

Part F

Apportionment and recharacterised transactions

Subpart FB—Apportionment

FB 2 Apportionment of income derived partly in New Zealand and partly elsewhere

- (1) For the purposes of this Act generally, if—
- (a) any business of a taxpayer is carried on partly in New Zealand and partly outside New Zealand; or
 - (b) a contract is made in New Zealand and is wholly or partly performed by a taxpayer outside New Zealand, or is made outside New Zealand and is wholly or partly performed by a taxpayer in New Zealand,—
- the gross amount of income from the business or contract, and expenditure incurred in deriving that income, is apportioned to New Zealand in such a way and to such an extent as is necessary to produce an amount of net income or net loss for the purposes of this Act in respect of the business or contract which the taxpayer might be expected to have if the taxpayer's activities in New Zealand in respect of the business or contract were carried out by the taxpayer as a separate and wholly independent person undertaking only those activities and dealing at arm's length, and the gross amount of income, so far as so apportioned to New Zealand, is deemed to be derived from New Zealand.
- (1A) For the purposes of **Part L**, if—
- (a) any business of a taxpayer is carried on partly in 1 country and partly in another country; or
 - (b) a contract is made in 1 country and wholly or partly performed by a taxpayer in another country, or is partly performed by a taxpayer in 2 or more countries,—
- the gross amount of income from the business or contract, and expenditure incurred in deriving that income, is apportioned between the countries in such a way and to such an extent as is necessary to produce an amount of net income or net loss, in respect of each country and the business or contract, which the taxpayer might be expected to have if the taxpayer's activities in that country in respect of the business or contract were carried out by the taxpayer as a separate and wholly independent person undertaking only those activities and dealing at arm's length.

- (2) This section must not be construed as applying with respect to—
- (a) income of any of the classes referred to in **section OE (1)** (except **paragraphs (a) and (q)**); or
 - (b) income of any of the classes referred to in **section OE (1) (a) or (q)** to the extent that that income consists of income of any of the classes referred to in any of the other provisions of that subsection.

Compare: 1994 No 164 s FB 2

FB 3 Disposal of trading stock

Where in any income year the whole or any part of the assets of a business owned or carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange, or gift, or distribution in terms of a will or on an intestacy, or otherwise, and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business or any part of it), and the assets sold or otherwise disposed of consist of or include any trading stock, the consideration received or receivable for the trading stock or, as the case may be, the price which under this Act the trading stock is deemed to have realised is taken into account in determining the taxpayer's counted income for that income year, and the person acquiring the trading stock is, for the purpose of calculating the person's taxable income for that income year or for any subsequent income year, deemed to have purchased it at the amount of that consideration or price. This section, with any necessary modifications, applies in any case where a share or interest in any trading stock is sold or otherwise disposed of by any taxpayer.

Compare: 1994 No 164 s FB 3

FB 4 Income derived from disposal of trading stock together with other assets of business

- (1) If trading stock is sold together with other assets of a business, the total consideration must be apportioned, for the purposes of this Act, between the trading stock and the other assets so as to reflect their respective market values, and the amount apportioned to the trading stock is treated as being the price paid for the trading stock by the purchaser.

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- (2) For the purposes of this section, any trading stock which has been disposed of otherwise than by sale and otherwise than by way of a transfer in accordance with a matrimonial agreement is deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash is deemed to have realised its market value at the date of the disposition or sale.
- (3) This section, with any necessary modifications, applies in any case where a share or interest in any trading stock is sold or otherwise disposed of together with other assets of a business or with a share or interest in other assets of a business.
- (4) For the purposes of this section,—
- (a) the creation or grant of any right to take timber is treated as a sale or other disposition of trading stock of a kind referred to in **subsection (5)(d)**;
 - (b) where there is a sale or other disposition of land with standing timber on the land, that sale or other disposition is deemed to include a sale or other disposition of trading stock of a kind referred to in **subsection (5)(d)**, except to the extent that the timber is—
 - (i) timber comprised in ornamental or incidental trees, as evidenced by a certificate given under **section 44C** of the Tax Administration Act 1994; or
 - (ii) 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
 - (iii) subject to a profit à prendre granted before 1 January 1984.
- (5) In this section, **trading stock** includes—
- (a) anything produced or manufactured;
 - (b) anything acquired or purchased for purposes of manufacture, sale, or exchange;
 - (c) livestock;
 - (d) timber;
 - (e) any right to take timber;
 - (f) any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the property was acquired by the taxpayer for the purpose of sale or other disposal:

- (g) anything in respect of which expenditure is incurred after 8.30 pm New Zealand Standard Time on 31 July 1986 and which, if possession of that thing were taken, would be trading stock;—

but does not include any financial arrangement to which the financial arrangements rules apply.

Compare: 1994 No 164 s FB 4

FB 4A Land on revenue account

If a person derives income under **sections CB 5 to CB 22** from the disposal of land, and the land is acquired together with other property, the cost of acquisition must be apportioned between the land and the other property.

Compare: 1994 No 164 s DJ 14(4)

FB 7 Depreciation: partial income-producing use

- (1) This section applies when—
- (a) a person has an amount of depreciation loss for an item of depreciable property for an income year; and
 - (b) at a time during the income year, the item is partly used, or is partly available for use, by the person—
 - (i) in deriving counted income or carrying on a business for the purpose of deriving counted income; or
 - (ii) in a way that is subject to fringe benefit tax; and
 - (c) at the same time, the item is partly used, or is partly available for use, by the person for a use that falls outside both **paragraph (b)(i) and (ii)**; and
 - (d) the item is not a motor vehicle to which **subpart DE** applies.
- (2) The deduction the person is allowed for the amount of depreciation loss must not be more than the amount calculated using the formula— $\text{depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}$.
- (3) In the formula,—
- (a) **depreciation loss** means the amount of depreciation loss for the income year;
 - (b) **qualifying use days** means the number of days in the income year on which the person owns the item and

uses it, or has it available for use, for a use that falls within **subsection (1)(b)(i) or (ii)**:

- (c) **all days** means the number of days in the income year on which the person owns the item and uses it or has it available for use.
- (4) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.

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

Subpart FC—Recharacterisation

Debentures and notes

FC 1 Floating rate of interest on debentures

- (1) Where in any debenture issued by a company the rate of interest payable in respect of the debenture is not specifically determined, but is determinable from time to time—
 - (a) by reference to the dividend payable by the company; or
 - (b) by reference to the company's profits, however measured, for debentures issued after 8.00 pm New Zealand Standard Time on 23 October 1986 other than those issued under a binding contract entered into before that time; or
 - (c) in any other manner, for debentures issued before the time specified in **paragraph (b)**,—

the company is denied a deduction in respect of any interest payable under the debenture or of any expenditure or loss incurred in connection with the debenture or in borrowing the money secured by or owing under it.
- (2) **Section HK 12** does not apply with respect to any such debenture or to the interest paid or payable under it.
- (3) This section does not apply if, under the terms of the debenture, the rate of interest payable is determined by a fixed relationship to banking rates or general commercial rates or (in the case of debentures issued after the time specified in **subsection (1)(b)**) economic, commodity, industrial, or financial indices.

Compare: 1994 No 164 s FC 1

FC 2 Interest on debentures issued in substitution for shares

- (1) Where a company has issued debentures to its shareholders or to any class of its shareholders, and the amount of the debenture or debentures issued to each shareholder of the company or of that class has been determined by reference to the number or to the available subscribed capital per share calculated under the slice rule of, or by reference otherwise to, the shares in that company or in any other company (whether or not that other company is being or has been liquidated) that were held by or on behalf of the shareholder at the time the debentures were issued or at any earlier time, the company is denied a deduction in respect of any interest payable under any debenture so issued or of any expenditure or loss incurred in connection with any such debenture or in borrowing the money secured by or owing under any such debenture.
- (2) **Section FC 1** applies with respect to all debentures to which **subsection (1)** applies, and to the interest payable under those debentures, in the same manner as if those debentures and that interest were debentures and interest of the kinds referred to in **section FC 1**.
- (3) This section does not apply with respect to any issue of debentures if more than 25% of the debentures (computed by reference to the amount of the debentures) were transferred for a consideration in money or money's worth before 30 August 1940 (being the date of the passing of the Finance Act (No 2) 1940).
- (4) This section does not apply with respect to any debenture that is a convertible note.
- (5) In this section,—
amount of the debenture means, in respect of any debenture, the principal sum expressed to be secured by or owing under that debenture
shareholder includes, in respect of any company, a person by whom or on whose behalf shares in the company have at any time been held.

Compare: 1994 No 164 s FC 2

*Shares***FC 3 Share dealing**

- (1) If a taxpayer holds shares that are revenue account property, a dividend derived by the taxpayer or an associated person from the shares after their acquisition which—
- (a) constitutes a realisation or recovery of the price at which the taxpayer acquired those shares; and
 - (b) is a dividend the declaration, payment, or distribution of which was in any way—
 - (i) controlled or directed by the taxpayer; or
 - (ii) part of or associated with a scheme which includes the acquisition of those shares and the payment or distribution of the dividend—
- is deemed to be received by the taxpayer as consideration or part consideration on the sale of the shares, whether or not the shares have been or will be sold, and is income in the tax year in which the dividend is derived:
- provided that if, in relation to the transaction initiated by the acquisition of those shares in the tax year in which the dividend is derived, the amount that would be the taxpayer's net income if the taxpayer's only income derived in that tax year were in respect of the transaction (including any amount deemed to be consideration under this subsection) is more than zero, the amount of the consideration that is treated as income under this subsection is reduced by the lesser of—
- (c) the amount that would be the taxpayer's net income so calculated; and
 - (d) the total of any dividends that have been treated as income under **subsection (2)** and that have not previously been applied in reduction of the amount of consideration under this paragraph.
- (2) Notwithstanding anything in **subsection (1)**, any dividend that is taken into account under that subsection in any tax year remains and is a dividend derived by the taxpayer in that tax year, and the amount of that dividend is income of the taxpayer in that tax year.

Compare: 1994 No 164 s FC 3

FC 4 Valuation adjustments where company acquires its shares

Where—

- (a) a company acquires, redeems, or otherwise cancels a share in the company (referred to in this section as the **cancellation**); and
- (b) the cancellation is not an on-market cancellation; and
- (c) any consideration derived by the shareholder from the cancellation would be income of the shareholder under any of **sections CB 1 to CB 4** or any other provision of this Act (other than a provision in **subpart CD** or **section HH 1(8)**); and
- (d) the shareholder continues to hold, after the cancellation, shares of the same class as the share,—

then, for the purposes of this Act,—

- (e) if the whole of the consideration derived by the shareholder is treated as a dividend for the purposes of this Act, the shareholder is deemed not to have disposed of the share (except for the purpose of determining whether the shareholder has derived a dividend) and an amount equal to the cost to the shareholder of the share must be fairly divided amongst and added to the cost to the shareholder of the shareholder's remaining shares of the same class when taking into account, under **subpart EB**, this section, or otherwise, the cost of those remaining shares of the same class at any time after the cancellation; and
- (f) in any case where—
 - (i) **paragraph (e)** does not apply; and
 - (ii) the consideration payable by the company for the cancellation is less than the market value of the share at the time at which notice is first given by the company to the shareholder or, in any case where the cancellation is proposed by the shareholder, by the shareholder to the company proposing the cancellation (for any reason other than that the proposal requires the consideration to be equal to the market value of the share at the time of the cancellation),—

section GD 1 does not apply but an amount (being not less than nil) calculated in accordance with the following formula:

$$a - b \times \frac{c}{d}$$

where—

- a is the cost to the shareholder of the share
- b is the aggregate cost to the shareholder of all the shareholder's shares of the same class immediately before the cancellation
- c is the consideration derived by the shareholder from the company in respect of the cancellation
- d is the market value of all the shareholder's shares of the same class immediately before the cancellation—

must be—

- (iii) fairly divided amongst and added to the cost to the shareholder of the shareholder's remaining shares of the same class when taking into account, under **subpart EB**, this section, or otherwise, the cost of those remaining shares of the same class at any time after the cancellation; and
- (iv) in any case where the shares are not trading stock of the shareholder, excluded from the cost of the share acquired, redeemed, or otherwise cancelled, so that the shareholder is not allowed any deduction for that amount.

Compare: 1994 No 164 s FC 4

Leases

FC 5 Assets purchased and resold after deduction of payments under lease

- (1) Where—
 - (a) a taxpayer leased, rented, or hired any asset, being any plant or machinery (including a motor vehicle) or other equipment or a temporary building and the taxpayer has been allowed a deduction for the consideration paid or given in respect of that lease, rental, or hire; and
 - (b) either—
 - (i) that taxpayer at any time purchased or otherwise acquired that asset and sold or otherwise disposed

of it for a consideration in excess of the consideration for which the taxpayer purchased or otherwise acquired it; or

- (ii) any other person, where the taxpayer and that other person are associated persons, at any time purchased or otherwise acquired that asset, not being an acquisition resulting from a matrimonial agreement, whether or not from the taxpayer, and that other person sold or otherwise disposed of it for a consideration in excess of the consideration for which that other person purchased or otherwise acquired it,—

an amount equal to the excess or to the total amount of the deductions so allowed, whichever is less, is income of the taxpayer derived in the tax year in which the asset is sold or otherwise disposed of.

- (2) **Subsection (1)** applies whether or not there was any clause or condition in the lease, contract, agreement, or arrangement under which the asset was leased, rented, or hired, by which that taxpayer or that other person was required to purchase or otherwise acquire that asset.
- (3) For the purposes of this section,—
- (a) if an asset to which this section relates has been purchased or otherwise acquired, or sold or otherwise disposed of, together with other assets, the total consideration must be apportioned between the asset and the other assets so as to reflect their respective market values, and the amount apportioned to the asset is treated as being the consideration for which the asset was purchased, acquired, sold, or disposed of:
- (b) where any asset to which this section relates has been sold or otherwise disposed of, not being a disposition in accordance with a matrimonial agreement, without consideration or for a consideration which is less than the market value of that asset at the date of the sale or other disposition, that asset is deemed to have been sold at and to have realised that market value.

Compare: 1994 No 164 s FC 5

FC 6 Effect of specified lease on lessor and lessee

- (1) This section applies notwithstanding anything in this Act.

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- (2) The leasing of any lease asset under any specified lease is deemed to be a sale of that lease asset, made at the commencement of the term of the lease, by the lessor to the lessee, and the lessee is deemed to have incurred, pursuant to that sale, capital expenditure of an amount equal to the cost price of that lease asset.
 - (3) The lessor in any specified lease is deemed to have advanced to the lessee in that specified lease a loan of an amount equal to the cost price of the lease asset and the lessee is deemed to have applied that loan in the financing of the acquisition of that lease asset.
 - (4) In any income year in which the lessor leases, under a specified lease, any lease asset to any lessee, the lessor is denied a deduction for an amount of depreciation loss in respect of that lease asset.
 - (5) On the expiry of the term of the lease, where the lease asset is not purchased by the lessee under the terms of that lease or on the exercise of any option under that lease, the lease asset is deemed to have been sold on the expiry of the term of the lease to the lessor for—
 - (a) an amount equal to the guaranteed residual value (if any) specified, in respect of the lease asset, in the specified lease; or
 - (b) where no guaranteed residual value is so specified, no consideration.
 - (6) In any case where a specified lease is terminated before the expiry of the term of the lease (whether by cancellation, surrender, or otherwise),—
 - (a) the lease asset in relation to that lease is deemed to be sold, on the date of that termination, to the lessor by the lessee at a price equal to the amount by which the amount of the outstanding balance (at the time of that termination) of any loan advanced by the lessor to the lessee exceeds the amount or the sum of the amounts payable by the lessee to the lessor in consideration for the release by the lessor of the lessee from the obligations of the lessee under the lease:
provided that where, in relation to the amount of that outstanding balance and to the amount or the sum of the amounts payable by the lessee to the lessor, no such

- excess arises, that lease asset is deemed to have been so sold for no consideration:
- (b) where the value of the consideration payable by the lessee to the lessor in respect of that termination exceeds the amount of the outstanding balance (at the time of that termination) of any loan advanced by the lessor to the lessee, an amount equal to the amount of that excess is deemed to be income derived by the lessor in the income year in which that lease is terminated.
- (7) Where on or after the expiry of the term of the lease in relation to any specified lease the lease asset in relation to that lease is sold, assigned, or leased under a specified lease by the lessor to another person and the value of the consideration in respect of that sale, or that assignment, or that lease—
- (a) exceeds the amount determined, in respect of that first-mentioned specified lease, under **subsection (5)**, that amount so determined is increased by such further amount as is equal to such part (if any) of the excess as is paid by the lessor to the lessee:
 - (b) is less than the amount determined, in respect of that first-mentioned specified lease, under **subsection (5)(a)** and the lessee is required to make a further payment to the lessor equal to the difference between the guaranteed residual value in relation to that lease value and that value of that consideration, that amount so determined is reduced by the amount of that further payment: provided that in any case where the value of the consideration in respect of that sale, or that assignment, or that lease exceeds the amount determined under **subsection (5)**, such part (if any) of that excess as is not paid to the lessee is deemed to be income derived by the lessor in the income year in which that term of the lease expires.
- (8) In any case where the lessee in any specified lease, or any other person where that other person and that lessee are associated persons, at any time purchased or otherwise acquired that lease asset and sold or otherwise disposed of that lease asset and the value of the consideration for that sale or other disposal exceeds the value of the consideration for which the lessee or the other person purchased or otherwise acquired it, an amount equal to that excess is income derived by the lessee

in the income year in which the lease asset is sold or otherwise disposed of.

Compare: 1994 No 164 s FC 6

FC 7 Income of lessor under specified lease

- (1) For the purposes of this Act, the income of any lessor derived under any specified lease is deemed to be interest.
- (2) The amount of interest so derived by any lessor is deemed to be,—
 - (a) during the term of the lease, derived during the initial period and each instalment period, an amount that either—
 - (i) is calculated, on the outstanding balance in relation to that initial period and each instalment period, at such a rate and in such a manner that the aggregate of all of the amounts so calculated is equal to the amount first mentioned in **paragraph (b)**; or
 - (ii) is calculated, in relation to that initial period and to each instalment period, in accordance with such other method commonly applied in commercial usage as, having regard to the term of the lease and to the frequency of the lease payments, results in the allocation to that initial period and to each instalment period of an amount that is fair and reasonable and results in the sum of all such amounts so allocated being equal to the amount first mentioned in **paragraph (b)**;
 - (b) in relation to the term of the lease, such amount as is equal to the sum of the amounts of the lease payments in relation to the specified lease and the amount of the guaranteed residual value (if any) in relation to the specified lease, reduced by the cost price of the lease asset.
- (3) The interest so derived by any lessor is, in relation to any income year, deemed to be an amount equal to the sum of such of the amounts (being amounts calculated in accordance with **subsection (2)(a)**) as are calculated in relation to the initial period (if any) and to each instalment period that ends in that income year.

Compare: 1994 No 164 s FC 7

FC 8 Deduction to lessee under specified lease

No deduction is allowed for any expenditure incurred by the lessee under a specified lease except to the extent that the expenditure—

- (a) would be allowed as a deduction to the lessee under **section BD 2**; and
- (b) does not exceed the sum of such of the amounts (being amounts calculated in accordance with **section FC 7(2)(a)**) as are calculated in relation to the initial period (if any) and to each instalment period that ends in that income year.

Compare: 1994 No 164 s FC 8

*Finance leases***FC 8A Lease of lease asset treated as sale**

- (1) The leasing of a lease asset under a finance lease is treated as a sale of the lease asset from the lessor to the lessee on the date that the lease starts, and—
 - (a) the lessor is treated as giving the lessee a loan for the lease asset; and
 - (b) the lessee is treated as using the loan to purchase the lease asset.
- (2) For the lessor, the loan's value is the lessor's disposition value.
- (3) For the lessee, the loan's value is the lessee's acquisition cost.

Compare: 1994 No 164 s FC 8A

FC 8B Rules for lease asset during term of finance lease

- (1) A lessor is not allowed a deduction for an amount of depreciation loss for a lease asset in a tax year or a part of a tax year (as the case may be) in which the lessor leases the lease asset under a finance lease.
- (2) If the lessee acquires ownership of the lease asset on the date that the term of the lease ends or terminates, the sale giving rise to the acquisition is the same sale referred to in **section FC 8A**.
- (3) Despite **section EE 37**, if the lessee does not purchase the lease asset at the end of the term of the lease, the lessor is treated as

having purchased the lease asset on the date that the lease ends, and the lease asset is sold to the lessor for—

- (a) the guaranteed residual value; or
- (b) no consideration, if there is no guaranteed residual value.

Compare: 1994 No 164 s FC 8B

FC 8C Termination of finance lease

- (1) Despite **section EE 37**, if a finance lease terminates before the term of the lease ends and the lessor reacquires the lease asset, the lease asset is treated as being sold to the lessor for the amount by which the outstanding balance of the loan on the date of termination is more than the amount the lessee paid to be released from his or her obligations under the lease.

Compare: 1994 No 164 s FC 8C

FC 8D Lessor's use of lease asset after finance lease ends

- (1) If, on or after the date the term of the lease ends, the lease asset is sold, assigned, or leased by the lessor to another person under another finance lease, and the consideration for the sale, assignment, or lease—
 - (a) is more than the amount determined under **section FC 8B(3)**, the amount determined under **section FC 8B(3)** is increased by the excess to the extent that it is paid by the lessor to the lessee of the original finance lease:
 - (b) is less than the amount determined under **section FC 8B(3)(a)**, and the lessee is required to make a further payment to the lessor for the difference between the guaranteed residual value and the consideration for the sale, assignment, or lease, the amount so determined is reduced by the further payment.
- (2) If **subsection (1)(a)** applies, any excess that is not paid by the lessor to the lessee is income derived by the lessor in the tax year in which the original term of the lease ends.

Compare: 1994 No 164 s FC 8D

FC 8E Purchase and sale of lease asset by lessee or associated person

If the lessee, or a person who is associated with the lessee, purchases or acquires a lease asset that has been subject to a finance lease and sells or disposes of it for more than the

consideration given for the purchase or acquisition, the difference is income of the lessee in the tax year in which the lessee or the person who is associated with the lessee sells the lease asset.

Compare: 1994 No 164 s FC 8E

FC 8F Lessor's income

Income derived by a lessor from the loan under a finance lease is treated as interest.

Compare: 1994 No 164 s FC 8F

FC 8G Deduction to lessee

A lessee is not allowed a deduction for expenditure incurred under a finance lease in a tax year, except to the extent that the lessee would be allowed a deduction for the expenditure under **section BD 2**.

Compare: 1994 No 164 s FC 8G

FC 8H Adjustment required for consecutive or successive leases

- (1) A lessor and a lessee must make an adjustment under **section FC 8I** if—
 - (a) their lease is a consecutive or a successive lease and is deemed to be 1 lease under the definition of **lease**; and
 - (b) they did not contemplate, at the start of the term of the lease, that the lease would be for more than 75% of the lease asset's estimated useful life; and
 - (c) their lease is for more than 75% of the lease asset's estimated useful life.
- (2) The result of the adjustment must be included in the return of income for the tax year in which the adjustment is made.

Compare: 1994 No 164 s FC 8H

FC 8I Adjustment

- (1) A lessor and a lessee must both apply the formula in **subsection (2)** for the period beginning on the date that the lease starts and ending on the last day of the tax year in which the lease becomes a finance lease to make the adjustment.
- (2) The formula is—

income (finance lease) – expenditure (finance lease)
 – income (operating lease) + expenditure (operating lease)

where—

income (finance lease) is the income that would have been derived under the lease as if the lease were a finance lease

expenditure (finance lease) is the expenditure that would have been incurred under the lease as if the lease were a finance lease

income (operating lease) is the income derived under an operating lease

expenditure (operating lease) is the sum of all deductions taken in relation to an operating lease.

- (3) If the result of the adjustment is—
- (a) a positive amount, the result is income of the lessor or the lessee derived in the tax year in which the adjustment is made; and
 - (b) a negative amount, the result is expenditure incurred by the lessor or the lessee in the tax year in which the adjustment is made.

Compare: 1994 No 164 s FC 81

Hire purchase

FC 9 Purpose

This section and **section FC 10** are intended to result in hire purchase agreements within the meaning of the Hire Purchase Act 1971 that are made in relation to personal property other than livestock or bloodstock being treated for the purposes of this Act in a similar manner to a sale of the property with a loan for the purchase price being made by the person providing the finance under the agreement to the person obtaining under the agreement the use of or right to use the property.

Compare: 1994 No 164 s FC 9

FC 10 Taxation of hire purchase agreements

- (1) For the purposes of this Act, except **subsections (2), (3), and (6) and section FC 9**, where a hire purchase asset is provided to a lessee under a hire purchase agreement,—

- (a) the lessor is deemed to have sold the hire purchase asset at the commencement of the hire purchase agreement for an amount equal to the lessor's disposition value for the hire purchase asset; and
 - (b) the lessee is deemed to have purchased the hire purchase asset at the commencement of the hire purchase agreement for an amount equal to the lessee's acquisition cost for the hire purchase asset; and
 - (c) the lessee, but no other person, is allowed deductions for amounts of depreciation loss of the hire purchase asset attributable to the period until the hire purchase agreement is terminated.
- (2) Subject to **subsections (3) and (4)**, for the purposes of this Act, if on or after the termination or expiry of a hire purchase agreement the lessee, or any other person if that person and the lessee are associated persons, does not acquire ownership of the hire purchase asset the subject of the hire purchase agreement,—
- (a) the lessor is deemed to have acquired ownership of the hire purchase asset from the lessee for an amount equal to the lessor's outstanding balance in relation to the hire purchase agreement; and
 - (b) the lessee is deemed to have disposed of ownership of the hire purchase asset to the lessor for an amount equal to the lessee's outstanding balance in relation to the hire purchase agreement—
- on the date of the termination or expiry of the hire purchase agreement.
- (3) If the lessor is a cash basis person, the amount referred to in **subsection (2)** is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula— $\text{accrual income} - \text{income}$ —
- where—
- accrual income is the amount of income that would have been derived under 1 of the spreading methods for the hire purchase payments if—
- (a) the lessor were not a cash basis person; and
 - (b) **section EW 37** did not apply to the lessor and the hire purchase agreement in the income year that the hire purchase agreement terminates or expires

income is the income of the lessor from hire purchase payments paid.

- (4) If the lessee is a cash basis person, the amount referred to in **subsection (2)** is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula—expenditure under the financial arrangements rules – expenditure

where—

expenditure under the financial arrangements rules is the amount of expenditure that would have been incurred under 1 of the spreading methods for the hire purchase payments if—

- (a) the lessee were not a cash basis person; and
- (b) **section EW 37** did not apply to the lessee and the hire purchase agreement in the income year that the hire purchase agreement terminates or expires

expenditure is the expenditure incurred by the lessee from hire purchase payments paid.

- (5) For the avoidance of doubt, if a lessor is deemed to acquire ownership of a hire purchase asset the subject of a hire purchase agreement from a lessee under **subsection (2)**,—
- (a) the amount calculated in accordance with **subsection (2)** and, if applicable, **subsection (3) or (4)** is taken into account as consideration paid by the lessee to the lessor in relation to the hire purchase agreement for the purposes of **section EW 37**, and as consideration derived by the lessor in respect of the hire purchase agreement for the purposes of **section EW 37**; and
 - (b) the costs and expenses referred to in section 31(2)(c) and (d) of the Credit (Repossession) Act 1997 (being, generally, storage and repossession and other costs and expenses associated with a breach of a hire purchase agreement by the lessee) are not taken into account by the lessor or the lessee for the purposes of the old financial arrangements rules; and
 - (c) the lessor is denied a deduction under **section DB 11 or DB 23** for bad debts in relation to any amount owing or

to become owing in respect of the hire purchase agreement, if the amount calculated for the lessor under **subsection (2)** and, if applicable, **subsection (3)** in relation to the hire purchase agreement is taken into account by the lessor—

- (i) as the acquisition price of trading stock of the lessor; or
 - (ii) for the purpose of calculating the net income of the lessor for any income year, in any way not referred to in **subparagraph (i)**; and
- (d) any amount paid at any time in an income year subsequent to the income year in which a hire purchase agreement is terminated or expires on account of any amount that, under the terms of the hire purchase agreement, the lessee or any person associated with the lessee is liable to pay to the lessor or any person associated with the lessor is income of the lessor in the income year it is received by the lessor or associate of the lessor; and
- (e) any amount—
- (i) paid at any time in an income year subsequent to the income year in which a hire purchase agreement is terminated or expires by the lessor or any person associated with the lessor to the lessee or any person associated with the lessee under the hire purchase agreement and consequent upon the termination or expiry of the hire purchase agreement; and
 - (ii) that was not taken into account in the computation of the lessor's outstanding balance in relation to that hire purchase agreement—
- is, in the income year it is paid, deemed to be expenditure incurred by the lessor; and
- (f) any amount—
- (i) paid at any time in an income year subsequent to the income year in which a hire purchase agreement is terminated or expires by the lessor or any person associated with the lessor to the lessee or any person associated with the lessee under the hire purchase agreement and consequent upon the termination or expiry of the hire purchase agreement; and

- (ii) that was not taken into account in the computation of the lessee's outstanding balance in relation to that hire purchase agreement—
is, in the income year it is paid, deemed to be income derived by the lessee if the lessee has been allowed a deduction in respect of the hire purchase asset that is the subject of the agreement.
- (6) For the purposes of this Act, if a lessee acquires ownership of a hire purchase asset on the termination or expiration of a hire purchase agreement and the lessor has been deemed already to have disposed of that ownership under **subsection (1)**, that acquisition does not constitute a further disposition of the hire purchase asset by the lessor or further acquisition of the hire purchase asset by the lessee.
- (6A) Income derived by a lessor from the loan under a hire purchase agreement is treated as interest.
- (7) **Sections FC 5 and FF 14** do not apply to a lessee in relation to a hire purchase agreement.
- (8) In this section, **lessee's acquisition cost**, in relation to a hire purchase asset, means the aggregate of—
- (a) the consideration paid to the lessee for the hire purchase agreement, as determined by the definition of **consideration**; and
 - (b) the amount of any expenditure or loss incurred by the lessee in preparing and installing the hire purchase asset for use (unless the lessee is allowed a deduction for such expenditure or loss, other than a deduction for an amount of depreciation loss).

Compare: 1994 No 164 s FC 10

Non-resident general insurers

FC 13 Premiums derived by non-resident general insurers treated as being derived from New Zealand

- (1) A premium is treated as being derived from New Zealand, for the purposes of **sections FC 14 and FC 15**, if—
- (a) there is a transaction that either—
 - (i) is insurance of the kind described in **subsection (2)**;
 - or

- (ii) is called insurance in this section and is described in **subsection (3) or (4)**; and
 - (b) an insured person pays the premium for the insurance to an insurer; and
 - (c) the premium meets all 3 conditions in **subsections (5) to (7)**; and
 - (d) the premium is not excluded from the application of this section by **subsection (8)**.
- (2) For the purposes of **subsection (1)(a)**, the first kind of insurance is general insurance.
- (3) For the purposes of **subsection (1)(a)**, the second kind of insurance is a guarantee against risk given by an insurer to an insured person, if—
 - (a) the insured person is liable to pay a premium to the insurer for the guarantee; and
 - (b) the insured person is associated with the insurer.
- (4) For the purposes of **subsection (1)(a)**, the third kind of insurance is a guarantee against risk given by an insurer to an insured person, if—
 - (a) the insured person is liable to pay a premium to the insurer for the guarantee; and
 - (b) the risk arises from money lent to the insured person; and
 - (c) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and
 - (d) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee.
- (5) For the purposes of **subsection (1)(c)**, the premium is derived by an insurer who is not resident in New Zealand when the insurer derives it.
- (6) For the purposes of **subsection (1)(c)**, the premium is not attributable to a fixed establishment of the insurer in New Zealand through which the insurer carries on business in New Zealand.
- (7) For the purposes of **subsection (1)(c)**, at least 1 of the following applies to the premium:
 - (a) the insured person from whom the premium is derived is resident in New Zealand; or

- (b) the insurance contract from which the premium is derived is offered or entered into in New Zealand; or
 - (c) the insurance contract from which the premium is derived is entered into for the purposes of a business carried on by the insured person in New Zealand through a fixed establishment in New Zealand.
- (8) For the purposes of **subsection (1)(d)**, the premium is excluded from the application of this section if—
- (a) all risk covered by the premium is located outside New Zealand; and
 - (b) the insurer deriving the premium is not associated with the insured person.
- (9) In this section, and **sections FC 14 to FC 17**,—
- insured person** means,—
- (a) in relation to insurance of the kind described in **subsection (2)**, a person who is liable to pay a premium to an insurer for the insurance and is entitled by the payment of the premium to make a claim against the insurer:
 - (b) in relation to insurance of the kinds described in **subsections (3) and (4)**, a person who is liable to pay a premium to an insurer for the guarantee, whether or not the payment of the premium entitles the person to make a claim against the insurer
- insurer** means,—
- (a) in relation to insurance of the kind described in **subsection (2)**, a person who provides the insurance and to whom an insured person is liable to pay a premium:
 - (b) in relation to insurance of the kinds described in **subsections (3) and (4)**, a person who provides the guarantee and to whom an insured person is liable to pay a premium
- premium** means,—
- (a) in relation to insurance of the kind described in **subsection (2)**, the amount payable by an insured person to an insurer for the insurance under the insurance contract entered into by the insurer and the insured person:
 - (b) in relation to insurance of the kind described in **subsection (3)**, the amount payable by an insured person to an insurer for the guarantee under the insurance contract entered into by the insurer and the insured person,

whether payable directly or indirectly or by 1 or more transactions:

- (c) in relation to insurance of the kind described in **subsection (4)**, the amount payable by an insured person to an insurer for the guarantee under the insurance contract entered into by the insurer and the insured person.

Compare: 1994 No 164 ss CN 4(1)(b), (c), OB 1, OE 4(1)(o)

FC 14 Non-resident general insurers' income

- (1) This section applies when an insurer derives a premium that, under **section FC 13**, is treated as being derived from New Zealand.
- (2) Ten percent of the gross premium derived by the insurer is income of the insurer.

Compare: 1994 No 164 s CN 4(1)

FC 15 Non-resident general insurers' expenditure

- (1) This section applies when an insurer derives income under **section FC 14**.
- (2) The insurer is denied a deduction in relation to an amount to which this section applies.
- (3) This section overrides the general permission.

Compare: 1994 No 164 s CN 4(2)

FC 16 Liability to make return and pay income tax

- (1) This section applies when an insurer derives income under **section FC 14**.
- (2) To the extent to which the insurer makes a return of income and pays income tax on the income, no other person described in this section is liable to do so.
- (3) To the extent to which a person on behalf of the insurer, including a broker or other agent who pays the premium on behalf of another person, makes a return and pays income tax on the income, no agent described in any of **subsections (4) to (6)** is liable to do so.
- (4) The person who is liable in the first place as an agent of the insurer to make a return of income and pay income tax on the income is—
 - (a) a person, including a broker or agent, who pays the premium to the insurer or to some other person not

- carrying on a business through a fixed establishment in New Zealand; or
- (b) a person described in **subsection (7)(b)**.
- (5) The person who is liable in the second place as an agent of the insurer to make a return of income and pay income tax on the income is a person who pays the premium, whether or not through a broker or agent.
- (6) The person who is liable in the third place as an agent of the insurer to make a return of income and pay income tax on the income is the insured person.
- (7) When a bank or other body to whom any of **section NF 9(1)(a) to (c)** applies pays the premium on behalf of another person to the insurer or to some other person not carrying on a business through a fixed establishment in New Zealand,—
- (a) the bank or other body is not an agent of the insurer; and
- (b) the person who provides the bank or other body with the funds from which the premium is paid is an agent of the insurer.

Compare: 1994 No 164 s CN 4(3)–(5)

FC 17 Premiums paid to residents of Switzerland and the Netherlands

- (1) This section applies when—
- (a) an insurer derives income under **section FC 14**; and
- (b) an agent of the insurer under **section FC 16** pays the premium to an insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand; and
- (c) the insurer or other person—
- (i) is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland; or
- (ii) is treated as being resident in the Netherlands for the purposes of a double tax agreement between the government of New Zealand and the government of the Netherlands.
- (2) The agent must disclose details of the premium payment to the Commissioner in the manner, if any, required by the Commissioner.

Compare: 1994 No 164 s CN 4(3A)

*Non-resident shippers***FC 18 Non-resident shippers' income**

- (1) This section applies when a ship that belongs to, or is chartered by, a non-resident person carries outside New Zealand cargo, mail, or passengers shipped or embarked in New Zealand. In this section, cargo, mail, or passengers shipped or embarked at a port in New Zealand for carriage outside New Zealand are treated as carried outside New Zealand from that port, even though the ship may call at another port in New Zealand before finally leaving New Zealand.
- (2) Five percent of the amount payable to the person for the carriage (whether it is payable inside or outside New Zealand) is treated as income of the person derived from New Zealand.
- (3) This section is subject to an exemption granted by the Commissioner under **section FC 19**.

Compare: 1994 No 164 s CN 1(1), (3)

FC 19 Non-resident shippers' excluded income

The Commissioner may determine that some or all of an amount that would otherwise be income of a non-resident person under **section FC 18** is excluded income if, and to the extent to which, in circumstances corresponding to those described in that section, similar persons resident in New Zealand are not liable to, or are exempt from, income tax imposed by the laws of the country or territory in which the non-resident person is resident.

Compare: 1994 No 164 s CN 1(2)

FC 20 Non-resident shippers' expenditure

- (1) When a person who is a non-resident is treated by **section FC 18** as deriving income from New Zealand for cargo, mail, or passengers shipped outside New Zealand,—
 - (a) the person is denied a deduction in relation to an amount to which this section applies; and
 - (b) the person has no amount of depreciation loss in relation to that income.
- (2) This section overrides the general permission.

Compare: 1994 No 164 s CN 1(1A)

*Non-resident film renters***FC 21 Amounts derived by non-residents from renting films**

- (1) Ten percent of the amounts derived from New Zealand by a non-resident person from the following activities is income of the non-resident person:
 - (a) renting, exhibiting, or issuing a film, or making other arrangements for its exhibition:
 - (b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film:
 - (c) selling or hiring advertising materials relating to a film.
- (2) The rest of the amounts derived from activities in **subsection (1)** are exempt income of the non-resident person.
- (3) The non-resident person is denied a deduction in relation to an amount to which this section applies.
- (4) This section does not apply to a non-resident person if the amounts derived by them from activities in **subsection (1)** are an insignificant proportion of the total amounts derived by them from any business carried on in New Zealand or elsewhere.
- (5) This section overrides the general permission.

Compare: 1994 No 164 s CN 2

Subpart FD—Consolidation of companies**FD 1 Purpose and application of consolidated grouping provisions**

Subject to the express provisions of the consolidation rules, those rules are intended to result in the provisions of this Act applying, except where otherwise expressly provided or where the context otherwise requires, to 2 or more companies which are a wholly-owned group of companies that elect to be treated as a consolidated group of companies as if those companies were a single company, and this Act must be read accordingly.

Compare: 1994 No 164 s FD 1

FD 2 Interpretation

- (1) For the purposes of the consolidation rules, any reference in those rules to—

- (a) income, counted income, net income, or taxable income of a consolidated group; or
 - (b) an attributed CFC net loss or a FIF net loss, or a net loss of a consolidated group; or
 - (c) tax payable by a consolidated group; or
 - (d) a tax credit available to a consolidated group—
is, unless the context otherwise requires, interpreted as a reference to the income, counted income, net income, taxable income, attributed CFC net loss, FIF net loss, net loss, tax payable, or tax credit available determined in respect of that consolidated group on a single assessment basis in accordance with those rules as if the group were 1 company.
- (2) For the purposes of the application of those provisions of the consolidation rules that require provisions of this Act to apply to a consolidated group as if it were a single company, the shares or options over shares in respect of that single company are deemed to comprise all shares or options over shares in respect of companies which were at the relevant time members of that consolidated group.
- (3) Notwithstanding any provisions of the consolidation rules other than any of those provisions that expressly otherwise provide, dividends paid by 1 member of a consolidated group to another member of the group continue to be taken into account for the purposes of—
- (a) the imputation rules; and
 - (b) the dividend withholding payment rules; and
 - (c) **subpart MF**; and
 - (d) **sections GC 24, GC 26, HB 2(1)(a)(vi), ME 10 to ME 14, MG 13 to MG 16, NH 5, and NH 6**; and
 - (e) sections 73 and 74 of the Tax Administration Act 1994.
- (4) For the purposes of **sections GC 24, ME 10 to ME 14, ME 25 to ME 28, MF 7 to MF 10, MG 13 to MG 16, NH 5, and NH 6**, and sections 73 and 74 of the Tax Administration Act 1994, unless the context otherwise requires, **sections ME 2, MG 1, and OB 6(1)(f)** apply as if references in those provisions—
- (a) to the imputation rules were references to **sections ME 10 to ME 14**;
 - (b) to the dividend withholding payment rules were references to **sections MG 13 to MG 16, NH 5, and NH 6**.

Compare: 1994 No 164 s FD 2

FD 3 Companies which may constitute consolidated group

For the purposes of this Act, any 2 or more eligible companies are entitled to be members of the same consolidated group at any time only where—

- (a) at that time those companies are a wholly-owned group of companies; and
- (b) if at that time any of the companies has a non-standard balance date, at that time all the companies have the same non-standard balance date; and
- (c) if at that time any of the companies is a qualifying company, at that time all the companies are qualifying companies; and
- (d) if at that time any of the companies is a mining company, at that time all the companies are mining companies; and
- (e) at that time, no shares in those companies have—
 - (i) been subject to any arrangement or series of related or connected arrangements; or
 - (ii) had any rights attaching to them extinguished or altered, directly or indirectly, by any means whatever,—

in either case for the purpose, or for purposes including the purpose, of enabling the companies to be entitled to be members of the same consolidated group so as to defeat the intent and application of the consolidation rules.

Compare: 1994 No 164 s FD 3

FD 4 Formation of consolidated group

- (1) Any 2 or more eligible companies that are entitled to be members of the same consolidated group may elect to form and be treated as a consolidated group for the purposes of this Act by giving notice to the Commissioner in such form as the Commissioner may approve.
- (2) Any notice given under **subsection (1)** must—
 - (a) nominate 1 of the companies as agent of the consolidated group for the purposes of this Act; and
 - (b) contain an agreement by each company to be jointly and severally liable with other members of the consolidated group for any income tax payable by the consolidated group (which agreement may be expressed as subject

to, or in terms of an approval given under, **section HB 1(2) to (5)**).

- (3) Where any 2 or more companies have elected under this section to form a consolidated group, those companies are treated for the purposes of this Act as members of a consolidated group from—
- (a) the beginning of the income year immediately succeeding that in which the notice is received by the Commissioner; or
 - (b) if the notice—
 - (i) is received by the Commissioner within 63 working days after the beginning of an income year, or within such further period as the Commissioner may allow under **subsection (6)**; and
 - (ii) specifies that the election applies for that income year,—
the beginning of that income year.
- (4) Notwithstanding **subsection (3)**, where—
- (a) any 2 or more companies that have elected under this section to form a consolidated group are each incorporated or otherwise formed during the same income year; and
 - (b) the notice of election—
 - (i) is received by the Commissioner within 63 working days after the latest of those incorporations or other formations, or within such further period as the Commissioner may allow under **subsection (6)**; and
 - (ii) specifies that the election applies for the income year in which the incorporations or other formations occurred,—
those companies are treated for the purposes of this Act as members of a consolidated group from the first day of that income year.
- (5) Notwithstanding **subsection (3)**, where—
- (a) any 2 or more companies have in any income year elected under this section to form a consolidated group during that income year; and
 - (b) the notice of election—
 - (i) is received by the Commissioner within 63 working days after the date the companies first became

entitled to so elect, or within such further period as the Commissioner may allow under **subsection (6)**; and

- (ii) specifies that the election applies from that date of first entitlement,—

those companies are treated for the purposes of this Act as members of a consolidated group from that date of first entitlement provided that adequate part income year accounts in respect of each company's net income or net loss for each relevant part income year are furnished to the Commissioner in accordance with **section FD 9**.

- (6) The Commissioner may in any particular case extend the period of 63 working days specified in any of **subsections (3)(b), (4)(b), and (5)(b)** where the relevant company or companies satisfy the Commissioner that in all the circumstances the notice of election could not reasonably be expected to be, or to have been, furnished within that period.
- (7) Nothing in this section applies to treat as members of a consolidated group any 2 companies that have made an election under this section, unless,—
 - (a) in the case of companies to which **subsection (3)(a)** would apply, the companies remain eligible companies entitled to be members of the same consolidated group at the beginning of the income year referred to in that provision; or
 - (b) in the case of companies to which any of **subsections (3)(b), (4), and (5)** would apply, the companies (once in existence) are eligible companies entitled to be members of the same consolidated group throughout the period that—
 - (i) commences with the date on which they would, under the relevant one of those provisions, be treated as being members of a consolidated group; and
 - (ii) ends with the date on which the notice of election is received by the Commissioner.
- (8) **Subsection (5)** does not apply where it can reasonably be concluded that any arrangement has been entered into for the purpose, or for purposes including the purpose, of enabling

the company to meet the requirements of that subsection so as to defeat the intent and application of the consolidation rules.

Compare: 1994 No 164 s FD 4

FD 5 Company may not be member of more than 1 consolidated group

- (1) No company may at any time be a member of more than 1 consolidated group.
- (2) Where any company would, but for this section, be treated at any time as being a member of more than 1 consolidated group, either—
 - (a) the company is treated as being at that time a member only of the group of which it was first a member; or
 - (b) where **paragraph (a)** does not apply by virtue of a company becoming a member of 2 or more groups simultaneously, the company is treated as being a member only of such one of the consolidated groups as the Commissioner may specify having regard to all the circumstances.

Compare: 1994 No 164 s FD 5

FD 6 Nominated companies

- (1) The nominated company for a consolidated group at any time is treated for the purposes of this Act and the Tax Administration Act 1994 as the agent at that time of the consolidated group and of each company which is at that time a member of the consolidated group, except where this Act or that Act otherwise expressly provides or the context otherwise requires.
- (2) No company is at any time a nominated company for a consolidated group unless, at that time, that company is a member of that consolidated group.
- (3) Where any company which is at any time a nominated company for a consolidated group gives notice to the Commissioner in such form as the Commissioner may approve that it is to cease to be the agent for that group and that another company is to become the agent for that group, the notifying company ceases to be the agent for the group, and the other company becomes the agent for the group, from the date of

receipt by the Commissioner of the notice or from such later date as may be specified in the notice.

Compare: 1994 No 164 s FD 6

FD 7 Joining existing consolidated group

- (1) Where at any time—
 - (a) any 2 or more companies have formed a consolidated group; and
 - (b) at least 1 company remains a member of that consolidated group,—

any other eligible company which is at that time entitled to be a member of the same consolidated group may elect to join and be treated as a member of that consolidated group by giving notice to the Commissioner in such form as the Commissioner may allow.
- (2) Any such notice must contain the agreement of the company to be jointly and severally liable for any income tax payable by the consolidated group (which agreement may be expressed as subject to, or in terms of an approval given under, **section HB 1(2) to (5)**).
- (3) A company that has elected to join and be treated as a member of a consolidated group is treated for the purposes of this Act as a member of the consolidated group from—
 - (a) the beginning of the income year immediately succeeding the income year in which the notice is received by the Commissioner; or
 - (b) if the notice—
 - (i) is received by the Commissioner within 63 working days after the beginning of an income year, or within such further period as the Commissioner may allow under **subsection (6)**; and
 - (ii) specifies that the election applies for that income year,—

the beginning of that income year.
- (4) Notwithstanding **subsection (3)**, where—
 - (a) an eligible company makes an election to join and be treated as a member of a consolidated group in the income year in which that company is incorporated or otherwise formed; and
 - (b) the notice of election—

- (i) is received by the Commissioner within 63 working days after the date of that incorporation or other formation, or within such further period as the Commissioner may allow under **subsection (6)**; and
 - (ii) specifies that the election applies for the income year in which the incorporation or other formation occurs,—

that company is treated for the purposes of this Act as a member of the consolidated group from the first day of that income year.
- (5) Notwithstanding **subsection (3)**, where—
 - (a) a company first becomes entitled to be a member of a specified consolidated group at any time during an income year; and
 - (b) the notice of election to join the group—
 - (i) is received by the Commissioner within 63 working days after that date of first entitlement, or within such further period as the Commissioner may allow under **subsection (6)**; and
 - (ii) specifies that the election applies from that date of first entitlement,—

the company is treated for the purposes of this Act as a member of the consolidated group from that date of first entitlement provided that adequate part income year accounts in respect of the company's net income or net loss for each relevant part income year are furnished to the Commissioner in accordance with **section FD 9**.
- (6) The Commissioner may in any particular case extend the period of 63 working days specified in any of **subsections (3)(b), (4)(b), and (5)(b)** where the company satisfies the Commissioner that in all the circumstances the notice of election could not reasonably be expected to be, or to have been, furnished within that period.
- (7) Nothing in this section applies to treat a company as a member of a consolidated group, unless,—
 - (a) in the case of a company to which **subsection (3)(a)** would apply,—
 - (i) the company remains an eligible company entitled to be a member of the consolidated group at

- the beginning of the income year referred to in that provision; and
- (ii) at least 1 other company remains a member of the consolidated group until the beginning of that income year; or
- (b) in the case of a company to which any of **subsections (3)(b), (4), and (5)** would apply, the company is an eligible company entitled to be a member of the consolidated group throughout the period that—
- (i) commences with the date on which the company would, under the relevant one of those subsections, be treated as being a member of the consolidated group; and
 - (ii) ends with the date on which the company's notice of election to join the group is received by the Commissioner.
- (8) **Subsection (5)** does not apply where it can reasonably be concluded that any arrangement has been entered into for the purpose, or for purposes including the purpose, of enabling the company to meet the requirements of that subsection so as to defeat the intent and application of the consolidation rules.

Compare: 1994 No 164 s FD 7

FD 8 Leaving consolidated group

- (1) A company that is a member of a consolidated group ceases to be a member of that group if—
- (a) the company so elects, by notice to the Commissioner in such form as the Commissioner may approve; or
 - (b) the company ceases to be an eligible company; or
 - (c) the company, not being the nominated company for the consolidated group, ceases to be entitled to be a member of the same consolidated group as the nominated company; or
 - (d) the company is a member of a consolidated group that has ceased to have a nominated company.
- (2) A company that elects to cease to be a member of a consolidated group is treated as having ceased to be a member of the group with effect from—
- (a) the beginning of the income year in which the notice of election is received by the Commissioner (or, where

- appropriate, such later time as the company was first treated as being a member of the group); or
- (b) if the company so specifies in the notice of election, the beginning of the income year immediately succeeding that in which the notice was furnished to the Commissioner (or, where appropriate, such earlier time as the company is treated under this section as having ceased to be a member of the group).
- (3) A company that ceases to be an eligible company is treated as having ceased to be a member of the consolidated group with effect from—
- (a) the beginning of the income year during which the company ceased to be an eligible company (or, where appropriate, such later time as the company was first treated as being a member of the group); or
 - (b) if **subsection (6)** applies, the beginning of the day on which the company ceased to be an eligible company.
- (4) Where any company, not being the nominated company for the consolidated group, ceases to be entitled to be a member of the same consolidated group as the nominated company, the company is treated as having ceased to be a member of the group with effect from—
- (a) the beginning of the income year during which the cessation occurred (or, where appropriate, such later time as the company was first treated as being a member of the group); or
 - (b) if **subsection (6)** applies in respect of the company, the beginning of the day on which the cessation of entitlement occurred.
- (5) Where at any time during an income year there is no nominated company for a consolidated group, all the companies in the group are treated as having ceased to be members of the group with effect from the beginning of the income year: provided that neither this subsection nor **subsection (1)(d)** applies where—
- (a) the nominated company ceases to be such by reason of being liquidated; and
 - (b) within 20 working days after that liquidation, or within such further period as the Commissioner may allow, the other companies in the group have selected another nominated company and notified the Commissioner

accordingly (in which case the selected company is treated as the nominated company with effect from the time of the liquidation).

- (6) Notwithstanding **subsections (3) and (4)**, where—
- (a) a company which has at any time been a member of a consolidated group first ceases—
 - (i) to be an eligible company; or
 - (ii) to be entitled to be a member of the same consolidated group as the nominated company of the group—

at any time during an income year (such time being referred to in this subsection as the **time of cessation**); and
 - (b) the company elects, by notice to the Commissioner in such form as the Commissioner may allow, that this subsection applies with respect to the company, the consolidated group, and the income year; and
 - (c) the notice is received by the Commissioner within 20 working days after the time of cessation, or within such further period as the Commissioner may allow as reasonable in all the circumstances,—

the company is treated for the purposes of this Act as ceasing to be a member of the consolidated group with effect from the time of cessation provided that adequate part income year accounts in respect of the company's net income or net loss for each relevant part income year are furnished to the Commissioner in accordance with **section FD 9**.
- (7) **Subsection (6)** does not apply where it can reasonably be concluded that any arrangement has been entered into for the purpose, or for purposes including the purpose, of enabling the company to meet the requirements of that subsection so as to defeat the intent and application of the consolidation rules.
- (8) Where a company ceases to be a member of a consolidated group by virtue only of being liquidated,—
- (a) nothing in **subsections (2) to (4)** applies to treat the company as having so ceased to be a member with effect from the beginning of the income year in which the liquidation occurred; and
 - (b) nothing in **subsection (6)** applies to require the furnishing of adequate part income year accounts in relation to the company.

- (9) If at any time a consolidated group ceases to have any member company or companies, that consolidated group is treated as having ceased to exist.

Compare: 1994 No 164 s FD 8

FD 9 Part income year accounts and part tax year income allocation

- (1) Where a company joins or leaves a consolidated group part way through an income year, or is or has been a member of a consolidated group that is formed or ceases to exist part way through an income year, any part income year accounts with respect to the company required to be furnished by any of **sections FD 4(5), FD 7(5), and FD 8(6)** must—
- (a) be incorporated in the return of income for the income year furnished to the Commissioner—
 - (i) by the company, where such part income year accounts are for a period in which the company is not a member of any consolidated group; or
 - (ii) by the consolidated group, where such part income year accounts are for a period in which the company is a member of the consolidated group; or
 - (iii) by any other consolidated group, where such part income year accounts are for a period in which the company is a member of another consolidated group; and
 - (b) sufficiently detail in accordance with **subsection (2)** the annual gross income and annual total deduction (and, where required, the income tax liability) of the company in respect of any relevant part of the income year.
- (2) The annual gross income, annual total deduction, income tax liability, or net loss of a company attributable to a part of an income year referred to in **subsection (1)** are determined, to the extent fair and reasonable and with any necessary modifications, by treating that part income year as a complete income year for the purposes of applying the provisions of this Act.

Compare: 1994 No 164 s FD 9

FD 10 Special provisions relating to dispositions of property

- (1) Where any company (in this subsection referred to as the **transferor**) disposes of any property to another company (in

this subsection referred to as the **transferee**) that is a member of the same consolidated group when the disposition takes place, being property that is—

- (a) depreciating property of the transferor; or
- (b) any property (being neither trading stock for either the transferor or the transferee nor a financial arrangement to which the financial arrangements rules apply) where, if the transferor or transferee were to dispose of that property, the consideration would (but for this section or **section HB 2**) be income of the transferor or transferee,—

then, for the purpose of determining income and deductions, in respect of any subsequent disposal of the property or in respect of depreciation or amortisation of the acquisition cost of the property under any of **sections EE 1, EZ 28, and EZ 29** or any other amortisation provisions of this Act,—

- (c) the transferee is deemed to have acquired the property on the day on which it was acquired by the transferor; and
- (d) the transferee is, where the transferor entered into a binding contract to purchase or construct any depreciable property before 16 December 1991, deemed to have entered into that binding contract on the same date as the transferor; and
- (e) the transferee is deemed to have acquired the property from the transferor for consideration equal to,—
 - (i) except where the property forms all or part of a pool of property that is depreciated by the transferor in accordance with **sections EE 20 to EE 24**, the aggregate of the following amounts of expenditure incurred by the transferor in respect of the property before the disposition to the transferee in fact takes place, being in every case expenditure in respect of which no deduction has been allowed under this Act (other than by way of depreciation or amortisation of the acquisition cost of the property under any of **sections EE 1, EZ 28, and EZ 29** or any other amortisation provisions of this Act):
 - (A) the original purchase price of the property; and

- (B) any expenditure incurred in purchasing or improving the property; and
 - (C) any expenditure incurred in securing or improving the legal rights of the transferor in relation to the property:
 - (ii) where the property forms the whole of a pool of property that is depreciated by the transferor in accordance with **sections EE 20 to EE 24**, the adjusted tax value of the pool immediately before the property was disposed of to the transferee:
 - (iii) where the property forms part only of any such pool, the lesser of—
 - (A) the market value of the property disposed of to the transferee; and
 - (B) the adjusted tax value of the whole of the pool immediately before the property was disposed of to the transferee.
- (2) Where any company (in this subsection referred to as the **transferor**) disposes of any depreciating property (other than pooled property) to another company (in this subsection referred to as the **transferee**) that is a member of the same consolidated group when the disposition takes place, for the purposes of **sections EE 1, EE 38 to EE 43, EZ 28, and EZ 29** and any other amortisation provisions of this Act in respect of the calculation of the net income of the transferee for any income year, the transferee is deemed to have been allowed deductions for amounts of depreciation loss or deductions under **section EZ 28 or EZ 29** or any other amortisation provision of the same amounts as, in respect of or in relation to the property, the transferor has been allowed.
- (3) Where and to the extent that in any income year—
 - (a) a company (in this subsection referred to as the **transferor**)—
 - (i) disposes of any land; or
 - (ii) ceases to carry on a business; and
 - (b) but for this subsection, the disposal or cessation would prevent the transferor from being allowed a deduction under any of **sections DO 4, DO 6, and DP 4**; and
 - (c) after the disposal or cessation and for the remainder of the income year—
 - (i) the land is held; or

- (ii) the business is carried on—
by another company which is a member of the same consolidated group as the transferor for the whole of the income year,—
the transferor is not prevented by the disposal or cessation from being allowed such a deduction.
- (4) Despite **sections EW 47 and GD 11**, for the purposes of this Act, a company (referred to as the **transferor**) that disposes of a financial arrangement to another company (referred to as the **transferee**) that is a member of the same consolidated group on the date of disposition must—
 - (a) apply **subsection (4A)** if—
 - (i) the financial arrangements rules apply to the financial arrangement; and
 - (ii) the method of calculating income and expenditure from the financial arrangement remains the same despite the disposition; and
 - (iii) the nominated company of the group so elects by filing the group's return of income for the income year; and
 - (iv) the transferor and the transferee are members of the same consolidated group at all times in the income year; and
 - (v) the transferor and the transferee are not entitled, under **section IE 1 or IF 1**, to carry forward and offset, in a later income year, a net loss of the company for any preceding income year, unless the whole of that net loss may be offset against the net income of the consolidated group for the income year under **section IG 6**:
 - (b) in any other case, apply either **subsection (4B) or (4C)**.
- (4A) In the income year in which the disposition occurs and in each subsequent income year,—
 - (a) the transferor is treated as if it had never been a party to the financial arrangement prior to the disposition, and **section EW 37** does not apply to the transferor with respect to the disposition; and
 - (b) the transferee is treated as if it had—
 - (i) entered into the financial arrangement on the same date and for the same amount of consideration as the transferor; and

- (ii) incurred all expenditure and derived all income incurred or derived by the transferor from the financial arrangement before the disposition; and
 - (iii) included in its return of income the same amounts of expenditure and income from the financial arrangement as were included by the transferor.
- (4B) If the method of calculating the income or expenditure from the financial arrangement remains the same despite the disposition, the consideration for the disposition in the transferor's base price adjustment calculation is a fair and reasonable amount of the income or expenditure that the transferor would have derived or incurred in the income year of disposition had the disposition not taken place.
- (4C) In any other case, the consideration for the disposition is the market value of the financial arrangement on the date of disposition.
- (5) Where—
 - (a) any company (in this subsection referred to as the **transferor**) disposes of any trading stock to another company (in this subsection referred to as the **transferee**) that is a member of the same consolidated group when the disposition takes place; and
 - (b) the nominated company has elected that this subsection applies, by notice to the Commissioner in such form as the Commissioner may approve given within the time within which the consolidated group is required to furnish a return of income for that income year or within such further time as the Commissioner may allow; and
 - (ba) the property and its ownership is, at any time, able to be specifically identified,—

then, for the purpose of calculation of the net income of the transferor and the transferee, the consideration for which the disposition has taken place is deemed to be,—
 - (c) in any case where the trading stock was held by the transferor at the beginning of the income year, the value of that trading stock as at the beginning of the income year as determined in accordance with **subpart EB**; and
 - (d) in any other case, the cost to the transferor of that trading stock.
- (6) For the purpose of bringing into account tax liabilities arising from dispositions of property within a consolidated group to

the extent that they have not previously been taken into account by virtue of this section or **section HB 2(1)**, where at any time—

- (a) a company ceases to be a member of a consolidated group (other than by virtue only of being liquidated); and
- (b) the company holds any property (whether that property is held as a separate item of property or is part of some other property) which has at any time been the subject of a disposition between members of that consolidated group to which any of **subsections (1), (2), (4)(a), (4)(b), and (5)** has applied,—

then, for the purposes of this Act, the company is deemed to have disposed of that item of property immediately prior to that time to a person not associated with the company and to have immediately thereafter reacquired it, in each case for a consideration equal to the market value of that property at that time.

- (7) For the purposes of **subsection (6)**, where—
 - (a) any property to which that subsection applies is, at the time of the disposition deemed to occur under that subsection, part of or absorbed into some other property; and
 - (b) its market value at that time cannot separately be determined,—

it is treated as if disposed of and reacquired for a consideration equal to its market value at the time of the disposition to which any of **subsections (1), (2), (4)(a), (4)(b), and (5)** has applied (or, if there has been more than 1 such disposition between members of the consolidated group, equal to its market value at the time of the latest in time of those dispositions at which its market value can separately be determined), and the treatment under this Act of that other property is adjusted accordingly.

- (8) Where and to the extent that—
 - (a) any company (in this subsection referred to as the **transferor**) disposes of any shares in another company (in this subsection referred to as the **related company**); and
 - (b) if that disposition were by way of sale, the consideration from the sale would be included in the transferor's

- income (not being income not taken into account by virtue of **section HB 2**); and
- (c) the consideration received by the transferor for that disposition is lower than the consideration that would have been received in an arm's length disposition had not any reduction in the value of the net assets of the related company occurred as a result of any 1 or more dividends, distributions, payments, arrangements, or transactions between the related company and any other company that was at the time of the dividend, distribution, payment, arrangement, or transaction a member of the same consolidated group as the related company,—
- for the purposes of this Act the consideration received by the transferor is deemed to be equal to the consideration that would have been received in an arm's length disposition had that reduction in value not occurred.
- (9) Notwithstanding the preceding subsections of this section, where—
- (a) any company joins a consolidated group; and
- (b) at the time of joining that consolidated group the company holds any property; and
- (c) after joining the consolidated group, the company disposes of the property to another member of the consolidated group; and
- (d) any of **subsections (1), (2), (4)(a), (4)(b), and (5)** would apply to that disposition but for the application of this subsection; and
- (e) after the time of that disposition, the company ceases to be a member of the consolidated group (including by virtue of being liquidated); and
- (f) it can reasonably be concluded that there was an arrangement having a purpose or effect of defeating the intent and application of the consolidation rules which involved that company joining the consolidated group, disposing of the property, and ceasing to be a member of the consolidated group,—
- the relevant subsection of this section which would have applied to that disposition but for the application of this subsection does not apply to that disposition.

Compare: 1994 No 164 s FD 10

FD 11 Application of international tax rules

The international tax rules apply, with any necessary modifications, as if the consolidated group were a single company, and the income and deductions of the consolidated group are determined accordingly.

Compare: 1994 No 164 s CG 2

Subpart FE—Amalgamation**FE 1 Amalgamation of companies: purpose**

- (1) Subject always to the express provisions of the amalgamation provisions, those provisions are intended—
 - (a) to specify certain taxation consequences of the amalgamation of companies; and
 - (b) in the case of a qualifying amalgamation, to permit certain property to be transferred to an amalgamated company on a concessional taxation basis and an amalgamated company to succeed to the net losses and imputation credit account and other credits of amalgamating companies, subject to tests of continuity and commonality of ownership being met; and
 - (c) to apply notwithstanding anything to the contrary in section 225(d) of the Companies Act 1993.
- (2) In this section, **amalgamation provisions** means—
 - (a) **sections CD 25, CD 33(22) and (23), CD 34(8), DB 8(3) to (5), DV 14, FE 2 to FE 10, IF 4 to IF 6, IG 8, IG 9, LC 8 to LC 12, MB 11, MD 2(8) and (9), ME 29, MF 16, MG 17, NC 15(7), ND 1R, ND 3(7), ND 4(7), and NH 4(8) and (9);** and
 - (b) sections 75 and 76 of the Tax Administration Act 1994.

Compare: 1994 No 164 s FE 1

FE 2 Cancellation of shares held by amalgamating company on amalgamation

Where shares in any amalgamating company are—

- (a) held by another amalgamating company; and
- (b) cancelled on the amalgamation,—

then, for the purposes of this Act, the shares are deemed to have been disposed of by the shareholder amalgamating company immediately before the amalgamation for a consideration equal to the cost of the shares to the shareholder amalgamating company.

Compare: 1994 No 164 s FE 2

FE 3 Deduction to amalgamated company for bad debts and expenditure

Where—

- (a) any amalgamating company ceases to exist on a qualifying amalgamation; and
- (b) the amalgamated company in any period—
 - (i) writes off as a bad debt any debt acquired from the amalgamating company at the time of the amalgamation; or
 - (ii) incurs any expenditure or loss (including an amount of depreciation loss) by virtue of anything done or not done by the amalgamating company; and
- (c) the amalgamated company would but for this subsection have been denied a deduction for the amount of the bad debt, expenditure, or loss (including an amount of depreciation loss); and
- (d) the amalgamating company would have been allowed a deduction for the amount but for the amalgamation,—
the amalgamated company is allowed a deduction for the amount for the period.

Compare: 1994 No 164 s FE 3

FE 4 Amalgamated company to assume unexpired accrual expenditure and profits or gains of amalgamating company

Where any amalgamating company ceases to exist on an amalgamation during any tax year,—

- (a) the unexpired portion of any amount of accrual expenditure of the amalgamating company for the tax year is deemed to be the unexpired portion of an amount of accrual expenditure of the amalgamated company for the tax year, and not of the amalgamating company; and
- (b) any amount derived by the amalgamated company at any time after the amalgamation which—
 - (i) is derived by virtue of anything done or not done by the amalgamating company; and
 - (ii) would have been income of the amalgamating company but for the amalgamation,—
is income at the time of the amalgamated company.

Compare: 1994 No 164 s FE 4

FE 5 Transfer of property or obligations under financial arrangements deemed to be at market value

Where any amalgamated company, on an amalgamation other than a qualifying amalgamation, acquires any property of an amalgamating company, or succeeds to any obligations of an amalgamating company in respect of a financial arrangement to which the amalgamating company is a party, for the purposes of this Act,—

- (a) the amalgamating company is treated as having disposed of the property or relieved itself of the obligations immediately before the amalgamation; and
- (b) the amalgamated company is treated as having acquired the property or assumed the obligations immediately after the amalgamation—

for a consideration equal to the market value of the property, or market price for assuming such obligations, at the time.

Compare: 1994 No 164 s FE 5

FE 6 Acquisition of property by amalgamated company on qualifying amalgamation

- (1) Where any amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company, then, for the purposes of this Act with effect from the date of acquisition and except where otherwise provided in the succeeding subsections of this section,—

- (a) the amalgamated company is deemed to have acquired the property on the date on which it was acquired by the amalgamating company; and
- (b) the amalgamated company is, where the amalgamating company entered into a binding contract to purchase or construct any depreciable property before 16 December 1991, deemed to have entered into that binding contract on the same date as the amalgamating company; and
- (c) the amalgamated company is deemed to have acquired the property from the amalgamating company for a consideration equal to,—
 - (i) except where the property forms all or part of a pool of property that is depreciated by the amalgamating company in accordance with **sections EE 20 to EE 24**, the aggregate of the following amounts of expenditure incurred by the amalgamating company in respect of the property before

- the amalgamation, being in every case expenditure in respect of which deductions are denied under this Act (other than by way of a deduction in respect of the depreciation or amortisation of the acquisition cost of the property under any of **sections EE 1, EZ 28, and EZ 29** or any other amortisation provisions of this Act):
- (A) the original purchase price of the property; and
 - (B) any expenditure incurred in purchasing or improving the property; and
 - (C) any expenditure incurred in securing or improving the legal rights of the amalgamating company in relation to the property:
- (ii) where the property forms the whole of a pool of property that is depreciated by the amalgamating company in accordance with **sections EE 20 to EE 24**, the adjusted tax value of the pool immediately before the amalgamation:
 - (iii) where the property forms part only of any such pool, the lesser of—
 - (A) the market value of the property acquired by the amalgamated company; and
 - (B) the adjusted tax value of the whole of the pool immediately before the amalgamation.
- (1A) Where any amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company, then, for the purposes of this Act and except where otherwise provided in the succeeding subsections of this section,—
- (a) the amalgamating company is deemed to have disposed of the property immediately before the amalgamation; and
 - (b) the amalgamating company is deemed not to derive any income or to have any deductions in respect of that disposition under **sections EE 36 to EE 43**.
- (2) Where an amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company which is trading stock for both the amalgamating company and the amalgamated company, for the purposes of this Act

the amalgamating company is deemed to have disposed of the trading stock and the amalgamated company is deemed to have acquired the trading stock for a consideration equal to the value of the trading stock under **subpart EB** to the amalgamating company, at the time of the amalgamation.

- (3) Where an amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company which is revenue account property of the amalgamating company and is not revenue account property of the amalgamated company, for the purposes of this Act the amalgamating company is deemed to have disposed of the property and the amalgamated company is deemed to have acquired the property at the time of the amalgamation for a consideration equal to its market value at that time.
- (3A) **Subsection (3)** does not apply where the property is land that is (or may be) revenue account property of the amalgamating company only by virtue of the 10 year rule in any of **sections CB 7 to CB 11** but, if the amalgamated company disposes of the property within 10 years after the date of its acquisition by the amalgamating company, any amount derived from the disposition is income of the amalgamated company under the relevant one of **sections CB 7 to CB 11** (subject to **sections CB 5 to CB 22**).
- (3B) Where an amalgamated company, on a qualifying amalgamation, acquires any land of an amalgamating company which is not revenue account property of the amalgamating company but is (to the extent that its sale or disposition would give rise to income under any of **sections CB 5 to CB 12**) revenue account property of the amalgamated company, for the purposes of this Act the amalgamating company is deemed to have disposed of the land and the amalgamated company is deemed to have acquired the land at the time of the amalgamation for a consideration equal to its market value at that time.
- (4) Where an amalgamated company, on a qualifying amalgamation, acquires property from an amalgamating company which was depreciating property (other than pooled property) of the amalgamating company, then, for the purposes of **sections EE 1, EE 38 to EE 43, EZ 28, and EZ 29** and any other amortisation provisions of this Act in respect of the calculation of the net income for any tax year of the amalgamated company, the amalgamated company is deemed to have been allowed

deductions for amounts of depreciation loss or deductions under **section EZ 28 or EZ 29** or any other amortisation provision of the same amounts as, in respect of or in relation to the property, the amalgamating company has been allowed.

- (5) Despite **sections EW 51 and GD 11**, for the purposes of this Act, an amalgamated company that acquires, during a tax year, a financial arrangement of an amalgamating company must—
- (a) apply **subsection (6)** if—
 - (i) the financial arrangements rules apply to the financial arrangement; and
 - (ii) the amalgamation is a qualifying amalgamation; and
 - (iii) the method of calculating income and expenditure from the financial arrangement remains the same despite the amalgamation; and
 - (iv) the amalgamated company so elects by filing its return of income for the tax year; and
 - (v) the amalgamating company and the amalgamated company were members of the same wholly-owned group of companies at all times in the tax year before the amalgamation; and
 - (vi) the amalgamating company is not entitled, under **section IE 1 or IF 1**, to carry forward and offset, in a later tax year, a net loss of the company for any preceding tax year, unless the whole of that net loss may be offset against the net income of the amalgamated company for the tax year under **section IF 4**;
 - (b) apply either **subsection (7) or (8)** for any other qualifying amalgamation.
- (6) In the tax year of amalgamation and in each subsequent tax year,—
- (a) the amalgamating company is treated as if it had never been a party to the financial arrangement prior to the amalgamation, and **section EW 37** does not apply to the amalgamating company with respect to the disposition; and
 - (b) the amalgamated company is treated as if it had—
 - (i) entered into the financial arrangement on the same date and for the same consideration as the amalgamating company; and

- (ii) incurred all expenditure and derived all income incurred or derived by the amalgamating company from the financial arrangement before the amalgamation; and
 - (iii) included in its return of income the same amounts of expenditure and income from the financial arrangement as were included by the amalgamating company.
- (7) If the method of calculating the income or expenditure from the financial arrangement remains the same despite the amalgamation, the consideration for the disposition in the amalgamating company's base price adjustment calculation is a fair and reasonable amount of the income or expenditure that the amalgamating company would have derived or incurred in the tax year of disposition had the disposition not taken place.
- (8) In any other case, the consideration for the disposition is the market value of the financial arrangement on the date of disposition.

Compare: 1994 No 164 s FE 6

FE 7 Succession of obligations of amalgamating company under financial arrangement on amalgamation

- (1) Despite **sections EW 51 and GD 11**, an amalgamated company that succeeds to the obligations of an amalgamating company in respect of a financial arrangement subject to the financial arrangements rules must—
 - (a) apply **subsection (2)** if—
 - (i) the amalgamation is a qualifying amalgamation; and
 - (ii) the method of calculating income and expenditure from the financial arrangement remains the same despite the amalgamation; and
 - (iii) the amalgamated company so elects by filing its return of income for the tax year; and
 - (iv) the amalgamating company and the amalgamated company were members of the same wholly-owned group of companies at all times in the tax year before the amalgamation; and
 - (v) the amalgamating company is not entitled, under **section IE 1 or IF 1**, to carry forward and offset, in a later tax year, a net loss of the company for any

preceding tax year, unless the whole of that net loss may be offset against the net income of the amalgamated company for the tax year under

section IF 4:

- (b) apply either **subsection (3) or (4)** for any other qualifying amalgamation.
- (2) In the tax year of amalgamation and in each subsequent tax year,—
- (a) the amalgamating company is treated as if it had never been a party to the financial arrangement prior to the amalgamation, and **section EW 37** does not apply to the amalgamating company with respect to the succession; and
 - (b) the amalgamated company is treated as if it had—
 - (i) entered into the financial arrangement on the same date and for the same consideration as the amalgamating company; and
 - (ii) incurred all expenditure and derived all income incurred or derived by the amalgamating company from the financial arrangement before the succession; and
 - (iii) included in its return of income the same amounts of income and expenditure from the financial arrangement as were included by the amalgamating company.
- (3) If the method of calculating the income or expenditure from the financial arrangement remains the same despite the amalgamation, the consideration for the disposition in the amalgamating company's base price adjustment calculation is a fair and reasonable amount of the income or expenditure that the amalgamating company would have derived or incurred in the tax year of disposition had the disposition not taken place.
- (4) In any other case, the consideration for the disposition is the market value of the financial arrangement on the date of disposition.

Compare: 1994 No 164 s FE 7

FE 8 Amalgamated company to assume rights and obligations of amalgamating company

Where any amalgamating company ceases to exist on an amalgamation, the amalgamated company must, in accordance with section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993, comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers, and privileges of, the amalgamating company under the Inland Revenue Acts with respect to the tax year in which the amalgamation occurs and all preceding tax years.

Compare: 1994 No 164 s FE 8

FE 9 Amalgamation not to result in deemed income or remission of liabilities

Sections CG 2 and IE 1(4) do not apply merely by virtue of an amalgamated company succeeding to a liability of an amalgamating company on an amalgamation.

Compare: 1994 No 164 s FE 9

FE 10 Treatment of financial arrangements between amalgamating companies

- (1) This section applies if the parties to a financial arrangement are amalgamating companies and the financial arrangement exists on the date of the amalgamation.
- (2) If immediately before the amalgamation the amalgamating company that is the borrower under the financial arrangement is solvent or likely to meet its obligations under the financial arrangement, the financial arrangement is, for the purposes of **section EW 37**, discharged immediately before the amalgamation and the amalgamating company is treated as having paid to the other party to the arrangement, in consideration for the discharge,—
 - (a) in the case of a qualifying amalgamation, the amalgamating company's outstanding accrued balance for the financial arrangement:
 - (b) in any other case, the market value of the financial arrangement on the date of the amalgamation.
- (3) If **subsection (2)** applies, the other party to the financial arrangement is treated as not having remitted an amount merely by virtue of the discharge.

- (4) If immediately before the amalgamation the amalgamating company that is the borrower under the financial arrangement is insolvent and unlikely to meet its obligations under the financial arrangement, the financial arrangement is, for the purposes of **section EW 37**, discharged immediately before the amalgamation and the amalgamating company is treated as having paid to the other party to the financial arrangement, in consideration for the discharge, the market value of the financial arrangement on the date of the amalgamation.
- (5) If **subsection (4)** applies, the other party to the financial arrangement is treated as having remitted the excess (over market value) of the other party's outstanding accrued balance for the financial arrangement.
- (6) For the purposes of this section,—
- (a) the amalgamating company's outstanding accrued balance for the financial arrangement is calculated using the formula—consideration + prior expenditure + expenditure accrued in year of amalgamation
– income accrued in year of amalgamation
– consideration paid before amalgamation

where—

consideration	is the consideration paid to the amalgamating company under the financial arrangement
prior expenditure	is expenditure incurred less income derived by the amalgamating company from the financial arrangement under a spreading method or section EW 61 in all previous tax years since the financial arrangement was entered into
expenditure accrued in year of amalgamation	is expenditure accrued by the amalgamating company from the financial arrangement for the period beginning on the first day of the tax year in which the amalgamation occurs and ending on the date of the amalgamation, calculated,—

- (i) if the amalgamating company was a party to the financial arrangement in a prior tax year, using the spreading method the amalgamating company used to calculate income and expenditure from the financial arrangement in that tax year; and
- (ii) in any other case, using a spreading method the amalgamating company chooses, if the method could have been used had the tax year ended immediately before the amalgamation

income accrued in year of amalgamation is the income accrued by the amalgamating company from the financial arrangement for the period beginning on the first day of the tax year in which the amalgamation occurs and ending on the date of the amalgamation, as calculated under **paragraph (i) or (ii)** of the item “expenditure accrued in year of amalgamation”

consideration paid before amalgamation is the consideration paid by the amalgamating company for the financial arrangement before the amalgamation:

- (b) the other party’s outstanding accrued balance for the financial arrangement is calculated using the formula—consideration + prior income + income accrued in year of amalgamation – expenditure accrued in year of amalgamation – consideration paid before amalgamation

where—

consideration is the consideration paid by the party under the financial arrangement

prior income	is income derived less expenditure incurred by the other party to the financial arrangement under a spreading method or section EW 61 in all previous tax years since the financial arrangement was entered into
income accrued in year of amalgamation	is income accrued by the party for the period beginning on the first day of the tax year in which the amalgamation occurs and ending on the date of the amalgamation, calculated,— <ul style="list-style-type: none"> (i) if the party was a party to the financial arrangement in a prior tax year, using the spreading method the party used to calculate income and expenditure from the financial arrangement in that tax year; and (ii) in any other case, using a spreading method the party chooses, if the method could have been used had the tax year ended immediately before the amalgamation
expenditure accrued in year of amalgamation	is the expenditure accrued by the party to the financial arrangement for the period beginning on the first day of the tax year in which the amalgamation occurs and ending on the date of the amalgamation, as calculated under paragraph (i) or (ii) of the item “income accrued in year of amalgamation”
consideration paid before amalgamation	is the consideration paid to the party under the financial arrangement before the amalgamation:

- (c) a company is treated as being insolvent if it does not satisfy the solvency test in section 4 of the Companies Act 1993.

Compare: 1994 No 164 s FE 10

Subpart FF—Matrimonial transfers

FF 1 Shares or options

- (1) The provisions of this section apply only to modify the provisions of **sections OD 3 and OD 4** for the purpose of the application of the continuity provisions.
- (2) Where any share or option over a share in a company is transferred to any person from a spouse or former spouse in accordance with a matrimonial agreement, the transferee is deemed to have acquired that share or option on the date on which that share or option was acquired, or deemed under **section OD 5** to have been acquired, by the transferor, and to have held it at all times until the date of transfer.

Compare: 1994 No 164 s FF 1

FF 2 Financial arrangements

The financial arrangements rules do not apply in relation to a financial arrangement transferred in accordance with a matrimonial agreement in the circumstances specified in **section EW 16(6)**.

Compare: 1994 No 164 s FF 2

FF 3 Business stock in hand

For the purposes of **section CB 1**, where any business is transferred in accordance with a matrimonial agreement, the value of stock in hand in relation to that business is an amount equal to the amount at which that stock is deemed by **section FF 13** to have been sold.

Compare: 1994 No 164 s FF 3

FF 4 Personal property

For the purposes of **sections CB 3 and CB 4**, where any personal property or any interest in personal property to which those sections apply is transferred in accordance with a matrimonial agreement,—

- (a) the transferor is deemed to have disposed of that personal property or that interest for a consideration equal to the cost of that personal property or that interest to the transferor:
- (b) the transferee is deemed to have acquired that personal property or that interest at a cost equal to the amount of the consideration determined under **paragraph (a)**:
- (c) where in any tax year the transferee sells or otherwise disposes of that personal property or that interest, the transferee is, in relation to that personal property or that interest, and to that sale or other disposition, deemed, for the purposes of **sections CB 3 and CB 4**, to be engaged in a business comprising dealing in such property.

Compare: 1994 No 164 s FF 4

FF 5 Commercial bills

For the purposes of **section CC 6**, where any commercial bill is transferred in accordance with a matrimonial agreement, the transferor is deemed to have disposed of the commercial bill, and the transferee is deemed to have purchased it, at a cost equal to the cost at which the transferor purchased the bill.

Compare: 1994 No 164 s FF 5

FF 6 Land

- (1) Where any land is transferred in accordance with a matrimonial agreement,—
 - (a) for the purposes of **sections BD 2, CB 5 to CB 10, CB 12, CB 15, CB 18, and CB 21**,—
 - (i) the transferor is deemed to have disposed of that land for a consideration equal to the total amount that would, if that land had been sold by the transferor on the date of the transfer, have been the cost price of the land to the transferor; and
 - (ii) the transferee is deemed to have incurred expenditure, in the acquisition of that land, of an amount equal to the consideration for which that land is, under **subparagraph (i)**, deemed to have been disposed of by the transferor; and
 - (iii) the transferee is deemed to have acquired that land on the day on which it was acquired by the transferor; and

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- (iv) where the transferor and the transferee are not associated persons and the transferee subsequently sells or otherwise disposes of that land, **section GD 9(1)** has effect as if the transferor and the transferee were associated persons:
 - (b) for the purposes of **sections BD 2 and CB 11**,—
 - (i) the transferor is deemed to have disposed of that land for a consideration equal to the sum of—
 - (A) the market value of the land, at the date of the commencement of any undertaking or scheme of the kind referred to in **section CB 11**, commenced, carried on, or carried out by the transferor prior to the transfer; and
 - (B) expenditure incurred by the transferor prior to the transfer in the carrying on or carrying out, in relation to that land, of any undertaking or scheme of the kind referred to in **section CB 11**:
 - (ii) where the land is acquired from any transferor to whom **subparagraph (i)** applies, the transferee is—
 - (A) deemed to have incurred expenditure, in the acquisition of that land, of an amount equal to the market value referred to in **subparagraph (i)(A)**; and
 - (B) deemed to have incurred expenditure, in the carrying on or carrying out of the undertaking or scheme which was carried on or carried out by the transferor prior to the transfer, of an amount equal to the expenditure referred to in **subparagraph (i)(B)**:
 - (iii) where the land is acquired from any transferor to whom **subparagraph (i)** does not apply, the transferee is deemed to have incurred expenditure, in the acquisition of that land, of an amount equal to the consideration for which that land is, under **paragraph (a)(i)**, deemed to have been disposed of by the transferor:
 - (iv) where the transferor and the transferee are not associated persons and the transferee subsequently sells or otherwise disposes of that land,

section GD 9(1) has effect as if the transferor and the transferee were associated persons.

- (2) Every reference in this section to a sale or other disposition of any land by any person is deemed to include a reference to a sale or other disposition of any land by or on behalf of any other person where that other person is, in relation to a mortgage secured on that land, a mortgagee and that sale or other disposition by or on behalf of that other person is made in consequence of the default of the person under that mortgage.

Compare: 1994 No 164 s FF 6

FF 7 Disposal of timber under matrimonial agreement

- (1) **Subsection (2)** applies when timber or a right to take timber is transferred under a matrimonial agreement.
- (2) The transfer of timber or a right to take timber is treated—
- (a) as if the transferor sold the timber or the right to take timber to the transferee; and
 - (b) as if the transferee gave the transferor consideration; and
 - (c) as if the amount of the consideration equalled the costs of timber to the transferor or the costs of the right to take timber to the transferor. The costs are worked out as at the date of transfer.
- (3) **Subsection (4)** applies when—
- (a) land with standing timber on it is transferred under a matrimonial agreement; and
 - (b) the standing timber does not consist of ornamental or incidental trees, as evidenced by a certificate given under **section 44C** of the Tax Administration Act 1994.
- (4) A transfer of land with standing timber on it is treated, so far as the standing timber is concerned,—
- (a) as if the transferor sold the timber to the transferee; and
 - (b) as if the transferee gave the transferor consideration; and
 - (c) as if the amount of the consideration equalled the costs of timber to the transferor. The costs are worked out as at the date of transfer.
- (5) The amount treated as consideration is,—
- (a) as far as the transferor is concerned, income; and

- (b) as far as the transferee is concerned, the cost of acquiring the timber or the cost of acquiring the right to take timber.

Compare: 1994 No 164 s FF 7

FF 8 Patent rights

For the purposes of **sections CB 27 and DB 29 to DB 31**, where any patent rights are transferred in accordance with a matrimonial agreement,—

- (a) the transferor is deemed to have sold those patent rights in the income year of transfer for a consideration equal to the amount (if any) of the expenditure of the kind referred to in **section DB 29** or, as the case may be, of the total cost of the kind referred to in **section DB 30**, for which the transferor has been denied a deduction; and
- (b) the transferor is denied a deduction of the amount first mentioned in **paragraph (a)** in any tax year; and
- (c) the transferee is deemed to have incurred expenditure, in the acquisition of those patent rights in that tax year, of an amount equal to the value of the consideration for which, under **paragraph (a)**, they are deemed to have been sold by the transferor.

Compare: 1994 No 164 s FF 8

FF 9 Listed livestock

For the purposes of **subpart EC and section EZ 27**, where any listed livestock is transferred in accordance with a matrimonial agreement, and—

- (a) that livestock was used by the transferor in any business carried on by the transferor, and was held by the transferor at the beginning of the income year of transfer; and
- (b) its value at the end of the preceding income year was determined by the transferor under the herd scheme; and
- (c) its value at the end of the income year in which the transfer occurred is determined by the transferee under the herd scheme,—

then, notwithstanding **section FF 13**, the transferee is deemed to have acquired the livestock during the income year in which the transfer occurred at a price equal to the national average

market value of that livestock for that income year multiplied by the herd value factor (if any) applying to the livestock in the hands of the transferor in the preceding income year.

Compare: 1994 No 164 s FF 9

FF 10 Non-listed livestock

- (1) For the purposes of **sections EC 27 to EC 30**,—
- (a) where in any income year—
 - (i) any non-listed livestock is transferred in accordance with a matrimonial agreement; and
 - (ii) by virtue of that transfer the transferee commences or recommences to derive income from non-listed livestock in that income year,—
the transferee is, except for the purpose of determining whether any subsequent acquisition of livestock by the transferee constitutes the commencement or recommencement by the transferee of the deriving of income from non-listed livestock, deemed not to have so commenced or recommenced to derive income from non-listed livestock by virtue of that transfer:
 - (b) where any land is transferred in accordance with a matrimonial agreement, the transferee is deemed to have acquired that land on the day on which it was acquired by the transferor.
- (2) Where—
- (a) any non-listed livestock is transferred in accordance with a matrimonial agreement and is then used by the transferee in the deriving of income from livestock; and
 - (b) the transferee was not, immediately before the transfer, deriving income from non-listed livestock; and
 - (c) if the livestock had been retained by the transferor and had not been so transferred, **section EC 29(2)(a) or (b)** would have applied to the valuation of that livestock in the hands of the transferor,—
then the value to be taken into account under **section EC 29** by the transferee in respect of that livestock is, notwithstanding **section EC 29(2)** (but subject to **subsection (1)**), increased,—
 - (d) for the income year of transfer, by an amount equal to either—
 - (i) the amount that would have been the transferor's amount of two-thirds of the difference between

- the cost price of the livestock and the standard value in relation to that livestock and the income year of transfer, where that income year is the income year in which **section EC 29(2)(a)** would have applied to the transferor if the transferor had retained the livestock; or
- (ii) one-third of the amount that would have been the transferor's amount of two-thirds of the difference between the cost price of the livestock and the standard value in relation to that livestock and the income year of transfer where that income year is the income year in which **section EC 29(2)(b)** would have applied to the transferor if the transferor had retained the livestock:
- (e) for the income year following the income year of transfer, by an amount equal to one-third of the amount (if any) that would have been the transferor's amount of two-thirds of the difference between the cost price of the livestock and the standard value in relation to that livestock and that following income year if, had the transferor retained the livestock, **section EC 29(2)(b)** would have applied in relation to the transferor and that livestock.

Compare: 1994 No 164 s FF 10

FF 11 High-priced livestock

For the purposes of **sections EC 31 to EC 35**, where any high-priced livestock is transferred to any taxpayer in accordance with a matrimonial agreement,—

- (a) the transferee is deemed to have acquired the livestock—
 - (i) on the day on which it was acquired by the transferor; and
 - (ii) at a cost equal to the cost of the livestock to that transferor; and
- (b) the value of the high-priced livestock to be taken into account at the end of the income year of transfer by the transferee is, notwithstanding **section EC 32(1)**, the amount of the value at which it is so transferred to the transferee (as that value is determined in accordance with **section FF 13**), reduced by an amount equal to the depreciation percentage of its cost price; and

- (c) where the transferor had elected under section 86I(7) of the Income Tax Act 1976 to adopt in respect of the high-priced livestock a specified writedown based on diminishing value, or had chosen to apply **section EC 32(3)**, the transferee is deemed also to have made such an election or choice; and
- (d) where the transferor had not so elected to adopt a specified writedown based on diminishing value, or had not chosen to apply **section EC 32(2)**, the transferee is not entitled to make a choice between **section EC 32(2) and (3)** unless the high-priced livestock was acquired by the transferor in the income year of transfer.

Compare: 1994 No 164 s FF 11

FF 12 Bloodstock

For the purposes of **sections EC 36 to EC 40**, where any bloodstock is transferred in accordance with a matrimonial agreement, and that bloodstock has been used for breeding purposes in New Zealand by the transferor, that bloodstock is deemed not to have been used for breeding purposes in New Zealand by the transferor.

Compare: 1994 No 164 s FF 12

FF 13 Trading stock

- (1) Where any trading stock is transferred in accordance with a matrimonial agreement, the trading stock is deemed for the purposes of this Act to have been sold at and to have realised during the tax year of transfer,—
 - (a) where that trading stock was used by the transferor in any business carried on by that person and was held by that person at the commencement of the tax year, an amount equal to,—
 - (i) in relation to any trading stock that is listed livestock other than livestock used in dealing operations, the value taken into account by the transferor in respect of that trading stock, under **subpart EC**, at the end of the last preceding tax year:
 - (ii) in relation to any trading stock other than trading stock to which **subparagraph (i)** applies, the greater of—

- (A) the value taken into account by the transferor in respect of that trading stock, under **subpart EB**, at the end of the last preceding tax year:
 - (B) the value of that trading stock to be taken into account by the transferee at the end of the income year of transfer, determined under **subpart EB** or, as the case may be, **subpart EC**; and
- (b) where that trading stock was used by the transferor in any business carried on by the transferor and was acquired by the transferor during the tax year of transfer, an amount equal to the price at which that trading stock was so acquired; and
 - (c) where that trading stock was not used by the transferor in any business carried on by the transferor, an amount equal to the cost price at which that trading stock was acquired by the transferor,—
- and for the purposes of this Act that trading stock is deemed to have been purchased by the transferee, during the tax year of transfer, at a price equal to the amount which that trading stock is so deemed to have realised.
- (2) Where any trading stock to which **subsection (1)(a) or (b)** applies is not used by the transferee in the carrying on by the transferee of any business and is in any tax year sold or otherwise disposed of by the transferee, that sale or other disposal is, for the purposes of this Act, deemed to be a sale of trading stock used by the transferee in the carrying on by the transferee of a business.
 - (3) **Section GD 1** does not apply in respect of any trading stock which is transferred to any person in accordance with a matrimonial agreement.

Compare: 1994 No 164 s FF 13

FF 14 Leased assets

Where—

- (a) any person has leased, rented, or hired any asset, being any plant or machinery (including a motor vehicle) or other equipment or a temporary building, and that person has been allowed a deduction in any tax year for the

- consideration paid or given in respect of that lease, rental, or hire; and
- (b) that person, or any other person where that person and that other person are associated persons, at any time purchases or otherwise acquires that asset; and
 - (c) that person or that other person who so purchases or otherwise acquires that asset transfers that asset to any further person in accordance with a matrimonial agreement; and
 - (d) the transferee sells or otherwise disposes of that asset for a consideration in excess of an amount equal to the value to which, at the commencement of the income year of transfer, the asset has been reduced by deductions for amounts of depreciation loss of that asset or, where the asset was purchased or otherwise acquired by the transferor during the tax year of transfer, an amount equal to the consideration for which the transferor purchased or otherwise acquired that asset,—
- the income under **section FC 5** of the transferee derived in the tax year in which the asset is sold or otherwise disposed of by the transferee includes an amount equal to the excess or the total amount of the deductions that the person first mentioned in this section has been allowed, whichever is the less.

Compare: 1994 No 164 s FF 14

FF 15 Amount of depreciation loss for qualifying items

- (1) This section applies when a qualifying item or an item to which a qualifying improvement has been made is transferred under a matrimonial agreement.
- (2) After the transfer, the transferee has an amount of depreciation loss under **section EZ 13** as if the transferee were the transferor.
- (3) The amount of the transferee's depreciation loss for the item for the income year in which the item is transferred is the amount of depreciation loss for the item for the income year under **section EZ 13** minus the amount that the transferor has for the income year.

Compare: 1994 No 164 s FF 15

FF 16 Depreciable property

- (1) This section applies when a transferor who has an amount of depreciation loss for an item transfers the item under a matrimonial agreement.
- (2) Whether or not the transferor has in fact had an amount of depreciation loss, the transferee has an amount of depreciation loss for the item from the time of the transfer.
- (3) The transferee is treated as having incurred, in acquiring the item, expenditure of the amount of the consideration for which the transferor is treated as having disposed of the item. The consideration is described in **subsection (4) or section FF 19**.
- (4) The transferor is treated as having disposed of the item for consideration, as follows:
 - (a) if the transferor acquired the item in the income year of transfer, a consideration equal to the item's cost:
 - (b) in any other case, a consideration equal to the item's adjusted tax value at the start of the income year of transfer.
- (5) The depreciation loss that the transferee has when the item is a building must be determined having regard to its cost to the transferor originally.
- (6) In addition to the amount of depreciation loss that the transferee in fact has for the item, the transferee is treated as having had an amount of depreciation loss equal to all the amounts of depreciation loss that the transferor had for the item.
- (7) The transferee does not have a greater amount of depreciation loss than that which the transferor would have had if the transferor had kept the item.
- (8) An item acquired, erected, installed, altered, extended, improved, or attached by the transferor in the income year in which the item is transferred is treated as if it were acquired, erected, installed, altered, extended, improved, or attached by the transferee in the income year.
- (9) If any of the following conditions applied to the item when the transferor acquired or erected it, the condition is treated as applying to the item at the time it is transferred:
 - (a) the item had not previously been used by any person or acquired or held by a person for their use; and

- (b) if the item is a building or part of a building, it had not previously been occupied.

Compare: 1994 No 164 s FF 16

FF 17 Pensions

- (1) For the purposes of **section DC 2**, where any part of the pension otherwise payable by an employer to a former employee is paid by the employer to any person other than the employee in accordance with an agreement made between the former employee and that other person under section 21 of the Property (Relationships) Act 1976 or in compliance with an order of the court made under section 25 of that Act, **section DC 2(1) and (2)** apply in the same manner and to the same extent to the amount of the part so paid as they would have applied if that amount had been, or formed part of, an amount paid by way of a pension to that former employee.
- (2) **Subsection (3)** applies if part of the pension, otherwise payable by a partnership or a taxpayer to a former partner, is paid by the partnership or the taxpayer to a person other than the former partner in accordance with an agreement made between the former partner and the person under section 21 of the Property (Relationships) Act 1976 or in compliance with an order of the court made under section 25 of that Act.
- (3) **Section DC 3** applies in the same manner and to the same extent to the part of the pension so paid as it would have applied if the part had been paid by way of a pension to the former partner.

Compare: 1994 No 164 s FF 17

FF 18 Land used in specified activity

- (1) For the purpose of the definition of **established activity** in **section IE 2(8)**, where any land is transferred in accordance with a matrimonial agreement where the transferee conducts on that land a specified activity or specified activities which the transferor conducted on 11 October 1982 which in the opinion of the Commissioner was the specified activity or 1 of the specified activities the conduct of which constituted, as at that date, the livelihood of the transferor and the transferor's sole or principal source of income, then the transferee is deemed to have conducted on 11 October 1982 such specified activity or specified activities and such specified activity or

specified activities are deemed to constitute the livelihood of the transferee and the transferee's sole or principal source of income.

- (2) For the purposes of **section IE 2(2)**, where the transferor, under a matrimonial agreement, of any land of the kind to which that subsection refers was an existing farmer immediately before the date of transfer, the transferee is deemed, as at the date of transfer, to have acquired or, as the case may be, commenced to hold that land on the first day of the period throughout which the transferor owned or held that land, being the period that ended with the day immediately preceding the date of transfer:

provided that in any case where the transferee commences to conduct, on that land, any specified activity that is of the same kind as any specified activity conducted on that land by the transferor immediately before the date of transfer, the transferee is not, in relation to that commencement by the transferee of the conduct of that specified activity, so deemed to have acquired or, as the case may be, commenced to hold that land on that first day.

Compare: 1994 No 164 s FF 18

FF 19 Mining assets

For the purposes of this section and **sections CU 12, DU 9, and IH 5**, where any asset is transferred in accordance with a matrimonial agreement, the following provisions apply:

- (a) where the transferor is a resident mining operator and that asset is an asset that was used by the transferor immediately before that transfer, in deriving counted income from mining, the transferor is deemed to have sold or otherwise disposed of that asset on the date of transfer for a consideration equal to the lesser of—
- (i) the amount of the expenditure incurred by the transferor in the acquisition of that asset;
 - (ii) where the transferor has been allowed a deduction for an amount of depreciation loss in respect of that asset, an amount equal to the value to which, at the commencement of the tax year of transfer, that asset has been reduced by all such deductions:

- (iii) where that asset is an asset acquired as a result of mining exploration expenditure or mining development expenditure incurred by the transferor in respect of which a deduction had been allowed under **sections DU 3 and DU 9**, the amount of that mining exploration expenditure or that mining development expenditure reduced by an amount equal to the sum of the amounts of all such deductions:
- (b) in any case where **paragraph (a)** applies, the transferee is deemed to have incurred expenditure in the acquisition of that asset, when so transferred to the transferee, of an amount equal to the amount of the consideration for which the transferor is, under **paragraph (a)**, deemed to have sold or otherwise disposed of that asset:
- (c) where, in any case where **paragraph (a)** applies, the transferor is deemed to have sold or otherwise disposed of that asset for a consideration equal to the amount calculated in accordance with **paragraph (a)(iii)**, and the transferee, being a transferee who, immediately after that transfer, is not a resident mining operator, at any time sells or otherwise disposes of that asset,—
 - (i) the transferee is, in relation to that sale or other disposal, deemed to be a resident mining operator; and
 - (ii) that sale or other disposal is deemed to be a sale or other disposal to which, in relation to **sections CU 3 and DU 4, sections CU 12 and DU 9** apply; and
 - (iii) the value of the consideration received or receivable by the transferee for that sale or other disposal is, for the purposes of **sections CU 1 to CU 12, DU 1 to DU 9, and IH 4**, deemed to be an amount equal to the amount by which the value of the consideration received or receivable by the transferee for that sale or other disposal exceeds the amount of the consideration first mentioned in this paragraph:
- (d) where the transferee is, immediately after the date of transfer, a resident mining operator, the transferee is deemed to have incurred expenditure in the acquisition of that asset, when so transferred, of an amount equal to the lesser of—

- (i) the amount of the expenditure incurred by the transferor in the acquisition of that asset:
 - (ii) where the transferor has been allowed a deduction for an amount of depreciation loss in respect of that asset, an amount equal to the value to which, at the commencement of the tax year of transfer, that asset has been reduced by all such deductions:
 - (iii) where that asset is an asset acquired as a result of mining exploration expenditure or mining development expenditure incurred by the transferor in respect of which the transferor has been allowed any deduction under **sections DU 3 and DU 9**, the amount of that mining exploration expenditure or that mining development expenditure reduced by an amount equal to the sum of the amounts of all such deductions:
- (e) where, in any case where **paragraph (d)** applies, the transferee is deemed to have incurred expenditure in the acquisition of that asset of an amount calculated in accordance with **paragraph (d)(iii)**, the transferee is, for the purposes of **sections CU 3, CU 10, DU 4, and DU 8**, deemed to have acquired that asset as a result of mining exploration expenditure or mining development expenditure incurred by the transferee.

Compare: 1994 No 164 s FF 19

Subpart FG—Apportionment of interest costs

FG 1 Purpose of this subpart

Subject always to the express provisions of this subpart, the purpose of this subpart is to ensure, in the case of a New Zealand taxpayer controlled by a single non-resident and which has a disproportionately high level of New Zealand group debt funding, an appropriate apportionment to the New Zealand taxpayer of the worldwide interest expenditure of the group of entities of which the New Zealand taxpayer is a part.

Compare: 1994 No 164 s FG 1

FG 2 Entities to which apportionment rule potentially applies

- (1) The interest apportionment rule in **section FG 8** applies only if, at any time in the relevant income year, the taxpayer is—

- (a) not resident in New Zealand, unless—
 - (i) the taxpayer is a company in which a person resident in New Zealand has a 50% or greater direct ownership interest; and
 - (ii) no person not resident in New Zealand, when aggregated with persons associated with the non-resident, has a 50% or greater direct ownership interest in the taxpayer; or
 - (b) a company resident in New Zealand, if a person not resident in New Zealand has—
 - (i) a 50% or greater ownership interest in the company; or
 - (ii) control of the company by any other means whatsoever (whether or not in conjunction with persons associated with the non-resident); or
 - (c) the trustee of a non-qualifying trust 50% or more settled by a person not resident in New Zealand.
- (2) A person's ownership interest in a company is equal to the sum of—
- (a) any direct ownership interest held by the person in the company; and
 - (b) any direct ownership interest or interests held in the company by persons associated with the person; and
 - (c) any indirect ownership interest or interests held by the person in the company; and
 - (d) any indirect ownership interest or interests held in the company by persons associated with the person.
- (3) A person's direct ownership interest in a company is equal to the highest percentage held by the person out of the categories listed in **section EX 5(1)** (applying that subsection as if the company were the foreign company referred to).
- (4) If a person has a direct ownership interest in a company (referred to in this subsection as the **upper company**) and the upper company has an ownership interest in another company (referred to in this subsection as the **lower company**), then,—
- (a) if the person's direct ownership interest in the upper company (when aggregated with the direct ownership interests of persons associated with the person) is less than 50%, the person is deemed to hold an indirect ownership interest in the lower company calculated by multiplying the person's direct ownership interest in the

- upper company by the upper company's ownership interest in the lower company; and
- (b) if the person's direct ownership interest in the upper company (when aggregated with the direct ownership interests of persons associated with the person) is equal to or greater than 50%, the person is deemed to hold an indirect ownership interest in the lower company equal to the upper company's ownership interest in the lower company.
- (5) If the application of **subsection (2) or (4)** to require a person's ownership interest in a company to be calculated on a basis of aggregation with associated persons results in the same percentage shares or rights in respect of the company being counted more than once, the person's ownership interest in the company is adjusted to the extent necessary to avoid multiple counting.
- (6) For the purposes of **subsections (1)(a)(ii) and (2)**, a person not resident in New Zealand who does not hold any direct or indirect ownership interests in the company and any relative of that person resident in New Zealand are not associated persons in respect of that company.
- (7) For the purposes of this section, a trust is treated as being 50% or more settled by a single person if the value of settlements by the single person, when aggregated with the value of settlements by all the persons associated with the single person, aggregate to 50% or more of the total value of all settlements on the trust.
- (8) For the purposes of this section, a foreign company is treated as not being resident in New Zealand.

Compare: 1994 No 164 s FG 2

FG 3 Circumstances in which apportionment required

Section FG 8 applies to require an apportionment of interest expenditure incurred during an income year if the taxpayer has a New Zealand group debt percentage for the income year that—

- (a) exceeds 75%; and
- (b) if the taxpayer is a company or a trustee, also exceeds the worldwide group debt percentage of the taxpayer multiplied by 1.1.

Compare: 1994 No 164 s FG 3

FG 4 Rules for calculating New Zealand group debt percentage

- (1) The New Zealand group debt percentage is the percentage which the amount of total debt represents of the amount of total assets for the taxpayer's New Zealand group for the income year, and must be calculated under the rules in this section.
- (2) **Total debt** means the sum of the outstanding balances of all financial arrangements entered into by the taxpayer (or another group member) on the relevant date chosen under **subsection (5)** if—
 - (a) the financial arrangement provides funds to the taxpayer (or another group member); and
 - (b) the financial arrangement gives rise to an amount for which the taxpayer (or another group member) would be allowed a deduction, other than an amount that arises only from movement in currency exchange rates.
- (3) **Total assets for the income year** means the aggregate on the relevant date chosen under **subsection (5)** of all assets of the taxpayer (or another group member), which (subject to the following subsections) must be measured, by any combination, elected by the taxpayer, of—
 - (a) the values shown in the financial accounts of the taxpayer's New Zealand group; or
 - (b) the net current value of the assets; or
 - (c) in the case of trading stock which is valued at market selling value in calculating the taxpayer's (or group member's) income tax liability for the income year, market selling value; or
 - (ca) in the case of a specified lease or a finance lease that is not recognised as an asset under generally accepted accounting practice, the adjusted tax value of the lease asset; or
 - (d) if permitted under generally accepted accounting practice, a combination of the financial account values and net current values.
- (4) Except where either **subsection (3)(c) or (ca)** applies, the amount of total assets must be calculated under generally accepted accounting practice.

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- (5) The amount of total debt and total assets for the income year must be measured, at the election of the taxpayer, on the basis of—
- (a) an average of the figures for the amount of total debt and total assets, respectively, calculated at the end of each day of the income year; or
 - (b) an average of the figures for the amount of total debt and total assets, respectively, calculated at the end of each complete consecutive 3 month period during the income year; or
 - (c) the amount of total debt and total assets, respectively, at the end of the income year.
- (6) Notwithstanding **subsection (5)**, if members of the taxpayer's New Zealand group have different income tax balance dates, the election made by the taxpayer under **subsection (5)** applies as if the taxpayer's income year were the same as that of the New Zealand parent (as defined in **subsection (10)**).
- (7) The amount of total debt and the amount of total assets calculated must be in New Zealand currency and, subject to **section FG 7**, any necessary currency conversions must be made at the close of trading spot exchange rate on the date as at which the amount is being calculated.
- (8) Any temporary—
- (a) reduction in the outstanding balance of a financial arrangement; or
 - (b) increase in the value of an asset—
- must be excluded from the calculations if the reduction or increase has a purpose or effect of defeating the intent and application of this subpart.
- (9) If the taxpayer is a company, the amount of total debt and the amount of total assets must be calculated, on a consolidated basis for elimination of intra-group balances used under generally accepted accounting practice for consolidation of a group of companies, for the group identified under **subsections (10) to (13)**.
- (10) If the taxpayer is a company, the members of the group are determined in accordance with **subsection (12)** by—
- (a) the taxpayer, if the taxpayer is—
 - (i) not resident in New Zealand; or
 - (ii) a company in which—

- (A) persons not resident in New Zealand have, under the rules set out in **section FG 2**, in aggregate a 50% or greater direct ownership interest; and
 - (B) no single person not resident in New Zealand and carrying on business in New Zealand through a fixed establishment in New Zealand has a 50% or greater ownership interest:
- (b) if **paragraph (a)** does not apply, the company—
- (i) that is either—
 - (A) resident in New Zealand; or
 - (B) not resident in New Zealand but carrying on business in New Zealand through a fixed establishment in New Zealand; and
 - (ii) that has, under the rules set out in **section FG 2** (but applied as if the rules for aggregation of the interests of associates set out in **section FG 2(2)(b) and (d)** were omitted), an ownership interest in the taxpayer; and
 - (iii) in which a person not resident in New Zealand has, under those rules, a direct ownership interest; and
 - (iv) in which, if **paragraph (b)(i)(A)** applies, a person not resident in New Zealand (being a person who has, under those rules, a 50% or greater ownership interest in the taxpayer) has a 50% or greater ownership interest; and
 - (v) in which no company satisfying the conditions of **subparagraphs (i) to (iv)** has, under those rules set out in **section FG 2**, a direct ownership interest:
- (c) the taxpayer, if **paragraph (a)** does not apply and no company can be identified under **paragraph (b)**:
- (d) if more than 1 company is identified under **paragraph (b)**, the company out of that set of companies where the highest figure is produced by multiplying—
- (i) the aggregate direct ownership interests held in that company by persons not resident in New Zealand who also have a 50% or greater ownership interest in the taxpayer; and
 - (ii) the ownership interest of that company in the taxpayer calculated under the rules set out in

- section FG 2** (but applied as if the rules for aggregation of the interests of associates set out in **section FG 2(2)(b) and (d)** were omitted):
- (e) if more than 1 company is identified under **paragraph (d)**, the company out of that set of companies that was incorporated at the earliest time—
(the party identified under **paragraphs (a) to (e)** being referred to in **subsections (12) to (14D)** as the **New Zealand parent**).
- (11) If a taxpayer is subject to the interest apportionment rule in **section FG 8** solely by virtue of **section FG 2(1)(b)(ii)**, **section FG 4(10)(b)** applies as if **subparagraph (iii)** were omitted and **subparagraph (iv)** read—
- “(iv) in which, if **paragraph (b)(i)(A)** applies, a person not resident in New Zealand who, under those rules, has control of the taxpayer by any other means whatsoever, has control by any other means whatsoever; and”.
- (12) Subject to **subsections (14C) and (14D)**, the taxpayer’s New Zealand group comprises the taxpayer, the New Zealand parent (if different from the taxpayer), and all companies that—
- (a) are resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand; and
 - (b) are identified under **subsection (13) or (14)** as being controlled by the New Zealand parent.
- (13) If the New Zealand parent elects that the relevant control percentage is any percentage greater than 50%, the companies treated as being controlled by the New Zealand parent and to be included in the New Zealand group are those in which greater than 50% direct ownership interests are held collectively by any combination of—
- (a) the New Zealand parent; and
 - (b) companies already included in the group as a result of **paragraph (a)** or this paragraph.
- (14) If the New Zealand parent elects that the relevant control percentage is 66% or any greater percentage, the companies treated as being controlled by the New Zealand parent and to be included in the New Zealand group are those in which 66% or greater direct ownership interests are held collectively by any combination of—
- (a) the New Zealand parent; and

- (b) a person not resident in New Zealand if—
 - (i) the person has a 50% or greater ownership interest in both the taxpayer and the New Zealand parent; and
 - (ii) the company included in the New Zealand group as a result would have been included in the New Zealand group under **subsection (13)** if the New Zealand parent had elected that **subsection (13)** applied; and
 - (c) companies already included in the group, as a result of any or all of **paragraph (a), (b)**, and this paragraph.
- (14A) If the New Zealand parent fails to elect that either **subsection (13) or (14)** applies, the New Zealand parent is deemed to have elected that **subsection (14)** applies.
- (14B) The New Zealand parent must and is deemed to make the same election whether **subsection (13) or (14)** applies for the income year with respect to any other taxpayer in respect of which it is determined to be the New Zealand parent.
- (14C) Notwithstanding **subsections (12) to (14)**, if the taxpayer is not a company identified under **subsection (13) or (14)** as being controlled by the New Zealand parent, the taxpayer's New Zealand group comprises only the taxpayer and all companies that—
- (a) are resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand; and
 - (b) are companies that—
 - (i) would be identified under **subsection (13) or (14)** as being controlled by the taxpayer if the taxpayer were treated as being the New Zealand parent; or
 - (ii) would result in the taxpayer being identified under **subsection (13) or (14)** as being controlled by the other company being included in the group under this subparagraph if the other company were treated as being the New Zealand parent; or
 - (iii) would be identified under **subsection (13) or (14)** as being controlled by a company included in the taxpayer's New Zealand group under **subparagraph (ii)** if that other company were treated as being the New Zealand parent.

- (14D) Notwithstanding **subsections (12) to (14C)**, the taxpayer's New Zealand group also includes 1 or more other companies resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand if—
- (a) the New Zealand parent so elects; and
 - (b) the same person who is not resident in New Zealand holds an ownership interest of 50% or more in the taxpayer and each of those companies; and
 - (c) any necessary elections are made under this subsection to ensure that the New Zealand group of—
 - (i) each of those other companies; and
 - (ii) each company which is a member of the taxpayer's New Zealand group other than under this subsection—comprises the same companies as the taxpayer's New Zealand group; and
 - (d) the other company is not a company in which, under the rules set out in **section FG 2**, a direct ownership interest is held by a company (referred to in this paragraph as the **possible group member**) if—
 - (i) the possible group member is not included in the taxpayer's New Zealand group; and
 - (ii) the possible group member could have been included in the taxpayer's New Zealand group had the New Zealand parent made an appropriate election under **subsection (13)** or this subsection.
- (14E) Notwithstanding **subsections (12) to (14D)**, a company is a member of the taxpayer's New Zealand group if it is—
- (a) a conduit tax relief holding company, on the date on which the measurement is made under **subsection (5)**, in respect of a conduit tax relief company in which it holds a direct ownership interest of more than 50%, and the conduit tax relief company is a member of the taxpayer's New Zealand group; or
 - (b) a member of the New Zealand group of any company identified under **paragraph (a)** (determined under this section before applying this subsection).
- (14F) **Subsection (14E)** does not apply to the income year if, at the end of the income year, the total of all dividends to the extent fully conduit tax relief credited and previously derived by the conduit tax relief holding company does not exceed the total

of all dividends to the extent fully conduit tax relief credited and previously paid by the conduit tax relief holding company.

- (15) If the taxpayer is a trustee, the amount of total debt and the amount of total assets must be calculated, on a consolidated basis for elimination of intra-group balances equivalent to that used for consolidation of a group of companies under generally accepted accounting practice, for the group comprising the taxpayer and all associated persons which are—
 - (a) resident in New Zealand; or
 - (b) carrying on business in New Zealand through a fixed establishment in New Zealand.
- (16) If the taxpayer is an individual who is not a trustee—
 - (a) the only person in the group is the taxpayer; and
 - (b) total assets do not include any private or domestic assets.
- (17) In any case where a group member required to be included in the consolidated calculation under **subsection (9), (12), (15), or (16)** is not resident in New Zealand, the amount of total debt and amount of total assets only includes the total debt and total assets of that group member to the extent that that group member is carrying on business in New Zealand through a fixed establishment in New Zealand.

Compare: 1994 No 164 s FG 4

FG 5 Rules for calculating worldwide group debt percentage

- (1) The worldwide group debt percentage is the percentage which the amount of total debt represents of the amount of total assets for the taxpayer's worldwide group for the accounting year of the group ending most immediately prior to the start of the income year, and must be calculated under the rules in this section.
- (2) Subject to the following subsections, either or both the amount of total debt and the amount of total assets can be taken from the financial accounts of the taxpayer's worldwide group.
- (3) The amount of total debt and amount of total assets for the income year are measured at the end of the relevant accounting year.

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- (4) The amount of total debt and amount of total assets must be calculated—
- (a) under a standard for financial reporting in a consistent and non-distorting manner which is equivalent to generally accepted accounting practice; and
 - (b) in accordance with the financial reporting standards of the country which are applied in the preparation of that group's consolidated financial accounts.
- (5) Notwithstanding **subsections (3) and (4)**, the taxpayer may elect either or both—
- (a) to measure total debt applying the definition of **total debt** in **section FG 4(2)** (applying that provision as if **paragraph (b)** referred also to a deduction which could be claimed if the taxpayer or another group member were resident in New Zealand);
 - (b) to measure total debt and total assets on 1 of the bases listed in **section FG 4(5)(a) or (b)** (applying that provision as if the accounting year were the income year referred to).
- (6) The amount of total debt and total assets calculated must be in New Zealand currency and, subject to **section FG 7**, any necessary currency conversions must be made at the close of trading spot exchange rate on the date as at which the amount is being calculated.
- (7) Any temporary increase in the amount of total debt and any temporary decrease in the amount of total assets must be excluded from the calculations if the increase or decrease has a purpose or effect of defeating the intent and application of this subpart.
- (8) If the taxpayer is a company, the amount of total debt and total assets must be calculated for the group (referred to in this section as the **taxpayer's worldwide group**) which comprises—
- (a) the taxpayer; and
 - (b) all persons included in the taxpayer's New Zealand group for the income year under **section FG 4**; and
 - (c) all persons not resident in New Zealand required to be included in consolidated group accounts with the taxpayer under, at the election of the taxpayer,—
 - (i) the generally accepted accounting practice; or
 - (ii) an equivalent standard for financial reporting in a consistent and non-distorting manner of the

- country in which is resident the company (referred to in this section as the **ultimate non-resident parent**)—
- (A) which has, under **section FG 2**, a 50% or greater ownership interest in the taxpayer; and
 - (B) is not excluded from the taxpayer's worldwide group under **subsection (9)**; and
 - (C) in which no other company, which has under the **section FG 2** rules a 50% or greater ownership interest in the taxpayer, has under those rules an ownership interest; or
- (iii) an equivalent standard for financial reporting in a consistent and non-distorting manner which is in fact applied when preparing the consolidated group accounts of the international group of which the taxpayer is part; and
- (d) the ultimate non-resident parent and all persons not resident in New Zealand required to be included in consolidated group accounts with the ultimate non-resident parent under,—
- (i) if an accounting standard of the ultimate non-resident parent's country applies under **subsection (8)(c)(ii)**, that standard; and
 - (ii) in any other case, under generally accepted accounting practice; and
- (e) any person not resident in New Zealand who—
- (i) is not a company; and
 - (ii) has a 50% or greater ownership interest in the company; and
- (f) any person associated with any person included in the taxpayer's worldwide group under **paragraph (e)**.
- (9) Notwithstanding **subsection (8)**, if in a joint venture ownership situation of a taxpayer which is a company—
- (a) a person, under the rules set out in **section FG 2**, has an ownership interest in the taxpayer equal to 50%; and
 - (b) the taxpayer elects to exclude the person (referred to in this subsection as the **excluded joint venturer**) from the taxpayer's worldwide group; and
 - (c) there is still included in the taxpayer's worldwide group—

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- (i) 1 other person (referred to in this subsection as the **included joint venturer**) who has an ownership interest equal to 50% in the taxpayer; and
 - (ii) all other persons who have an ownership interest equal to 50% in the taxpayer and—
 - (A) who have an ownership interest in the included joint venturer; or
 - (B) in whom the included joint venturer has an ownership interest,—the excluded joint venturer is excluded from the taxpayer's worldwide group for the income year in respect of which the election is made.
- (10) If the taxpayer is a company, the amount of total debt and total assets must be calculated, for the group identified under **subsections (8) and (9)**, on a consolidated basis for elimination of intra-group balances, under,—
- (a) if an accounting standard of the ultimate non-resident parent's country applies under **subsection (8)(c)(ii)**, that standard; and
 - (b) in any other case, under generally accepted accounting practice.
- (11) If the taxpayer is a trustee, the amount of total debt and total assets must be calculated, on a consolidated basis for elimination of intra-group balances equivalent to that used for consolidation of companies under generally accepted accounting practice, for the group comprising the taxpayer and all associated persons.
- (12) If it is impractical for the taxpayer to calculate the taxpayer's worldwide group debt percentage for an income year due to an inability to comply with all or any of these rules,—
- (a) the taxpayer may elect that the Commissioner must estimate the percentage in accordance with the intent of this subpart and, if the Commissioner then makes an estimate, the estimate is treated as being the percentage for the purposes of this subpart; and
 - (b) if the Commissioner is not asked to or cannot reasonably make an estimate, this subpart applies as if the percentage were 68.1818.
- (13) If there is no person in the taxpayer's worldwide group who is not resident in New Zealand (other than the taxpayer), the

taxpayer's worldwide group debt percentage is 68.1818 notwithstanding the calculation rules in this section.

Compare: 1994 No 164 s FG 5

FG 6 Concession for on-lending

- (1) When a taxpayer calculates their New Zealand group debt percentage, the amount of total debt and total assets is reduced by the outstanding balance of a financial arrangement if—
 - (a) the taxpayer (or another group member) enters into the financial arrangement with a person who is—
 - (i) neither resident in New Zealand nor carrying on a business in New Zealand through a fixed establishment; or
 - (ii) not associated with the taxpayer; or
 - (iii) associated with the taxpayer if **section FG 8** can apply to that person because **section FG 2** applies, and the person is not a member of the taxpayer's New Zealand group; and
 - (b) the financial arrangement provides funds to the other party; and
 - (c) the consideration given for the financial arrangement is an arm's length amount.
- (2) When a taxpayer calculates their worldwide group debt percentage, the amount of total debt and total assets is reduced by the outstanding balance of a financial arrangement if—
 - (a) the taxpayer (or another group member) enters into the financial arrangement with a person not associated with the taxpayer; and
 - (b) the financial arrangement provides funds to the other party.

Compare: 1994 No 164 s FG 6

FG 7 Concession for exchange rate fluctuations

The taxpayer may elect, when calculating the taxpayer's New Zealand or worldwide group debt percentage for the income year, to calculate the outstanding balance of any 1 or more financial arrangements, or the value of any 1 or more assets, denominated in a currency other than New Zealand currency using the forward exchange rate, for the relevant measurement

date specified in **section FG 4 or FG 5**, applicable on the first day of the income year.

Compare: 1994 No 164 s FG 7

FG 8 Apportionment of interest deductions

- (1) Notwithstanding anything in **section DB 6 or DB 7 or DB 8**, if a taxpayer's New Zealand group debt percentage for an income year fails the test in **section FG 3**, the amount for which the taxpayer would, in the absence of this section, be allowed a deduction for the income year under **section DB 6 or DB 7 or DB 8** is reduced by an amount calculated in accordance with the following formula:

$$(I - GI - IFD) \times \frac{TNZD - NZDA}{TNZD} \times \frac{NZDP - TDP}{NZDP}$$

where—

- I** is the sum of all deductions for which the taxpayer would be allowed a deduction under **section DB 6 or DB 7 or DB 8** but for this subpart
- GI** is the sum of all deductions which the taxpayer would be allowed under **section DB 6 or DB 7 or DB 8** in respect of amounts payable (excluding any amount included in item "IFD") to a company included in the taxpayer's New Zealand group under **section FG 4(12) or (15)**
- IFD** is the sum of all deductions which the taxpayer would be allowed under **section DB 6 or DB 7 or DB 8** in respect of financial arrangements excluded from total debt for the taxpayer's New Zealand group by virtue of **section FG 4(2)**
- TNZD** is the total debt of the taxpayer's New Zealand group for the income year, calculated under **section FG 4** before allowing for any adjustment under **section FG 6**
- NZDA** is the amount, if any, deducted under **section FG 6** in calculating the total debt of the taxpayer's New Zealand group for the income year (which amount must be averaged in circumstances where **section FG 4(5)(a) or (b)** applies)
- NZDP** is the taxpayer's New Zealand group debt percentage for the income year
- TDP** is,—
- (a) if the taxpayer is a company or a trustee, the greater of—

- (i) 75%; and
 - (ii) the taxpayer's worldwide group debt percentage multiplied by 1.1; and
 - (b) if the taxpayer is an individual who is not a trustee, 75%.
- (2) Notwithstanding **subsection (1)**, if and to the extent that another member of the same wholly-owned group of companies—
- (a) elects that this subsection apply; and
 - (b) would, in the absence of an election under **paragraph (a)** and after allowing for any other reductions under this subsection, be allowed a deduction under **section DB 6 or DB 7 or DB 8**, and if the sum of all deductions under **section DB 6 or DB 7 or DB 8** is at least as large as the amount to which the election applies,—
- the reduction is made to the amount for which the other group member would otherwise be allowed a deduction under **section DB 6 or DB 7 or DB 8** for the income year instead of to the amount for which the taxpayer was allowed a deduction.

Compare: 1994 No 164 s FG 8

FG 9 Treatment of specified leases and interest expense

In this subpart,—

- (a) a deemed loan under **section FC 6(3)** must be treated as a financial arrangement which provides funds to the issuer; and
- (b) expenditure incurred by the lessee in respect of specified leases for which a deduction is allowed must be treated as an amount of interest under **section DB 6 or DB 7 or DB 8**; and
- (c) interest that is allowed as a deduction under **section DP 2(1)(b) or DV 11(1)(a) or (b)** must be treated as an amount of interest under **section DB 6 or DB 7 or DB 8**, if not already allowed as a deduction under **section DB 6 or DB 7 or DB 8**.

Compare: 1994 No 164 s FG 9

FG 10 Mode of elections

- (1) Any election available to a person under this subpart must be exercised by the person filing the person's return of income for the income year completed in a manner which reflects the election.

- (2) Notwithstanding **subsection (1)**, any election under **section FG 4(5) or FG 5(5)(b)** can be revoked and exercised differently on receipt of a notice of assessment from the Commissioner for the relevant income year.
- (3) Notwithstanding **subsection (1)**, an election made under **section FG 4(11), (13), (14), or (14D)** by a person other than the taxpayer must be exercised by the person giving a notice to the Commissioner with the taxpayer's income tax return for the income year.

Compare: 1994 No 164 s FG 10

Subpart FH—Foreign attributed income excess interest allocation

FH 1 Circumstances in which group excess interest allocation required

- (1) Subject to **subsection (2)**, the group excess interest allocation rules in **sections FH 5 to FH 8** apply for a tax year to a company that is a dividend withholding payment account company or a conduit tax relief company for the imputation year that corresponds with the tax year, and in that tax year derives foreign attributed income or is paid a dividend from which the company must deduct an amount of dividend withholding payment (or would have to deduct an amount but for **section NH 7**).
- (2) The group excess interest allocation rules do not apply for a tax year to—
 - (a) a company, if the total of the rebates in the following subparagraphs is less than \$50,000, calculated as if item “EIA” of the formula in **section KH 1(2)** were in all cases nil:
 - (i) income tax rebates under **section KH 1** and dividend withholding payment reductions under **section NH 7** allowed to the company for the tax year if it is a conduit tax relief company, or that would be allowed to the company if it had been a conduit tax relief company; and
 - (ii) income tax rebates under **section KH 1** and dividend withholding payment reductions under **section NH 7** allowed to all other conduit tax relief companies that are associated with the company; and
 - (iii) income tax rebates under **section KH 1** and dividend withholding payment reductions under **section**

- NH 7** that would be allowed to all other companies that are not conduit tax relief companies and are associated with the company, had those other companies been conduit tax relief companies; or
- (b) a company whose New Zealand foreign attributed income group debt percentage for the tax year is 66% or less.

Compare: 1994 No 164 s FH 1

FH 2 Rules for determining company's foreign attributed income group

- (1) If the thin capitalisation interest apportionment rule in **section FG 8** can apply to a company by virtue of **section FG 2**, the company's foreign attributed income group is the same New Zealand group of companies that would be identified for thin capitalisation purposes under **section FG 4(10) to (14D)**.
- (2) If **subsection (1)** does not apply, the company's foreign attributed income group consists of—
- (a) the company; and
 - (b) every other company that is—
 - (i) in the same group of companies as the company; and
 - (ii) resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand.

Compare: 1994 No 164 s FH 2

FH 3 Rules for determining New Zealand foreign attributed income group debt percentage

- (1) Subject to **subsections (2) and (3)**, the New Zealand foreign attributed income group debt percentage of a company for a tax year is calculated under **section FG 4** (excluding **subsections (14E) and (14F)** and modified, as relevant, under **sections FG 6, FG 7, and FG 9**) as if the company were the taxpayer calculating its New Zealand group debt percentage.
- (2) If a company and each company in the same New Zealand tax group are the company's foreign attributed income group under **section FH 2(2)**,—
- (a) **section FG 4(10) to (14F)** does not apply; and
 - (b) the group of companies referred to in **section FG 4(9)** is the group identified under **section FH 2(2)**; and

- (c) **section FG 4(6)** applies as if the company were the New Zealand parent.
- (3) The total assets of the group are reduced by the total of the amounts calculated for each member of the group as follows: $NRS \times (CFC + FIF)$

where—

NRS is the percentage of the relevant group member's shareholders not resident in New Zealand, calculated under **section KH 2(3)**

CFC is the total value, at the relevant measurement time and determined under **section FG 4(3)**, of the assets of the relevant group member which are rights in respect of a controlled foreign company which result in the relevant group member having attributed CFC income or attributed CFC loss in the controlled foreign company for an accounting period which includes the relevant measurement time

FIF is the total value, at the relevant time and measured under **section FG 4(3)**, of any interests in foreign investment funds of the relevant group member for which the relevant group member is determining its FIF income or FIF loss under the accounting profits method or the branch equivalent method.

Compare: 1994 No 164 s FH 3

FH 4 Rules for determining consolidated foreign attributed income group debt percentage

- (1) A company may choose to calculate its consolidated foreign attributed income group debt percentage for the tax year under this section if its New Zealand foreign attributed income group debt percentage for the tax year is more than 66%.
- (2) Subject to **subsections (3) to (8)**, the consolidated foreign attributed income group debt percentage is calculated under the rules set out in **section FH 3** for calculating the New Zealand foreign attributed income group debt percentage.
- (3) A controlled foreign company or foreign investment fund of the type referred to in item "CFC" or "FIF" in **section FH 3(3)** is consolidated with a foreign attributed income group if the foreign attributed income group—
- (a) has a total income interest of 40% or more in the controlled foreign company for the accounting period in

- which the relevant measurement date under **section FG 4(5)** falls; or
- (b) would be treated, under **section EX 8** if the foreign investment fund were a controlled foreign company, as having a total income interest of 40% or more in the foreign investment fund for the accounting period in which the relevant measurement date under **section FG 4(5)** falls.
- (4) A controlled foreign company or foreign investment fund of the type referred to in item “CFC” or “FIF” in **section FH 3(3)** is consolidated with a foreign attributed income group if the foreign attributed income group—
- (a) has a total income interest of 5% or more but less than 40% in the controlled foreign company for the accounting period in which the relevant measurement date under **section FG 4(5)** falls; or
 - (b) would be treated, under **section EX 8** if the foreign investment fund were a controlled foreign company, as having in total an income interest of 5% or more but less than 40% in the foreign investment fund for the accounting period in which the relevant measurement date under **section FG 4(5)** falls.
- (5) A controlled foreign company’s or foreign investment fund’s consolidation with a foreign attributed income group under **subsection (4)** applies only to the extent that the percentage of the controlled foreign company’s or foreign investment fund’s debts and assets equal the total percentage income interest of the foreign attributed income group in the controlled foreign company or foreign investment fund.
- (6) The consolidation required under **subsections (3) and (4)** is made—
- (a) as if the controlled foreign company or foreign investment fund were a member of the company’s foreign attributed income group; and
 - (b) on a basis for eliminating intra-group balances used under generally accepted accounting practice for consolidation of a group of companies; and
 - (c) by calculating the amount of debts and assets of the controlled foreign company or foreign investment fund using the values shown in the financial accounts for the accounting period and to a financial reporting standard

that is equivalent to generally accepted accounting practice.

- (7) No reduction from the amount of total assets is to be made under **section FH 3(3)**.
- (8) A reduction is to be made equal to the total value of assets (determined under **section FG 4(3)**) of group members which are—
- (a) referred to in items “CFC” or “FIF” of **section FH 3(3)** for the accounting period in which the relevant measurement date falls; and
 - (b) not consolidated under **subsection (3) or (4)**.

Compare: 1994 No 164 s FH 4

FH 5 Rule for calculating group excess interest allocation amount

The group excess interest allocation amount for a company for a tax year is calculated under the following formula (but cannot be less than nil):

$$(GI - IGI - GIFD) \times \frac{NCGDP - CGDP}{NCGDP}$$

where—

GI is the total of deductions that companies are allowed for the tax year if they are members of the company’s foreign attributed income group at the end of the tax year under—

- (a) **section DB 6 or DB 7 or DB 8** (as modified by **section FG 8**); or
- (b) **sections FC 6 to FC 8** as lessee expenditure in respect of a specified lease

IGI is the total of amounts included in item “GI” for amounts payable to another company in the foreign attributed income group (excluding an amount included in item “GIFD”)

GIFD is the total of amounts included in item “GI” for financial arrangements that are excluded, when applying **sections FH 3 and FH 4**, as a result of **section FG 4(2)**

NCGDP is the New Zealand foreign attributed income group debt percentage of the company for the tax year calculated under **section FH 3**

- CGDP is the greatest of—
- (a) 66%; or
 - (b) the New Zealand foreign attributed income group debt percentage that would be calculated for the company if **section FH 3(3)** did not apply; or
 - (c) the consolidated foreign attributed income group debt percentage of the company for the tax year, calculated under **section FH 4**, if the company chooses to calculate that percentage.

Compare: 1994 No 164 s FH 5

FH 6 Rule for calculating company's excess interest allocation percentage

If a company has a group excess interest allocation amount for a tax year, the company's excess interest allocation percentage is the lesser of 1 and the amount calculated as follows:

$$\frac{\text{GEIA} \times \text{TR}}{\text{TR} \times (\text{GFAI} - \text{GFALO}) - \text{GBC}}$$

where—

- GEIA** is the group excess interest allocation amount for the tax year
- GFAI** is the total of the foreign attributed income for the tax year of all companies (including the company) which are in the company's foreign attributed income group at the end of the tax year
- GFALO** is the total of the foreign attributed loss offsets for the tax year of all companies (including the company) that are in the company's foreign attributed income group at the end of the tax year
- GBC** is the total of the amounts able to be credited against the income tax liability for the tax year under **section MF 5(4)** of all companies (including the company) that are in the company's foreign attributed income group at the end of the tax year, determined as if the amount of rebate calculated under **section KH 1** were for all companies nil
- TR** is the rate of income tax stated in **schedule 1, part A, clause 5** for the tax year.

Compare: 1994 No 164 s FH 6

FH 7 Rule for calculating individual excess interest allocation amount

The individual excess interest allocation for the company for the tax year to be included in the formula in **section KH 1(2)** is calculated as follows:

$$\text{FAI} - \text{FALO} - \frac{\text{BC}}{\text{TR}} \times \text{EIAP}$$

where—

BC is the total of—

- (a) the amount able to be credited by the company against its income tax liability for the tax year under **section MF 5(4)** (the amount is determined as if the amount of rebate calculated under **section KH 1** were nil); and
- (b) the amount credited by another company in the same group of companies against the company's income tax liability for the tax year under **section MF 5(4)** (the amount is determined as if the amount of rebate calculated under **section KH 1** were nil)

TR is the rate of income tax stated in **schedule 1, part A, clause 5** for the tax year

FAI is the company's foreign attributed income for the tax year

FALO is the company's foreign attributed loss offsets for the tax year

EIAP is the company's excess interest allocation percentage calculated under **section FH 6** for the tax year.

Compare: 1994 No 164 s FH 7

FH 8 Rules for applying surplus group excess interest allocation amount to increase income tax and dividend withholding payment

- (1) If the total of individual excess interest allocations calculated under **section FH 7** for the tax year for all companies included in a company's foreign attributed income group at the end of the tax year is less than the group excess interest allocation amount calculated under **section FH 5**, for all companies included in the company's foreign attributed income group, the difference is the surplus group excess interest allocation amount.

- (2) The company's surplus group excess interest allocation percentage for the tax year is the lesser of 1 and the percentage calculated as follows:

$$\frac{\text{SGEIA} \times \text{TR}}{\text{GDWP}}$$

where—

SGEIA is the surplus group excess interest allocation amount for the tax year

TR is the rate of income tax stated in **schedule 1, part A, clause 5** for the tax year

GDWP is the total of dividend withholding payments (calculated after loss offsets are claimed under **section NH 3** but before any reduction is allowed under **section NH 7**) that must be deducted from dividends paid during the tax year to companies that are members of the company's foreign attributed income group at the end of the tax year.

- (3) The company is deemed to derive, on the last day of the tax year, an amount of income equal to the foreign dividend adjustment amount.
- (4) The company's foreign dividend adjustment amount is calculated as follows:

$$\frac{\text{DWP} \times \text{SGEIP}}{\text{TR}}$$

where—

DWP is the total of dividend withholding payments (calculated after loss offsets are claimed under **section NH 3** but before any reduction is allowed under **section NH 7**) that must be deducted by the company from dividends paid to the company during the tax year

SGEIP is the surplus group excess interest allocation percentage calculated under **subsection (2)** for the company and the tax year

TR is the rate of income tax stated in **schedule 1, part A, clause 5** for the tax year.

- (5) A conduit tax relief company has a conduit tax relief account adjustment of an amount calculated as follows:

$$\text{FDAA} \times \text{TR}$$

where—

FDAA is the company's foreign dividend adjustment amount for the tax year

TR is the rate of income tax stated in **schedule 1, part A, clause 5** for the tax year.

- (6) A membership change that has only a temporary effect on the company's foreign attributed income group is disregarded when making calculations under this section, if a purpose or effect of the change is to defeat the intent and application of this section.

Compare: 1994 No 164 s FH 8

Subpart FZ—Terminating provisions

FZ 1 Deduction for dividends paid on certain preference shares

- (1) This section does not apply to the extent that any specified preference shares in any close company are to be issued to or are held by—
- (a) any holder of any other class or classes of shares in the capital of the company; or
 - (b) any person where that person and any holder of any other class or classes of shares in the capital of the company are associated persons,—
- unless the Commissioner has approved the terms of issue of the specified preference shares as being ordinary commercial conditions consistent with those applying between parties at arm's length, and those terms as approved are continued.
- (2) This section does not apply to any company which is under the control of persons who are not deemed to be resident in New Zealand.
- (3) For the purposes of **subsection (2), section OD 1** has effect as if for the term "50%" wherever it occurs there were substituted in each case the term "25%".
- (4) Subject to this section, a company to which this section applies is allowed a deduction in any income year of an amount equal to the dividends paid by the company in that income year in respect of specified preference shares of that company in any case where at all times in that income year the aggregate amount of the available subscribed capital per share calculated under the slice rule of all the preference shares, including specified preference shares, of the company does

not exceed 50% of the aggregate amount of the available subscribed capital per share calculated under the slice rule of all the ordinary shares of the company.

- (5) In this section, **specified preference shares**, in relation to any company, means shares in the company—
- (a) that have been issued and subscribed for in cash on or after 22 May 1975, in accordance with a binding contract entered into before 8.00 pm New Zealand Standard Time on 23 October 1986; and
 - (b) that are preferential as to dividends; and
 - (c) that are fully paid up in cash; and
 - (d) that are entitled to a fixed rate of dividend without a further right to participate in profits; and
 - (e) that are issued at par value only; and
 - (f) that are—
 - (i) redeemable in cash at that par value; or
 - (ii) convertible into, or redeemable by the issue of, shares or stock in the capital of the company or in the capital of any other company not earlier than 5 years after the date of allotment.

Compare: 1994 No 164 s FZ 1

FZ 2 Amounts owing under convertible notes deemed to be share capital and holders deemed to be shareholders

- (1) Where, under the terms of any issue of convertible notes, any person becomes entitled to have a convertible note issued or given to the person by a company, the company is, for the purposes of this section, deemed to have issued or given the convertible note at the time when that person first became entitled to have the convertible note issued or given to the person.
- (2) Where a company has issued or given a convertible note in accordance with an offer made by or to the company after 8 September 1960,—
- (a) the company is not allowed a deduction in respect of any interest payable under the convertible note or of any expenditure or loss incurred in connection with the convertible note or in borrowing any money in respect of which the convertible note is issued or given; and
 - (b) for the purposes of this Act,—

- (i) the amount in respect of which the convertible note is issued or given is deemed to be share capital in the capital of the company; and
 - (ii) that amount is deemed to be the amount paid up in respect of shares of which the holder of the convertible note is deemed to be the holder; and
 - (iii) the holder of the convertible note is deemed to be a shareholder in the company,—and this Act applies accordingly.
- (3) **Subsection (2)** does not apply with respect to any convertible note that is issued or given by a New Zealand company on or after 11 June 1971, if the total amount in respect of which the convertible note has been issued or given is required, not later than 5 years after the date on which the company has issued or given the convertible note, to be, under the terms of issue of the convertible note, converted into, or redeemed or paid by the issue of, shares or stock in the capital of the company.
- (4) A company is not allowed a deduction in respect of—
 - (a) any interest payable on the whole or any part of the amount in respect of which the company has issued or given a convertible note to which **subsection (3)** applies, after—
 - (i) the date on which, under the terms of issue of the convertible note, the amount in respect of which the convertible note has been issued or given is required to be converted into, or to be redeemed or paid by the issue of, shares or stock in the capital of the company; or
 - (ii) the expiration of 5 years after the date on which the company has issued or given the convertible note,—whichever is the earlier; or
 - (b) any expenditure or loss incurred at any time in connection with a convertible note to which **subsection (3)** applies, or in borrowing any money in respect of which any such convertible note is issued or given.
- (5) Notwithstanding anything in **subsection (1)**, the period of 5 years referred to in **subsections (3) and (4)(a)(ii)** is deemed not to include any interval between the time when the person entitled first became entitled to have the convertible note issued or given to the person and the commencement of the period for

which interest under the convertible note commences to become payable, if and to the extent that that interval is, in the opinion of the Commissioner, necessary for the completion of formalities preliminary to the issue of the convertible note.

- (6) This section does not apply to any convertible note issued after 8.00 pm New Zealand Standard Time on 23 October 1986, other than a convertible note issued in accordance with a binding contract entered into before that time.

Compare: 1994 No 164 s FZ 2

Part G

Avoidance and non-market transactions

Subpart GB—Avoidance: general

GB 1 Agreements purporting to alter incidence of tax to be void

- (1) Where an arrangement is void in accordance with **section BG 1**, the amounts of counted income, deductions, and available net losses included in calculating the taxable income of any person affected by that arrangement may be adjusted by the Commissioner in the manner the Commissioner thinks appropriate, so as to counteract any tax advantage obtained by that person from or under that arrangement, and, without limiting the generality of this subsection, the Commissioner may have regard to—
 - (a) such amounts of counted income, deductions, and available net losses as, in the Commissioner's opinion, that person would have, or might be expected to have, or would in all likelihood have, had if that arrangement had not been made or entered into; or
 - (b) such amounts of counted income and deductions as, in the Commissioner's opinion, that person would have had if that person had been allowed the benefit of all amounts of counted income, or of such part of the counted income, as the Commissioner considers proper, derived by any other person or persons as a result of that arrangement.
- (2) Where any amount of counted income or deduction is included in the calculation of taxable income of any person under **subsection (1)**, then, for the purposes of this Act, that amount is not included in the calculation of the taxable income of any other person.
- (2A) Without limiting the generality of the preceding subsections, if an arrangement is void in accordance with **section BG 1** because, whether wholly or partially, the arrangement directly or indirectly relieves a person from liability to pay income tax by claiming a credit of tax, the Commissioner may, in addition to any other action taken under this section,—
 - (a) disallow the credit in whole or in part; and
 - (b) allow in whole or in part the benefit of the credit of tax for any other taxpayer.

- (2B) For the purposes of **subsection (2A)**, the Commissioner may have regard to the credits of tax which the taxpayer or another taxpayer would have had, or might have been expected to have had, if the arrangement had not been made or entered into.
- (2C) In this section, **credit of tax** means the reduction or offsetting of the amount of tax a person must pay because—
- (a) credit has been allowed for a payment of any kind, whether of tax or otherwise, made by a person; or
 - (b) of a credit, benefit, entitlement, or state of affairs.
- (3) Without limiting the generality of **subsections (1) and (2)**, **section BG 1**, or the definitions of **arrangement**, **liability**, **tax avoidance**, or **tax avoidance arrangement** in **section OB 1**, where, in any tax year, any person sells or otherwise disposes of any shares in any company under a tax avoidance arrangement under which that person receives, or is credited with, or there is dealt with on that person's behalf, any consideration (whether in money or money's worth) for that sale or other disposal, being consideration the whole or a part of which, in the opinion of the Commissioner, represents, or is equivalent to, or is in substitution for, any amount which, if that arrangement had not been made or entered into, that person would have derived or would derive, or might be expected to have derived or to derive, or in all likelihood would have derived or would derive, as dividends in that tax year, or in any subsequent tax year or years, whether in 1 sum in any of those years or in any other way, an amount equal to the value of that consideration, or of that part of that consideration, is deemed to be a dividend derived by that person in that first-mentioned tax year.

Compare: 1994 No 164 s GB 1

Subpart GC—Avoidance: specific

GC 1 Arrangement to defeat application of cross-border arrangement provision

Notwithstanding **section GD 13(2)**, **section GD 13** also applies to require the substitution of an arm's length amount of consideration in the case of an arrangement which has a purpose or effect in respect of any taxpayer of defeating the intent and application of that section (including, but without limiting the

generality of this section, as a result of a collateral arrangement involving an associated person not resident in New Zealand, or another collateral arrangement such as a market sharing arrangement, an arrangement not to enter a particular market, a back-to-back supply arrangement, or an income sharing arrangement).

Compare: 1994 No 164 s GC 1

GC 2 Arrangements to defeat application of net loss carry forward provisions

Where any company (in this section referred to as the **loss company**) claims to carry forward the whole or any part of any net loss for any income year to any later income year and—

- (a) any shares in the loss company or in any other company have been subject to any arrangement or series of related or connected arrangements; or
- (b) any shares in the loss company or in any other company have had any rights attaching to them extinguished or altered, directly or indirectly by any means,—

in each case for the purpose, or for purposes including the purpose, of enabling the loss company to meet the requirements of **section IF 1(1)** so as to defeat the intent and application of **sections IE 1 and IF 1**, the loss company is, in relation to those shares, deemed not to have met those requirements.

Compare: 1994 No 164 s GC 2

GC 3 Effect on continuity provisions of change in beneficiaries of trust

- (1) The provisions of this section apply only to modify the provisions of **sections OD 3 and OD 4** for the purposes of the application of the continuity provisions.
- (2) Where at any time—
 - (a) any share in a company or option over a share in a company is held by a trustee; and
 - (b) there is a change in the beneficiaries of the trust under an arrangement which has a purpose or effect of defeating the intent and application of any of the continuity provisions,—

the trustee is treated as having disposed of the share or option at that time to an unrelated third party and to have reacquired the share or option immediately thereafter.

Compare: 1994 No 164 s GC 3

GC 4 Arrangement to defeat application of net loss offset provisions

No offset is allowed under **section IG 2(2)** in calculating the taxable income of any company for any tax year where the Commissioner is of the opinion that any shares in that company or in any other company—

- (a) have been subject to any arrangement or series of related or connected arrangements; or
- (b) have had any rights attaching to them extinguished or altered, directly or indirectly, by any means,—

in either case for the purpose, or for purposes including the purpose, of enabling that first-mentioned company to meet the requirements of that subsection so as to defeat the intent and application of **section IG 2**.

Compare: 1994 No 164 s GC 4

GC 5 Arrangement to defeat application of qualifying company provisions

Where the Commissioner is of the opinion that at any time any shares in a company have been subject to any arrangement or series of related or connected arrangements for the purpose, or for purposes including the purpose, of making the company or any other company (the relevant company being in this section referred to as the **specified company**) a qualifying company so as to defeat the intent and application of **subpart HG**, the specified company is deemed not to be a qualifying company at that time.

Compare: 1994 No 164 s GC 5

GC 6 Arrangement to defeat application of depreciation provisions

For the purposes of **sections EZ 13 to EZ 15 and FF 15**, where the Commissioner is of the opinion that at any time the assets of a taxpayer have been subject to any arrangement or series of connected arrangements for the purpose, or for purposes including the purpose, of allowing the taxpayer or any other

taxpayer (the relevant taxpayer being in this section referred to as the **specified taxpayer**) a deduction so as to defeat the intent or application of this Act, the specified taxpayer is not allowed such a deduction.

Compare: 1994 No 164 s GC 6

GC 7 Arrangements in respect of CFCs

Where in relation to any foreign company any 2 or more persons resident in New Zealand have entered into an arrangement by which any control interests in that foreign company are held by any other person or persons, which arrangement has the purpose or a purpose of preventing the foreign company from being a controlled foreign company, those control interests are deemed to be held by those persons resident in New Zealand divided equally among them.

Compare: 1994 No 164 s GC 7

GC 8 Arrangement to defeat application of CFC attributed repatriation provisions

For the purposes of **sections CD 35 to CD 42**, where and to the extent that—

- (a) any controlled foreign company enters into any loan or other arrangement (including a security arrangement) with any other person; and
- (b) the arrangement does not directly result in any person having any attributed repatriation in respect of the controlled foreign company; and
- (c) where, having regard to any connection between the parties to the loan or arrangement or to any other relevant circumstances, the parties were dealing with each other in relation to the loan or arrangement in a manner that has the purpose or effect of—
 - (i) directly or indirectly enabling any person (whether or not the person referred to in **paragraph (a)**, and referred to in this paragraph as the **investor**) to enter into a loan or other arrangement (in this section referred to as the **related arrangement**), which, if entered into by the controlled foreign company, would have resulted in a person having attributed repatriation in respect of the controlled foreign company; and

- (ii) defeating the intent and application of **sections CD 35 to CD 42**,—
the related arrangement is deemed to have been entered into by the controlled foreign company and not by the investor.

Compare: 1994 No 164 s GC 8

GC 9 Variations in control or income interests in foreign companies

- (1) Where before the end of a quarter there is, in relation to any person and any foreign company, a variation in control or income interests that is attributable to an acquisition of control or income interests or a disposal of control or income interests by the person (in this subsection referred to as the **variation**), and within a period of 183 days after that variation there is a further variation in control or income interests that is attributable to a disposal of control or income interests or an acquisition of control or income interests by the person (in this subsection referred to as the **subsequent variation**), then if—
- (a) the variation reduces the person's control interest or income interest in the foreign company and the subsequent variation increases that person's control interest or income interest in the foreign company; or
 - (b) the variation increases the person's control interest or income interest in the foreign company and the subsequent variation reduces that person's control interest or income interest in the foreign company,—
- and, if it were not for the application of this subsection the effect of the variation would be that a greater amount of attributed CFC loss or a lesser amount of attributed CFC income or attributed repatriation would be attributed to the person, or to any person associated with the person, or, where the person is a controlled foreign company, to any person holding an income interest in the controlled foreign company, then if the variation and the subsequent variation are part of an arrangement the effect, or 1 of the effects, of which is to defeat the intent and application of the international tax rules, the variation, to the extent it was reversed by the subsequent variation, is deemed not to have occurred when calculating that person's control interest or income interest in the foreign company at the end of the quarter.

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- (2) Where before the end of a quarter there is, in relation to any person and any foreign company, a variation in control or income interests that is attributable to a reduction or increase in any of the foreign company aggregates (in this subsection referred to as the **variation**) and within a period of 365 days after the variation there is a further variation in control or income interests which is attributable to an increase or reduction in any of the foreign company aggregates (in this subsection referred to as the **subsequent variation**), then if—
- (a) the variation reduces the person's control interest or income interest in the foreign company and the subsequent variation increases that person's control interest or income interest in the foreign company; or
 - (b) the variation increases the person's control interest or income interest in the foreign company and the subsequent variation reduces that person's control interest or income interest in the foreign company,—
- and if it were not for the application of this subsection the effect of the variation would be that a greater amount of attributed CFC loss or a lesser amount of attributed CFC income or attributed repatriation would be attributed to the person, or to any person associated with the person, or, where the person is a controlled foreign company, to any person holding an income interest in the controlled foreign company, then if the variation and the subsequent variation are part of an arrangement the effect, or 1 of the effects, of which is to defeat the intent and application of the international tax rules, the variation, to the extent it was reversed by the subsequent variation, is deemed not to have occurred when calculating that person's control interest or income interest in the foreign company at the end of the quarter.
- (3) Where before the end of a quarter there is, in relation to any person and any foreign company, a variation in control or income interests (in this subsection referred to as the **variation**) that is attributable to—
- (a) an acquisition of control or income interests or a disposal of control or income interests by the person; or
 - (b) a reduction in any of the foreign company aggregates or an increase in any of the foreign company aggregates,—

and within a period of 365 days after the variation there is a further variation in control or income interests (in this subsection referred to as the **subsequent variation**) which is attributable,—

- (c) in any case where the variation was of the type specified in **paragraph (a)**, to an increase in the foreign company aggregates or a reduction in the foreign company aggregates; or
- (d) in any case where the variation was of the type specified in **paragraph (b)**, to an acquisition of control or income interests or a disposal of control or income interests by the person,—

and if it were not for the application of this subsection, the effect of the variation would be that a greater amount of attributed CFC loss or a lesser amount of attributed CFC income or attributed repatriation would be attributed to the person, or to any person associated with the person, or, where the person is a controlled foreign company, to any person holding an income interest in the controlled foreign company, then if the variation and the subsequent variation are part of an arrangement the effect, or 1 of the effects, of which is to defeat the intent and application of the international tax rules, the variation, to the extent it was reversed by the subsequent variation, is deemed not to have occurred when calculating that person's control interest or income interest in the foreign company at the end of the quarter.

- (4) **Subsections (1) and (3)** do not apply where the person first mentioned in each of those subsections acquired a control interest or an income interest in a controlled foreign company from, or disposes of a control interest or income interest in a controlled foreign company to, a person who—
 - (a) is at the time of the acquisition or disposal resident in New Zealand; and
 - (b) is required to include as counted income any attributed CFC income which that person might derive; and
 - (c) has immediately prior to the acquisition or immediately after the disposition (as the case may be) an income interest of 10% or greater in that controlled foreign company.

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- (5) Nothing in this section is to be construed as limiting the circumstances in which a person is regarded as being entitled to acquire anything under **section EX 6**.
- (6) For the purposes of the international tax rules, where a company resident in New Zealand becomes a foreign company and subsequently within 183 days becomes a company resident in New Zealand, that company is deemed to have been resident in New Zealand at all times during that period.
- (7) In this section,—
- acquisition of control or income interests** means an acquisition directly or indirectly, and whether by 1 transaction or a series of transactions, by a person of any percentage of any of the things, or an entitlement to acquire any percentage of any of the things, listed in **section EX 5 or EX 9**
- disposal of control or income interests** means a disposal directly or indirectly, and whether by 1 transaction or a series of transactions, by a person of any percentage of any of the things, or an entitlement to acquire any percentage of any of the things, listed in **section EX 5 or EX 9**
- foreign company aggregates**, in relation to any foreign company, means the total of each of—
- (a) the available subscribed capital per share calculated under the slice rule of shares in the foreign company; or
 - (b) the rights to vote or participate in any decision-making concerning the distributions to be made by that foreign company (not being decision-making undertaken by directors acting only in their capacity as directors), the constitution of that foreign company, any variation in the issued capital of the foreign company, or the appointment or election of directors of the foreign company; or
 - (c) the rights to receive or have dealt with the income of the foreign company, if distributed; or
 - (d) the rights to receive or have dealt with the net assets of the foreign company, if distributed
- variation in control or income interests**, in relation to any person, means any increase or reduction in the control interest or income interest of such person in a foreign company, whether by 1 transaction or a series of transactions, that is attributable to—
- (a) an acquisition of control or income interests; or

- (b) a disposal of control or income interests; or
- (c) a reduction in any of the foreign company aggregates;
or
- (d) an increase in any of the foreign company aggregates.

Compare: 1994 No 164 s GC 9

**GC 10 Attributed CFC income and FIF income:
arrangements in respect of elections**

Notwithstanding **sections EX 27 and EX 42(5)**, where—

- (a) an income interest in a controlled foreign company or an attributing interest in a foreign investment fund is transferred from 1 person to an associated person on 1 or more occasions; and
- (b) the associated persons enter into an arrangement with respect to making or not making—
 - (i) the election referred to in **section EX 27**; or
 - (ii) the election referred to in **section EX 42(5)**; or
 - (iii) any combination of 2 or more such elections; and
- (c) the arrangement has an effect of defeating the intent and application of the international tax rules,—

the Commissioner may deem any 1 or more of such elections to have been made or not made to the extent appropriate to prevent the arrangement having such effect.

Compare: 1994 No 164 s GC 10

GC 11A Non-market transactions to acquire film rights

- (1) A person must reduce the deduction allowed to them under **section DS 1** for expenditure incurred in acquiring a film right, in accordance with **subsection (2)**, if—
 - (a) the Commissioner considers that the person (**person A**) and the person from whom the film right was acquired (**person B**) were not dealing with each other at arm's length in relation to the acquisition; and
 - (b) the amount of the expenditure incurred by person A in acquiring the film right is more than the market value of the film right at the time it was acquired by person A.
- (2) If **subsection (1)** applies, the deduction must be reduced to an amount equal to the market value of the film right at the time it was acquired by person A.

- (3) If person A acquires only a share of a film right, this section applies only to the part of the total market value of the film right that is attributable to that share.

Compare: 1994 No 164 s GC 11(3)

GC 11B Manipulation of arrangements to acquire film rights

If the Commissioner considers that 2 persons have made arrangements so that **section DS 1, EJ 4, or EJ 5** applies more favourably in relation to a person in an income year than it would have applied without the arrangements,—

- (a) the deduction allowed to the person under **section DS 1** must be reduced to the amount that the Commissioner considers would have been allowed if the arrangements had not been made;
- (b) the deduction allocated under **section EJ 4 or EJ 5** must be allocated to the income year to which the Commissioner considers it would have been allocated if the arrangements had not been made.

Compare: 1994 No 164 s GC 11(4)

GC 12 Petroleum mining

- (1) Without limiting the provisions of **sections BG 1, GB 1, and GZ 1**, where the Commissioner considers that any arrangement consisting of—

- (a) a disposal of any petroleum mining asset on or after 1 July 1992, together with any related arrangements (if any); or
- (b) the incurring of petroleum exploration expenditure on or after 1 July 1992, together with any related arrangements (if any); or
- (c) a farm-out arrangement entered into on or after 16 December 1991, together with any related arrangements (if any),—

has the effect or has been entered into for a purpose of tax avoidance, the Commissioner may, in accordance with **section GB 1**, adjust the taxable income of any person affected by the arrangement so as to counteract any tax advantage obtained by that person.

- (2) Without limiting the generality of **subsection (1)**, and for the purposes of that subsection, an arrangement having the effect of tax avoidance includes—

- (a) an arrangement involving the disposal, on or after 1 July 1992, of any petroleum mining asset where it is probable at the time the arrangement is entered into that the person acquiring the petroleum mining asset—
 - (i) will through a related arrangement, whether in relation to an associated person or otherwise, not have to suffer the whole or part of the expenditure of acquiring the petroleum mining asset; or
 - (ii) will be (or has been or is) effectively compensated in some way for the whole or part of that expenditure:
- (b) an arrangement involving the incurring, on or after 1 July 1992, of petroleum exploration expenditure where it is probable at the time the arrangement is entered into that the person who is to incur the petroleum exploration expenditure—
 - (i) will through a related arrangement, whether in relation to an associated person or otherwise, not have to suffer the whole or part of the petroleum exploration expenditure; or
 - (ii) will be (or has been or is) effectively compensated in some way for whole or part of the petroleum exploration expenditure:
- (c) an arrangement, involving a farm out arrangement entered into on or after 16 December 1991, where it is probable at the time the arrangement is entered into that—
 - (i) the farm-in party will through a related arrangement, whether in relation to an associated person or otherwise, not have to suffer the whole or part of the farm-in expenditure attributable to the proportionate interest acquired by the farm-in party under the farm-out arrangement; or
 - (ii) the farm-in party or an associated person will be (or has been or is) effectively compensated in some way for the whole or part of that farm-in expenditure:
- (d) an arrangement by which a petroleum miner disposes of a petroleum mining asset to an associated person on or after 1 July 1992 for the purpose, or for purposes including the purpose, of ensuring that the associated person secures the benefit of a greater deduction than

that which would have been allowed if the asset had been disposed of for its market value:

- (e) an arrangement by which a petroleum miner enters into a farm-out arrangement with an associated person on or after 16 December 1991 for the purpose, or for purposes including the purpose, of ensuring that the associated person receives the benefit of a greater deduction than would have been allowed if the farm-out arrangement had been entered into on substantially the same terms as those on which it would have been entered into with a person not associated with the petroleum miner.
- (3) This section applies 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.
- (4) For the purposes of this section, 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.
- (5) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Compare: 1994 No 164 s GC 12

GC 14 Income assessable to beneficiaries

- (1) Where, in relation to any trust and any beneficiary, any arrangement has been entered into under which property is transferred, or services or other benefits are provided by the trustee to a person other than that beneficiary, which arrangement has the effect in relation to that beneficiary of defeating the intent and application of **section HH 3**, that property and those services or benefits are deemed for the purposes of that section to be received or enjoyed by that beneficiary.
- (2) This section does not apply to a Maori authority or a Maori to whom **subpart HI** applies.

Compare: 1994 No 164 s GC 14

GC 14A Sale or transfer of commercial bill to New Zealand resident

- (1) A person who redeems a commercial bill derives income from the redemption payment if—
 - (a) a non-resident, not being a person who has become a party to a commercial bill for the purpose of carrying on business through a fixed establishment in New Zealand, sells or transfers the commercial bill to the person; and
 - (b) the person is a resident or a non-resident who has become a party to the commercial bill for the purpose of carrying on business through a fixed establishment in New Zealand; and
 - (c) the sale or transfer has the purpose of avoiding non-resident withholding tax or the approved issuer levy.
- (2) A person who does not redeem the commercial bill but otherwise satisfies **subsection (1)** is treated as having redeemed the bill.
- (3) **Subsection (1)** does not apply to a commercial bill issued by—
 - (a) a person who is resident in New Zealand, if the money lent for the bill is used by the person in a business carried on through a fixed establishment outside New Zealand; or
 - (b) a person who is not resident in New Zealand, unless the money lent for the bill is used by the person in a business carried on through a fixed establishment in New Zealand.

Compare: 1994 No 164 s GC 14A

GC 14B Attribution rule for personal services

- (1) If, during a tax year, a person (**person A**) purchases services from another person (**person B**) and the services are personally performed by a third person (**person C**), who is associated with person B, an amount must be attributed by person B to person C in accordance with **section GC 14D** in the same tax year.
- (2) **Subsection (1)** applies if—
 - (a) 80% or more of person B's total counted income from personal services during the tax year is derived from the sale of services to person A or a person associated with person A; and

- (b) 80% or more of person B's total counted income from personal services during the tax year is derived through services personally performed by person C or a relative of person C; and
 - (c) person C's net income for the tax year in which an attribution would be made is more than \$60,000; and
 - (d) substantial business assets are not a necessary part of the business structure that is used to derive the total counted income referred to in **paragraph (a)**.
- (3) **Subsection (1)** does not apply—
- (a) if person B and person C are both non-residents during all of person B's tax year:
 - (ab) if person B is a natural person and is not a partner of a partnership:
 - (b) to the extent that the services personally performed by person C are essential support for a product supplied by person B.

Compare: 1994 No 164 s GC 14B

GC 14C Definitions for use in section GC 14B

- (1) This section applies for the purposes of **section GC 14B**.
- (2) A person is treated as being associated with another person if the person would be treated as being associated under **section OD 7 or OD 8(3)** at the time the services are personally performed by person C.
- (3) A person is not treated as being associated with another person under **subsection (2)** if—
 - (a) both persons are public authorities;
 - (b) person C cannot be reasonably expected to know that a particular person A is associated with another person A, other than by making a specific enquiry.
- (4) For the purposes of **section GC 14B(2)(b)**, a relative of person C must be a relative at the beginning of person C's tax year.
- (5) For the purposes of **section GC 14B(2)(c)**, person C's total counted income includes the taxable value of a fringe benefit provided or granted by a person associated with person C.
- (6) **Substantial business assets** means depreciable property that—

- (a) on person B's balance date, costs more than \$75,000, or 25% or more of person B's total counted income from services for the tax year; and
 - (b) is not for private use or enjoyment.
- (7) For the purposes of **subsection (6)(a)**, the cost of depreciable property includes the cost price of property subject to a specified lease or the lessee's acquisition cost of property subject to a finance lease or a hire purchase agreement.
- (8) **Subsection (6)(b)** does not apply to depreciable property if 20% or less of the property's use is for private use or enjoyment.
- (9) For the purposes of **subsection (8)**, 20% of a property's use is calculated according to—
- (a) the proportion that the number of days for which fringe benefit tax is payable in respect of the property bears to the total number of days in the tax year in which the property is owned or is subject to a specified lease, finance lease, or a hire purchase agreement, if the property is subject to the FBT rules:
 - (b) the proportion that the expenditure incurred in respect of the property, for which a deduction is denied, bears to all expenditure incurred in respect of the property in the tax year if the property is not subject to the FBT rules.

Compare: 1994 No 164 s GC 14C

GC 14D Attribution rule: calculation

- (1) Person B must attribute to person C in a tax year the lesser of the following amounts:
- (a) person B's net income for the tax year, calculated as if their only income were derived from personal services; and
 - (b) person B's net income for the tax year; and
 - (c) if person B is a company or a trust that has a net loss available for carry forward under **section IE 1** that arises only from a business or a trading activity of selling personal services, person B's net income for the tax year, offset by any net loss carried forward from a previous tax year, as allowed by **section IE 1**.
- (2) For the purpose of calculating person B's net income for the tax year under **subsection (1)**,—

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- (a) if person B is a trustee of a trust, the trustees are treated as not having made a distribution to a beneficiary during the tax year or before the end of 6 months after the end of the tax year:
 - (b) if person B is a partnership, person B is treated as a taxpayer and **section HD 1(1)(b)** does not apply.
 - (3) For the purpose of calculating person B's net income for the tax year under **subsection (1)(a)**,—
 - (a) person B is allowed a deduction for employment income paid to person C during the tax year:
 - (b) person B is allowed a deduction for the taxable value of a fringe benefit provided or granted by person B to person C during the tax year and the fringe benefit tax payable on the fringe benefit.
 - (4) Person B's net income for the tax year, as calculated after applying **subsections (2) and (3)**, is reduced by,—
 - (a) in the case of a trustee of a trust, the amount of beneficiary income derived by person C from the trust in the tax year:
 - (b) in the case of a partnership, the share of profits allocated by the partnership to person C:
 - (c) in the case of a company, any dividends paid—
 - (i) by person B to person C during the tax year or before the end of 6 months after the end of the tax year; and
 - (ii) from income derived in the tax year.
 - (5) If person B is a partnership that receives administrative services from another person related to their income from personal services and has not paid for the administrative services, the amount to be attributed to person C must be reduced by the market value of the administrative services provided by the other person.
 - (6) If a reduction required under **subsection (4)** results in a negative amount, an amount is not attributable.
 - (7) If person B is a trust and the amount attributable would cause the trust to have a net loss for the tax year, the trust's beneficiary income for the tax year must be reduced so that the trust's taxable income for the tax year is zero, and the amount of beneficiary income distributed to beneficiaries other than person C must be reduced—

- (a) according to proportions determined by the trust's trustees;
 - (b) if **paragraph (a)** does not apply, by the amount of the reduction, according to the proportion the beneficiary income distributed bears to total beneficiary income.
- (8) If the amount attributable is to be attributed to more than 1 person C, the amount attributed to each person C must reflect the value of the services personally performed by each person C respectively.

Compare: 1994 No 164 s GC 14D

GC 14E Attribution rule: exception

- (1) **Sections GC 14B and GC 14D** do not apply if the amount to be attributed by person B to person C is less than \$5,000.
- (2) If there is more than 1 person selling the services that are personally performed by the same person C, **subsection (1)** may be applied in respect of person C once only.

Compare: 1994 No 164 s GC 14E

GC 14F Arrangement to avoid application of restrictive covenant rule

- (1) If a person enters into an arrangement that has an effect of avoiding **section CE 9**, the Commissioner may, despite the arrangement, treat—
 - (a) an amount, or part of an amount, under the arrangement as an amount to which **section CE 9** applies; and
 - (b) a person affected by the arrangement as the person who gave the undertaking referred to in **section CE 9(1)**.
- (2) In this section, a collateral arrangement to dispose of property may be part of an arrangement.

Compare: 1994 No 164 s GC 14F

Fringe benefit tax

GC 15 Benefit given to associated person of employee

- (1) For the purposes of the FBT rules, where any benefit which, if it were provided for or granted to an employee would be a fringe benefit, is provided or granted by the employer of the employee, or is provided or granted by another person with whom the employer of the employee has entered into an

arrangement for the providing or granting of that benefit, for or to a person other than the employee of the employer, the employee of the employer and the other person being associated persons, that benefit is deemed to be a benefit provided for or granted to the employee by the employer of the employee.

- (2) **Subsection (1)** does not apply to deem a benefit provided or granted by an employer (being a company) to an associated person of any employee to be a benefit provided or granted to the employee where and to the extent that—
- (a) the employee is also a shareholder in the company; and
 - (b) the associated person is a company; and
 - (c) the Commissioner is satisfied that the benefit is not provided or granted under an arrangement which has a purpose of providing or granting a benefit to the employee—
 - (i) in lieu of employment income; or
 - (ii) free from the application of fringe benefit tax.
- (3) For the purposes of the FBT rules and notwithstanding **section CX 5**, an associated person is deemed to be an employee of an employer and a benefit is deemed to be a fringe benefit subject to fringe benefit tax where—
- (a) the employer is a company; and
 - (b) the employer provides or grants a benefit, or has entered into an arrangement with another person for the providing or granting of that benefit, for or to an associated person of an employee; and
 - (c) the person associated with the employee is also an associated person of a shareholder in the company; and
 - (d) the associated person is not a company; and
 - (e) the associated person is not an employee or shareholder in the company except to the extent this section deems otherwise; and
 - (f) the benefit is of a kind that would be a fringe benefit under the FBT rules were it provided or granted for or to the employee; and
 - (g) the benefit is of a kind that would be a dividend were it provided or granted for or to the shareholder.

- (4) **Subsection (3)** does not apply for the purposes of **sections ND 5 and ND 6**, which require calculations of fringe benefit tax on attributed and non-attributed fringe benefits respectively.

Compare: 1994 No 164 s GC 15

GC 16 Value of motor vehicle acquired from associated person

For the purposes of **schedule 2, part A**,—

- (a) in any case where, in any quarter, or (where fringe benefit tax is payable on an income year basis under **section ND 14**) income year, any motor vehicle, being a motor vehicle acquired by a person on or after 23 September 1985 (that acquisition being referred to in this subsection as the **specified acquisition**), is owned by the person and has, within the period of 24 consecutive months immediately preceding the day on which the specified acquisition occurred, been owned by the person, or by any other person where the person and the other person are associated persons, the cost price of the motor vehicle to the person is deemed to be an amount equal to the higher, or the highest, of the cost prices for which the motor vehicle has, subsequent to its manufacture, been acquired by the person or the other person:
- (b) subject to **paragraph (a)**, where, in relation to any motor vehicle and to any acquisition of the vehicle by any person,—
- (i) the motor vehicle was acquired by that person at no cost; or
- (ii) the cost price of the motor vehicle to that person was, in the opinion of the Commissioner, less than the amount of the market value of the motor vehicle on the date of the acquisition of it by that person, and the Commissioner is satisfied that the cost price would not have been so less but for an arrangement entered into, for the purpose of defeating the intent and application of the FBT rules, between that person and any other person (that person and that other person being associated persons); or
- (iii) the cost price in relation to that acquisition is for any reason unable to be established by that person to the satisfaction of the Commissioner,—

the cost price, in relation to that acquisition, is deemed to be an amount equal to the amount which the Commissioner is satisfied was the market value of the motor vehicle on the date of that acquisition.

Compare: 1994 No 164 s GC 16

GC 17 Fringe benefit tax: general

Where the Commissioner is satisfied that an arrangement has been entered into between persons and a purpose or effect of the arrangement (not being a merely incidental purpose or effect) is to defeat the intent and application of the FBT rules, or of any provision of the FBT rules, the Commissioner may, notwithstanding the arrangement, deem—

- (a) a person who is a party to that arrangement (that person being referred to in this section as the **participant**) to be the employer in relation to such other person or such other persons as the Commissioner specifies by notice to the participant; and
- (b) any person so specified to be, in relation to the participant, an employee (that person being referred to in this section as the **deemed employee**); and
- (c) any benefit that—
 - (i) is obtained by the deemed employee and is provided or granted by the participant; or
 - (ii) the deemed employee would have, or might be expected to have, or would in all likelihood have, obtained if that arrangement had not been made or entered into,—

to be a benefit provided or granted by the participant to the deemed employee by virtue of the employment of the deemed employee,—

for the purposes of the FBT rules; and the FBT rules apply accordingly throughout such period or periods (each being a period during which that arrangement is in force) as the Commissioner determines.

Compare: 1994 No 164 s GC 17

Deductions

GC 18 Agreements not to make tax deductions to be void

Where a tax deduction or combined tax and earner premium deduction or combined tax and earner levy deduction is required to be made under the PAYE rules and, where applicable, section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, any agreement not to make the deduction in accordance with those rules or that section 115 or that section 285 or that section 221 is void.

Compare: 1994 No 164 s GC 18

GC 19 Resident withholding tax

Without limiting the generality of **section NF 13, section GB 1(1)** applies as if—

- (a) the words “amounts of counted income, deductions, and available net losses included in calculating the taxable income” in **subsection (1)** were replaced by the words “liability to resident withholding tax”; and
- (b) the words “counted income, deductions, and available net losses” in **subsection (1)(a)** were replaced by the words “resident withholding income”; and
- (c) the words “counted income and deductions as, in the Commissioner’s opinion, that person would have had if that person had been allowed the benefit of all amounts of counted income, or of such part of the counted income” in **subsection (1)(b)** were replaced by the words “resident withholding income as, in the Commissioner’s opinion, that person would have had, if that person had been allowed the benefit of all amounts of resident withholding income, or such part of the resident withholding income”.

Compare: 1994 No 164 s GC 19

GC 20 Agreements not to make resident withholding tax deductions to be void

Where a resident withholding tax deduction is required to be made under the RWT rules, any agreement not to make the tax deduction in accordance with those rules is void.

Compare: 1994 No 164 s GC 20

Imputation**GC 21 Imputation continuity requirements**

For the purposes of **section ME 5(1)(i)**, where—

- (a) any shares in the company or in any other company have been subject to any arrangement or series of related or connected arrangements; or
- (b) any shares in the company or in any other company have had any rights attaching to them extinguished or altered, directly or indirectly, by any means,—

in each case for the purpose, or for purposes including the purpose, of enabling the company to meet the requirements of **section ME 5(1)(i)** so as to defeat its intent and application, the company, in relation to those shares, is deemed not to have met those requirements.

Compare: 1994 No 164 s GC 21

GC 22 Imputation: arrangement to obtain tax advantage

- (1) For the purposes of this section, there is an arrangement to obtain a tax advantage where—
 - (a) there is an arrangement for the sale or other disposition of shares or issue of shares where—
 - (i) any person who is a party to the arrangement might reasonably have anticipated that a dividend would be paid in respect of the shares in any income year; and
 - (ii) any person who is a party to the arrangement might reasonably have anticipated that an imputation credit or a dividend withholding payment credit would be attached to the dividend; and
 - (iii) any person who is a party to the arrangement might reasonably expect—
 - (A) that a party to the arrangement will be able to obtain a tax advantage in relation to any

- such imputation credit or dividend withholding payment credit; or
- (B) that a party to the arrangement will not be able to obtain a tax advantage in relation to any such imputation credit or dividend withholding payment credit; and
- (iv) the purpose, not being an incidental purpose, of the arrangement is that a party to the arrangement would obtain any such tax advantage; or
- (b) in respect of any 1 or more distributions (including bonus issues) by a company, whether occurring in the same imputation year or over more than 1 imputation year, the company streams the payment of dividends, or the attachment of imputation credits or dividend withholding payment credits or both to any dividends, in such a way as will give higher credit values to persons who will obtain a tax advantage from them than to persons who will not so obtain a tax advantage or who may reasonably be expected to derive a lesser benefit from any tax advantage.
- (2) For the purposes of **subsection (1)(b)**, a dividend paid by a company is deemed to have a higher credit value than another dividend where any of the following applies:
- (a) the dividend has an imputation credit attached to it, and the other dividend does not:
- (b) the imputation ratio of the dividend is higher than that of the other dividend:
- (c) the dividend has a dividend withholding payment credit attached to it, and the other dividend does not:
- (d) the dividend withholding payment ratio of the dividend is higher than that of the other dividend:
- (e) the dividend has both an imputation credit and a dividend withholding payment credit attached to it, and the other dividend has no such credit or only 1 such type of credit attached:
- (f) the combined imputation and dividend withholding payment ratio of the dividend is greater than that of the other dividend.
- (3) Where the Commissioner determines that there is an arrangement to obtain a tax advantage, the Commissioner may—

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- (a) determine whether the arrangement gives rise to an account advantage, a tax credit advantage, or both;
 - (b) determine, in the case of any arrangement within the meaning of **subsection (1)(b)** to which any person (other than the company referred to in that paragraph) is a party, which of **subsections (4) and (5)** should apply;
 - (c) determine the amount of the imputation credit or dividend withholding payment credit the subject of the arrangement;
 - (d) determine the imputation year in which the arrangement occurred or commenced (being the year in which the Commissioner considers that the first reasonably identifiable step towards implementation of the arrangement occurred).
- (4) Where the Commissioner determines that there is an arrangement within the meaning of **subsection (1)(a)**, or determines that there is an arrangement within the meaning of **subsection (1)(b)** and that this subsection should apply to that arrangement, the following provisions apply:
- (a) any person who, but for this paragraph, would obtain a tax credit advantage from the arrangement is not entitled in respect of the arrangement to a credit of tax under **section LB 2 or LD 8** or to a refund under **section LD 9** (as the case may be); and
 - (b) there arises a debit to the imputation credit account or the dividend withholding payment credit account (as the case may be) of any company that, but for this paragraph, would obtain both a tax credit advantage and an account advantage from the arrangement; and
 - (c) the amount of the credit of tax or refund to which the person referred to in **paragraph (a)** is not entitled and the amount which arises as the debit referred to in **paragraph (b)** is in each case an amount equal to the amount of the imputation credit or the dividend withholding payment credit determined under **subsection (3)(c)** to be the subject of the arrangement; and
 - (d) any debit arising under **paragraph (b)** is a debit that arises in the imputation year determined under **subsection (3)(d)** to be that in which the arrangement occurred or commenced.

- (5) Where there is an arrangement within the meaning of **subsection (1)(b)** to which no person other than the company referred to in that paragraph is a party, or where the Commissioner determines that there is an arrangement within the meaning of that paragraph and that this subsection should apply in respect of that arrangement, the following provisions apply:
- (a) there arises a further debit to the imputation credit account or the dividend withholding payment account of the company referred to in **subsection (1)(b)**; and
 - (b) the amount of that further debit is an amount equal to the amount of the imputation credit or the dividend withholding payment credit determined under **subsection (3)(c)** to be the subject of the arrangement; and
 - (c) the further debit is a debit that arises in the imputation year determined under **subsection (3)(d)** to be that in which the arrangement occurred or commenced; and
 - (d) to the extent to which this subsection applies to the arrangement, **subsection (4)** does not apply to the arrangement.
- (6) As soon as is convenient after a determination is made in relation to a company under **subsection (3)** (in this section referred to as a **determination of tax advantage arrangement debit**), the Commissioner must give notice of the determination to the company in respect of whose imputation credit account or dividend withholding payment account the determination is made.
- (7) A notice may be included in a notice of assessment made under section 111(1) of the Tax Administration Act 1994, or a determination under either **section ME 40 or MG 12**.
- (8) An omission to give the notice referred to in **subsection (6)** does not invalidate the determination of tax advantage arrangement debit.
- (9) In this section,—
- account advantage** means—
- (a) the arising of a credit to an imputation credit account in accordance with **section ME 4**; or
 - (b) the arising of a credit to a dividend withholding payment account in accordance with **section MG 4**
- tax credit advantage** means—

- (a) the allowance, in whole or in part, of a credit of tax in accordance with **section LB 2**:
- (b) the allowance, in whole or in part, of a credit of tax in accordance with **section LD 8**, or the obtaining of a refund of dividend withholding payment under **section LD 9**.

Compare: 1994 No 164 s GC 22

GC 23 Imputation: dividend paid by another company

- (1) Where, in relation to a company and a shareholder of the company, there is an arrangement entered into for the purpose, or for purposes including the purpose, that—
 - (a) the shareholder or, where the shareholder is a trustee in relation to the share or shares held, any beneficiary of that trust, or any person associated with either the shareholder or any such beneficiary, may be paid a dividend by another company, whether directly or indirectly by any means whatever; or
 - (b) the shareholder or, where the shareholder is a trustee in relation to the share or shares held, any beneficiary of that trust, or any person associated with either the shareholder or any such beneficiary, may acquire any shares in another company so that the other company may pay a dividend to the shareholder or the beneficiary or the associated person, whether directly or indirectly by any means whatever,—

any dividend paid to the shareholder or, as the case may be, the beneficiary or associated person by that other company under the arrangement is, for the purposes of the imputation rules, deemed to be a dividend paid by the company.
- (2) For the purposes of the imputation rules, the amount of any imputation credit attached to a dividend to which **subsection (1)** applies—
 - (a) does not constitute income of the shareholder or, as the case may be, the beneficiary or associated person:
 - (b) is not treated as an imputation credit for the purposes of **section LB 2**:
 - (c) notwithstanding anything in **subsection (1)**, is a debit in accordance with **section ME 5(1)(a)** to the imputation credit account of the company that is deemed by **subsection (1)** to have paid the dividend.

Compare: 1994 No 164 s GC 23

GC 24 Application of specific imputation provisions to consolidated groups

- (1) **Section GC 23(2)** applies in any case where the company deemed by **section GC 23(1)** to have paid a dividend is at the time of payment a member of a consolidated group as if the reference to **section ME 5(1)(a)** were a reference to **section ME 12(1)(a)**.
- (2) **Section GC 22** applies, with any necessary modifications, in any case which involves accounts of a consolidated group, as if—
 - (a) the consolidated group were a single company; and
 - (b) references to provisions of this Act were references to the equivalent provisions applicable to such equivalent accounts.

Compare: 1994 No 164 s GC 24

GC 25 Avoidance of dividend withholding payments

Where the Commissioner is satisfied that an arrangement has been entered into between persons for the purpose of, or for purposes including the purpose of, avoiding the application of the dividend withholding payment rules or of any provision of those rules, the Commissioner may, notwithstanding the arrangement, deem a payment or part of a payment that is the subject of the arrangement to be a foreign withholding payment dividend for the purposes of those rules.

Compare: 1994 No 164 s GC 25

GC 26 Arrangement to defeat application of branch equivalent tax account provisions

For the purposes of **section MF 4(1)(e) and (3)(d)**, where—

- (a) any shares in the company or in any other company have been subject to any arrangement or series of related or connected arrangements; or
- (b) any shares in the company or in any other company have had any rights attached to them extinguished or altered, directly or indirectly, by any means whatever,—

in each case for the purpose, or for purposes including the purpose, of enabling the company to meet the requirements of either **section MF 4(1)(e) or (3)(d)** so as to defeat its intent and application, the company, in relation to those shares, is deemed not to have met those requirements.

Compare: 1994 No 164 s GC 26

GC 27 Arrangement to defeat application of dividend withholding payment account provisions

For the purposes of **section MG 5(1)(i)**, where—

- (a) any shares in the company or in any other company have been subject to any arrangement or series of related or connected arrangements; or
- (b) any shares in the company or in any other company have had any rights attaching to them extinguished or altered, directly or indirectly, by any means whatsoever,—

in each case for the purpose, or for purposes including the purpose, of enabling the company to meet the requirements of **section MG 5(1)(i)** so as to defeat its intent and application, the company, in relation to those shares, is deemed not to have met those requirements.

Compare: 1994 No 164 s GC 27

Tax credits for family support and family plus**GC 28 Tax credits for family support and family plus**

If the Commissioner is satisfied that arrangements have been made between a person and another person with a view to the affairs of those persons being arranged or conducted so that **subpart KD** would, but for this section, have effect more favourably for that person than would otherwise have been the case, the amount of a credit of tax to which that person is entitled under **subpart KD** may not be more than the amount of the credit of tax to which the person would, in the Commissioner's opinion, have been entitled if those arrangements had not been made.

Compare: 1994 No 164 s GC 28

Subpart GD—Non-market transactions***Trading stock*****GD 1 Sale of trading stock for inadequate consideration**

- (1) Subject to **subsection (2)**, where any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than the

- market price of the trading stock at the date of the sale or other disposition,—
- (a) the trading stock is, for the purposes of this Act, treated as having been sold at and realised at its market price on the date of the sale or other disposition:
 - (b) the price which under this section the trading stock is deemed to have realised is treated as income of the person selling or otherwise disposing of the trading stock:
 - (c) the person acquiring the trading stock is deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.
- (2) For the purposes of this section,—
- (a) the creation or grant (other than in favour of a proprietor or grantor) of a right to take timber must be treated as a sale or other disposition of trading stock of a kind referred to in **paragraph (b)(iv)** of the definition of **trading stock**:
 - (b) a sale or other disposition of land with standing timber on the land, unless the land is subject to a right in favour of the seller to take timber, is deemed to include a sale or other disposition of trading stock of a kind referred to in **paragraph (b)(iv)** of the definition of **trading stock**, except to the extent the timber is—
 - (i) timber comprised in ornamental or incidental trees, as evidenced by a certificate given under **section 44C** of the Tax Administration Act 1994; or
 - (ii) 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
 - (iii) subject to a profit à prendre granted before 1 January 1984.
- (3) This section, with any necessary modifications, applies in any case where a share or interest in any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than the market value of the share or interest at the date of the sale or other disposition.
- (3A) **Subsection (3)** does not apply to land with standing timber that is subject to a right to take standing timber.

- (4) This section does not apply in respect of any trading stock which is transferred to any person in accordance with a matrimonial agreement.

Compare: 1994 No 164 s GD 1

GD 2 Distribution of trading stock to shareholders of company

- (1) Subject to **subsections (3) and (4)**, where any trading stock of a company is distributed to any shareholder or to an associated person of any shareholder of the company as such, whether on a reduction of the share capital of the company, or on a reconstruction of the company, or on the liquidation of the company, or otherwise,—
- (a) the distribution is, for the purposes of this Act, treated as a sale of the trading stock by the company to the shareholder or the associated person, and the trading stock is treated as having been sold at and realised at its market price on the date of the distribution;
 - (b) an amount equal to the price which under this section the trading stock is deemed to have realised is treated as income of the company;
 - (c) the shareholder or the associated person is deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.
- (2) Nothing in this section is to be construed to prevent any such distribution from being a dividend.
- (3) Where there is a distribution to a shareholder (or associated person) of any land with standing timber on the land, that distribution is deemed for the purposes of this section to include a distribution of trading stock of a kind referred to in **paragraph (b)(iv)** of the definition of **trading stock**, except to the extent that the timber is—
- (a) timber comprised in ornamental or incidental trees, as evidenced by a certificate given under **section 44C** of the Tax Administration Act 1994; or
 - (b) 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) subject to a profit à prendre granted before 1 January 1984.

- (4) Notwithstanding **subsection (1)(a)**, where—
- (a) on the winding up of a company,—
 - (i) a distribution of trading stock being timber is made; or
 - (ii) a distribution of trading stock being a right to take timber is made; and
 - (b) the liquidator of the company was appointed under the Companies Act 1955 before—
 - (i) 24 June 1993, in the case of any such distribution of trading stock being timber; or
 - (ii) 5 August 1993, in the case of any such distribution of trading stock being a right to take timber; and
 - (c) but for **paragraph (b)(iv) or (v)** of the definition of **trading stock**, the timber or right to take timber would not be trading stock to which this section applies,—
- then, for the purposes of **subsection (1)**, the price which the trading stock being timber or a right to take timber is deemed to have been sold at and to have realised on that distribution is equal to the costs of the timber to the company making the distribution.

Compare: 1994 No 164 s GD 2

Remuneration

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

- (1) Where—
- (a) any taxpayer carries on any business or undertaking and employs or engages any relative, or, being a company other than a close company, employs or engages any relative of a director or shareholder of the company, to perform services in connection with that business or undertaking; or
 - (b) any taxpayer carries on business in partnership with any person, whether or not any other person is a member of the partnership, and—
 - (i) any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or

- (ii) where 1 of the partners is a company, any relative of a director or shareholder of the company is employed or engaged by the partnership to perform services in connection with the business; or
- (c) any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company, whether or not any other person is a member of the partnership,—

and the Commissioner is of the opinion that the remuneration, salary or wages, share of profits, or other income payable to or for the benefit of that relative or that company, or the share of losses to be borne by that relative or that company, under the contract of service, employment, or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise, and any other relevant matters, the Commissioner may for the purposes of this Act allocate the total profits, income or losses of the business or undertaking, without taking into account any amount payable to that relative or company, between the parties to the contract or the partners or any of them in such shares and proportions as the Commissioner considers reasonable, and the amounts so allocated are deemed to be income or losses of persons to whom those amounts are so allocated and of no other person.

- (2) Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company, is allocated to that company in accordance with **subsection (1)**, the amount so allocated to the company is deemed to be a dividend paid by the company to that person and received by that person as a shareholder of the company.
- (3) This section applies whether the contract of service or employment or the partnership was entered into before or after the commencement of the tax year.
- (4) This section does not apply to a bona fide contract of employment or to a bona fide contract of partnership.

- (5) For the purposes of this section, a contract of employment or a contract of partnership is deemed to be bona fide if it complies with the following conditions:
- (a) the contract is in writing or by deed signed by all the parties to it:
 - (b) no partner and no person employed or engaged under the contract was under the age of 20 years at the date on which the contract was signed:
 - (c) the contract is binding on the parties to the contract for a term of not less than 3 years and is not capable of being terminated by any of those parties before the expiry of that term except for the reasons specified in sections 36 and 38 of the Partnership Act 1908:
 - (d) each party to the contract has—
 - (i) real and effective control of the remuneration, salary or wages, share of profits, or other income to which the party is entitled under the contract:
 - (ii) real and effective liability for the share of losses to be borne by the party under the contract:
 - (e) the remuneration, salary or wages, share of profits, or other income payable to a relative, or to a company a director or a shareholder of which is a relative, does not constitute in whole or in part a gift for the purposes of the Estate and Gift Duties Act 1968.

Compare: 1994 No 164 s GD 3

GD 4 Payments to taxpayer's spouse

No deduction may, except as expressly provided in this Act, be made in respect of any payments of any kind made by a taxpayer to his or her spouse:

provided that, with the consent of the Commissioner granted before the deduction is claimed by the taxpayer, and subject to **section GD 3**, a deduction may be made in respect of any payment made by a taxpayer to his or her spouse where the Commissioner is satisfied that the payment is for services rendered (not being domestic services or services performed in connection with the home) or is otherwise a bona fide payment, and that the payment was exclusively incurred in the derivation of counted income of the taxpayer for the tax year.

Compare: 1994 No 164 s GD 4

GD 5 Excessive remuneration by close company to shareholder, director, or relative

Where any sum paid or credited by a close company, being or purporting to be remuneration for services rendered by any person who is a shareholder or director of the company or a relative of any such shareholder or director, exceeds such amount as in the opinion of the Commissioner is reasonable, the amount of the excess is not allowed as a deduction of the company, and is, for the purposes of this Act, deemed to be a dividend paid by the company to that person and received by that person as a shareholder of the company:

provided that this section does not apply in any case where the Commissioner is satisfied—

- (a) that the person to whom the sum is paid or credited is an adult employed substantially full time in the business of the company and participating in the administration or management of the company; and
- (b) that the determination by the company of the amount so paid or credited to that person was not influenced by the fact that the person is a relative of a shareholder or director of the company; and
- (c) that the person is resident in New Zealand.

Compare: 1994 No 164 s GD 5

Superannuation and life insurance**GD 6 Value of loans provided by superannuation fund deemed to be income of fund**

- (1) Where any superannuation fund in any income year has, directly or indirectly and whether by 1 transaction or by a series of transactions, provided to a member of that superannuation fund in that income year any loan that would be a fringe benefit if it were provided by an employer to an employee in respect of that employee's employment, the value of the loan so provided is deemed to be income derived by the superannuation fund in that income year.
- (2) For the purposes of **subsection (1)**, but subject to **subsection (3)**, the value of the loan is the amount, if any, by which the amount of interest that would have accrued on that loan in respect of that income year had that interest been calculated on the daily balance of that loan at the prescribed rate of

interest exceeds the amount of interest that, whenever it accrues, arises in respect of that loan to the member during that income year.

- (3) Where the loan is a loan that was made on or before 31 March 1989, and the rate of interest payable on the loan is not subject to review, the prescribed rate of interest is deemed to be—
- (a) in the case of a loan made before 1 April 1985, the non-concessionary rate of interest for the tax year in which the agreement to make the loan was signed or, where the agreement was not in writing, the making of the loan was agreed to by all the parties to the loan:
 - (b) in the case of a loan made on or after 1 April 1985, the prescribed rate of interest that applied during the quarter in which the agreement to make the loan was signed or, where the agreement was not in writing, the making of the loan was agreed to by all parties to the loan.

Compare: 1994 No 164 s GD 6

GD 7 Distribution of property to policyholders

For the purposes of **sections GD 1 and GD 2** (which relate to the sale of trading stock for inadequate consideration, and the distribution of trading stock to shareholders of companies), where any life insurer sells or otherwise disposes of any property (other than any financial arrangement) in the course of carrying on a business of providing life insurance,—

- (a) that property is deemed to be trading stock; and
- (b) the life insurer is deemed to be a company; and
- (c) holders of policies of life insurance for which the life insurer is the insurer are deemed to be shareholders of the life insurer.

Compare: 1994 No 164 s GD 7

GD 8 Superannuation schemes

- (1) For the purposes of the life insurance rules, where any person is the trustee of a superannuation scheme and provides any life insurance to members or beneficiaries of that scheme, the provision by that trustee of any benefit to any member or beneficiary of that scheme is, subject to **subsections (2) to (6)**, treated as if it were the provision of life insurance.

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- (2) Notwithstanding **subsection (1)** or any other provision of the life insurance rules, where any person is the trustee of a superannuation fund (other than a superannuation fund to which property is transferred under an arrangement approved by the Government Actuary under Part 6 of the Superannuation Schemes Act 1989), in respect of the 1990–91 tax year that person is deemed in respect of that superannuation fund not to carry on the business of life insurance.
- (3) Notwithstanding **subsection (1)** or any other provision of the life insurance rules, where in any tax year any person is the trustee of a superannuation fund which is in respect of that tax year a qualifying superannuation scheme, that person is deemed in respect of that superannuation fund and that tax year not to carry on the business of life insurance.
- (4) For the purposes of this section, a superannuation fund is a qualifying superannuation scheme in respect of any tax year where at all times during that tax year—
- (a) the superannuation fund is registered by the Government Actuary under the Superannuation Schemes Act 1989; and
 - (b) no trustee of the superannuation fund is a company carrying on the business of providing life insurance to which the Life Insurance Act 1908 applies; and
 - (c) the superannuation fund was—
 - (i) established by an employer or group of employers who are associated persons to provide benefits only to persons who are, in respect of any such employer or in respect of any other associated person who is an employer and subsequent to the establishment of the superannuation fund agrees to make contributions to the fund,—
 - (A) employees; or
 - (B) in the case of deferred benefits relating to a previous period of employment, former employees; or
 - (C) in the case of benefits arising in respect of membership of the superannuation fund by those employees or former employees, relatives or dependants of those employees or former employees; or

- (ii) constituted under the National Provident Fund Restructuring Act 1990, the National Provident Fund Act 1950, or the Government Superannuation Fund Act 1956 and provides benefits only to persons who are—
 - (A) employees; or
 - (B) in the case of deferred benefits relating to a previous period of employment, former employees; or
 - (C) in the case of benefits arising in respect of membership of the superannuation fund by those employees or former employees, relatives or dependants of those employees or former employees,—
 - of any employer who agrees to or is required to make contributions to the fund or is accepted as a contributor to the fund or on whose behalf contributions are made to the fund; or
- (iii) not being a superannuation fund of the kind referred to in **subparagraph (ii)**, constituted under—
 - (A) the National Provident Fund Restructuring Act 1990 for the purpose of providing benefits to persons (and relatives and dependants of persons) who, before 1 April 1991, were members of a superannuation fund which satisfied the requirements of **subparagraph (ii)**; or
 - (B) the National Provident Fund Act 1950 and which, but for the fact that a small number of the total employers to which the fund relates do not agree to or are not required to make contributions to the fund, would be a superannuation fund which satisfied the requirements of **subparagraph (ii)**; or
 - (C) the National Provident Fund Restructuring Amendment Act 1997 for the purpose of providing benefits to persons (and relatives, dependants, and nominated beneficiaries of persons) who, immediately prior

- to becoming members of that superannuation fund, were members of a superannuation fund which satisfied the requirements of either **subparagraph (ii) or (iii)(B)**; and
- (d) the only beneficiaries of the superannuation fund are natural persons to whom—
- (i) any of **paragraph (c)(i)(A) to (C) or (ii)(A) to (C)** applies; or
 - (ii) **paragraph (c)(iii)** applies—
- except to the extent that an employer of employees who are members of the superannuation fund may have a contingent interest in any surplus in the superannuation fund; and
- (e) except in the case of a superannuation fund to which **paragraph (c)(iii)** applies, and subject to **subsection (5)**, each employer—
- (i) is required by the trust deed of the superannuation fund or by any Act under which the superannuation fund is constituted to make; or
 - (ii) in that tax year is making; or
 - (iii) in that tax year is having made on the employer's behalf—
- superannuation contributions to the superannuation fund to provide to a significant extent the benefits payable by the superannuation fund, not being merely nominal contributions or contributions only to meet the costs of administration and management of investments of the superannuation fund; and
- (f) the superannuation fund has not been established or utilised in a manner which has the effect of defeating the intent and application of the life insurance rules,—
- and where an application in writing has been made for the purposes of this subsection to the Government Actuary by the trustee of that superannuation fund and the Government Actuary is satisfied that the superannuation fund is in respect of that tax year a superannuation fund to which the preceding paragraphs of this subsection apply.
- (5) Where in respect of any tax year a superannuation fund fails to meet the requirements of **subsection (4)(e)**, that fund is nevertheless treated as complying with that paragraph if the Government Actuary is satisfied that each employer would be required by the trust deed of the superannuation fund, or by

- any Act under which the superannuation fund is constituted, to make superannuation contributions to the superannuation fund to provide to a significant extent the benefits payable by the superannuation fund, not being merely nominal contributions or contributions only to meet the costs of administration and management of investments of the superannuation fund, were it not that the assets of the fund exceed the accrued benefits of all members and other beneficiaries of the fund.
- (6) Where the Government Actuary ceases to be satisfied that any superannuation fund is a superannuation fund to which **subsection (4)(a) to (f)** apply, that superannuation fund ceases to be a qualifying superannuation scheme from such date as the Government Actuary may specify.
- (7) The Government Actuary must, as soon as practicable after determining under **subsection (4) or (6)**—
- (a) whether or not a superannuation fund is in respect of any tax year a fund to which **subsection (4)(a) to (f)** apply; or
 - (b) that a superannuation fund has ceased to be a fund to which those paragraphs apply,—
- notify the trustee of the superannuation fund accordingly.
- (8) Any person who is dissatisfied with any such determination of the Government Actuary may object to the determination in accordance with section 23 of the Superannuation Schemes Act 1989, and no right of objection lies under this Act or the Tax Administration Act 1994 in respect of any such determination.

Compare: 1994 No 164 s GD 8

Land

GD 9 Land transferred between associated persons

- (1) Where—
- (a) any land has been transferred from any person (the **transferor**) to any other person (the **transferee**); and
 - (b) the transferor and the transferee are associated persons; and
 - (c) the transferee subsequently sells or otherwise disposes of that land and the consideration from that sale or disposition exceeds the cost of the land to the transferee; and

- (d) if, had the transferor not transferred the land to the transferee but instead had sold or otherwise disposed of the land for the consideration referred to in **paragraph (c)**, that consideration would have been income of the transferor under any of **sections CB 5 to CB 22**,—
that consideration is deemed to be income of the transferee under the relevant provision of **sections CB 5 to CB 22**.
- (2) Every reference in this section to a sale or other disposition of any land by any taxpayer is deemed to include a reference to a sale or other disposition of any land by or on behalf of any other person where that other person is, in relation to a mortgage secured on that land, a mortgagee and that sale or other disposition by or on behalf of that other person is made in consequence of the default of the taxpayer under that mortgage.

Compare: 1994 No 164 s GD 9

GD 10 Leases for inadequate rent

- (1) Where any property owned by any person or by 2 or more persons (whether jointly or in common) or by any partnership is leased to a relative of any of those persons or of any member of the partnership or to a related company or by a company to any person and the rent is less than an adequate rent for that property or the lease makes no provision for the payment of rent,—
- (a) there is deemed to be payable under the lease a rent that is equal to an adequate rent for the property, and that rent is deemed to be payable by the lessee to the lessor on the days provided in the lease for payment of the rent, or, if no rent is payable under the lease, on each day of the term of the lease on a pro rata basis, and is deemed to be income derived by the lessor on the days on which the rent is deemed to be payable under this paragraph; and
- (b) the rent deemed to be payable under **paragraph (a)** is deemed to accrue from day to day during the period in respect of which it is payable, and is apportionable accordingly.
- (2) This section applies with respect to any leased property only if and to the extent that it is used by the lessee in the derivation of counted income or exempt income.

- (3) This section applies whether the lease was granted before or after the commencement of the tax year.
- (4) In this section,—

adequate rent, in relation to any property, means the amount of rent that the Commissioner determines to be adequate for that property during the period in respect of which the determination is made

lease means a tenancy of any duration, whether in writing or otherwise; and includes a sublease; and also includes a bailment; and **lessor** and **lessee** have corresponding meanings

related company means a company that is under the control of the lessor or any relative or relatives of the lessor or any 1 or more of them, or, where there are several lessors or the lessor is a partnership, under the control of any of the lessors or partners or any relative or relatives of any of the lessors or partners

rent includes any premium or other consideration for the lease.

Compare: 1994 No 164 s GD 10

Other non-market transactions

GD 11 Financial arrangements rules

If the Commissioner is satisfied that the parties to a financial arrangement were, at the time the financial arrangement is entered into, acquired, varied, sold, or transferred, dealing with each other in a way that defeats the intention of the financial arrangements rules, the Commissioner may deem the consideration to be that which independent parties dealing at arm's length would give.

Compare: 1994 No 164 s GD 11

GD 12 Non-market transactions for incurring film production expenditure

- (1) A person must reduce the deduction allowed to them under **section DS 2** in accordance with **subsection 2**, if—
- (a) the Commissioner considers that the person (**person A**) and a person who supplied goods or provided services to person A in relation to the film (**person B**) were not

- dealing with each other at arm's length in relation to the goods or services; and
- (b) person A incurred more film production expenditure than person A would have incurred if person A and person B had been dealing with each other at arm's length.
- (2) If **subsection (1)** applies, the deduction must be reduced to an amount equal to the film production expenditure that the Commissioner thinks person A would have incurred if person A and person B had been dealing with each other at arm's length.

Compare: 1994 No 164 s GD 12(1), (1A)

GD 12A Film production expenditure if payments postponed or contingent

For the purposes of **sections DS 2, EJ 6, and EJ 8**, a person is treated as incurring film production expenditure in relation to goods or services only at the time of payment for those goods or services if—

- (a) payment for the goods or services has been deferred by agreement between the supplier of the goods or services and any other person, and the Commissioner thinks that the period between the time that the goods or services are supplied and the time of payment for them is excessive; or
- (b) liability for the payment is contingent.

Compare: 1994 No 164 s EO 4(12)

GD 12B Manipulation of arrangements to incur film production expenditure

If the Commissioner considers that 2 persons have made arrangements so that **section DS 2, EJ 6, or EJ 8** applies more favourably in relation to a person in an income year than it would have applied without those arrangements,—

- (a) the deduction that a person is allowed under **section DS 2** must be reduced to the amount that the Commissioner considers would have been allowed if the arrangements had not been made:

- (b) the deduction allocated under **section EJ 6 or EJ 8** must be allocated to the income year to which the Commissioner considers it would have been allocated if the arrangements had not been made.

Compare: 1994 No 164 s GD 12(2)

GD 13 Cross-border arrangements between associated persons

- (1) Subject always to its express provisions, the purpose of this section is to require a taxpayer, who enters into a cross-border arrangement with an associated person for the acquisition or supply of goods, services, or anything else at a consideration which reduces the taxpayer's net income, to substitute an arm's length consideration when calculating the taxpayer's net income.
- (2) This section only applies to require the substitution of an arm's length amount of consideration in the case of an arrangement—
- (a) that involves the supply and acquisition of goods, services, money, other intangible property, or anything else; and
 - (b) where the supplier and acquirer are associated persons; and
 - (c) where the supplier and acquirer are—
 - (i) 2 persons each not resident in New Zealand (unless each enters into the arrangement for the purposes of a business carried on by the person in New Zealand through a fixed establishment in New Zealand); or
 - (ii) a person resident in New Zealand and a person not resident in New Zealand unless—
 - (A) the non-resident is entering into the arrangement for the purposes of a business carried on by the non-resident in New Zealand through a fixed establishment in New Zealand; and
 - (B) the New Zealand resident has not entered into the arrangement for the purposes of a business carried on by the New Zealand resident outside New Zealand; or

- (iii) 2 persons each resident in New Zealand if either or both enter into the arrangement for the purposes of a business carried on by the person outside New Zealand.
- (3) If the amount of consideration payable by a taxpayer under such an arrangement exceeds the arm's length amount, then for all purposes of the application of this Act in relation to the income tax liability for any tax year of the taxpayer, an amount equal to the arm's length amount is deemed to be the amount payable by the taxpayer in substitution for the actual amount.
- (4) If the amount of consideration receivable by a taxpayer under such an arrangement is less than the arm's length amount, an amount equal to the arm's length amount is deemed to be the amount receivable by the taxpayer in substitution for the actual amount for all purposes of the application of this Act in relation to—
 - (a) the income tax liability for any tax year of the taxpayer; or
 - (b) the obligation of the taxpayer under **subpart NH** to make a withholding or deduction from the amount; or
 - (c) the obligation of any person other than the taxpayer to make a withholding or deduction under **Part N** from the amount.
- (5) **Subsection (4)** does not apply if the taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand, and—
 - (a) the amount is a deduction of the other party (or, in the case of an interest-free loan, would be a deduction but for the application of **subpart FG** if an arm's length amount of interest were substituted) and is interest, royalties, or an insurance premium; or
 - (b) the amount is a dividend receivable on a fixed rate share.
- (6) For the purposes of this section, the arm's length amount of consideration must be determined by applying whichever 1 (or combination) of the methods listed in **subsection (7)** produces the most reliable measure of the amount completely independent parties would have agreed upon after real and fully adequate bargaining.

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- (7) The arm's length amount of consideration must be calculated under any 1 (or a combination) of—
- (a) the comparable uncontrolled price method; or
 - (b) the resale price method; or
 - (c) the cost plus method; or
 - (d) the profit split method; or
 - (e) comparable profits methods.
- (8) The choice of method or methods for calculation and the resultant application of the method (or methods) must be made having regard to—
- (a) the degree of comparability between the uncontrolled transactions used for comparison and the controlled transactions of the taxpayer; and
 - (b) the completeness and accuracy of the data relied on; and
 - (c) the reliability of all assumptions; and
 - (d) the sensitivity of any results to possible deficiencies in the data and assumptions.
- (9) The arm's length amount of consideration is determined by the taxpayer under **subsections (6) to (8)**, and the amount so determined is the arm's length amount for the purposes of **subsections (3), (4), and (10)**, unless—
- (a) the Commissioner can demonstrate another amount to be a more reliable measure of the arm's length amount; or
 - (b) the taxpayer has not co-operated with the Commissioner in the Commissioner's administration of this section in relation to that taxpayer and the non-co-operation has materially affected the Commissioner in that administration,—
- in either of which events the Commissioner determines the amount under **subsections (6) to (8)** for the purposes of **subsections (3), (4), and (10)**.
- (10) If—
- (a) the amount of consideration payable by a taxpayer for an acquisition is less than an arm's length amount or the amount of consideration receivable by the taxpayer for a supply exceeds an arm's length amount (that acquisition or supply being referred to in this subsection as the **compensating adjustment arrangement**); and
 - (b) in the same tax year or in the immediately preceding or succeeding tax year, either—

- (i) an amount of consideration payable by the taxpayer is adjusted down under **subsection (3)**; or
- (ii) an amount of consideration receivable by the taxpayer is adjusted up under **subsection (4)**; and
- (c) the adjustment down (or up) is in respect of an arrangement for acquisition (or supply) with the same other party and—
 - (i) involving goods, services, money, other intangible property, or anything else of the same type as that supplied and acquired in the compensating adjustment arrangement; or
 - (ii) where the amount of consideration actually payable (or receivable) is set having regard to the amount of consideration actually payable (or receivable) under the compensating adjustment arrangement,—

then for all purposes of the application of this Act in relation to the income tax liability for any tax year of the taxpayer (or, if the amount is receivable by the taxpayer, to the obligation of the taxpayer or any other person to make a withholding or deduction from the amount under **Part N**), an amount equal to the arm's length amount is deemed to be the amount payable (or receivable) by the taxpayer under the compensation adjustment arrangement in substitution for the actual amount.

- (11) If—
 - (a) an arm's length amount of consideration is substituted under **subsection (3) or (4)** in respect of an arrangement entered into by a taxpayer; and
 - (b) the other party to the arrangement (or, if the other party is a controlled foreign company, any person with an income interest in the controlled foreign company) applies to the Commissioner in writing within 6 months after an assessment is made in respect of the taxpayer which reflects the substitution; and
 - (c) the Commissioner considers it is fair and reasonable to do so, having regard to any adjustment made under a double tax agreement or any other matter, and has notified the other party,—

then the substitution so applies for all purposes of the application of this Act in relation to the other party—

- (d) excluding the determination of whether and the extent to which the other party has derived or been paid a dividend; and
 - (e) including, in any case where the other party is a controlled foreign company, the calculation of branch equivalent income or branch equivalent loss in respect of the other party and the resultant calculation of the attributed CFC income or attributed CFC loss or attributed CFC net loss of any person.
- (12) Except to the extent that **subsection (11)** applies, an adjustment under any of **subsections (3), (4), and (10)** has no effect on any obligation of the taxpayer to make a withholding or deduction in respect of the amount under **Part N**, other than under **subpart NH**.
- (13) In this section,—

acquisition—

- (a) subject to **paragraph (b)**, includes obtaining the availability of any thing; and
- (b) does not include the mere receipt, or retention, by a company of consideration for issue of a share (unless the share is a fixed rate share)

amount includes a nil amount

insurance premium means a premium treated as being derived from New Zealand under **section FC 13**

supply—

- (a) subject to **paragraph (b)**, includes making any thing available; and
- (b) does not include the mere payment, and subsequent continuing making available, by a person to a company of consideration for issue of a share (unless the share is a fixed rate share).

Compare: 1994 No 164 s GD 13

GD 14 Attributing interests in FIFs

- (1) **Subsection (2)** applies if—
- (a) a person disposes of an attributing interest in a FIF; and
 - (b) they use the comparative value method or deemed rate of return method to calculate their FIF income or loss for the period up to the disposal; and

- (c) they received no consideration for the disposal or consideration that was below the market value of the interest at the time.
- (2) The person is treated as having disposed of the interest for an amount equal to its market value at the time.
- (3) **Subsection (4)** applies if—
 - (a) a person acquires an attributing interest in a FIF; and
 - (b) they use the comparative value method or deemed rate of return method to calculate their FIF income or loss from the interest for the period after the acquisition; and
 - (c) either—
 - (i) the consideration (if any) is not equal to the market value of the interest at the time; or
 - (ii) the acquisition is on a distribution by a company to the person as a shareholder or by a trustee to the person as a beneficiary.
- (4) The person is treated as having acquired the interest for its market value at the time.

Compare: 1994 No 164 s CG 23(5), (6)

GD 15 Disposal of timber, or right to take timber, or standing timber to associated person

- (1) This section applies when—
 - (a) a person (**person A**) disposes of timber, or a right to take timber, or standing timber, to an associated person; and
 - (b) as a result, person A has an amount of income under **section CB 23 or CB 24**.
- (2) The deduction that person A is allowed for the timber, or the right to take timber, or the standing timber must not be more than the amount of the income.
- (3) The deduction that the associated person is allowed for the cost of acquiring the timber is calculated on the basis that the associated person acquired the timber for the total of—
 - (a) the cost to the associated person of acquiring the timber; and
 - (b) the amount (if any) that person A is denied a deduction for by **subsection (2)**.

Compare: 1994 No 164 s DL 1(1)

Subpart GE—Non-market transactions: specific

GE 1 New Zealand Raspberry Marketing Council

- (1) This section applies upon the making of regulations to dissolve the New Zealand Raspberry Marketing Council, the Raspberry Marketing Export Authority, and the District Raspberry Marketing Committees, established under the Raspberry Marketing Regulations 1979.
- (2) In this section, **Council**, **current grower**, **District Committee**, and **grower** have the meanings set out in the Raspberry Marketing Authorities (Dissolution) Regulations 1999.
- (3) When the Raspberry Marketing Authorities (Dissolution) Regulations 1999 are made, the making and coming into force does not give rise to—
 - (a) counted income for growers, current growers, or the District Committees under **section BD 1**; or
 - (b) a dividend.
- (4) When the Cold Storage Nelson Limited shares owned by the Nelson Raspberry Marketing Committee vest in Rubus Investments Nelson Limited, the vesting—
 - (a) is treated as the consideration received by Rubus Investments Nelson Limited for the issue of its shares to the current growers of the Nelson Raspberry Marketing Committee in accordance with the formula in the Raspberry Marketing Authorities (Dissolution) Regulations 1999; and
 - (b) does not give rise to—
 - (i) counted income for Rubus Investments Nelson Limited under **section BD 1**; or
 - (ii) a dividend.
- (5) The issue of shares to the current growers of the Nelson Raspberry Marketing Committee by Rubus Investments Nelson Limited in accordance with the formula in the Raspberry Marketing Authorities (Dissolution) Regulations 1999 is treated as a distribution having been made by the Nelson Raspberry Marketing Committee itself on dissolution.
- (6) A distribution made by the Council to the District Committees on dissolution is treated as a distribution made by a company to its shareholders on dissolution.

- (7) A distribution made by any 1 of the Committees to a grower or a current grower on dissolution is treated as a distribution made by a company to its shareholders on dissolution.

Compare: 1994 No 164 s GE 1

Subpart GZ—Terminating provisions

GZ 1 Pre-1974 agreements purporting to alter incidence of tax

Where any arrangement has been made or entered into before 1 October 1974 and the Commissioner is satisfied, in respect of that arrangement, or in respect of a part of that arrangement, that the terms or conditions of that arrangement or of that part (being legally binding terms or conditions which were agreed upon in writing before that date) prevent the discontinuance of that arrangement or of that part,—

- (a) **sections BG 1 and GB 1** do not apply with respect to that arrangement, or with respect to that part, so long as that arrangement or that part is so prevented from being discontinued and is continued strictly in accordance with the requirements of the terms or conditions of the arrangement or part of the arrangement; and
- (b) so long as **sections BG 1 and GB 1** are not applied with respect to that arrangement, or with respect to that part, in accordance with **paragraph (a)**, the section for which section 108 of the Land and Income Tax Act 1954 was substituted by section 9 of the Land and Income Tax Amendment Act (No 2) 1974 is, notwithstanding that substitution, deemed to remain in full force and effect in relation to that arrangement or in relation to that part of the arrangement.

Compare: 1994 No 164 s GZ 1

Part H

Treatment of net income of certain entities

Subpart HB—Consolidated groups of companies

HB 1 Returns, assessments, and liability of consolidated group

- (1) Where and to the extent that any 1 or more companies are in any income year members of the same consolidated group,—
 - (a) the nominated company must make a single return of income of those companies for that income year and those companies must not make separate returns of income for that income year, except to the extent that any such company is not a member of the group for part of the income year:
 - (b) that single return of income must, if the Commissioner so requires, include such form of accounts detailing the separate affairs of each of those companies as the Commissioner may specify:
 - (c) for the purposes of determining the availability under this Act of credits for set-off against the income tax liability of the consolidated group in respect of that income year, the group is treated as if it were a single company:
 - (d) a single assessment must be made by the nominated company for those companies for that income year as if the companies were a single taxpayer, and a separate assessment for each company for that income year must not be made except to the extent that the company is not a member of the group for part of the income year,—and each of those companies is, subject to this section, jointly and severally liable for the amount of income tax assessed in respect of that consolidated group and that income year, and that joint and several liability is in substitution for any income tax liability of those companies under this Act individually in respect of taxable income for that income year (to the extent that the taxable income relates to a period when the company is a member of the consolidated group).
- (2) **Subsection (1)** does not apply to impose on a company that has ceased to be a member of a consolidated group joint and several liability for any amount of income tax assessed in

respect of the consolidated group and any income year to the extent that—

- (a) the assessment is made after the later of—
 - (i) the date on which the company is treated for the purposes of this Act as having ceased to be a member of the group; and
 - (ii) the date on which occurred the event that caused the company to cease to be treated as a member of the group; and
 - (b) the amount of income tax so assessed exceeds the amount (if any) assessed before that date in respect of the consolidated group and the income year; and
 - (c) the Commissioner is satisfied that the application of this subsection will not significantly prejudice any recovery or likely recovery of any amount of income tax for the income year, and notifies the company and the consolidated group accordingly.
- (3) The nominated company of a consolidated group may, at any time before making an assessment of income tax in respect of the consolidated group and any income year, apply to the Commissioner requesting that only 1 or more specified companies in the consolidated group be treated as jointly and severally liable for the income tax liability of that group for that income year.
- (4) The Commissioner must give written approval of any application made under **subsection (3)** where satisfied that recovery or likely recovery of income tax assessed for that income year will not be significantly prejudiced by limiting the joint and several liability for that tax to the company or companies specified in the application.
- (5) Where the Commissioner approves an application under **subsection (4)**,—
- (a) **subsection (1)** does not apply to impose on any company other than the companies specified in the Commissioner's written approval joint and several liability for income tax assessed in respect of the consolidated group for the income year to which the approval relates, except to the extent that—
 - (i) the specified companies default in meeting their liability for that income tax assessed; and

- (ii) the Commissioner determines that the income tax liability of the consolidated group that is attributable to the taxable income of the other company is to be recovered from the other company:
- (b) **section MB 7(1)** does not apply to impose on any company other than the companies specified in the Commissioner's written approval joint and several liability for the amount of provisional tax payable by the consolidated group for the income year to which the approval relates.

Compare: 1994 No 164 s HB 1

HB 2 Taxable income to be calculated generally as if group were single company

- (1) Notwithstanding any other section of this Act, for the purposes of ensuring that a consolidated group is generally liable to income tax as if it were a single company, when calculating the taxable income for all or part of any income year of a company which is for that income year or part income year a member of the consolidated group (that year or part year being in this subsection referred to as the **relevant period** and the relevant period for the purposes of this section being treated as if it were an income year) to be included in the group return of income under **section HB 1**,—
 - (a) an amount derived in the relevant period by the company that—
 - (i) is derived from a transaction or other arrangement with any other company that is a member of the same consolidated group; and
 - (ii) would not be income if the company and the other company were 1 company,—
is not income except to the extent that—
 - (iii) it arises by virtue of a disposition of trading stock of the company; or
 - (iv) the amount arises under **section EW 37** from the disposition of a financial arrangement to which the financial arrangements rules apply; or
 - (v) the amount arises under **section EW 37** from the remission of a financial arrangement to which the financial arrangements rules apply, if the parties to the financial arrangement were not members of

- the consolidated group for the whole term of the arrangement; or
- (vi) the amount is a dividend under **section CD 3(1)** that arises between members of a consolidated group due to the release of the obligation to repay an amount lent before the time the members are treated as being members of the consolidated group under **section FD 4**; and
- (b) any expenditure or loss incurred in the relevant period by the company—
- (i) that is incurred by virtue of a payment or disposition to, or other transaction or arrangement with, any other company that is a member of the consolidated group; and
 - (ii) for which the company would be denied a deduction if the company and the other company were 1 company,—
is denied as a deduction except—
 - (iii) to the extent that it arises by virtue of an acquisition of trading stock by the company; or
 - (iv) for the purposes of and in accordance with **section FD 10**; and
- (c) where any expenditure or loss or amount of depreciation loss incurred in the relevant period by the company (not being expenditure or loss that is denied as a deduction by virtue of **paragraph (b)**)—
- (i) would be denied as a deduction but for this paragraph; or
 - (ii) would be allowed as a deduction if the consolidated group were 1 company by virtue of any connection between the incurring of that expenditure or loss or amount of depreciation loss and the deriving of counted income or the carrying on of any business by any other member of the consolidated group,—
the expenditure or loss or amount of depreciation loss is allowed as a deduction for the relevant period; and
- (d) where any expenditure or loss or amount of depreciation loss incurred in the relevant period by the company (not being expenditure or loss that is denied as a deduction by virtue of **paragraph (b)**)—

- (i) would be allowed as a deduction but for this paragraph; or
 - (ii) would be denied as a deduction if the consolidated group were 1 company,—
the expenditure or loss or amount of depreciation loss is denied as a deduction for the relevant period, except to the extent that it is interest in respect of money borrowed from a person that is not a member of the consolidated group; and—
 - (iii) is allowed as a deduction under **section DB 7 or DB 8**; or
 - (iv) would be allowed as a deduction under **section DB 7 or DB 8** if the company were deemed for the purposes of that section to have used the money borrowed (to the extent of the actual acquisition cost) to acquire certain shares in fact acquired by another member of the consolidated group using (having regard to interposed intra-group borrowings) the money borrowed; and
 - (e) where any amount derived in the relevant period by the company—
 - (i) would not be income but for this paragraph; or
 - (ii) would be income of the consolidated group if it were 1 company, by virtue of any purpose for which any property was acquired or any connection between that amount and the carrying on of a business by any other member of the consolidated group or otherwise,—
the amount is treated as income for the relevant period; and
 - (f) in applying any provision of this Act (such as **section EW 23**) whose application is dependent upon whether a specified limit is or is not exceeded, the consolidated group is treated as if it were a single company.
- (2) Where—
- (a) any company which is a member of a consolidated group of companies incurs any expenditure or loss; and
 - (b) that expenditure or loss would, if the group of companies were a single company, be taken into account under this Act in determining the cost of any property; and

- (c) but for the application of this subsection, that expenditure or loss would not be taken into account in determining under this Act the cost of any property of a member of the consolidated group,—
that expenditure or loss is taken into account in determining the cost of any property of members of the consolidated group.

Compare: 1994 No 164 s HB 2

Subpart HC—Special partnerships

HC 1 Special partnerships

- (1) This section applies to a special partnership registered—
- (a) on or after 1 August 1986; or
 - (b) on or before 31 July 1986 if, and only if, the partnership obtains additional capital on or after 1 August 1986 from any source, other than additional capital obtained—
 - (i) from any partner who, prior to 1 August 1986, became committed to provide further capital to the partnership in instalments; or
 - (ii) prior to 1 April 1987 in order to meet any commitment involving the incurring of expenditure by the partnership under an unconditional contract entered into on or before 31 July 1986 by or on behalf of a general partner acting in the capacity of a general partner for the partnership, notwithstanding any change in the composition of the special partners.
- (2) Notwithstanding anything in this Act, where in any income year a special partnership sustains a partnership loss,—
- (a) every partner is denied a deduction for any outgoing of the partnership:
 - (b) the partnership income is deemed not to have been derived by the partners.
- (3) A special partnership which has in any income year sustained a partnership loss (in this subsection referred to as the **loss**) is, for the purposes of this section, entitled to claim that—
- (a) the loss be carried forward to the income year immediately succeeding the income year in which the loss arose and offset against the partnership net income (if

- any) for that immediately succeeding income year so far as that income extends; and
- (b) so far as it cannot then be offset, the loss be carried forward from that immediately succeeding income year to the next succeeding income year and offset against the partnership net income (if any) for that next succeeding income year, and so on.
- (4) Where partnership losses that arose in 2 or more income years are carried forward in accordance with the provisions of this section those losses are offset in the same order as those losses were incurred.
- (5) If a special partnership claims, in accordance with **subsection (3)**, to carry forward the whole or part of a partnership loss that arose in any income year to any later income year, the claim is not allowed unless, if at all times for the purposes of this Act,—
- (a) the partnership had been a company; and
- (b) the respective interests of partners in the partnership's certified capital had been shares in that company held by those partners,—
- that partnership loss or part loss could have been carried forward to that later income year in accordance with the provisions of **sections IE 1 and IF 1**.
- (6) Where any partnership loss carried forward by a special partnership is offset against partnership net income for any income year, in accordance with **subsection (3)**, each partner in the partnership is allowed a deduction in that income year of an amount equal to each partner's share of the amount of partnership loss so offset.
- (7) Where the amount of any debt incurred by a special partnership has been taken into account in calculating any partnership loss of the special partnership in any income year, and subsequently the liability of the special partnership in respect of that debt has been remitted or cancelled in whole or in part, the offset available under **subsection (3)** is reduced by the amount so remitted or cancelled. For the purposes of giving effect to this subsection, the Commissioner may at any time amend any assessment, notwithstanding the time bar.
- (8) Subject to **subsection (2)**, where a special partnership pays an amount in respect of a debt to which **subsection (7)** applies, the partners are allowed a deduction for the amount paid, to the

extent that it does not exceed that debt, in the income year in which the payment is made.

- (9) For the purposes of **subsection (7)**,—
- (a) a debt is deemed to have been remitted to the extent to which the partners have been discharged from that liability without fully adequate consideration in money or money's worth:
 - (b) a debt is deemed to have been cancelled to the extent to which the partners have been released from that liability by the operation of the Bankruptcy Act 1908 or the Insolvency Act 1967 or the Companies Act 1955 or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement of composition with the partnership's creditors:
 - (c) a debt is deemed to have been cancelled to the extent to which it has become irrecoverable or unenforceable by action through the lapse of time.
- (11) Where any special partnership first registered on or before 31 July 1986 is renewed or continued in conformity with section 58 of the Partnership Act 1908 (or, in relation to a special partnership formed in a country or territory outside New Zealand, in conformity with any provision similar or equivalent to that section) beyond the time originally agreed on for the duration of the partnership, it is deemed, for the purposes of **subsection (1)**, to have been registered on or before 31 July 1986.
- (12) In this section,—
- additional capital**, in relation to a special partnership, means—
- (a) any capital contributed by a partner:
 - (b) any capital used, or to be used, for the acquisition of any asset, other than trading stock, for use in the business of the partnership
- allowance** means an amount for which a deduction is allowed under this Act, other than any amount of expenditure or loss
- outgoing** means any expenditure, loss, or allowance
- partnership income**, in relation to a special partnership and an income year, means the income of the partners for the

income year in respect of the business or businesses of the partnership

partnership loss, in relation to a special partnership and to an income year, means the amount that would be the net loss of the partnership for the income year if the partnership were a taxpayer resident in New Zealand deriving the income and incurring the outgoings of the partners in carrying on the business or businesses of the partnership

partnership net income, in relation to a special partnership and an income year, means the amount that would be the net income of the partnership for the income year if the partnership were a taxpayer resident in New Zealand deriving the income and incurring the outgoings of the partners in carrying on the business or businesses of the partnership

registered, in relation to a special partnership formed in a country or territory outside New Zealand, means registered in that country or territory by a procedure similar or equivalent to the registration of a special partnership under Part 2 of the Partnership Act 1908

special partnership means—

- (a) a special partnership registered under Part 2 of the Partnership Act 1908:
- (b) an association of persons registered as a special partnership under Part 2 of the Partnership Act 1908:
- (c) in relation to any country or territory outside New Zealand, a partnership or an association of persons formed in that country or territory which, if formed in New Zealand, would be registered as a special partnership under Part 2 of the Partnership Act 1908.

Compare: 1994 No 164 s HC 1

Subpart HD—Partnerships

HD 1 Assessment of partners, co-trustees, and joint venturers

- (1) Where amounts are derived or incurred by 2 or more persons jointly, whether as partners, co-trustees, or otherwise,—
 - (a) in the case of co-trustees, they include such amounts that would be income or deductions if the co-trustees were a single taxpayer resident in New Zealand in a joint calculation of taxable income and are jointly and severally liable for the resulting income tax liability:

- (b) in the case of partners there is no joint assessment, but each partner must, in calculating their taxable income, take into account their share of the income that they jointly derive from the firm:
 - (c) in any case other than that of co-trustees or partners, each person jointly deriving or incurring such amounts must, in calculating their taxable income, take into account their share of the income that they jointly derive.
- (2) This section does not apply with respect to the income derived by, and deductions allowed to, an airport operator from activities that, in relation to that airport operator, are activities as an airport operator.

Compare: 1994 No 164 s HD 1

Subpart HE—Unit trusts

HE 1 Unit trusts

For the purposes of this Act,—

- (e) income derived by the trustees of a unit trust is deemed to be income derived by that unit trust; and
- (f) the trustees of a unit trust are liable to income tax as agent of the unit trust; and
- (g) sums periodically appropriated or paid for manager's and trustee's remuneration out of income derived by the trustees of a unit trust are treated as expenditure incurred in the production of that income.

Compare: 1994 No 164 s HE 1

HE 2 Group investment funds

- (1) The trustee of a group investment fund for any income year must make separate returns of—
- (a) category A income of the group investment fund; and
 - (b) category B income of the group investment fund.
- (1A) Any income derived by the trustee of a group investment fund from the investments and funds of the group investment fund is, to the extent that—
- (a) the income is category A income of the group investment fund, deemed to be income to which the trustee of the group investment fund is beneficially entitled;
 - (b) the income is—

- (i) income derived from the investments and funds of any designated group investment fund; or
 - (ii) category B income of the group investment fund,—
deemed to be income derived by a trustee and the trustee of the group investment fund must make returns and be liable accordingly in accordance with **sections CX 35, DV 1 to DV 4, DV 8, GC 14, HH 1 to HH 6, HK 14, and HZ 2.**
- (2) For the purposes of this section, the current value of the investments and funds referred to in **paragraphs (a) and (b)** of the definition of **protected amount** in **subsection (3)** is the current value attributable to the investments and funds referred to in that **paragraph (a)** or, as the case may be, that **paragraph (b)** at any time in relation to which the protected amount is ascertained, as if the investments and funds referred to in that **paragraph (a)** or, as the case may be, that **paragraph (b)** comprised all of the investments and funds in the group investment fund at that time.
- (3) In this section,—
designated sources, in relation to a group investment fund, means—
 - (a) any trust, other than the trust under which the group investment fund is established, being a trust—
 - (i) that is created—
 - (A) by will or codicil or by order of court varying or modifying the provisions of any will or codicil; or
 - (B) on any intestacy (including any partial intestacy), or by order of court varying or modifying, in relation to any estate, the application of the law relating to the distribution of intestate estates; or
 - (C) by order of court; or
 - (D) by any enactment; or
 - (E) for the purpose of administering any funds, being compensation or other money arising from the death of, or injury to, any person; or
 - (F) in order to vary the terms of a will or codicil or, in relation to any estate, to vary the

application of the law relating to the distribution of intestate estates, in either case for the sole purpose of effecting a settlement out of court of an application made or proposed to be made under the Family Protection Act 1955 or a claim or proposed claim to be made under the Law Reform (Testamentary Promises) Act 1949, where the Commissioner is of the opinion that the terms are substantially the same as those likely to have been ordered by the court; or

- (ii) that is not carried on for the private pecuniary profit of any individual and the funds of which are, in the opinion of the Commissioner, applied, wholly or principally, for benevolent, philanthropic, cultural, or public purposes within New Zealand,—

where the trustee of the group investment fund is a trustee of the trust first referred to in this paragraph

protected amount, in relation to a group investment fund and to any time, means the aggregate of—

- (a) the current value of the investments and funds from designated sources invested as at that time in the group investment fund; and
- (b) the current value of the investments and funds that were invested in the group investment fund as at 22 June 1983 as if those investments and funds had continued to be so invested up to the time first mentioned in this definition other than the part of those investments and funds that on that date were attributable to amounts from designated sources,—

and for the purposes of this definition the investments and funds that were invested in the group investment fund as at 22 June 1983 are deemed to include—

- (c) any money deposited between 15 June and 23 June 1983 with the trustee of the group investment fund being money so deposited for investment in the group investment fund; and
- (d) any money deposited between 22 June and 16 July 1983 with the trustee of the group investment fund, being

money so deposited for investment in the group investment fund which was, on or before 22 June 1983, subject to a binding commitment to deposit that money **specified value**, in relation to a group investment fund and to any income year, means the amount of the current value of all of the investments and funds of the group investment fund on the last day of the income year reduced by the amount that, on that day, is the protected amount.

Compare: 1994 No 164 s HE 2

Subpart HF—Mutual associations

HF 1 Profits of mutual associations in respect of transactions with members

- (1) Where in any income year an association enters into transactions with its members, or with its members and other persons, any amounts derived in that income year from those transactions which would be income of the association if the transactions were not of a mutual character is deemed to be income of the association derived in that income year (such an association being referred to in this section as an **association to which this section applies**).
- (2) Subject to **subsection (3)**, an association to which this section applies is allowed a deduction in an income year for the lesser of—
 - (a) the aggregate of the amounts of rebates, being rebates that—
 - (i) are paid by the association to its members in respect of their transactions with the association in that income year, being transactions that are taken into account in determining the net income or net loss of the association; and
 - (ii) are calculated by reference to the amounts of those transactions, whether or not, in any case, any rebate is limited or reduced by reference to the amount of the share or interest of a member in the capital of the association; and
 - (b) an amount calculated in accordance with the following formula: $a - (b + c)$

where—

 - a is the total of the counted income attributable to those transactions

- b is the total of the deductions to which the association is entitled other than under this subsection and which are attributable to that counted income
 - c is the total of any amounts distributed to members in that income year by way of a cash distribution in respect of which a determination is made under **section ME 35(1)(a)**.
- (3) Where an association to which this section applies is a statutory producer board,—
- (a) any amount allowed as a deduction under **subsection (2)** in respect of rebates paid by the producer board is the amount specified in **subsection (2)(a)**, and nothing in **subsection (2)(b) or (4)** or the proviso to **subsection (5)** applies in relation to any such deduction; and
 - (b) the statutory producer board may elect whether the amount is allowed as a deduction in the income year in which the rebates were paid or for the income year in which occurred the transactions in respect of which the rebates were paid; and
 - (c) where any member of the statutory producer board to whom such a rebate is paid is itself a mutual association to which this section applies, the amount of the rebate is deemed to be income of that association derived in the income year in which the rebate is allowed as a deduction to the statutory producer board in accordance with its election under **paragraph (b)**.
- (4) In **subsection (2)(b)**, any expenditure or loss (being expenditure or loss that is allowed as a deduction under this Act) incurred by the association in the income year must be apportioned between the transactions referred to in **paragraph (a)(i)** of that subsection and the transactions (being transactions that are taken into account in determining the net income or net loss of the association) in that income year with persons other than its members.
- (5) Where any rebate or part of a rebate paid to any member by an association to which this section applies is paid in respect of any transactions which are of such a nature that any payments in respect of those transactions by that member to the association, or by the association to that member, would be taken into account in determining the taxable income of that member,

that rebate, or that part of a rebate, is income (otherwise than as a dividend) of that member:

provided that where that rebate, or that part of a rebate, exceeds so much as is attributable to it of the deduction allowed under **subsection (2)**, the amount of the excess is deemed to be a dividend derived by that member.

- (6) For the purposes of this section, a rebate is deemed to have been paid to a person when it has been credited in account or otherwise dealt with in the person's interest or on the person's behalf.
- (7) Where a rebate or part of a rebate is satisfied—
 - (a) by the issue of fully paid-up or partly paid-up shares in an association (being a company) to which this section applies; or
 - (b) by giving credit in respect of the whole or part of the amount unpaid on any shares in any such association,—that rebate or part of a rebate is deemed not to be a bonus issue.
- (8) Every reference in this section to transactions as being transactions of an association with its members or transactions of members of an association with the association and as being, in either case, transactions that are taken into account in determining net income or net loss of the association is taken as a reference to transactions of any 1 or more of the following classes:
 - (a) the purchase or other acquisition by the association of trading stock from a member of the association, whether that trading stock is sold or otherwise disposed of by the association to a member of the association or to any other person:
 - (b) the sale or other disposition by the association of trading stock to a member of the association, whether that trading stock was purchased or otherwise acquired from a member of the association or from any other person:
 - (c) the supply of any services by a member of the association to the association:
 - (d) the supply of any services by the association to a member of the association:
 - (e) the borrowing by the association of money from a member of the association to the extent to which that money

is applied in lending money to a member or members of the association:

- (f) the lending by the association of money to a member of the association:
- (g) in relation to an association that is a statutory producer board, produce transactions, and the payment of levies to the statutory producer board by its members.

(9) In this section,—

association means any body or association of persons, whether incorporated or not

member, in relation to an association that is a statutory producer board and to any income year, means any person who—

- (a) is liable in respect of that year to pay a levy to the statutory producer board; or
- (b) during that year, supplies produce or goods to the statutory producer board, in terms of the body's primary statutory functions

rebate means any payment to its members by an association, being a payment that—

- (a) is made by way of a distribution of profits of the association; and
- (b) is made not later than 6 months after the end of the trading year of the association in respect of which the payment is made,—

but does not include any such payment to the extent that it forms part of a cash distribution in respect of which the association has made a determination under **section ME 30(1)(a) or ME 35(1)(a)** or any distribution referred to in **section CD 18 or CD 24**.

Compare: 1994 No 164 s HF 1

Subpart HG—Qualifying companies

HG 1 Qualifying company regime

Subject to the express provisions of this subpart, any company that—

- (a) is owned by 5 or fewer natural persons as counted in accordance with **section OB 3**; or
- (b) is a flat-owning company within the meaning of **subsection (1)(b)(ii)** of that section—

and that otherwise meets the requirements of that section may, by making the appropriate elections,—

- (c) make distributions to its shareholders of its gains in such a fashion that the distributed gains are treated for taxation purposes; and
- (d) where the company has only 1 class of shares, allocate its net losses to its shareholders in such a fashion that the net losses are treated for taxation purposes,—

in like manner to that which would have occurred had the company been a partnership.

Compare: 1994 No 164 s HG 1

HG 2 Determination of effective interest in company

For the purpose of determining a person's effective interest in a company in respect of any income year,—

- (a) the person's voting interest and market value interest in the company at any time is determined in accordance with **sections OD 2 to OD 5**, but the person's voting interest and market value interest is, except where otherwise specifically provided in this subpart, determined in accordance with those sections as if (in any case where the person is a company) the person were not a company and as if **sections OD 3(3)(c) and (d) and OD 4(3)(c) and (d)** did not apply:
- (b) where the person's voting interest or market value interest varies at any time during the income year, the person's voting interest or market value interest for that year is equal to the weighted average of the person's voting interest or market value interest, as the case may be, for the whole of the income year:
- (c) in the case of a person who has made a shareholder election under **section HG 4(1) or (2)** in respect of any income year,—
 - (i) the person (or, in the case of an election made under **section HG 4(2)** by a person other than the trustee, the trustee (but only for the purposes of that election)) is, if during that income year the person revokes that election under **section HG 5(1)**, treated as having a nil voting interest and a nil market value interest during any period following the date on which the revocation takes effect under **section HG 5(1)(b)**, unless the person makes a

- subsequent shareholder election during and in respect of the same income year and in respect of the company:
- (ii) if the shareholder election was made after the commencement of the income year, the person's voting interest and market value interest is determined in relation to that part of the income year that starts with the earliest day of the income year on which the person was a shareholder in the company, whether or not that date precedes the date on which the election was made:
- (d) in the case of a majority shareholder who has made a shareholder election under **section HG 4(3)** in respect of a minority shareholder's shareholding,—
- (i) the effective interest of the minority shareholder in respect of which the majority shareholder has elected to be liable is determined exclusive of any effective interest for which the minority shareholder is personally liable by virtue of an election made by the minority shareholder under **section HG 4(1) or (2)**; and
 - (ii) where the majority shareholder's election is revoked under **section HG 5(1)** or deemed to be revoked under **section HG 5(2)(d) or (e)**, the effective interest of the minority shareholder for which the majority shareholder is liable is treated as nil for that part of the income year that follows the day on which the revocation took effect under **section HG 5(1)(b)** or, as the case may be, the day on which occurred the event specified in **section HG 5(2)(d) or (e)**.

Compare: 1994 No 164 s HG 2

HG 3 Director elections, and revocation of director elections

- (1) A company is only a qualifying company where all persons who are directors of the company at the time of the notice of election have, by notice to the Commissioner in such form as the Commissioner may allow, elected that the company should become a qualifying company.
- (2) Any election under this section takes effect,—

- (a) if no later income year has been specified in the notice of election, on the first day of the income year of the company that succeeds the income year in which the notice is received by the Commissioner; or
 - (b) in any case where a later income year has been so specified, on the first day of such later income year,— and remains effective until the date upon which a revocation of that election takes effect in accordance with this section.
- (3) Notwithstanding **subsection (2)**, any election under this section in relation to any company that has not previously been required to furnish an annual return of income under the Income Tax Act 1976 or the Tax Administration Act 1994 may take effect on the first day of the company's first income year if the notice of election so requests and is received by the Commissioner not later than the time allowed in accordance with section 37 of the Tax Administration Act 1994 for the furnishing of a return of income in respect of that first income year of the company.
- (4) A director election may be revoked only by resolution of the board of directors notified to the Commissioner in such form as the Commissioner may allow.
- (5) Any such revocation takes effect on the later of—
- (a) the beginning of the income year in which the notice of revocation is received by the Commissioner; or
 - (b) the beginning of such other income year as may be specified in the notice.

Compare: 1994 No 164 s HG 3

HG 4 Shareholder elections

- (1) A company may only be a qualifying company where each shareholder in that company who is sui juris has, by notice to the Commissioner in such form as the Commissioner may allow,—
- (a) elected that the company should become a qualifying company; and
 - (b) elected to be personally liable in respect of each income year during which the election is at any time in effect for such percentage of—
 - (i) the income tax liability for that income year of that company; and

-
- (ii) any income tax payable in respect of that income year in accordance with an election by the company under this section as a shareholder in another company,—
as is equal to the shareholder's effective interest in the company for the relevant income year.
- (2) Where any shareholder in a company is a trustee, that trustee is not treated as having made an election in accordance with **subsection (1) or (3)** unless both the trustee and any 1 or more natural persons who are sui juris (being in each case a beneficiary of the trust, or, where no beneficiary of the trust is sui juris, being a natural person (who may also be the trustee) assuming liability on behalf of beneficiaries) have, by notice to the Commissioner in such form as the Commissioner may allow,—
- (a) elected that the company should become a qualifying company; and
- (b) elected to be personally (in the case of any such beneficiary or natural person (who may also be the trustee) assuming liability on behalf of beneficiaries), or to the extent of the net assets subject to the trust (in the case of the trustee), jointly and severally liable in respect of each income year during which the election is at any time in effect for such percentage of any income tax liability for that income year of the company and of any income tax for which the company may be liable in respect of that income year in accordance with an election by the company under this section as a shareholder in another company as is equal to,—
- (i) in the case of an election made in accordance with **subsection (1)**, the effective interest in the company of the trustee as a shareholder of the company for that income year; or
- (ii) in the case of an election made in accordance with **subsection (3)**, the effective interest of the relevant other shareholder in the company for that income year.
- (3) Where—
- (a) the effective interest of any shareholder (in this subsection referred to as the **minority shareholder**) in a

- company at the time at which the election referred to in **paragraph (b)** is made is less than 50%; and
- (b) any 1 or more other shareholders (in this subsection referred to as the **majority shareholders**) in the company whose effective interests in that company at that time aggregate 50% or more have, in addition to any other election the majority shareholders have made in accordance with this section,—
- (i) elected that the company should become a qualifying company; and
- (ii) elected to be personally and (in the case of more than 1 majority shareholder) jointly and severally liable for each income year during which the election remains in effect for such percentage of any income tax liability for that income year of the company and of any income tax payable by the company in respect of that income year by virtue of an election by the company under this section as a shareholder in another company as is equal to the minority shareholder's effective interest in the company at the time of election and subsequently from time to time,—
- the minority shareholder is, for the purposes only of **section OB 3(1)(f)**, treated as having made an election in accordance with **subsection (1)** in respect of the minority shareholder's shareholding in the company at the time of election.
- (4) Any election made in accordance with this section in relation to any company takes effect,—
- (a) in the case of an election made at a time when the company is not already a qualifying company,—
- (i) if no later income year has been specified in the notice of election, on the first day of the income year of the company that succeeds the income year of the company in which the notice is received by the Commissioner; or
- (ii) in any case where a later income year has been specified, on the first day of that later income year; or
- (b) in the case of an election made at a time when the company is already a qualifying company, on the date on which the Commissioner receives notice of the election.

- (5) Notwithstanding **subsection (4)(a)**, any election under this section in relation to any company that has not previously been required to furnish an annual return of income under the Income Tax Act 1976 or the Tax Administration Act 1994 may take effect on the first day of the company's first income year if the notice of election so requests and is received by the Commissioner not later than the time allowed in accordance with section 37 of the Tax Administration Act 1994 for the furnishing of a return of income in respect of that first income year of the company.

Compare: 1994 No 164 s HG 4

HG 5 Revocation of shareholder elections

- (1) A shareholder election made by any person may be revoked by that person by notice furnished to both the Commissioner and the company in such form as the Commissioner may allow, and any such revocation, subject to **sections HG 6 and HG 7**, takes effect,—
- (a) for the purposes only of **section OB 3(1)(f)**,—
 - (i) if no later income year has been specified in the notice of revocation, on the first day of the income year in which the notice is received by the Commissioner; or
 - (ii) on the first day of such later income year as may be specified in the notice:
 - (b) for the purpose of determining in any appropriate case the effective interest in the company of the person making the revocation, on the date on which both the Commissioner and the company have received notice of the revocation or on such later date as may be specified in the notice of revocation.
- (2) A shareholder election made by any person is deemed to be revoked—
- (a) upon the death of the person:
 - (b) upon the sale or other disposal of all the shares in the shareholding in relation to which the election was made (unless those shares are sold or otherwise disposed of to an existing shareholder in the company for whose shareholding a valid shareholder election is already in effect):

- (c) in the case of an election made under **section HG 4(2) or (3)** by both a trustee and a natural person assuming liability on behalf of the beneficiaries of a trust none of whom is sui juris, upon any beneficiary of the trust becoming sui juris:
- (d) in any case where the effective interest in the company of a minority shareholder in respect of whom an election has been made under **section HG 4(3)** increases to 50% or more, upon that effective interest attaining 50% or more:
- (e) in any case where the effective interest or aggregate effective interests in the company of any majority shareholder or shareholders who have made an election under **section HG 4(3)** falls below 50%, upon the effective interest or aggregate effective interests falling below 50%:
- (f) in the case of an election jointly made by 2 or more persons, upon any revocation or deemed revocation taking effect in respect of any 1 of those persons and that election,—

and any such deemed revocation, subject to **sections HG 6 and HG 7**, takes effect for the purposes of **section OB 3(1)(f)** on the first day of the income year in which occurred the event giving rise to the deemed revocation.

Compare: 1994 No 164 s HG 5

HG 6 Period of grace for new elections following death, revocation of shareholder election, or issue of new shares

- (1) A company does not cease to be a qualifying company at any time as a result only of the death of a shareholder or any other person, if—
 - (a) that company would have been a qualifying company at that time but for that death; and
 - (b) that company meets (and, subject to this section, subsequently continues to meet) all the requirements of **section OB 3(1)** at some time falling within—
 - (i) the period of 12 months immediately succeeding that death; or
 - (ii) such extended period as the Commissioner may allow on the application of the company, the personal representative of a deceased shareholder, or

any other person who may make any relevant shareholder election.

- (2) A company does not cease to be a qualifying company by reason only of a failure to comply with **section OB 3(1)(f)** due to the revocation or deemed revocation of any shareholder election if,—
- (a) in the case of a revocation made by a person by notice to both the Commissioner and the company under **section HG 5(1)**, any other person makes or is deemed to make a shareholder election in respect of all of the shareholding to which the revocation relates within—
 - (i) the period of 63 days immediately succeeding the date of receipt by the company of the notice of revocation; or
 - (ii) such extended period as the Commissioner may allow on the application of the company or of a person who may make an election in respect of the shareholding;
 - (b) in the case of a shareholder election deemed to be revoked under any of **section HG 5(2)(b) to (e)**, a valid shareholder election is made (or is already in effect) in respect of all of the shareholding to which the revoked election relates within—
 - (i) the period of 63 days immediately succeeding the event that gave rise to the deemed revocation; or
 - (ii) such extended period as the Commissioner may allow on the application of the company or any person who may make a shareholder election in respect of the shareholding;
 - (c) in the case of a jointly made shareholder election deemed to be revoked under **section HG 5(2)** by reason of a revocation taking effect in respect of any 1 of the persons making the election, any person or persons who may make a shareholder election in respect of the relevant shareholding make that election within the period specified under whichever of **subsection (1) or paragraph (a) or (b)** applies to the cause of the revocation.
- (3) A company does not cease to be a qualifying company by reason only of a failure to comply with **section OB 3(1)(f)** due to—

- (a) the acquisition of shares in the company by a person other than an existing shareholder (whether by purchase, issue, or otherwise); or
- (b) an existing shareholder becoming sui juris—
if, within the period of 63 days following the date upon which the shares were acquired or the shareholder became sui juris, or within such extended period as the Commissioner may allow on the application of the new shareholder or the newly sui juris shareholder, or of any other person who may make a shareholder election in respect of the relevant shareholding, a valid shareholder election is made in respect of that shareholding.

Compare: 1994 No 164 s HG 6

HG 7 Date on which non-complying company ceases to be qualifying company, and Commissioner's power to defer

- (1) Where a company ceases to comply with any of the requirements of **section OB 3(1)**, the company, subject to **subsection (2)**, ceases to be a qualifying company with effect on and after the first day of the income year in which the failure to comply occurred, whether or not it was known or possible to ascertain at that time that the company had so ceased to comply.
- (2) Where in respect of any company that would, but for this subsection, cease on the first day of any income year to be a qualifying company by reason of any event occurring or failing to occur at or by any particular time within that income year, the Commissioner is satisfied that—
 - (a) at the particular time the company did not know and could not reasonably be expected to have known or ascertained that it would so cease to be a qualifying company, whether by reason of—
 - (i) a reasonable expectation that the company would continue to qualify as a qualifying company by virtue of a substitute election or other appropriate event occurring within any period specified in or allowed under **section HG 6 or HG 15(3)**; or
 - (ii) a reasonable expectation that the company would not fail to comply with **section OB 3(1)(d)**; or
 - (iii) a reasonable belief that qualifying company dividend income derived by a trustee referred to in

- section OB 3(1)(c)(ii)** would be distributed, and qualify, as beneficiary income,—
- or otherwise; and
- (b) having regard to—
- (i) the period of time that has elapsed between the beginning of the income year and the date of failure to comply with any of the requirements of **section OB 3(1)**; and
- (ii) the period of time that has elapsed between the date of failure to comply with any of the requirements and the date on which that failure became known, or could reasonably be expected to have become known, to the company; and
- (iii) any transactions of the company during any such period; and
- (iv) any other relevant circumstances,—
- it would be unduly harsh or otherwise inappropriate to treat the company as having ceased for the purposes of this Act to be a qualifying company,—
- the Commissioner may, on the application of the company supported by such accounts or other information as the Commissioner may require, defer until the first day of a later income year than that specified under **subsection (1)** the date on which the company will be treated as ceasing to be a qualifying company; and this Act and the Tax Administration Act 1994 accordingly apply in respect of the company and its shareholders as if the company had ceased to be a qualifying company on that later date.

Compare: 1994 No 164 s HG 7

HG 8 Liability of electing shareholder for income tax of company

- (1) Where any person elects in accordance with any of **section HG 4(1) or (2) or (3)** to be liable for a percentage of any income tax payable by a company, then, while the company must make an assessment in the first instance,—
- (a) the Commissioner may assess that person and, where the Commissioner does so, the person is liable as agent under this Act accordingly, as if the person were an agent for the company, for such percentage of the income tax payable by the company (including any income tax payable by the company by virtue of a

- shareholder election made by the company) in respect of any income year during which the company is a qualifying company and the election is at any time in effect as is equal to that person's effective interest (and, where appropriate, the effective interest of a minority shareholder) in the company in respect of the income year; and
- (b) no assessment of the company in respect of that income tax precludes an assessment of that person for the income tax, and no assessment of that person in respect of the income tax precludes an assessment of the company for the income tax.
- (2) Where a person who is liable under this section for a percentage of the tax payable by a qualifying company first acquires shares in the company, or sells or otherwise disposes of that person's whole shareholding in the company, during an income year, the Commissioner may reduce the percentage of tax for which the person is liable if—
- (a) the person satisfies the Commissioner, with the support of adequate accounts and such other information as the Commissioner may require, that the proportion of the company's tax liability that is attributable to the part of the income year in which the person was a shareholder in the company is smaller than the proportion that that part income year bears to the whole income year; and
- (b) the Commissioner is satisfied in all the circumstances that it would be appropriate to reduce the person's liability to tax accordingly—
- and, where the Commissioner so reduces the percentage of tax liability, the person's liability under this section is determined in relation to that reduced percentage accordingly.

Compare: 1994 No 164 s HG 8

HG 9 Taxation of shareholders in qualifying companies

- (1) Where any qualifying company pays a dividend to any shareholder resident in New Zealand, the provisions of **section HG 13** apply in relation to that dividend.
- (2) Where for any income year a loss attributing qualifying company has a net loss, the provisions of **sections HG 16 and HG 17** apply to the shareholders in the company in relation to that loss.

- (3) Notwithstanding any other provision of this Act, where in any income year any shareholder in a qualifying company incurs any interest expenditure in respect of money borrowed to acquire shares in that company, **section DB 6** denies any deduction for that interest expenditure to the extent of the amount of any non-cash dividends (other than taxable bonus issues) which that shareholder, or any person associated with the shareholder, derives from that company in that income year.
- (3A) For the purposes of **subsection (3)**, where the associated person is associated with more than 1 shareholder in the qualifying company, the amount of any non-cash dividends (other than taxable bonus issues) derived by that person from that company in the income year is apportioned among the shareholders associated with the person in proportion to the effective interest in the company held by each of those shareholders in the relevant income year.
- (4) For the purpose only of determining whether a deduction is allowed under **section DB 6** for interest expenditure incurred in respect of money borrowed to acquire shares in a qualifying company,—
- (a) **section HG 13** is treated as not deeming to be exempt income distributions from a qualifying company to a shareholder of that company; and
 - (b) those distributions are treated as excluded from the definition of **dividend**.
- (5) For the purposes of **subsection (3)**, dividends to which **section CD 29** applies are not deemed to be paid and derived on the earlier of the dates specified in **section CD 29(3)**, but are instead deemed to be paid and derived at the end of the quarter in respect of which the amount of the dividend is determined under that paragraph.

Compare: 1994 No 164 s HG 9

HG 10 Taxation of qualifying company

Notwithstanding any other provision of this Act,—

- (a) **sections CW 9 to CW 11** do not apply to treat as exempt income any dividend derived by a company which has been at any time before the date of derivation a qualifying company, except to the extent that the dividend is a dividend to which **section CW 9** applies; and

- (b) **section IG 2(2)** does not apply to permit any qualifying company to offset against its net income any amount on account of—
- (i) the loss of any other company; or
 - (ii) a payment made to any other company,—
- unless the other company is also a qualifying company.

Compare: 1994 No 164 s HG 10

HG 11 Taxation on election to become qualifying company

- (1) Where at any time any company not a qualifying company becomes a qualifying company, that company is liable to pay a special tax by way of an income tax known as qualifying company election tax.
- (1A) If a company is not a qualifying company and ceases to exist when it amalgamates with a qualifying company, the amalgamated company is liable to pay a special tax by way of income tax known as qualifying company election tax.
- (1B) If **subsection (1A)** applies, **subsection (2)** applies to the amalgamated company as if—
- (a) the reference to the “**relevant time**” were read as referring to the time at which the amalgamating company ceases to exist; and
 - (b) all references to the time or income year in which the company became a qualifying company, however expressed, were read as referring to the time at which the amalgamating company ceases to exist.
- (2) The amount of qualifying company election tax payable by any company is an amount (not being less than nil) calculated in accordance with the following formula:

$$a + c - b - \frac{c}{d} \times d$$

where—

- a is the aggregate of any amounts which would be dividends for the purposes of this Act if, at the time (referred to in this section and **section HG 12** as the **relevant time**) immediately preceding the time at which the company became a qualifying company,—

-
- (a) the company had disposed of all its tangible and intangible property (other than cash) to an unrelated person at the relevant time for amounts of cash equal to the market value of such property at the relevant time; and
 - (b) the company had repaid or otherwise met all of its liabilities at the relevant time (not being income tax payable as a result of the disposition of property or meeting of liabilities) for amounts of cash equal to the market value of such liabilities to a purchaser of such liabilities at the relevant time; and
 - (c) the company had then been liquidated and any amounts of cash remaining (whether arising from the disposition or otherwise) had been distributed to its shareholders (without imputation credits or dividend withholding payment credits attached); and
 - (d) **paragraph (i)** of item “j” of the formula in the definition of **transitional capital amount** were repealed
- b is the aggregate of the counted income which would be derived by the company at the relevant time from taking the actions described in **paragraphs (a) and (b)** of item “a”, reduced by all amounts of expenditure or loss incurred in taking such actions for which this Act would allow a deduction
- c is, subject to **subsection (4)**, the aggregate of the following amounts:
- (a) the amount of the balance in the company’s imputation credit account immediately before the time at which the company became a qualifying company:
 - (b) the amount of the balance in the company’s dividend withholding payment account immediately before the time at which the company became a qualifying company:
 - (c) any amount of income tax that—

- (i) is payable by the company in relation to an income year earlier than that in which the company became a qualifying company; and
- (ii) has not been paid by the company before the time it became a qualifying company; and
- (iii) is tax that, when paid, gives rise to a credit to the company's imputation credit account under **section ME 4**,—

less the amount of any income tax refund due in respect of any such earlier income year that is paid to the company, or credited or available to be credited in payment of any income tax liability of the company, after the time it became a qualifying company, and that gives rise, when paid or credited, to a debit to the company's imputation credit account under **section ME 5**:

- (d) any amount of dividend withholding payment that—
 - (i) is payable by the company in relation to dividends received before the time the company became a qualifying company; and
 - (ii) has not been paid by the company before that time,—

less the amount of any refund of dividend withholding payment made or due after that time to the company in relation to dividend withholding payment paid in respect of dividends received before that time

- d is the basic rate of income tax for companies, expressed as a decimal, stated in **schedule 1, part A, clause 5**, and applying in the income year of the company in which the relevant time falls.

- (3) Where in any income year (in this section referred to as the **relevant year**) any company not a qualifying company becomes a qualifying company, that company is not entitled by virtue of any of **sections IE 1, IE 3, IE 4, IF 1, and IF 3** to carry forward any net losses of that company for income years

before the relevant year to the relevant year or any later income year or years.

- (3A) If a company that is not a qualifying company amalgamates with a qualifying company and ceases to exist on amalgamation during an income year (referred to as the **relevant year**), the amalgamated company is not entitled by virtue of any of **sections IE 1, IE 3, IE 4, IF 1, and IF 3** to carry forward to the relevant year or a later income year any net losses of the amalgamating company that ceases to exist for income years before the relevant year.
- (4) For the purposes of this section, there is deducted, when calculating the amount of item “c” of the formula specified in **subsection (2)**, any amount of credit to the company’s imputation credit account or dividend withholding payment credit account which results from any payment of income tax or dividend withholding payment made by the company with a purpose or intention (other than a merely incidental purpose) of reducing the amount of qualifying company election tax payable by the company.

Compare: 1994 No 164 s HG 11

HG 12 Payment of qualifying company election tax

- (1) Every company liable to pay qualifying company election tax in accordance with **section HG 11** must—
- (a) make payment to the Commissioner of the qualifying company election tax not later than the date specified in accordance with **section MC 1(2) or MC 2(2)** upon which is due and payable all income tax payable by the company in respect of the income year in which the relevant time (as defined in **section HG 11(2)**) falls (not being income tax previously due and payable); and
 - (b) at the same time as making that payment, furnish to the Commissioner a return in a form prescribed by the Commissioner, setting out such details as are required in that form.
- (2) Subject to this section, and to sections 94 and 139B of the Tax Administration Act 1994, the provisions of this Act and of the Tax Administration Act 1994, so far as they are applicable and with any necessary modifications, apply with respect to qualifying company election tax, and to any late payment penalty payable under section 139B of the Tax Administration

Act 1994 in respect of that qualifying company election tax as if it were income tax imposed under **section BB 1**, but nothing in this section is to be so construed as to include qualifying company election tax or any such late payment penalty in the expressions “income tax” or “tax” for the purposes of—

- (a) the provisions listed in **section OB 6(3)**; or
- (b) the provisional tax rules; or
- (c) section 120K of the Tax Administration Act 1994.

Compare: 1994 No 164 s HG 12

HG 13 Dividends from qualifying company

(1) Where any qualifying company pays a dividend to any person (in this section referred to as the **shareholder**) resident in New Zealand,—

- (a) that dividend is exempt income of the shareholder to the extent to which the dividend exceeds the aggregate of—
 - (i) the amount calculated in accordance with the following formula: $\frac{a + b}{c}$

where—

- a is the amount of the imputation credit deemed to have been attached to the dividend in accordance with **subsection (3)** (which amount is zero where no imputation credit is attached)
- b is the amount of the dividend withholding payment credit deemed to have been attached to the dividend in accordance with **subsection (4)** (which amount is zero where no dividend withholding payment credit is attached)
- c is the basic rate of income tax for companies, expressed as a decimal, stated in **schedule 1, part A, clause 5** and applying in respect of the income year of the shareholder in which the dividend is derived; and
- (ii) the amount of the dividend which would not be a dividend if **paragraph (i)** of item “j” of the formula in the definition of **transitional capital amount** were repealed—

- and the amount of any such imputation credit or dividend withholding payment credit is, for the purposes of this Act, deemed to be attached to that part of the dividend which is not exempt income; and
- (aa) **sections CW 9 to CW 11** do not apply to treat that dividend as exempt income; and
 - (b) the whole of that dividend does not constitute resident withholding income for the purposes of the RWT rules; and
 - (c) where for any income year—
 - (i) the shareholder has a late balance date; and
 - (ii) the dividend is derived in the period between the preceding 31 March and that balance date,—
the dividend is, notwithstanding section 38 of the Tax Administration Act 1994, treated for the purposes of this Act as if derived by the shareholder immediately following that balance date.
- (1A) For the avoidance of doubt, a dividend that is paid by a qualifying company to any trustee shareholder and that is, or that becomes, beneficiary income of a beneficiary resident in New Zealand is exempt income of the beneficiary to the same extent as if the beneficiary were the shareholder referred to in **section HG 13(1)(a)** and the company had paid the dividend to the beneficiary.
- (2) Notwithstanding the imputation rules or the dividend withholding payment rules, no qualifying company may attach—
- (a) an imputation credit to any dividend paid by that company except in accordance with **subsection (3)**; or
 - (b) a dividend withholding payment credit to any dividend paid by that company except in accordance with **subsection (4)**.
- (3) A qualifying company that is an imputation credit account company is, with respect to any dividend (not being a non-cash dividend other than a taxable bonus issue) paid during any imputation year while that company is a qualifying company, deemed to have attached an imputation credit to that dividend equal to the lesser of—
- (a) the maximum imputation credit which may be attached to that dividend by virtue of **section ME 8(1)**; and
 - (b) an amount calculated in accordance with the following formula: $\underline{a \times b}$

c

where—

- a is the balance in the company's imputation credit account on the last day of the imputation year in which the dividend is paid, being the balance before any debit is made for the attachment in accordance with this subsection of imputation credits to dividends paid by the company during the imputation year
- b is the amount of the dividend before attachment of any imputation credits
- c is the aggregate amount of all dividends (not being non-cash dividends other than taxable bonus issues) paid by the company during the imputation year before attachment of any imputation credits.

(4) A qualifying company that is a dividend withholding payment account company is, with respect to any dividend (not being a non-cash dividend other than a taxable bonus issue) paid during any imputation year while that company is a qualifying company, deemed to have attached a dividend withholding payment credit to that dividend equal to the lesser of—

- (a) the maximum dividend withholding payment credit which may be attached to that dividend by virtue of **sections MG 8(1) and MG 10(1)** (after taking into account for the purposes of **section MG 10(1)** any imputation credit attached to that dividend under **subsection (3)**); and
- (b) an amount calculated in accordance with the following formula: $\frac{d \times e}{f}$

where—

- d is the balance in the company's dividend withholding payment account on the last day of the imputation year in which the dividend is paid, being the balance before any debit is made for the attachment in accordance with this subsection of dividend withholding payment credits to dividends paid by the company during the imputation year
- e is the amount of the dividend before attachment of any dividend withholding payment credits

- f is the aggregate amount of all dividends (not being non-cash dividends other than taxable bonus issues) paid by the company during the imputation year before attachment of any dividend withholding payment credits.
- (5) Where a company has in any imputation year paid any dividends (not being non-cash dividends other than taxable bonus issues),—
- (a) the amount of any imputation credit attached to any of those dividends in accordance with **subsection (3)** is, for the purposes of **section ME 5**, a debit to the company's imputation credit account arising on the date the company paid the dividend; and
 - (b) the amount of any dividend withholding payment credit attached to any of those dividends in accordance with **subsection (4)** is, for the purposes of **section MG 5**, a debit to the company's dividend withholding payment credit account arising on the date the company paid the dividend; and
 - (c) the company must complete a company dividend statement in accordance with section 67(1) of the Tax Administration Act 1994 in respect of all dividends (not being non-cash dividends other than taxable bonus issues) so paid (whether or not any imputation credits or dividend withholding payment credits are attached), which company dividend statement must—
 - (i) detail the extent (if any) to which any of the dividends are counted income and the extent (if any) to which any of the dividends are exempt income by virtue of **subsection (1)**; and
 - (ii) be completed by the 31 May first succeeding the last day of the imputation year in which the dividends were paid; and
 - (d) the company must complete a shareholder dividend statement in accordance with section 29 of the Tax Administration Act 1994 in respect of all dividends (not being non-cash dividends other than taxable bonus issues) paid to the shareholder in the imputation year (whether or not any imputation credits or dividend withholding payment credits are attached), which shareholder dividend statement must—

- (i) detail the extent (if any) to which any of the dividends are counted income and the extent (if any) to which any of the dividends are exempt income by virtue of **subsection (1)**; and
 - (ii) be given by the 31 May first succeeding the last day of the imputation year in which the dividends were paid; and
 - (e) in addition to the information to be included in a shareholder dividend statement under **paragraph (d)**, the company must, where it is requested to do so by the shareholder, include in the shareholder dividend statement a statement of the amount of non-cash dividends paid to the shareholder during the imputation year.
- (6) **Sections ME 5(1)(i) and MG 5(1)(i)** do not apply in the case of any qualifying company but, in the event that any qualifying company ceases to be a qualifying company,—
- (a) **subsections (3) and (4)** apply with respect to the imputation year in which occurs the day (in this subsection referred to as the **relevant date**) that immediately precedes the day on which the company ceases to be a qualifying company as if references in those subsections to an imputation year were references to the period commencing with the first day of the imputation year and ending with the close of the relevant date; and
 - (b) there is a debit recorded in the company's imputation credit account on the relevant date equal to the lesser of—
 - (i) the excess (if any) of the balance in the company's imputation credit account on the relevant date (being that balance before the attachment of any imputation credits in accordance with **subsection (3)**) over the amount of such credits attached in accordance with **subsection (3)**; and
 - (ii) any debit (and, if more than 1, the greatest in amount) which would have arisen before the relevant date to the company's imputation credit account by virtue of the application of **section ME 5(1)(i)** had this subsection not applied; and
 - (c) there is a debit recorded in the company's dividend withholding payment credit account on the relevant date equal to the lesser of—

- (i) the excess (if any) of the balance in the company's dividend withholding payment credit account on the relevant date (being that balance before the attachment of any dividend withholding payment credits in accordance with **subsection (4)**) over the amount of such credits attached in accordance with **subsection (4)**; and
- (ii) any debit (and, if more than 1, the greatest in amount) which would have arisen before the relevant date to the company's dividend withholding payment credit account by virtue of the application of **section MG 5(1)(i)** had this subsection not applied.

Compare: 1994 No 164 s HG 13

HG 14 Loss attributing qualifying companies

A company is in respect of any income year a loss attributing qualifying company to which **section HG 16** applies where—

- (a) the company is at all times in the income year a qualifying company; and
- (b) each share in the company carries at all times in the income year the same—
 - (i) right to exercise voting power and participate in any decision-making at any time concerning—
 - (A) the distributions to be made by the company; and
 - (B) the constitution of the company; and
 - (C) any variation in the capital of the company; and
 - (D) the appointment or election of directors of the company; and
 - (ii) right (in terms of priority, amount payable per share, and otherwise) to receive or have dealt with in the shareholder's interest or on the shareholder's behalf—
 - (A) profits that may be distributed at any time by the company; and
 - (B) distributions of assets of the company on any acquisition, redemption, or other cancellation by the company of its shares or other reduction in or return of share capital

- of the company, whether on its liquidation or otherwise,—
- as each other share in the company; and
- (c) a notice in such form as the Commissioner may allow electing that the company be a loss attributing qualifying company—
- (i) is executed by each person who is sui juris and is at the date on which the notice is furnished a shareholder or a director in the company; and
- (ii) is received by the Commissioner before the first day of the income year, or, in the case of a company that has not previously been required to furnish an annual return of income under the Income Tax Act 1976 or the Tax Administration Act 1994, before the time specified in **section HG 4(5)** as that by which notice of shareholder elections in respect of the company and that income year is required to be furnished to the Commissioner; and
- (iii) subject to **section HG 15**, has not been revoked; and
- (d) no share in the company has, at any time during that income year, in the opinion of the Commissioner, been subject to any arrangement or series of related or connected arrangements for the purpose, or for purposes including the purpose, of making the company a company to which this section applies so as to defeat the intent and application of this section.

Compare: 1994 No 164 s HG 14

HG 14A Minority shareholders in loss attributing qualifying companies

For the purposes only of **section HG 14**, the requirements of **section HG 14(c)** are treated as fulfilled in respect of a shareholder who has not executed the notice of election, and who has an effective interest of less than 50% in a company at the time at which an election under **section HG 14(c)** is made in respect of the company, if—

- (a) any 1 or more other shareholders in the company whose effective interests in that company at that time aggregate 50% or more have executed the notice required by **section HG 14(c)(i)**; and

- (b) all the conditions required by **section HG 14** for a company to be a loss attributing qualifying company are fulfilled except that the notice required by **section HG 14(c)(i)** is not executed by each person who is sui juris and is at the date on which the notice is furnished a shareholder in the company.

Compare: 1994 No 164 s HG 14A

HG 15 Revocation of loss attribution elections

Sections HG 3(4) and (5), HG 5, HG 6, and HG 7 apply to an election made under **section HG 14 or HG 14A**, in respect of the revocation of that election, as if that election were, in the case of an election made by a director, an election made under **section HG 3(1)** or, in the case of an election made by a shareholder, a shareholder election made under **section HG 4(1)**.

Compare: 1994 No 164 s HG 15

HG 16 Net losses of loss attributing qualifying company to be attributed to shareholders

- (1) Subject to **section HG 17**, where a loss attributing qualifying company has a net loss for any income year, then, for the purposes of this Act,—
- (a) each shareholder who has an effective interest in the company for that income year is deemed to incur an amount of loss equal to the net loss of the company for that income year multiplied by the shareholder's effective interest in the company for that income year; and
- (b) subject to **subsection (2)**, the amount of loss deemed to be incurred by each shareholder is treated for the purposes of this Act as if it were a loss incurred by that shareholder in deriving counted income of that shareholder for that income year (except to the extent that the net loss of the company includes an attributed CFC loss or a FIF loss, in either of which cases the shareholder's amount of attributed loss is treated for the purposes of this Act as if it were attributed CFC loss or FIF loss, as the case may be, of the shareholder); and
- (c) the company is not entitled to carry that net loss forward in accordance with any of **sections IE 1, IE 3, IE 4, and IF 1** to

any income year succeeding that income year, but without prejudice to any right of the company under this Act to carry forward any other net loss.

- (2) Where, in respect of any company, any shareholder in that company, and any income year,—
- (a) either the company, the shareholder, or both have a non-standard balance date for that income year; and
 - (b) the company has a later balance date for the income year than the shareholder; and
 - (c) by reason of the difference in balance dates it is not practicable for the shareholder to ascertain, within the time allowed in accordance with section 37 of the Tax Administration Act 1994 for the furnishing of the shareholder's return of income for that income year, the amount of any net loss of the company attributable to the shareholder under this section in respect of that income year; and
 - (d) the shareholder elects that this subsection applies by applying accordingly the provisions of this Act,—
- the amount of any net loss of the company so attributable to the shareholder in respect of that income year is, notwithstanding section 38 of the Tax Administration Act 1994, treated for the purposes of this Act as if it were incurred by the shareholder on the first day of the immediately succeeding income year of the shareholder.
- (3) Notwithstanding **subsections (1) and (2)**, where and to the extent that, in relation to any loss attributing qualifying company and any income year of that company,—
- (a) any shareholder has a part of that company's net loss attributed to that shareholder in accordance with **subsections (1) and (2)**; and
 - (b) that company's net loss results in a reduction in the aggregate value of shares in that company; and
 - (c) that shareholder suffers no, or substantially no, part of such reduction, due to any factor or factors, including any right of the shareholder or any other person to sell any thing, or any right of any other person to require that shareholder or any other person to sell any thing,—
- the shareholder is, for the purposes of this Act in respect of that income year, deemed to have no part of that company's

net loss attributed to that shareholder in accordance with this section.

- (4) Where the attribution of any amount of a company's net loss is denied to a shareholder under **subsection (3)**, that amount—
- (a) is not attributed to any other shareholder; and
 - (b) may not be carried forward by the company under any of **sections IE 1, IE 3, IE 4, and IF 1**.

Compare: 1994 No 164 s HG 16

HG 17 Attributed CFC losses and FIF losses

- (1) Where a foreign loss election is deemed in accordance with this section to be in effect in respect of a loss attributing qualifying company in any income year,—
- (a) the amount of any attributed CFC loss and any FIF loss of the company for the income year is not included within any net loss attributed to and deemed to be incurred by shareholders under **section HG 16(1)(a) and (b)**; and
 - (b) the company may carry that amount of attributed CFC loss or FIF loss forward to a succeeding income year subject to and in accordance with **section IE 3 or IE 4**.
- (2) A foreign loss election is deemed to be in effect in respect of any income year of a loss attributing qualifying company where—
- (a) the company is at all times in the income year a qualifying company; and
 - (b) a notice in such form as the Commissioner may allow, executed by each person who is sui juris and is at the date on which the notice is furnished a shareholder in the company, electing that the company is to retain any attributed CFC losses and FIF losses, has been received by the Commissioner before—
 - (i) the first day of the income year; or
 - (ii) in the case of a company that has not previously been required to furnish an annual return of income under the Income Tax Act 1976 or the Tax Administration Act 1994, before the time specified in **section HG 4(5)** as that by which notice of shareholder elections in respect of the company and that income year is required to be given; and

- (c) no revocation of the foreign loss election is in effect for that income year.
- (3) A foreign loss election under this section may be revoked only by furnishing to the Commissioner a notice of revocation, in such form as the Commissioner may allow, executed by all persons who are sui juris and are shareholders in the company at the time of the notice of revocation, and, subject to **subsection (4)**, any such revocation takes effect—
 - (a) where no later income year is specified, on the first day of the income year of the company in which the notice of revocation was received by the Commissioner; or
 - (b) on the first day of such later income year as is specified in the notice.
- (4) Any revocation of a foreign loss election under this section does not apply in respect of any attributed CFC loss or FIF loss of the company that—
 - (a) has been carried forward under **section IE 3 or IE 4** to the income year in which the revocation takes effect; and
 - (b) arose for the company in an earlier income year.

Compare: 1994 No 164 s HG 17

HG 18 Company that ceases to be loss attributing qualifying company also ceases to be qualifying company

Where any company which is a loss attributing qualifying company for any income year ceases to be a loss attributing qualifying company for the immediately succeeding income year, that company is also deemed, for the purposes of this Act, and notwithstanding any other provision of this subpart, to have ceased to be a qualifying company on the first day of that immediately succeeding income year, but without prejudice to any ability of that company subsequently to become once again a qualifying company.

Compare: 1994 No 164 s HG 18

Subpart HH—Trusts

HH 1 Interpretation

- (1) For the purposes of this section, where any person (in this subsection referred to as the **first person**) has made any settlement to or for the benefit of a trust or on the terms of a trust,—
 - (b) where such settlement is of a nominal amount made at the request of any other person,—

- that other person is, in relation to that settlement, deemed to be the settlor and not the first person.
- (2) For the purposes of this section and the trust rules, without limiting the situations in which a person is a settlor by reason of that person indirectly undertaking any of the transactions specified in **paragraph (a)** of the definition of **settlor**, where a company (being at the time of settlement a controlled foreign company or which would have been at that time a controlled foreign company had it been at that time a foreign company) settles a trust or is deemed by virtue of this section to be a settlor of a trust, in respect of that trust the term **settlor** includes any person who at the time of the settlement of the trust held a control interest in any of the categories of control interest listed in **section EX 5(1)** of 10% or more, calculated in accordance with **sections EX 2 to EX 7**, or who would have at that time held such a control interest had that company been at that time a foreign company.
 - (3) For the purposes of this section and the trust rules, where a trustee of a trust (in this subsection called the **first trust**) settles a trust or makes any distribution to or on the terms of another trust (in this subsection called the **second trust**), **paragraph (a)** of the definition of **settlor**, in relation to the second trust, includes any person who is a settlor of the first trust, and includes any person who is a settlor of the first trust by the operation of this subsection.
 - (4) For the purposes of this section and the trust rules, where any person has, directly or indirectly, acquired any rights or powers in relation to a trustee or settlor of an existing trust, and that acquisition has the purpose or effect of enabling the person to require the trustee of the trust to treat the person or any other person nominated by that person as a beneficiary of that trust, the person is deemed to be a settlor of that trust.
 - (5) Subject to **subsection (6)**, for the purposes of this section and the trust rules, a trust is a charitable trust in any tax year if the income derived by the trustees of that trust in that tax year and any income derived by the trustee of that trust in prior tax years and not previously distributed is held in trust solely for charitable purposes.
 - (6) For the purposes of this section and the trust rules, no trust is a charitable trust in relation to any tax year if, in that tax year, a business is carried on by or on behalf of the trustees of that

trust and, in the carrying on of that business, any benefit or advantage, whether or not in money or money's worth, or any income of any of the kinds referred to in **sections CB 5 to CB 22, CB 29, CC 1, CC 3 to CC 8, CD 1, CE 1, CE 8, CF 1, CG 3, CQ 1, CQ 4, FF 3, and FF 4** is able to be afforded to, or received, gained, achieved, or derived by any person—

- (a) who is a settlor or trustee of the trust by which the business is carried on; or
- (b) who is a shareholder or director of the company by which the business is carried on; or
- (c) who is a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) where that person and that settlor or trustee or shareholder or director referred to in any of **paragraphs (a) to (c)** are associated persons by virtue of **section OD 7 or OD 8(3)**.—

and that person is able, by virtue of that capacity as settlor or trustee or shareholder or director or associated person, in any way (whether directly or indirectly) to determine, or to materially influence in any way the determination of, the nature or the amount of that benefit or advantage or that income or the circumstances in which it is or is to be so received, gained, achieved, afforded, or derived; and for the purposes of this subsection—

- (e) a person is, in relation to a trust, deemed to be a settlor of the trust and to gain a benefit or advantage in the carrying on of a business of the trust, in any case where that person has disposed of or disposes of, to the trust, any asset that is used by the trust in the carrying on of that business, and where that person retains or reserves an interest in that asset or where that asset will revert to that person:
- (f) the deriving by any trustee of any rents, fines, premiums, or other revenues from any asset is, in any case where any person, being a person of any of the kinds referred to in **paragraphs (a) to (d)**, has disposed of or disposes of, to the trust, any asset that is used by the trustee in the deriving of those rents, fines, premiums, or other revenues, and where that person retains or reserves an interest in that asset or that asset will revert to that person, deemed to be the carrying on of any business by the trustee:

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- (g) income is deemed not to be derived by any person of any of the classes referred to in **paragraphs (a) to (d)** in any case where the income consists of interest on money lent that, in the opinion of the Commissioner, is payable at not more than current commercial rates, having regard to the nature and term of the loan:
- (h) a person is not, by reason only that the person renders professional services to any trust or company by which a business is carried on, considered to be able to determine, or to materially influence the determination of, the nature or the amount of any benefit or advantage or income afforded to, or received, gained, achieved, or derived by that person or the circumstances in which it is or is to be so received, gained, achieved, afforded, or derived, in any case where that ability to so determine or to so materially influence results from the rendering by that person, in the course of and as part of the carrying on as a business of a professional public practice by that person, of professional services to the trust or company by which the business first mentioned in this paragraph is carried on; and, for the purposes of this paragraph, Public Trust, the Maori Trustee, and any trustee company are each deemed to be a person carrying on as a business a professional public practice.
- (7) For the purposes of this section and the trust rules, where any property of the kinds described in the definition of **corpus** is settled on a trust, the property is, unless this Act otherwise requires, deemed to be income derived by a trustee of that trust in the tax year in which it was settled on that trust.
- (8) This section and the trust rules do not apply to any unit trust or to any group investment fund to the extent to which it is treated as a company for the purposes of this Act.
- (9) Where a trust that is deemed for the purposes of this Act to be a company becomes a superannuation fund, the trust is for the purposes of this Act deemed to have been wound up on the date that it becomes a superannuation fund.
- (10) For the purposes of this section and the trust rules, where any person resident in New Zealand makes a settlement as an employer for the benefit of 1 or more employees on the terms of a trust established or created principally for the purpose of providing retirement benefits to beneficiaries who are natural

persons, which trust is neither a foreign superannuation scheme nor a superannuation fund, that person is, in relation to that settlement, deemed not to be a settlor of that trust.

Compare: 1994 No 164 ss HH 1, CF 2(3A)(b)

HH 1A Treatment of settlements on trust

For the purposes of this subpart, if a settlement is made on a trust and further settlements are made on the same terms, a trustee of the trust may treat all settlements as 1 trust.

Compare: 1994 No 164 s HH 1A

HH 2 Trusts settled by persons before becoming resident

- (1) Where any settlor of a trust (being a natural person) becomes resident in New Zealand and had a distribution been made from that trust on the day immediately preceding the day on which the settlor became resident in New Zealand that trust would have been in relation to that distribution a foreign trust, any settlor, trustee, or beneficiary of the trust may, within 12 months of the day on which the settlor first became resident in New Zealand, elect under **section HH 4(7)** to satisfy the income tax liability in respect of the taxable income of the trustee of the trust.
- (2) Where an election has been made in accordance with **sub-section (1)**, for the purposes of the definition of **taxable distribution**,—
 - (a) the trust is deemed to be a foreign trust to the extent to which any distribution from that trust consists of income, capital profits, or capital gains derived by the trustee of the trust before the date on which the election was made; and
 - (b) the trust is deemed to be a qualifying trust to the extent to which any distribution from the trust consists of income, capital profits, or capital gains derived by the trustee of the trust on or after the date on which the election was made if the trustee's obligations under this Act and the Tax Administration Act 1994 in respect of the trustee's liability to income tax in respect of the trustee income derived by the trustee have been satisfied, and if, in the tax year in which the election was made or any subsequent tax year, the trustee's obligations are not satisfied, the trust is deemed to be a non-

qualifying trust with respect to any distributions made in that tax year and succeeding tax years (not being distributions to which **paragraph (a)** applies).

- (3) Where an election has not been made in accordance with **subsection (1)**, for the purposes of the definition of **taxable distribution**,—
- (a) the trust is deemed to be a foreign trust to the extent to which any distribution from that trust consists of income, capital profits, or capital gains derived by the trustee of the trust before the date on which expires 12 months from the day on which the settlor first became resident in New Zealand (referred to in this section as the **election expiry date**); and
 - (b) the trust is deemed to be a non-qualifying trust to the extent to which any distribution from the trust consists of income, capital profits, or capital gains derived by the trustee of the trust on or after the election expiry date.
- (4) For the purposes of **subsections (2) and (3)**, the income, capital profits, or capital gains derived in the part of the tax year before the election to pay tax was made or before the election expiry date, as the case may be, must be calculated at the option of any trustee, settlor, or beneficiary of the trust who is required to satisfy the income tax liability in respect of the taxable income of the trustee of the trust as—
- (a) the amount calculated in accordance with the following formula:

$$a \times \frac{b}{365}$$

where—

- a is the income, capital profits, or capital gains derived by the trustee of the trust during the tax year in which the election is made or in which the election expiry date falls
- b is the number of days in the tax year which fall before the day on which the election is made or before the election expiry date; or
- (b) the income, capital profits, or capital gains derived by the trustee of the trust in the part of the tax year which falls before the day on which the election is made or before the election expiry date.

Compare: 1994 No 164 s HH 2

HH 3 Income assessable to beneficiaries

- (1) The income of any person in any tax year includes any beneficiary income and any taxable distribution derived other than from a non-qualifying trust by that person in that tax year.
- (2) Where any beneficiary derives in any tax year beneficiary income or a taxable distribution, the trustee must in respect of that beneficiary income or taxable distribution satisfy the income tax liability of the beneficiary as agent of the beneficiary.
- (3) Notwithstanding any other provision of this Act, where any person resident in New Zealand ceases to be resident in New Zealand and, within a period of not more than 5 years from the day upon which that person ceased to be resident, that person again becomes resident in New Zealand, for the purposes of this section that person is deemed to derive, on the day on which that person again becomes resident in New Zealand, any amount which would have been income of the person, if the person had during that period remained in New Zealand, as beneficiary income from a foreign trust or a non-qualifying trust or taxable distributions derived by that person during the period commencing with the day on which that person ceased to be resident in New Zealand and ending on the day on which that person again became resident in New Zealand:
provided that this subsection does not apply to beneficiary income or taxable distributions derived by that person prior to 16 December 1988 (being the date upon which the Income Tax Amendment Act (No 5) 1988 received the Royal assent).
- (4) Where any person derives in any tax year any taxable distribution from a trust which is, in relation to that distribution, a non-qualifying trust, that taxable distribution is not income of the person and the person is liable for tax by way of an income tax in respect of that taxable distribution at the rate specified in **schedule 1**:
provided that where in that tax year the person has any net loss or net loss carried forward to which relief would be given under **section IE 1 or IF 1**, that person is entitled to subtract from that taxable distribution an amount calculated in accordance with the following formula: $\frac{a \times b}{c}$
where—

- a is such part of the net loss or net loss carried forward as the person claims must be taken into account by virtue of this proviso
 - b is the minimum rate specified in **schedule 1** for income tax on taxable income of trustees of trusts expressed as a decimal
 - c is the rate specified in **schedule 1** first mentioned in this subsection expressed as a decimal,—
- and, to the extent to which any net loss or net loss carried forward is taken into account by virtue of this proviso, the loss may not be offset by the person against the person's net income or carried forward by the person.
- (5) Distributions (not being beneficiary income) derived by any beneficiary in that beneficiary's capacity as beneficiary in any tax year from any trust that is in relation to that distribution a qualifying trust is excluded from being income of the beneficiary.
- (6) This section does not apply to a Maori authority or a Maori to whom **subpart HI** applies.

Compare: 1994 No 164 s HH 3

HH 3A Beneficiary income of minors

- (1) If a minor derives beneficiary income,—
- (a) a trustee of the trust from which the beneficiary income is derived must pay income tax on the beneficiary income as if the beneficiary income were trustee income:
 - (b) despite **section HH 3(1)**, the beneficiary income is excluded from being income of the minor.
- (2) For the purpose of debiting and crediting a beneficiary's account within a trust, income tax paid by the trustee of a trust on beneficiary income is paid on behalf of the beneficiary, being a minor.

Compare: 1994 No 164 s HH 3A

HH 3B Exemption for beneficiary income \$1,000 or less

Section HH 3A does not apply if the amount of beneficiary income derived by a minor in relation to a tax year is \$1,000 or less.

Compare: 1994 No 164 s HH 3B

HH 3C Source of beneficiary income

- (1) **Section HH 3A** does not apply to beneficiary income derived by a minor from a trust if all settlements on the trust were either—
 - (a) made by a person who is neither a relative or legal guardian of the minor nor a person associated with the relative or legal guardian; or
 - (b) made by a relative, legal guardian, or associated person as an agent of the minor if the settlor has received the property from someone other than a relative, guardian, or associated person; or
 - (c) made by a relative, legal guardian, or associated person if the settlor is required by a court order to pay damages or compensation to the minor; or
 - (d) made by a relative, a legal guardian, or an associated person, against whom a protection order has been made under section 14 of the Domestic Violence Act 1995; or
 - (e) made according to a will, codicil, intestacy, or a court variation of a will, codicil, or intestacy if—
 - (i) the minor is alive within 12 months of the date of the settlor's death; or
 - (ii) the minor has a brother, sister, half-brother, or half-sister who is alive within 12 months of the date of the settlor's death.
- (2) **Subsection (1)(d)** applies if—
 - (a) the minor is a protected person, as defined in section 2 of the Domestic Violence Act 1995, in relation to the protection order; and
 - (b) the settlement on the trust is made before the protection order is made or during the time the protection order is in force.
- (3) For the purposes of **subsection (1)(d)**, a settlement on the trust may be made jointly with another person.

Compare: 1994 No 164 s HH 3C

HH 3D Treatment of various settlements

- (1) If more than 1 settlement is made on a trust and 1 or more settlements are not of the type referred to in **section HH 3C**, **section HH 3A** does not apply to beneficiary income derived by a minor from the trust if—

- (a) all the settlements that are not of the type referred to in **section HH 3C** satisfy either—
 - (i) **paragraph (a)(i)** of the definition of **settlor**; or
 - (ii) **paragraph (a)(ii)** of the definition of **settlor**, being financial assistance by way of a loan for less than market value; and
 - (b) the settlements that satisfy **paragraph (a)(i)** of the definition of **settlor** have a total value of not more than \$5,000 at the end of the trust's tax year; and
 - (c) the settlements that satisfy **paragraph (a)(ii)** of the definition of **settlor** relate to loans that are for less than market value and the loans have a total value of not more than \$1,000 on any day in the trust's tax year.
- (1A) **Subsection (1)** does not apply if more than 1 settlement is made on a trust and none of the settlements are of the type referred to in **section HH 3C**.
- (2) For the purposes of **subsection (1)(b)**, a settlement is valued on the date of settlement.
- (3) This section does not apply if services are provided to a trust by a relative or a legal guardian of a minor or by a person associated with the relative or the legal guardian.
- (4) In **subsection (3)**, **services** does not include services that are incidental to the operation of the trust, such as bookkeeping or accounting services or those provided in being a trustee.

Compare: 1994 No 164 s HH 3D

HH 3E Exceptions

- (1) **Section HH 3A(1)** does not apply to beneficiary income derived by a minor for whom a child disability allowance is paid under the Social Security Act 1964.
- (2) **Section HH 3A(1)** does not apply to beneficiary income derived directly by a minor from a group investment fund or derived by a minor from the Maori trustee or a Maori authority.

Compare: 1994 No 164 s HH 3E

HH 3F Definitions of guardian, minor, and relative

- (1) In **sections HH 3C and HH 3D**, **guardian** has the corresponding meaning to the definition of **guardianship** as set out in section 3 of the Guardianship Act 1968, but does not include a guardian appointed under—

- (a) section 110(1)(a), (b), (c), or (d) of the Children, Young Persons, and Their Families Act 1989; or
 - (b) section 10B of the Guardianship Act 1968; or
 - (c) section 53 of the Public Trust Office Act 1957 by a court order; or
 - (d) section 7(4) of the Adoption Act 1955.
- (2) In **sections HH 3A to HH 3E, LB 1, and LB 1A, minor** means a natural person who is a New Zealand resident and who is, on the balance date of the trust making the distribution of beneficiary income, under 16 years of age.
- (2A) In **subsection (2)**, the balance date of the trust is the balance date for the income year in which the income, from which the distribution of beneficiary income is made, is derived.
- (3) In **sections HH 3C and HH 3D, relative**, in relation to a person (**person A**), means another person (**person B**) connected with person A by blood relationship, marriage, or adoption and includes the trustee of a trust under which person B has benefited or is eligible to benefit.
- (4) In **subsection (3)**,—
- (a) persons are connected by blood relationship if within the fourth degree of relationship:
 - (b) persons are connected by marriage if—
 - (i) 1 person is married to the other or to a person who is connected by blood relationship, adoption, or guardianship to the other; or
 - (ii) 1 person is in a relationship in the nature of marriage to the other or to a person who is connected by blood relationship, adoption, or guardianship to the other:
 - (c) persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:
 - (d) persons are connected by guardianship if one is a guardian of the other.

Compare: 1994 No 164 s HH 3F

HH 4 Trustee income

- (1) Subject to this section and **sections CX 35, DV 1 to DV 4, and DV 8**, a trustee is required to satisfy the income tax liability in respect

of the taxable income of the trustee as if the trustee were an individual beneficially entitled to the trustee income.

- (2) A trustee is not entitled—
 - (a) to any rebate of income tax; or
 - (b) to be a cash basis person, unless the trustee meets the requirements of **section EW 68**.
- (3) Subject to **subsection (7) and section HH 2**, if a trustee who is not resident in New Zealand derives in a tax year any amount from outside New Zealand that would be income if derived by a resident of New Zealand, that amount is deemed to be income of the trustee if at any time in the tax year—
 - (a) any settlor of the trust is resident in New Zealand; or
 - (b) the trust is a superannuation fund; or
 - (c) any trustee of the trust was resident in New Zealand and the trust is a testamentary trust or an inter vivos trust where any settlor of the trust died resident in New Zealand, whether in that tax year or otherwise.
- (3A) In calculating the taxable income of a trustee to whom **subsection (3)** applies, and for no other purpose, the trustee is deemed not to be a non-resident for the purposes of **section BD 1(2)** and is deemed to be resident in New Zealand for the purposes of **sections EW 5, EW 7, EW 17, LC 1, and MF 11**, the FIF rules, and the international tax rules.
- (3B) If a trustee resident in New Zealand derives in a tax year any foreign-sourced amount, that amount is exempt income if no settlor of the trust is resident in New Zealand at any time during the tax year and that trust is neither—
 - (a) a superannuation fund; nor
 - (b) a testamentary trust or an inter vivos trust where any settlor of the trust died resident in New Zealand, whether in that tax year or otherwise.
- (4) Subject to **subsection (5)**, where, in relation to any trust (not being a charitable trust) and any tax year, a trustee of the trust derives trustee income, and a settlement was made to or for the benefit of the trust or on the terms of the trust by any person after 17 December 1987 (whether or not that person or any other person may have also made a settlement on the terms of that trust on or before 17 December 1987), any settlor of the trust who is resident in New Zealand at any time during that tax year is liable as agent of the trustee for any income tax payable by the trustee (other than income tax payable by the

trustee in the trustee's capacity as agent) and, if there is more than 1 such settlor, those settlors are, in respect of that income tax payable, jointly and severally so liable.

- (5) **Subsection (4)** does not apply to—
- (a) any settlor of a trust in any tax year where at all times during that tax year (or, where a settlement is first made to or for the benefit of that trust or on the terms of that trust during that tax year, at all times from the day of that settlement until the end of that tax year) a trustee of that trust is resident in New Zealand; or
 - (b) any settlor of a superannuation fund; or
 - (c) any settlor of a trust (being a natural person) who was at the time of any settlement by that settlor on the trust not resident in New Zealand and who had not at the time of any settlement previously (at any time after 17 December 1987) been resident in New Zealand, unless the settlor elects to satisfy the income tax liability in respect of the taxable income of the trustee under **subsection (7)**; or
 - (d) any settlor of a trust to the extent to which that settlor can establish to the satisfaction of the Commissioner by making full disclosure of all relevant facts that the liability of that settlor to satisfy the income tax liability of the trustee exceeds the liability which that settlor should bear by comparison to other persons who have made a settlement to or for the benefit of the trust or on the terms of that trust having regard to the respective settlements made by that settlor and those other persons; or
 - (e) any settlor of a trust to the extent to which the trustee income is derived by virtue of the application of the financial arrangements rules to any amounts remitted by the settlor under any financial arrangement where **section EW 37** applies:
provided that **paragraph (d)** does not apply in determining the nature and extent of the obligations of the trustee of the trust and whether those obligations have been satisfied for the purposes of the definition of **qualifying trust** and the application of that definition.
- (6) Where in any tax year an amount is income under **subsection (3)** and—
- (a) either—

- (i) no settlement was made to or for the benefit of the trust or on the terms of the trust after 17 December 1987 and, where any election has been made under **section HZ 2** to pay income tax on trustee income, that election has not been made by the trustee; or
 - (ii) the only settlements made to or for the benefit of the trust or on the terms of the trust have been made by settlors who, at the time of the settlement, were not resident in New Zealand nor had previously (at any time after 17 December 1987) been resident in New Zealand and, where an election has been made under **section HZ 2** to pay income tax on trustee income, that election has not been made by the trustee; and
- (b) the trustee is at all times during that tax year resident outside New Zealand,—

the amount is exempt income under **subsection (3)**:

provided that this subsection does not affect the income tax liability of any settlor of a trust under **sections HH 1 and HH 2** and the trust rules:

provided also that for the purpose of determining whether a trust is or remains a qualifying trust or is deemed to be a qualifying trust, and for the purpose of the application of the definition of **qualifying trust**, this subsection does not apply in determining whether the trustee's obligations in relation to that liability have been satisfied.

- (7) In relation to any trust and any tax year, any trustee, settlor, or beneficiary of a trust may furnish to the Commissioner within the prescribed period for furnishing an annual return of income for that tax year, or within such other period as may be specified in **section HH 2**, an election to satisfy the income tax liability of the trustee for that tax year or from the date of the election and, if an election is so made, the trustee, settlor, or beneficiary is liable for any income tax payable by the trustee (other than income tax payable in the trustee's capacity as agent) and that election applies in respect of that tax year or from the date of the election, and in respect of all succeeding tax years.

- (8) This section does not apply to a Maori authority or a Maori to whom **subpart HI** applies.

Compare: 1994 No 164 s HH 4

HH 5 Existing trusts becoming subject to tax

Where, in relation to any trust and any tax year, amounts derived by the trustee of that trust on or after any date in that tax year are trustee income, but would not have been trustee income had they been derived immediately before that date (other than only as non-resident withholding income),—

- (a) the cost for the purposes of this Act at that date of the premises, plant, machinery, equipment, and trading stock of that trust is deemed to be, at the option of any person who is liable for any income tax payable by the trustee,—
- (i) the historical cost of the asset, less accumulated amounts of depreciation loss (if any), or other value at that date used for the purposes of income tax calculations in any country or territory in which there has been a liability to income tax in respect of the trustee income of the trust (being a value not higher than the market value at that date); or
- (ii) the value which would be used for the purposes of this Act at that date calculated as if the trustee income of that trust had at all times been counted income under this Act (other than only as non-resident withholding income):
- (b) the consideration for a financial arrangement on that date is, at the option of the person who is liable for income tax payable by the trustee,—
- (i) the market value of the financial arrangement on that date; or
- (ii) the absolute value of the result of the formula—
- $$\begin{array}{l} \text{consideration paid to the person} + \text{expenditure} \\ - \text{consideration paid by the person} - \text{income} \end{array}$$

where—

consideration paid to the person is the consideration paid to the person for all periods before the accounting period

expenditure	is expenditure that would have been incurred under the financial arrangements rules for all periods before the accounting period
consideration paid by the person	is the consideration paid by the person for all periods before the accounting period
income	is income that would have been derived under the financial arrangements rules for all periods before the accounting period.

Compare: 1994 No 164 s HH 5

HH 6 Distributions from trusts

- (1) Subject to **subsection (2)**, where in any tax year any distribution from a trust is made to a beneficiary by any trustee, that distribution is, for the purposes of **sections HH 1 and HH 2** and the trust rules, deemed to consist of—
- (a) the income derived by the trustee in that tax year (whether, as between the parties to the trust, the income is treated as derived by a beneficiary or not) less any deductions in that tax year required to be taken into account under this Act for the purpose of calculating net or taxable income, not being income deemed by this section to have constituted part of any earlier or contemporaneous distribution from that trust in that tax year; and
 - (b) to the extent to which the distribution exceeds the amount specified in **paragraph (a)**, income derived by the trustee in preceding tax years (not being beneficiary income) during which the trust was in existence less any deductions in that tax year required to be taken into account under this Act for the purpose of calculating net or taxable income, not being amounts deemed by this section to have constituted part of any earlier or contemporaneous distribution from that trust; and
 - (c) to the extent to which the distribution exceeds the amounts specified in **paragraphs (a) and (b)**, profits derived during that tax year by the trustee of the trust from realisation of a capital asset of the trust or any other capital profit or capital gain realised during that tax year by the trustee (not being amounts required to be taken into account under this Act for the purpose of assessing income tax) less any capital loss incurred by the trust in

that tax year (not being a loss required to be taken into account under this Act for the purpose of assessing income tax), not being profits or gains deemed by this section to have constituted part of any earlier or contemporaneous distribution from that trust in that tax year; and

- (d) to the extent to which the distribution exceeds the amounts specified in **paragraphs (a), (b), and (c)**, the distribution is deemed to be out of the amount specified in **paragraph (c)** for preceding tax years during which the trust was in existence, not being amounts deemed by this section to have constituted part of any earlier or contemporaneous distribution from that trust; and
 - (e) to the extent to which the distribution exceeds the amounts specified above, corpus of the trust.
- (2) **Subsection (1)** does not apply—
- (a) to any distribution from a trust which is a qualifying trust (other than a qualifying trust in relation to which an election to pay income tax on trustee income has been made for the purposes of **section HZ 2**); or
 - (b) to any distribution from a trust—
 - (i) created by will or codicil or by an order of court varying or modifying the provisions of any will or codicil; or
 - (ii) created on any intestacy or partial intestacy; or
 - (iii) on which no settlement was made after 17 December 1987,—and the trustee has no discretion as to the source nature and amount of distributions to beneficiaries, including but not limited to the classification of trust property as capital or income; or
 - (c) to any distribution that is a distribution only by virtue of the application of **paragraph (a) or (b)** of the definition of **distribution** and not by virtue of the application of any other part of that definition; or
 - (d) to any distribution from a trust which is one to which **section HH 2(2)** applies (except where the trust is deemed to be a non-qualifying trust under **paragraph (b)** of that subsection)—
- and in such case except in the case of a distribution specified in **paragraph (c)** of this subsection the distribution is deemed to consist of such amounts as reflect the terms of the trust or the

terms of the exercise of the discretion of the trustee, and, in the case of a distribution specified in **paragraph (c)**, the distribution is a taxable distribution.

- (3) Subject to **subsection (2)**, where and to the extent to which in relation to any distribution the records maintained in relation to any trust do not permit **subsection (1)** to be applied accurately to determine the constituent elements of any distribution, the distribution made is a taxable distribution.
- (4) For the purposes of this section, in determining in relation to any trust and to any beneficiary the constituent elements of any distribution, no amount of income or capital profits or gains derived by the trustee of the trust is treated as having been distributed to any other beneficiary of that trust if the effect is that any part or all of the distribution in question would be treated as not being a taxable distribution, unless that amount distributed to that other beneficiary was distributed in a bona fide transaction which placed the whole of that amount beyond the possession and control of the trustee in the trustee's capacity as trustee of that trust and which transaction did not itself constitute a settlement.

Compare: 1994 No 164 s HH 6

HH 7 Commissioner may determine amount of trustee income

Where any person—

- (a) has failed to disclose for any tax year in accordance with section 59 of the Tax Administration Act 1994 a trust of which that person is a settlor or any of the further details required by the Commissioner; or
- (b) has failed to disclose any information requested by the Commissioner under section 37 of the Tax Administration Act 1994 in relation to that trust; or
- (c) is unable to obtain sufficient information to calculate the trustee income of that trust for any tax year,—

the Commissioner may determine the amount of trustee income for the tax year in such manner as the Commissioner considers fair and reasonable.

Compare: 1994 No 164 s HH 7

HH 8 Income received by trustee after death of deceased person

Any amount received in any tax year by the trustee of the estate of a deceased person is deemed to be income derived by the trustee in that tax year if it does not represent income derived by the deceased person during that person's lifetime, but would have been included in that person's income if that person had been alive when it was received.

Compare: 1994 No 164 s HH 8

Subpart HI—Maori authorities**HI 1 Distributions and income of Maori authorities**

- (1) For the purposes of this section and **sections DV 12 and HI 2 to HI 5**, and sections 31 and 57 of the Tax Administration Act 1994, an amount is deemed to be distributed by a Maori authority to a Maori—
 - (a) where the amount is paid or credited by the Maori authority to the Maori in any manner or under any name, or is applied by the Maori authority exclusively for the individual personal benefit of the Maori:
 - (b) where any amount is advanced by the Maori authority to the Maori or for the individual personal benefit of the Maori, to the extent to which, in the opinion of the Commissioner, the making of the advance was not a bona fide investment by the Maori authority but was virtually a distribution of income:
 - (c) where any property is transferred or otherwise disposed of by the Maori authority to the Maori without consideration in money or money's worth or for a consideration that is less than the market price or true value of that property, to the extent by which the market price or true value exceeds the amount or value of the consideration (if any).
- (2) Any amount distributed by a Maori authority to a Maori is deemed to be distributed out of income except to the extent to which the Commissioner determines that the amount does not represent income derived by the Maori authority:
provided that, where the distribution is made in the course of the winding up or liquidation or termination of a trust or authority, the amount distributed is deemed to be distributed out of income to the extent only to which the Commissioner

determines that the amount represents either income derived in the tax year in which the distribution is made or income derived in a previous tax year which has not been taken into account in the calculation of taxable income of the Maori authority.

- (3) For the purposes of this Act, the income derived by a Maori authority that is a Maori incorporation is deemed to be derived in trust for its shareholders.

Compare: 1994 No 164 s HI 1

HI 1A Distribution by Treaty of Waitangi Fisheries

Commission

For the purposes of **section HI 1(2)**, the distribution of assets by the Treaty of Waitangi Fisheries Commission is treated as being a distribution made in the course of the termination of a Maori authority.

Compare: 1994 No 164 s HI 1A

HI 3 Tax in respect of Maori authorities with more than 20 beneficiaries

- (1) This section applies where income is derived or held by a Maori authority in respect of any trust or authority during any tax year in trust for or on behalf of or for the benefit of any number of Maori exceeding 20 at the end of the tax year.
- (2) Any amount distributed by the Maori authority to any Maori during any tax year out of income is deemed to be dividends derived by the Maori in that tax year (whether it was derived by the Maori authority in that tax year or any previous tax year).
- (3) A Maori authority is in any tax year allowed a deduction in respect of all amounts (if any) distributed by the Maori authority to any Maori in that tax year out of income.
- (4) Where the amount distributed by the Maori authority to any Maori during any tax year out of income exceeds the amount that would be the net income of the Maori authority for that tax year in the absence of this section, the Maori authority may be allowed a deduction for the amount of the excess for

any of the 4 immediately preceding tax years and an assessment must be made in respect of the Maori authority accordingly.

Compare: 1994 No 164 s HI 3

HI 4 Tax in respect of Maori authorities with 20 or fewer beneficiaries

- (1) Where income is derived by a Maori authority in respect of any trust or authority during any tax year in trust for or on behalf of any number of Maori not exceeding 20 at the end of the tax year, this section applies with respect to income tax.
- (2) The amount that would be the net income or net loss of the Maori authority if the sources of the income referred to in **subsection (1)** were its only sources of income is included in the calculation of taxable income of the Maori authority as trustee for the Maori and also included in the calculation of the taxable income of each Maori according to that Maori's interest in the trust or authority as beneficiary income and **section HH 3** applies accordingly. The Maori authority is in respect of that income deemed to be the agent of each Maori, and each Maori as principal as well as the Maori authority as that Maori's agent is liable for income tax in respect of his or her interest in that income accordingly, and all the provisions of this Act and of the Tax Administration Act 1994 as to agents, so far as applicable, apply accordingly.

Compare: 1994 No 164 s HI 4

HI 5 Adjustments where section HI 3 or HI 4 ceases to apply by reason of change in number of beneficiaries

Where during any tax year the number of Maori having a beneficial interest in the income of a Maori authority in respect of any trust or authority—

- (a) decreases so that at the end of the tax year **section HI 3** does not apply; or
- (b) increases so that at the end of the tax year **section HI 4** does not apply,—

the Commissioner may make such adjustments in the assessments of income tax as the Commissioner considers just and reasonable, having regard to all relevant circumstances.

Compare: 1994 No 164 s HI 5

Subpart HJ—Superannuation

HJ 1 Government Superannuation Fund

The Government Superannuation Fund Authority is liable for income tax in the same manner in all respects as if the Fund were a superannuation scheme that is a trust and the Government Superannuation Fund Authority were the trustee of that scheme.

Compare: 1994 No 164 s HJ 1

Subpart HK—Agency

Agents generally

HK 1 Agent to make returns and be assessed as principal

- (1) A person who is an agent for a principal under this Act or under the Tax Administration Act 1994 is, in the person's capacity as agent for that principal, treated as being a separate taxpayer with respect to the income in respect of which the person is agent and must—
 - (a) make all assessments that the principal is required to make; and
 - (b) furnish all tax returns that the principal is required to furnish; and
 - (c) satisfy the income tax liability of the principal.
- (2) A person who is an agent under **subsection (1)** is not entitled to a rebate other than a rebate to which the agent's principal is entitled.

Compare: 1994 No 164 s HK 1

HK 2 Rate and amount of tax payable by agent

Except where otherwise expressly provided by this Act, the rate of tax used to calculate an agent's income tax liability must be determined by reference to the taxable income of the principal, but it must be charged and payable in the same proportion as the income subject to **section HK 1** bears to the taxable income of the principal.

Compare: 1994 No 164 s HK 2

HK 3 Liability of principal not affected

- (1) Nothing in this Act relating to an agent is to be so construed as to release the principal from liability to make assessments, furnish returns, and to be charged with tax.
- (1A) With the Commissioner's agreement, a principal may agree with their agent that the principal will—
 - (a) make an assessment that the agent would be required to make; and
 - (b) furnish a return that the agent would be required to furnish; and
 - (c) satisfy an income tax liability that the agent would be required to satisfy.
- (2) No assessment of the agent precludes an assessment of the principal for the same tax, nor does an assessment of the principal by the Commissioner preclude an assessment of the agent by the Commissioner for the same tax, and the principal and agent are jointly and severally liable for all tax for which the agent is liable.
- (3) When 2 or more persons are liable as agents in respect of the same tax, they are jointly and severally liable for it.

Compare: 1994 No 164 s HK 3

HK 4 Agent may recover tax from principal

When an agent pays any tax, the agent may recover the amount so paid from the agent's principal or may deduct the amount from any money in the agent's hands belonging or payable to the agent's principal.

Compare: 1994 No 164 s HK 4

HK 5 Agent may retain from money of principal amount required for tax

An agent may from time to time during the tax year, or at any later time, retain out of any money belonging or payable to the agent's principal such sums as may reasonably be deemed sufficient to pay the tax for which the agent is or may become liable.

Compare: 1994 No 164 s HK 5

HK 6 Assessment deemed authority for payment of tax by agent

An assessment made by the Commissioner is, as between an agent and the agent's principal, a sufficient authority for the payment by the agent of the tax so assessed and the agent is entitled as against the agent's principal to reimbursement accordingly.

Compare: 1994 No 164 s HK 6

HK 7 Agents to be personally liable for payment of tax

- (1) Every person who is an agent is personally liable for the income tax liability of the person in respect of the person's taxable income as agent.
- (2) When the Commissioner is satisfied that an agent has no money of the agent's principal with which the agent can pay the tax, and that the agent has not paid away any such money after an assessment in respect of the agent has been made, and that immediate enforcement of payment by the agent would be a cause of hardship, the Commissioner may set a new due date for payment of the tax assessed as payable in the notice of assessment.

Compare: 1994 No 164 s HK 7

HK 8 Relation of principal and agent arising in effect

When the Commissioner is satisfied that any person carrying on business in New Zealand (in this section referred to as the **agent**) is so far under the control of any other person carrying on business in New Zealand or elsewhere (in this section referred to as the **principal**) that the relation between them is in effect that of agent and principal, the Commissioner may treat the first-mentioned business as that of the principal, and as being carried on by the agent on the principal's behalf, and may require returns to be made, and may make assessments accordingly, and the principal and agent are liable for income tax accordingly.

Compare: 1994 No 164 s HK 8

Special cases of agency

HK 9 Guardian of person under disability to be agent

Every person who, as guardian, manager, or otherwise, has the receipt, control, or disposition of any income derived by a person under any legal disability is for the purposes of this Act and the Tax Administration Act 1994 the agent of that person in respect of that income.

Compare: 1994 No 164 s HK 9

HK 10 Liability of mortgagee in possession

For the purposes of this Act and the Tax Administration Act 1994, a mortgagee in possession of any land or other property is deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor.

Compare: 1994 No 164 s HK 10

HK 11 Liability for tax payable by company left with insufficient assets

- (1) This section applies where—
 - (a) any arrangement has been entered into in relation to a company; and
 - (b) an effect of that arrangement is that the company is unable to satisfy under this Act a liability for income tax (referred to in this subsection as the **tax liability**) of the company, whether the tax liability exists at the time of entry into the arrangement or arises subsequently; and
 - (c) it can reasonably be concluded that—
 - (i) a director of the company at the time of entry into the arrangement who had made all reasonable inquiries into the affairs of the company would have anticipated at that time that the tax liability would be, or would be likely to be, required to be satisfied by the company under this Act; and
 - (ii) a purpose of the arrangement was to have the effect specified in **paragraph (b)**.
- (2) This section does not apply to—
 - (a) any arrangement to which the Commissioner is a party; or

- (b) any arrangement to the extent that the Commissioner is satisfied that the tax liability is less than or equal to any amount of income tax—
 - (i) arising under this Act as a direct result of the performance of the arrangement; and
 - (ii) the liability for which has been duly satisfied under this Act; or
 - (c) any arrangement entered into at a time when the company is under statutory management under the Reserve Bank of New Zealand Act 1989 or the Corporations (Investigation and Management) Act 1989.
- (3) Where any arrangement to which this section applies has been entered into, all persons who were directors of the company at the time the arrangement was entered into are, subject to **subsection (6)**, jointly and severally liable for the tax liability as agent of the company.
- (4) Where any arrangement to which this section applies has been entered into, any person who was—
- (a) a controlling shareholder at the time the arrangement was entered into; or
 - (b) a person who had a voting interest or market value interest in the company (calculated, in any case where the person is a company, as if the person were not a company) at the time the arrangement was entered into, where it could reasonably be concluded, having regard to the materiality of the benefit derived by the person from the arrangement, that the person was a party to the arrangement,—
- is liable as agent of the company for—
- (c) the tax liability (exclusive of any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment of any part of the tax liability) to the extent that the amount of the tax liability (so exclusive) does not exceed the greater of—
 - (i) the market value of the person's direct and indirect shareholding in the company at the time of entry into the arrangement; and
 - (ii) the value of any benefit derived by the person from the arrangement; and
 - (d) that proportion of any late payment penalty or interest arising under this Act or the Tax Administration Act

1994 for late payment, which comprises part of the tax liability, which is equal to the proportion which the amount for which the person is liable under **paragraph (c)** represents as a proportion of the tax liability (exclusive of any such late payment penalty or interest).

- (5) A limitation placed on the liability of any person under **subsection (4)** applies notwithstanding **section HK 3(3)**.
- (6) Notwithstanding **subsection (3)**, a director is not liable under that subsection for any tax liability of the company where the Commissioner is satisfied that the director derived no benefit from the arrangement and either—
 - (a) the director has, at the first reasonable opportunity after becoming aware of the arrangement, or of those aspects of the arrangement that render it subject to this section,—
 - (i) formally recorded with the company his or her dissent in relation to the arrangement; and
 - (ii) notified the Commissioner of the arrangement and of his or her dissent from that arrangement; or
 - (b) the director satisfies the Commissioner that—
 - (i) the director was not at the material time or times involved in the executive management of the company; and
 - (ii) the director had no knowledge of the arrangement, or of those aspects of the arrangement that render it subject to the application of this section.
- (7) Subject to the time bar, but notwithstanding any other provision of this Act or the Tax Administration Act 1994, for the purposes of giving effect to this section where a company has been liquidated, the Commissioner may at any time after the liquidation make or amend any assessment of a company under this Act or an earlier Act or the Tax Administration Act 1994 in respect of any tax liability of the company as if the company had not been liquidated.
- (8) Where the Commissioner makes or amends any assessment under **subsection (7)**, the Commissioner must nominate 1 or more persons whom the Commissioner considers to be liable in respect of the tax liability specified in that assessment and that person or those persons are treated, for the purposes of

this Act and the Inland Revenue Acts in respect of any notification or objection procedure in relation to that assessment or amended assessment, as the agent or agents of the company.

- (9) No person is liable under this section as agent for the tax liability of a company in respect of any particular tax year where—
- (a) the company has furnished returns for that tax year before the expiry of the time allowed under section 37 of the Tax Administration Act 1994 for the furnishing of returns for the tax year in which the company is liquidated; and
 - (b) the Commissioner fails to issue a notice of assessment of the company for the particular tax year before the expiry of 4 years following the end of the tax year in which the company is liquidated.

- (10) In this section,—

controlling shareholder means, at any time at which an arrangement to which this section applies is entered into, in respect of any company, any person whose voting interest or market value interest in that company, aggregated with the voting interest or market value interest or interests (as the case may be) of any other person or persons who are at that time associated with that person, at that time (calculated, in any case where either the person or any such associated person is a company, as if neither that person nor any such associated persons were companies and as if **sections OD 3(3)(c) and (d) and OD 4(3)(c) and (d)** were omitted from this Act) is equal to or greater than 50%

director means—

- (a) a person occupying the position of director by whatever name called;
- (b) in the case of an entity deemed or assumed to be a company by virtue of any provision of this Act, which entity does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993.

- (11) Except as otherwise specifically provided in this section, a person's market value interest or voting interest in a company is determined in accordance with **sections OD 2 to OD 4**.

Compare: 1994 No 164 s HK 11

HK 12 Company deemed agent of debenture holders

Save as otherwise provided in **sections FC 1 and HK 13**, every company which has issued debentures, whether charged on the property of the company or not, is for the purposes of this Act and the Tax Administration Act 1994 the agent of all debenture holders, whether absentees or not, in respect of all income derived by them from those debentures.

Compare: 1994 No 164 s HK 12

HK 13 Modification of agency provisions in respect of income from company debentures

- (1) The duty to act as the agents of debenture holders imposed on companies by **section HK 12** does not apply with respect to debentures issued to any person resident in New Zealand if the company that has issued the debentures has supplied to the Commissioner, before an assessment has been made, or should have been made, in any tax year taking into account the income derived from those debentures, a certified list specifying the numbers of the debentures or other particulars sufficient to identify them, the names, addresses, and descriptions of the persons to whom the debentures have been issued, the interest derived or derivable from the debentures, and such other particulars as may be prescribed.
- (2) Where any such list is supplied the person named in it as the holder of any debentures is liable for income tax (though not to the exclusion of any other person) accordingly, unless and until that person satisfies the Commissioner that they have transferred or assigned the debentures, and has given notice to the Commissioner in the prescribed form of the name, address, and description of the transferee or assignee.
- (3) Every person being the transferee or assignee of any debentures in like manner remains personally liable in respect of them (though not to the exclusion of any other person) unless and until the person has given notice to the Commissioner in the prescribed form of the transfer or assignment of the debentures.

- (4) Any tax paid by the former holder of any debentures in respect of the taxable income calculated taking into account income derived from the debentures by a subsequent holder is deemed to be paid on behalf of that subsequent holder so far as it does not exceed the income tax liability which the subsequent holder might personally have had in respect of those debentures and may be recovered by the former holder from the subsequent holder accordingly.

Compare: 1994 No 164 s HK 13

HK 14 Rents, royalties, or interest derived by Maori Trustee and not distributed

If and so far as amounts of rents, royalties, or interest derived by the Maori Trustee in the Maori Trustee's capacity as collecting and distribution agent for such amounts are not also beneficiary income, the Maori Trustee is liable for income tax in respect of taxable income calculated after taking into account those amounts as income as if the Maori Trustee were beneficially entitled to the amounts, except that the Maori Trustee is not entitled to any rebate of income tax under any of **sections KC 1 to KC 4**.

Compare: 1994 No 164 s HK 14

Agents of absentees and non-residents

HK 16 Liability of agent of absentee principal for returns and tax

Every person who in New Zealand carries on any business for and on behalf of a principal who is an absentee is for the purposes of this Act and the Tax Administration Act 1994 the agent of that principal in respect of all income derived by the principal through the business so carried on in New Zealand by means of that agent, whether the income comes to the hands of the agent or not.

Compare: 1994 No 164 s HK 16

HK 17 Partner of absentee deemed agent

Every person who in New Zealand carries on business in partnership with an absentee is for the purposes of this Act and the Tax Administration Act 1994 the agent of that absentee in respect of the absentee's share of the amount that would

be income of the business if the business were a person resident in New Zealand.

Compare: 1994 No 164 s HK 17

HK 18 Master of ship deemed agent of absentee owner

- (1) When an absentee, by means of any ship owned by the absentee or under charter to the absentee, carries on the business of the carriage of merchandise, mails, or passengers, the master of that ship is (though not to the exclusion of any other agent) the agent of that absentee for the purposes of this Act and the Tax Administration Act 1994 in respect of all income so derived by the absentee.
- (2) Pending the payment of any tax assessed against such an absentee or against any person who is the absentee's agent for the purposes of this Act and the Tax Administration Act 1994, a Customs officer must, on the requisition of the Commissioner, withhold the clearance of the ship in respect of which the tax is payable.

Compare: 1994 No 164 s HK 18

HK 19 Tenant, mortgagor, or other debtor to be agent of absentee landlord, mortgagee, or other creditor

- (1) Any tenant, mortgagor, or other person who transmits from New Zealand to any landlord, mortgagee, or other creditor, being an absentee, any rent, interest, or other money being income derived by that absentee from New Zealand, is for the purposes of this Act and the Tax Administration Act 1994 the agent of that absentee in respect of all money so transmitted at any time after the Commissioner has given notice to the person that the person is accountable as the agent of that absentee.
- (2) For the purposes of this section, any money paid by or on account of a person resident in New Zealand from a fund situated out of New Zealand is deemed to be money transmitted by that person from New Zealand.

Compare: 1994 No 164 s HK 19

HK 20 Person having disposal of income deemed agent

Every person who in New Zealand has the receipt, control, or disposal of any income derived by a principal who is an

absentee is for the purposes of this Act and the Tax Administration Act 1994 the agent of the principal in respect of that income.

Compare: 1994 No 164 s HK 20

HK 21 Company to be agent of absentee shareholders

A New Zealand company is the agent of all absentee shareholders and of all absentee holders of debentures to which **section FC 1 or FC 2** applies, and the company must treat as income of the company and make returns in respect of all dividends paid or credited by the company to any such shareholder or debenture holder while that shareholder or debenture holder is an absentee.

Compare: 1994 No 164 s HK 21

HK 22 Trustee of group investment fund to be agent of absentee investors

The trustee of any group investment fund is the agent of every investor in the group investment fund, being an investor who is an absentee, and must treat as income of the trustee and make returns in respect of all dividends paid or credited by the group investment fund to any such investor while that investor is an absentee.

Compare: 1994 No 164 s HK 22

HK 23 Banking company to be agent of absentee depositors

Every banking company, and every other company, local or public authority, or other person, who in the course of business receives or holds money by way of deposit and allows interest on the deposit is, for the purposes of this Act and the Tax Administration Act 1994, the agent of all depositors who are absentees and must treat as income of the person as agent and make returns in respect of any interest which is paid or credited to a depositor while the depositor is an absentee, if that interest exceeds \$100 in any tax year.

Compare: 1994 No 164 s HK 23

HK 24 Liability as agent of employer of non-resident taxpayer and employer's agent

- (1) The employer or the agent of the employer of every non-resident taxpayer is, for the purposes of this Act and the Tax

Administration Act 1994, the agent of the non-resident taxpayer in respect of the salary, wages, or other emoluments received by the non-resident taxpayer.

- (2) Where any such non-resident taxpayer has, whether before or after the commencement of this Act, made default in the payment of any income tax payable by the non-resident taxpayer in respect of his or her salary, wages, or other emoluments, the amount of that tax must, on application by the Commissioner, be deducted by the employer or the employer's agent from any salary, wages, or other emoluments to be paid and must be paid to the Commissioner on behalf of the taxpayer.
- (3) Where any non-resident taxpayer is in receipt of any pension or annuity payable by the Government of New Zealand or payable out of any superannuation scheme established in New Zealand, any income tax payable by the non-resident taxpayer in respect of the pension or annuity must, on application by the Commissioner, be deducted from any instalment or instalments of the pension or annuity to be paid and must be paid to the Commissioner on behalf of the taxpayer.
- (4) In this section, **non-resident taxpayer** means any person who, being liable for income tax in respect of salary, wages, or other emoluments derived from New Zealand, or in respect of any annuity or pension derived from New Zealand, has no fixed and permanent residence or place of abode in New Zealand.

Compare: 1994 No 164 s HK 24

HK 25 Non-resident trader to be agent of employees in New Zealand

Every non-resident trader is, for the purposes of this Act and the Tax Administration Act 1994, the agent of all persons in the non-resident trader's employment in New Zealand in respect of the salary, wages, or other emoluments received by them. The agent in New Zealand of a non-resident trader is, for the purposes of this section, under the same obligations as the agent's principal.

Compare: 1994 No 164 s HK 25

HK 26 Agents in New Zealand of principals resident abroad

- (1) Subject to this section, when any person in New Zealand, on behalf of a principal who is resident in a country or territory outside New Zealand and is not resident in New Zealand, is instrumental in procuring the purchase from that principal of goods or merchandise which are in New Zealand or are to be imported into New Zealand in pursuance of or in consequence of that purchase, whether the contract of purchase is made in New Zealand or elsewhere, the principal is in respect of the sale by the principal of the goods or merchandise deemed to be carrying on business in New Zealand through the agency of that person; and the income derived from that business is deemed to be derived from New Zealand, in the same manner and to the same extent as if the contract had been made in New Zealand.
- (2) An agent is not required under **subsection (1)** to pay income tax in New Zealand in respect of any principal or class or classes of principals, being resident in a country or territory outside New Zealand and not being resident in New Zealand, if and so far as the Commissioner is satisfied that in corresponding circumstances the like principal or the like class or classes of principals, being resident in New Zealand, are not liable to or are exempt from income tax imposed by the laws of that country or territory.
- (3) Every exemption granted under **subsection (2)** to a principal extends to exempt from income tax in New Zealand (in the capacity of agent, but not otherwise) the agent of that principal.

Compare: 1994 No 164 s HK 26

Subpart HZ—Terminating provisions**HZ 1 Trust distributions**

Where and to the extent to which any distribution received from a trust (not being a unit trust, a group investment fund, or a superannuation scheme) consists of income, capital profits, or capital gains derived by the trustee of that trust in the 1987–88 or any earlier tax year which was not also income derived by a beneficiary entitled in possession to the receipt of that income under the trust during the same tax year,—

- (a) the provisions of this Act and of the Tax Administration Act 1994 that correspond to those provisions of the

Income Tax Act 1976 and of the Income Tax Amendment Act (No 5) 1988 specified in the proviso to section 9 of the latter Act (as substituted by section 13 of the Income Tax Amendment Act 1990) do not apply in respect of that distribution; and

- (b) that distribution is not income.

Compare: 1994 No 164 s HZ 1

HZ 2 Trusts that may become qualifying trusts

Where a settlement was first made on the terms of a trust on or before 17 December 1987 (whether or not any further settlements were made to or for the benefit of the trust or on the terms of the trust after 17 December 1987), and any settlor, trustee, or beneficiary of that trust has made an election under section 228(7) of the Income Tax Act 1976 on or before 31 May 1989 to pay income tax on trustee income derived in the 1988–89 and subsequent tax years, for the purposes of determining the liability of any person for income tax on any distribution from that trust, all trustee income of that trust—

- (a) derived from outside New Zealand; or
(b) derived from New Zealand only as non-resident withholding income, if the obligations of all persons to pay income tax in relation to that non-resident withholding income tax have been satisfied,—

in the 1987–88 and earlier tax years during any period during which there was no trustee of that trust resident in New Zealand is deemed to have been liable under this Act to New Zealand income tax (other than only as non-resident withholding income) and all the trustee's obligations under this Act in relation to the trustee's liability to New Zealand income tax in respect of that trustee income are deemed to have been satisfied.

Compare: 1994 No 164 s HZ 2

Part I

Treatment of net losses

Subpart ID—Application of Part to schedular income

ID 1 No offset in calculating some schedular income tax liabilities

A taxpayer may not take an available net loss into account in calculating the schedular income tax liability relating to schedular income that is of a type described in any of **paragraphs (c) or (e) to (h)** of the definition of **schedular income**.

Compare: 1994 No 164 s ID 1

Subpart IE—Net losses

IE 1 Net losses may be offset against future net income

- (1) Subject always to the express provisions of this section and **section IF 1**, this section and **section IF 1** are intended—
 - (a) to permit taxpayers to carry forward net losses that arise in an income year for offset against net income of the taxpayer in a later income year; but
 - (b) in the case of taxpayers who are companies, to limit the circumstances in which a net loss can be so carried forward and offset to those where the tax benefit arising from the offset is obtained (directly or indirectly), at least to the extent of 49%, only by the same natural persons holding (directly or indirectly) rights in relation to the company who, by virtue of holding such rights, effectively bore the net loss.
- (2) Any taxpayer who has a net loss for any income year is, subject to this section and **section IF 1**, entitled to claim that—
 - (a) the net loss be carried forward to the income year immediately succeeding that income year and be offset against the net income for that immediately succeeding income year, so far as that net income extends; and
 - (b) so far as it cannot then be offset, the net loss be carried forward from that immediately succeeding income year to the next succeeding income year and be offset against the net income for that next succeeding income year and so on.

- (3) Where net losses for 2 or more income years are carried forward to an income year in accordance with the provisions of this section,—
- (a) the aggregate amount of those net losses that may be offset against net income for that income year must not exceed the amount of that net income; and
 - (b) those net losses must be offset in the order in which they arose.

Compare: 1994 No 164 s IE 1

IE 2 Specified activity net losses

- (1) Subject to this section, where in any income year any taxpayer, being an existing farmer, commences to conduct another specified activity that is different from the specified activity, or every 1 of the specified activities, by virtue of which the taxpayer is, immediately before that commencement, an existing farmer and that other specified activity is 1 that is usually conducted in association with and is complementary to the specified activity or any of the specified activities by virtue of which the taxpayer is, immediately before that commencement, an existing farmer, that other specified activity is deemed to be an activity related to the specified activity to which it is complementary.
- (2) Subject to this section, where in any income year any taxpayer, being an existing farmer, commences to conduct another specified activity that is different from the specified activity or every 1 of the specified activities by virtue of which the taxpayer is, immediately before that commencement, an existing farmer and that other specified activity is conducted on land that the taxpayer has owned, or has held under any lease, licence, or other agreement, throughout the period of 5 years ending on the date of that commencement, that other specified activity is deemed to be an activity related to (as the case may be)—
- (a) the specified activity by virtue of which the taxpayer is, immediately before that commencement, an existing farmer; or
 - (b) such 1 of the specified activities by virtue of which the taxpayer is, immediately before that commencement, an existing farmer—

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- (i) as the taxpayer elects by notice (which notice is irrevocable) given to the Commissioner within the time within which the taxpayer is required to furnish a return of the taxpayer's income for the income year in which the taxpayer commenced to conduct that other specified activity, or within such further time as the Commissioner may allow in any case or class of cases; or
 - (ii) where the taxpayer does not so elect, as the Commissioner determines.
 - (3) For the purposes of **subsections (4) to (7)**, any specified activity that is a related activity is deemed to be part of the specified activity in relation to which it is a related activity.
 - (4) **Subsection (6)** does not apply in respect of any specified activity net loss for any income year of any taxpayer, who is an existing farmer, in the conduct of any established activity.
 - (5) Where, in relation to a taxpayer and to any income year, this section would have effect more favourably if the words "not including crops for which the preparation of the land, and the planting and cultivation of the tree or plant, and the harvesting of the crop is accomplished within 12 months" were omitted from **paragraph (c)(iii)** of the definition of **specified activity**, this section, in relation to the taxpayer and to the income year, applies as if those words were omitted.
 - (5A) **Sections IE 1, IF 1, and IG 2** and section 92 of the Tax Administration Act 1994, subject to **subsection (6)**, apply to any specified activity net loss carried forward from a preceding income year as if it were a net loss carried forward from a preceding income year.
 - (6) Where in any income year (referred to in this subsection as the **year of offset**) any taxpayer has carried forward from the preceding income year any specified activity net loss, the following provisions apply:
 - (a) the amount of that specified activity net loss which may be offset against the net income of the taxpayer or another taxpayer for the year of offset is the lesser of the amount of that specified activity net loss and,—
 - (i) where the offset is made against the net income of the taxpayer, the sum of the taxpayer's specified activity net income for the year of offset from the

- conduct of the same specified activity as gave rise to the specified activity net loss and \$10,000:
- (ii) where the offset is made against the net income of another taxpayer, \$10,000:
- (b) in any case where the specified activity was conducted in any income year by 2 or more persons, the preceding provisions of this subsection apply as if every reference in those provisions to a taxpayer and to the amount of a specified activity net loss of the taxpayer attributable to the conduct of the specified activity were a reference to each such person and to the amount of each such person's share of the amount of any joint specified activity net loss for that income year:
 - (c) where in the year of offset a taxpayer has carried forward from the preceding income year any specified activity net losses to which this subsection applies and which arise from the conduct of 2 or more specified activities, the aggregate amount of those specified activity net losses that may be offset against the taxpayer's net income for the year of offset is the lesser of the sum of those specified activity net losses and the sum of—
 - (i) the sum of the taxpayer's specified activity net income from each of those specified activities for the year of offset; and
 - (ii) \$10,000:
 - (d) in any year of offset in which **paragraph (c)** applies, the taxpayer may elect, by notice (which notice is irrevocable) given to the Commissioner within the time within which the taxpayer is required to furnish a return of the taxpayer's income for the year of offset, or within such further time as the Commissioner may allow in any case or class of cases, that, of the aggregate of the amount of the losses referred to in **paragraph (c)**, the amount that may be offset under that paragraph comprises such amount (if any) of each of those specified activity net losses as the taxpayer specifies in that notice.
- (7) Notwithstanding anything in the preceding subsections of this section, in any case where in any income year any taxpayer—
- (a) is engaged (on average in respect of the whole of the income year) principally and personally in conducting any specified activity (not being a specified activity

within the meaning of **paragraph (j)** of the definition of **specified activity**) which is the livelihood of the taxpayer or the taxpayer is in the course of establishing as the taxpayer's livelihood; and

- (b) derives income from personal exertion, being income derived otherwise than from the conduct of that specified activity and being income which the taxpayer is compelled, by reason of circumstances that arise in the course of and as a result of the conduct of that specified activity, to derive; and
- (c) derives that income from personal exertion for the purposes of enabling the taxpayer to meet expenditure (whether or not the expenditure is required to meet losses suffered through any adverse event, happening, or cause) essential for the maintenance of the taxpayer and the taxpayer's dependants or for the continuance of that specified activity; and
- (d) would, in the opinion of the Commissioner, suffer hardship from the application of **subsection (6)**,—

the Commissioner may determine that an amount of specified activity net loss greater than that authorised in **subsection (6)** (being a specified activity net loss arising from the conduct of the specified activity) may, subject to **section IF 1(1)**, be offset against the taxpayer's net income in such income year or income years as the Commissioner specifies.

- (8) In this section,—

established activity in relation to a taxpayer who is an existing farmer, means any specified activity or specified activities (not being a specified activity within the meaning of **paragraph (j)** of the definition of **specified activity**) that the taxpayer conducted on 11 October 1982, where, in the opinion of the Commissioner, the conduct of the specified activity or the specified activities constituted the livelihood of the taxpayer and the taxpayer's sole or principal source of income

income from personal exertion means income of any of the kinds referred to in **sections CB 1 and CE 1**; but does not include income from any business of renting, or lending money, or making financial investments

related activity, in relation to a specified activity conducted by any taxpayer in any income year, means—

- (a) any other specified activity conducted by the taxpayer in the income year that is of the same kind as that specified activity, whether or not conducted on the same land as that on which that specified activity is conducted;
- (b) any other specified activity conducted by the taxpayer in the income year which is deemed, under **subsection (1) or (2)**, to be an activity related to that specified activity

specified activity net income means, in respect of a specified activity conducted by a taxpayer in an income year, the result of subtracting from the sum of the income of the taxpayer allocated to that activity and that income year the sum of the deductions of the taxpayer allocated to that activity and that income year, if that result is a positive amount

specified activity net loss means, in respect of a specified activity conducted by a taxpayer in an income year preceding, in the case of an activity referred to in **paragraphs (a) to (i)** of the definition of **specified activity**, the 1986–87 tax year and, in the case of an activity referred to in **paragraph (j)** of that definition, the 1990–91 tax year, a loss from that specified activity referred to in section 188A of the Income Tax Act 1976.

Compare: 1994 No 164 s IE 2

IE 3 Attributed CFC net losses

- (1) Subject to this section, **section IE 1** and section 92 of the Tax Administration Act 1994 apply to any attributed CFC net loss as if it were a net loss.
- (2) If a person has carried forward to an income year an attributed CFC net loss, the maximum amount of that loss that the person may offset against the person's net income for that income year is an amount equal to the total of—
 - (a) any attributed CFC income of the taxpayer for that income year in respect of—
 - (i) the controlled foreign company in respect of which the loss arose, where that company remains resident in the relevant country; and
 - (ii) any other controlled foreign company resident in the relevant country; and
 - (b) any FIF income, calculated under the branch equivalent method, of the taxpayer derived in that income year in

respect of any foreign investment fund resident in the relevant country.

- (3) A person may only take an amount of attributed CFC income or an amount of FIF income into account under **subsection (2)** to the extent that the person has not taken the amount into account—
 - (a) in determining under **section DN 5 or DN 9** the deductions that the person is allowed; or
 - (b) in any other calculation under **subsection (2)** in respect of any other attributed CFC net loss; or
 - (c) in determining the person's entitlement to offset under **sections IG 2 and IG 4**.
- (4) If, in an income year,—
 - (a) a person has an attributed CFC net loss in relation to an income interest in a controlled foreign company; and
 - (b) by virtue of section 38 of the Income Tax Amendment Act (No 2) 1993 the income interest becomes an interest of the person in a foreign investment fund,—with effect from that income year the attributed CFC net loss is treated as a FIF net loss of the person (as if the controlled foreign company were the relevant fund) not calculated under the branch equivalent method, except where the person calculates the person's FIF income or loss under the branch equivalent method with respect to the interest and the period commencing with the date upon which the income interest becomes an interest in a foreign investment fund.
- (5) If a person is unable to offset any part of the maximum amount calculated under **subsection (2)** for an income year against net income for the income year because there is insufficient net income, the excess is treated as if it were a net loss for the income year determined under **section BC 4** and ceases to be part of the attributed CFC net loss available to the person.

Compare: 1994 No 164 s IE 3

IE 4 FIF net losses

- (1) Subject to this section, **section IE 1** and section 92 of the Tax Administration Act 1994 apply to any FIF net loss as if it were a net loss.
- (2) If a person has carried forward to an income year a FIF net loss calculated under any calculation method other than the branch equivalent method, the maximum amount of that loss

that the person may offset against the person's net income for that income year is an amount equal to the total of FIF income calculated under any calculation method other than the branch equivalent method derived by that person in that income year.

- (3) A person may only take an amount of FIF income for an income year into account under **subsection (2)** to the extent that the amount is not taken into account—
- (a) in determining under **section DN 8** the deductions that the person is allowed under **section DN 5**; or
 - (b) in any other calculation under **subsection (2)** in respect of any other FIF net loss; or
 - (c) in determining the person's entitlement to an offset under **sections IG 2 and IG 5**.
- (4) If a person has carried forward to an income year a FIF net loss in respect of an attributing interest in a foreign investment fund calculated under the branch equivalent method, the maximum amount of that loss that the person may offset against the person's net income for that income year is the amount that could be offset in respect of that loss under **section IE 3** if—
- (a) the interest in the fund were an income interest in a controlled foreign company; and
 - (b) the FIF net loss were an attributed CFC net loss arising in respect of a branch equivalent loss; and
 - (c) references to the controlled foreign company were references to the fund.
- (5) Notwithstanding any other provision of this section, where—
- (a) a person has carried forward to any income year a FIF net loss; and
 - (b) **section CQ 5(1)(d)** applies in respect of the person and the income year,—
- the person may offset the FIF net loss against the person's net income for the income year, to the extent that the FIF net loss does not exceed the person's counted income in respect of attributing interests that would give rise to FIF income in the income year but for **section CQ 5(1)(d)**.
- (6) If a person is unable to offset any part of the maximum amount of a FIF net loss calculated under **subsection (2) or (3)** for an income year against net income for the income year because there is insufficient net income, the excess is treated as if it were a net loss for the income year determined under

section BC 4 and ceases to be part of the FIF net loss available to the person.

Compare: 1994 No 164 s IE 4

Subpart IF—Net losses: companies

IF 1 Net losses may be offset against future net income

- (1) Subject to the succeeding provisions of this section, no taxpayer being a company (in this subsection referred to as the **loss company**) may carry forward, in accordance with **section IE 1(2)**, the whole or any part of a net loss for any income year (in this subsection referred to as the **year of loss**) to any later income year (in this subsection referred to as the **year of carry forward**), unless there is a group of persons—
 - (a) the aggregate of whose minimum voting interests in the loss company in the period from the beginning of the year of loss to the end of the year of carry forward (in this subsection referred to as the **continuity period**) is equal to or greater than 49%; and
 - (b) in any case where at any time during the continuity period a market value circumstance exists in respect of the loss company, the aggregate of whose minimum market value interests in the loss company in the continuity period is equal to or greater than 49%,—

and, for the purposes of this subsection, the minimum voting interest or minimum market value interest (as the case may be) of any person in the loss company in the continuity period is equal to the lowest voting interest or market value interest (as the case may be) in the loss company which that person has during the continuity period.
- (2) **Subsection (1)** does not apply to prevent any company from carrying forward, in accordance with **section IE 1(2)**, the whole or part of any net loss for any income year (in this subsection referred to as the **year of loss**) where and to the extent that—
 - (a) **subsection (1)** would not have applied to prevent carry forward if regard were had, for the purposes of applying that subsection (to the extent to which it requires regard to be had to the circumstances in the year of loss and without prejudice to the application of that subsection to the extent to which it requires regard to be had to later periods), to part only of the year of loss; and

- (b) adequate accounts have been prepared and furnished to the Commissioner by the company relating to that part of that year of loss which detail sufficiently that part of the net loss for the year of loss which was reasonably and fairly attributable to that part of that year of loss,— in which event that claim for carry forward is allowed in respect of that part of the net loss for the year of loss as those accounts indicate was reasonably and fairly attributable to that part of that year of loss.
- (3) **Subsection (1)** does not apply to prevent any company from carrying forward, in accordance with **section IE 1(2)**, the whole or part of any net loss for any income year (in this subsection referred to as the **year of loss**) to any later income year where and to the extent that—
- (a) **subsection (1)** would not have applied to prevent the carry forward if regard were had, for the purposes of applying such subsection (to the extent to which it requires regard to be had to the later income year and without prejudice to the application of such subsection to the extent to which it requires regard to be had to earlier periods), to part only of the later income year; and
- (b) adequate accounts have been prepared and furnished to the Commissioner by the company relating to that part of that later income year which detail sufficiently that part of the net income for the whole of the later income year which was reasonably and fairly attributable to that part of that later income year,— in which event that claim for carry forward to the later income year is allowed in respect of the net loss for the year of loss to the extent to which it does not exceed that amount of net income as those accounts indicated was reasonably and fairly attributable to that part of that later income year.
- (4) For the purposes of this section, where adequate accounts are required to be prepared and furnished to the Commissioner in respect of the net loss or net income of any company which is reasonably and fairly attributable to a period which is part only of an income year of that company, those accounts must be prepared, to the extent to which reasonable and fair, by applying the provisions of this Act to that period as if it were an income year.

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- (5) Any taxpayer is entitled to claim to carry forward and offset against net income of the taxpayer in accordance with **section IE 1(2)** any net loss of the taxpayer for any income year prior to the 1977–78 income year if that taxpayer would have been entitled to claim to carry forward that net loss to that subsequent tax year for the purpose of assessing income tax under section 137 of the Land and Income Tax Act 1954 if the Income Tax Act 1976, the Income Tax Act 1994, and this Act had not been passed.
- (6) Where any taxpayer (being a company) claims, in accordance with **section IE 1(2)**, to carry forward the whole or part of a net loss incurred by it in the 1991–92 income year or any earlier income year (in this subsection referred to as the **pre-1993 year of loss**) to any later income year, the provisions of **subsection (1)** do not preclude such claim where—
- (a) the taxpayer would have been entitled to claim to carry forward the whole or part of the net loss to the later income year under section 188 of the Income Tax Act 1976, as that section applied before its repeal and replacement by section 22 of the Income Tax Amendment Act (No 2) 1992, if that section 188 had continued to apply—
- (i) as modified by section 188AA of the Income Tax Act 1976; and
- (ii) as if the continuity percentage referred to in section 188(7) of the Income Tax Act 1976 were always 40%,—
- in respect of the later income year; and
- (b) in respect of the period commencing on the first day of the 1992–93 income year and ending with the last day of that later income year (referred to in this subsection as the **relevant period**), there is a group of persons—
- (i) the aggregate of whose minimum voting interests in the taxpayer in the relevant period is equal to or greater than 49%; and
- (ii) in any case where at any time during the relevant period a market value circumstance exists in respect of the taxpayer, the aggregate of whose minimum market value interests in the taxpayer in the relevant period is equal to or greater than 49%—

and, for the purposes of this paragraph, the minimum voting interest or minimum market value interest (as the case may be) of any person in the taxpayer in the relevant period is equal to the lowest voting interest or market value interest (as the case may be) in the taxpayer which that person has during the relevant period.

Compare: 1994 No 164 s IF 1

IF 2 Special provision in relation to net losses of companies for 1990–91 and 1991–92 income years

Where and to the extent that the Commissioner is satisfied that—

- (a) a company (in this section referred to as the **loss company**) has a net loss for the 1990–91 income year or the 1991–92 income year (the relevant income year being referred to in this section as the **year of loss**); and
- (b) section 188(7B) of the Income Tax Act 1976 (as inserted by section 7 of the Income Tax Amendment Act (No 5) 1991 and in force before the repeal of section 188 by section 22 of the Income Tax Amendment Act (No 2) 1992) would not have applied to prevent the loss company from carrying forward the whole or part of that net loss if regard were had, for the purposes of that subsection (7B) (to the extent to which it required regard to be had to that part of the period commencing with 8.00 pm New Zealand Standard Time on 30 July 1991 which falls within the year of loss (in this paragraph referred to as the **relevant part of the year of loss**) and without prejudice to the application of that subsection (7B) to the extent to which it required regard to be had to later periods), to part only of the relevant part of the year of loss (that part of the relevant part of the year of loss being in this section referred to as the **relevant continuity period**); and
- (c) adequate accounts have been prepared by the loss company and furnished to the Commissioner relating to the relevant continuity period which detail sufficiently that part of the net loss for the whole of the year of loss which was reasonably and fairly attributable to the relevant continuity period,—

that subsection (7B) does not apply to prevent the loss company carrying forward, in accordance with section 188(2) (as

in force before its repeal by section 22 of the Income Tax Amendment Act (No 2) 1992), that part of the net loss as those accounts indicate was reasonably and fairly attributable to the relevant continuity period.

Compare: 1994 No 164 s IF 2

IF 3 Attributed CFC net losses

For the purposes of **sections IF 1 and IG 2**, an attributed CFC net loss or a FIF net loss is deemed to arise on the last day of the income year in respect of which the loss is attributed.

Compare: 1994 No 164 s IF 3

IF 4 Losses, attributed CFC net losses, and FIF net losses of amalgamating company

If—

- (a) an amalgamating company ceases to exist on a qualifying amalgamation; and
- (b) the amalgamating company, in respect of a tax year, has a net loss, an attributed CFC net loss, or a FIF net loss; and
- (c) the net loss, the attributed CFC net loss, or the FIF net loss has not, under any of **sections IE 1, IF 1, and IG 2**, been offset against net income of the amalgamating company or any other company in any period prior to the amalgamation (including any part of the tax year in which the amalgamation takes place); and
- (d) under **section IG 2**, the net loss, the attributed CFC net loss, or the FIF net loss could have been offset against net income (if there were sufficient such income) of the amalgamated company (unless it is a company incorporated only on the amalgamation) and any company which has, at any time before or during the tax year in respect of which the net loss, the attributed CFC net loss, or the FIF net loss is offset under this section, amalgamated with the amalgamated company, that is attributable to that part of the tax year of the relevant company which ends with the date of the amalgamation,—

the net loss, the attributed CFC net loss, or the FIF net loss (as the case may be) is attributed to the amalgamated company and may be offset against, under **section IE 1 or IF 1**, the net

income of the amalgamated company in periods commencing on or after the amalgamation, but applying **sections IE 1 and IF 1** (and any other provisions of this Act the application of which is dependent upon the application of either of those provisions) as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

Compare: 1994 No 164 s IF 4

IF 5 Ordering of losses of amalgamated company

Where net losses, attributed CFC net losses, or FIF net losses of 2 or more amalgamating companies are allowed under **section IF 4** to be offset against the net income for a tax year of the amalgamated company, those net losses, attributed CFC net losses, or FIF net losses must—

- (a) if arising in 2 or more tax years, be offset in the same order as they arose; and
- (b) if arising in the same tax year, be offset, so far as the net income extends,—
 - (i) in the order elected by the amalgamated company by notice to the Commissioner in such form as the Commissioner may allow; or
 - (ii) if no such election is made, on a pro rata basis.

Compare: 1994 No 164 s IF 5

IF 6 Losses, attributed CFC net losses, and FIF net losses of amalgamated company

Where—

- (a) an amalgamated company, in respect of a tax year prior to the tax year in which the amalgamation takes place, has a net loss, an attributed CFC net loss, or a FIF net loss; and
- (b) the net loss, the attributed CFC net loss, or the FIF net loss has not, under any of **sections IE 1, IF 1, and IG 2**, been offset against net income of the amalgamated company or any other company in any period prior to the amalgamation (including any part of the tax year in which the amalgamation takes place),—

the amalgamated company is entitled to carry forward the net loss, the attributed CFC net loss, or the FIF net loss into the tax year in which the amalgamation takes place or any subsequent tax year only if—

- (c) the amalgamated company satisfies the relevant requirements of **sections IE 1 and IF 1**; and
- (d) under **section IG 2**, the net loss, the attributed CFC net loss, or the FIF net loss could have been offset against net income (if there were sufficient such income) attributable to that part of the tax year of the relevant company which ends with the date of the amalgamation, by each amalgamating company.

Compare: 1994 No 164 s IF 6

IF 7 Offsetting supplementary dividend against net income

- (1) If a taxpayer is a section LE 3 holding company and derives a supplementary dividend in a tax year, the maximum aggregate amount that the taxpayer may offset under **section IE 1, IG 2, or IH 4** against its net income for that tax year is the amount calculated in accordance with the following formula:

$$NI - \frac{NRC + CC + SDD}{T}$$

where—

NI is the taxpayer's net income

NRC is the total amount of non-refundable credits that are available under **Part L** to be set off against the taxpayer's income tax liability

CC is the total amount of convertible credits that are available under **Part L** to be set off against the taxpayer's income tax liability

SDD is the total amount of supplementary dividends derived by the taxpayer in the tax year

T is the applicable basic tax rate.

- (2) **Subsection (1)** does not affect the calculation under **Part L** of the non-refundable credits and convertible credits of a section LE 3 holding company for a tax year.

Compare: 1994 No 164 s IF 7

Subpart IG—Net losses: groups of companies

IG 1 Companies included in group of companies

- (1) Subject always to the express provisions of this section and **section IG 2**, the provisions of this section and **section IG 2** are intended to limit the circumstances in which a company that has a net loss for an income year, or that has a net loss able to be carried forward to that income year in accordance with **section IE 1 or IF 1**, may offset part or the whole of that net loss against the net income of another company to those circumstances where, at all times during the income year in which the net loss arises and all succeeding income years (if any) up to and including the income year in which the net loss is offset, the company which has the net loss and the other company are, at least to the extent of 66%, commonly owned (whether or not always during that period by the same group of persons).
- (2) For the purposes of this Act, in relation to any 2 or more companies—
 - (a) where at any time there is a group of persons—
 - (i) the aggregate of whose common voting interests is equal to or greater than 66%; and
 - (ii) in any case where at that time a market value circumstance exists in respect of any of the companies, the aggregate of whose common market value interests is equal to or greater than 66%,—those companies are treated as a group of companies at that time; and
 - (b) where, in relation to any income year or other period, there is at all times during that income year or other period a group of persons (whether or not always during that income year or other period the same group of persons)—
 - (i) the aggregate of whose common voting interests is equal to or greater than 66%; and
 - (ii) in any case where at any relevant time a market value circumstance exists in respect of any of the companies, the aggregate of whose common market value interests is equal to or greater than 66%,—those companies are treated as a group of companies for that income year or other period.

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- (3) For the purposes of this Act, references to any 2 or more companies being at any time or for any period a wholly-owned group of companies mean any 2 or more companies which would be a group of companies at that time or for that period if—
- (a) the references in **subsection (2)** to 66% were instead references to 100%; or
 - (b) the companies would be a wholly-owned group of companies under **paragraph (a)** if—
 - (i) any nominal shareholding held by any person solely for the purpose of complying with the requirements of company law were disregarded; or
 - (ii) the shares in any such company held by the trustee of, or held by employees or former employees of the company as a consequence of the operation of, any share purchase scheme were disregarded to the extent that the shares so held by the trustee or employees or former employees—
 - (A) represent no more than 3% of the voting interests in the company; and
 - (B) in any case where at that time or during that period a market value circumstance exists in respect of the company, represent no more than 3% of the market value interests in the company.
- (4) Except as expressly provided in this Act, every company in a group of companies is liable for income tax in the same manner as if it were a company not included in a group of companies.
- (5) For the purposes of this section, in relation to any 2 or more companies at any time,—
- (a) the **common voting interest** of any person who has or is treated as having a voting interest in each of those companies at that time by virtue of **section OD 3** is that percentage which is equal to—
 - (i) the percentage voting interest of the person in each of the companies at that time, if those percentages are the same in the case of each company; or

- (ii) the lowest of the percentage voting interests of the person in each of the companies at that time, if those percentages differ as between the companies; and
- (b) the **common market value interest** of any person who is treated as having a market value interest in each of those companies at that time by virtue of **section OD 4** is that percentage which is equal to—
 - (i) the percentage market value interest of the person in each of the companies at that time, if those percentages are the same in the case of each company; or
 - (ii) the lowest of the percentage market value interests of the person in each of the companies at that time, if those percentages differ as between the companies.

Compare: 1994 No 164 s IG 1

IG 2 Net loss offset between group companies

- (1) For the purposes of this section, continuity of ownership is treated as being maintained in respect of any company and any period where there is a group of persons—
 - (a) the aggregate of whose minimum voting interests in the company is equal to or greater than 49%; and
 - (b) in any case where at any time during the period a market value circumstance exists in respect of the company, the aggregate of whose minimum market value interests in the company is equal to or greater than 49%—and, for the purposes of this paragraph, the minimum voting interest or the minimum market value interest of any person in the company in the period is equal to the lowest voting interest or market value interest (as the case may be) in the company which that person has during the period.
- (2) Subject to the succeeding subsections of this section, where in respect of any income year (in this subsection referred to as the **year of offset**)—
 - (a) a company (in this subsection referred to as the **loss company**) has—
 - (i) a net loss (not being a net loss which consists of a mining outgoing excess) for the year of offset; or

- (ii) carried forward under **sections IE 1 and IF 1** such a net loss of the loss company which arose in a preceding income year (in this subsection referred to as the **preceding loss year**) to the year of offset; and
- (b) the loss company either—
 - (i) elects by notice in accordance with **subsection (3)** that the whole or part of the net loss be offset against the net income for the year of offset of another company; or
 - (ii) receives a payment from another company under an agreement providing for the other company to bear or share in the net loss—
that other company being in this subsection referred to as the **profit company**; and
- (c) the profit company is in the same group of companies as the loss company for—
 - (i) the year of offset of the loss company; and
 - (ii) in any case where the year of offset of the profit company ends on a date later than the last day of the year of offset of the loss company, the year of offset of the profit company; and
 - (iii) in the case of a net loss or part of a net loss of the loss company, for any preceding loss year that was the 1981–82 income year or any subsequent year, the preceding loss year of the loss company; and
 - (iv) in the case of a net loss or part of a net loss of the loss company, for any preceding loss year that was the 1991–92 income year or any subsequent year, all income years of the loss company (if any) falling between the preceding loss year of the loss company and the year of offset of the loss company; and
- (d) the loss company is at all times in—
 - (i) the year of offset of the loss company; and
 - (ii) in the case of a net loss or part of a net loss of the loss company, for any preceding loss year,—
 - (A) the preceding loss year of the loss company; and
 - (B) in any case where the preceding loss year is the 1991–92 income year or a later income

- year, all income years of the loss company (if any) falling between the preceding loss year of the loss company and the year of offset of the loss company—
- not a dual resident company and is at all times in those years either—
- (iii) incorporated in New Zealand; or
 - (iv) carrying on business in New Zealand through a fixed establishment in New Zealand; and
- (e) continuity of ownership is maintained in respect of the loss company for—
- (i) the year of offset of the loss company; and
 - (ii) in any case where the year of offset of the profit company ends on a date later than the last day of the year of offset of the loss company, the year of offset of the profit company; and
- (f) the amount so elected to be offset or payment so received does not exceed the amount that would, were that offset not allowed or that payment not made, be the taxable income (after offsetting any net loss which is available to the profit company under this section or other than under this section) of the profit company for the year of offset; and
- (g) in the case of any payment made by the profit company,—
- (i) the payment does not exceed the amount of the net loss; and
 - (ii) the payment is made not later than the 31 March that, in relation to the loss company and the year of offset, is the latest date to which the time for the furnishing of the return for that income year may be extended under section 37(5) of the Tax Administration Act 1994 or is made within such further time as the Commissioner may allow; and
 - (iii) the payment would not (otherwise than under this subsection) be taken into account in calculating the taxable income of either the loss company or the profit company; and
 - (iv) the loss company gives notice of the payment to the Commissioner in accordance with **subsection (3)**,—

the amount so elected to be offset or the payment (as the case may be) must—

- (h) be offset against net income of the profit company in the year of offset; and
- (i) to the extent so offset, give rise to a reduction in the available net losses of the loss company (in the same order in which the losses arose); and
- (j) in the case of any payment made by the profit company, to the extent so offset, not be treated as a dividend paid by the profit company to the loss company,—

and any election made in accordance with this subsection is irrevocable.

- (3) Every notice under **subsection (2)** must be given to the Commissioner not later than the 31 March that, in relation to the loss company and the year of offset, is the latest date to which the time for the furnishing of the return of its income for the year of offset may be extended under section 37(5) of the Tax Administration Act 1994 or within such further time as the Commissioner may allow.
- (4) Notwithstanding **subsection (2)**, where and to the extent that—
 - (a) an offset under that subsection would not, but for the application of this subsection, be available to a company (in this subsection referred to as the **profit company**) in an income year (in this subsection referred to as the **year of offset**) in respect of all or part of a net loss of another company (in this subsection referred to as the **loss company**) for that income year because the requirements of either or both of **subsection (2)(c)(i) and (ii) and (e)** are not met; and
 - (b) an offset under the relevant subsection would be available if regard were had, for the purposes of applying **subsection (2)(c) and (e)** to a period (in this subsection referred to as the **loss company commonality period**) which is part only of the year of offset of the loss company; and
 - (c) adequate accounts have been prepared by the loss company and furnished to the Commissioner which detail sufficiently that part of the net loss (in this subsection referred to as the **part-year loss**, and that net loss to be calculated after taking into account any amount that has been offset under this section against the net income of

- any company other than the profit company) as is reasonably and fairly attributable to the loss company commonality period; and
- (d) adequate accounts have been prepared by the profit company and furnished to the Commissioner which detail sufficiently that part of the amount (in this subsection referred to as the **part-year profit**) that would be the profit company's taxable income if this subsection did not apply to that net loss for the whole of the year of offset of the profit company as is reasonably and fairly attributable to—
- (i) in any case where the year of offset of the profit company is co-extensive with the year of offset of the loss company, the loss company commonality period (in this subsection in respect of that case referred to as the **profit company commonality period**); and
- (ii) in any other case, that part of the year of offset of the profit company (in this subsection in respect of that case referred to as the **profit company commonality period**)—
- (A) which includes (but is not limited to) all or part of the loss company commonality period; and
- (B) in which the profit company and the loss company are at all times members of the same group of companies; and
- (C) in which continuity of ownership has been maintained in respect of the loss company,—

the loss company may, in any notice given to the Commissioner, in accordance with **subsection (3)** in respect of the net loss, the profit company, the loss company, and the year of offset, elect that regard must be had in applying **subsection (2)** in respect of the net loss, the profit company, the loss company, and the year of offset only to the loss company commonality period and, where that election is made, **subsection (2)** applies for the purpose of determining the amount able to be offset against the net income of the profit company in respect of the net loss and the year of offset as if—

- (e) the year of offset of the loss company were co-extensive with the loss company commonality period and the net

- loss of the loss company for that deemed year were equal to the part-year loss; and
- (f) the year of offset of the profit company were co-extensive with the profit company commonality period and the taxable income of the profit company for that deemed year were equal to the part-year profit.
- (5) Notwithstanding **subsection (2)**, where and to the extent that—
- (a) an offset under that subsection would not, but for the application of this subsection, be available to a company (in this subsection referred to as the **profit company**) in an income year (in this subsection referred to as the **year of offset**) in respect of all or part of a net loss of another company (in this subsection referred to as the **loss company**) for a preceding income year (in this subsection referred to as the **preceding loss year**) because the requirements of any 1 or more of—
- (i) **paragraph (c)(i)**; or
- (ii) **paragraph (c)(ii)**; or
- (iii) in the case where the preceding loss year is the 1991–92 income year or a subsequent income year, **paragraph (c)(iii)**; or
- (iv) **paragraph (e)**—
- of **subsection (2)** are not met; and
- (b) an offset under that subsection would be available if—
- (i) in any case where **subsection (2)(c)(i) or (ii) or (e)** is not met,—
- (A) regard were had for the purposes of applying **subsection (2)(c)(i), (ii), and (e)** to a period (in this subsection referred to as the **loss company commonality period**) which is part only of the year of offset of the loss company; and
- (B) **section IF 1(3)** were to apply as if the loss company had, in that part of the year of offset of the profit company which falls within the loss company commonality period, net income equal to that part of the profit company’s net income for the year of offset specified in **paragraph (c)**; and
- (ii) in any case where **subsection (2)(c)(iii)** is not met in respect of a preceding loss year being the 1991–92 income year or a subsequent income

- year, regard were had for the purposes of applying that **paragraph (c)(iii)** to a period (in this subsection referred to as the **preceding year loss company commonality period**) which is part only of the preceding loss year; and
- (c) in any case where **subsection (2)(c)(i) or (ii) or (e)** is not met, adequate accounts have been prepared by the profit company and furnished to the Commissioner which detail sufficiently that part of the amount that would, if this subsection did not apply to the net loss of the loss company, be the profit company's taxable income (in this subsection referred to as the **part-year profit**) for the whole of the year of offset of the profit company as is reasonably and fairly attributable to—
- (i) in any case where the year of offset of the profit company is co-extensive with the year of offset of the loss company, the loss company commonality period (in this subsection in respect of that case referred to as the **profit company commonality period**); and
- (ii) in any other case, that part of the year of offset of the profit company (in this subsection in respect of that case referred to as the **profit company commonality period**)—
- (A) which includes (but is not limited to) all or part of the loss company commonality period; and
- (B) in which the profit company and the loss company are members of the same group of companies; and
- (C) in which continuity of ownership has been maintained in respect of the loss company; and
- (d) in any case where **subsection (2)(c)(iii)** is not met in respect of a preceding loss year being the 1991–92 income year or a subsequent income year, adequate accounts have been prepared by the loss company and furnished to the Commissioner which detail sufficiently that part of the net loss (in this subsection referred to as the **part-year loss**, and that net loss to be calculated after taking into account any amount that has been offset against net income by any company other than the profit company)

as is reasonably and fairly attributable to the preceding year loss company commonality period,—
the loss company may, in any notice given to the Commissioner in accordance with **subsection (3)** in respect of the net loss, the profit company, the loss company, and the year of offset, elect that, in respect of the net loss, the profit company, the loss company, and the year of offset,—

- (e) in any case where **subsection (2)(c)(i) or (ii) or (e)** is not met, regard must be had in applying those paragraphs only to the loss company commonality period, and, where such an election is made,—
- (i) for the purposes of determining the amount able to be offset by the profit company in respect of the loss company's net loss and the year of offset, **subsection (2)** applies as if the year of offset of the profit company were co-extensive with the profit company commonality period and the taxable income of the profit company for that deemed year were equal to the part-year profit; and
- (ii) where and to the extent that—
- (A) the whole or part net loss of the loss company could only be carried forward by the loss company under **section IE 1(2)** to the year of offset by virtue of **section IF 1(3)**; and
- (B) by virtue of this subsection an offset is allowed to the profit company,—
section IF 1(3) applies as if the loss company has, in that part of the profit company commonality period which falls within the loss company commonality period, net income equal to the part-year profit; and
- (f) in any case where **subsection (2)(c)(iii)** is not met in respect of a preceding loss year being the 1991–92 income year or a subsequent income year, regard must be had in applying that **paragraph (c)(iii)** only to the preceding year loss company commonality period, and, where such an election is made, for the purposes of determining the amount able to be offset by the profit company in respect of the loss company's net loss and the year of offset, **subsection (2)** applies as if the preceding loss year were co-extensive with the preceding year loss company commonality period and the net loss of the loss

company for such deemed year were equal to the part-year loss.

(6) Where—

- (a) a company (referred to in this subsection as the **loss company**) has a net loss for any income year; and
- (b) a deduction has been allowed under this Act or an earlier Act, in the 1993–94 or any subsequent income year (referred to in this subsection as the **year of write off**), to any company (referred to in this subsection as the **write-off company**) other than the loss company for—
 - (i) a bad debt; or
 - (ii) a decline in the value of any shares determined as follows:
 - (A) if the shares have not been disposed of, from a valuation made under **subpart EB** or otherwise; or
 - (B) if the shares have been disposed of by the taxpayer, as the amount by which the income of the company in respect of the disposal is less than the deduction allowed to the company in respect of the cost of the shares; and
- (c) the application by the loss company of an amount which—
 - (i) gave rise to the debt; or
 - (ii) was paid by any person for the subscription of the shares—

was taken into account in calculating the net loss,—
no offset is available in respect of the net loss under **subsection (2)** in the year of write off or in any income year succeeding the year of write off in calculating the net income of any company which is the write-off company or which is at any time in the income year in which the net loss arises in the same group of companies as the write-off company, except to the extent that the net loss exceeds the aggregate of the deductions referred to in **paragraph (b)**.

(7) Where—

- (a) an amount of net loss apparently arising for a company (in this subsection referred to as the **loss company**) in an income year (in this subsection referred to as the

- year of loss**) is offset by more than 1 company (in this subsection referred to as the **profit companies**) under **subsection (2)**; and
- (b) the actual net loss of the loss company for the year of loss is determined by the Commissioner to be less than the aggregate amounts offset in respect of the apparent net loss by the profit companies against their net income,—
- then, notwithstanding any other provision of this section,—
- (c) where the loss company so elects by notice in such form as the Commissioner may allow, given to the Commissioner within 6 months after the date upon which the Commissioner gave notice to the loss company of the determination of the reduced amount of the net loss or within such further time as the Commissioner may allow, the amount by which the actual net loss determined by the Commissioner is less than the aggregate of the amounts offset by the profit companies must be allocated to the respective profit companies as a reduction in the amounts available to them for offset in the manner the loss company elects, but any election which provides that the amount of the reduction allocated to a company which at the time of the election is no longer a member of the same group of companies as the loss company exceeds the amount of reduction which would arise under **paragraph (d)** is deemed not to have been made; and
- (d) in any other case, the amount available to each of the profit companies for offset against their net income must be reduced by the same proportion as the proportion by which the apparent net loss was reduced to equal the actual net loss,—
- and, where and to the extent that the reduction in an amount available for offset against the net income of any profit company results in any payment made under this section under an agreement for the profit company to bear or share in the net loss of the loss company being treated as a dividend, that dividend is deemed to be reduced to the extent to which the payment is refunded by the loss company to the profit company within the period of 6 months referred to in **paragraph (c)**.
- (8) For the purposes of **subsection (2)(c)(iii) and (iv)**, a company is treated as being a member of the same group of companies as

another company in respect of the 1991–92 income year or any earlier income year if those 2 companies were, in respect of that income year, members of the same group of companies for the purposes of section 191(5) and (7) of the Income Tax Act 1976 as in force before its repeal by section 25 of the Income Tax Amendment Act (No 2) 1992 by virtue of the provisions of that section 191, as modified by **section IG 3**.

- (9) **Section IE 1(4)** applies as if deduction allowed under **subsection (2)** were relief afforded by **section IE 1**.
- (10) For the purposes of this section, where adequate accounts are required to be prepared and furnished to the Commissioner in respect of part of the net loss or taxable income for any income year of any company which is reasonably and fairly attributable to a period which is part only of that income year of that company, those accounts must be prepared, to the extent to which reasonable and fair, by applying the provisions of this Act to that period as if it were an income year.
- (11) In this section, **dual resident company** means, in relation to any income year, any company which in that income year or any part of that income year is—
- (a) resident in New Zealand; and
 - (b) either—
 - (i) treated, under an agreement, as not being resident in New Zealand for the purposes of the agreement; or
 - (ii) also, by the law of another country or territory, liable to income tax in that country or territory by reason of domicile, residence, or place of incorporation.

Compare: 1994 No 164 s IG 2

IG 3 Special provisions in relation to group companies for 1991–92 tax year

- (1) Notwithstanding section 191(3A) of the Income Tax Act 1976 (as that provision was inserted by section 8 of the Income Tax Amendment Act (No 5) 1991 and as in force before the repeal of section 191 of that Act by section 25 of the Income Tax Amendment Act (No 2) 1992), where and to the extent that the Commissioner is satisfied that—
- (a) a company (in this subsection referred to as the **loss company**) had a net loss for the 1991–92 tax year; and

- (b) the loss company and another company would have been treated, under that section 191(3A), as a group of companies or a specified group to which section 191(4) of the Income Tax Act 1976 (as also in force before its repeal) applied, had the period specified in that section 191(3A)(c) and (d) been, instead of the period so specified, part only of the period so specified; and
 - (c) adequate accounts have been prepared by the loss company and furnished to the Commissioner relating to that part of that period which detail sufficiently such part of the net loss for the 1991–92 tax year which was reasonably and fairly attributable to that part of that period,— those 2 companies are treated, for the purposes of section 191(5) and (7) of the Income Tax Act 1976 (as so previously in force), but only with respect to that part of that net loss as those accounts indicate was reasonably and fairly attributable to that part of that period, as constituting a group of companies, specified group, or both (as the case may be).
- (2) The references in section 191(7A) of the Income Tax Act 1976 (as in force before the repeal of section 191 by section 25 of the Income Tax Amendment Act (No 2) 1992) to section 188 of the Income Tax Act 1976 are references to section 188 (as in force before its repeal by section 22 of the Income Tax Amendment Act (No 2) 1992)—
- (a) as modified by section 188AA of the Income Tax Act 1976; and
 - (b) as if the continuity percentage referred to in that section 188(7) were always 40%.

Compare: 1994 No 164 s IG 3

IG 4 Group of companies attributed CFC net losses

- (1) Subject to this section, if a company (in this section referred to as the **first company**) has an attributed CFC net loss for any income year or has carried forward to any income year an attributed CFC net loss under **sections IE 1 and IF 1**, and the loss may not be offset by the first company in the income year in accordance with **sections IE 1 and IE 3, sections GC 4 and IG 2** apply as if—
- (a) the attributed CFC net loss were a net loss arising on the last day of the income year in respect of which it was attributed; and

- (b) each reference in those sections to a group of companies were a reference to a wholly-owned group of companies; and
 - (c) **section IG 2(4), (5), and (10)** were omitted; and
 - (d) the reference in **section IG 2(8)** to “the same group of companies for the purposes of section 191(5) and (7) of the Income Tax Act 1976” were a reference to “the same specified group in accordance with section 191(4) of the Income Tax Act 1976”.
- (2) The maximum amount of the attributed CFC net loss that any other company may, under **section IG 2** (as modified by this section), offset against its net income for that income year is an amount equal to the total of—
- (a) any attributed CFC income of the other company for that income year in respect of any controlled foreign company resident in the same country or territory (referred to in this section as the **relevant country**) as that in which the first-mentioned controlled foreign company was resident in the accounting period in respect of which the attributed CFC net loss arose; and
 - (b) any FIF income of the other company that is calculated under the branch equivalent method and is derived in that income year in respect of an attributing interest in a foreign investment fund resident in the relevant country.
- (3) An amount of attributed CFC income or FIF income of the other company may only be taken into account under **subsection (2)** to the extent that the amount is not taken into account—
- (a) in determining under **section DN 4 or DN 9** the deductions that the other company is allowed; or
 - (b) in determining the other company’s entitlement to an offset under **section IE 3**; or
 - (c) in determining the other company’s entitlement to an offset under **section IG 2** in respect of any other attributed CFC net loss.
- (4) If the first company is unable to offset any part of the maximum amount of attributed CFC net loss calculated under **subsection (2)** for the income year against net income of the other company for the income year because there is insufficient net income, the excess is treated as if it were a net loss of

the other company for the year determined under **section BC 4** and ceases to be part of the attributed CFC net loss available to the first company.

Compare: 1994 No 164 s IG 4

IG 5 Group of companies FIF net losses

- (1) Subject to this section, if a company (in this section referred to as the **first company**) has a FIF net loss for an income year or has carried forward to an income year a FIF net loss under **sections IE 1 and IF 1**, and that loss may not be offset by the first company in that income year in accordance with **sections IE 1 and IE 4, sections IG 2 and GC 4** apply as if—
 - (a) the FIF net loss were a net loss arising on the last day of the income year in respect of which it was attributed; and
 - (b) each reference in those sections to a group of companies were a reference to a wholly-owned group of companies; and
 - (c) **section IG 2(4), (5), and (10)** were omitted; and
 - (d) the reference in **section IG 2(8)** to “the same group of companies for the purposes of section 191(5) and (7) of the Income Tax Act 1976” were a reference to “the same specified group in accordance with section 191(4) of the Income Tax Act 1976”.
- (2) If the FIF net loss is calculated under any method other than the branch equivalent method, the maximum amount of the FIF net loss which may be offset against net income by another company under **section IG 2** (as modified by this section) is determined by applying **section IE 4(2) and (3)** as if the FIF net loss were a carried forward FIF net loss of the other company.
- (3) If the FIF net loss is calculated under the branch equivalent method, the maximum amount of the FIF net loss which may be offset against the net income of another company under **section IG 2** (as modified by this section) is determined by applying **section IG 4** as if—
 - (a) the interest in the fund were an income interest in a controlled foreign company; and
 - (b) the FIF net loss were an attributed CFC net loss; and
 - (c) references to the first controlled foreign company referred to were references to the fund.

- (4) If the first company is unable to offset any part of the maximum amount of the FIF net loss calculated under **subsection (2) or (3)** for the income year against net income of the other company for the year because there is insufficient net income, the excess is treated as if it were a net loss of the other company for the year determined under **section BC 4** and ceases to be part of the FIF net loss available to the first company.

Compare: 1994 No 164 s IG 5

IG 6 Loss carry forward and grouping by consolidated group and consolidated group members

- (1A) Subject to this section, **sections IE 1 to IE 4, IF 1, IF 2, IG 1, IG 2, and IH 1** apply, with any necessary modifications, in respect of a consolidated group as if the consolidated group were a single company and the taxable income of the consolidated group is determined accordingly.
- (2) Nothing in this section applies to any consolidated group whose members are mining companies.
- (3) Where any consolidated group has a net loss for an income year, no part of that net loss is treated for the purposes of this Act as a net loss of any individual member company of that consolidated group.
- (4) Where a company that is in an income year a member of a consolidated group is allowed under **sections IE 1 and IF 1** to claim to carry forward to that income year and offset to the extent of net income for that year (in this subsection referred to as the **specified year**) any net loss of the company for any preceding income year,—
- (a) that net loss must, subject to **subsections (5) to (7)**, be offset against the net income (if any) for the specified year of the consolidated group so far as that net income extends; and
- (b) only so far as it has not been so offset, is eligible to be—
- (i) offset in accordance with **sections IE 1 and IF 1** or this section against net income of the company or of any other consolidated group for the specified year; or
- (ii) carried forward by the company in accordance with **sections IE 1 and IF 1** to any succeeding income year; or

- (iii) treated, for the purposes of **section IG 2**, as a net loss of the company carried forward to the specified year, in which event that net loss may be the subject of an election or agreement under **section IG 2(2)** in respect of the net income of any other company (other than the consolidated group).
- (5) Where net losses of a consolidated group or of 1 or more member companies of the group are allowed under **sections IE 1 and IF 1** or required under this section to be offset against the net income (if any) for an income year of a consolidated group, those net losses must—
 - (a) if they arose in 2 or more income years, be offset in the same order as they arose; and
 - (b) if they arose in the same income year, be offset, so far as the net income extends,—
 - (i) in the order elected by the consolidated group by notice to the Commissioner in such form as the Commissioner may allow; or
 - (ii) if no such election is made, on a pro rata basis.
- (6) In any case where—
 - (a) **subsection (4)** would, except to the extent of the application of this subsection and **subsection (7)**, require the whole or part of the net loss of any company for any income year (in this subsection referred to as the **preceding loss year**) to be offset against the net income (if any) of a consolidated group for a subsequent year (in this subsection referred to as the **subsequent year**); and
 - (b) the company was not a member of the same group of companies, for the preceding loss year or any income year falling between the preceding loss year and the subsequent year, as any 1 or more companies which are members of the consolidated group in the subsequent year,—

the amount of net loss offset under **subsection (4)** against the net income of the consolidated group for the subsequent year must not exceed the aggregate of—
 - (c) the amount of the net loss that could be offset by the company in the subsequent year under **sections IE 1 and IF 1** against its own net income (that net income being nevertheless calculated in accordance with **section**

- HB 2(1)**) were it not in that subsequent year a member of a consolidated group; and
- (d) the aggregate amount that could be offset under **section IG 2** against their own net income (that net income being nevertheless calculated in accordance with **section HB 2(1)**) by companies (other than the company) which are members of the consolidated group in the subsequent year if—
- (i) neither the company nor those other companies were members of the consolidated group in the subsequent year; and
- (ii) the company were to take all necessary steps under **section IG 2** to permit that offset under that section by the other companies.
- (7) In any case where—
- (a) **subsection (4)** would, except to the extent of the application of this subsection and **subsection (6)**, require the whole or part of the net loss of any company for any income year (in this subsection referred to as the **preceding loss year**) to be offset against the net income (if any) of a consolidated group of companies for a subsequent year (in this subsection referred to as the **subsequent year**); and
- (b) the company was a member of the consolidated group for part only of the subsequent year,—
- the amount of net loss offset under **subsection (4)** against the net income of the consolidated group for the subsequent year must not exceed the lesser of—
- (c) the excess (if any) of the net loss of the company for the preceding loss year and required, but for the application of this subsection and **subsection (6)**, to be offset against the net income of the consolidated group for the subsequent year over the aggregate of—
- (i) any net income for the subsequent income year of the company attributable to any period prior to the company being a member of the consolidated group, calculated by applying the provisions of **section FD 9(2)**; and
- (ii) any part of the net loss required, under **subsection (4)**, to be offset against the net income for the subsequent year of another consolidated group of companies of which the company was a member

during the subsequent year and prior to the company being a member of the consolidated group; and

- (d) the amount (if any), as shown in adequate and sufficiently detailed accounts furnished to the Commissioner with the consolidated group's return of income for the income year, of the consolidated group's net income for the income year as is reasonably and fairly attributable to the part of the income year during which the company was a member of the consolidated group.
- (8) Where and to the extent that—
- (a) a company is a member of a consolidated group for part only of an income year (in this subsection referred to as the **specified year**); and
 - (b) the company is entitled only by virtue of **section IF 1(3)** to claim to carry forward to the specified year and offset, to the extent of the amount of net income of the company attributable to part only of the specified year (that part being referred to in this subsection as the **continuity period**) any net loss of the company for any preceding income year; and
 - (c) the company is a member of the consolidated group for the whole or part of the continuity period; and
 - (d) adequate and sufficiently detailed accounts have been prepared and furnished to the Commissioner with the consolidated group's return of income for the specified year, relating to that part of the continuity period during which the company was a member of the consolidated group, which detail sufficiently such part of the net income of the consolidated group (that part being referred to in this subsection as the **continuity period profit**) for the specified year as is reasonably and fairly attributable to that part of the continuity period; and
 - (e) the net loss of the company for the preceding income year, to the extent able to be carried forward under **sections IE 1 and IF 1** by virtue of this subsection, is, by virtue of this section, offset against the net income for the specified year of the consolidated group,—

section IF 1(3) applies as if the company had an amount of net income attributable to the continuity period equal to the continuity period profit.

Compare: 1994 No 164 s IG 6

IG 7 Attributed CFC net losses and FIF net losses of consolidated group members

- (1) Where any consolidated group has in respect of an income year—
 - (a) an attributed CFC net loss; or
 - (b) a FIF net loss,—

no part of that attributed CFC net loss or FIF net loss is treated for the purposes of this Act as an attributed CFC net loss or FIF net loss of any individual member company of that consolidated group.
- (2) Where—
 - (a) any company is a member of a consolidated group in an income year (in this subsection referred to as the **specified year**); and
 - (b) the company is entitled—
 - (i) in accordance with **sections IE 1 and IE 3** to claim to carry forward to the specified year and offset against net income for that year any attributed CFC net loss of that company for any preceding income year; or
 - (ii) in accordance with **sections IE 1 and IE 4** to claim to carry forward to the specified year and offset against net income for that year any FIF net loss of that company for any preceding income year,—

that loss must, subject to **subsections (3) and (4)**, be—
 - (c) in the case of such an attributed CFC net loss, offset against the net income of the consolidated group for the specified year, to the extent that it does not exceed the attributed CFC income (if any) derived in the specified year by the consolidated group in respect of any controlled foreign company or companies resident in the relevant country or territory; and
 - (d) in the case of such a FIF net loss, offset against the net income of the consolidated group for the specified year to the extent that it does not exceed the FIF income (if any) derived in the specified year by the consolidated group,—

and only so far as it cannot be so offset is eligible to be—
 - (e) offset against the net income of the company or any other consolidated group in the specified year; or

- (f) carried forward by the company in accordance with **sections IE 1 and IF 1** to any succeeding income year; or
 - (g) offset against the net income of any other company (other than the consolidated group) subject to and in accordance with **section IG 4 or IG 5**.
- (3) Where attributed CFC net losses or FIF net losses of a consolidated group or of 1 or more member companies of the group are allowed to be offset against net income of a consolidated group, those net losses must,—
- (a) if resulting from net losses arising in 2 or more income years, be offset in the same order as the net losses arose; and
 - (b) if resulting from net losses arising in the same income year, be offset, so far as the relevant net income extends,—
 - (i) in the order elected by the consolidated group by notice to the Commissioner in such form as the Commissioner may allow; or
 - (ii) if no such election is made, on a pro rata basis.
- (4) In any case where—
- (a) **subsection (2)** would, except to the extent of the application of this subsection, require the whole or part of any net loss of any company, arising in any income year (in this subsection referred to as the **preceding loss year**), to be offset against net income (if any) of a consolidated group of companies for a subsequent income year (in this subsection referred to as the **subsequent year**); and
 - (b) the company was not a member of the same group of companies, for the preceding loss year or any income year falling between the preceding loss year and the subsequent year, as any 1 or more companies which are members of the consolidated group in the subsequent year,—
- the amount of net loss offset under **subsection (2)** against the net income of the consolidated group in the subsequent year must not exceed the aggregate of—
- (c) the amount of the attributed CFC net loss or FIF net loss which could be offset by the company in the subsequent year in accordance with **sections IE 1 and IF 1, and IE 3 or IE 4** (as the case may be) against its own net income were it not in that subsequent year a member of a consolidated

- group of companies (that net income being nevertheless calculated in accordance with **section HB 2(1)**); and
- (d) the aggregate amount which could be offset against their own net income if that net income were nevertheless calculated in accordance with **section HB 2(1)** and in accordance with **sections IG 2 and IG 4 or IG 5** by companies (other than the company) that are members of the consolidated group in the subsequent year if—
- (i) neither the company nor those other companies were members of the consolidated group in the subsequent year; and
- (ii) the company were to take all necessary steps under **sections IG 2 and IG 4 or IG 5** to permit that offset by the other companies under the relevant one of those sections.
- (5) In any case where—
- (a) **subsection (2)** would, except to the extent of application of this subsection and **subsection (4)**, require the whole or part of any attributed CFC net loss or FIF net loss of any company for any income year (in this subsection referred to as the **preceding year**) to be offset against net income of a consolidated group of companies in a subsequent year (in this subsection referred to as the **subsequent year**); and
- (b) the company was a member of the consolidated group for part only of the subsequent year,—
- the amount of net loss offset under that subsection against net income of the consolidated group for the subsequent year must not exceed the lesser of—
- (c) the excess (if any) of the amount of net loss of the company for the preceding year required, but for the application of this subsection and **subsection (4)**, to be offset against net income of the consolidated group in respect of the subsequent year over the aggregate of—
- (i) any net income of the company in the subsequent year in any period prior to the company being a member of the consolidated group (calculated by applying the provisions of **section FD 9(2)**) against which net income that net loss would be able to be offset under this Act; and

- (ii) any part of the net loss required, under **subsection (2)**, to be offset against net income for the subsequent year of another consolidated group of companies of which the company was a member during the subsequent year prior to the company being a member of the consolidated group; and
- (d) the amount (if any), as shown in adequate and sufficiently detailed accounts furnished to the Commissioner with the consolidated group's return of income for the income year, of the consolidated group's net income for the income year (being net income against which that net loss could be offset under this Act) as is reasonably and fairly allocable to the part of the income year during which the company was a member of the consolidated group.

Compare: 1994 No 164 s IG 7

IG 8 Net losses, attributed CFC net losses, and FIF net losses of amalgamated company

Where an amalgamated company is deemed under **section IF 4** to have a net loss, attributed CFC net loss, or FIF net loss in respect of an amalgamating company that ceased to exist on the amalgamation, for the purposes of determining whether the net loss, attributed CFC net loss, or FIF net loss may be offset, under **sections IG 2, IG 4, and IG 5** against net income of another company, the relevant section of this Act applies as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

Compare: 1994 No 164 s IG 8

IG 9 Net losses, attributed CFC net losses, and FIF net losses offset against net income of amalgamated company

Where a company (referred to in this subsection as the **loss company**) has a net loss, attributed CFC net loss, or FIF net loss in respect of a period that falls wholly or partly before an amalgamation, the net loss, attributed CFC net loss, or FIF net loss may be offset, under **sections IG 2, IG 4, and IG 5** against net

income of the amalgamated company if and only if the net loss, attributed CFC net loss, or FIF net loss can be so offset by applying the commonality of ownership and other tests contained in the relevant provisions of this Act severally to the loss company and the amalgamated company in respect of each company that has in the course of or before the amalgamation amalgamated with the amalgamated company, as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead that amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

Compare: 1994 No 164 s IG 9

IG 10 Net losses used to pay penalties

- (1) A taxpayer may elect to use a net loss of the taxpayer to pay a shortfall penalty assessed by the Commissioner in respect of an income tax liability, if—
 - (a) the net loss is available to be offset against net income of the taxpayer in the tax year of the shortfall penalty; and
 - (b) the taxpayer notifies the Commissioner of the election within the due date period for the payment of the shortfall penalty.
- (1A) A wholly-owned group of companies may elect, in the manner provided in **subsection (1)**, to apply a loss incurred by a company in the wholly-owned group in payment of a shortfall penalty imposed on any company in that group.
- (2) If a taxpayer makes an election under **subsection (1)** in relation to current tax year losses and the net losses are available to be offset in the current tax year, the time that the net losses are offset is the time of the election.
- (3) Each dollar of net loss that is used to pay a shortfall penalty—
 - (a) counts as an amount of payment equal to 1 dollar multiplied by the tax rate; and
 - (b) is, from the date the net loss is used, no longer available for use by a person.
- (4) For the purposes of **subsection (3)**, the term **tax rate** means the rate of tax or lowest marginal rate of tax that would apply to

the taxpayer during the return period to which the relevant tax shortfall relates, if the taxpayer had tax to pay.

- (5) In this section, **tax year** includes any part of a tax year that, by virtue of **section IF 1 or IG 2**, may be taken into account for loss continuity or group purposes.

Compare: 1994 No 164 s IG 10

Subpart IH—Losses: miners

IH 1 Losses of mining companies and petroleum miners

- (1) Where the whole or a part of a net loss of a company (being a mining company or a resident mining operator or a non-resident mining operator) for any income year (in this subsection referred to as the **year of loss**) arises as a result of mining exploration expenditure or mining development expenditure or petroleum exploration expenditure or petroleum development expenditure relating to an area comprised in a mining licence or a mining privilege or to 2 or more such areas (any such area being referred to in this subsection as a **licence area**), the following provisions apply:
- (a) the amount of that net loss which so arises in relation to that licence area or (as the case may be) to each of those licence areas is to be determined (and the amount in respect of any such licence area is referred to in this subsection as the **specified sum** in relation to that licence area); and
- (b) where, in relation to the specified sum in relation to a licence area,—
- (i) at the beginning of any income year, being an income year after the year of loss and being the first such income year in respect of which this subsection applies with respect to that specified sum, (that income year being referred to in this paragraph as the **year of claim**), there remains a balance of that specified sum after taking into account such amounts of that specified sum as have been offset against the net income of that company for any income year or years before the year of claim under this Act, and, where that company is a mining company, after taking into account any amounts by which that specified sum

- has been reduced in accordance with **section IH 4(1)(a) or (c)**; and
- (ii) by reason only of **section GC 2 or IF 1(1)**, that balance would, but for this paragraph, be precluded from being, in whole or in part, offset against any net income of that company for the year of claim,—**section GC 2 or IF 1(1)** does not preclude that balance from being offset against the net income of that company to the extent that it does not exceed the amount that would be the net income of the company if its sole source of counted income for the year of claim was from that licence area and, so far as that balance cannot then be offset, from being offset against the net income of that company for the income year next following the year of claim, to the extent that it does not exceed the amount that would be the net income of the company if its sole source of counted income for that income year was from that licence area, and so on, and, in any such case, **section IH 4(1)(e)**, with any necessary modifications, applies; and
- (d) for the purposes of this subsection, the reference in this subsection to petroleum exploration expenditure relating to an area comprised in a mining licence or a mining privilege is taken as including a reference to expenditure on exploring or searching in any area which is outside but continuous, or geologically contiguous, with that first-mentioned area, being exploring or searching which was included in the programme of exploring or searching as a consequence of which application was made for that mining licence or that mining privilege.
- (2) Subject to **section IH 2(1)**, where the Commissioner is satisfied that the whole or part of any net loss of a petroleum mining company for the 1990–91 income year or any earlier income year (that income year being referred to in this subsection as the **year of loss**) arises from the allowance of—
- (a) a deduction of the amount of any petroleum exploration expenditure incurred by that company on or before 30 September 1990 in exploring or searching for petroleum in an area that is or is subsequently comprised in a mining licence or in 2 or more such areas; or

- (b) a deduction of an amount in respect of the amount of any petroleum development expenditure incurred by that company on or before 30 September 1990,—
- the following provisions apply:
- (c) the amount of that net loss which so arises from the allowance of that deduction, in relation to that licence area or (as the case may be) to each of those licence areas (the amount so determined in respect of any such licence area being referred to in this subsection as the **specified sum** in relation to that licence area); and
- (d) where, in relation to that specified sum in relation to a licence area, at the beginning of any income year, being an income year after the year of loss and being the first such income year in respect of which this subsection (or section 188C(2) of the Income Tax Act 1976) applies with respect to that specified sum (that income year being referred to in this paragraph as the **year of claim**), there remains a balance of that specified sum after taking into account—
- (i) such amounts of that specified sum that have been allowed as a deduction to that company, or offset against the net income of that company, in or for any income year or years before the year of claim under this Act or the Income Tax Act 1976 or have been allowed as a deduction to any other company in or for any such income year or years; and
- (ii) where that company was, immediately before the commencement of section 214B of the Income Tax Act 1976, a company to which section 216 of that Act applied, after taking into account any amounts by which, in the determination of the Commissioner, that specified sum has been reduced in accordance with section 216(16)(a) or the first proviso to section 216(16)(b) of that Act (as those provisions applied immediately before the commencement of section 214B of the Income Tax Act 1976); and
- (iii) by reason only of **section GC 2 or IF 1(1)**, that balance would, but for this paragraph, be precluded from being, in whole or in part, offset against the net

income of that company, in or for the year of claim,—

section GC 2 or IF 1(1) does not preclude that balance from being offset against the net income of that company for the year of claim, to the extent that the amount offset does not exceed the amount that would be the net income of the company for the year of claim if the company's sole source of counted income was from that licence area, so far as that income or amount extends, and, so far as the balance cannot then be offset, from being offset against the net income of the company for the income year next following the year of claim to the extent that the amount offset does not exceed the amount that would be the net income of the company for that income year if the company's sole source of counted income was from that licence area, and so on; and

- (f) for the purposes of this subsection,—
- (i) the reference in this subsection to exploration in exploring or searching for petroleum in an area which is or is subsequently comprised in a mining licence is taken as including a reference to expenditure in exploring or searching for petroleum in any area which is outside but continuous, or geologically contiguous, with that first-mentioned area, being exploring or searching that was included (whether originally or additionally) in the programme of exploring or searching as a consequence of which application was made for that mining licence; and
 - (ii) the expression **mining licence** means a mining licence issued under the Petroleum Act 1937.

Compare: 1994 No 164 s IH 1

IH 2 Companies engaged in exploring for, searching for, or mining petroleum

- (1) Where in the 1990–91 or any earlier income year a net loss arises from the allowance in that income year to a petroleum mining company of a deduction or further deduction under any of section 214B(6), (13)(b), (14)(b), and (18)(c) of the Income Tax Act 1976 (or under section DZ 6(4) or (9)(c) of the Income Tax Act 1994)—

- (a) any company (referred to in this subsection as a **shareholder company**) that is a shareholder of that petroleum mining company and has made at any time (being a time at which that shareholder company was a shareholder of that petroleum mining company) any payment or payments to that petroleum mining company which was or were used for the purposes of the petroleum development expenditure of the kind referred to in section DZ 6(4) of the Income Tax Act 1994, in respect of which that deduction or further deduction is allowed in that income year, is allowed, if that shareholder company has so elected by notice in accordance with section 214B(22)(d) of the Income Tax Act 1976 (or section DZ 6(12)(d) of the Income Tax Act 1994), a deduction of an amount that bears to that net loss the same proportion as that payment, or the aggregate of those payments, bears to that petroleum development expenditure; and
- (b) no other deduction and no offset is allowed under this Act in respect of—
- (i) that net loss, except to the extent that it exceeds the aggregate of all amounts deducted, under **paragraph (a)** in the income year in which that net loss arises:
 - (ii) any amount allowed as a deduction under **paragraph (a)** to any such shareholder company:

provided that where that net loss arises from the allowance of a further deduction under the second proviso to section 214B(6) of the Income Tax Act 1976 (or section DZ 6(4) of the Income Tax Act 1994) that net loss is, for the purposes of this subsection, deemed to be a net loss arising in the year which, in section DZ 6(4), is referred to as the year of cessation:

provided also that in no case may the aggregate of the amounts deducted by any shareholder company under **paragraph (a)** exceed the aggregate of the payments of the kind referred to in that paragraph made by that shareholder company to the petroleum mining company.

- (2) Where, in relation to the 1990–91 or any earlier income year, any taxpayer (being a company) is a petroleum mining company, **sections CV 1 and IG 1** do not apply, in relation to that company, in respect of—

- (a) any net loss, arising in that company, of the kind referred to in **section IH 2(1)** except to the extent (if any) that, in relation to that net loss, there is an excess of the kind referred to in **section IH 2(1)**; and
- (b) any net loss of that taxpayer for the 1978–79 or any earlier tax year.

Compare: 1994 No 164 s IH 2

IH 3 Loss carry back by petroleum miners

- (1) If a petroleum miner would, in the absence of this section, have a net loss for any income year in which—
 - (a) expenditure for removal or restoration operations is incurred; or
 - (b) a permit is relinquished and the petroleum miner is allowed a deduction for deferred deductions under **section DT 5**,—

the deductions of the petroleum miner for that income year are reduced by the amount that would otherwise be a net loss, and that amount is allowed as a deduction in the income years preceding the loss year, beginning with the income year immediately preceding the loss year, and the petroleum miner has the right to amend its returns for those income years notwithstanding the time bar.
- (2) This section applies 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.

Compare: 1994 No 164 s IH 3

IH 4 Companies engaged in exploring for, searching for, or mining certain minerals

- (1) Where, in accordance with **sections IE 1 and IF 1 or IH 1**, a mining company is entitled to claim that a net mining loss for any income year (that income year being referred to in this subsection as the **year of loss**) be carried forward and offset against the net income of that company for subsequent income years, that section applies subject to the following provisions:

- (a) the amount that may be carried forward in respect of the net mining loss from the income year in which the net mining loss arose for offset against the net income of that company in subsequent income years must not exceed an amount calculated in accordance with the following formula:

$$a - b$$

where—

- a is the amount of the mining outgoing excess in the year of loss
- b is 150% of so much of the amount of that mining outgoing excess as is deducted, in accordance with **section DU 2**, in calculating the net income of that company for the year of loss:
- (b) the maximum amount of net mining losses that a mining company may offset against its net income for an income year is an amount equal to the lesser of the company's net income for the income year and the amount calculated in accordance with the following formula:

$$\frac{2 \times (c - d)}{3} + d$$

where—

- c is the net mining losses carried forward to that income year
- d is the amount that would be the company's net income for the year if its only source of counted income for the income year were from mining:
- (c) if the mining company offsets net mining losses against its net income for an income year, the amount of net mining losses that the company may otherwise carry forward to the subsequent income year under **sections IE 1 and IF 1** must be reduced by an amount equal to the larger of zero and the amount calculated in accordance with the following formula:

$$\frac{e - d}{2}$$

where—

- e is the amount of net mining losses offset by the mining company in that income year
- d has the same meaning as in **paragraph (b)**:

- (d) **paragraphs (b) and (c)** do not apply to any balance of a net loss, being a balance to which **section IH 1(1)(b)** applies:
 - (e) where—
 - (i) that company is entitled, in accordance with the preceding provisions of this subsection, to carry forward any amount and offset it against the net income of that company for any income year; and
 - (ii) that company has ceased to be a mining company at or before the end of that income year,—
it is treated, for the purposes of those provisions, as if it had not so ceased to be a mining company.
- (2) Where, in relation to any income year, a company is a mining company,—
- (a) none of the provisions of **section IG 2** apply with respect to that company in relation to that income year; and
 - (b) that company is not included in a group of companies for the purposes of that section in relation to that income year.
- (3) Where—
- (a) but for **subsection (2)**, a mining company and a holding company (not being a mining company) would be included in a wholly-owned group of companies in relation to an income year; and
 - (b) that mining company has net income for that income year in excess of any net loss carried forward by that mining company to that income year under **sections IE 1 and IF 1**; and
 - (c) that holding company has a net loss for that income year, being a net loss which has been calculated without taking into account any deduction allowed or allowable to that holding company under **section DU 12** in respect of the amount written off from any loan made by that holding company to that mining company,—
the amount of that net loss (as so calculated) may, to the extent that it cannot be offset under **section IG 2(2)** from the net income for that income year of any other company or companies (being a company or companies which together with that holding company are included in a wholly-owned group of companies in relation to that income year), be deducted from the amount by which the net income of that mining company for that income year exceeds any net loss carried forward by

that mining company to that income year under **sections IE 1 and IF 1**, and the amount so deducted from that excess must not be carried forward under **sections IE 1 and IF 1**:

provided that where, by reason of an amount being, in accordance with the preceding provisions of this subsection, offset against the net income of that mining company for that income year, instead of being offset against the net income of that holding company for an income year after that income year, the Commissioner is of the opinion that adjustment is warranted for the purposes of this subsection, the Commissioner may, on application made by that holding company within 8 years after the end of that first-mentioned income year, or within such extended period as the Commissioner may allow, and notwithstanding the time bar, make such adjustments for the purposes of this subsection, in relation to that holding company and that mining company, in respect of that first-mentioned income year and any 1 or more of the 8 income years immediately succeeding that first-mentioned income year, as the Commissioner considers equitable to meet the special circumstances of the case.

Compare: 1994 No 164 s IH 4

IH 5 Resident mining operators

Notwithstanding anything in this Act, where a resident mining operator has a net mining loss for a tax year (that tax year being referred to in this subsection as the **year of loss**), **sections IE 1, IF 1, and IH 1** apply subject to the following provisions:

- (a) where the net mining loss is not a balance to which **section IH 1(1)(b)** applies, the amount of the loss that the resident mining operator is allowed to offset against net income in the first tax year after the year of loss must not exceed the sum of—
- (i) the amount that would be the resident mining operator's net income for that tax year if the operator's sole source of counted income in that year was income from mining; and
 - (ii) an amount equal to the greater of zero and an amount calculated in accordance with the following formula:

$$a - b$$

where—

- a is the prescribed amount of the resident mining operator for that tax year
 - b is the mining outgoing excess of the resident mining operator for that tax year:
- (b) any net mining loss that cannot be offset under **paragraph (a)** may be offset against the resident mining operator's net income for the tax year immediately succeeding the tax year to which **paragraph (a)** refers, to the extent it does not exceed the amount that could be offset under **paragraph (a)** if that paragraph referred to the immediately succeeding tax year, and so on:
- (c) **section IH 4(1)(e)**, with any necessary modifications, applies for the purposes of this section as if every reference to a mining company or company were a reference to a resident mining operator and as if the reference to **section IH 4(1)** were a reference to this subsection.

Compare: 1994 No 164 s IH 5

Subpart II—Losses: life insurers

II 1 Policyholder net losses

- (1) Subject to this section, **section IE 1** and section 92 of the Tax Administration Act 1994 apply to any policyholder net loss as if it were a net loss.
- (2) **Sections IF 1(1) and IG 2(2)** do not apply in respect of a policyholder net loss.
- (3) Subject to **section II 2**, in calculating a policyholder base income tax liability for a tax year, a life insurer may offset an available net loss by an amount no greater than the life insurer's policyholder net loss.
- (4) To the extent that an available net loss consists of a policyholder net loss, the policyholder net loss may be offset only in calculating a life insurer's policyholder base income tax liability.

Compare: 1994 No 164 s II 1

II 2 Policyholder net loss for tax year preceding 1990–91

Where any company to which section 204 of the Income Tax Act 1976 (as that provision was in force before its repeal and substitution by section 13(1) of the Income Tax Amendment Act (No 2) 1990) applied—

- (a) incurred any loss in carrying on its business of life insurance in the 1989–90 tax year; or
- (b) carried forward any loss (incurred in any earlier tax year) to the 1989–90 tax year in accordance with section 188 of the Income Tax Act 1976 as then in force,—

that loss is (except to the extent to which it was in the 1989–90 tax year deducted from or offset against any income of any person otherwise than in accordance with section 205C of the Income Tax Act 1976) deemed to be a policyholder net loss of that company.

Compare: 1994 No 164 s II 2

II 3 Carry forward of policyholder net loss

Where—

- (a) a life insurer transfers its life insurance business to another company; and
- (b) the transfer meets the requirements set out in **section EY 44**,—

the transferor life insurer may, by notification to the Commissioner in such form as the Commissioner may approve, elect that any policyholder net loss calculated by it for the tax year of transfer, or carried forward by it to that tax year, be treated as a policyholder net loss calculated for or carried forward to that tax year by the transferee company and not by the transferor life insurer, and the provisions of this Act apply to any such loss accordingly.

Compare: 1994 No 164 s II 3

Subpart IZ—Withdrawal tax

IZ 1 Application of this subpart

This subpart applies to every person who is deemed to derive withdrawal income.

Compare: 1994 No 164 s IZ 1

IZ 2 Rate of withdrawal tax

The rate of tax (referred to as **withdrawal tax**) in respect of withdrawal income derived by any person is 45% of the gross amount of that withdrawal income.

Compare: 1994 No 164 s IZ 2

IZ 3 Withdrawal income

- (1) Where any special account is closed in any tax year, any amount withdrawn on that closure, not being an amount withdrawn under a withdrawal certificate, is deemed to be withdrawal income derived in that tax year by the person who operated that account:
provided that in no case must the withdrawal income of any person under this subsection exceed,—
 - (a) in the case of a person operating a special farm ownership account or a special fishing vessel ownership account, \$60,000 less the aggregate amount withdrawn from that account under withdrawal certificates:
 - (b) in the case of a person operating a special home ownership account, \$10,250 less the aggregate amount withdrawn from that account under withdrawal certificates.
- (2) Where in any tax year any special farm ownership account or special fishing vessel ownership account is converted into a special home ownership account, the amount (if any) by which the amount standing to the credit of the special farm ownership account or special fishing vessel ownership account at the end of the 31 March immediately preceding the date of that conversion of that account exceeded the amount of \$10,250 is deemed to be withdrawal income derived in that tax year by the person who operated that account so converted.
- (3) Where any amount is withdrawn from a special account under a withdrawal certificate, and the farm ownership requirements or the home ownership requirements or the fishing vessel ownership requirements (as the case may be) are not fulfilled in relation to that amount, that amount is deemed to be withdrawal income derived by the person who operated the account in the tax year in which the Commissioner is notified under the Farm Ownership Savings Act 1974 or the Home Ownership Savings Act 1974 that those requirements were not fulfilled:
provided that in no case must the withdrawal income of any person under this subsection exceed,—
 - (a) in the case of a person who operated a special farm ownership account or a special fishing vessel ownership account, \$60,000 less the aggregate of any amounts

deemed to be withdrawal income derived by that person under **subsection (1)**:

- (b) in the case of a person who operated a special home ownership account, \$10,250 less the aggregate of any amounts deemed to be withdrawal income derived by that person under **subsection (1)**.
- (4) Any amount that is withdrawal income derived by any person in any tax year under this section is excluded income of that person in that tax year or any other tax year.

Compare: 1994 No 164 s IZ 3

IZ 4 Payment of withdrawal tax

- (1) Where, in respect of any withdrawal from any special account, any withdrawal income is derived by any person under **section IZ 3(1)**, the authorised savings institution with which that account is operated must withhold from the proceeds payable in respect of that withdrawal the amount of the withdrawal tax payable in respect of that withdrawal income.
- (2) Where, in respect of the conversion of any special farm ownership account or special fishing vessel ownership account to a special home ownership account, any amount standing to the credit of that account is withdrawal income derived by any person under **section IZ 3(2)**, the authorised savings institution with which that account is operated must deduct from the amount of that withdrawal income the amount of the withdrawal tax payable in respect of that withdrawal income.
- (3) Any authorised savings institution that is liable to withhold or deduct, under **subsection (1) or (2)**, the amount of any withdrawal tax payable by any person, must, not later than the 20th of the month immediately following the month in which it became so liable, pay that amount to the Commissioner, and deliver to the Commissioner a certificate in the prescribed form giving such details in relation to that tax and to the person in respect of whom it is payable as are mentioned in that form, and that payment is deemed to be a payment of that tax by that person.
- (4) Notwithstanding anything in this or any other Act, the amount of any withdrawal tax that any authorised savings is liable to withhold or deduct under **subsection (1) or (2)** must in all cases be so withheld or deducted and is payable by that authorised

savings institution only to the Commissioner in respect of that tax.

- (5) Where any authorised savings institution has failed to withhold or deduct the amount of any withdrawal tax payable by any person, under **subsection (1) or (2)**, and has paid an amount equal to the amount of that tax to the Commissioner under **subsection (3)**, it may recover the amount so paid from that person.
- (6) Any person who derives any withdrawal income under **section IZ 3(3)** must pay to the Commissioner, within such time as the Commissioner may allow, the withdrawal tax payable in respect of that income.

Compare: 1994 No 164 s IZ 4

IZ 5 Evidence of liability in proceedings for recovery

Any amount that is payable to the Commissioner as or in respect of withdrawal tax under **section IZ 4(3) or (6)** is recoverable by the Commissioner in the same manner as if it were income tax imposed under **section BB 1** and, in any proceedings against any person relating to the recovery of such an amount, a certificate signed by the Commissioner certifying that that amount is payable by that person under this section is, in the absence of proof to the contrary, conclusive evidence that that amount is payable to the Commissioner by that person. Judicial notice must be taken of the signature to any certificate given under this section.

Compare: 1994 No 164 s IZ 5

IZ 6 Relief in certain cases

In any case where it is shown to the satisfaction of the Commissioner that the amount of withdrawal tax payable by any person in respect of any withdrawal income deemed to be derived by the person in relation to any special account operated by the person exceeds the aggregate of the amounts of rebate of income tax allowed in relation to that account under **section KG 1**, the Commissioner must make such reduction in the amount of that withdrawal tax as the Commissioner considers to be just and equitable in the circumstances of that particular case.

Compare: 1994 No 164 s IZ 6

IZ 7 Application of other provisions to withdrawal tax

Subject to this subpart, the other provisions of this Act and of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, apply with respect to withdrawal tax as if it were income tax imposed under **section BB 1**; but nothing in this subpart is to be so construed as to include withdrawal tax in the terms “income tax” or “tax” for the purposes of—

- (a) the provisions listed in **section OB 6(3)**; or
- (b) section 120K of the Tax Administration Act 1994.

Compare: 1994 No 164 s IZ 7

Part K Rebates

Subpart KB—General

KB 2 Proportionate adjustment to rebates on change of return date

Where, for the purposes of section 39 of the Tax Administration Act 1994, an assessment in respect of a taxpayer is made for a period of less than a year, the taxpayer is entitled, by way of rebates allowed under **sections KC 1 to KC 4**, only to an amount bearing to the total of such rebates to which the taxpayer would be entitled for a full year, the same proportion as the number of days in that period bears to the number of days in a year; and where an assessment is made for a period of more than a year, the total of such rebates to which the taxpayer is entitled is proportionately increased.

Compare: 1994 No 164 s KB 2

KB 3 Calculations of rebates producing negative amounts

If a calculation prescribed by this subpart produces a result of less than zero for the amount of a rebate or the amount of a component of a rebate, then the amount of that rebate or component is zero.

Compare: 1994 No 164 s KB 3

Subpart KC—Individual rebates

KC 1 Low income rebate

- (1) A taxpayer, who is a natural person but who is not an absentee, is allowed as a rebate of income tax,—
 - (a) where the net income derived in the tax year by that taxpayer, being a New Zealand superannuitant or a person in receipt of a veteran's pension, is less than \$9,500, a rebate of an amount equal to 4.5 cents for each complete dollar of that net income:
 - (b) where the net income of that taxpayer (not being a taxpayer to whom **paragraph (a)** applies) is less than \$9,500 for the tax year, a rebate of 4.5 cents for each complete dollar of the amount determined under the formula in **subsection (4)**:

- (c) where the net income of that taxpayer amounts to, or exceeds, \$9,500 for the tax year, an amount calculated in accordance with the following formula:

$$x - y$$

where—

x is—

- (i) \$427.50, where the taxpayer is a New Zealand superannuitant or a person in receipt of a veteran's pension:
- (ii) the lesser of \$427.50 and an amount equal to 4.5 cents for each complete dollar of the amount determined under the formula in **subsection (4)**, in all other cases

y is an amount equal to 1.5 cents for each complete dollar of the net income that exceeds \$9,500.

- (2) In a tax year in which a taxpayer is a non-resident for a period, the amount of rebate under **subsection (1)** is calculated by—
- (a) increasing the net income of the taxpayer in the proportion that the number of days for which the taxpayer is a resident bears to the number of days in the tax year; and
 - (b) reducing the rebate in the proportion that the number of days for which the taxpayer is a resident bears to the number of days in the tax year.
- (3) For the purposes of **subsection (1)** and notwithstanding **subsection (2)**, where the taxpayer derives counted income from New Zealand in the period (in the tax year) that precedes the taxpayer's arrival in, or, as the case may be, succeeds the taxpayer's departure from New Zealand (being the period in respect of which the taxpayer is deemed not to be resident in New Zealand), the Commissioner may determine the amount of the net income of the taxpayer for the tax year in such manner and in such amount as in all the circumstances of the case appear equitable having regard to the class or classes of the counted income so derived by the taxpayer and to the circumstances of the derivation of that counted income and to the tenor of this section.
- (4) The amount on which a rebate calculated under **subsection (1)(b) or (c)** is determined is calculated in accordance with the following formula:

$$a - (b - c)$$

where—

- a is the net income of the taxpayer for the tax year
- b is the aggregate amount of counted income of the taxpayer that is interest, dividends, royalties, rents, beneficiary income, and taxable distributions under **section HH 3** allocated to that year in accordance with **Part B**
- c is the aggregate amount of deductions allowed in deriving the counted income referred to in item “b” of this formula allocated to that year in accordance with **Part B** to the extent it does not exceed the amount calculated in item “b” of this formula.

Compare: 1994 No 164 s KC 1

KC 2 Rebate in certain cases for children

A taxpayer (other than an absentee) who at any time during any tax year—

- (a) is under the age of 15 years; or
- (b) is under the age of 18 years and is attending—
 - (i) a private primary school or a State primary school or a private secondary school or a State secondary school or department (in each case as defined in the Education Act 1964); or
 - (ii) an integrated school (as defined in section 2 of the Private Schools Conditional Integration Act 1975); or
 - (iii) a school providing special education (as defined in the Education Act 1964) for the deaf, the dumb, the blind, the mentally handicapped, the crippled, or the otherwise disabled, afflicted, or handicapped; or
- (c) is a person under the age of 19 years who—
 - (i) during the preceding tax year was a person to whom **paragraph (b)** applied; and
 - (ii) attained the age of 18 years on or after 1 January in that preceding tax year; and
 - (iii) continues to attend a school of any of the kinds referred to in **paragraph (b)**—

is allowed a rebate of income tax for that tax year of the lesser of—

- (d) an amount calculated in accordance with the following formula:

$$(x - y) \times \frac{15}{100}$$

where—

x is the net income of the taxpayer for that tax year
y is the resident withholding income derived by the taxpayer in that tax year:

(e) \$156:

provided that in no case is a taxpayer allowed a rebate under this section in respect of any tax year in respect of which the taxpayer has been allowed a rebate under **section KC 3**.

Compare: 1994 No 164 s KC 2

KC 3 Transitional tax allowance

(1) A taxpayer who in any tax year is a qualifying person is allowed as a rebate of income tax an amount calculated in accordance with the following formula:

$$y \times \frac{z}{52}$$

where—

y is,—

- (i) where the net income of the taxpayer for the tax year is less than \$6,241, \$728:
- (ii) where the net income of the taxpayer for the tax year amounts to or exceeds \$6,241, \$728 diminished by 20 cents for each complete dollar of the net income that exceeds \$6,240

z is the number (if any) of periods of 1 week, in the tax year, in relation to each of which the taxpayer is a full-time earner.

(2) For the purposes of **subsection (1)**, in any case where a qualifying person has, during the tax year, either arrived in or departed from New Zealand and in respect of that part of the tax year (being the tax year in which the qualifying person so arrives or departs) that precedes the qualifying person's arrival in or, as the case may be, succeeds the qualifying person's departure from New Zealand, the qualifying person is deemed, under **section OE 1**, not to be resident in New Zealand, the net income of the qualifying person for the tax year is deemed to be an amount equal to the net income of the qualifying person for the period during which (in the tax year) the qualifying person is personally present in New Zealand,

increased in the proportion that the number of days in the tax year bears to the number of days in that period:
provided that in any case where the qualifying person derives counted income from New Zealand in the period (in the tax year) that precedes the qualifying person's arrival in or, as the case may be, succeeds the qualifying person's departure from New Zealand (being the period in respect of which the qualifying person is deemed not to be resident in New Zealand), the Commissioner may determine the amount of the net income of the qualifying person for the tax year in such manner and in such amount as in all the circumstances of the case appear equitable having regard to the class or classes of the counted income so derived by the qualifying person and to the circumstances of the derivation of that income and to the tenor of this subsection.

(3) In this section,—

full-time earner, in relation to any week, means any person who, in the week, is engaged in remunerative work for not less than 20 hours, and includes any person who has not been so engaged by reason of—

(a) that person having suffered incapacity due to personal injury by accident (being personal injury by accident within the meaning of section 2 of the Accident Compensation Act 1982 or personal injury within the meaning of section 4 of the Accident Rehabilitation and Compensation Insurance Act 1992) in respect of which earnings related compensation (under section 2 of the Accident Compensation Act 1982), any compensation for loss of earnings payable under sections 38, 39, and 43 of the Accident Rehabilitation and Compensation Insurance Act 1992, or any vocational rehabilitation allowance payable under section 25 of that Act, or any compensation for loss of potential earning capacity payable under section 45 or 46 of that Act, or any weekly compensation payable under section 58, 59, or 60 of that Act, or any continued compensation payable under section 138 of that Act has been, is being, or will be paid where, were it not for the suffering of that incapacity, that person would have been so engaged:

- (aa) that person having suffered incapacity due to personal injury (within the meaning of section 13 of the Accident Insurance Act 1998) in respect of which—
 - (i) weekly compensation is payable under section 428(2) or 429(2) or schedule 1, part 2 of that Act; or
 - (ii) compensation payable under section 445, 446, or 447 or schedule 1, clauses 67, 70, and 71 of that Act has been, is being, or will be paid where, were it not for the death of another person, that person would have been so engaged:
- (ab) that person having suffered incapacity due to personal injury (within the meaning of section 6 of the Injury Prevention, Rehabilitation, and Compensation Act 2001) in respect of which—
 - (i) weekly compensation (within the meaning of sections 6 and 365 and schedule 1, part 2 of that Act) is payable; or
 - (ii) compensation payable under sections 383, 384, and 385 and schedule 1, clauses 66, 70, and 71 of that Act has been, is being, or will be paid where, if not for the death of another person, that person would have been so engaged:
- (b) that person having been temporarily, or for an indefinite period, incapacitated for work through sickness or accident in respect of which a sickness benefit has been, is being, or will be paid under the Social Security Act 1964 where, were it not for that person having been so incapacitated for work, that person would have been so engaged:

and for the purposes of this definition, in any case where remunerative work is performed, by any person, in a pay period that consists of a period that is longer than 1 week, the person is deemed to have been engaged in remunerative work to a uniform daily extent throughout the said period

qualifying person, in relation to a tax year, means any full-time earner, not being a person—

- (a) who is a child under the age of 18 years (other than a child over the age of 15 years who has ceased attending a school of any of the kinds referred to in **section KC 2(b)**);
- (c) who is deemed, under **section OE 1**, not to be resident in New Zealand throughout the tax year:

- (d) who is entitled to any credit of tax in respect of the tax year under **subpart KD**:
- (e) who is, throughout the tax year, the spouse of any person who, in respect of the tax year, is entitled to any credit of tax under **subpart KD**

remunerative work, in relation to any person, means work from, by, or through the performing of which by the person counted income (within the meaning of this Act) is derived by the person.

Compare: 1994 No 164 s KC 3

KC 4 Rebate in certain cases for housekeeper

- (1) A taxpayer (other than an absentee) specified in **paragraph (a) or (b) or (c)** of the definition of **housekeeper** in **subsection (2)** who makes qualifying payments during any tax year is allowed as a rebate of income tax for that tax year the smaller of—
 - (a) a sum equal to 33 cents for every complete dollar of those qualifying payments:
 - (b) \$310.
- (1A) A refund may be made under this section only if section 41A of the Tax Administration Act 1994 is complied with.
- (2) In this section,—

child means any child who is under the age of 18 years or who is suffering from any mental or physical infirmity or disability affecting his or her ability to earn his or her living

communal home means a motel, hotel, boardinghouse, guest house, convalescent home, nursing home, rest home, hospital, hospice, or other similar establishment; but does not include any part of such an establishment that is occupied by any person regularly engaged in carrying on the activity of operating the establishment or by the spouse of the person

home, in relation to a taxpayer and to any tax year, means the dwelling that is the residence of the taxpayer in which the taxpayer resides during the tax year; but does not include a communal home

housekeeper, in relation to a taxpayer and a tax year, means—

 - (a) where the taxpayer is a widow, a widower, a divorced person, an unmarried person, or a separated person,—

- (i) a person who, or an institution which, has the care and control, either in the home of the taxpayer or elsewhere, of any child; or
- (ii) a person who tends the home of the taxpayer, where the Commissioner is satisfied that the services of the person are necessary by reason of any mental or physical infirmity or disability of the taxpayer; or
- (b) where the taxpayer is a married person (other than a separated person),—
 - (i) a person who, or an institution which, has the care and control, either in the home of the taxpayer or elsewhere, of any child; or
 - (ii) a person who tends the home of the taxpayer,— where, in either case, the Commissioner is satisfied that the services of the person or the institution are necessary by reason of any mental or physical infirmity or disability of the taxpayer or his or her spouse; or
- (c) where the taxpayer is a married person (other than a separated person), a person who, or an institution which, has the care and control, either in the home of the taxpayer or elsewhere, of any child, where the Commissioner is satisfied that the services of the person or the institution are necessary by reason of the employment or business activities of both the taxpayer and his or her spouse:
provided that where, in respect of any tax year and by reason of this paragraph, both spouses are entitled to a rebate under this section, the Commissioner may apportion such amounts of rebate not exceeding in the aggregate \$310 in such manner as the Commissioner considers fair and equitable

institution means any creche, day nursery, play centre, kindergarten, or similar body; but does not, in relation to the care and control of a child who is 5 years of age or over, include any institution which is, in any way, concerned with the education of the child

qualifying payments, in relation to a taxpayer and to any tax year, means payments made by the taxpayer during the tax year for the services of a housekeeper or housekeepers, being payments in respect of which no rebate of income tax under

any other provision of this Act has been, or will be, allowed to the taxpayer or to any other taxpayer

separated person means a married person who is in fact separated and living separate and apart from his or her spouse, whether in accordance with a decree, order, or judgment of any court, or under an agreement for separation, or by reason of the desertion of one of the parties by the other of them, or otherwise.

Compare: 1994 No 164 s KC 4

KC 5 Rebate in respect of gifts of money

- (1) A taxpayer, other than an absentee, or a company, or a public authority, or a Maori authority, or an unincorporated body, or a trustee liable for income tax under **sections HH 3 to HH 6, HK 14, and HZ 2**, is allowed as a rebate of income tax the amount of any gift (not being a testamentary gift) of money of \$5 or more made by the taxpayer in the tax year to any of the following societies, institutions, associations, organisations, trusts, or funds (being in each case a society, an institution, an association, an organisation, a trust, or a fund in New Zealand), namely:
- (aa) a society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual and the funds of which are, in the opinion of the Commissioner, applied wholly or principally to any charitable, benevolent, philanthropic, or cultural purposes within New Zealand:
 - (ab) a public institution maintained exclusively for any 1 or more of the purposes within New Zealand specified in **paragraph (aa)**:
 - (ac) a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand specified in **paragraph (aa)**, by a society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual:
 - (ad) a public fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand specified in **paragraph (aa)**:
 - (ae) the Red Cross Society Incorporated:

- (af) the Pacific Leprosy Foundation:
- (ag) the Leprosy Mission New Zealand Incorporated:
- (ah) the Volunteer Service Abroad (Incorporated):
- (ai) the Commonwealth Foundation:
- (aj) the Sir Walter Nash Vietnam Appeal:
- (ak) the Food Bank of New Zealand:
- (al) the Norman Kirk Memorial Trust Fund:
- (am) the United Nations International Children’s Emergency Fund (UNICEF):
- (an) World Vision of New Zealand (Incorporated):
- (ao) the Save the Children Fund:
- (ap) the Hillary Commission for Sport, Fitness, and Leisure:
- (aq) Christian World Service:
- (ar) Caritas Aotearoa–New Zealand:
- (as) “Raphael” (The Ryder-Cheshire Foundations of New Zealand):
- (at) New Zealand Sports Foundation (Incorporated):
- (au) the New Zealand Society for the Intellectually Handicapped (Incorporated):
- (av) Amnesty International:
- (aw) the Evangelical Alliance Relief Fund (TEAR Fund):
- (ax) CORSO (Incorporated):
- (ay) Operation Hope (Aid Ship to Africa):
- (az) the New Zealand Rotary Clubs Charitable Trust:
- (ba) Alhay Buhay Foundation Trust:
- (bb) Cyclone Ofa Relief Fund:
- (bc) Water for Survival:
- (bd) International Christian Aid (ICA):
- (be) Christian Children’s Fund of New Zealand Limited (CCFNZ):
- (bf) Cyclone Val Relief Fund:
- (bg) Channel 2 Cyclone Aid for Samoa:
- (bh) Community Action Overseas (Oxfam NZ):
- (bi) the Winston Churchill Memorial Trust:
- (bj) the Fred Hollows Foundation (NZ):
- (bk) Christian Blind Mission International (New Zealand):
- (bl) Four Sherpa Trust:
- (bm) Adventist Development and Relief Agency:
- (bn) Mobility Equipment for the Needs of Disabled Trust:
- (bo) the Serious Road Trip Charitable Trust:
- (bp) Valehead Community Health Centre Trust:
- (bq) Nelson Mandela Trust (New Zealand):

- (br) African Enterprise (New Zealand) Aid and Development Fund:
 - (bs) New Zealand Viet Nam Health Trust:
 - (bt) Mission Without Borders (NZ), Humanitarian Aid Account:
 - (bu) Bangladesh Flood Appeal Trust:
 - (bv) Karunai Illam Trust:
 - (bw) Cry for the World Foundation New Zealand Humanitarian Aid Fund:
 - (bx) Akha Rescue Ministry Charitable Trust.
- (2) The rebates provided for in this section must not, in the case of any taxpayer, in any tax year exceed in the aggregate the smaller of—
- (a) 33 $\frac{1}{3}$ % of the aggregate of all gifts described in **subsection (1)**:
 - (b) \$500.
- (3) No rebate is allowed under this section in respect of any gift unless the taxpayer furnishes to the Commissioner in support of the taxpayer's claim for the rebate a receipt evidencing to the satisfaction of the Commissioner the making of the gift by the taxpayer.
- (3AA) Despite **subsection (3)**, a rebate is allowed under this section if a tax agent makes an application for a refund under section 41A of the Tax Administration Act 1994 on behalf of a person and—
- (a) the tax agent sights the receipt evidencing the making of the gift for which a claim is being made; and
 - (b) the person retains the receipt for 4 tax years after the tax year to which the claim relates.
- (3A) A refund may be made under this section only if section 41A of the Tax Administration Act 1994 is complied with.
- (4) In this section, **gift** includes a subscription paid to a society, institution, association, organisation, trust, or fund, only if the Commissioner is satisfied that the subscription does not confer any rights arising from membership in that or any other society, institution, association, organisation, trust, or fund.

Compare: 1994 No 164 s KC 5

Subpart KD—Tax credits for family support and family plus

KD A1 Calculation of tax credits under this subpart

Despite section 92 of the Tax Administration Act 1994, a rebate of income tax under this subpart is calculated by the Commissioner.

Compare: 1994 No 164 s KD A1

KD 1 Determination of net income

- (1) Notwithstanding any other provision of this Act, for the purposes of this subpart, in calculating under this Act the net income or net loss of any person in any income year,—
 - (a) amounts referred to in **sections CW 22(1)(e) and CW 24**, and an overseas pension under **section CW 22(1)(e)** as defined in **section CW 22(2)**, derived by the person in the income year, are deemed not to be exempt income; and
 - (b) the person is allowed a deduction for—
 - (i) the amount of any payment, made by the person during the tax year, of the kind referred to in **section CW 24**; and
 - (ii) the amount of any payment made by the person during the tax year under section 27K of the Social Security Act 1964; and
 - (c) there is not included—
 - (i) any amount of income equalisation deposit in relation to the 2002–03 or an earlier income year (not being interest payable under **section EH 6**) that is refunded to the person in the 2003–04 income year or a later income year under any of **sections EH 10, EH 14, EH 15, EH 17, and EH 23**; and
 - (ii) any amount of counted income that, under any of **sections CB 27, CF 2, EE 36 to EE 43, EI 1, EI 4, EI 6, and EZ 7**, is deemed to be, or to have been, derived by the person in the 2002–03 or an earlier income year and that, were it not so deemed, would not be or have been counted income derived by the person in the 2002–03 or an earlier income year; and
 - (d) any amount derived from the sale of a building that, under **sections EE 36 to EE 43 and EZ 7**, is counted

- income of the person in the income year, excluding a deduction allowed by way of a depreciation loss in the 2003–04 or a later income year; and
- (vi) any amount of adverse event income equalisation deposit made under **section EH 39** in relation to the 2002–03 or an earlier income year (not being interest payable under **section EH 41**) that is refunded to the person in the 2003–04 or a later income year under any of **sections EH 45, EH 48, and EH 54**; and
 - (vii) any amount of a net loss of a qualifying company that is attributed to the person as a shareholder of that company under **section HG 16**; and
- (f) where, in the income year, a business or more than 1 business is carried on by the person, there must, in relation to that business, or each such business, be calculated under this Act, including this subpart (that calculation being referred to in this paragraph and in **subsection (2)** as the **specified calculation**), the amount that would be the net income or the net loss of the person for that income year if the person derived counted income only from carrying on the business and, where that amount so calculated is a net loss, that business is deemed, for the purposes of this subpart (except for the purpose of making the specified calculation), not to have been carried on by the person during the income year; and
- (g) where, on the day that, in relation to a company that is a close company, is the last day of the year or other period ending with the date of the annual balance of the accounts of the company for the purpose of furnishing its return of income under this Act for the tax year (that period being referred to in this paragraph as the **accounting year of the company**), the person is, or would be if that day was the last day of any quarter, in relation to that company, a major shareholder, there is included,—
- (i) for the purposes of this Act, other than the definition of **net specified income**, an amount equal to the amount (if any) by which the amount of any dividend, or the aggregate of the amounts of all dividends, paid by the company to the person in

the tax year is less than an amount equal to so much of the net income of the company for the tax year to which, under and for the purposes of this Act, the accounting year of the company corresponds, as bears to that amount the same proportion as the total of the issued shares of the company (other than shares which bear a fixed rate of dividend only) so held by the person bears to the total of the issued shares of the company (other than shares which bear a fixed rate of dividend only) on the last day of that accounting year of the company:

- (ii) for the purposes of the definition of **net specified income**, an amount equal to the amount (if any) by which the amount of any dividend, or the aggregate of the amounts of all dividends, paid by the company to the person in the tax year is less than the amount calculated in accordance with the following formula:

$$\frac{a}{b} \times (c - d)$$

where—

- a is the number of issued shares of the company (other than shares which bear a fixed rate of dividend only) held by the person on the last day of the accounting year of the company
- b is the number of issued shares of the company (other than shares which bear a fixed rate of dividend only) on the last day of the accounting year of the company
- c is the net income of the company for the tax year to which, under and for the purposes of this Act, the accounting year of the company corresponds
- d is the income tax liability of the company for the tax year to which, under and for the purposes of this Act, the accounting year of the company corresponds; and
- (h) where any person receives any distribution from a superannuation scheme, and an employer of that person

- (being an employer by whom the person continues to be employed 1 month after the date of receipt of the distribution) has made contributions to that superannuation scheme in the income year in which the distribution was received or in the immediately preceding 2 income years, that distribution is, unless the Commissioner in the Commissioner's discretion determines otherwise, counted income of the person and is deemed to be derived in the income year or years determined by the Commissioner as being the income year or years for which the contributions were appropriate, less an amount that the Commissioner determines is attributable to the member's contributions for any such year: provided that this paragraph does not apply to any person who receives any distribution from a superannuation scheme as a result of and on or after the person's retirement from employment with an employer who was a contributor to the scheme; and
- (i) the Commissioner must have regard to the gross amounts of all income sources known to the Commissioner and, if the person has been issued an income statement under Part 3A of the Tax Administration Act 1994, the sum of all amounts of counted income included in an income statement issued to the person.
- (2) For the purposes of **subsection (1)(f)**,—
- (a) where, in the income year, any asset of the person is used in the carrying on by the person of a business and another business or other businesses, there is allowed, in the making, in relation to that first-mentioned business, of the specified calculation, a deduction of such part (and no other part) of the expenditure incurred and of an amount (if any) of depreciation loss (being the expenditure and being the amount of depreciation loss that, apart from **subsection (1)(f)**, would for the purposes of this subpart, in the income year, be allowed as a deduction in respect of or in relation to the asset), as the Commissioner thinks fit; and
 - (b) where, the Commissioner is satisfied, 2 or more businesses that are carried on by the person in the income year are businesses of the kind that are normally carried on in association with each other or, as the case may be, one another the Commissioner may determine that the

carrying on of those businesses is deemed to constitute the carrying on by the person of a single business in the income year.

- (3) For the purpose of determining the amount that is equal to so much of the net income of any person for any income year as, for the purposes of this subpart, is deemed to be the net income for any period contained in the income year, that is, in relation to the person, a specified period,—
- (a) the counted income derived by the person in the income year is, to the extent that it was derived by the person from employment during the whole or any part of the income year, deemed to have been derived at a uniform daily rate throughout the period of that employment:
 - (b) the counted income derived by the person in the income year is, to the extent that it was derived by the person by way of a benefit that was an income-tested benefit, deemed to have been derived at a uniform daily rate throughout the period, in the income year, in respect of which the benefit was paid to the person:
 - (c) notwithstanding section 38(1) of the Tax Administration Act 1994,—
 - (i) the counted income derived by the person in the income year is, to the extent that it was derived by the person otherwise than from employment, and otherwise than by way of a benefit that was an income-tested benefit, deemed to have been derived at a uniform daily rate throughout the income year; and
 - (ii) any expenditure incurred in deriving the counted income to which **subparagraph (i)** applies that is allowed as a deduction is deemed to have been incurred at a uniform daily rate throughout the income year.
- (4) For the purposes of this subpart, the specified income in relation to a person and to any specified period is an amount calculated in accordance with the following formula:

$$a \times \frac{365}{b}$$

where—

- a is so much of the net income of the person for the income year that contains the specified period as, in the opinion of the Commissioner, is attributable to the specified period
 - b is the number of days in the specified period.
- (5) Where the net income calculated under this Act (except this subpart) in relation to any person and to any income year is calculated in respect of a period (referred to in this subsection as the **greater period**) that is greater than a period of 12 consecutive months, the net income (referred to in this subsection as the **adjusted net income**) of the person calculated under this Act (including this subpart), for the purposes of this subpart, in relation to that income year, must, subject to such adjustments (if any) as the Commissioner considers fair and equitable, be reduced (for the purposes of this subpart) to an amount equal to such amount as bears to the adjusted net income the proportion that 365 bears to the number of days in the greater period.
- (6) Where, by reason of an alteration to the date of the annual balance of the accounts of any person for the purpose of the furnishing by the person of returns of income under the Tax Administration Act 1994, the net income (referred to in this subsection as the **adjusted income**) calculated under this Act (except this subpart) in relation to the person and to an income year is calculated in respect of a period (referred to in this subsection as the **lesser period**) that is less than a period of 12 consecutive months, the net income of the person calculated under this Act (including this subpart), for the purposes of this subpart, in relation to that income year, must, subject to such adjustments (if any) as the Commissioner considers fair and equitable, be increased (for the purposes of this subpart) to an amount equal to such amount as bears to the adjusted income the proportion that 365 bears to the number of days in the lesser period.

Compare: 1994 No 164 s KD 1

KD 1A Family support and family plus

- (1) Under this subpart, a person and their spouse (if any) may be entitled to family support and family plus.

- (2) Family plus consists of the child tax credit, the parental tax credit, and the family tax credit.

Compare: 1994 No 164 s KD 1A

KD 2 Calculation of subpart KD credit

- (1) A person is allowed a credit of tax (known as the **subpart KD credit**) for a tax year containing an eligible period of an amount calculated under the formula in **subsection (2)**.

- (2) The formula is—

$$\text{FSC} + \text{CTC} + \text{PTC} - \text{FCA}$$

where—

FSC is the amount of the family support credit for the eligible period calculated under **subsection (3)**

CTC is the amount of the child tax credit for the eligible period calculated under **subsection (4)**

PTC is the amount of the parental tax credit for the eligible period calculated under **subsection (5)**

FCA is the amount of the family credit abatement for the eligible period calculated under **subsection (6)**.

- (3) The amount of the family support credit for an eligible period is calculated using the formula—

$$\text{amount} \times \frac{\text{days}}{365}$$

where—

amount is the sum of—

- (a) for the eldest dependent child for whom the person is a principal caregiver during the period, 1 of the following:
- (i) \$2,444, if the child is under 13 years of age:
 - (ii) \$2,444, if the child is 13, 14, or 15 years of age:
 - (iii) \$3,120, if the child is 16 years of age or older:
 - (iv) a weighted average of the amounts in **subparagraphs (ii) and (iii)** that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 16 years of age during the period; and

- (b) for each dependent child for whom the person is a principal caregiver during the period, other than the eldest dependent child, 1 of the following:
- (i) \$1,664, if the child is under 13 years of age:
 - (ii) \$2,080, if the child is 13, 14, or 15 years of age:
 - (iii) \$3,120, if the child is 16 years of age or older:
 - (iv) a weighted average of the amounts in **subparagraphs (i) and (ii)** that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 13 years of age during the period:
 - (v) a weighted average of the amounts in **subparagraphs (ii) and (iii)** that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 16 years of age during the period
- days is the number of days in the eligible period.
- (4) The amount of the child tax credit for an eligible period is calculated using the formula—

$$\$780 \times \text{dependent children} \times \frac{\text{eligible period}}{365}$$

where—

dependent child-is the number of dependent children for whom the person is a principal caregiver during the eligible period

eligible period is the number of days in the eligible period for which the person and their spouse do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.

- (5) For each dependent child born on or after 1 October 1999, the amount of the parental tax credit for an eligible period is calculated using the formula—

$$\text{amount} \times \frac{\text{days}}{56}$$

where—

amount is \$1200 per dependent child

days is the number of days in the eligible period, up to a maximum of 56 days, for which the person and their spouse do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.

- (6) The amount of the family credit abatement for an eligible period is calculated using the formula—

$$\text{abatement rate} \times \frac{\text{days}}{365}$$

where—

abatement rate is,—

- (a) if the person has no spouse during the eligible period, and—
 - (i) the person's specified income for a specified period containing the eligible period is not more than \$20,000, nil:
 - (ii) the person's specified income for a specified period containing the eligible period is more than \$20,000 but is not more than \$27,000, 18 cents for each complete dollar of that excess:
 - (iii) the person's specified income for a specified period containing the eligible period is more than \$27,000, the amount of \$1,260 increased by 30 cents for each complete dollar of the excess; or
- (b) if a person has a spouse during the eligible period, and—
 - (i) the person's specified income, their spouse's specified income, or the sum of those specified incomes, as the case may be, for a specified period containing the eligible period is not more than \$20,000, nil:

- (ii) the person's specified income, their spouse's specified income, or the sum of those specified incomes, as the case may be, for a specified period containing the eligible period is more than \$20,000 but is not more than \$27,000, 18 cents for every complete dollar of that excess:
 - (iii) the person's specified income, their spouse's specified income, or the sum of those specified incomes, as the case may be, for a specified period containing the eligible period is more than \$27,000, the amount of \$1,260 increased by 30 cents for every complete dollar of the excess
- days is the number of days in the eligible period.
- (7) If a qualifying person receives interim fortnightly instalments of the parental tax credit in an 8 week period that includes 31 March, the family credit abatement formula in **subsection (6)** is to be applied so that—
- (a) instalments of the parental tax credit received in the first tax year are abated against the person's specified income, their spouse's specified income, or the sum of those specified incomes for that tax year; and
 - (b) instalments of the parental tax credit received in the second tax year are abated against the person's specified income, their spouse's specified income, or the sum of those specified incomes for that tax year.

Compare: 1994 No 164 s KD 2

KD 2AA Rules for subpart KD credit

- (1) This section applies for the purposes of **section KD 2**.
- (2) A person is a principal caregiver of a child if the person lives apart from another qualifying person for that dependent child and has the dependent child in his or her exclusive care for periods totalling at least one-third of the tax year or, in the case of the parental tax credit, for periods totalling at least one-third of the entitlement period.

-
- (3) A subpart KD credit must be reduced in proportion to the amount of time a dependent child spends in the exclusive care of another qualifying person during the eligible period.
 - (4) **Subsection (5)** applies if a person has a spouse throughout an eligible period and during the eligible period—
 - (a) the person is a qualifying person for a dependent child or more than 1 dependent child; and
 - (b) the spouse is a qualifying person for a dependent child or more than 1 dependent child; and
 - (c) the dependent child, or at least 1 of the dependent children, referred to in **paragraph (b)** is not a dependent child referred to in **paragraph (a)**.
 - (5) **Section KD 2** and this section, apart from this subsection and **subsection (6)**, apply as if either the person or the spouse were the qualifying person for all those children and the other person were not a qualifying person for any of the children.
 - (6) The Commissioner must determine which of the persons referred to in **subsection (5)** is the qualifying person under that subsection.
 - (7) A credit of tax is allowed under **section KD 2** to a qualifying person for a person aged 18 years who—
 - (a) is not financially independent; and
 - (b) is attending school or a tertiary educational establishment,—as if the person had not attained the age of 18 years.
 - (8) The Commissioner must determine the period for which a credit is allowed to a qualifying person who is a person aged 18 years.
 - (9) The period determined by the Commissioner under **subsection (8)** expires on or before the first day fixed by the Commissioner for payments of interim instalments of credits of tax under **section KD 7** in the calendar year following the calendar year in which the person turns 18.
 - (10) If a day is part of more than 1 eligible period, for the purposes of this section, the day is part only of the particular eligible period that the Commissioner thinks just, having regard to the tenor of this section and **section KD 2**.
 - (11) If a day is part of more than 1 specified period, for the purposes of this section, the day is part only of the particular

specified period that the Commissioner thinks just, having regard to the tenor of this section and **section KD 2**.

Compare: 1994 No 164 s KD 2AA

KD 2AB Parental tax credit

- (1) The qualifying person for a dependent child that is born on or after 1 October 1999 is allowed a credit of tax, called the **parental tax credit**, for up to the first 56 days after the date of the dependent child's birth if at any time during that period (in this subpart called the **entitlement period**) the person and their spouse (if any) do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.
- (2) A qualifying person continues to be entitled to the parental tax credit if the dependent child dies during the entitlement period and the person and their spouse (if any) would otherwise meet the requirements of **subsection (1)**.
- (3) The parental tax credit is to be paid to a qualifying person either—
 - (a) in accordance with **section KD 4**; or
 - (b) in the 56 days after the date an application is made if the person applies to receive the credit by way of fortnightly interim instalments and at any time during that period (in this subpart called the **payment period**) the person and their spouse do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.

Compare: 1994 No 164 s KD 2AB

KD 2A Calculating net contributions to family support credit, child tax credit, and parental tax credit

When the Commissioner calculates the amounts making up the family support credit, the child tax credit, and the parental tax credit corresponding to a period under this subpart, the Commissioner must—

- (a) treat the family support credit, the child tax credit, and the parental tax credit as credits corresponding to the period; and
- (b) treat as a debit the amount of family credit abatement corresponding to the period; and
- (c) apply the amount of the family credit abatement corresponding to the period,—

- (i) first, to reduce the amount of the family support credit corresponding to the period; and
- (ii) secondly, to reduce the amount of the child tax credit corresponding to the period; and
- (iii) thirdly, to reduce the amount of the parental tax credit corresponding to the period.

Compare: 1994 No 164 s KD 2A

KD 3 Calculation of family tax credit

(1) In this section,—

employment means the activity a person performs that gives rise, or will give rise, to an entitlement to a source deduction payment other than—

- (a) a payment of any of the kinds referred to in **paragraph (b)(iii), (vii), and (viii)** of the definition of **salary or wages**;
- (b) a withholding payment of the kind specified in part E of the schedule of the Income Tax (Withholding Payments) Regulations 1979;
- (c) a payment made by a close company to a person who is a major shareholder of the close company;
- (d) a payment made by a person to their spouse;
- (e) a payment made by a business carried on by 2 or more persons jointly, whether in partnership or otherwise, to a spouse of 1 of the persons in business

qualifying person, for a specified period, means a person, if throughout the specified period—

- (a) the person is 16 years or older; and
- (b) the person is the principal caregiver in respect of 1 or more dependent children; and
- (c) either—
 - (i) the person has been both resident and present in New Zealand for a continuous period of 12 months at any time and is tax resident, being resident in New Zealand, on the date on which a credit of tax is claimed under this section; or
 - (ii) each of the dependent children referred to in **paragraph (b)** is both resident and present in New Zealand;—

but does not include a person who, during the specified period, receives an income-tested benefit, a veteran's pension, or a war widows mother's allowance.

- (2) A person who does not have a spouse during an eligible period is allowed a credit of tax for the tax year containing the eligible period of an amount calculated using the formula in **subsection (3)**.

- (3) The formula is—

$$(\text{amount} - \text{NSI}) \times \frac{1\text{WPs}}{52}$$

where—

amount is \$15,080

NSI is the person's net specified income for the specified period containing the eligible period

1WPs is the number of 1 week periods in the eligible period for which the person is a full-time earner.

- (4) If a person has a spouse and is the principal caregiver during an eligible period, that person is allowed a credit of tax for the tax year containing the eligible period of an amount calculated using the formula in **subsection (5)**.

- (5) The formula is—

$$(\text{amount} - \text{NSI}) \times \frac{1\text{WPs}}{52}$$

where—

amount is \$15,080

NSI is the person's net specified income for a specified period containing the eligible period or their spouse's net specified income for the specified period or the sum of the person's and their spouse's net specified income for the specified period

1WPs is the number of 1 week periods in the eligible period for which the person is a full-time earner.

Compare: 1994 No 164 s KD 3

KD 3A Rules for family tax credit

- (1) This section applies for the purposes of **section KD 3**.
- (2) **Subsection (3)** applies if a person has a spouse throughout an eligible period and during the eligible period—
- (a) the person is a qualifying person for a dependent child or more than 1 dependent child; and
 - (b) the spouse is a qualifying person for a dependent child or more than 1 dependent child; and

-
- (c) the dependent child, or at least 1 of the dependent children, referred to in **paragraph (b)** is not a dependent child referred to in **paragraph (a)**.
- (3) **Section KD 3** and this section, apart from this subsection and **subsection (4)**, apply as if either the person or the spouse were the qualifying person for all those children and the other person was not a qualifying person for any of the children.
- (4) The Commissioner must determine which of the persons referred to in **subsection (3)** is the qualifying person under that subsection.
- (5) A credit of tax is allowed under **section KD 3** to a qualifying person for a person aged 18 years who—
- (a) is not financially independent; and
 - (b) is attending school or a tertiary educational establishment,—
- as if the person had not attained the age of 18 years.
- (6) The Commissioner must determine the period for which a credit is allowed to a qualifying person who is a person aged 18 years.
- (7) The period determined by the Commissioner under **subsection (6)** expires on or before the first day fixed by the Commissioner for payments of interim instalments of credits of tax under **section KD 7** in the calendar year following the calendar year in which the person turns 18.
- (8) If a day is part of more than 1 eligible period, for the purposes of this section, the day is part only of the particular eligible period that the Commissioner thinks just, having regard to the tenor of this section and **section KD 3**.
- (9) If a day is part of more than 1 specified period, for the purposes of this section, the day is part only of the particular specified period that the Commissioner thinks just, having regard to the tenor of this section and **section KD 3**.
- (10) For the purposes of this section, if a person receives a source deduction payment and on the date of receipt does not perform any employment or performs an activity to an extent less than would give rise to an entitlement to the source deduction payment, the person is treated as having performed such employment as the Commissioner determines, having regard to the date of receipt, to the pay period in which it occurs, to

the circumstances giving rise to the source deduction payment, and to any other circumstances that the Commissioner considers relevant.

Compare: 1994 No 164 s KD 3A

KD 3B Applications for guaranteed minimum family tax credit

A person who wishes to apply for a credit of tax, known as the guaranteed minimum family tax credit, under **section KD 3** as it was before or after its enactment by section 21 of the Income Tax Act 1994 Amendment Act 1996, must apply either **section KD 3** as if the definition of **qualifying person** read—**qualifying person**, in relation to any specified period, means any person where, throughout the specified period,—

- (a) the person is aged 16 years or over; and
- (b) the person is the principal caregiver in respect of 1 or more dependent children; and
- (c) either—
 - (i) the person has been both resident and present in New Zealand for a continuous period of 12 months at any time and is tax resident, being resident in New Zealand, on the date on which a credit of tax is claimed under this section; or
 - (ii) each of the dependent children referred to in **paragraph (b)** is both resident and present in New Zealand;—

but does not include any person who, during the specified period, receives an income-tested benefit, a veteran's pension, or a war widows mother's allowance.

Compare: 1994 No 164 s KD 3B

KD 4 Allowance of credit of tax in end of year assessment

- (2) Where, in relation to any tax year, a credit of tax is allowed under **section KD 2 or KD 3**, the Commissioner—
- (a) issues a person with a certificate of entitlement for the tax year because an interim instalment of estimated entitlement to a credit of tax was paid to the person during the tax year; or
 - (b) finds out, otherwise than by way of a certificate of entitlement, that an interim instalment of estimated entitlement to a credit of tax has been paid to, or for the

benefit of, or dealt with in the interest of, the person for the tax year,—

then,—

- (c) where any such instalment of estimated entitlement to a credit of tax, or the aggregate of all such instalments of estimated entitlement to a credit of tax, exceeds any credit of tax, or the aggregate of all credits of tax, to which, under this subpart, the person is entitled for the tax year, an amount equal to that excess is added to the tax payable by the person for the tax year; or
- (d) where any credit of tax, or the aggregate of all credits of tax, to which, under this subpart, the person is entitled for the tax year exceeds the credit first mentioned or, as the case may be, the aggregate first mentioned in **paragraph (c)**, an amount equal to that excess is credited in payment of any tax payable by the person for the tax year, so far as that tax extends,—

and,—

- (e) in any case where **paragraph (c)** applies, the amount added under that paragraph is recoverable by the Commissioner in the same manner, with any necessary modifications, as if it were tax payable by the person for the tax year:
 - (f) in any case where **paragraph (d)** applies, and where, after the crediting in payment of any tax payable under that paragraph, there remains a balance of the excess referred to in that paragraph, that balance is deemed to be tax paid by the person in respect of the tax year and is refundable by the Commissioner to the person as if it were tax paid in excess.
- (2A) A credit of tax in respect of a child is not allowed under **subsection (2)(c) or (d)** if the person does not provide the Commissioner with—
- (a) the tax file number of the child for whom the credit is claimed; or
 - (b) the birth certificate or other evidence acceptable to the Commissioner verifying the birth or existence of the child for whom the credit is claimed.
- (4) Where the Commissioner is satisfied that the amount of any credit of tax under **section KD 2 or KD 3** set off or refunded to the person in relation to any tax year is in excess of the proper

amount, the Commissioner may recover the excess in the same manner, with any necessary modifications, as if it were income tax payable by the person in that tax year:

provided that where any person is a qualifying person in relation to whom, throughout the tax year, any other person is a spouse, that person and that spouse are jointly and severally liable for payment of the excess and the Commissioner may recover the excess in the same manner, with any necessary modifications, as if it were income tax payable by the person or, as the case may be, the spouse in that tax year.

- (5) Every person to whom the Commissioner has issued a certificate of entitlement in relation to any tax year must, within the time within which the person is required to furnish a return of his or her income for the tax year, furnish to the Commissioner a statement in the prescribed form setting forth a complete statement of the net income of the person together with a complete statement of the net income for the tax year of every other person who at any time during that tax year was a spouse in relation to that person, signed by that person, that statement setting forth such other particulars as may be required in the statement.

Compare: 1994 No 164 s KD 4

KD 5 Credit of tax by instalments

- (1) Any person who, before the commencement of any specified period that, for the purposes of this section, is elected by the person (that specified period being referred to in this subpart as the **elected period**), expects to be entitled, in relation to and throughout the elected period, to a credit of tax under **section KD 2** or, as the case may be, **sections KD 2 and KD 3**, may, subject to this section, by application made in accordance with **subsection (2)**, require that, in advance of the expiry of the tax year that contains the elected period, payment to the person, or to the spouse of the person on behalf of the person, be made of that credit of tax by way of interim instalments.
- (1A) If a person is entitled to receive the parental tax credit for up to the first 56 days of a dependent child's life (referred to in this subpart as the **elected period**), the person may apply, in accordance with **subsection (2)**, to receive the parental tax credit under **section KD 2** by way of interim instalments in advance of the end of the tax year containing the elected period.

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- (1B) The application must be made no later than 3 months after the date of the dependent child's birth.
- (1BA) If the 3 month period in which a person may apply to receive the parental tax credit spans 2 tax years and all of the elected period falls in the first tax year, for the purposes of this subpart, the elected period is treated as falling in the second tax year if all interim instalments are paid to the person in the second tax year.
- (1C) If a person applies more than 3 months after the date of the dependent child's birth, the person may receive the parental tax credit only in accordance with **section KD 4** in the tax year in which the birth occurs.
- (2) Every application made under **subsection (1) or (1A)** must be in the prescribed form, signed by the person and any other person who, at the time at which the application is made, expects to be, in the elected period, a spouse in relation to that person, and must set forth in relation to the signatory, or each signatory, to the application, a complete statement of the net income that is expected to be attributable to the tax year referred to in **subsection (1) or (1A)**, and of so much of that net income as is expected to be attributable to the elected period, together with such other information as the Commissioner may require, and must be accompanied by,—
- (a) in relation to any signatory who expects to derive income from employment, evidence of the amount of income from employment (if any) derived by the person in the period of 1 month immediately preceding the date on which that application was made:
 - (b) in relation to any signatory who expects to derive income from a business, either—
 - (i) a copy of the annual accounts of the business for the tax year (or the accounting year that, under and for the purposes of this Act, corresponds with the tax year) immediately preceding the tax year that contains the elected period; or
 - (ii) where the Commissioner is satisfied that the annual accounts referred to in **subparagraph (i)** have not been completed, a copy of the annual accounts of the business for the tax year (or the accounting year that, under and for the purposes of this Act, corresponds with the tax year) that

- precedes the year immediately preceding the tax year that contains the elected period; or
- (iii) a set of budgeted accounts of the business for the tax year (or the accounting year that, under and for the purposes of this Act, corresponds with the tax year) that contains the elected period; or
 - (iv) such other evidence as is acceptable by the Commissioner in relation to the business for the tax year (or the accounting year that, under and for the purposes of this Act, corresponds with the tax year) that contains the elected period:
- (c) unless **paragraph (d)** applies, the tax file number of each child in relation to whom a credit of tax is claimed:
 - (d) in the case of a child that has died or is given up for adoption, a birth certificate or other evidence acceptable to the Commissioner verifying the birth or existence of the child for whom a credit of tax is claimed.
- (2AA) **Subsection (2)(a)** does not apply if the Commissioner considers that the Commissioner has sufficient evidence of a signatory's income from employment.
- (2AB) **Subsection (2)(d)** does not apply to an application made by a person who is an adoptive parent, as that term is defined in the Adoption Act 1955.
- (2A) A person continues to be entitled to a credit of tax under **section KD 2 or KD 2 and KD 3** for specified periods after the specified period for which an application was made until the Commissioner withdraws the certificate of entitlement under either **subsection (10) or (12)**.
- (3) If an application is not accompanied by the tax file number of each child for whom a credit of tax is claimed and if the Commissioner is otherwise satisfied of the person's entitlement, the Commissioner must—
- (a) issue the person with a certificate of entitlement; and
 - (b) pay to the person interim instalments of a credit of tax under **section KD 2 or KD 2 and KD 3** for a period of 8 weeks.
- (3A) If the person or their spouse does not provide the tax file number of a child for whom a credit of tax is claimed within the 8 week period, the Commissioner must stop paying the credit of tax for the child until the tax file number is provided.

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- (4) On receipt by the Commissioner of an application made by any person in accordance with **subsection (2)**, the Commissioner must, subject to this section,—
- (a) determine under this subpart the amount (if any) of the estimated entitlement to a credit of tax (calculated on the basis of that application and the statement and the other information furnished with the application and any other information available to the Commissioner) to which the person would be entitled in relation to the elected period; and
 - (b) calculate the amount that, if the Commissioner issued to the person a certificate of entitlement in relation to the whole of the elected period, would be the fortnightly interim instalment by way of credit of tax that would be specified in the certificate of entitlement; and
 - (c) in relation to the whole or such part (if any) of the elected period as the Commissioner sees fit, issue to the person a certificate specifying—
 - (i) the amount of the fortnightly interim instalment by way of credits of tax (as calculated under **paragraph (b)**) to which the person is entitled;
 - (ii) the amount (if any) after abatement contributed by the family support credit to the fortnightly interim instalment;
 - (iii) the amount (if any) after abatement contributed by the child tax credit to the fortnightly interim instalment;
 - (iiia) the amount (if any) after abatement contributed by the parental tax credit to the fortnightly instalment;
 - (iv) the amount (if any) contributed by the family tax credit to the fortnightly interim instalment.
- (5) Where a certificate of entitlement has been issued to a person under this section,—
- (a) the Commissioner must retain a copy of the certificate; and
 - (b) the Commissioner must make payments to the person of interim instalments by way of credit of tax in accordance with **section KD 7**.

- (6) In determining under **subsection (4)** the amount of the subpart KD credit relating to the whole or any part of an elected period, the Commissioner must—
- (a) calculate an amount (referred to in **paragraph (b)** and in **schedule 12** as the **annual amount**) in accordance with the following formula:

$$x \times \frac{365}{y}$$
 where—
 - x is equal to such amount of the net income referred to in **subsection (2)** expected to be attributable to the part of the tax year that is the part (referred to in this subsection as the **calculation period**) in relation to which the Commissioner determines that a credit of tax is allowable to the person
 - y is the number of days in the calculation period; and
 - (b) ascertain the amount that, in **schedule 12, second column**, is deemed to be the equivalent of the annual amount, as that annual amount is represented in **schedule 12, first column**; and
 - (c) calculate the subpart KD credit that would be allowed to the person, for the tax year of which the calculation period is part, if the specified income of the person in relation to the calculation period were equal to the amount first mentioned in **paragraph (b)**.
- (6A) The amount of an interim instalment by way of credit of tax under **section KD 2** or, as the case may be, **sections KD 2 and KD 3**, must be calculated by the Commissioner—
- (a) as if the calculation period were a specified period; and
 - (b) using—
 - (i) a value for specified income as directed by **subsection (6)(c)**; and
 - (ii) the rates of family support credit, child tax credit, parental tax credit, family credit abatement, and family tax credit given by **section KD 5B**.
- (7) The amount of any interim instalment by way of credit of tax under **section KD 2** or, as the case may be, **sections KD 2 and KD 3**, in relation to any part of any elected period, that is shown in any certificate of entitlement issued to any person under **subsection (4)** is the amount that, but for this subsection, would be

shown in that certificate of entitlement as the whole dollars comprised in that last-mentioned amount.

- (8) Where—
- (a) a person—
 - (i) expects that in any specified period the person will be entitled to receive an income-tested benefit; or
 - (ii) has applied to the chief executive of the department currently responsible for administering the Social Security Act 1964 under **section KD 6(1B)** for a credit of tax to be paid for a period after an income-tested benefit has ceased; and
 - (b) the chief executive of that department—
 - (i) is authorised, by **section KD 6(1)**, to make payments of a subpart KD credit to the person; and
 - (ii) does not request the Commissioner, under **section KD 6(1C)**, to accept from the person an application for a certificate of entitlement,—
- the person is not entitled to make an application under **subsection (2)** in relation to that period and **section KD 6** applies in relation to the person and the period.
- (9) Any person to whom a certificate of entitlement has been issued under this section must notify the Commissioner immediately upon the occurrence (within the period commencing with the issuing of that certificate of entitlement and ending with the last day of the part, of the elected period, to which that certificate of entitlement relates) of any of the following:
- (a) the cessation, by the person or by another person who in relation to the person is a spouse, of the role of being principal caregiver of any child, where the person expects that he or she will not resume the role of principal caregiver for a period of more than 56 consecutive days;
 - (b) the commencing or the ceasing of the person to be a spouse in relation to another person;
 - (c) any other event of a kind specified, by the Commissioner, in the certificate of entitlement, for the purposes of this subsection,—
- and may so notify the Commissioner upon the person, or another person who in relation to the person is a spouse,

becoming the principal caregiver of any child, or upon the occurrence of any other event that, the person considers, may affect his or her entitlement to the credit of tax specified in that certificate of entitlement, or upon the loss or destruction of that certificate of entitlement.

- (10) Where the Commissioner—
- (a) receives any notification given by any person in accordance with **subsection (9)** that affects any certificate of entitlement; or
 - (b) is otherwise satisfied that a certificate of entitlement issued to any person is incorrect; or
 - (c) is advised by the chief executive of the department currently responsible for administering the Social Security Act 1964, under section 84 of the Tax Administration Act 1994, that the person is also receiving a credit of tax from the chief executive,—
- the Commissioner may require the return of the certificate of entitlement and, whether or not the Commissioner requires the certificate to be returned, may—
- (d) withdraw the certificate of entitlement; or
 - (e) withdraw the certificate of entitlement and issue to the person, in its place, such other certificate of entitlement, in relation to the specified period to which that withdrawn certificate of entitlement related or in relation to such other specified period as the Commissioner considers appropriate, as, having regard to any information in the Commissioner's possession, the Commissioner considers should be issued to the person for the purpose of giving effect to this subpart; or
 - (f) in relation to the certificate of entitlement, issue to the person such supplement as, in the circumstances of the case, the Commissioner considers appropriate; and, for the purposes of this Act, that supplement so issued is deemed to constitute part of, and to amend accordingly, that certificate of entitlement.
- (11) A certificate of entitlement issued to any person under this section (that person being referred to in this subsection and in **subsection (12)** as the **claimant**) is—
- (a) not transferable (whether or not for valuable consideration) by the claimant to any other person:
 - (b) on alteration, in any manner by any person, invalid:

- (c) subject to all terms and conditions stipulated in the certificate by the Commissioner.
- (12) The Commissioner may, by notice to the claimant, withdraw the certificate of entitlement where, in the opinion of the Commissioner, the certificate of entitlement should cease to have effect and the claimant must, within the period of 7 days immediately succeeding the giving of that notice, return the certificate of entitlement to the Commissioner for cancellation by the Commissioner.

Compare: 1994 No 164 s KD 5

KD 5B Rates for interim instalments for period beginning on or after 1 July 1998

- (1) For the purposes of **section KD 5(6)**, the amount of the estimated entitlement of a person to a credit of tax for a period beginning on or after 1 July 1998 is calculated under the formula in **subsection (1A)**.

- (1A) The formula is—

subpart KD credit + FTC

where—

subpart KD credit is the estimated entitlement of the person to a subpart KD credit for the period calculated under **subsections (2) and (2A)**

FTC is the estimated entitlement of the person to a family tax credit for the period calculated under **subsection (6)**.

- (2) For the purposes of this section, the estimated entitlement of a person to a subpart KD credit for a period is calculated under the formula in **subsection (2A)**.

- (2A) The formula is—

FSC + CTC + PTC + FCA

where—

FSC is the amount of the family support credit for the eligible period calculated under **subsection (3)**

CTC is the amount of the child tax credit for the eligible period calculated under **subsection (4)**

PTC is the amount of the parental tax credit for the eligible period calculated under **subsection (4A)**

FCA is the amount of the family credit abatement for the eligible period calculated under **subsection (5)**.

- (3) The amount of the family support credit under this subsection is calculated using the formula—

$$a \times \frac{d}{364}$$

where—

a is an amount equal to the sum of,—

- (a) for the eldest dependent child of whom the person is a principal caregiver during the period, 1 of the following:
 - (i) \$2,444, if the child is under the age of 13 years:
 - (ii) \$2,444, if the child is 13, 14, or 15 years of age:
 - (iii) \$3,120, if the child is 16 or more years of age:
 - (iv) a weighted average of the amounts in **subparagraphs (ii) and (iii)** that reflects the proportion of the period that those subparagraphs apply to the child if the child attains 16 years of age during the period; and
- (b) for each dependent child of whom the person is a principal caregiver during the period, other than the eldest dependent child, 1 of the following:
 - (i) \$1,664, if the child is under the age of 13 years:
 - (ii) \$2,080, if the child is 13, 14, or 15 years of age:
 - (iii) \$3,120, if the child is 16 or more years of age:
 - (iv) a weighted average of the amounts in **subparagraphs (i) and (ii)** that reflects the proportion of the period that those subparagraphs apply to the child if the child attains 13 years of age during the period:
 - (v) a weighted average of the amounts in **subparagraphs (ii) and (iii)** that reflects the proportion of the period that those subparagraphs apply to the child if the child attains 16 years of age during the period

d is the number of days in the period.

- (4) The amount of the child tax credit under this subsection is calculated using the formula—

$$\$780 \times c \times \frac{e}{364}$$

where—

- c is the number of dependent children for whom the person is a principal caregiver during the period
- e is the number of days in the period that the person and any spouse of the person does not receive a specified payment and does not have a suspended entitlement to an income-tested benefit.

- (4A) The amount of the parental tax credit is calculated using the formula—

$$\text{amount} \times \frac{\text{days}}{56}$$

where—

- amount is \$1200 per dependent child
- days is the number of days in the eligible period, up to a maximum of 56 days, for which the person and their spouse do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.

- (5) The amount of the family credit abatement under this subsection is calculated in accordance with the following formula:

$$f \times \frac{d}{364}$$

where—

f is,—

- (a) if the qualifying person has no spouse during the period and—
 - (i) the specified income of the person for the period does not exceed \$20,000, nil;
 - (ii) the specified income of the person for the period exceeds \$20,000 but does not exceed \$27,000, 18 cents for each complete dollar of that excess;
 - (iii) the specified income of the person for the period exceeds \$27,000, the amount of \$1,260 increased by 30 cents for each complete dollar of the excess; or
- (b) if the person has a spouse during the period and—

- (i) the specified income of the person, or the specified income of the spouse, or the sum of those specified incomes, as the case may be, for the period does not exceed \$20,000, nil:
 - (ii) the specified income of the person, or the specified income of the spouse, or the sum of those specified incomes, as the case may be, for the period exceeds \$20,000 but does not exceed \$27,000, 18 cents for every complete dollar of that excess:
 - (iii) the specified income of the person, or the specified income of the spouse, or the sum of those specified incomes, as the case may be, for the period exceeds \$27,000, the amount of \$1,260 increased by 30 cents for every complete dollar of the excess
- d is the number of days in the period.
- (5A) If a principal caregiver receives interim fortnightly instalments of the parental tax credit in an 8 week period that includes 31 March, the family credit abatement formula in **subsection (5)** is to be applied so that—
- (a) instalments of the parental tax credit received in the first tax year are abated against the person's specified income, their spouse's specified income, or the sum of those specified incomes for that tax year; and
 - (b) instalments of the parental tax credit received in the second tax year are abated against the person's specified income, their spouse's specified income, or the sum of those specified incomes for that tax year.
- (6) For the purposes of this section, the estimated entitlement of the person to a family tax credit is calculated,—
- (a) for a person who has no spouse, in accordance with the following formula:

$$(x - y) \times \frac{z}{52}$$

where—

x is \$15,080

y is the net specified income in relation to that person and to the period

- z is the number (if any) of periods of 1 week in the period in relation to each of which the person is a full-time earner; and
- (b) if a person has a spouse, for each of the person and the spouse, 50% of the amount calculated in accordance with the following formula:

$$(x - y) \times \frac{z}{52}$$

where—

x is \$15,080

y is the net specified income in relation to the person and to the period, or the net specified income in relation to the spouse and to the period, or the aggregate of the net specified income in relation to the person and to the spouse and to the period

z is the number (if any) of periods of 1 week in the period in relation to each of which the person is a full-time earner.

Compare: 1994 No 164 s KD 5B

KD 6 Chief executive to deliver credit of tax

- (1) Where in any tax year the chief executive of the department currently responsible for administering the Social Security Act 1964 pays to any person an income-tested benefit, and the chief executive is satisfied that—
- (a) the person is entitled to receive a subpart KD credit for which the amount of the family credit abatement is nil; or
- (b) the chief executive is authorised by an Order in Council made under section 225A of the Tax Administration Act 1994 to pay the person under this section an amount of subpart KD credit for which the amount of family credit abatement is greater than nil,—
- the chief executive must, when paying the income-tested benefit, in addition pay to the person so much of the amount of the subpart KD credit as, in the opinion of the chief executive, the person is entitled to at the time of the payment.
- (1A) In determining under **subsection (1)** the amount of any subpart KD credit to be paid to a person for a period, the chief executive of the department currently responsible for administering the Social Security Act 1964 must—

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- (a) use the method set out in **section KD 5(6)**, if required to calculate the amount of the family credit abatement; and
- (b) take into account the rates of family support credit and family credit abatement given by **section KD 5B**.
- (1B) Where the chief executive of the department currently responsible for administering the Social Security Act 1964 ceases to pay to any person an income-tested benefit, the chief executive must, if the person applies, continue to pay to the person, for a period determined by the chief executive in consultation with the Commissioner, an amount of subpart KD credit determined as if the person were still being paid an income-tested benefit during the period.
- (1C) The chief executive of the department currently responsible for administering the Social Security Act 1964 may request the Commissioner to accept from a person an application for a certificate of entitlement if the chief executive is satisfied that the person is entitled to a subpart KD credit under **section KD 2** but is not satisfied that the chief executive is authorised by **subsection (1)** to pay the person an amount of subpart KD credit.
- (1D) The chief executive of the department currently responsible for administering the Social Security Act 1964 may, any time after making a request under **subsection (1C)** in relation to a person, request the Commissioner to cease making payments to the person under a certificate of entitlement if the chief executive is satisfied that **subsection (1)** authorises the chief executive to pay the person an amount of subpart KD credit.
- (2) Notwithstanding **subsection (1) or (1B)**, any person entitled to payment of a credit of tax under either of those subsections may notify the chief executive of the department currently responsible for administering the Social Security Act 1964 not to pay the credit of tax to that person and the chief executive must as soon as practicable cease to pay the credit of tax accordingly.
- (3) Any notification given under **subsection (2)** by any person may be cancelled by that person at any time and the chief executive must then recommence payment of the credit of tax as soon as practicable.

- (4) If, in relation to a tax year, the chief executive of the department currently responsible for administering the Social Security Act 1964 makes a payment under this section to a person or to the spouse of a person on behalf of the person, the chief executive must for each month in which a payment is made deliver to the Commissioner particulars of the payment in an employer monthly schedule and,—
- (a) not later than the 20 April next succeeding the last day of the tax year in which any such payment is so made, deliver to that person a certificate, signed by the chief executive, in a form authorised by the Commissioner and showing the total of all of the amounts of the credits of tax paid under any certificate of entitlement, together with such other information as the Commissioner may prescribe:
 - (b) not later than 31 May in the tax year next succeeding the tax year in which any such payment is so made, deliver to the Commissioner a copy of every certificate delivered by the chief executive in accordance with **paragraph (a)**, together with such other information as the Commissioner may prescribe.

Compare: 1994 No 164 s KD 6

KD 7 Commissioner to deliver credit of tax by instalments

- (1) Where a certificate of entitlement has been issued to any person under **section KD 5**, the Commissioner must, in such period as—
- (a) commences on the day specified in the certificate of entitlement; and
 - (b) ends with the earlier of—
 - (i) the day on which the certificate of entitlement is withdrawn by the Commissioner; or
 - (ii) the termination date specified in the certificate of entitlement,—
- pay to the person, on such days as the Commissioner may fix, the fortnightly interim instalments of the credit of tax shown in the certificate of entitlement.
- (2) If the Commissioner makes a payment in accordance with this section to a person or to their spouse on their behalf during a tax year, the Commissioner must deliver to the person a certificate in the prescribed form showing the total of all the credits

of tax paid by instalments under a certificate of entitlement for that tax year, together with such other information the Commissioner may prescribe.

- (2A) The Commissioner must deliver the certificate—
- (a) on or before 20 May next following the last day of the tax year in which the payment is made for persons to whom section 33A(5) of the Tax Administration Act 1994 does not apply; and
 - (b) on the same date that the Commissioner issues the person with an income statement for the tax year in which the payment is made for persons to whom section 33A(5) of the Tax Administration Act 1994 applies.
- (3) Where, following receipt by the Commissioner of an application for a certificate of entitlement under **section KD 5(2)**, the issue of a certificate of entitlement has in the opinion of the Commissioner been unduly delayed, the Commissioner may pay such amounts by way of interim instalments of credit of tax as, having regard to the circumstances of the case, the Commissioner determines should be so paid.
- (3A) Where in any tax year the chief executive of the department currently responsible for administering the Social Security Act 1964 ceases to pay to any person a credit of tax, the Commissioner may, on application by the person, pay to the person the amount of the credit of tax that the Commissioner determines the person would be entitled to under **section KD 2(2)** for the period that—
- (a) commences on the later of—
 - (i) the first day of the tax year; and
 - (ii) the day following that on which the chief executive ceases payment of any credit of tax to the person; and
 - (b) ends on the day preceding the first day specified in a certificate of entitlement subsequently issued to the person under **section KD 5**.
- (3B) Where in any tax year the chief executive of the department currently responsible for administering the Social Security Act 1964 ceases to pay to any person an income-tested benefit, the Commissioner may, on application by the person, pay

- to the person the amount of the credit of tax that the Commissioner determines the person would be entitled to under **section KD 3** for the period that—
- (a) commences on the later of—
 - (i) the first day of the tax year; and
 - (ii) the day following that on which the chief executive ceases payment of the income-tested benefit to the person; and
 - (b) ends on the day preceding the first day specified in a certificate of entitlement subsequently issued to the person under **section KD 5**.
- (3C) Where in any tax year the chief executive of the department currently responsible for administering the Social Security Act 1964 ceases to pay to any person an income-tested benefit, the Commissioner may, on application by that person, pay to the person the amount of the credit of tax that the Commissioner determines the person would be entitled to under **section KD 2(3)** for the period that—
- (a) commences on the later of—
 - (i) the first day of the tax year; and
 - (ii) the day following that on which the chief executive ceases payment of the income-tested benefit to the person; and
 - (b) ends on the day preceding the first day specified in a certificate of entitlement subsequently issued to the person under **section KD 5**.
- (4) Unless the Commissioner in any particular case otherwise determines, it is a condition of the receipt of credits of tax paid by instalments under this section that the qualifying person, or the qualifying person and his or her spouse, supply the Commissioner with particulars of an existing account held by the person (whether alone or jointly with the person's spouse), or open such an account if one is not held, and supply the Commissioner with particulars of the account, being an account held with—
- (a) any registered bank within the meaning of that term in section 2 of the Reserve Bank of New Zealand Act 1989; or
 - (b) any private savings bank carried on under the Private Savings Banks Act 1983; or

- (c) any building society, in respect of any deposits with the building society; or
- (d) the Public Service Investment Society Limited; or
- (e) any person that is a bank within the meaning of the Banking Act 1982,—

and every credit of tax by interim instalment must be paid by the Commissioner into such an account.

Compare: 1994 No 164 s KD 7

KD 8 Credit of tax deemed to be excluded income

Every credit of tax allowed to any person under this subpart is, for the purposes of this Act, deemed to be excluded income derived by the person to whom the credit of tax is allowed.

Compare: 1994 No 164 s KD 8

KD 9 Advice

In determining the entitlement of a person to any credit of tax under this subpart, the Commissioner may, if the Commissioner considers it necessary, obtain the advice of the chief executive of the department currently responsible for administering the Social Security Act 1964 or, as the case may be, the Secretary for War Pensions.

Compare: 1994 No 164 s KD 9

Subpart KE—Housing rebates

KE 1 Rebate for interest on home vendor mortgages

- (1) A taxpayer (not being an absentee, or a company, or a public authority, or a Maori authority, or an unincorporated body, or a trustee liable for income tax under **sections HH 3 to HH 6, HK 14, and HZ 2**) who in any tax year has derived interest in respect of a home vendor mortgage is allowed as a rebate of income tax for that tax year an amount equal to 20 cents for each complete dollar of the interest so derived:
- provided that the rebate under this section in any tax year must not exceed \$500:
- provided also that where in any tax year there are 2 or more taxpayers who have provided the loan secured by any home vendor mortgage, the rebate allowed to each such taxpayer must not exceed an amount calculated in accordance with the following formula:

$$\frac{a}{b} \times \$500$$

where—

- a is the amount of the loan provided by the taxpayer
- b is the total amount of the loan secured by the home vendor mortgage.

(3) In this section,—

corporation means Housing New Zealand Corporation

home vendor mortgage means a mortgage—

- (a) which secures a loan provided by the vendor or vendors of a house; and
- (b) which is guaranteed by the Corporation under its housing mortgage guarantee scheme; and
- (c) which has been approved by the Corporation, on or before 5 August 1982, for the purpose of the rebate to which this section applies; and
- (d) in respect of which notice of such guarantee and approval and of any variation has been delivered by the Corporation to the Commissioner.

Compare: 1994 No 164 s KE 1

Subpart KF—Rebates for non-residents

KF 3 Rebates for absentees

Every absentee who has derived counted income from that absentee's personal services (being services performed for or on behalf of any other person) while personally present in New Zealand in a tax year is entitled to a rebate of income tax in that absentee's assessment for that tax year of the same proportion of every rebate to which the absentee would have been entitled under any of the provisions of **sections KC 1 to KC 4** if the absentee were not an absentee, as the proportion that,—

- (a) if the absentee was paid for regular pay periods in respect of those services, the number of weeks for which the absentee was so paid in the tax year bears to 52:
- (b) in every other case, the number of days for which the absentee was paid for those services in the tax year bears to the number of days in the tax year.

Compare: 1994 No 164 s KF 3

Subpart KG—Industry-specific rebates

KG 1 Rebate for savings in special farm, fishing vessel, and home ownership accounts

- (1) A taxpayer who in any tax year operates a special account is allowed as a rebate of income tax for that tax year an amount equal to 45 cents for every complete dollar of any increase in savings in that account in relation to that tax year:
provided that in no case is a rebate allowed under this section for any tax year in respect of any increase in savings in any special account to the extent that the increase in relation to that year exceeds \$5,000 in the case of a special farm ownership account, or a special fishing vessel ownership account, or \$3,000 in the case of a special home ownership account.
- (2) For the purposes of this section, the aggregate of the amounts of the increase in savings in any special account in relation to every tax year must not exceed \$60,000 in the case of a special farm ownership account, or a special fishing vessel ownership account, or \$10,250 in the case of a special home ownership account.
- (3) In this section, **increase in savings**, in relation to any special account of any taxpayer and to any tax year, means the aggregate of—
 - (a) the amount by which the amount standing to the credit of that special account at the end of that tax year or the date of the closure of that account, whichever is the earlier, exceeds the amount standing to the credit of that account, if any, at the end of the tax year immediately preceding that tax year; and
 - (b) the amount of resident withholding tax deducted during that tax year from interest paid in respect of that account.
- (4) For the purposes of the definition of **increase in savings** in **subsection (3)**,—
 - (a) any amount withdrawn from a special account in accordance with a withdrawal certificate is deemed not to have been withdrawn:
 - (b) any amount withdrawn from a special account in accordance with a withdrawal certificate, and subsequently redeposited in the account, is deemed not to have been redeposited.

Compare: 1994 No 164 s KG 1

Subpart KH—Conduit tax relief

KH 1 Conduit tax relief

- (1) A company is allowed an income tax rebate as calculated under **subsection (2)**, for a tax year corresponding with an imputation year for which it is a conduit tax relief company, if it is still a conduit tax relief company at the time it files its return of income for the tax year.

- (2) The rebate amount is—

$$\text{NRS} \times ((\text{TR} \times (\text{FAI} - \text{FALO} - \text{EIA})) - \text{FAC} - \text{BC})$$

where—

NRS is the percentage of the company's shareholders who are not resident in New Zealand calculated under **section KH 2**

TR is the rate of income tax stated in **schedule 1, part A, clause 5**, that applies to the tax year

FAI is the company's foreign attributed income for the tax year

FALO is the company's foreign attributed loss offsets for the tax year

EIA is the excess interest allocation, if any, for the tax year calculated under **section FH 7**

FAC is all tax credits that would be allowed against the company's income tax liability for the tax year under **section LC 4 or LC 5**, determined as if the amount of rebate calculated under this section were nil

BC is the total of—

- (a) the amount able to be credited by the company against its income tax liability for the tax year under **section MF 5(4)**; and

- (b) the amount credited by another company in the same group of companies against the company's income tax liability for the tax year under **section MF 5(4)**; and

both amounts are determined as if the amount of rebate calculated under this section were nil.

- (3) Notwithstanding **subsection (2)**, the rebate amount cannot be—

- (a) less than nil; or

- (b) greater than the amount calculated as follows:

$$\text{NRS} \times (\text{terminal tax} + \text{refundable credits})$$

where—

NRS	is the percentage of the company's shareholders who are not resident in New Zealand calculated under section KH 2
terminal tax	is the company's terminal tax (including a nil amount and calculated as if the rebate calculated under this section were nil) for the tax year
refundable credits	are the company's refundable credits for the tax year.

Compare: 1994 No 164 s KH 1

KH 2 Calculation of percentage of shareholders not resident

- (1) The percentage of shareholders of a conduit tax relief company not resident in New Zealand is calculated—
 - (a) on the last date the company pays a dividend to all shareholders during the tax year; or
 - (b) at the end of the tax year if the company does not pay a dividend to all shareholders during the year.
- (2) If a company to which **subsection (1)** applies is a listed company, the company may use—
 - (a) the record date (the date on which entitlement to a dividend is determined) for a dividend instead of the date on which the dividend is paid; or
 - (b) any date in the tax year on which the company, for whatever commercial reason, calculates the percentage of non-resident shareholders.
- (2A) If, in respect of a company, there is a conduit tax relief group member, **subsection (1)** (as modified, if applicable, by **subsection (2)**) applies as if the company referred to in that subsection were the company—
 - (a) in which 1 or more non-residents have a direct voting interest; and
 - (b) that has a 100% voting interest (calculated as if **section OD 3(3)(d)** did not apply to deem the company's interests to be held by others) in the company first mentioned in this subsection.
- (3) The percentage of shareholders not resident in New Zealand is the lowest of—
 - (a) the percentage of direct voting interests held in the company by non-residents at the relevant time; and

- (b) the percentage of direct market value interests (if a direct market value circumstance exists) held in the company by non-residents at the relevant time; and
 - (c) the percentage of total dividends payable by the company (if the shares in the company are not all shares of the same class) that would be derived by non-residents, if the company were liquidated at the relevant time.
- (4) For the purposes of **subsection (1)(a)**, a company with more than 1 class of shares that pays a dividend to all shareholders of each class of shares in a tax year is treated as if a dividend had been paid to all shareholders on the latest date on which it paid a dividend to all holders of shares of 1 of the classes.
- (5) For the purposes of determining direct voting interests under **subsection (3)(a)** or direct market value interests under **subsection (3)(b)**,—
- (a) the relevant time is the date on which the company is treated as having paid a dividend to all shareholders under **subsection (4)**; and
 - (b) in relation to each class of shares, the company is treated as having the same shareholders on the relevant date in relation to that class that it had on the last date in the tax year on which a dividend was paid to all shareholders of that class.
- (6) For the purposes of this section, treasury stock is to be disregarded.
- (7) The rules for determining residence in **sections OE 7 and OE 8** apply for the purposes of this section.

Compare: 1994 No 164 s KH 2

Subpart KZ—Terminating provisions

KZ 1 Rebate from tax payable by persons receiving war pension

- (1) Where the counted income derived in any tax year by any taxpayer who, having served in the First World War with any naval, military, or air forces of any part of the Commonwealth is, in the year in which that counted income is derived, in receipt of a pension granted by the government of any part of the Commonwealth in respect of the taxpayer's total disablement attributable to such service comprises counted income otherwise than income from employment, there is allowed as

a rebate of income tax for that tax year 7.5% of so much of the amount that would be the taxable income if the only counted income derived were derived by the taxpayer otherwise than from—

- (a) income from employment; or
 - (b) New Zealand superannuation.
- (2) For the purposes of this section, income from employment does not include a periodic payment by way of superannuation, pension, retiring allowance, or annuity in respect of or in relation to the past employment of any person to whom this section relates.

Compare: 1994 No 164 s KZ 1

KZ 2 Rebate in respect of loss not carried forward

- (1) Where—
- (a) if the Land and Income Tax Amendment Act (No 3) 1968 had not been passed any taxpayer would have been entitled to claim that a loss be carried forward for the purpose of calculating social security income tax on income derived in the 1969–70 tax year; and
 - (b) that loss exceeds the loss to be carried forward to that tax year in accordance with section 137(4) of the Land and Income Tax Act 1954,—
- the Commissioner must allow a rebate of 7.5% of that excess in accordance with **subsection (2)**.
- (2) The rebate provided for in **subsection (1)**, to the extent that it has not been deducted from the tax payable in respect of the income derived by the taxpayer in the 1976–77 or any earlier tax year, must be deducted from the income tax that, apart from this section and after taking into account all other rebates allowed under this Act, is payable in respect of income derived by the taxpayer in the 1977–78 tax year, so far as that tax extends and, so far as it cannot then be deducted, is deducted from the tax payable in respect of income derived by the taxpayer in the next succeeding tax year, and so on.

Compare: 1994 No 164 s KZ 2

KZ 3 Continuation of rebates in respect of certain specified development projects

- (1) Notwithstanding the repeal of **sections KF 1, NF 1(2)(a)(vi), NG 1(2)(f), and OB 5** by sections 13, 21, 22, and 26 of the Income

Tax Act 1994 Amendment Act (No 3) 1995, a non-resident investment company, in relation to the development projects specified in **subsection (4)**, continues to be eligible for the rebates specified in **subsections (2) and (3)** and, accordingly,—

- (a) **sections NF 1(2)(a)(vi) and NG 1(2)(f)** continue to apply in respect of the company; and
 - (b) **section OB 5** and the definitions of any terms relevant to those rebates are treated as continuing in force for the purposes of this section.
- (2) Where the Commissioner is satisfied that, if this section had not been passed, the amount that would be the income tax liability of a non-resident investment company if the only counted income of the company were interest derived by it in any tax year from development investments would exceed the amount of income tax that would be payable by the company in respect of that interest if the company had derived the interest from a source in the country or territory in which the company is resident, the Commissioner must allow the excess as a rebate of income tax:
- provided that in any case where—
- (a) any interest is derived by a non-resident investment company in any tax year from development investments; and
 - (b) the company and the person by whom the interest is paid are not associated persons,—
- the amount that would be the income tax liability of the company if the only counted income of the company were that interest must not exceed 15% of the gross amount of that interest.
- (3) Where the Commissioner is satisfied that, if this section had not been passed, the amount that would be the income tax liability of a non-resident investment company, as determined by **section NG 3**, if the only counted income of the company were dividends derived by it from development investments would exceed the amount of income tax that would be payable by the company in respect of those dividends if the company had derived the dividends from a source in the country or territory in which the company is resident, the Commissioner must allow the excess as a rebate of income tax.
- (4) This section applies to the development projects specified in the following orders:

- (a) the Income Tax (Non-Resident Investment Companies) Order 1970 (SR 1970/138):
- (b) the Income Tax (Non-Resident Investment Companies) Order 1972 (SR 1972/19):
- (c) the Income Tax (Non-Resident Investment Companies) Order (No 2) 1972 (SR 1972/248):
- (d) the Income Tax (Non-Resident Investment Companies) Order (No 3) 1974 (SR 1974/277).

Compare: 1994 No 164 s KZ 3

Part L Credits

Subpart LB—Imputation credits: shareholders and imputation system

LB 1 Determination of amount of credit in certain cases

- (1) For the purposes of **sections CD 9(1) and (2), LB 2(1), and LD 8**, the amount of any imputation credit or dividend withholding payment credit is, where appropriate, as follows:
 - (a) in the case of a beneficiary of a trust, other than to the extent specified in **subsection (2)**, the amount of the imputation credit or dividend withholding payment credit calculated, in relation to the beneficiary, in accordance with the formula stated in **subsection (3)**:
 - (ab) in the case of a beneficiary of a trust who is a minor, the amount of the imputation credit or dividend withholding payment credit calculated, in relation to the beneficiary, in accordance with the formula in **subsection (3)** as if **section HH 3A(1)(b)** did not apply:
 - (b) in the case of a partner of a partnership, the amount of the imputation credit or dividend withholding payment credit calculated, in relation to the partner, in accordance with the formula stated in **subsection (4)**:
 - (c) in the case of an imputation credit attached to a dividend that has an imputation ratio greater than the ratio calculated in accordance with the formula stated in **section ME 8(1)**, so much of the imputation credit as would arise if the imputation ratio of the dividend were the ratio so calculated:
 - (d) in the case of a dividend withholding payment credit attached to a dividend with a dividend withholding payment ratio greater than the ratio calculated in accordance with the formula stated in **section MG 8(1)**, so much of the dividend withholding payment credit as would arise if the dividend withholding payment ratio of the dividend were the ratio so calculated:
 - (e) in the case of a dividend with a combined imputation and dividend withholding payment ratio greater than the ratio calculated in accordance with the formula stated in **section MG 10(1)**, so much of the dividend withholding payment credit and the imputation credit as

- remain after any reduction of the dividend withholding payment credit or the imputation credit in accordance with **subsection (5)**:
- (f) in the case of an imputation credit in respect of which any credit of tax has been disallowed under **section LB 2(4)**, so much (if any) of the imputation credit as is not disallowed under that provision:
 - (g) in the case of a dividend withholding payment credit in respect of which any credit of tax has been disallowed under **section LD 8(3)**, so much (if any) of the dividend withholding payment credit as is not disallowed under that provision:
 - (h) in the case of an imputation credit that gives rise to a reduced credit of tax in accordance with **section LB 2(5) or (7)**, so much of the imputation credit as remains after reduction by an amount equal to the amount of reduction under the relevant one of those subsections:
 - (i) in the case of a dividend withholding payment credit that gives rise to a reduced credit of tax in accordance with **section LD 8(4) or (6)**, so much of the dividend withholding payment credit as remains after reduction by an amount equal to the amount of reduction under the relevant one of those subsections:
 - (j) in the case of an imputation credit attached to a dividend to which **section GC 23** applies, a nil amount:
 - (k) in the case of an imputation credit determined under **section GC 22** to be the subject of an arrangement to obtain a tax advantage, so much of the imputation credit as remains after reduction by the amount referred to in **subsection (5)(b)** of that section:
 - (l) in the case of a dividend withholding payment credit determined under **section GC 22** to be the subject of an arrangement to obtain a tax advantage, so much of the dividend withholding payment credit as remains after reduction by the amount referred to in **subsection (5)(b)** of that section.
- (2) **Subsection (1)(a)** does not apply to a beneficiary who is an investor of a group investment fund in so far as the beneficiary derives an amount from the group investment fund that is category A income.

- (3) The amount of an imputation credit or dividend withholding payment credit, in relation to a beneficiary of a trust who, during an income year, derives dividends with an imputation credit or a dividend withholding payment credit attached by reason of being a beneficiary of the trust is, for the purposes of **subsection (1)(a)**, an amount calculated in accordance with the following formula:

$$a \times \frac{b}{c}$$

where—

- a is the aggregate of all imputation credits and all dividend withholding payment credits attached to all dividends distributed to beneficiaries of the trust in their capacity as such during the income year
- b is the aggregate of all distributions (whether of an income or a capital nature and whether or not included in the counted income of the beneficiary) made to the beneficiary in his or her capacity as a beneficiary of the trust during the income year
- c is the aggregate of all distributions (whether of an income or a capital nature and whether or not included in the counted income of the beneficiaries) made to beneficiaries of the trust in their capacity as such during the income year.
- (3A) In any case where a beneficiary of a trust derives, by reason of being a beneficiary of the trust, a supplementary dividend to which **section LE 2** applies, **subsection (3)** applies as if—
- (a) item “a” of the formula in that subsection included the amount of all supplementary dividends distributed to beneficiaries of the trust in their capacity as such during the income year; and
- (b) the amount of the imputation credit calculated with respect to that beneficiary were reduced by the amount of the supplementary dividend.
- (4) The amount of an imputation credit or dividend withholding payment credit, in relation to a partner of a partnership that, during an income year, derives dividends with an imputation credit or dividend withholding payment credit attached by reason of being a partner of the partnership is, for the purposes of **subsection (1)(b)**, an amount calculated in accordance with the following formula:

$$a \times \frac{b}{c}$$

where—

- a is the aggregate of all imputation credits and all dividend withholding payment credits attached to dividends derived by partners of the partnership in their capacity as such in the income year
 - b is the counted income of the partner as a partner of the partnership for the income year excluding all imputation credits and dividend withholding payment credits attached to dividends derived by the partner during the year
 - c is the counted income jointly derived by partners of the partnership for the income year excluding all imputation credits and dividend withholding payment credits attached to dividends derived by the partners during the year.
- (4A) If a partnership has both resident and non-resident partners, **subsection (4)** applies as if—
- (a) supplementary dividends derived by non-resident partners were added to item “a” of the formula:
 - (b) the counted income of a non-resident partner excluded supplementary dividends derived by the non-resident partner:
 - (c) the counted income jointly derived by partners excluded supplementary dividends derived by non-resident partners.
- (4B) A non-resident partner must reduce the result obtained from applying **subsection (4A)** by the amount of supplementary dividends derived by the non-resident partner.
- (5) Where there is an excess credit amount in respect of a dividend with a combined imputation and dividend withholding payment ratio greater than the ratio calculated in accordance with the formula stated in **section MG 10(1)**,—
- (a) the amount of the dividend withholding payment credit attached to the dividend is, for the purposes of **section CD 9(1)(b)**, reduced by the amount of the excess credit amount in so far as the dividend withholding payment credit extends:
 - (b) the amount of the imputation credit attached to the dividend is, for the purposes of **section CD 9(1)(a)**, reduced

by so much of the excess credit amount as remains after deduction from the excess credit amount of the amount of the reduction referred to in **paragraph (a)**.

Compare: 1994 No 164 s LB 1

LB 1A Treatment of imputation credits of beneficiary minor

For the purposes of **section LB 2**, an imputation credit calculated in respect of a beneficiary of a trust who is a minor is included in the counted income of the trustee of the trust and not in the beneficiary's counted income.

Compare: 1994 No 164 s LB 1A

LB 2 Credit of tax for imputation credit

- (1) Where the counted income of a taxpayer for an income year includes any imputation credit, the taxpayer is, subject to the provisions of this section and of **section LB 1**, entitled to a credit of tax of an amount equal to the imputation credit so included in counted income.
- (2) Any such credit of tax is credited, in so far as it extends, against the income tax liability of the taxpayer for the income year.
- (3) There is no refund to the taxpayer of any credit of tax under this section but, where the whole of the credit of the tax is not credited against the income tax liability of the taxpayer for the income year, the taxpayer is, in respect of any amount of the credit that is not so credited, deemed to have a net loss for the income year calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the credit of tax not credited against the income tax liability for the income year
- b is,—
 - (i) in any case where the taxpayer is a company, the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying for the income year; and

- (ii) in any case where the imputation credit giving rise to the credit of tax is category A income of the trustee of a group investment fund, the rate of tax applicable to category A income of the trustee of a group investment fund, expressed as a percentage, stated in **schedule 1, part A, clause 7**, and applying for the income year; and
 - (iii) in any case where the taxpayer is a trustee (other than the Maori trustee), the basic rate of income tax for trustees, expressed as a percentage, stated in **schedule 1, part A, clause 4**, and applying for the income year; and
 - (iv) in any other case, 21%.
- (3A) A taxpayer who has calculated under **subsection (3)** a net loss in an income year may—
 - (a) offset under **subparts IG and IH** the net loss wholly or partly against the net income of another company for the income year; or
 - (b) carry forward under **subparts IE and IF** the net loss as an available net loss to a later income year.
- (4) A taxpayer is not allowed a credit of tax under this section unless the taxpayer furnishes the shareholder dividend statement, or other sufficient evidence in writing, evidencing the imputation credit giving rise to the credit of tax.
- (5) Subject to **subsection (6)**, where the Commissioner is satisfied that it would be inappropriate for a taxpayer to be allowed, in whole or in part, a credit of tax by reason of the taxpayer receiving an imputation credit in respect of which insufficient income tax or further income tax has been paid by the company that issued the imputation credit,—
 - (a) the taxpayer is not allowed the credit of tax under this section to the extent that the Commissioner is so satisfied; and
 - (b) any such disallowance is in such manner as the Commissioner considers fair and equitable.
- (6) A credit of tax disallowed under **subsection (5)** is allowed to the extent the Commissioner is satisfied that sufficient income tax or further income tax has subsequently been paid by or on behalf of the company.
- (7) Where the Commissioner is satisfied that the amount of any credit of tax claimed under this section is in excess of the

proper amount, the credit of tax is not allowed to the extent of the excess.

Compare: 1994 No 164 s LB 2

Subpart LC—Foreign tax

LC 1 Credits in respect of tax paid in country or territory outside New Zealand

- (1) Where a person who is resident in New Zealand derives counted income from a country or territory outside New Zealand, income tax paid in that country or territory in respect of that counted income is allowed as a credit against the income tax liability of the person:

provided that if the person so resident in New Zealand has, as a national or member of that country or territory, paid income tax in that country or territory in respect of that counted income, there is allowed as a credit against the income tax liability of the person only such amount as does not exceed the amount of income tax that would have been paid by the person in that country or territory in respect of that counted income if the person, being resident in New Zealand, had not been a national or member of that country or territory.

- (2) Where in any tax year any beneficiary of a trust who is resident in New Zealand derives a taxable distribution,—
- (a) no credit is allowed in respect of any tax paid on the taxable distribution unless the tax is substantially of the same nature as non-resident withholding tax imposed under the NRWT rules; and
- (b) the amount of the credit is calculated in accordance with the following formula:

$$a \times \frac{b}{c}$$

where—

- a is the tax which qualifies for a credit under **paragraph (a)**
- b is the amount of the taxable distribution, including the tax which qualifies for a credit under **paragraph (a)** derived by the beneficiary
- c is the total amount of the distribution, including the tax which qualifies for a credit under **paragraph (a)** derived by the beneficiary.

- (3) A credit is not allowed under this section in respect of income tax paid in a country or a territory specified in **schedule 6** to the extent that the income tax is paid on the types of income specified in that schedule.
- (3A) Despite **subsection (1) and sections LC 4 and NH 2**, if and to the extent that a taxpayer or a person pays foreign tax, and the taxpayer, the person, or a person associated with either of them receives a refund or repayment of the foreign tax or another amount (whether in money or money's worth) or a benefit of any kind (including the remission of a debt) which is determined, directly or indirectly, by reference to the amount of the foreign tax paid or any part of that amount, the taxpayer is not allowed—
- (a) a credit for income tax paid in a country or territory outside New Zealand against income tax payable in New Zealand; or
 - (b) an underlying foreign tax credit or a credit for foreign withholding tax in calculating under **section NH 2(1)** the amount of dividend withholding payment to be deducted from a foreign withholding payment dividend.
- (3B) If a credit initially allowed under **subsection (1) or section LC 4**, or an underlying foreign tax credit or a credit for foreign withholding tax taken into account under **section NH 2**, is more than the amount allowable by virtue of **subsection (3A), section LC 3** or, if **section LC 3(3)** is applicable, **section LC 4(11)**, applies to the excess amount of credit initially allowed.
- (4) Any amount that would but for **section EX 47** be counted income of a taxpayer in respect of an attributing interest in a foreign investment fund for a period is treated as if it were counted income for the purpose of determining the taxpayer's entitlement to a credit under this section, provided that the amount of income to be taken into account in determining item "a" of the formula in **section LC 14(1)** is the taxpayer's FIF income with respect to the interest and the period.
- (5) This subpart and **sections BH 1 and CD 11(1)**, and sections 88 and 108(3B) of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, for the purposes of **subsection (1)**, apply as if that subsection were a double tax agreement.
- (6) In this section,—

member, in relation to a country or territory outside New Zealand, means any person who, under any law in force for the time being in the country or territory outside New Zealand, is liable to income tax in that country or territory by reason of the domicile or residence of the person in that country or territory

national, in relation to any country or territory, includes a citizen of that country or territory.

Compare: 1994 No 164 s LC 1

LC 1A Amendment of schedule 6 by Order in Council

- (1) The Governor-General may, by Order in Council, amend **schedule 6**—
 - (a) by adding a country or territory and specifying in respect of the country or territory the type of income for which a credit is not allowed against income tax payable in New Zealand:
 - (b) by omitting a country or territory.
- (2) An Order in Council made under **subsection (1)(a)** expires on 31 December in the tax year following that in which it is made, unless it is confirmed by an Act of Parliament before the end of the following tax year, in which case the Order in Council does not expire.
- (3) The repeal of an Act passed to confirm an Order in Council does not affect the confirmation of the order unless there is express provision to the contrary.

Compare: 1994 No 164 s LC 1A

LC 2 Maximum credits

Where, under a double tax agreement, a credit for foreign tax is allowed, the amount of that credit must not exceed the amount of New Zealand tax calculated in accordance with **section LC 14**.

Compare: 1994 No 164 s LC 2

LC 3 Recovery of excess credit allowed through not taking into account refund of foreign tax

- (1) **Subsection (2)** applies if—
 - (a) a credit for foreign tax has been—

- (i) initially allowed under **section LC 1(1) or LC 4** against a person's New Zealand income tax liability; or
 - (ii) initially taken into account under **section NH 2** as an amount of underlying foreign tax credit or credit for foreign withholding tax in calculating the amount of dividend withholding payment to be deducted from a foreign withholding payment dividend; and
 - (b) the credit, or any part of it, is not allowed under **section LC 1(3A)**, irrespective of when the taxpayer, the person, or a person associated with either of them received the refund or repayment of the foreign tax or the other amount or benefit referred to in that subsection; and
 - (c) either—
 - (i) the amount of the credit was more than the amount allowable against New Zealand tax by virtue of **section LC 1(3A)**, after taking into account the refund or repayment of the foreign tax or the other amount or benefit referred to in that subsection; or
 - (ii) the amount of dividend withholding payment calculated under **section NH 2** by taking the credit into account is less than the amount of dividend withholding payment deduction that would have been required by virtue of **section LC 1(3A)**, after taking into account the refund or repayment of the foreign tax or the other amount or benefit referred to in that subsection.
- (2) The excess or shortfall is treated as if it were income tax or, as the case may be, a dividend withholding payment which is due and payable to the Commissioner 30 days after the later of—
- (a) the date of the notice of assessment in which the credit for foreign tax is reflected or, in the case of an underlying foreign tax credit or a credit for foreign withholding tax that is taken into account under **section NH 2(1)**, the due date for payment of the dividend withholding payment deduction under **section NH 3(1)**; and
 - (b) the date the relevant person receives the refund, repayment, or the other amount or benefit.

- (3) This section does not apply to a credit for which a refund or repayment of foreign tax is received by a controlled foreign company if **section LC 4(11)** applies to the credit and the refund or repayment.

Compare: 1994 No 164 s LC 3

LC 4 Foreign tax credits: CFCs

- (1) Subject to this section, where any person has for any income year any attributed CFC income in respect of an income interest in a controlled foreign company, a credit is allowed against that person's income tax liability for the income tax paid or payable by that controlled foreign company in New Zealand or any other country or territory in respect of that attributed CFC income and, for the purposes of this section, income tax paid or payable by a controlled foreign company includes any withholding tax paid or payable on behalf of that controlled foreign company:

provided that for the purposes of this section any income tax paid or payable by that controlled foreign company, if paid or payable in a currency, other than New Zealand currency, must be converted into New Zealand currency at the option of that person either—

- (a) by applying the close of trading spot exchange rate applicable on the date when the income tax was paid or became payable; or
- (b) by applying the average of the close of trading spot exchange rates for the 15th day of each complete month falling within that period:

provided further that where the amount of any credit against income tax payable in New Zealand in respect of any attributed CFC income of any person cannot be determined prior to the time at which, under this Act or the Tax Administration Act 1994, the person is required to file that person's return of income for that income year, the Commissioner must, if requested by that person in writing within 4 years after the end of that income year, upon determination of the amount of the credit, amend the person's assessment for that income year or a subsequent income year as may be required to reflect determination of the amount of the credit.

- (2) A credit is not allowed under **subsection (1)** in respect of income tax paid or payable in a country or territory specified in **schedule 6**.
- (3) For the purposes of this section, in respect of any accounting period of a controlled foreign company, the amount of income tax paid or payable by that controlled foreign company in respect of the attributed CFC income of any person calculated on the basis of that accounting period is the product of the income interest used to calculate attributed CFC income under **section EX 18** and the income tax paid or payable by that company in any country or territory (including New Zealand) in respect of that accounting period.
- (4) Any person who is, for an income year, allowed a credit under **subsection (1)** in respect of attributed CFC income derived in respect of a controlled foreign company (referred to in this subsection as the **primary controlled foreign company**) is entitled to set off that credit against the person's income tax liability—
 - (a) for that income year, to the extent it does not exceed the amount that would be the person's income tax liability for that year if the person did not have any counted income for that year other than attributed CFC income derived in respect of any controlled foreign company resident in the same country or territory as that in which the primary controlled foreign company was resident in the accounting period during which the income tax giving rise to the credit was paid or was payable, determined as if the amount of any rebate under **section KH 1** were nil; and
 - (b) so far as the credit cannot be set off under **paragraph (a)**, for the income year immediately succeeding that income year, to the extent it does not exceed the amount that would be the person's income tax liability for the year if the person did not have any counted income for that year other than attributed CFC income derived in respect of any controlled foreign company resident in the country or territory as that in which the primary controlled foreign company was resident in the accounting period during which the income tax giving rise to the credit was paid or was payable, determined as

- if the amount of any rebate under **section KH 1** were nil;
and
- (c) so far as the credit cannot be set off under **paragraph (b)**, for the next income year to the immediately succeeding income year, to the extent it does not exceed the amount that could be offset under **paragraph (b)** if that paragraph applied to the next income year and so on.
- (5) Where credits initially allowable in 2 or more income years are carried forward in accordance with the provisions of this section, those credits are allowed in the same order as those credits were initially allowable.
- (6) If the person who has any credit allowable is a company, that credit may only be carried forward to any succeeding income year in accordance with this section if and to the extent to which, had that credit been a net loss to which **sections IE 1 and IF 1** applied, the carry forward of that net loss would have been permitted by those sections and, for the purposes of this subsection only, that credit is deemed to be a net loss that arose on the last day of the income year in respect of which the credit was initially allowable.
- (7) Where during any accounting period any controlled foreign company receives a taxable distribution and, in relation to any person with an income interest of 10% or greater under the rules in **sections EX 14 to EX 17** in the controlled foreign company, that taxable distribution gives rise to attributed CFC income to which **section EX 19** applies,—
- (a) no credit is allowed in respect of any tax paid in respect of that attributed CFC income unless the tax is substantially of the same nature as non-resident withholding tax imposed under the NRWT rules; and
- (b) the amount of the tax for which a credit is allowed must not exceed an amount calculated in accordance with the following formula:

$$a \times \frac{b}{c}$$

where—

- a is the tax which qualifies for a credit under **paragraph (a)**

- b is the amount of the taxable distribution, including the tax which qualifies for a credit under **paragraph (a)**, derived by the controlled foreign company
 - c is the total amount of the distribution, including the tax which qualifies for a credit under **paragraph (a)**, derived by the controlled foreign company; and
 - (c) the credit to which the person is entitled is calculated as the product of the income interest of the person in the controlled foreign company and the tax calculated in accordance with the formula in **paragraph (b)**.
- (10) For the purposes of this section, where and to the extent to which by virtue of any legislation of any country or territory which has similar intent and application to the provisions of the international tax rules any foreign company has paid income tax in respect of the income derived by any controlled foreign company, that income tax is deemed to have been paid by the controlled foreign company and not by the foreign company.
- (11) Where, by virtue of the preceding provisions of this section,—
- (a) a credit has been allowed against the income tax liability of any person; and
 - (b) that credit has not taken into account any refund or repayment of income tax received by the controlled foreign company in question, whether before or after that credit was allowed; and
 - (c) the amount of that credit was in excess of the amount that would have been allowed if only the amount of the income tax not refunded or repaid to the controlled foreign company had been taken into account in calculating the credit,—
the amount of that excess—
 - (d) must be applied to reduce the balance of the credits carried forward under **subsection (4)** in respect of that controlled foreign company; and
 - (e) to the extent that the amount of the excess is not applied in accordance with **paragraph (d)** that excess is deemed to be income tax due and payable to the Commissioner on the 30th day after the date of the assessment in which the credit is reflected or the date of the receipt by the

controlled foreign company of that refund or repayment, whichever date is the later, and this Act and the Tax Administration Act 1994 apply accordingly.

Compare: 1994 No 164 s LC 4

LC 5 Group of companies CFC tax credits

- (1) Where a company (in this section referred to as the **primary company**) has for any income year a credit in relation to an income interest in a controlled foreign company (referred to in this section as the **taxpaying controlled foreign company**) that is allowable under **section LC 4** or has been carried forward to that income year in accordance with **section LC 4** and that credit may not be utilised by the primary company in that income year in accordance with **section LC 4(4)**, that credit may be set off against the income tax liability of another company (referred to in this section as the **member company**) for that income year in accordance with **subsection (2)** where the member company is, for the income year, a member of the same group of companies as the primary company to the extent that the credit does not exceed the amount that would be the member company's income tax liability if its only counted income was the attributed CFC income derived in respect of that income year and is in respect of any controlled foreign company resident in the same country or territory as that in which the taxpaying controlled foreign company was resident in the accounting period in which was paid or was payable the income tax giving rise to the credit.
- (2) A credit under **subsection (1)** may only be allowed against the income tax liability of the member company where that credit would be able to be allowed under **section IG 2** were—
 - (a) each reference in that section to a group of companies to be treated as if it were a reference to a wholly-owned group of companies; and
 - (b) each reference in that section to the loss company to be treated as if it were a reference to the primary company; and
 - (c) each reference in that section to a net loss of the loss company to be treated as if it were a reference to the credit allowed to the primary company; and
 - (d) each reference in that section and **section GC 4** to the offset of a net loss against net income to be treated as if

- it were a reference to allowance of the credit against the income tax liability; and
- (e) each reference in that section to the profit company to be treated as if it were a reference to the member company; and
 - (f) each reference in that section to the net income of the profit company to be treated as if it were a reference to the income tax liability of the member company; and
 - (g) each reference in that section (other than the references in **subsection (9)** to **sections IE 1 and IF 1** to be treated as if it were a reference to **section LC 4**; and
 - (h) the reference in **section IG 2(2)(f)** to “any net loss which is available to the profit company under this section” to be treated as if it were a reference to “any other amount allowed to the member company under this section”; and
 - (i) **section IG 2(4), (5), and (10)** to be treated as if omitted; and
 - (j) the reference in **section IG 2(8)** to the “same group of companies for the purposes of section 191(5) and (7) of the Income Tax Act 1976” to be treated as if it were a reference to the “same specified group in accordance with section 191(4) of the Income Tax Act 1976”,—
- and to the extent to which a credit has been so allowed to the member company, the credit may not be allowed to or carried forward by the primary company.

Compare: 1994 No 164 s LC 5

LC 8 CFC tax credits of amalgamating company

Where—

- (a) any amalgamating company ceases to exist on a qualifying amalgamation; and
- (b) the amalgamating company, in respect of a tax year, has a controlled foreign company tax credit; and
- (c) the tax credit has not, under **section LC 4 or LC 5**, been credited against the income tax liability of the amalgamating company or any other company in respect of any period prior to the amalgamation (including any part of the tax year in which the amalgamation takes place); and
- (d) under **section LC 5**, the credit could have been credited against income tax payable (if any) in respect of that part of the tax year of the relevant company which ends

with the date of the amalgamation by each of the amalgamated company (unless it is a company incorporated only on the amalgamation) and any company which has, at any time before or during the tax year in respect of which the tax credit is credited under this section, amalgamated with the amalgamated company,—
the tax credit is treated as a tax credit of the amalgamated company and may be credited, under **section LC 4**, against the income tax liability of the amalgamated company in periods commencing on or after the amalgamation, but applying **section LC 4** (in so far as its application is dependent upon the application of **sections IE 1 and IF 1**) as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

Compare: 1994 No 164 s LC 8

LC 9 Ordering of CFC tax credits of amalgamated company

Where tax credits of 2 or more amalgamating companies are permitted under **section LC 8** to be credited against the amalgamated company's income tax liability for a tax year, those tax credits must,—

- (a) if resulting from tax payable in 2 or more tax years, be credited in the same order as arising; and
- (b) if resulting from tax payable in the same tax year, be credited, so far as the tax extends,—
 - (i) in the order elected by the amalgamated company by notice to the Commissioner in such form as the Commissioner may allow; or
 - (ii) if no such election is made, on a pro rata basis.

Compare: 1994 No 164 s LC 9

LC 10 CFC tax credits of amalgamated company

Where—

- (a) an amalgamated company, in respect of a tax year prior to the tax year in which the amalgamation takes place, has a controlled foreign company tax credit; and

- (b) the tax credit has not, under **section LC 4 or LC 5**, been credited against the income tax liability of the amalgamated company or any other company in respect of any period prior to the amalgamation (including any part of the tax year in which the amalgamation takes place),— the amalgamated company is entitled to carry forward the tax credit into the tax year in which the amalgamation takes place or any subsequent tax year only if—
- (c) the amalgamated company satisfies the relevant requirements of **section LC 4**; and
- (d) under **section LC 5**, the tax credit could have been credited against income tax liability (if any) in respect of that part of the tax year of the relevant company which ends with the date of the amalgamation by each amalgamating company.

Compare: 1994 No 164 s LC 10

LC 11 CFC tax credits of amalgamated company credited against income tax liability of another company

Where an amalgamated company is deemed under **section LC 8** to have a controlled foreign company tax credit, in respect of an amalgamating company which ceased to exist on the amalgamation, for the purposes of determining whether the tax credit may be credited, under **section LC 5**, against the income tax liability of another company, that section is applied as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

Compare: 1994 No 164 s LC 11

LC 12 CFC tax credits of company credited against income tax liability of amalgamated company

Where a company (referred to in this section as the **credit company**) has a controlled foreign company tax credit, in respect of a period which falls wholly or partly before an amalgamation, the tax credit may be credited under **section LC 5** against the income tax liability of the amalgamated company if and only if the tax credit can be so credited, by applying the

commonality of ownership and other tests contained in that section severally to the credit company and the amalgamated company in respect of each company which has in the course of or before the amalgamation amalgamated with the amalgamated company, as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead that amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

Compare: 1994 No 164 s LC 12

LC 13 Information for credit to be furnished within 4 years

- (1) A credit for foreign tax is not allowed unless, within 4 years after the end of the tax year in which arose the income tax liability of the taxpayer against which the credit is claimed, or within such further period, not exceeding 2 years, as the Commissioner allows in any case or class of cases, the taxpayer claiming the credit—
 - (a) makes application in writing to the Commissioner for the credit; and
 - (b) furnishes to the Commissioner all information necessary to determine the amount of the credit, including information relevant to the application of **section LC 1(3A)**.
- (2) If an entitlement to a refund or repayment of the foreign tax or another amount or a benefit referred to in **section LC 1(3A)** changes after their application is made, the taxpayer must furnish to the Commissioner all information relating to the change as soon as possible.

Compare: 1994 No 164 s LC 13

Miscellaneous provisions

LC 14 Ascertainment of New Zealand income tax liability

- (1) Subject to **subsections (2) and (3)**, the part of a taxpayer's income tax liability for a tax year that is treated as being in respect of counted income of the taxpayer from a particular source or of a particular nature that is allocated to the tax year is an amount calculated in accordance with the following formula:

$$\frac{(a - b)}{c} \times d$$

where—

- a is the total of the taxpayer's counted income from that source or of that nature that is allocated to the tax year
- b is the total of the taxpayer's deductions that are allocated to the tax year and that are attributable to counted income of the type referred to in item "a"
- c is the taxpayer's net income for the tax year
- d is the taxpayer's notional income tax liability for the tax year.

- (2) If, for a tax year, the amount or the total of the amounts determined under **subsection (1)** exceeds the taxpayer's notional income tax liability for the tax year, the amount that is treated as being part of the taxpayer's income tax liability that is in respect of counted income from a particular source or of a particular nature is the amount calculated in accordance with the following formula:

$$\frac{d}{e} \times f$$

where—

- d has the same meaning as in **subsection (1)**
- e is the total of the amounts calculated under **subsection (1)** by the taxpayer for that tax year
- f is the amount calculated under **subsection (1)**.

- (3) If an amount calculated under **subsection (1)** is less than nil, the amount is deemed to be zero.

- (4) For the purposes of this section, the **notional income tax liability** of a taxpayer for a tax year is the amount calculated in accordance with the following formula:

$$(g - h) \times i$$

where—

- g is the taxpayer's net income
- h is the amount (if any) of net losses that the taxpayer has offset against the net income in accordance with **subparts IE and IF**
- i is the taxpayer's applicable basic tax rate.

Compare: 1994 No 164 s LC 14

LC 14A Source of dividends

If a company is not resident in New Zealand, and for the purposes of a law of another territory in relation to which a

double tax agreement has been made is resident in that territory, and the law imposes foreign tax, a dividend paid by the company is treated as being derived from a source in that other territory for the purposes of the double tax agreement.

Compare: 1994 No 164 s LC 14A

LC 15 United Kingdom tax on dividends

For the purposes of this subpart, and of section 88 of the Tax Administration Act 1994 and of the double tax agreement entered into between the Government of the United Kingdom and the Government of New Zealand, the United Kingdom tax payable, in accordance with the law of the United Kingdom and that agreement, on a dividend paid by a company resident in the United Kingdom, being a dividend the amount of which is deemed to be increased under **section CD 11(1)**, is deemed to be United Kingdom tax payable notwithstanding that, by reason of the allowance of a tax credit in the United Kingdom, such tax may not actually be paid or may be paid in part only.

Compare: 1994 No 164 s LC 15

LC 16 Foreign tax credits of consolidated group members

- (1) Where any consolidated group has in respect of an income year a tax credit available for crediting under **section LC 4(1)** against the income tax liability of the consolidated group, no part of that credit is treated for the purposes of this Act as a tax credit available to any individual member company of that consolidated group.
- (2) Where—
 - (a) any company is a member of a consolidated group in an income year (in this subsection referred to as the **specified year**); and
 - (b) the company is entitled under **section LC 4** to carry forward to the specified year and credit (against an income tax liability for the specified year) any credit for income tax resulting from income tax payable in any preceding income year,—

that credit must, subject to **subsections (3) and (4)**, be credited against the income tax liability (if any) of the consolidated group for the specified year (but must not exceed the amount that would be that consolidated group's income tax liability for the year if it had not derived any counted income other

than the attributed CFC income derived in respect of any controlled foreign company or companies resident in the relevant country or territory) and, only so far as it cannot be so credited, is eligible to be—

- (c) credited against the income tax liability of the company or any other consolidated group in the specified year; or
 - (d) carried forward by the company in accordance with **section LC 4** to any succeeding income year; or
 - (e) treated for the purposes of **section LC 5** as a credit of the company carried forward to the specified year, in which event that credit may be credited against the income tax liability of any other company (other than the consolidated group) subject to and in accordance with that section.
- (3) Where tax credits available to a consolidated group or to 1 or more member companies of the group are permitted, under **section LC 4**, or required, under this section, to be credited against the income tax liability of a consolidated group, those credits are,—
- (a) if resulting from tax payable in 2 or more income years, credited in the same order as the tax was payable; and
 - (b) if resulting from tax payable in the same income year, credited, so far as the income tax extends,—
 - (i) in the order elected by the consolidated group by notice to the Commissioner in such form as the Commissioner may allow; or
 - (ii) if no such election is made, on a pro rata basis.
- (4) In any case where—
- (a) **subsection (2)** would, except to the extent of the application of this subsection, require the whole or part of any tax credit of any company, resulting from income tax payable by the company in any income year (in this subsection referred to as the **preceding year**), to be credited against the income tax liability of a consolidated group of companies in a subsequent income year (in this subsection referred to as the **subsequent year**); and
 - (b) the company was not a member of the same group of companies, for the preceding year or any income year falling between the preceding year and the subsequent

- year, as any 1 or more companies which are members of the consolidated group in the subsequent year,—
the amount credited under **subsection (2)** against the income tax liability of the consolidated group in the subsequent year must not exceed the aggregate of—
- (c) the amount of the credit which could be credited by the company in the subsequent year under **section LC 4** against its own income tax liability were it not in that subsequent year a member of a consolidated group of companies (its taxable income being nevertheless calculated in accordance with **section HB 2(1)**); and
 - (d) the aggregate amount which could be credited against their own income tax liability (their taxable income being nevertheless calculated in accordance with **section HB 2(1)**) under **section LC 5** by companies (other than the company) which are members of the consolidated group in the subsequent year if—
 - (i) neither the company nor those other companies were members of the consolidated group in the subsequent year; and
 - (ii) the company were to take all necessary steps under **section LC 5** to permit that crediting by the other companies under that section.
- (5) In any case where—
- (a) **subsection (2)** would, except to the extent of application of this subsection and **subsection (4)**, require the whole or part of any tax credit of any company resulting from income tax payable by the company in any income year (in this subsection referred to as the **preceding year**) to be credited against the income tax liability of a consolidated group of companies in a subsequent income year (in this subsection referred to as the **subsequent year**); and
 - (b) the company was a member of the consolidated group for part only of the subsequent year,—
the amount of tax credit credited under **subsection (2)** against the income tax liability of the consolidated group in the subsequent year must not exceed the lesser of—
 - (c) the excess (if any) of the amount of tax credit of the company for the preceding year required, but for the application of this subsection and **subsection (4)**, to be

credited against the income tax liability of the consolidated group in respect of the subsequent year over the aggregate of—

- (i) any income tax liability of the company in the subsequent year in respect of any period prior to the company being a member of the consolidated group (calculated by applying the provisions of **section FD 9(2)**) against which income tax liability that tax credit would be able to be credited under this Act; and
- (ii) any part of the tax credit required, under **subsection (2)**, to be credited against the income tax liability for the subsequent year of another consolidated group of companies of which the company was a member during the subsequent year prior to the company being a member of the consolidated group; and
- (d) the amount (if any), as shown in adequate and sufficiently detailed accounts furnished to the Commissioner with the consolidated group's return of income for the income year, of the consolidated group's income tax liability for the income year (being the income tax liability against which that tax credit could be credited under this Act) as is reasonably and fairly allocatable to the part of the income year during which the company was a member of the consolidated group.

Compare: 1994 No 164 s LC 16

Subpart LD—Credit for tax paid or withheld

LD 1 Tax deductions to be credited against tax assessed

- (2) If the Commissioner has received tax deductions from source deduction payments in relation to an employee in respect of a tax year, the amount of the tax deductions must be credited successively against—
 - (a) the income tax liability (if any) of the employee for the tax year:
 - (b) the income tax liability (if any) of the employee that has not otherwise been satisfied for any tax year before that tax year:

- (c) the income tax liability (if any) of the employee that has not otherwise been satisfied for any tax year after that tax year and, if more than 1, in the order of those years:
 - (d) the provisional tax (if any) that is due by the employee and unpaid for any tax year after that tax year and, if more than 1, in the order of those years,—
- and the Commissioner must refund to the employee in accordance with **section MD 1**, and the Tax Administration Act 1994, an amount equal to the tax deductions not so credited.
- (2AA) **Subsection (2)** does not apply to a non-filing taxpayer.
- (2A) The amount credited or refunded must not exceed the sum of the amount of the tax deductions received by the Commissioner and the amount of a subpart KD credit paid to the employee, if the employee is employed by a closed company and—
- (a) the employee and the employer are associated persons, or the spouse of the employee and the employer are associated persons; and
 - (b) the amount of tax deductions from source deduction payments shown in the employer monthly schedule was deducted from source deduction payments made to the employee by the employer.
- (3) If the amount credited under **subsection (2)(b)** is less than the income tax liability referred to in that subsection, the amount credited must be applied in satisfaction, so far as the amount extends, of the income tax liability.
- (4) A tax deduction must not be credited against an income tax liability, nor must a tax deduction made in relation to an employee be refunded, if the Commissioner considers that a particular in an employer monthly schedule is incorrect.
- (5) A tax deduction referred to in **subsection (4)** may be credited in satisfaction of an income tax liability or refunded when the Commissioner is satisfied the particulars received are correct.
- (6) If a tax deduction relating to an employee is credited in satisfaction of an income tax liability or is refunded, and the amount credited or refunded—
- (a) exceeds the amount that the employer deducted from a source deduction payment, particulars of which are contained in an employer monthly schedule; or

- (b) if **subsection (2A)** applies and the amount credited or refunded exceeds the amount last mentioned in that subsection,—

the employer and the employee are jointly and severally liable to pay to the Commissioner the amount of the excess and that amount is deemed to be due and payable on the 31 May in the tax year after the tax year to which the tax deductions were made.

- (7) **Subsection (6)** does not apply to a non-filing taxpayer who has provided the taxpayer's correct tax file number and correct tax code for a tax year.

Compare: 1994 No 164 s LD 1

LD 2 Non-resident withholding tax: credit allowed

There is allowed as a credit against the income tax liability of a person for a tax year an amount equal to the non-resident withholding tax (but not including any penalties) deducted from the non-resident withholding income of that person and paid to the Commissioner in respect of that non-resident withholding income.

Compare: 1994 No 164 s LD 2

LD 3 Resident withholding tax deductions to be credited against income tax assessed

- (1) Where a person derives an amount of resident withholding income from which an amount has been deducted on account of resident withholding tax, the amount of resident withholding income, for the purposes of this Act, includes such amount deducted.
- (2) Subject to this section, where any resident withholding tax, not being a penalty, has been deducted from any amount of resident withholding income derived by any person in any tax year, the amount of the resident withholding tax deduction must be credited successively against—
- (a) the income tax liability (if any) of the person for that tax year; and
 - (b) the income tax liability (if any) of the person that has not otherwise been satisfied for any tax year before that tax year; and
 - (c) the income tax liability (if any) of the person that has not otherwise been satisfied for any tax year after that

- tax year and, if more than 1, in the order of those years;
and
- (d) the provisional tax (if any) that is due by the person and unpaid for any tax year after that tax year and, if more than 1, in the order of those years,—
and the Commissioner must refund to the person an amount equal to the excess of the resident withholding tax deducted over the amounts which are so credited in accordance with **section MD 1**, and the Tax Administration Act 1994, as if it were tax paid in excess.
- (3) Any credit of tax to which a person is entitled under this section must be credited, so far as it extends, after allowing for any credit of tax allowable in accordance with **sections LB 2 and LC 1 and subpart LE**.
- (4) A credit of tax is not allowed and a refund must not be paid under **subsection (2)** in relation to resident withholding tax deducted, unless the Commissioner has received—
- (a) the resident withholding tax deduction certificate relating to that resident withholding tax or other evidence in writing satisfactory to the Commissioner evidencing the deduction; and
- (b) such other information as the Commissioner may require.
- (5) Where the Commissioner is satisfied that the amount of any tax credit or refund claimed in accordance with this section is in excess of the amount properly allowable in accordance with this section, the Commissioner may disallow the credit or refuse to make the refund to the extent of the excess.
- (7) For the purposes of giving effect to this section, the Commissioner may at any time amend any assessment or any determination, notwithstanding the time bar.

Compare: 1994 No 164 s LD 3

LD 6 Allowance for provisional tax paid by agent

Where an agent is liable to pay any amount of provisional tax on behalf of the agent's principal, any amount paid by the agent is credited against the principal's account on the date on which that payment is made.

Compare: 1994 No 164 s LD 6

LD 7 Provisional tax to be credited against income tax liability

The provisional tax paid by a taxpayer for a tax year is credited against the taxpayer's income tax liability for that year.

Compare: 1994 No 164 s LD 7

LD 8 Credit of tax for dividend withholding payment credit in hands of shareholder

- (1) Where the counted income of a taxpayer for an income year includes any dividend withholding payment credit then, subject to this section and **section LB 1**,—
 - (a) the taxpayer is entitled to a credit of tax equal to the dividend withholding payment credit so included in counted income; and
 - (b) the credit of tax is credited, so far as it extends, against the taxpayer's income tax liability for the income year; and
 - (c) to the extent that the credit of tax is not so credited, the excess is refundable to the taxpayer in accordance with **section MD 1**, and the Tax Administration Act 1994, as if it were tax paid in excess.
- (2) Any credit of tax to which a taxpayer is entitled under this section is credited after allowing for any credit of tax allowable in accordance with **sections LB 2, LC 1, and LD 3**.
- (3) A credit of tax is not allowed under this section unless the taxpayer furnishes the shareholder dividend statement, or other sufficient evidence in writing, evidencing the dividend withholding payment credit giving rise to the credit of tax.
- (4) Subject to **subsection (5)**, where the Commissioner is satisfied that it would be inappropriate for a taxpayer to be allowed a credit of tax under this section by reason of the taxpayer receiving any dividend withholding payment credit in respect of which no dividend withholding payment or further dividend withholding payment has been paid by the company that issued the dividend withholding payment credit,—
 - (a) the taxpayer is not allowed the credit of tax to the extent the Commissioner is so satisfied;
 - (b) any such disallowance is in such a manner as the Commissioner considers fair and reasonable.

- (5) A credit of tax previously disallowed under **subsection (4)** is allowed to the extent the Commissioner is satisfied that sufficient dividend withholding payment or further dividend withholding payment has subsequently been paid by or on behalf of the company.
- (6) Where the Commissioner is satisfied that the amount of any credit of tax claimed under this section is in excess of the proper amount, the credit of tax is not allowed to the extent of the excess.
- (9) For the purposes of giving effect to this section, the Commissioner may at any time amend any assessment or any determination, notwithstanding the time bar.

Compare: 1994 No 164 s LD 8

LD 9 Refund to non-resident or exempt shareholders

- (1) Where a dividend with a dividend withholding payment credit attached is paid to a shareholder of a company (being a company resident in New Zealand) who is—
 - (a) a person who is not resident in New Zealand; or
 - (b) a person who is resident in New Zealand and for whom the dividend is exempt income otherwise than by virtue of **sections CW 9 to CW 11 or CZ 9**,—the Commissioner must, except as otherwise provided in this section, pay to the shareholder by way of a refund of dividend withholding payment credit an amount equal to the amount of the dividend withholding payment credit.
- (2) The amount of any refund payable under this section to a shareholder in respect of a dividend withholding payment credit—
 - (a) must not exceed the amount of the dividend withholding payment credit that would be included in that counted income in accordance with **section CD 9 or LB 1**;
 - (b) must be reduced by any amount of the dividend withholding payment credit that is applied in accordance with **section NG 2(2)** to reduce an amount of non-resident withholding tax.
- (3) A shareholder who becomes entitled to a refund under this section must make application for the refund, in a form authorised by the Commissioner, no earlier than the 31 May that follows the end of the imputation year during which the dividend with the credit attached was paid to the shareholder.

- (4) The Commissioner may not pay a refund under this section unless the Commissioner receives the shareholder dividend statement, or such other evidence as the Commissioner considers necessary, evidencing the dividend withholding payment credit giving rise to the refund of dividend withholding payment.

Compare: 1994 No 164 s LD 9

Subpart LE—Non-resident investors

LE 1 Purpose of subpart

Subject always to its express provisions, the purpose of this subpart is to allow a company that pays to a non-resident investor a dividend with an imputation credit attached, and a supplementary dividend to the same investor, a credit of tax calculated by reference to the imputation credit which is equal to and sufficient to fund the supplementary dividend.

Compare: 1994 No 164 s LE 1

LE 2 Credits in respect of dividends to non-resident investors

- (1) This section applies if a company resident in New Zealand pays in an income year with respect to its own shares—
- (a) a dividend (referred to in this section as the **dividend**);
 - and
 - (b) a single supplementary dividend with respect to the dividend—
- derived by a person not resident in New Zealand.
- (2) The company is entitled to a credit against its income tax liability calculated under the following formula:

$$IC \times \frac{67}{120}$$

where IC is the imputation credit (if any, and calculated having regard to **subsections (9) and (10)**) attached to the dividend.

- (2A) A section LE 3 holding company may elect to reduce the amount of credit applied against its income tax liability under **subsection (2)** to an amount that is not less than the amount of supplementary dividends derived in that income year.
- (3) If a part of the tax credit cannot be credited under **subsection (2)** against the company's income tax liability for the income year in which the supplementary dividend was paid, or if the

- amount credited is reduced under **subsection (2A)**, the company may—
- (a) elect under **subsection (4)** that the excess credit be set off against any other income tax liability of the company or an income tax liability of another company; and
 - (b) if and to the extent that the excess credit cannot be set off against an income tax liability as a result of an election under **subsection (4)**, carry forward the excess credit under **subsection (5)** to a later income year.
- (4) If any part of the tax credit cannot be set off under **subsection (2)** against the company's income tax liability and the company so elects, by notice to the Commissioner with the company's return of income for the income year, the excess credit (so far as it extends) must be set off against the income tax liability,—
- (a) for the income year in which the supplementary dividend is paid, of any other company that is for that income year (or, in any case where 1 of the companies exists for part only of the income year, at all times in the income year at which the 2 companies both exist) in the same wholly-owned group of companies as the company; or
 - (b) for any of the 4 income years immediately preceding the income year in which the supplementary dividend is paid (being in each case the 1993–94 income year or a subsequent income year), of—
 - (i) the company; or
 - (ii) any other company which is, for both the income year in which the supplementary dividend is paid and the relevant preceding income year (or, in any case where 1 of the companies exists for part only of the relevant income year, at all times in the relevant income year at which the 2 companies both exist) in the same wholly-owned group of companies as the company.
- (5) A company which has an excess credit for an income year (referred to in this section as the **original income year**) may carry the excess credit forward to the succeeding or a later income year (referred to in this section as the **year of carry forward**) if and only if there is a group of persons,—

- (a) the aggregate of whose minimum voting interests in the company in the period from the beginning of the original income year to the end of the year of carry forward (in this subsection referred to as the **continuity period**) is equal to or greater than 49%; and
 - (b) in any case where at any time during the continuity period a market value circumstance exists in respect of the company, the aggregate of whose minimum market value interests in the company in the continuity period is equal to or greater than 49%,—
and, for the purposes of this subsection, the minimum voting interest or minimum market value interest, as the case may be, of any person in the company in the continuity period is equal to the lowest voting interest or market value interest, as the case may be, in the company that that person has during the continuity period.
- (6) If a company has carried forward any excess credit to a year of carry forward, the excess credit is to be set off in the first instance against the income tax liability of the company for the year of carry forward, to the extent that the credit does not exceed the income tax liability for that year after allowing for any credit under **section LC 1**.
- (7) If any part of the excess credit cannot be set off under **subsection (6)** against the company's income tax liability for the year of carry forward, and the company so elects by notice to the Commissioner with the company's return of income for the year of carry forward, the excess credit is to be set off against the income tax liability for the year of carry forward of any other company that is in the same wholly-owned group of companies as the company for both the year of carry forward and the original income year (or, in any case where 1 of the companies exists for part only of the relevant income year, at all times in the relevant income year at which the 2 companies both exist).
- (8) If and to the extent that an excess credit is set off against an income tax liability under **subsection (4) or (6) or (7)**, the excess credit ceases to be available otherwise to be carried forward or credited under this section.
- (9) The benchmark dividend provisions of **sections ME 8 and MG 8** and the provisions of **section GC 22** apply as if the company had never paid the supplementary dividend.

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- (10) The maximum imputation credit ratio and benchmark dividend provisions of **section ME 8** and the provisions of **section GC 22** apply as if the imputation credit attached to the dividend were increased by an amount equal to the tax credit calculated with respect to the dividend under **subsection (2)**.
- (11) If the company pays such a supplementary dividend with respect to all shares of the relevant class held by persons not resident in New Zealand, the payment of the supplementary dividend with respect only to certain shares of that class is not to be treated as contravening—
- (a) any provision of the Companies Act 1955 or section 53 of the Companies Act 1993; or
 - (b) any provision of the company's articles of association or constitution (not being a provision which expressly refers to this subsection); or
 - (c) any rule of law—
- that would otherwise prohibit the payment by the company at the time of dividends of different amounts in relation to shares of the class.
- (12) If a trustee derives the dividend and is required under the terms of the trust to distribute it as beneficiary income to a beneficiary, the distribution by the trustee of the supplementary dividend to the same beneficiary is not to be treated as contravening any term of the trust.

Compare: 1994 No 164 s LE 2

LE 3 Special rules for holding companies

- (1) **Subsections (4) to (10)** apply if a company (referred to in this section as the **company**) resident in New Zealand pays in any income year with respect to its own shares—
- (a) a dividend (referred to in this section as the **dividend**); and
 - (b) a single supplementary dividend with respect to the dividend—
- derived by a section LE 3 holding company.
- (2) A **section LE 3 holding company** is a company resident in New Zealand which—
- (a) has given a notice to the company before the dividend is paid advising the company that it is a section LE 3 holding company; and
 - (b) has not revoked that notice before the dividend is paid.

- (3) A notice given under **subsection (2)(a)** is treated as having been revoked by the company which gave it (referred to in this section as the **former section LE 3 holding company**), and the former section LE 3 holding company must give notice to the company of the revocation as soon as is practicable, if—
- (a) more than 7 years have passed since the end of the income year in which the notice was given; or
 - (b) the former section LE 3 holding company elects to revoke the notice; or
 - (c) the former section LE 3 holding company does not have the purpose, in keeping the notice in existence, of enabling, directly or indirectly, the payment of a supplementary dividend to a person not resident in New Zealand; or
 - (d) the only persons holding voting interests in the former section LE 3 holding company are residents of New Zealand; or
 - (e) dividends derived by the former section LE 3 holding company are excluded income unless **sections CW 9 and CW 10** apply.
- (4) **Section LE 2** applies, with respect to the dividend and the supplementary dividend, as if the section LE 3 holding company were not resident in New Zealand.
- (5) Notwithstanding **subsection (4) and section LE 2**, if—
- (a) the section LE 3 holding company and the company are associated persons (as defined in **section OD 8(3)**) but as if each reference in that provision to “50% or more” instead read “more than 50%”); and
 - (b) because the section LE 3 holding company has an earlier income tax balance date than the company, the dividend is derived by the section LE 3 holding company in a later income year than the income year of the company in which the company pays the dividend,—
- the provisions of **section LE 2** allowing the company a tax credit apply as if the income year in which the company pays the dividend were the later income year.
- (6) Where **section CW 10** would otherwise apply to the dividend, the dividend is exempt income under that section only to the extent to which it exceeds the amount calculated under the following formula:

$$\frac{(IC + SD)}{\times} \frac{(1 - T)}{T} + IC$$

where—

IC is the amount of imputation credit attached to the dividend

SD is the amount of the supplementary dividend

T is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year—

and the imputation credit is deemed, for the purposes of **section LB 2**, to be included in the part of the dividend that is counted income.

- (7) The dividend is ignored for the purposes of the RWT rules to the extent to which it does not exceed the amount calculated under the formula in **subsection (6)** and the imputation credit is deemed to be included in the part ignored.
- (8) The supplementary dividend is not exempt income under **section CW 10**.
- (9) The supplementary dividend is ignored for the purposes of the RWT rules.
- (10) If in an income year a section LE 3 holding company derives a supplementary dividend,—
 - (a) the maximum amount of net losses that the company may offset against its net income for the income year is the amount calculated under **section IF 7(1)**; and
 - (b) the maximum aggregate amount of deductions that the company may allocate to the income year is the amount calculated in accordance with the formula in **section LE 4(2)**.
- (11) If a section LE 3 holding company is a member of a consolidated group, this section does not apply to a dividend received by the section LE 3 holding company from a member of the consolidated group.

Compare: 1994 No 164 s LE 3

LE 4 Allocation of deductions by section LE 3 holding company

- (1) This section applies when a person is a section LE 3 holding company and derives a supplementary dividend in an income year.

- (2) The maximum total amount of deductions of the person that may be allocated to the income year is the amount calculated using the formula—
- $$\text{income} - \frac{\text{non-refundable credits} + \text{convertible credits} + \text{supplementary dividends}}{\text{applicable tax rate}}$$
- (3) In the formula,—
- income is the person's income
 - non-refundable credits is the total amount of non-refundable credits that are available under this Part to be set off against the person's income tax liability
 - convertible credits is the total amount of convertible credits that are available under this Part to be set off against the person's income tax liability
 - supplementary dividends is the total amount of supplementary dividends derived by the person in the income year
 - applicable tax rate is the applicable basic tax rate.
- (4) If **subsection (2)** prevents an amount from being allocated to an income year, the section LE 3 holding company may offset or carry forward the amount under **subsection (5)** and under no other provision of this Act.
- (5) If **subsection (2)** prevents an amount from being allocated to an income year, the section LE 3 holding company may—
- (a) carry forward to a later income year under **subparts IE and IF** some or all of the amount as an available net loss; or
 - (b) offset under **subpart IG or IH** some or all of the amount as a net loss against the net income of another company for the income year.
- (6) This section does not affect the calculation under this subpart of the non-refundable credits and convertible credits of a section LE 3 holding company.

Compare: 1994 No 164 s EQ 1

Subpart LF—Underlying foreign tax credits

LF 1 Underlying foreign tax credits generally, and interpretation

- (1) This subpart, taken in conjunction with **section NH 2**,—

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- (a) allows in certain circumstances for a credit to be claimed against a New Zealand resident company's dividend withholding payment liability, such credit, in general terms, to be calculated in a manner that reflects a proportionate share of the New Zealand and foreign income tax paid (or in some cases deemed to be paid) by the foreign company paying the foreign withholding payment dividend in respect of which the dividend withholding payment arises, or by any other company directly or indirectly funding the dividend; and
- (b) provides for the entitlement to the credit to arise where, in general terms,—
- (i) the New Zealand resident company liable to pay the dividend withholding payment has at least a 10% interest in the company paying the income tax in respect of which the credit arises, at the time the income tax was paid; and
 - (ii) the company can provide to the Commissioner sufficient details to enable accurate calculation of the credit entitlement.
- (2) A person has a sufficient interest in a company at any time only where—
- (a) the person has at the time—
 - (i) a voting interest of 10% or greater in the company (determined as if **paragraphs (a) to (c)** of the definition of **shareholder decision-making rights** did not apply and **section OD 3(3)(d)** did not apply to deem any voting interest held or deemed to be held by the person to be held by any other person); and
 - (ii) in any case where at the time a market value circumstance exists in respect of the company, a market value interest of 10% or greater in the company (determined as if **section OD 4(3)(d)** did not apply to deem any market value interest held or deemed to be held by the person to be held by any other person)—and, if the time is on or after 1 April 1993, the company is, at the time, either—
 - (iii) a branch equivalent company; or
 - (iv) a grey list company; or

- (v) a company resident in New Zealand that is not a company that, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement; or
- (b) in any case where the time is on or after 1 April 1988,—
 - (i) the person has at the time an income interest of 10% or greater under the rules in **sections EX 14 to EX 17** in the company; and
 - (ii) the company is at the time a controlled foreign company.

Compare: 1994 No 164 s LF 1

LF 2 Granting of underlying foreign tax credit

- (1) Where a taxpayer derives at any time a foreign withholding payment dividend from a company, the amount of underlying foreign tax credit arising with respect to the dividend is,—
 - (a) where—
 - (i) **subsection (2)** does not apply with respect to the dividend; and
 - (ii) at the time either—
 - (A) the company is not a grey list company; or
 - (B) the company is a grey list company and **section LF 5(1)** does not apply with respect to the dividend,—

the amount determined by **section LF 3**; and
 - (b) where—
 - (i) **subsection (2)** does not apply with respect to the dividend; and
 - (ii) at the time the company is a grey list company and **section LF 5(1)** applies with respect to the dividend,—

the amount determined by **section LF 5**; and
 - (c) where **subsection (2)** applies with respect to the dividend, nil.
- (2) The underlying foreign tax credit arising with respect to a foreign withholding payment dividend derived by a taxpayer at any time from a company is nil—
 - (a) in any case where, at the time, the taxpayer is a qualifying company; or
 - (b) if, at the time, the taxpayer does not have a sufficient interest in the company; or

- (c) where the share in respect of which the dividend is paid (or, in the case of any dividend being attributed repatriation, any share taken into account in calculating the income interest giving rise to the attributed repatriation) is a fixed rate share; or
 - (d) where the company is allowed a deduction, in respect of the payment of the dividend, in calculating its liability to income tax in any country or territory outside New Zealand; or
 - (e) where—
 - (i) the dividend is sourced, directly or indirectly, out of an amount derived by the company from another company; and
 - (ii) the company was not liable to income tax in any country or territory outside New Zealand in respect of that amount; and
 - (iii) the other company is allowed a deduction, in respect of the payment of the amount, in calculating its liability to income tax in any country or territory outside New Zealand.
- (3) In this section, **fixed rate share** means—
- (a) any share where the dividend payable in respect of the share is payable at a rate which is—
 - (i) a specific fixed percentage of the amount subscribed in respect of the issue of the share; or
 - (ii) a percentage of the amount subscribed in respect of the issue of the share which is determined by a fixed relationship to economic, commodity, industrial, or financial indices, or to banking rates or general commercial rates of interest; or
 - (iii) a percentage that would be of a kind referred to in **subparagraph (i) or (ii)** but for any variation in the rate of dividend that may occur only—
 - (A) by a fixed relationship to a rate of income tax; or
 - (B) as may be necessary to compensate the shareholder for any default on the part of the paying company or any expenditure or loss suffered by the shareholder (or a person associated with the shareholder) in respect of the holding of the share,—
- or due to a combination of those 2 factors; or

- (b) any share where, having regard to—
- (i) whether or not the share is redeemable; and
 - (ii) any security provided to the shareholder, including any option to require the purchase or sale of the share, and any amount payable determined by reference to the amount of dividends payable; and
 - (iii) the variability or lack of variability of the dividend payable,—
- the payment of dividends in respect of the share is equivalent to the payment of interest in respect of money lent.

Compare: 1994 No 164 s LF 2

LF 3 Amount of underlying foreign tax credit

- (1) The amount of underlying foreign tax credit arising with respect to a foreign withholding payment dividend derived by a taxpayer from a company during an accounting year is the greater of nil and the amount calculated in accordance with the following formula:

$$a \times \frac{(b + c - d - e)}{(f - g - h)}$$

where—

- a is the amount of the foreign withholding payment dividend (before deduction of any withholding tax)
- b is the aggregate amount of income tax paid or payable by the company with respect to all eligible accounting years (not being income tax deemed paid under **section LF 4**)
- c is the aggregate amount of income tax deemed under **section LF 4** to be paid by the company in all eligible accounting years with respect to dividends derived from lower tier companies
- d is the aggregate of all underlying foreign tax credit amounts, determined under **section LF 2**, with respect to all dividends paid by the company during an eligible accounting year (not including the current year), calculated as if,—

-
- (a) in the case of any dividend not derived by the taxpayer, the dividend were derived by the taxpayer at a time when the taxpayer had a sufficient interest in the company; and
 - (b) in the case of any dividend derived before 28 September 1993, as if this section applied at the time the dividend was derived
 - e is the aggregate amount of underlying foreign tax credit amounts with respect to all dividends paid by the company during the current year, being dividends to which **section LF 5(1)** applies, calculated as if, in the case of any dividend paid during the current year which was not derived by the taxpayer, the dividend were derived by the taxpayer at a time when the taxpayer had a sufficient interest in the company
 - f is equal to the greater of—
 - (a) the aggregate amount of after-income tax earnings (less after-income tax losses) of the company with respect to all eligible accounting years; or
 - (b) the aggregate of—
 - (i) all dividends paid by the company during the accounting year other than dividends included in item “h”; and
 - (ii) the amounts of items “g” and “h”
 - g is the aggregate amount of dividends paid by the company during an eligible accounting year (not including the current year)
 - h is the aggregate amount of dividends paid by the company during the current year which—
 - (a) are dividends to which **section LF 2(2) or LF 5(1)** applies; or
 - (b) in the case of any dividends not derived by the taxpayer, would be dividends to which **section LF 2(2) or LF 5(1)** would apply if derived by the taxpayer.
- (2) Where—
- (a) an amount of underlying foreign tax credit is being calculated under **subsection (1)** with respect to any dividend paid by a company during an accounting year; and

- (b) the financial statements of the company for the accounting year are prepared in a currency other than New Zealand currency,—

the calculation of the amount of underlying foreign tax credit must be undertaken in the foreign currency and converted to New Zealand currency at the close of trading spot exchange rate for the day on which the dividend is paid.

Compare: 1994 No 164 s LF 3

LF 4 Dividends from lower-tier companies

- (1) For the purposes of **section LF 3** with respect to the calculation of an amount of underlying foreign tax credit in respect of a foreign withholding payment dividend derived by a taxpayer, where—

- (a) a company pays a standard dividend to another company; and

- (b) at the time the dividend is paid, the taxpayer has a sufficient interest in both companies,—

the other company is deemed to have paid (in addition to any actual tax paid or payable), with respect to its earnings in its accounting year in which the dividend is derived, income tax equal to the amount of underlying foreign tax credit determined under **section LF 2** with respect to the dividend as if—

- (c) the other company were the taxpayer; and

- (d) the dividend were a foreign withholding payment dividend to which **section LF 2** applies; and

- (e) the only dividends paid by the company paying the standard dividend were those of its dividends which are standard dividends; and

- (f) all such standard dividends were foreign withholding payment dividends to which **section LF 2** applies.

- (2) Notwithstanding **subsection (1)**, the income tax deemed paid must not exceed the amount (being not less than nil) calculated in accordance with the following formula:

$$((a + b + c) \times d) - c$$

where—

- a is the amount of the dividend (after deduction of any withholding tax paid in respect of the dividend)

- b is the amount of underlying foreign tax credit referred to in **subsection (1)**

- c is the withholding tax paid in respect of the dividend

- d is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the tax year in which the dividend is paid.
- (3) Notwithstanding any provision of **section LF 3** or the preceding provisions of this section, the amount of underlying foreign tax credit arising with respect to a foreign withholding payment dividend, including the notional credit calculated under the concluding phrase and 4 paragraphs of **subsection (1)**, paid by a company resident in New Zealand which has ever been an imputation credit account company must not exceed the imputation credit attached to the dividend and is nil if no imputation credit is attached.

Compare: 1994 No 164 s LF 4

LF 5 Dividends from grey list companies

- (1) Where—
- (a) a taxpayer derives a foreign withholding payment dividend from a grey list company; and
 - (b) the company has, in respect of all eligible accounting years, been liable to income tax in a country or territory specified in **schedule 3, part A**, by reason of domicile, residence, place of incorporation, or place of management; and
 - (c) the company has in respect of all eligible accounting years, for the purposes of income tax in the country or territory, calculated its income liable to income tax without applying any features of the taxation law of the country or territory that are specified in **schedule 3, part B** (except where and to the extent that the feature is that specified in **schedule 3, part B, clause 1** and the exemption is in respect of business activities carried on in a country or territory specified in **schedule 3, part A**); and
 - (d) the company is either—
 - (i) at all times during the period commencing with—
 - (A) the first day of the third accounting year of the company preceding the first accounting year in which the taxpayer had a sufficient interest in the company; or
 - (B) the date of incorporation of the company, where the taxpayer had a sufficient interest

in the company when it was first incorporated or first acquired a sufficient interest in the company less than 3 years after the date of incorporation of the company,—

and ending with the time at which the dividend is paid, a foreign company; or

(ii) at the time the dividend is paid, a member of the same wholly-owned group of companies as the taxpayer; and

(e) the taxpayer has maintained, with respect to transactions occurring on or after the latest of—

(i) 20 October 1992; and

(ii) the first day of the first eligible accounting year; and

(iii) the first day of such eligible accounting year as the taxpayer elects,—

(such latest date being referred to in **subsection (2)** as the **effective date**) and can furnish to the Commissioner, if requested, the tracking account required under **subsection (2)** in order to determine the extent of the application of this subsection to the dividend,—

the amount of the underlying tax credit arising with respect to the dividend is equal to the amount calculated in accordance with the following formula:

$$a \times \frac{b}{1 - b}$$

where—

a is the amount of the dividend (before deduction of any withholding tax)

b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the tax year in which the dividend is paid.

(2) **Subsection (1)** applies to a dividend paid by a company to the taxpayer in an accounting year only to the extent to which it exceeds the amount calculated by multiplying the dividend by the lesser of 1 and the following fraction:

$$\frac{a}{b}$$

where—

-
- a is the credit balance (if any) at the last day of the accounting year of the company in an account which is—
- (a) credited with each of the following amounts (referred to in this subsection as the **applicable payments**) derived or received by the company on or after the effective date and before the end of the accounting year, except to the extent such amounts are paid by a company resident in New Zealand or, had they been dividends derived by the taxpayer, would have been dividends with respect to which an amount of underlying tax credit would have been deemed to arise under **subsection (1)**:
- (i) any standard dividend in respect of which the company is not liable to income tax; and
- (ii) a dividend paid by a relevant associate and in respect of which the company is not liable to income tax, not being—
- (A) attributed repatriation; or
- (B) a standard dividend; or
- (C) a dividend within the meaning of **section CD 3** arising only by virtue of a difference between the rate of interest specified in **section CD 29(6) to (8)** and the interest rate in fact payable in respect of a loan made by the relevant associate to the company, to the extent to which the loan is treated as an applicable payment under **subparagraph (iv)**; and
- (iii) any amount subscribed for shares issued by the company (or otherwise contributed to the company as additional equity) by a relevant associate, to the extent to which the relevant associate has, at the time of subscription (or contribution), retained earnings; and

- (iv) any amount advanced by way of loan to the company by a relevant associate (except where and to the extent that the taxpayer anticipates that the advance will be repaid within 5 years and the advance is in fact so repaid) to the extent to which the relevant associate has, at the time of advance, retained earnings; and
 - (v) any amount, not being a dividend, paid by a relevant associate, which would be counted income of the company if the company were at all times resident in New Zealand and in respect of which the company is not liable to income tax; and
- (b) in any case where the effective date is determined by **subsection (1)(e)(iii)**, credited with the retained earnings of the company at the end of the accounting year immediately preceding the accounting year in respect of which the taxpayer makes the election; and
- (c) debited with the aggregate of amounts (not being dividends to which **paragraph (d)** of this item applies) paid by the company on or after the effective date and before the end of the accounting year and derived by another company as applicable payments where and to the extent that—
 - (i) the taxpayer maintains, with respect to that other company, a tracking account with an effective date earlier than the time of payment of the amount; and
 - (ii) the amount is credited to that account maintained with respect to that other company; and

-
- (d) debited with the aggregate amount of dividends paid by the company on or after the effective date and before the start of the accounting year in respect of which an amount of underlying foreign tax credit amount would have been deemed to arise under **subsection (1)** but for the application, in respect of the taxpayer, of this subsection (had all such dividends been derived by the taxpayer); and
- (e) in any case where the company prepares its financial statements in a currency (referred to in this paragraph as the **first currency**) other than New Zealand currency, prepared in the first currency and converted, in any case where the applicable payment is paid in a different currency, to the first currency at the close of trading spot exchange rate (as if all references to New Zealand currency in the definition of **close of trading spot exchange rate** were to the first currency) on the day on which the applicable payment or dividend is paid
- b is the aggregate amount of dividends paid by the company during the accounting year to which **subsection (1)** (or would, but for this subsection) applies to deem an amount of underlying foreign tax credit to arise (had all such dividends been derived by the taxpayer).
- (3) For the purposes of **subsection (2)**, a company is treated as not being liable to income tax of a country or territory in respect of an amount derived by the company where and to the extent that the derivation of the amount gives rise, under the taxation law of the country or territory, to a rebate, credit, deduction, subsidy, or similar benefit (not being in any case merely the deduction of a current year loss to offset the amount or the operation merely, under the taxation law of the country or territory, of provisions equivalent to this subpart or any of **sections BH 1, IE 1, IF 1, IG 2, LC 1, and MF 5**) which has the direct or indirect effect of rebating to the company the income tax for which the company is liable in respect of the amount.
- (3A) Where a company carries on the business of providing life insurance, **subsection (2)** applies as if the amounts referred to in **paragraph (a)(i) to (v)** of item “a” in that subsection were limited

to such amounts as are actuarially determined to be part of the profit or loss of the company which the shareholders (and not the policyholders in the company) are attributed with, except where the Commissioner—

- (a) considers that the amounts so determined are not a reasonable and fair reflection of the relevant part of the profit or loss; or
 - (b) has requested but has not received sufficient information to allow the Commissioner to review the actuarial calculation of the amount.
- (4) Where, as a result of **subsection (2)**, **subsection (1)** applies to part of a dividend only, the part to which **subsection (1)** does not apply is treated as a separate dividend to which **section LF 3** applies to calculate an amount of underlying foreign tax credit.

- (5) In **subsection (2)**,—

relevant associate means, at any time with respect to any taxpayer and any dividend paid by any company (referred to in this definition as the **company**), a company (other than the taxpayer) which is at the time—

- (a) associated with both the taxpayer and the company; and
- (b) either—
 - (i) resident in New Zealand; or
 - (ii) a controlled foreign company

retained earnings means, with respect to any company at any time, the aggregate at the time of the company's shareholders' funds (calculated under generally accepted accounting practice) after deduction of the aggregate of—

- (a) the company's paid up share capital; and
- (b) the company's share premium account; and
- (c) any amount subscribed by the company, prior to the time, for shares issued by another company and credited, under **paragraph (a)(iii)** of item "a" of the formula in **subsection (2)**, to the tracking account maintained with respect to another company; and
- (d) any principal balance outstanding, at the time, of a loan by the company which has been credited, under **paragraph (a)(iv)** of item "a" of the formula in **subsection (2)**, to the tracking account maintained with respect to another company; and

- (e) any amount, not being an amount previously or otherwise deducted in calculating the aggregate at the time of the company's shareholders' funds, paid by the company prior to the time and credited, under **paragraph (a)(v)** of item "a" of the formula in **subsection (2)**, to the tracking account maintained with respect to another company,—

not being amounts of the company's paid-up share capital or share premium account resulting from—

- (f) bonus issues by the company; or
- (g) reinvestment, directly or indirectly, of distributions made by the company,—

except to the extent to which such bonus issues or distributions were—

- (h) derived by another company as applicable payments (as defined in **paragraph (a)** of item "a" of the formula in **subsection (2)**) where the taxpayer maintains, with respect to that other company, a tracking account with an effective date (as defined in **subsection (1)(e)**) earlier than the time of derivation of the bonus issue or distribution; or
- (i) foreign withholding payment dividends; or
- (j) derived by a shareholder of the company subject to income tax.

Compare: 1994 No 164 s LF 5

LF 6 Procedures with respect to underlying foreign tax credit

- (1) A taxpayer may, before 28 September 1995 (or by such later date as the Commissioner may allow, where the Commissioner is satisfied that the reason for the failure to meet the deadline is beyond the control of the taxpayer), furnish to the Commissioner, in such form as the Commissioner may allow, details of—
 - (a) the earnings of a company for any 1 or more accounting years immediately preceding the commencement date; and
 - (b) the income tax paid or payable with respect to the earnings of those years; and
 - (c) dividends paid by the company during those years; and
 - (d) amounts of underlying foreign tax credits arising under **section LF 2** with respect to those dividends.

- (2) Notwithstanding any provision in **section NH 3** or in section 102 or 139B of the Tax Administration Act 1994, the Commissioner may not assess any company for dividend withholding payment or late payment penalty for late payment of dividend withholding payment, to the extent such assessment is made only by reason of the Commissioner disputing details provided by the company to the Commissioner under **subsection (1) or (6)(c)**, after the expiration of 4 years from the later of—
- (a) the date upon which the details were provided; and
 - (b) the last date specified in or allowed by the Commissioner under **subsection (1) or (6)**, as the case may be, for filing the details,—
- except where, in the opinion of the Commissioner, the details are fraudulently or wilfully misleading.
- (3) Where—
- (a) a taxpayer furnishes under **subsection (1)** details in respect of an accounting year of a company to which **paragraph (c)(i) or (ii)** of the definition of **eligible accounting year** does not apply; and
 - (b) the company is at any time in the accounting year a low tax jurisdiction company,—
- for the purposes of this subpart the company is treated as—
- (c) deriving, in that accounting year, only those of its earnings for the accounting year which are dividends derived from another company which is, at the time of derivation, not a low tax jurisdiction company; and
 - (d) paying, with respect to its earnings in that accounting year, only those amounts of income tax paid or payable with respect to the earnings for the accounting year which are—
 - (i) income tax payable, in the country or territory in which the other company is resident, with respect to those dividends; or
 - (ii) income tax deemed under **section LF 4** to be payable by the company with respect to derivation of those dividends—
- and the taxpayer must furnish the details accordingly.
- (4) For the purposes of **section LF 3**, with respect to any taxpayer, a company is treated as having no amount of income tax paid or payable with respect to its earnings for an accounting year except where—

-
- (a) the taxpayer has available to furnish, if requested, to the Commissioner—
- (i) a copy of a receipt issued by the relevant revenue authority evidencing payment of the amount of tax; or
 - (ii) a copy of a return of income, of substantially the same nature as a return of income furnished under this Act, of the company as furnished to the relevant revenue authority and showing as payable the amount of tax; or
 - (iii) a copy of a demand, statement of account, or similar paper issued by the relevant revenue authority requesting payment of the amount of tax; or
- (b) the Commissioner is satisfied on the basis of any other evidence, such as an auditor's certificate, that the amount of tax is paid or payable; or
- (c) the company is deemed under **section LF 4** to have paid the amount of tax (but without prejudice to the determination of whether the lower-tier company paying the relevant dividend is treated as paying any amount of tax).
- (5) Where, with respect to any taxpayer and any company,—
- (a) the taxpayer has reason to believe that the statements used, under the definition of **after-income tax earnings**, to measure the after-income tax earnings or after-income tax loss of the company for any eligible accounting year do not fairly present the actual after tax profits or loss of the company for the eligible accounting year; or
 - (b) the Commissioner has concluded that such statements do not fairly present the actual after-tax profits or loss of the company for an eligible accounting year; or
 - (c) no statements exist to which any of the paragraphs of the definition of **after-income tax earnings** apply in respect of the company and an eligible accounting year,—

then, for the purposes of **section LF 3**, the income tax paid or payable by that company with respect to its earnings for that accounting year, the immediately preceding accounting year, and the immediately succeeding accounting year is in each case nil.

- (6) Where the amount of any dividend withholding payment deductible under **section NH 2(1)** with respect to a foreign withholding payment dividend derived by a taxpayer is reducible by virtue of an amount of underlying foreign tax credit arising with respect to the dividend, then, notwithstanding anything in **section NH 2**, no such reduction is allowed unless the taxpayer has furnished to the Commissioner, within such time as the Commissioner may allow in a particular case or class of cases having regard to the period stated in **section LC 13**, all information specified by the Commissioner as being necessary to verify the calculation of the amount of underlying foreign tax credit, including, if specified by the Commissioner,—
- (a) details of the calculation of the amounts of items “a” to “h” of the formula in **section LF 3(1)** with respect to the underlying foreign tax credit amount; and
 - (b) in any case where the amount of underlying foreign tax credit is calculated under **section LF 5(1)**, details of the relevant tracking account and entries in that account; and
 - (c) in any case where the amount of underlying foreign tax credit is calculated having regard to underlying foreign tax credit amounts arising under **section LF 4** with respect to a lower-tier company, details of the calculation of items “a” to “h” of the formula in **section LF 3(1)**, or of the relevant tracking account and entries in that account (as the case may be) with respect to the underlying foreign tax credit amount in respect of the lower-tier company.

Compare: 1994 No 164 s LF 6

LF 7 Interest paid in conduit financing arrangements

Notwithstanding anything in **sections DB 6 to DB 8**, or any other provision of this Act, where—

- (a) any company—
 - (i) incurs any interest expenditure for which the company is allowed a deduction under this Act; or
 - (ii) incurs expenditure under the financial arrangements rules,—in any tax year; and
- (b) in that tax year or a preceding tax year—
 - (i) the company; or

- (ii) another company resident in New Zealand which is at the time of derivation associated with the company,—
derives a dividend from a company (referred to in this section as the **first foreign company**); and
- (c) **section LF 5(1)** deems an amount of underlying foreign tax credit to arise in respect of the dividend or, by virtue of **section LF 4**, results in an amount of underlying foreign tax credit arising in respect of the dividend; and
- (d) the interest, or the consideration payable by the company giving rise to the expenditure incurred under the financial arrangements rules, is paid, directly or indirectly and whether by 1 transaction or a series of transactions, to—
- (i) the first foreign company; or
- (ii) a person (referred to in this section as the **associate**) who, at the time of payment,—
- (A) is associated with the first foreign company; and
- (B) is a foreign company; and
- (e) at the time at which—
- (i) the interest or consideration is paid; or
- (ii) the dividend is paid,—
- persons not resident in New Zealand have—
- (iii) voting interests; or
- (iv) in any case where at the time a market value circumstance exists in respect of the company, market value interests,—
- aggregating 50% or greater in the first foreign company and, in any case to which **paragraph (d)(ii)** applies, the associate; and
- (f) at the time at which—
- (i) the interest or consideration is paid; and
- (ii) the dividend is paid,—
- the recipient (referred to in **paragraph (d)(i) and (ii)**) of the direct or indirect payment of interest or consideration (referred to in that paragraph) is not a controlled foreign company,—
- the company is denied any deduction in calculating the net income of the company for such interest or expenditure incurred in the tax year except where and to the extent that the aggregate of such interest or expenditure incurred in the tax

year exceeds the amount calculated in accordance with the following formula:

$$a - b$$

where—

- a is the aggregate amount of dividends (before deduction of any withholding tax) in respect of which an amount of underlying foreign tax credit has been deemed to arise under or by virtue of **section LF 5(1)**, derived by—
- (i) the company; or
 - (ii) another company resident in New Zealand which is associated at the time with the company,—
- in the tax year or any preceding tax year from the first foreign company
- b is the aggregate amount of—
- (i) such interest or expenditure incurred in any preceding tax year for which, under this section, the company has been denied a deduction by virtue of the receipt of such dividends from the first foreign company; and
 - (ii) income derived by the company from a financial arrangement for which the interest or expenditure is incurred in any preceding tax year if, in those tax years, the first foreign company or the associate (as the case may be) were a party to the financial arrangement.

Compare: 1994 No 164 s LF 7

Subpart LG—Conduit tax relief credits

LG 1 Conduit tax relief additional dividends

- (1) If a conduit tax relief company pays a dividend to a non-resident and a conduit tax relief credit is attached to the dividend, the company must pay a conduit tax relief additional dividend at the same time.
- (2) The additional dividend must be—
 - (a) equal in amount to the conduit tax relief credit; and
 - (b) paid with respect to the first dividend; and
 - (c) derived by the same person.
- (3) **Sections GC 22, ME 8, and MG 8** apply as if the company had never paid the additional dividend.

- (4) The payment of an additional dividend to all non-resident shareholders that hold shares of a particular class (that would otherwise be prohibited) does not contravene—
- (a) section 53 of the Companies Act 1993; or
 - (b) a provision of the company's articles of association or constitution, unless the provision expressly refers to this subsection; or
 - (c) another rule of law.
- (5) When a trustee derives the dividend and is required under the terms of the trust to distribute it to a beneficiary, the trustee's distribution of an additional dividend to the same beneficiary does not contravene the terms of the trust.
- (6) The rules for determining residence in **sections OE 7 and OE 8** apply for the purposes of **subsections (1) and (4)**.

Compare: 1994 No 164 s LG 1

Part M

Tax payments

Subpart MB—Provisional tax

MB 1A Special rules for 2000–01 and 2001–02 tax years

A provisional taxpayer must determine the amount of provisional tax payable for—

- (a) the 2000–01 tax year by applying **section MB 2AA**; and
- (b) the 2001–02 tax year by applying **section MB 2AB**; and
- (c) for other tax years by applying **section MB 2**.

Compare: 1994 No 164 s MB 1A

MB 2 Amount of provisional tax payable

- (1) The amount of provisional tax payable by a provisional taxpayer for a tax year is, for the purpose of determining the amount of any particular instalment of provisional tax payable under **section MB 5 or MB 5A**,—
 - (a) except where any other provision of this subsection applies, 105% of the residual income tax of the taxpayer for the immediately preceding tax year, as that residual income tax is determined in accordance with **subsection (3)** at the date the instalment is due; or
 - (aa) 100% of the residual income tax for the immediately preceding tax year if—
 - (i) the taxpayer is a natural person; and
 - (ii) the taxable income of the taxpayer for the immediately preceding tax year does not exceed \$75,000; and
 - (iii) none of **paragraph (ab), (b), (c), or (d)** applies; or
 - (ab) 105% of the residual income tax for the tax year before the immediately preceding tax year if—
 - (i) the taxpayer is a natural person; and
 - (ii) the taxpayer is required to furnish a return of income for the immediately preceding tax year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not required to furnish that return on or before the date the instalment is due; and
 - (iii) the taxpayer has not in fact furnished that return on or before the date the instalment is due; and

-
- (iv) the instalment is not the instalment due on the third instalment date; and
 - (v) the taxable income of the taxpayer for the tax year before the immediately preceding tax year does not exceed \$75,000; and
 - (vi) neither **paragraph (c) nor (d)** applies; or
- (b) 110% of the residual income tax for the tax year before the immediately preceding tax year if—
- (i) the taxpayer is required to furnish a return of income for the immediately preceding tax year, but is not required to furnish the return on or before the date the instalment is due because section 37 of the Tax Administration Act 1994 or an extension granted under that section applies; and
 - (ii) the taxpayer has not furnished the return on or before the date the instalment is due; and
 - (iii) the instalment is not the instalment due on the third instalment date; and
 - (iv) neither **paragraph (c) nor (d)** applies; or
- (c) if the taxpayer furnishes an estimate of residual income tax under **section MB 3**, and **paragraph (d)** does not apply, the amount that, on or most recently before the instalment date, is estimated and furnished or deemed to be estimated and furnished by the taxpayer under that section; or
- (d) where the Commissioner determines the amount of provisional tax payable by the taxpayer under section 119 of the Tax Administration Act 1994, the amount latest determined by the Commissioner under that section to the extent that—
- (i) the amount has been determined and notified to the taxpayer not less than 30 days before the date the instalment is due; or
 - (ii) the Commissioner has determined the amount on the ground that the estimate latest furnished by the taxpayer on or before the date the instalment was due was not fair and reasonable whenever that determination was made and notified.
- (2) Notwithstanding **subsection (1)** or any other provision of the provisional tax rules, no person is obliged to pay provisional tax in any tax year if—

- (b) the person's residual income tax for the preceding tax year did not exceed \$2,500.
- (3) For the purposes of **subsection (1)(a)**, the amount of the taxpayer's residual income tax for the immediately preceding tax year is—
 - (a) calculated on the basis of the Commissioner's assessment for that preceding tax year where, before the relevant instalment date, the Commissioner has issued a notice of assessment for that tax year not less than 30 days before the relevant instalment date:
 - (b) calculated on the basis of the taxpayer's assessment for the preceding tax year:
 - (c) calculated on the basis of the Commissioner's assessment for that preceding tax year, whenever that assessment may be made, if—
 - (i) the taxpayer, despite being required under section 37 of the Tax Administration Act 1994 to furnish a return of income for that tax year on or before the relevant instalment date, fails to furnish the return on or before that date; or
 - (ii) the taxpayer is not required under section 37 of the Tax Administration Act 1994 to furnish a return of income for that tax year on or before the relevant instalment date, and none of **paragraphs (a), (b), and (d)** applies:
 - (d) the amount of residual income tax (if any) for the immediately preceding tax year, where—
 - (i) the taxpayer is not required under this Act or the Tax Administration Act 1994 to furnish a return of income for that preceding tax year; or
 - (ii) the taxpayer (being a taxpayer whose residual income tax for the tax year preceding that preceding tax year was less than \$2,500) is not required to furnish and has not furnished a return for that preceding tax year on or before the third instalment date.
- (4) Notwithstanding anything in the provisional tax rules, where—
 - (a) the Commissioner makes an assessment in respect of a taxpayer after the due date for payment of the tax; and

- (b) the taxpayer's residual income tax for that tax year is increased by that assessment,—
the taxpayer's residual income tax for that tax year is treated for the purposes of the provisional tax rules as if it had not been so increased.
- (5) Where any provisional taxpayer carrying on the business of providing life insurance is liable for income tax in accordance with the life insurance rules, that taxpayer must at the time of determining the provisional tax payable for that tax year provide to the Commissioner details of the calculation of that provisional tax, including, in particular, the extent to which the amount of that provisional tax relates to the policyholder base.
- (6) For the purposes of **subsection (1)(a) and (aa)**, and section 119(3) of the Tax Administration Act 1994, the amount of a taxpayer's residual income tax for the immediately preceding tax year, where that tax year is a transitional year, is calculated in accordance with the following formula:

$$\frac{a \times b}{c}$$

where—

- a is the residual income tax for the transitional year
b is the number of days in the current tax year
c is the number of days in the transitional year.
- (7) For the purposes of **subsection (1)(ab) and (b)**, the amount of a taxpayer's residual income tax for the tax year before an immediately preceding tax year, if the tax year before the immediately preceding tax year is a transitional year, is calculated in accordance with the formula—

$$\frac{a \times b}{c}$$

where—

- a is the residual income tax for the transitional year
b is the number of days in the current tax year
c is the number of days in the transitional year.

Compare: 1994 No 164 s MB 2

MB 2AB Amount of provisional tax payable in 2001–02 tax year

- (1) For the purpose of determining the amount of provisional tax payable under **section MB 5 or MB 5A**, a provisional taxpayer's provisional tax payable for a tax year is—
- (a) except if any other provision of this subsection applies, 105% of the taxpayer's residual income tax for the 2000–01 tax year, as that residual income tax is determined in accordance with **section MB 2(3)** at the date the instalment is due; or
 - (b) 110% of the residual income tax for the 1999–00 tax year as if the residual income tax had been calculated using the basic rates, resident withholding tax deduction rates, and basic tax deduction rates set out in the Taxation (Tax Rate Increase) Act 1999 and if—
 - (i) the taxpayer is one to whom **schedule 1, part A, clause 9** applies; and
 - (ii) the taxpayer is required to furnish a return of income for the 2000–01 tax year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not required to furnish that return on or before the date the instalment is due; and
 - (iii) the taxpayer has not in fact furnished that return on or before the date the instalment is due; and
 - (iv) the instalment is not the instalment due on the third instalment date; and
 - (v) the taxpayer's taxable income for the 1999–00 tax year is more than \$60,000; and
 - (vi) none of **paragraphs (c), (d), and (e)** applies; or
 - (c) 110% of the residual income tax for the 1999–00 tax year if—
 - (i) the taxpayer is required to furnish a return of income for the 2000–01 tax year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not required to furnish that return on or before the date the instalment is due; and
 - (ii) the taxpayer has not in fact furnished that return on or before the date the instalment is due; and
 - (iii) the instalment is not the instalment due on the third instalment date; and

- (iv) none of **paragraphs (b), (d), and (e)** applies; or
- (d) if the taxpayer furnishes an estimate of residual income tax under **section MB 3** and **subsection (1)(e)** does not apply, the amount that, on or most recently before the instalment date, is estimated and furnished or deemed to be estimated and furnished by the taxpayer under that section; or
- (e) if the Commissioner determines the amount of provisional tax payable by the taxpayer under section 119 of the Tax Administration Act 1994, the amount latest determined by the Commissioner under that section to the extent that—
 - (i) the amount has been determined and notified to the taxpayer not less than 30 days before the date the instalment is due; or
 - (ii) the Commissioner has determined the amount on the ground that the estimate latest furnished by the taxpayer on or before the date the instalment was due was not fair and reasonable whenever that determination was made and notified.

- (2) For the purposes of **subsection (1)(b)**, the amount of a taxpayer's residual income tax for the 1999–2000 tax year, if that year is a transitional year, is calculated using the formula—

$$\frac{a \times b}{c}$$

where—

- a is the residual income tax for the 1999–00 tax year
- b is the number of days in the 2001–02 tax year
- c is the number of days in the transitional year, being the 1999–00 tax year.

- (3) For the purposes of **subsection (1)(c)**, the amount of a taxpayer's residual income tax for the 1999–00 tax year, if that tax year is a transitional year, is calculated using the formula—

$$\frac{a \times b}{c}$$

where—

- a is the residual income tax for the 1999–00 tax year
- b is the number of days in the 2001–02 tax year
- c is the number of days in the transitional year, being the 1999–00 tax year.

- (4) **Section MB 2(2) to (7)** and section 119 of the Tax Administration Act 1994 apply to this section as if—
- (a) references to the preceding tax year or the immediately preceding tax year were read as referring to the 2000–01 tax year; and
 - (b) the reference to the tax year preceding that tax year were read as referring to the 1999–00 tax year; and
 - (c) the reference to **subsection (1)(a)** in **section MB 2(3) and (6)** were read as referring to **subsection (1)(a)** of this section.
- (5) References to **section MB 2** in **sections MB 5, MB 8, and MB 10** and section 28(3) of the Student Loan Scheme Act 1992 are to be read as references to this section or the equivalent subsection of this section as the context requires.

Compare: 1994 No 164 s MB 2AB

MB 2A Election to be provisional taxpayer

- (1) In a tax year, when first furnishing a tax return for the tax year to which the election relates, a taxpayer may elect to be a provisional taxpayer if—
- (a) the taxpayer has paid provisional tax of \$2,500 or more on or before—
 - (i) the third instalment date, if the taxpayer is in a tax year or a non-standard income year; or
 - (ii) the final instalment date, if the taxpayer is in a transitional year; and
 - (b) on the day on which the first payment of provisional tax is made for a tax year, the taxpayer had a reasonable expectation of being a provisional taxpayer in that tax year, other than by this election.
- (2) **Subsection (3)** applies if a taxpayer has a non-standard income year and has filed a return of income for the 1998–99 or a subsequent income year between 10 October 2000 and the date the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 receives the Royal assent.
- (3) If a taxpayer has filed their return of income on the basis that section MB 2A(1)(a)(i) applied, as it was before the enactment of section 50(1) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002, the taxpayer may elect to be a provisional taxpayer for the income year for which the return was filed if the taxpayer has paid provisional tax of \$2,500 or more on or before the third instalment date in the

non-standard income year that corresponds with the income year for which the return was filed.

Compare: 1994 No 164 s MB 2A

MB 2B Amount of provisional tax based on 1997–98 or earlier tax year

For the purposes of **section MB 2**, other than **section MB 2(3)**, and for a taxpayer who is a New Zealand superannuitant for the 1997–98 tax year, the taxpayer's residual income tax for that tax year or for an earlier tax year is the amount that would have been the taxpayer's residual income tax if the taxpayer—

- (a) had not been liable to pay the New Zealand superannuitant surcharge; and
- (b) had not paid any New Zealand superannuitant surcharge by way of surcharge deduction.

Compare: 1994 No 164 s MB 2B

MB 3 Estimated provisional tax

- (1) Any provisional taxpayer may, on or before the day on which an instalment of provisional tax becomes due and payable, make a fair and reasonable estimate or revised estimate of residual income tax for the tax year and furnish to the Commissioner a statement showing the amount so estimated.
- (4) A provisional taxpayer who furnishes an estimate or revised estimate in accordance with the provisions of this section must—
 - (a) take reasonable care in making that estimate or revised estimate; and
 - (b) if an estimate ceases to be fair and reasonable must, on or before the next instalment date, make a revised estimate for that tax year.
- (5) In a transitional year, a taxpayer who furnishes an estimate or revised estimate must,—
 - (a) before the date on which the Commissioner notifies a change of balance date, estimate the residual income tax as if no change in balance date will be approved; and
 - (b) after the date on which the Commissioner notifies a change of balance date, re-estimate the residual income tax.
- (6) If a taxpayer makes an estimate of residual income tax and that estimate exceeds the provisional tax otherwise payable,

the taxpayer is deemed to have taken reasonable care in making the estimate.

Compare: 1994 No 164 s MB 3

MB 4 Provisional tax payable in 1, 2, or 3 instalments

- (1) Unless otherwise provided in this section, provisional tax is payable in 3 instalments, with each instalment being calculated and due and payable in accordance with **section MB 5(1)**.
- (2) Provisional tax is payable by a taxpayer in 2 instalments, with each instalment being calculated and due and payable in accordance with **section MB 5(2)**, by—
 - (a) a new provisional taxpayer whose first business day occurs on or after the day which is 30 days before the first instalment date and is more than 30 days before the second instalment date; or
 - (b) a taxpayer whose return of income for the immediately preceding tax year is furnished after the first instalment date and on or before the second instalment date where—
 - (i) the taxpayer is required to furnish a return for that immediately preceding tax year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not required to furnish the return on or before the first instalment date; and
 - (ii) the taxpayer's residual income tax for the tax year before the immediately preceding tax year was less than \$2,500.
- (3) Provisional tax is payable by a taxpayer in 1 instalment, with the instalment being calculated and due and payable in accordance with **section MB 5(3)**, by—
 - (a) a new provisional taxpayer whose first business day occurs on or after the day that is 30 days before the second instalment date; or
 - (c) a taxpayer whose return of income for the immediately preceding tax year is not furnished on or before the second instalment date where—
 - (i) the taxpayer is required to furnish a return for that immediately preceding tax year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not

- required to furnish the return on or before the second instalment date; and
- (ii) the taxpayer's residual income tax for the tax year before the immediately preceding tax year was less than \$2,500.
- (4) In a transitional year,—
- (a) provisional tax is payable in the number of instalments specified in **schedule 13, part B, second column**; and
 - (b) instalments of provisional tax must be calculated and due and payable in accordance with **section MB 5A**.

Compare: 1994 No 164 s MB 4

MB 5 Amount of provisional tax instalments

- (1) Where a provisional taxpayer is required to pay provisional tax for a tax year in 3 instalments, the 3 instalments are due and payable on the first instalment date, second instalment date, and third instalment date respectively, and the amount of each instalment is calculated as follows:
- (a) for the first instalment, one-third of the provisional tax payable for that tax year, as that provisional tax is determined under **section MB 2** at the time of the first instalment date:
 - (b) for the second instalment, the balance remaining after deducting from two-thirds of the provisional tax payable for that tax year (as that provisional tax is determined under **section MB 2** at the time of the second instalment date) the amount of provisional tax previously due and payable for that tax year:
 - (c) for the third instalment, the balance remaining after deducting from the provisional tax payable for that tax year (as that provisional tax is determined under **section MB 2** at the time of the third instalment date) the amount of provisional tax previously due and payable for that tax year.
- (2) Where a provisional taxpayer is entitled under **section MB 4(2)** to pay provisional tax for a tax year in 2 instalments, the 2 instalments are due and payable on the second instalment date and the third instalment date respectively, and the amount of each instalment is calculated as follows:
- (a) for the first instalment, one-half of the provisional tax payable for that tax year, as that provisional tax is

determined under **section MB 2** at the time of the second instalment date:

- (b) for the second instalment, the balance remaining after deducting from the provisional tax payable for that tax year (as that provisional tax is determined under **section MB 2** at the time of the third instalment date) the amount of provisional tax previously due and payable for that tax year.
- (3) Where any provisional taxpayer is entitled under **section MB 4(3)** to pay provisional tax in 1 instalment, that instalment is due and payable on the third instalment date, and the amount of that instalment is the provisional tax payable for that tax year, as that provisional tax is determined under **section MB 2** at the time of the third instalment date.

Compare: 1994 No 164 s MB 5

MB 5A Amount of provisional tax instalments in transitional year

- (1) This section applies to instalments of provisional tax due in a transitional year.
- (1A) The total amount of provisional tax payable in a transitional year is the total of all instalments of provisional tax due in the transitional year.
- (2) Instalments (other than a final instalment) of provisional tax are due on—
 - (a) the 7th day of the months specified in **schedule 13, part B, third column** unless January is specified; and
 - (b) the 15th day of January, when **schedule 13, part B, third column** specifies that January is a month in which the instalment is due.
- (3) Payment of the final instalment is due on—
 - (a) the 7th day of the final month in the transitional year; or
 - (b) the 15th day of January where January is the final month.
- (4) For the purposes of **subsection (2)**, provisional tax is not due and payable on—
 - (a) the first instalment date, if the taxpayer is a taxpayer to whom **section MB 4(2)** would have applied had the tax year not been a transitional year; or

- (b) the first and second instalment dates, if the taxpayer is a taxpayer to whom **section MB 4(3)** would have applied had the tax year not been a transitional year; or
- (c) the first, second, and third instalment dates, if the taxpayer is a new provisional taxpayer whose first business day occurs on or after the day that is 30 days before the third instalment date.
- (5) If a taxpayer does not make an estimate of residual income tax for a transitional year prior to an instalment date and the instalment is not a final instalment, the amount payable on an instalment date is calculated in accordance with the following formula:

$$\frac{p \times n}{3} - i$$

where—

- i is the amount of provisional tax previously due and payable for that transitional year
- n is the aggregate number, plus 1, of instalments due in that transitional year before the instalment date
- p is the amount of provisional tax determined under **section MB 1A**.
- (6) If a taxpayer makes an estimate of residual income tax for a transitional year, the amount payable on an instalment date, other than a final instalment date, is calculated in accordance with the following formula:

$$\frac{((4 \times n) \times p)}{m} - i$$

where—

- i is the amount of provisional tax previously due and payable for that transitional year
- m is the number of months in the transitional year
- n is the aggregate number, plus 1, of instalments due in that transitional year before the instalment date
- p is the amount of provisional tax determined under **section MB 1A**.
- (7) If a taxpayer has not made an estimate of the residual income tax for a transitional year, the amount payable on a final instalment date is calculated in accordance with the following formula:

$$\frac{p \times b}{c} - i$$

where—

- b is the number of days in the transitional year
- c is the number of days in the immediately preceding tax year
- i is the amount of provisional tax previously due and payable for that immediately preceding tax year
- p is the amount of provisional tax determined under **section MB 1A**.

- (8) If a taxpayer makes an estimate of the income tax for a transitional year, the amount payable on a final instalment date is the amount of provisional tax determined under **section MB 1A** less the amount of any instalment previously due and payable.
- (9) In this section and in **schedule 13, part B, first column**, the number of months in a transitional year must be determined in accordance with the following:
 - (a) the first month in a taxpayer's transitional year—
 - (i) is the first whole month in that transitional year; and
 - (ii) for a new provisional taxpayer, is the month following the first business day of the taxpayer:
 - (b) the final month in a transitional year is the month in which a taxpayer's new return date (as defined in section 39 of the Tax Administration Act 1994) occurs:
 - (c) each month falling between the first and final months must be included in determining the length of the transitional year.

Compare: 1994 No 164 s MB 5A

MB 6 Voluntary payments

A taxpayer may at any time make voluntary payments to the Commissioner of such amounts as the taxpayer thinks fit by way of provisional tax, being either—

- (a) tax in respect of the taxpayer's income tax liability for a tax year in which that taxpayer is not a provisional taxpayer; or
- (b) tax in excess of the provisional tax payable by a provisional taxpayer for that tax year.

Compare: 1994 No 164 s MB 6

MB 7 Provisional tax of consolidated group members

- (1) The provisional tax rules apply, with any necessary modifications, in respect of a consolidated group as if it were a single company, and—
 - (a) each company that is a member of a consolidated group in an income year is, subject to **section HB 1(5)**, jointly and severally liable for the amount of provisional tax payable by the consolidated group to be credited against the income tax liability of the group for that income year, and that joint and several liability is in substitution for any individual liability of those companies under the provisional tax rules in respect of an income tax liability for that income year (to the extent the income tax liability arises while the company is a member of the consolidated group); and
 - (b) where any company—
 - (i) is a member of a consolidated group for all or part of any income year (referred to in this paragraph as the **current income year**); and
 - (ii) was not a member of the consolidated group for all or part of the preceding income year,—

the residual income tax of the consolidated group in the preceding income year is deemed, for the purposes of the provisional tax rules (but, in any case where the company is a member for part only of the current income year, only with respect to instalments of provisional tax payable after the date upon which the company becomes a member), to be increased by an amount equal to the residual income tax of that company in the preceding income year multiplied by that fraction which is equal to the fraction of the current income year during which the company is a member of the consolidated group.
- (2) **Subsection (3)** applies if a company is—
 - (a) a member of a consolidated group for all or part of an income year; and
 - (b) not a member of the consolidated group for all or part of the immediately succeeding income year.
- (3) The company must make an estimate of residual income tax on or before the third instalment date for the immediately succeeding income year, and the company is treated as a

provisional taxpayer to whom **section MB 3** applies for the purpose of its estimate.

- (4) The consolidated group, in the case of the company that is a member of another consolidated group, must make an estimate of residual income tax on or before the third instalment date for the immediately succeeding income year, and the consolidated group is treated as a provisional taxpayer to whom **section MB 3** applies for the purpose of its estimate.
- (5) If a company ceases to be a member of the consolidated group during the immediately succeeding income year, the company's estimate applies only to instalments of provisional tax payable after the date of cessation.

Compare: 1994 No 164 s MB 7

MB 8 Refund of overpaid provisional tax

- (1) Where—
 - (a) the amount of provisional tax payable by a provisional taxpayer for a tax year is reduced by the taxpayer or by the Commissioner under section 119(2) of the Tax Administration Act 1994; and
 - (b) the taxpayer has as a result paid more than the amount of provisional tax that would have been payable had the reduced amount of provisional tax applied at all earlier provisional tax instalment dates for that tax year; and
 - (c) the taxpayer has applied in writing to the Commissioner for a refund of provisional tax,—

the Commissioner must credit that excess in payment of any income tax due by the taxpayer and underpaid in respect of any earlier tax year in accordance with a taxpayer's, or their agent's, request under section 173T of the Tax Administration Act 1994 or otherwise, and must refund to the taxpayer any excess not so credited.
- (2) Where, in relation to any tax year,—
 - (a) the provisional tax payable by a taxpayer on the first instalment date for that tax year, or the second instalment date for that tax year, is determined in accordance with **section MB 2(1)(b)**; and
 - (b) the residual income tax of the taxpayer for the immediately preceding tax year, as assessed subsequent to the first instalment date or the second instalment date, as the case may require, does not exceed \$2,500; and

- (c) the taxpayer has applied in writing to the Commissioner for a refund of the income tax or provisional tax paid in relation to that instalment date,—
the Commissioner must credit that excess in payment of any income tax due by the taxpayer and underpaid in respect of any earlier tax year in accordance with a taxpayer's, or their agent's, request under section 173T of the Tax Administration Act 1994 or otherwise, and must refund to the taxpayer any excess not so credited.
- (3) Where any excess provisional tax paid for any tax year has, under **subsection (1) or (2)**, been refunded, or credited in payment of income tax due and unpaid,—
- (a) any subsequent instalments payable in accordance with **section MB 5** are calculated as if the total of the instalments previously payable were reduced by the amount of the excess provisional tax; and
- (b) the amount of the excess refunded or credited is, with effect from the date of the refund or crediting, deemed not to be provisional tax paid in respect of the tax year.

Compare: 1994 No 164 s MB 8

MB 9 Payments to be set off within wholly-owned group

- (1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in relation to any taxpayer that is a company included in a wholly-owned group of companies.
- (2) Where for any tax year a company has paid provisional tax in excess of its residual income tax, the company (in this section referred to as the **excess company**) may, if it so elects by notice in accordance with **subsection (6)**, allocate all or any part of that excess to any other company (any such company being in this section referred to as the **underpaid company**) included in that tax year in the same wholly-owned group as the excess company, to the extent that the provisional tax paid by the underpaid company is less than its residual income tax for that tax year.
- (3) An excess company may make an allocation under **subsection (2)** in relation to a tax year only on or after the later of—
- (a) the day on which the provisional tax in excess is paid by the excess company; or

- (b) the day on which the first instalment of provisional tax payable in respect of the tax year becomes payable by the underpaid company.
- (4) Every allocation made under **subsection (2)** is deemed to be made on the day specified for the purpose in the notice required by that subsection.
- (5) Any provisional tax allocated by an excess company to an underpaid company, in relation to a tax year in accordance with **subsection (2)**, is deemed to be provisional tax paid by the underpaid company and not by the excess company.
- (6) Every notice under **subsection (2)** must—
 - (b) name the underpaid company or companies to which any excess amount is to be allocated, and the amount or amounts so allocated; and
 - (c) be furnished to the Commissioner within the time within which a return of income for the tax year is required to be furnished by the underpaid company or companies, or within such further time as the Commissioner may allow; and
 - (d) specify the day on which an excess amount is deemed to be allocated to the underpaid company and the amount of the excess allocated.

Compare: 1994 No 164 s MB 9

MB 9A Provisional tax and attribution rule for services

- (1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in respect of provisional tax paid for income from personal services to which **section GC 14B** may apply.
- (2) If, during a tax year, person B pays provisional tax in excess of its residual income tax, person B may allocate all or part of the excess to person C, to the extent that provisional tax paid by person C is less than person C's residual income tax for the tax year.
- (3) If, during a tax year, person C pays provisional tax in excess of its residual income tax, person C may allocate all or part of the excess to person B, to the extent that provisional tax paid by person B is less than person B's residual income tax for the tax year.

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- (4) Persons B and C may allocate all or part of the excess only on or after the later of—
 - (a) the day on which the provisional tax in excess is paid by person B or person C, as the case may be; and
 - (b) the day on which the first instalment of provisional tax payable in respect of the tax year becomes payable by—
 - (i) person C, if person B is making the allocation;
 - (ii) person B, if person C is making the allocation.
 - (5) Provisional tax allocated by person B to person C is treated as provisional tax paid by person C and not by person B.
 - (6) Provisional tax allocated by person C to person B is treated as provisional tax paid by person B and not by person C.
 - (7) An allocation is made by giving notice to the Commissioner, within the time that a return of income for the tax year must be furnished by the person to whom the excess is allocated, or within such further time as the Commissioner may allow.
 - (8) A notice must state—
 - (a) the person to whom an excess amount is allocated; and
 - (b) the amount of the excess; and
 - (c) the date on which the excess amount is allocated.

Compare: 1994 No 164 s MB 9A

MB 10 Offset of further income tax

- (1) For the purposes of **sections MB 2 and MB 5**, where, in accordance with **section ME 9**, a company applies an amount of tax by way of further income tax in payment of any instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax, the instalment of provisional tax is satisfied by the amount of the further income tax, so far as that amount extends.
- (2) The Commissioner must credit the amount of the further income tax in payment successively of—
 - (a) the instalment of provisional tax that first falls due and payable after the date of payment of the further income tax; and
 - (b) instalments subsequent to that instalment, in the order in which they fall due and payable, so far as the amount of the further income tax extends,—

and the amount is deemed to be provisional tax and to have been paid on the date on which the instalment so credited was due and payable.

Compare: 1994 No 164 s MB 10

MB 11 Calculation of residual income tax of amalgamated company

Where any amalgamating company ceases to exist on an amalgamation, the residual income tax of the amalgamated company in the tax year preceding the tax year in which the amalgamation takes place is deemed, for the purposes of the provisional tax rules (but only with respect to instalments of provisional tax payable after the amalgamation), to be equal to the amount which would have been such residual income tax had the amalgamating company and the amalgamated company always been 1 company.

Compare: 1994 No 164 s MB 11

MB 12 Application of other provisions to provisional tax

Subject to the provisional tax rules, the other provisions of this Act and of the Tax Administration Act 1994, except where otherwise specified, apply with respect to every amount that any person is liable to pay to the Commissioner under the provisional tax rules as if the amount were income tax imposed under **section BB 1**.

Compare: 1994 No 164 s MB 12

Subpart MC—Terminal tax

MC 1 Payment of terminal tax by provisional taxpayer

- (2) Notwithstanding **section NC 17(2)**, terminal tax payable for a tax year of a provisional taxpayer is due and payable on—
 - (a) the 7th day of the month specified in **schedule 13, part A** for payment of terminal tax for that tax year, unless January is specified; and
 - (b) the 15th day of January, if January is specified in **schedule 13, part A** for payment of terminal tax for that tax year.
- (3) Notwithstanding **subsection (2)**, the Commissioner may specify in a notice given to the taxpayer a terminal tax date earlier

than that referred to in **subsection (2)**, not being a day less than 30 days after the date of that notice.

- (4) For the purposes of **subsection (2)**, the month specified in **schedule 13, part A** for the payment of terminal tax is that—
- (a) specified in **column E**, if the provisional taxpayer's return of income giving rise to the terminal tax liability was linked to a tax agent; or
 - (b) specified in **column D**, in any other case.

Compare: 1994 No 164 s MC 1

MC 2 Payment of tax

- (1) Terminal tax for a tax year by a company that does not have a fixed establishment in New Zealand and is not deemed to be resident in New Zealand is due and payable on—
- (a) 7 February in the next tax year; or
 - (b) 7 April in the tax year following the next tax year, if the company's return of income giving rise to the terminal tax liability was linked to a tax agent.
- (2) Terminal tax payable for a tax year by a person (other than a company to which **subsection (1)** applies) is due and payable on—
- (a) the 7th day of the month specified in **schedule 13, part A** for payment of terminal tax for that tax year, unless January is specified; and
 - (b) the 15th day of January, if January is specified in **schedule 13, part A** for payment of terminal tax for that tax year.
- (3) For the purposes of **subsection (2)**, the month specified in **schedule 13, part A** for the payment of terminal tax is that—
- (a) specified in **column E**, if the person's return of income giving rise to the terminal tax liability was linked to a tax agent; or
 - (b) specified in **column D**, in any other case.

Compare: 1994 No 164 s MC 2

MC 3 Payment of tax by instalments

Without limiting the general power to make regulations under this Act or the Tax Administration Act 1994, regulations may be made under this Act or that Act for all or any of the following purposes:

- (a) providing for the fixing of the amounts of the instalments of income tax payable by any taxpayers or by any class of taxpayers for any tax year, whether by reference to the basic rates, or by reference to the amount of income tax payable for the last preceding tax year, or otherwise:
- (b) prescribing the manner in which the payment of instalments of income tax or of any class of instalments must be denoted or acknowledged:
- (c) providing for the allowance of interest or discount in respect of instalments of income tax or in respect of any class of instalments:
- (d) making any provision which may be necessary or convenient in relation to the assessment, collection, and adjustment of instalments of income tax, or generally for the purposes of this section.

Compare: 1994 No 164 s MC 3

Subpart MD—Refunds

MD 1 Refund of excess tax

- (1) Subject to **sections MD 2, MD 2A, MD 3, and NH 4**, in any case where the Commissioner is satisfied that tax has been paid in excess of the amount properly payable, the Commissioner must refund the amount paid in excess:
provided that, subject to **subsection (2)**, no refund may be made under this section after the expiration of the period of 8 years immediately after the end of the tax year in which the assessment was made or, in any case where the original assessment has been amended (whether once or more than once), after the end of the tax year in which the original assessment was made, unless written application for the refund is made by or on behalf of the taxpayer before the expiration of that period.
- (1A) If, as a result of the issue of an income statement, the amount of tax paid in excess and required to be refunded is more than \$50, or such greater amount as the Governor-General by Order in Council prescribes, the Commissioner must not refund the tax until the taxpayer has confirmed the income statement is correct.
- (1B) The Commissioner must not pay a refund under **subsection (1)** to the extent that the excess tax is applied to a nil period under either **section MZ 5 or MZ 6**.

- (2) Subject to **sections MD 2, MD 2A, MD 3, and NH 4**, in any case where an assessment has been amended so as to increase the amount of tax payable and the Commissioner is satisfied that by reason of that amendment tax has been paid in excess of the amount properly payable, the Commissioner must, notwithstanding that the time limited in accordance with **subsection (1)** for the making of a refund may have expired, refund the amount paid in excess by reason of that amendment: provided that, in any such case, no refund may be made under this section after the expiration of the period of 8 years immediately after the end of the tax year in which the amendment was made, unless written application for the refund is made by or on behalf of the taxpayer before the expiration of that period.
- (3) Subject to **subsection (4)** and to **sections MD 1(3A), MD 2, MD 2A, MD 3, and NH 4**, where a person to whom a refund is payable in accordance with this section has failed to pay any tax or other amount that is due and payable by that person to the Commissioner under any provision of this Act or any other of the Inland Revenue Acts, the Commissioner may apply all or any part of the refund in satisfying, in such order or manner as the Commissioner may determine or in accordance with a person's, or their agent's, request under section 173T of the Tax Administration Act 1994, the obligation of the person to pay the tax or other amount due.
- (3A) The Commissioner may apply a credit of tax allowed under **section KD 5** in satisfaction of an amount added to tax payable under **section KD 4(2)** in respect of a prior tax year whether that amount is due and payable.
- (4) Nothing in **subsection (3)** authorises the Commissioner to apply in satisfaction of any tax or other amount due the amount of any refund that arises in terms of—
- (a) **subpart KD** (which relates to family support and family plus); or
 - (b) **section NF 7** (which relates to refunds of excess resident withholding tax); or
 - (c) **section NG 16** (which relates to refunds of excess non-resident withholding tax).

Compare: 1994 No 164 s MD 1

MD 2 Limits on refunds of tax

- (1) Where an imputation credit account company becomes entitled at any time to a refund of income tax in accordance with **section MD 1**, the refund to be paid to the company must not exceed the credit balance (if any) of the company's imputation credit account at the later of—
 - (a) the end of the most recently ending imputation year; or
 - (b) the last day of any period for which the company furnishes an imputation return under section 70(3) of the Tax Administration Act 1994; or
 - (c) the last day of any period for which the company is required by the Commissioner to furnish an imputation return under section 70(1) of the Tax Administration Act 1994.
- (1A) Despite **subsection (1)(a)**, an imputation credit account company that furnishes its imputation return for an imputation year before the end of the next imputation year due to an extension of time for furnishing the imputation return may be refunded income tax in accordance with **section MD 1** if the refund is not more than the credit balance of the company's imputation credit account on the last day of the imputation year for which the imputation return was furnished.
- (2) Where a company that has ceased to be an imputation credit account company becomes entitled to a refund of income tax in accordance with **section MD 1** in respect of any income year during which it was an imputation credit account company, the refund to be paid to the company must not exceed the credit balance (if any) of the company's imputation credit account that arose as a debit under **section ME 5(1)(k)** immediately before the company ceased to be an imputation credit account company.
- (3) For the purposes of **subsections (1), (1A), and (2)**, any credit balance referred to in those subsections is deemed to be reduced by any earlier refund paid to the company during the same imputation year, being a refund of income tax or a refund of dividend withholding payment that may not, under this section or **section NH 4**, exceed that credit balance.
- (4) For the purposes of **subsections (1), (1A), and (2)**, where the refund referred to in those subsections is a refund of income tax for any income year made under **section MD 1**, the credit balance referred to in those subsections is deemed to be increased by

an amount equal to any debit to the company's imputation credit account which arose under **section ME 5(1)(i)** after the date of payment of the first instalment of provisional tax for that income year and before the date upon which the credit balance is to be determined in accordance with **subsection (1) or (2)**.

- (5) Where income tax paid in excess is not refunded to a company by reason of **subsection (1), (1A), or (2)**, the income tax not refunded—
- (a) is credited in payment of any income tax or provisional tax that is payable by the company for the income year during which the entitlement to the refund arose, or for any income year commencing after 31 March 1988, whether before or after the income year in which the entitlement to the refund arose:
 - (b) to the extent that it cannot be credited in accordance with **paragraph (a)**, whether by reason of the company being liquidated or for any other reason, is retained by the Commissioner.
- (5A) Despite **subsection (5)**, the income tax not refunded may be credited on a provisional tax instalment date if residual income tax is treated as being payable on the date specified in Part 7 of the Tax Administration Act 1994.
- (6) For the purposes of **section MD 1**, every company that has paid further income tax under **section ME 9** is deemed not to have paid tax in excess of the amount properly payable to the extent that any tax paid in excess is referable to the further income tax paid by the company.
- (7) Nothing in this section applies to limit the amount of any refund of tax overpaid by a qualifying company unless—
- (a) the tax was overpaid as part of or under an arrangement to secure a tax advantage of any of the kinds referred to in **section GC 22(1)**, or otherwise to avoid the liability of any shareholder in the company to tax under this Act; and
 - (b) the arrangement, or any element of the arrangement, was based on the ability of the company to obtain a refund of tax that, but for this subsection, would not be obtainable by virtue of **subsection (1), (1A), or (2)**.
- (8) Where an amalgamating company ceases to exist upon a qualifying amalgamation, this section applies with effect from the time of the amalgamation, with any necessary modifications,

in respect of any tax paid by the amalgamating company as if it and the amalgamated company were a single company.

- (9) Where a consolidated group ceases to exist on a qualifying amalgamation which involves all members of the consolidated group amalgamating (whether or not also amalgamating with any company outside the group), this section applies with effect from the time of the amalgamation, with any necessary modifications, in respect of any tax paid by the consolidated group as if it and the amalgamated company were a single company.
- (10) Nothing in this section applies to limit the amount of any refund of tax paid by a company in respect of income derived by the company in the 1987–88 or any earlier tax year or any refund of tax paid in relation to which no credit arose to the company's imputation credit account by virtue of **section ME 4(1)(a)**.

Compare: 1994 No 164 s MD 2

MD 2A Limits on refunds of tax for certain qualifying unit trusts and group investment funds

If a qualifying unit trust or a group investment fund becomes entitled to a refund of income tax in accordance with **section MD 1** and has a credit balance in its supplementary available subscribed capital account upon liquidation and a nil balance in its imputation credit account, the refund of income tax may not be more than the amount calculated according to the formula—

$$\text{credit balance} \times \text{maximum imputation ratio}$$

where—

credit balance	is the credit balance in the qualifying unit trust's, or the group investment fund's, supplementary available subscribed capital account; and
maximum imputation ratio	is the formula set out in section ME 8(1) , as if the words "in which the dividend is paid" in item "a" were read as "in which the liquidation occurs".

Compare: 1994 No 164 s MD 2A

MD 3 Refund of income tax not to exceed amount of credit balance

- (1) Where a policyholder credit account person becomes entitled at any time to a refund of income tax in accordance with **section MD 1**, the refund to be paid to the person must not exceed the credit balance (if any) of the person's policyholder credit account at the later of—
 - (a) the end of the most recently ending tax year of the person; or
 - (b) the last day of any period (being a period ending before the date upon which the refund is payable) for which the person furnishes a policyholder credit account return under section 66(5) of the Tax Administration Act 1994; or
 - (c) the last day of any period (being a period ending before the date upon which the refund is payable) for which the person is required by the Commissioner to furnish a policyholder credit account return under section 66(4) of the Tax Administration Act 1994.
- (2) Where a person who has ceased to be a policyholder credit account person becomes entitled to a refund of income tax in accordance with **section MD 1** in respect of any tax year during which the person was a policyholder credit account person, the refund to be paid to the person does not exceed the credit balance (if any) of the person's policyholder credit account immediately before the person ceased to be a policyholder credit account person.
- (3) For the purposes of **subsections (1) and (2)**, any credit balance referred to in those subsections is deemed to be reduced by any earlier refund paid to the person during the same tax year, being a refund of income tax that may not, under this section, exceed that credit balance.
- (4) Where income tax paid in excess is not refunded to a person by reason of **subsection (1) or (2)**, the income tax not refunded—
 - (a) is credited in payment of any income tax or provisional tax payable by the person for the tax year during which the entitlement to the refund arose, or for any tax year commencing after 31 March 1990, whether before or after the tax year in which the entitlement to the refund arose:

- (b) to the extent that it cannot, for any reason, be credited in accordance with **paragraph (a)**, is retained by the Commissioner.
- (5) Nothing in this section applies to limit the amount of any refund of tax paid by a person in respect of income derived by the person in the 1989–90 or any earlier tax year.

Compare: 1994 No 164 s MD 3

MD 4 Application of income tax or dividend withholding payments not refunded

For the purposes of the imputation rules, the dividend withholding payment rules, and the consolidation rules, where any amount of overpaid income tax or overpaid dividend withholding payment which has been credited to the imputation credit account or dividend withholding payment account of a company, or a consolidated group, as the case may be, is not refunded and is applied by the Commissioner towards the satisfaction of another amount of income tax liability or provisional tax instalment or the satisfaction of another amount of dividend withholding payment, the application of the amount overpaid does not give rise to another credit in the company's or group's imputation credit account or dividend withholding payment account.

Compare: 1994 No 164 s MD 4

Subpart ME—Imputation credit accounts

Imputation credit accounts: general

ME 1 Companies required to maintain imputation credit account

- (1) Except as provided in **subsection (2)**, every company that is resident in New Zealand must establish and maintain an imputation credit account for each imputation year.
- (2) A company must not establish and maintain an imputation credit account in respect of any imputation year, or any period within an imputation year, if, during the whole of that imputation year or that period, the company is—
- not resident in New Zealand; or
 - a company resident in New Zealand but not subject to tax in respect of part or all of its income under a double

- tax agreement, where the company is, for the purposes of the double tax agreement, treated as not being a resident of New Zealand; or
- (c) a company acting only in the capacity of trustee (not being a company that is a group investment fund that derives category A income); or
 - (d) a company whose constitution prohibits it from making any distribution of any kind to any proprietor, member, or shareholder of the company; or
 - (e) a company which derives only exempt income (not being exempt income under any of **sections CW 9 to CW 11**); or
 - (f) a local authority; or
 - (g) a Crown Research Institute; or
 - (i) a subsidiary company of the Accident Compensation Corporation to which section 334(1) of the Accident Insurance Act 1998 or section 24 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 applies.
- (3) Where a company that acts in the capacity of trustee is required to establish and maintain an imputation credit account by virtue of also engaging in other activities, no debits or credits arise to the account in respect of any activities of the company in its capacity as trustee.

Compare: 1994 No 164 s ME 1

ME 2 Balance of imputation credit account

For the purposes of the imputation rules, the balance of an imputation credit account at any time is ascertained by calculating the difference in amount between the aggregate of credits and the aggregate of debits to the account at that time, and the account has—

- (a) a credit balance to the extent that credits exceed debits:
- (b) a debit balance to the extent that debits exceed credits.

Compare: 1994 No 164 s ME 2

ME 3 Imputation credit account

- (1) Every imputation credit account company must record in its imputation credit account for each imputation year—
- (a) the opening balance of the account for the imputation year, in accordance with **subsection (2)**:

- (b) credits as they arise in accordance with **section ME 4**:
 - (c) debits as they arise in accordance with **section ME 5**.
- (2) The opening balance of the imputation credit account for any imputation year is,—
- (a) for the imputation year during which the company first becomes an imputation credit account company, nil:
 - (b) for any subsequent imputation year, the amount of the closing balance of the imputation credit account for the preceding imputation year, and such amount is—
 - (i) a credit arising to the imputation credit account where the closing balance is a credit balance:
 - (ii) a debit arising to the imputation credit account where the closing balance is a debit balance.

Compare: 1994 No 164 s ME 3

ME 4 Credits arising to imputation credit account

- (1) There arise as credits to be recorded in a company's imputation credit account for any imputation year the following amounts:
- (a) the amount of any income tax paid by the company during the imputation year to meet a provisional tax obligation under the provisional tax rules or to satisfy an income tax liability under **sections BC 9 and BC 10**, other than—
 - (i) in the case of a company acting in the capacity of trustee, income tax paid by the company in respect of its activities when acting in the capacity of trustee:
 - (ii) in the case of a company carrying on a business of providing life insurance to which **section EY 47** applies, income tax paid to the extent that that income tax does not exceed the company's policyholder base income tax liability for the imputation year:
 - (iii) in the case of a company that is a group investment fund deriving category B income, income tax paid in respect of the income:
 - (iv) in the case of a company that becomes an imputation credit account company during the imputation year, income tax paid to the extent that that income tax does not exceed the amount that

would have been the company's income tax liability for the imputation year, if the imputation year ended on the day immediately preceding the day on which the company became an imputation credit account company:

- (v) income tax paid by way of crediting under **subpart LE**:
- (vi) income tax that is paid by way of a crediting of further income tax under **section ME 9(5)**:
- (vii) income tax paid by way of crediting under **section LB 2(2) or LD 8(1)**:
- (viii) income tax paid in relation to the income tax payable for the 1987–88 or any earlier tax year:
- (ix) income tax paid by way of crediting under **section MF 5** the company's branch equivalent tax account:
- (aab) the amount that results from multiplying the basic rate of income tax, expressed as a percentage, stated in **schedule 1, part A, clause 5** by the amount of expenditure transferred to the company, being a master fund, in accordance with **sections DV 5 to DV 7**:
- (ab) 49.25% of an amount attributed in accordance with **section GC 14D**, but not if the company is a qualifying company:
- (b) the amount of any tax deemed to be paid by the company under **section MB 9(5)**:
- (c) the amount of any further income tax paid by the company during the imputation year under **section ME 9**:
- (d) the amount of any imputation credit attached to a dividend that is paid to the company during the imputation year:
- (da) the amount calculated according to the formula—

$$\text{credit balance} \times \text{maximum imputation ratio}$$

where—

credit balance

is all or part of the credit balance of the supplementary available subscribed capital account that the qualifying unit trust or group investment fund elects to use under **section MJ 6**; and

- maximum imputation ratio is the formula set out in **section ME 8(1)**, as if the words “in which the dividend is paid” in item “a” were read as “to which the election made under **section MJ 6** relates”:
- (e) the amount of any dividend withholding payment credit attached to a dividend paid to the company during the imputation year at a time when the company is not a dividend withholding payment account company:
 - (f) subject to **subsection (3)**, the amount of any dividend withholding payment paid by the company during the imputation year at a time when the company is not a dividend withholding payment account company:
 - (g) any amount forming all or part of an end of year credit balance in the company’s dividend withholding payment account that the company elects in accordance with **section MG 11** to be a credit to the company’s imputation credit account:
 - (h) an amount equal to any amount of a debit arising to the imputation credit account under **section ME 5(1)(j)** (which relates to debits arising in respect of imputation credits determined to have been the subject of an arrangement to obtain a tax advantage), to the extent that it is subsequently established that the relevant imputation credit should not have been determined to be the subject of such an arrangement:
 - (i) the amount of any resident withholding tax deduction deemed, under **section NF 12(b)**, to have been derived by the company during the imputation year:
 - (j) any amount forming all or part of a credit balance in the company’s policyholder credit account that the company elects in accordance with **section ME 19** to be a credit to the company’s imputation credit account.
- (2) The credits referred to in **subsection (1)** arise,—
- (a) in the case of the credits referred to in **subsection (1)(a) and (c)**, on the date the relevant tax is paid:
 - (aab) in the case of a credit referred to in **subsection (1)(aab)**, on 31 March of the income year in which the expenditure is deducted:
 - (ab) in the case of a credit referred to in **subsection (1)(ab)**, on 31 March of the income year in which the amount is attributed:

- (b) in the case of a credit referred to in **subsection (1)(b)**, on the date on which notice of the allocation of the tax referred to in **section MB 9(4)** is given to the Commissioner:
 - (c) in the case of the credits referred to in **subsection (1)(d) and (e)**, on the date the relevant dividend is paid:
 - (ca) in the case of a credit referred to in **subsection (1)(da)**, on the date that a debit arises in the qualifying unit trust's or group investment fund's supplementary available subscribed capital account under **section MJ 6**:
 - (d) in the case of a credit referred to in **subsection (1)(f)**, on the date the dividend withholding payment is paid:
 - (e) in the case of a credit referred to in **subsection (1)(g)**, on the date that the amount of the credit arises as a debit to the company's dividend withholding payment account under **section MG 5(2)(c)**:
 - (f) in the case of a credit referred to in **subsection (1)(h)**, on the date that the relevant debit arose under **section ME 5(2)(i)**:
 - (g) in the case of a credit referred to in **subsection (1)(i)**, on the date that the resident withholding tax is deducted from the resident withholding income:
 - (h) in the case of a credit referred to in **subsection (1)(j)**, on the date that the amount of the credit arises as a debit to the company's policyholder credit account under **section ME 19**.
- (3) For the purposes of **subsection (1)(f)**, a credit does not arise to the extent that, in accordance with **section NH 3(2) or (3)**, payment of all or part of a dividend withholding payment is satisfied by reducing a net loss.

Compare: 1994 No 164 s ME 4

ME 5 Debits arising to imputation credit account

- (1) There arise as debits to be recorded in a company's imputation credit account for any imputation year the following amounts:
- (a) the amount of any imputation credit attached to a dividend paid by the company during the imputation year:
 - (b) in the case of a company carrying on a business of providing life insurance to which the life insurance rules apply, the amount of any credit balance of the

company's imputation credit account which the company elects in accordance with **section ME 7** is a credit to the company's policyholder credit account:

- (c) in the case of any on-market cancellation by the company of a share in the company, the amount (not being less than nil) calculated in accordance with the following formula:

$$a \times \frac{b}{1 - b}$$

where—

- a is the amount distributed upon the on-market cancellation to the extent that it exceeds the available subscribed capital per share calculated under the ordering rule
- b is the rate of resident withholding tax, expressed as a percentage, stated in **schedule 14, clause 2** and applying at the time the acquisition occurs:
- (d) the amount of any provisional tax allocated by the company under **section MB 9** to an underpaid company (as referred to in that section):
- (e) the amount of any refund of income tax paid to the company during the imputation year except to the extent that—
- (i) the refund is in respect of income tax paid in relation to the 1987–88 or any earlier tax year; or
- (ii) the refund is in respect of income tax paid that was applied in satisfaction of an income tax liability for an income year—
- (A) during which the company was not an imputation credit account company; or
- (B) during only part of which the company was an imputation credit account company, in which case the debit to the company's imputation credit account is the amount calculated in accordance with the following formula:

$$\frac{a}{365} \times b$$

where—

- a is the number of days in the income year during which the company was an imputation credit account company
 - b is the amount of the refund; or
- (iii) the amount of the refund does not exceed the amount of a debit arising under **paragraph (i)** if—
 - (A) the refund is in respect of income tax paid prior to the date that the debit arose; and
 - (B) in the case of a refund arising by virtue of **subpart LE**, the supplementary dividend paid by the company giving rise to the refund was paid before the date that the debit arose under **paragraph (i)**:
- (f) the amount of any allocation debit arising in respect of the imputation year under **section ME 8(4)**:
- (g) the amount of any refund of dividend withholding payment paid to the company during the imputation year at a time when the company is not a dividend withholding payment account company:
- (h) the amount of any credit of tax refunded to the company under **section LD 8(1)(a)** at a time when the company is not a dividend withholding payment account company:
- (i) the amount of any particular credit in the company's imputation credit account at any time (in this paragraph referred to as the **specified time**), not being a credit which has before the specified time been cancelled out by a prior or subsequent debit, unless there is a group of persons—
 - (i) the aggregate of whose minimum voting interests in the company in the period from the date upon which the credit arose until the specified time is equal to or greater than 66%; and
 - (ii) in any case where at any time during that period a market value circumstance exists in respect of the company, the aggregate of whose minimum market value interests in the company in the period is equal to or greater than 66%:
- (ia) the amount of a credit in the company's imputation credit account arising under **section ME 4(1)(ab)** if the company's financial statements are adjusted to reflect an amount attributed in accordance with **section GC 14D**:

- (j) the amount of any further debit arising to the imputation credit account under **section GC 22** in relation to an imputation credit determined to be the subject of an arrangement to obtain a tax advantage:
- (jb) the amount that results from multiplying the basic rate of income tax, expressed as a percentage, stated in **schedule 1, part A, clause 5** by the amount of expenditure transferred by the company, being a member fund, to a master fund in accordance with **sections DV 5 to DV 7**:
- (k) the amount of credit balance, if any, of the imputation credit account where, during the imputation year, the company ceases to be an imputation credit account company:
- (l) the amount of any overpaid income tax that the Commissioner applies towards the satisfaction of an amount (other than an income tax liability or an instalment of provisional tax) that is due and payable under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—
 - (i) is in respect of income tax paid before the date that a debit arises under **paragraph (i)**; and
 - (ii) does not exceed the amount of the debit that arises on that date:
- (m) the amount of any overpaid dividend withholding payment that the Commissioner applies, at a time when the company is not a dividend withholding payment account company, towards the satisfaction of an amount (other than a dividend withholding payment or an income tax liability or an instalment of provisional tax) that is due and payable under this Act or any other of the Inland Revenue Acts:
- (n) the amount of any overpaid income tax or dividend withholding payment that the Commissioner applies, at a time when the company is not a dividend withholding payment account company, in satisfaction of income tax that is due and payable in respect of the 1987–88 or any earlier tax year, except to the extent that the amount applied—
 - (i) is in respect of income tax or dividend withholding payment paid before the date that a debit arises under **paragraph (i)**; and

- (ii) does not exceed the amount of the debit that arises on that date:
 - (o) the amount calculated under **subsection (6) or (7)** for an income year and transferred to the company's dividend withholding payment account on account of net foreign attributed income.
- (2) The debits referred to in **subsection (1)** arise,—
 - (a) in the case of a debit referred to in **subsection (1)(a)**, on the date the dividend is paid:
 - (b) in the case of a debit referred to in **subsection (1)(b)**, on the date the company makes the election in accordance with **section ME 7**:
 - (c) in the case of a debit referred to in **subsection (1)(c)**, on the date the acquisition occurs:
 - (d) in the case of a debit referred to in **subsection (1)(d)**, on the date the company gives to the Commissioner notice of the allocation of tax under **section MB 9**:
 - (e) in the case of a debit referred to in **subsection (1)(e) or (h)**, on the date the refund is paid:
 - (f) in the case of a debit referred to in **subsection (1)(f)**, at the end of the imputation year in respect of which the allocation debit arises:
 - (g) in the case of a debit referred to in **subsection (1)(g)**, on the date the refund is paid:
 - (h) in the case of a debit referred to in **subsection (1)(i)**, at the specified time referred to in that paragraph:
 - (ha) in the case of a debit referred to in **subsection (1)(ia)**, on 31 March of the income year in respect of which the company's financial statements are adjusted:
 - (i) in the case of a debit referred to in **subsection (1)(j)**, at the end of the imputation year in respect of which it is determined under **section GC 22** that the arrangement to obtain a tax advantage occurred or commenced:
 - (ia) in the case of a debit referred to in **subsection (1)(jb)**, on 31 March in the income year in which the expenditure is transferred:
 - (j) in the case of a debit referred to in **subsection (1)(k)**, immediately before the company ceases to be an imputation credit account company:
 - (k) in the case of a debit referred to in **subsection (1)(l) or (m) or (n)**, on the date that the Commissioner applies the amount of overpaid income tax or dividend withholding

- payment in satisfaction of the amount that is referred to in those paragraphs as due and payable:
- (1) in the case of a debit to which **subsection (1)(o)** applies,—
 - (i) on the last day of the imputation year that corresponds to the income year, to the extent that the debit does not exceed the amount of provisional tax payments made in relation to the income year on or before that day; and
 - (ii) to the extent that **subparagraph (i)** does not apply, on the date the company files the return of income for the income year.
 - (3) Subject always to the express provisions of this Act, **subsection (1)(i)** is intended to limit the circumstances in which a taxpayer, being a company, may carry forward an imputation account credit for subsequent utilisation to those where the tax benefit arising from such utilisation is obtained or available to be obtained (directly or indirectly), at least to the extent of 66%, only by the same natural persons holding (directly or indirectly) rights in relation to the company who—
 - (a) by virtue of holding (directly or indirectly) such rights, bore the tax liability giving rise to the imputation account credit; or
 - (b) held (directly or indirectly) such rights at the time of the event giving rise to the imputation account credit.
 - (4) For the purposes of **subsection (1)(i)**,—
 - (a) in respect of any period referred to in that paragraph the minimum voting interest or market value interest of any person in the company in the period is equal to the lowest voting interest or market value interest (as the case may be) which that person holds in the company during the period; and
 - (b) **section ME 3(2)(b)** does not apply and any credit in the company's imputation credit account is treated as continuing to exist until treated as being cancelled out by a prior or subsequent debit in accordance with **paragraph (c)**; and
 - (c) in determining whether any credit in the company's imputation credit account has been cancelled out by any prior or subsequent debit,—

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- (i) any amount of debit may be taken into account only once for the purpose of ascertaining whether any credit has been so cancelled out; and
 - (ii) the amount of any debit is offset against the amount of any credit in the order in which the credits arise; and
 - (d) any credit arising on or before 16 December 1988 is deemed to have been cancelled out by a subsequent debit before the specified time referred to in that paragraph; and
 - (e) in the case of any credit arising after 16 December 1988 and before 1 April 1992 (not being a credit cancelled out before 1 April 1992 by a subsequent debit), the credit is deemed first to arise in the company's imputation credit account on 1 April 1992, but a debit is deemed to arise in accordance with **subsection (1)(i)** in respect of that credit at any time if and to the extent that, at that specified time, that credit still exists and a debit would have arisen in respect of that credit in accordance with section 394E(2)(g) of the Income Tax Act 1976 as that paragraph applied before its repeal and replacement by section 51 of the Income Tax Amendment Act (No 2) 1992, had that paragraph continued to apply but with the figure "75" omitted and the figure "66" substituted.
- (5) Where—
- (a) a share in a company is acquired by any person (referred to in this subsection as the **associated person**) associated with the company; and
 - (b) the acquisition would have been an on-market cancellation if the associated person had been the company; and
 - (c) in the opinion of the Commissioner, the acquisition occurs under an arrangement between the company and the associated person for the associated person to make the acquisition in lieu of the company,—
- then, for the purposes of **subsections (1)(c) and (2)(c) and section CD 33(20)**, the acquisition is deemed to be an on-market cancellation by the company.
- (6) If a dividend withholding payment account company is also a conduit tax relief company for the whole of the imputation year corresponding with the income year, and at the time of

filing the return, the amount to be transferred under **subsection (1)(o)** from the company's imputation credit account to the company's dividend withholding payment account is calculated by applying **sections KH 1 and KH 2** (as if the amount were conduit tax relief for the imputation year) but substituting the percentage of resident shareholders for the quantity NRS in **section KH 1(2) and (3)** and calculating the percentage of resident shareholders by deducting NRS from 100%.

- (7) If a dividend withholding payment account company for the whole of the imputation year corresponding with the income year is not a conduit tax relief company for the whole of the imputation year corresponding with the income year and at the time of filing the return, the amount to be transferred under **subsection (1)(o)** is calculated under **section KH 1** as if the company were a conduit tax relief company and quantity NRS were 100%.
- (8) If neither **subsection (6) nor (7)** applies, no amount is transferred under **subsection (1)(o)**.

Compare: 1994 No 164 s ME 5

ME 6 Company may attach imputation credit to dividend

- (1) An imputation credit account company may, on payment of a dividend by the company, attach an imputation credit to that dividend.
- (2) Notwithstanding **subsection (1)**, if—
- (a) an imputation credit account company pays a non-cash dividend; and
 - (b) the company is subject to an adjustment under **section GD 13(3) or (4)** in respect of the arrangement giving rise to the dividend,—
- the company may retrospectively attach an imputation credit to the dividend, subject to compliance with **subsections (3), (4), and (5)**.
- (3) The amount of imputation credit able to be attached retrospectively under **subsection (2)** must not (when aggregated with all other imputation credits retrospectively attached by the company to dividends paid in the same imputation year) exceed the least of—
- (a) the credit balance, if any, in the company's imputation credit account at the end of the imputation year in which the dividend is paid; and

- (b) the credit balances, if any, in the company's imputation credit account at the end of each imputation year after the year in which the dividend is paid and before the year in which the company makes the retrospective attachment.
- (4) Where a company has determined to attach an imputation credit to a dividend under **subsection (2)**,—
- (a) the amount of the imputation credit is, for the purposes of **section ME 5**, a debit to the company's imputation credit account arising on the date the company paid the dividend; and
 - (b) the company dividend statement to be completed in accordance with section 67 of the Tax Administration Act 1994 must be completed at the time the company makes the determination under **subsection (2)**; and
 - (c) the shareholder dividend statement to be given by the company in accordance with section 29 of the Tax Administration Act 1994 must be given at the time the company makes the determination under **subsection (2)**.
- (5) If and to the extent that—
- (a) a company has determined to attach an imputation credit to a dividend under **subsection (2)**; and
 - (b) an amount of income tax paid by the company is attributable to the relevant adjustment under **section GD 13(3) or (4)**; and
 - (c) the company would not, without application of imputation penalty tax, be able to attach the imputation credit; and
 - (d) the company notifies the Commissioner with the company dividend statement completed under **subsection (4)(b)**,—

the amount of income tax is treated for the purposes of this subpart as if it were paid on the date the dividend was paid and the company is not liable for any failure to have furnished a correct imputation return under section 69 of the Tax Administration Act 1994 to the extent the return is rendered incorrect solely as a result of this subsection.

Compare: 1994 No 164 s ME 6

ME 7 Transfer by life insurance company of credit balance to policyholder credit account

- (1) Where an imputation credit account company is also a policyholder credit account company, the company may elect that all or any part of the credit balance (if any) in the company's imputation credit account at the time of election is to be a credit to the company's policyholder credit account and a debit to its imputation credit account.
- (2) A company makes an election under this section by recording the amount in respect of which the election is made—
 - (a) as a debit in the company's imputation credit account; and
 - (b) as a credit in its policyholder credit account.
- (3) Where a company that may make an election under **sub-section (1)** furnishes a return of income under section 38 of the Tax Administration Act 1994 for a non-standard accounting year, then,—
 - (a) where and to the extent to which, in respect of any imputation year,—
 - (i) any credit has arisen to the company's imputation credit account in accordance with **section ME 4(1)(a)** on or before the last day of that imputation year and during the accounting year in which the last day of that imputation year falls, by virtue of any amount of provisional tax paid by the company in accordance with the provisional tax rules; and
 - (ii) the amount of that credit has not, on or before the last day of that imputation year, been cancelled out by any subsequent debit arising in accordance with **section ME 5(1)(e)**, by virtue of any refund of provisional tax paid during that accounting year; and
 - (iii) the company has not, on or before the last day of that imputation year, elected in accordance with this section that the amount of that credit is to be transferred to the company's policyholder credit account,—

the company is deemed to have so elected on the last day of that imputation year:
 - (b) where and to the extent to which, in respect of any imputation year,—

- (i) any credit has arisen to the company's imputation credit account in accordance with **section ME 4(1)(f)** on or before the last day of that imputation year and during the accounting year in which the last day of that imputation year falls; and
- (ii) the amount of that credit has not, on or before the last day of that imputation year, been cancelled out by any subsequent debit arising in accordance with **section ME 5(1)(g)**, by virtue of any refund of dividend withholding payment paid during that accounting year; and
- (iii) the company has not, on or before the last day of that imputation year, elected in accordance with this section that the amount of that credit is to be transferred to the company's policyholder credit account,—
- the company is deemed to have so elected on the last day of that imputation year:
- (c) where and to the extent to which in any imputation year any credit has arisen to the company's imputation credit account in accordance with **section ME 4(1)(d) or (e)**, then, notwithstanding any provision of this section the company may not elect that any part of that credit is to be transferred to that company's policyholder credit account on any day falling after the last day of that imputation year and during the accounting year in which the last day of that imputation year falls.
- (4) For the purposes of **subsection (3)(a)(ii) and (b)(ii)**, the amount of any debit referred to in those paragraphs is offset against the amount of any credits referred to in those paragraphs in the order in which the credits arise.

Compare: 1994 No 164 s ME 7

ME 8 Allocation rules for imputation credits

$$\frac{a}{1 - a}$$

where—

- a is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year that is concurrent with the imputation year in which the dividend is paid.

- (1) A company must not attach to a dividend an imputation credit of such an amount that the imputation ratio of the dividend would exceed the ratio calculated in accordance with the following formula:
- (2) Where an imputation credit account company has paid a benchmark dividend in any imputation year, the company must, unless it makes a ratio change declaration in accordance with **subsection (3)**, ensure that the imputation ratio of every subsequent dividend paid by the company during that imputation year is the same as the imputation ratio of the benchmark dividend; and for the purposes of this subsection any benchmark dividend with an imputation ratio exceeding the ratio specified in **subsection (1)** is deemed to have the ratio so specified.
- (3) The imputation ratio of a subsequent dividend may differ from that of a benchmark dividend if—
 - (a) an officer of the company declares, in a ratio change declaration in the prescribed form, that the subsequent dividend is not being paid as part of an arrangement to obtain a tax advantage, and provides such further information as may be prescribed; and
 - (b) the ratio change declaration is delivered to the Commissioner before the date of payment of the subsequent dividend, or before such later date as the Commissioner may allow in any case or class of cases; and
 - (c) the subsequent dividend is not paid as part of an arrangement to obtain a tax advantage.
- (4) Where the imputation ratio of a subsequent dividend differs from the imputation ratio of a benchmark dividend in contravention of **subsection (2)**, there arises an allocation debit of an amount calculated in accordance with the following formula: $(a \times b) - c$

where—

 - a is the aggregate of the amount of all dividends paid by the company during the imputation year (exclusive of any imputation credit or withholding payment credit attached to those dividends)
 - b is the lesser of—
 - (i) the imputation ratio of the dividend with the greatest imputation ratio of all dividends paid by the company during the imputation year; or

- (ii) the ratio calculated in accordance with the formula stated in **subsection (1)**
 - c is the aggregate of all imputation credits attached to dividends paid by the company during the imputation year.
- (5) Nothing in this section applies to a dividend that is the subject of a determination made by a statutory producer board or a co-operative company in accordance with **section ME 30 or ME 35**.
Compare: 1994 No 164 s ME 8

ME 9 Further tax payable where end of year debit balance, or when company ceases to be imputation credit account company

- (1) Where there is a debit balance in a company's imputation credit account at the end of any imputation year, and the company is not a company that is liable to pay further income tax under **subsection (3)**, then, subject to **subsection (7)**, the company is liable to pay to the Commissioner an amount of tax by way of further income tax of an amount equal to that debit balance.
- (1A) **Subsection (1)** does not apply if the debit balance in the company's imputation credit account arises solely because of a debit amount that is recorded in the account after applying **section ME 5(1)(jb)**.
- (2) A company must pay any further income tax for which it is liable under **subsection (1)** not later than the 20 June following the end of the imputation year for which there was the debit balance.
- (3) Where there is a debit balance in a company's imputation credit account immediately before the company ceases to be an imputation credit account company, then, subject to **subsection (7)**, the company is liable to pay to the Commissioner an amount of tax by way of further income tax of an amount equal to that debit balance.
- (4) A company must pay any further income tax to which it is liable under **subsection (3)** not later than the last day on which it is still an imputation credit account company.
- (5) Where a company pays any further income tax for which it is liable under this section, that tax may be credited against any income tax liability that arises or any instalment of provisional

tax in accordance with **section MB 10** for which the company becomes liable after the date of payment of the further income tax.

- (6) Subject to this section, and section 101 of the Tax Administration Act 1994, the other provisions of this Act and of the Tax Administration Act 1994 (other than the imputation rules), so far as they are applicable and with any necessary modifications, apply with respect to any further income tax for which a company is chargeable under this section as if it were income tax.

- (7) If—

- (a) a qualifying company that is an imputation credit account company has been paid a refund of an amount of income tax; and
- (b) the amount of that refund has in any imputation year arisen as a debit to the company's imputation credit account,—

any amount that the company would otherwise be liable to pay by way of further income tax under **subsection (1) or (3)** is reduced (so far as it extends) by an amount calculated in accordance with the following formula: $a - b$

where—

- a is the sum of all such refunds of amounts of income tax paid to the company on or before the date on which the relevant debit balance giving rise to the liability for further income tax is determined
- b is the sum of any credits arising in accordance with **sections ME 3(2)(b)(i) and ME 4(1)** in the company's imputation credit account during the imputation year in which the amount of any such refund first arose as a debit to the company's imputation credit account and during any subsequent imputation year.

Compare: 1994 No 164 s ME 9

Consolidated groups

ME 10 Consolidated group to maintain separate imputation credit account

- (1) Every consolidated group must for each imputation year establish and maintain in accordance with this section and **sections ME 11 to ME 14** an imputation credit account, separate

from the imputation credit account of each company that is a member of that consolidated group.

- (2) The opening balance of the imputation credit account of a consolidated group for any imputation year is—
- (a) nil, for the imputation year during which the consolidated group is formed; and
 - (b) the amount of the closing balance of the imputation credit account for the preceding imputation year (being a credit or debit, as the case may be), in any other case.

Compare: 1994 No 164 s ME 10

ME 11 Credits arising to imputation credit account of group

- (1) There arise as credits to be recorded in the imputation credit account of a consolidated group for any imputation year the following amounts:
- (a) the amount of any income tax paid during that imputation year by that consolidated group that is to be applied in satisfaction of the income tax liability (if any) of the group except to the extent that such income tax—
 - (i) would not, if the group were a single company, give rise to a credit by virtue of **section ME 4(1)(a)(i) to (viii)**; or
 - (ii) is paid by way of a crediting of further income tax under **section ME 13(6)**;
 - (b) the amount of any income tax deemed under **section MB 9** to be paid during the imputation year by the consolidated group;
 - (c) the amount of any further income tax paid in respect of the consolidated group during the imputation year under **section ME 14(3)**;
 - (d) the amount of any imputation credit attached to a dividend paid during the imputation year to any company which is at the time of payment a member of the consolidated group;
 - (e) the amount of any dividend withholding payment credit attached to a dividend paid to any company which is at the time of payment a member of the consolidated group at a time when the consolidated group does not have a dividend withholding payment account;

- (f) the amount of any dividend withholding payment paid during the imputation year, at a time when the consolidated group does not have a dividend withholding payment account, by any company which is a member of the consolidated group in respect of any dividend paid to a company which is at the time of payment a member of the consolidated group, except to the extent to which under **section NH 5(4)** payment of that dividend withholding payment is satisfied by reducing a net loss:
 - (g) any amount forming all or part of a credit balance in the consolidated group's dividend withholding payment account that the nominated company elects under **section NH 6(6)** during the imputation year to be a credit to the group's imputation credit account:
 - (i) an amount equal to the amount of a debit arising to the imputation credit account under **section ME 12(1)(i)** during the imputation year, to the extent that it is subsequently established that the relevant imputation credit should not have been determined to be the subject of an arrangement to which that subsection applies:
 - (j) the amount of any resident withholding tax deduction deemed under **section NF 12(b)** to have been derived by any company during the imputation year where the company is at the time of derivation a member of the consolidated group:
 - (k) the amount forming all or part of a credit balance in the policyholder credit account of the consolidated group that the nominated company elects under **section ME 28(3)** during the imputation year to be a credit to the consolidated group's imputation credit account:
 - (l) the amount of any credit arising during the imputation year to the imputation credit account under **section ME 13(2)**.
- (2) The credits referred to in **subsection (1)** arise,—
- (a) in the case of the credits referred to in **subsection (1)(a), (c), and (f)**, on the date the relevant tax or dividend withholding payment is paid:
 - (b) in the case of the credit referred to in **subsection (1)(b)**, on the date on which notice of the allocation of the tax referred to in **section MB 9** is given to the Commissioner:

- (c) in the case of the credits referred to in **subsection (1)(d), (e), and (j)**, on the date the relevant dividend or interest is paid:
- (d) in the case of the credits referred to in **subsection (1)(g) and (k)**, on the date the relevant credit arises as a debit to the relevant account:
- (e) in the case of the credit referred to in **subsection (1)(i)**, on the date the relevant debit arose under **section ME 12(1)(i)**:
- (f) in the case of the credit referred to in **subsection (1)(l)**, immediately prior to the date the relevant debit referred to in **section ME 13(2)(b)** arose to the imputation credit account.

Compare: 1994 No 164 s ME 11

ME 12 Debits arising to imputation credit account of group

- (1) There arise as debits to be recorded in the imputation credit account of a consolidated group for any imputation year the following amounts:
 - (a) the amount of any imputation credit attached to a dividend paid during the imputation year by any company which is at the time of payment a member of the consolidated group:
 - (b) the amount of any credit balance in the imputation credit account which the nominated company elects under **section ME 14(1)** during the imputation year is to be a credit to the consolidated group's policyholder credit account:
 - (c) the amount of any provisional tax allocated by the consolidated group under **section MB 9** during the imputation year to an underpaid company (as referred to in that section):
 - (d) the amount of any refund of income tax paid to the consolidated group during the imputation year that was applied towards the satisfaction of an income tax liability of the consolidated group or that was paid as an instalment of provisional tax of the consolidated group except to the extent that—
 - (i) the refund is in respect of income tax paid before the date that a debit arises under **paragraph (h)**; and
 - (ii) the amount of the refund does not exceed the amount of the debit that arises on that date:

- (e) the amount of any allocation debit arising in respect of the imputation year under **section ME 8(4)** in respect of any company which is at the time of payment of the relevant dividend a member of the consolidated group:
- (f) the amount of any—
 - (i) refund of dividend withholding payment paid; or
 - (ii) credit of tax refunded under **section LD 8(1)(c)**,—during the imputation year in respect of a dividend derived by a company, which is at the time of derivation a member of the consolidated group, at a time when the consolidated group does not have a dividend withholding payment account:
- (h) the amount of any debit which would arise under **section ME 5(1)(i)** if that provision were to apply, with any necessary modifications, to a consolidated group and its imputation credit account as if it were a single company:
- (i) the amount of any further debit arising during the imputation year to the imputation credit account under **section GC 22** in relation to an imputation credit determined to be the subject of an arrangement to obtain a tax advantage:
- (j) the amount of credit balance, if any, of the imputation credit account where, during the imputation year, the consolidated group ceases to exist:
- (k) the amount of any debit arising during the imputation year to the imputation credit account under **section ME 13(5)** (or under section ME 13(5) of the Income Tax Act 1994 or section 191SC(6) of the Income Tax Act 1976):
- (l) the amount of any overpaid income tax paid by the consolidated group that the Commissioner applies towards the satisfaction of an amount (other than an amount of income tax) that is due and payable by a company that is a member of the consolidated group under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—
 - (i) is in respect of income tax paid before the date that a debit arises under **paragraph (h)**; and
 - (ii) does not exceed the amount of the debit that arises on that date:

- (m) the amount of any overpaid dividend withholding payment paid by a company in respect of a dividend derived by the company, which is at the time of derivation a member of the consolidated group, that the Commissioner applies, at a time when the consolidated group does not have a dividend withholding payment account, in satisfaction of an amount (other than dividend withholding payment or income tax) that is due and payable by a company that is a member of the consolidated group under any provision of this Act or any other of the Inland Revenue Acts:
 - (n) the amount calculated under **subsection (3) or (4)** for an income year and transferred to the group's dividend withholding payment account on account of net foreign attributed income.
- (2) The debits referred to in **subsection (1)** arise,—
- (a) in the case of the debit referred to in **subsection (1)(a)**, on the date the dividend is paid:
 - (b) in the case of a debit referred to in **subsection (1)(b)**, on the date the nominated company makes the election:
 - (c) in the case of a debit referred to in **subsection (1)(c)**, on the date there is given to the Commissioner notice of the allocation of tax under **section MB 9**:
 - (d) in the case of the debits referred to in **subsection (1)(d) and (f)**, on the date the refund is paid:
 - (e) in the case of a debit referred to in **subsection (1)(e)**, at the end of the imputation year in respect of which the allocation debit arises:
 - (g) in the case of a debit referred to in **subsection (1)(h)**, at the specified time:
 - (h) in the case of a debit referred to in **subsection (1)(i)**, at the end of the imputation year in respect of which it is determined that the arrangement to obtain a tax advantage occurred or commenced:
 - (i) in the case of a debit referred to in **subsection (1)(j)**, immediately before the consolidated group ceases to exist:
 - (j) in the case of a debit referred to in **subsection (1)(k)**, at the time first referred to in **section ME 13(5)** (or section ME 13(5) of the Income Tax Act 1994 or section 191SC(6) of the Income Tax Act 1976, as the case may be):

- (k) in the case of a debit referred to in **subsection (1)(l) or (m)**, on the date that the Commissioner applies the amount of overpaid income tax or dividend withholding payment in satisfaction of the other amount that is due and payable:
 - (l) in the case of a debit referred to in **subsection (1)(n)**,—
 - (i) on the last day of the imputation year that corresponds to the income year, to the extent that the debit is not more than the amount of provisional tax payments made for the income year on or before that day; and
 - (ii) to the extent that **subparagraph (i)** does not apply, on the date the return of income for the income year is filed.
- (3) If a consolidated group maintains both a dividend withholding payment account and a conduit tax relief account for the imputation year corresponding to the income year, the amount to be transferred under **subsection (1)(n)** is calculated by applying **sections KH 1 and KH 2**, with any necessary modifications and as if the amount were conduit tax relief for the imputation year, but—
 - (a) substituting the percentage of resident shareholders for the quantity “NRS” in **section KH 1(2) and (3)**; and
 - (b) calculating the percentage of resident shareholders by deducting the quantity “NRS” from 100%.
- (4) If a consolidated group maintains a dividend withholding payment account for the imputation year corresponding to the income year but does not maintain a group conduit tax relief account for the imputation year, the amount to be transferred under **subsection (1)(n)** is calculated by applying **section KH 1** as if each member of the group were a conduit tax relief company and quantity “NRS” were 100%.
- (5) If neither **subsection (3) nor (4)** applies, no amount is to be transferred under **subsection (1)(n)**.

Compare: 1994 No 164 s ME 12

ME 13 Debiting and crediting between consolidated group and individual companies

- (1) Where—

- (a) any credit arises to the imputation credit account of a consolidated group in respect of any tax paid, imputation credit attached to a dividend derived, dividend withholding payment credit attached to a dividend derived, or dividend withholding payment paid; or
 - (b) any debit arises to the imputation credit account of a consolidated group in respect of any tax refunded, imputation credit attached to a dividend paid, dividend withholding payment refunded, tax credit refunded, or allocation debit arising under **section ME 8(4)**,—
that credit or debit does not arise to the imputation credit account of any individual company.
- (2) Subject to **subsection (3)**, where and to the extent that at any time—
 - (a) a company which is at that time a member of a consolidated group has a credit in its individual imputation credit account (that credit being referred to in this subsection as the **company credit**); and
 - (b) a debit arises under **section ME 12** to be recorded in the imputation credit account of the consolidated group; and
 - (c) that debit is not offset, determined by applying the procedure set out in **section ME 5(4)(c)**, against any credit in the consolidated group's imputation credit account which arose before the date or on the same date upon which the company credit arose,—
the company credit is, to the extent of that debit, credited to the imputation credit account of the consolidated group, and that credit to the group's imputation credit account is, for the purposes of **section ME 12(1)(h)**, deemed to have been cancelled out by that debit notwithstanding **section ME 5**.
- (3) Where at any time all or part of any credit in a company's imputation credit account is credited to the imputation credit account of a consolidated group, an amount equal to the credit so arising arises as a debit at that time to be recorded under **section ME 5** in the company's imputation credit account.
- (4) Where under **subsection (2)** credits in the individual imputation credit accounts of 2 or more members of a consolidated group would, but for this subsection, be required to be credited to the group's imputation credit account, those credits must be credited—

- (a) in the order in which those credits arose, determined by applying the procedure set out in **section ME 5(4)(c)**; and
 - (b) if 2 or more credits arose at the same time,—
 - (i) in the order elected by the consolidated group; or
 - (ii) if no such election is made, on a pro rata basis,—so far as the relevant debit to the group's imputation credit account extends and no further.
- (5) Where and to the extent that at any time—
- (a) a debit would, but for this subsection, arise in the individual imputation credit account of a company which is at that time a member of a consolidated group; and
 - (b) the arising of that debit would result in or increase a debit balance in the individual imputation credit account of the company,—
- that debit does not arise to the company's imputation credit account but is debited to the consolidated group's imputation credit account.
- (6) Where at any time—
- (a) a company has paid any further income tax under **section ME 9** in respect of a debit balance in its individual imputation credit account; and
 - (b) the company is entitled under **section ME 9(5)** to credit that further income tax against any income tax liability of the company that arises or any instalment of provisional tax for which the company becomes liable at or after that time; and
 - (c) the company is at that time a member of a consolidated group,—
- that further income tax may be credited against—
- (d) any income tax liability of the group that arises at or after that time; or
 - (e) any instalment of provisional tax in accordance with **section MB 10** for which the group becomes liable at or after that time,—
- and, to the extent so credited, the further income tax is not available to be credited under **section ME 9(5)**.

Compare: 1994 No 164 s ME 13

ME 14 Application of specific imputation provisions to consolidated groups

- (1) Where a consolidated group has a policyholder credit account,—
 - (a) the nominated company may elect that all or any part of the credit balance (if any) in the group's imputation credit account at the time of election is to be a credit to the policyholder credit account and a debit to the group's imputation credit account, which election is made by recording the debit and credit in the respective accounts; and
 - (b) **section ME 7(3) and (4)** apply in the case of any consolidated group with a non-standard balance date with any necessary modifications as if—
 - (i) each reference in those subsections to a company were a reference to the group; and
 - (ii) each reference to provisions of this Act applicable to an individual company were references to the equivalent provision of this section or of **sections ME 10 to ME 13** applicable to consolidated groups.
- (2) **Section ME 8** applies, with any necessary modifications, to a consolidated group as if it were a single company but, for the purposes of **sections ME 8(2) to (4)**, dividends paid by 1 member of the consolidated group to another member of the consolidated group are not taken into account.
- (3) **Section ME 9**, and sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated group and its imputation credit account as if—
 - (a) it were a single company; and
 - (b) each reference to a provision of this Act were a reference to the equivalent provision applicable to consolidated groups; and
 - (c) each reference to liability of a company for further income tax, late payment penalty, or imputation penalty tax were (subject to the application of **section HB 1(2) to (5)**) a reference to joint and several liability for that tax of each company which is a member of the group at the time the further income tax, late payment penalty, or imputation penalty tax becomes payable.

- (4) **Sections GC 22 and ME 40** apply, with any necessary modifications, in any case which involves accounts of a consolidated group, as if—
- (a) the consolidated group were a single company; and
 - (b) references to provisions of this Act were references to the equivalent provisions applicable to such equivalent accounts.
- (5) **Section MD 2**—
- (a) applies, with any necessary modifications, in respect of any tax paid by a consolidated group as if—
 - (i) the group were a single company; and
 - (ii) the reference to that company ceasing to be an imputation credit account company were a reference to the consolidated group ceasing to exist; and
 - (iii) each reference to a provision of this Act or of the Tax Administration Act 1994 were a reference to the equivalent provision applicable to consolidated groups; and
 - (b) does not apply to limit a refund of income tax payable to a company which is a member of a consolidated group in respect of income tax paid individually by that company to the extent that, if that refund had been of income tax paid by the consolidated group, **section MD 2** would not have limited the refund; but, where and to the extent that a refund of income tax is paid which would not have been payable but for this paragraph, **section MD 2(3)** applies as if that refund were in respect of tax paid by the consolidated group.

Compare: 1994 No 164 s ME 14

Policyholder credit accounts

ME 15 Resident life insurance companies to maintain policyholder credit account

A company resident in New Zealand (being a company carrying on a business of providing life insurance to which the life insurance rules apply) must establish and maintain a policyholder credit account for each imputation year.

Compare: 1994 No 164 s ME 15

ME 16 Calculation of balance of policyholder credit account

For the purposes of **sections MD 3 and ME 15 to ME 24**, the balance of a policyholder credit account at any time is ascertained by calculating the difference in amount between the aggregate of credits and the aggregate of debits to the account existing at that time, and the account has—

- (a) a credit balance to the extent that credits exceed debits:
- (b) a debit balance to the extent that debits exceed credits.

Compare: 1994 No 164 s ME 16

ME 17 Policyholder credit account of company

- (1) Every policyholder credit account company must record in its policyholder credit account for any imputation year—
 - (a) the opening balance of the account for that imputation year, in accordance with **subsection (2)**:
 - (b) credits as they arise in accordance with **section ME 18(1) and (2)**:
 - (c) debits as they arise in accordance with **section ME 18(3) and (4)**.
- (2) The opening balance of the policyholder credit account of a company for any imputation year is,—
 - (a) for the imputation year during which the company commences to be a policyholder credit account company, nil:
 - (b) for any subsequent imputation year, the amount of the closing balance of the policyholder credit account of the company for the immediately preceding imputation year, and such amount is—
 - (i) a credit arising to the account where the closing balance is a credit balance:
 - (ii) a debit arising to the account where the closing balance is a debit balance.

Compare: 1994 No 164 s ME 17

ME 18 Credits and debits arising to policyholder credit account of company

- (1) There arise as credits to be recorded in the policyholder credit account of a policyholder credit account company the following amounts:
 - (a) any amount forming all or part of a credit balance in the company's imputation credit account that the company

- elects in accordance with **section ME 7** to be a credit to the company's policyholder credit account:
- (b) any amount forming all or part of a credit balance in the company's dividend withholding payment account that the company elects in accordance with **section MG 7** to be a credit to the company's policyholder credit account:
 - (c) any amount forming all of the credit balance in another company's or person's policyholder credit account that that other company or person elects, in accordance with **section ME 19A**, to transfer as a credit to the policyholder credit account of the company along with the transfer of the other company's or person's life insurance business to the company.
- (2) The credits referred to in **subsection (1)** arise,—
- (a) in the case of a credit referred to in **subsection (1)(a)**, on the date that the amount of the credit arises as a debit to the company's imputation credit account under **section ME 7**:
 - (b) in the case of a credit referred to in **subsection (1)(b)**, on the date that the amount of the credit arises as a debit to the company's dividend withholding payment account under **section MG 7**:
 - (c) in the case of a credit referred to in **subsection (1)(c)**, on the date of transfer of the life insurance business.
- (3) There arise as debits to be recorded in the policyholder credit account of a policyholder credit account company the following amounts:
- (a) the amount of any credit balance in the account that the company elects in accordance with **section ME 19** to use as a credit against the company's policyholder base income tax liability:
 - (b) the amount of any credit balance in the account that the company elects in accordance with **section ME 19** to be a credit to the company's imputation credit account:
 - (c) the amount of the credit balance in the account that the company elects in accordance with **section ME 19A** to transfer as a credit to the policyholder credit account of another company or person along with the transfer of the company's life insurance business to that other company or person.
- (4) The debits referred to in **subsection (3)** arise,—

- (a) in the case of a debit referred to in **subsection (3)(a)**, on the last day of the income year of the company to which the income tax that is reduced by the relevant amount of the credit balance relates:
- (b) in the case of a debit referred to in **subsection (3)(b)**, on the date the company elects in accordance with **section ME 19** to credit the company's imputation credit account:
- (c) in the case of a debit referred to in **subsection (3)(c)**, on the date of transfer of the life insurance business.

Compare: 1994 No 164 s ME 18

ME 19 Use of credit balance to credit against company's policyholder base income tax liability, or transfer of credit balance to company's imputation credit account

- (1) A policyholder credit account company may elect that all or part of any credit balance in its policyholder credit account at the time of the election is to be credited against any policyholder base income tax liability of the company, or provisional tax payable by the company in respect of its policyholder base.
- (2) A company makes an election under **subsection (1)** by recording the amount in respect of which it makes the election as a debit in its policyholder credit account, and any amount so recorded as a debit in accordance with **subsection (1)** is credited against any policyholder base income tax liability of the company or provisional tax payable by the company in respect of its policyholder base.
- (3) A policyholder credit account company may elect that all or part of any credit balance in its policyholder credit account at the time of the election is to be a credit to the company's imputation credit account and a debit to its policyholder credit account.
- (4) A company makes an election under **subsection (3)** by recording the amount in respect of which it makes the election—
 - (a) as a debit in the company's policyholder credit account:
 - (b) as a credit in its imputation credit account.
- (5) Notwithstanding **subsection (3)**, no policyholder credit account company may in any imputation year elect that any credit balance in its policyholder credit account is to be a credit to the company's imputation credit account where and to the extent to which—

- (a) the company furnishes a return of income under section 38 of the Tax Administration Act 1994 for a non-standard accounting year; and
 - (b) that credit balance is an amount of credit arising in that imputation year from an election made by the company in accordance with **section ME 7 or MG 7** during the accounting year of the company in which the last day of that imputation year falls; and
 - (c) the election would, if made, result in a debit to the company's policyholder credit account in that imputation year.
- (6) For the purposes of **subsection (5)**, a credit balance in a policyholder credit account is deemed not to contain the amount of a credit referred to in **paragraph (b)** of that subsection to the extent that the credit has been cancelled out by any subsequent debit arising to the account, and for this purpose the amount of any debit is offset against the amount of any credits in the order in which the credits arise.

Compare: 1994 No 164 s ME 19

ME 19A Credit balance may be transferred on transfer of life insurance business

- (1) Where a policyholder credit account company or policyholder credit account person transfers its life insurance business to another company or person, the policyholder credit account company or person may, if—
- (a) the transfer meets the requirements set out in **section EY 44(1)**; and
 - (b) in the case of—
 - (i) a policyholder credit account company, the company is not, following the transfer, required by **section ME 15** to maintain a policyholder credit account; or
 - (ii) a policyholder credit account person, the person is not, following the transfer, eligible to make an election under **section ME 21** to maintain a policyholder credit account,—
- elect to transfer the whole of the credit balance in its account at the time of transfer of the business to the policyholder credit account of the company or person to which its business is transferred.

- (2) A policyholder credit account company or person makes an election under **subsection (1)** by recording a debit in its policyholder credit account accordingly.

Compare: 1994 No 164 s ME 19A

ME 20 Determinations by Commissioner as to credits and debits arising to policyholder credit account

- (1) Where the Commissioner considers that—
- (a) any amount recorded as a credit or a debit arising to a company's policyholder credit account—
 - (i) is not the correct amount that should have been recorded in respect of the credit or debit; or
 - (ii) should not have been so recorded; or
 - (iii) should not have been recorded as arising at the time it was recorded as arising; or
 - (b) any amount that has not been recorded as a credit or debit to a company's imputation credit account should have been so recorded,—
- the Commissioner must determine the correct amount (including a nil amount) of the credit or debit properly arising to the account and the time at which such credit or debit arose.
- (2) Where the Commissioner makes a determination under **subsection (1)**, then, except in so far as the company establishes on objection that any credit or debit was correctly recorded, or not recorded as the case may be, in the policyholder credit account,—
- (a) the relevant credit or debit is deemed to have arisen, or not to have arisen, or to have been the amount determined by the Commissioner under **subsection (1)**, as the case may require, effective on the date on which the debit or credit originally arose, or is determined by the Commissioner as having arisen:
 - (b) the company must make such other corrections in respect of any credits or debits or balances recorded as arising to its policyholder credit account or imputation credit account or dividend withholding payment account, whether for the imputation year in which the incorrect record the subject of the determination was made or for any subsequent imputation year, as may be necessary or as may be directed by the Commissioner as

a consequence of the determination in relation to the amount incorrectly recorded or not recorded.

- (3) As soon as is convenient after a determination is made under **subsection (1)**, the Commissioner must give notice to the company in respect of whose policyholder credit account the determination is made, and the notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994.
- (4) An omission to give the notice referred to in **subsection (3)** does not invalidate the determination.

Compare: 1994 No 164 s ME 20

ME 21 Person may elect to maintain policyholder credit account

- (1) Any person carrying on a business of providing life insurance (not being a company resident in New Zealand) to which **section CR 1(4)** applies may at any time during an income year of that person elect to maintain a policyholder credit account for that income year.
- (2) A person who so elects must notify the Commissioner of that fact within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases, and must maintain a policyholder credit account—
 - (a) for the income year in which the election is made; and
 - (b) subject to this section, for every subsequent income year.
- (3) A person who has made an election under **subsection (1)** may, during any income year subsequent to that in which the election was made, elect to cease to be a policyholder credit account person, and, subject to **subsection (4)**, any person who so elects must, as from the commencement of the income year succeeding that in which the election to so cease is made, cease to be a person required to maintain a policyholder credit account.
- (4) An election made under **subsection (3)** is of no effect unless the person furnishes, within the time provided for in section 66(3) of the Tax Administration Act 1994, the annual policyholder

credit account return required in respect of the income year in which the election is made.

Compare: 1994 No 164 s ME 21

ME 22 Policyholder credit account of person

- (1) Every policyholder credit account person must record in the person's policyholder credit account for any income year of that person—
 - (a) the opening balance of the account for that income year, in accordance with **subsection (2)**;
 - (b) credits as they arise in accordance with **section ME 23(1), (2), (3), and (6)**;
 - (c) debits as they arise in accordance with **section ME 23(4), (5), and (6)**.
- (2) The opening balance of the policyholder credit account of a person for any income year is,—
 - (a) for the income year during which the person commences to be a policyholder credit account person, nil;
 - (b) for any subsequent income year, the amount of the closing balance of the policyholder credit account of the person for the preceding income year, and such amount is—
 - (i) a credit arising to the account where the closing balance is a credit balance;
 - (ii) a debit arising to the account where the closing balance is a debit balance.

Compare: 1994 No 164 s ME 22

ME 23 Credits and debits arising to policyholder credit account of person

- (1) There arise as credits to be recorded in the policyholder credit account of a policyholder credit account person—
 - (a) such amounts as would arise as credits if—
 - (i) that policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - (ii) that policyholder credit account were an imputation credit account; and
 - (iii) **section ME 4(1)(d), (e), and (j)** did not apply:

- (b) any amount forming all of the credit balance in another company's or person's policyholder credit account that that other company or person elects, in accordance with **section ME 19A**, to transfer as a credit to the policyholder credit account of the person along with the transfer of the other company's or person's life insurance business to the person.
- (2) Subject to **subsection (3)**, any such credit arises—
- (a) in the case of a credit referred to in **subsection (1)(a)**, on the date on which the credit would have arisen to the imputation credit account of the policyholder credit account person if—
 - (i) that policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - (ii) that policyholder credit account were an imputation credit account;
 - (b) in the case of a credit referred to in **subsection (1)(b)**, on the date of transfer of the life insurance business.
- (3) Where any amount of income tax is treated as being paid by the policyholder credit account person by virtue of **section LB 2 or LD 8 or MF 14**, for the purposes of this section the income tax is deemed to be paid on the date upon which the relevant dividend is paid.
- (4) There arise as debits to be recorded in the policyholder credit account of a policyholder credit account person for any income year the following amounts:
- (a) any of the credit balance of the account that the person elects in accordance with **section ME 24** to use as a credit against the policyholder base income tax liability of the person:
 - (b) any amount equal to any debits which would have arisen to the imputation credit account of the policyholder credit account person if—
 - (i) that policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - (ii) that policyholder credit account were an imputation credit account; and

- (iii) **section ME 5(1)(b), (c), and (i)** did not apply:
 - (c) the amount of the credit balance in the account that the person elects in accordance with **section ME 19A** to transfer as a credit to the policyholder credit account of another company or person along with the transfer of the person's life insurance business to that other company or person.
- (5) The debits referred to in **subsection (4)** arise,—
- (a) in the case of a debit referred to in **subsection (4)(a)**, on the date the person makes the election in accordance with **section ME 24**:
 - (b) in the case of a debit referred to in **subsection (4)(b)**, on the date the debit would have arisen to the imputation credit account of the policyholder credit account person if—
 - (i) that policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - (ii) that policyholder credit account were an imputation credit account:
 - (c) in the case of a debit referred to in **subsection (4)(c)**, on the date of transfer of the life insurance business.
- (6) Notwithstanding any provision of this section, in the case of any policyholder credit account person not resident in New Zealand to whom **section EY 47** applies,—
- (a) a credit arises only to that person's policyholder credit account by virtue of income tax paid to the extent that it does not exceed—
 - (i) the amount of income tax liability that would have arisen in respect of the person's taxable income if the sole activity of the person carrying on a business of providing life insurance consisted of or related to any 1 or more policies of life insurance for which that life insurer is the insurer which were offered or entered into in New Zealand; or
 - (ii) an amount that would have been so calculated and deemed to be derived from New Zealand under that formula but for the application of **section NG 3**; and

- (b) no debit arises to that person's policyholder credit account by virtue of any refund of income tax paid to that person if no credit arose to that person's policyholder credit account in respect of that income tax paid by virtue of **paragraph (a)**.

Compare: 1994 No 164 s ME 23

ME 24 Use of credit balance to reduce income tax

- (1) A policyholder credit account person may elect that all or any part of the credit balance in the policyholder credit account of that person at the time of election is to be credited against any policyholder base income tax liability of the person or provisional tax payable in respect of the person's policyholder base.
- (2) A person makes an election under this section by recording the amount in respect of which the election is made as a debit in the person's policyholder credit account, and any amount recorded as a debit in accordance with this section is credited against any policyholder base income tax liability of the person or provisional tax payable by the person in respect of the person's policyholder base.

Compare: 1994 No 164 s ME 24

Policyholder credit accounts: consolidated groups

ME 25 Policyholder credit accounts and consolidated groups

Every consolidated group any member of which is a company carrying on a business of providing life insurance to which the life insurance rules apply must establish and maintain a policyholder credit account, separate from the policyholder credit account of each company which is a member of that consolidated group.

Compare: 1994 No 164 s ME 25

ME 26 Credits and debits arising to group policyholder credit account

- (1) The opening balance of the policyholder credit account of a consolidated group for any imputation year is—
- (a) nil, for the imputation year during which the consolidated group is formed; and

-
- (b) the amount of the closing balance of the policyholder credit account for the preceding imputation year (being a credit or debit, as the case may be), in any other case.
- (2) There arise as credits to be recorded in the policyholder credit account of the consolidated group for any imputation year the following amounts:
- (a) any amount forming all or part of a credit balance in the group's imputation credit account that the nominated company for the group elects in accordance with **section ME 14(1)(a)** to be a credit to the group's policyholder credit account:
- (b) any amount forming all or part of a credit balance in the group's dividend withholding payment account that the nominated company for the group elects in accordance with **section ME 14(2)** to be a credit to the group's policyholder credit account:
- (c) the amount of any credit arising during the imputation year to the policyholder credit account under **section ME 27(1)**.
- (3) The credits referred to in **subsection (2)** arise,—
- (a) in the case of a credit referred to in **subsection (2)(a)**, on the date that the amount of the credit arises as a debit to the group's imputation credit account under **section ME 12(2)(b)**:
- (b) in the case of a credit referred to in **subsection (2)(b)**, on the date that the amount of the credit arises as a debit to the group's dividend withholding payment account under **section MG 15(2)(b)**:
- (c) in the case of a credit referred to in **subsection (2)(c)**, at the time first referred to in **section ME 27(1)**.
- (4) There arise as debits to be recorded in the policyholder credit account of a consolidated group the following amounts:
- (a) the amount of any credit balance in the account that the nominated company for the group elects in accordance with **section ME 28(2)** to use as a credit against the policyholder base income tax liability of the group:
- (b) the amount of any credit balance in the account that the nominated company for the group elects in accordance with **section ME 28(3)** to be a credit to the group's imputation credit account.
- (5) The debits referred to in **subsection (4)** arise,—

- (a) in the case of a debit referred to in **subsection (4)(a)**, on the last day of the income year of the group to which the income tax that is reduced by the relevant amount of the credit balance relates:
- (b) in the case of a debit referred to in **subsection (4)(b)**, on the date the company elects in accordance with **section ME 28(3)** to credit the group's imputation credit account.

Compare: 1994 No 164 s ME 26

ME 27 Debiting and crediting between group and individual policyholder credit accounts

- (1) Subject to **subsection (3)**, where and to the extent that at any time—
 - (a) a company which is at that time a member of a consolidated group has a credit in its individual policyholder credit account (that credit being referred to in this section as the **company credit**); and
 - (b) a debit arises under this section to be recorded in the policyholder credit account of the consolidated group; and
 - (c) that debit is not offset, determined by applying the procedure set out in **section ME 5(4)(c)** as if that policyholder credit account were an imputation credit account, against any credit in the consolidated group's policyholder credit account which arose before the date or on the same date upon which the company credit arose,—

the company credit is, to the extent of that debit, credited to the policyholder credit account of the consolidated group.
- (2) Where at any time all or any part of any credit in a company's policyholder credit account is credited to the policyholder credit account of a consolidated group, an amount equal to the credit so arising arises as a debit at that time to be recorded under **section ME 18** in the company's policyholder credit account.
- (3) Where under **subsection (1)** credits in the individual policyholder credit accounts of 2 or more members of a consolidated group would, but for this subsection, be required to be credited to the group's policyholder credit account, those credits must be credited—

- (a) in the order in which those credits arose, determined having regard to the procedure set out in **section ME 5(4)(c)** as if that policyholder credit account were an imputation credit account; and
- (b) if 2 or more credits arose at the same time,—
 - (i) in the order elected by the consolidated group; or
 - (ii) if no election is made, on a pro rata basis,—so far as the relevant debit to the group's policyholder credit account extends and no further.

Compare: 1994 No 164 s ME 27

ME 28 Application of policyholder credit account provisions to consolidated group

- (1) The nominated company for a consolidated group may elect that all or part of any credit balance in the group's policyholder credit account at the time of the election is to be credited against any policyholder base income tax liability of the group or provisional tax payable by the group, in respect of its policyholder base.
- (2) An election under **subsection (1)** is made by recording the amount in respect of which the nominated company makes the election as a debit in the group's policyholder credit account, and any amount so recorded as a debit in accordance with this subsection is credited against any policyholder base income tax liability of the group or provisional tax payable by the group in respect of its policyholder base.
- (3) The nominated company for a consolidated group may elect that all or any part of a credit balance in the group's policyholder credit account at the time of election is to be a credit to the group's imputation credit account, which election must be made in the manner specified in **section ME 19(4)**.
- (4) **Sections ME 19(5) and (6) and ME 20**, with any necessary modifications, apply in any case where a consolidated group has a policyholder credit account as if—
 - (a) each reference to the policyholder credit account company were a reference to the group; and
 - (b) each reference to a provision of this Act applicable to an individual company were a reference to the equivalent provision of this Act applicable to consolidated groups.

Compare: 1994 No 164 s ME 28

Imputation credit accounts and policyholder credit accounts: amalgamated companies

ME 29 Debits and credits arising to imputation credit account or policyholder credit account on amalgamation

- (1) Where any amalgamating company ceases to exist upon a qualifying amalgamation,—
 - (a) if, immediately before the amalgamation, a credit or debit exists in the amalgamating company's imputation credit account, determined by applying the procedure set out in **sections GC 21 and ME 5(4)**, or in its policyholder credit account, the credit or debit must be treated with effect from the time of the amalgamation as a credit or debit in the equivalent account of the amalgamated company (or, if the amalgamated company does not have a policyholder credit account, in its imputation credit account) and not as a credit or debit in the relevant account of the amalgamating company but applying **section ME 5(1)(i)** as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares as the amalgamating company each holding the same number and class of shares and options over shares as they held in the amalgamating company; and
 - (b) any credit or debit (not being a debit arising under **section ME 5(1)(i)**) would have arisen, but for the amalgamation, to be recorded in the imputation credit account of the amalgamating company on a date after the amalgamation, the credit or debit instead arises to be recorded in the imputation credit account of the amalgamated company.
- (2) Where a consolidated group ceases to exist on a qualifying amalgamation which involves all members of the consolidated group amalgamating (whether or not also amalgamating with any company outside the group),—
 - (a) if, immediately before the amalgamation, a credit or debit exists in the consolidated group's imputation credit account, determined by applying the procedure set out in **sections GC 21 and ME 5(4)**, or in its policyholder credit account, the credit or debit must be treated with effect from the time of the amalgamation as a credit or

debit in the equivalent account of the amalgamated company (or, if the amalgamated company does not have a policyholder credit account, in its imputation credit account) and not as a credit or debit in the relevant account of the consolidated group but applying **section ME 5(1)(i)** as if, with respect to times prior to the amalgamation, the amalgamated company did not separately exist and was instead the consolidated group with the same holders of shares and options over shares as the consolidated group each holding the same number and class of shares and options over shares as they held in the consolidated group; and

- (b) any credit or debit (not being a debit arising under **section ME 12(1)(h)**) would have arisen, but for the amalgamation, to be recorded in the imputation credit account of the consolidated group on a date after the amalgamation, the credit or debit instead arises to be recorded in the imputation credit account of the amalgamated company.

Compare: 1994 No 164 s ME 29

Imputation credit accounts: statutory producer boards

ME 30 Statutory producer board may determine to attach imputation credit to certain distributions

- (1) Every statutory producer board that is an imputation credit account company is entitled to determine, in respect of any year of determination,—
- (a) to attach an imputation credit to a cash distribution in respect of which the producer board makes an election in accordance with **subsection (2)** (being a cash distribution that the producer board is otherwise authorised to make):
- (b) to make a notional distribution with an imputation credit attached in respect of all persons who were members of the producer board at any time during the year of determination.
- (2) A statutory producer board may, where—
- (a) it is to make a cash distribution in respect of all persons who at any time during the year of determination were members of the producer board, based on—

- (i) the proportion that amounts paid in respect of each such member's produce transactions bear to the total amount paid in respect of produce transactions of all members of the producer board; or
 - (ii) the proportion that levies payable by each such member bear to the total levies payable by all members of the producer board; or
 - (iii) such other method as the Commissioner may approve; and
- (b) all or any part of that cash distribution would, were it not for this section, be allowed as a deduction to the producer board, whether as a rebate under **section HF 1** or otherwise,—
- elect, on or before the day it makes the distribution, not to claim the amount of the cash distribution as a deduction; and where a producer board so elects the amount of the cash distribution is, to the extent it is not a deduction, deemed for the purposes of this Act to be a dividend.
- (3) Any determination under **subsection (1)** must be made after the year of determination in respect of which the determination is made, but not later than 6 months after the end of that year of determination.
- (4) A statutory producer board that makes an election under **subsection (2)** must give notice to the Commissioner of the election not later than the time allowed in accordance with section 37 of the Tax Administration Act 1994 for providing its return of income for the year of determination.

Compare: 1994 No 164 s ME 30

ME 31 Amount of imputation credit to be attached to cash distribution

- (1) Where a statutory producer board determines under **section ME 30(1)(a)** to attach an imputation credit to a cash distribution, the aggregate of all imputation credits to be attached in respect of the distribution is an amount calculated in accordance with the following formula:

$$a \times \frac{b}{1 - b}$$

where—

- a is the total amount of the cash distribution (exclusive of any imputation credit)

- b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year that is concurrent with the imputation year in which the determination is made.
- (2) Where a statutory producer board determines under **section ME 30(1)(a)** to attach an imputation credit to a cash distribution, the amount of the imputation credit attached is, in relation to each person who was a member of the producer board during the year of determination, an amount calculated in accordance with the following formula:

$$\frac{c}{d} \times e$$

where—

- c is the member's share of the cash distribution (exclusive of the imputation credit)
- d is the total amount of the cash distribution (exclusive of any imputation credit)
- e is the aggregate of all imputation credits attached in respect of the cash distribution.

Compare: 1994 No 164 s ME 31

ME 32 Amount of imputation credit to be attached to notional distribution

- (1) Where a statutory producer board determines under **section ME 30(1)(b)** to make a notional distribution with an imputation credit attached, the amount of the imputation credit in relation to each person who was a member of the producer board during the year of determination is, having regard to any produce transactions of the member during that year of determination and to any levies payable by the member for that year of determination, calculated by the producer board—
- (a) in accordance with the formula in **subsection (2)** (which relates to produce transactions of the member); or
- (b) in accordance with the formula in **subsection (3)** (which relates to levies payable by the member); or
- (c) partly in accordance with the formula in **subsection (2)** and partly in accordance with the formula in **subsection (3)**, where it is appropriate to take into account both produce transactions and levies payable; or
- (d) in such other manner as the Commissioner approves.

- (2) The producer board may calculate the amount of the imputation credit attached to a notional distribution, in relation to each person who was a member of the producer board during the year of determination, in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the aggregate of all amounts paid to or by the member in respect of produce transactions of the member during the year of determination
 - b is the aggregate of all amounts paid to or by all members of the producer board for produce transactions during the year of determination
 - c is the aggregate of all imputation credits determined by the producer board to be attached in respect of the notional distribution.
- (3) The producer board may calculate the amount of the imputation credit attached to a notional distribution, in relation to each member, in accordance with the following formula:

$$\frac{d}{e} \times f$$

where—

- d is the aggregate of all levies payable by the member to the producer board for the year of determination
 - e is the aggregate of all levies payable by all members to the producer board for the year of determination
 - f is the aggregate of all imputation credits attached in respect of the notional distribution.
- (4) Where the Commissioner is satisfied, having regard to—
- (a) any levy payable to or any produce transactions of the producer board; and
 - (b) any other circumstances that the Commissioner considers relevant,—
- that a calculation made by a producer board under this section does not result in a fair and reasonable allocation of an imputation credit to a person who was a member of the producer board during the relevant year of determination, the Commissioner may determine the extent to which the producer board should have made the calculation under any of **subsection (1)(a) to (d)**.

- (5) Where and to the extent that the Commissioner makes a determination under **subsection (4)**, the amount of the imputation credit attached to the notional distribution is, notwithstanding any calculation made by the producer board, the amount calculated under the determination of the Commissioner.

Compare: 1994 No 164 s ME 32

ME 33 Notional distribution deemed to be dividend

- (1) Where a statutory producer board has determined under **section ME 30(1)(b)** to attach an imputation credit in respect of a notional distribution to persons who were members of the producer board during a year of determination, the producer board is, for the purposes of this Act, deemed to have paid a dividend to each such member of an amount calculated in accordance with the following formula:

$$\frac{a}{b} - a$$

where—

- a is the amount of the imputation credit attached to the notional distribution of the member
- b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year that is concurrent with the imputation year in which the determination is made.
- (2) Any notional distribution that is deemed by **subsection (1)** to be a dividend is, for the purposes of this Act, deemed to have been derived on the date of the determination made in relation to the distribution under **section ME 30(1)(b)**.
- (3) A statutory producer board that makes a determination in respect of a notional distribution under **section ME 30(1)(b)** must—
- (a) furnish, with the return furnished under section 33 of the Tax Administration Act 1994 for the income year in which the determination is made, particulars of the dividend deemed to have been paid; and
- (b) retain such particulars as will enable the Commissioner to determine whether any subsequent distribution in respect of the deemed dividend is not a dividend under **section CD 18(3) or CD 24(1)**.

Compare: 1994 No 164 s ME 33

ME 34 Statutory producer boards and dividend withholding payments

- (1) Where a statutory producer board is a dividend withholding payment company, **sections ME 30 to ME 33** apply, with any necessary modifications, as if references to an imputation credit included references to a dividend withholding payment credit.
- (2) Where a statutory producer board proposes in respect of any year of determination to attach both dividend withholding payment credits and imputation credits, the determination under **section ME 30** in relation to the dividend withholding payment credits must be made at the same time as the determination under that section in relation to the imputation credits.

Compare: 1994 No 164 s ME 34

Imputation credits: co-operative companies**ME 35 Co-operative company may make annual determination to attach imputation credit to certain distributions**

- (1) Every co-operative company that is an imputation credit account company is entitled to determine—
 - (a) once only in respect of any year of determination to attach an imputation credit to a cash distribution in respect of which the co-operative company makes an election in accordance with **subsection (2)**:
 - (b) once only in respect of any year of determination to make a notional distribution with an imputation credit attached in respect of all persons who at any time during the year of determination were shareholders of the company.
- (2) A co-operative company may, where—
 - (a) it is to make a cash distribution in respect of all persons who at any time during the year of determination were shareholders of the company, based on the proportion that amounts paid in respect of each such shareholder's produce transactions bear to the total amount paid in respect of produce transactions of all shareholders of the company; and
 - (b) all or any part of that cash distribution would, were it not for this section, be allowed as a deduction to the co-

operative company, whether as a rebate under **section HF 1** or otherwise,—

elect, on or before the day it makes the distribution, by notice to the Commissioner, not to claim the amount of the cash distribution as a deduction; and where a co-operative company so elects the amount of the cash distribution is, to the extent it is not a deduction, deemed for the purposes of this Act to be a dividend.

- (3) Any determination under **subsection (1)** must be made after the year of determination in respect of which the determination is made, but not later than 6 months after the end of that year of determination.

Compare: 1994 No 164 s ME 35

ME 36 Amount of imputation credit to be attached to cash distribution

- (1) Where a co-operative company determines under **section ME 35(1)(a)** to attach an imputation credit to a cash distribution, the aggregate of all imputation credits to be attached in respect of the distribution is an amount calculated in accordance with the following formula:

$$a \times \frac{b}{1 - b}$$

where—

- a is the total amount of the cash distribution (exclusive of any imputation credit)
- b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year that is concurrent with the imputation year in which the determination is made.
- (2) Where a co-operative company determines under **section ME 35(1)(a)** to attach an imputation credit to a cash distribution, the amount of the imputation credit attached is, in relation to each person who was a shareholder of the co-operative company during the year of determination, an amount calculated in accordance with the following formula:

$$\frac{c}{d} \times e$$

where—

- c is the shareholder's share of the cash distribution (exclusive of the imputation credit)
- d is the total amount of the cash distribution (exclusive of any imputation credit)
- e is the aggregate of all imputation credits attached in respect of the cash distribution.

Compare: 1994 No 164 s ME 36

ME 37 Amount of imputation credit to be attached to notional distribution

Where a co-operative company determines under **section ME 35(1)(b)** to make a notional distribution with an imputation credit attached, the amount of the imputation credit is, in relation to each person who was a shareholder of the co-operative company during the year of determination, an amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the aggregate of all amounts paid to or by the shareholder in respect of produce transactions of the shareholder for the year of determination
- b is the aggregate of all amounts paid to or by shareholders of the company in respect of all produce transactions for the year of determination
- c is the aggregate of all imputation credits determined by the co-operative company to be attached in respect of the notional distribution.

Compare: 1994 No 164 s ME 37

ME 38 Notional distribution deemed to be dividend

- (1) Where a co-operative company has determined under **section ME 35(1)(b)** to attach an imputation credit in respect of a notional distribution to persons who were shareholders of the company during a year of determination, the co-operative company is, for the purposes of this Act, deemed to have paid a dividend to each such shareholder of an amount calculated in accordance with the following formula:

$$\frac{a}{b} - a$$

where—

- a is the amount of the imputation credit attached to the notional distribution of the shareholder
 - b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year that is concurrent with the imputation year in which the determination is made.
- (2) Any notional distribution that is deemed by **subsection (1)** to be a dividend is, for the purposes of this Act, deemed to have been derived on the date of the determination made in relation to the distribution under **section ME 35(1)(b)**.

Compare: 1994 No 164 s ME 38

ME 39 Co-operative companies and dividend withholding payments

- (1) Where a co-operative company is a dividend withholding payment company, **sections ME 35 to ME 38** and section 64 of the Tax Administration Act 1994 apply, with any necessary modifications, as if references to an imputation credit included references to a dividend withholding payment credit.
- (2) Where a co-operative company proposes in respect of any year of determination to attach both dividend withholding payment credits and imputation credits, the determination under **section ME 35** in relation to the dividend withholding payment credits must be made at the same time as the determination under that section in relation to the imputation credits.

Compare: 1994 No 164 s ME 39

Imputation credit accounts: credits and debits incorrectly recorded

ME 40 Determinations by Commissioner as to credits and debits arising to imputation credit account

- (1) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's imputation credit account is not the correct amount that should have been recorded in respect of the credit or debit, the Commissioner must determine the amount of the credit or debit properly arising to the account.

- (2) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's imputation credit account should not have been so recorded, the Commissioner must determine accordingly.
- (3) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's imputation credit account should not have been recorded as arising at the time it was recorded as arising, the Commissioner must determine the time at which the credit or debit properly arose to the account.
- (4) Where the Commissioner considers that any amount that has not been recorded as a credit or debit arising to a company's imputation credit account should have been so recorded, the Commissioner must determine—
 - (a) the amount of the credit or debit so arising; and
 - (b) the time at which the credit or debit arose to the account.
- (5) Where the Commissioner makes a determination under any of **subsections (1) to (4)**, then, except in so far as the company establishes by proceedings on a challenge that any credit or debit was correctly recorded, or not recorded as the case may be, in the imputation credit account,—
 - (a) the relevant credit or debit is deemed to have arisen, or not to have arisen, or to have been the amount determined by the Commissioner under **subsection (1)**, as the case may require, effective on the date on which the debit or credit originally arose, or is determined by the Commissioner as having arisen:
 - (b) the company must make such other corrections in respect of any credits or debits or balances arising to its imputation credit account or dividend withholding payment account or branch equivalent tax account, whether for the imputation year to which the determination related or for any subsequent imputation year, as may be directed by the Commissioner to be necessary or appropriate as a consequence of the determination in relation to the amount incorrectly recorded, or not recorded.
- (6) As soon as is convenient after a determination is made under any of **subsections (1) to (4)**, the Commissioner must give notice

of the determination to the company in respect of whose imputation credit account the determination is made.

- (7) Any such notice may be included in a notice of assessment made under section 111(1) of the Tax Administration Act 1994.
- (8) An omission to give the notice referred to in **subsection (6)** does not invalidate the determination.
- (9) This section applies, with any necessary modifications, in any case which involves accounts of a consolidated group, as if—
 - (a) the consolidated group were a single company; and
 - (b) references to provisions of this Act were references to the equivalent provisions applicable to such equivalent accounts.

Compare: 1994 No 164 s ME 40

Imputation credit accounts: unit trusts and group investment funds

ME 41 Special debits arising to imputation credit account of unit trust or group investment fund

- (1) Notwithstanding anything in this Part, a debit arises to the imputation credit account of a company or a consolidated group in respect of any dividends derived in an income year by the company or any company in that group if—
 - (a) the dividend is derived by a company resident in New Zealand which is either—
 - (i) the manager of a unit trust; or
 - (ii) the trustee or manager of a group investment fund,—
(such manager or trustee being in this subsection referred to as the **manager**); and
 - (b) the dividend is derived in respect of the redemption or other cancellation of—
 - (i) units in the unit trust; or
 - (ii) interests of investors in the group investment fund; and
 - (c) these units or interests were acquired by the manager from unit holders or investors—
 - (i) in the ordinary course of the manager's activities in respect of the unit trust or group investment fund; and

- (ii) in accordance with the terms upon which units in the unit trust or interests in the group investment fund were offered to potential unit holders or investors.
- (2) The amount of the debit referred to in **subsection (1)** is the greater of—
 - (a) the aggregate of the amounts of imputation credits and dividend withholding payment credits attached to the dividends, excluding imputation credits that have been included in a debit to the company's or consolidated group's imputation credit account arising under **section ME 5(1)(i)** in the income year, being imputation credits attached to dividends derived by the company or group company in the circumstances described in **subsection (1)**; and
 - (b) the amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c - d$$

where—

- a is the aggregate amount of the dividends paid (including any imputation and dividend withholding payment credits attached to the dividends)
 - b is the taxable income of the company or, as the case may be, the consolidated group for the income year in which the dividends are derived
 - c is the income tax liability of the company or, as the case may be, the consolidated group for the income year
 - d is the amount of imputation credits attached to dividends that have been included in a debit to the company's or consolidated group's imputation credit account that arises under **section ME 5(1)(i)** in the income year, being imputation credits attached to dividends derived by the company or group company in the circumstances described in **subsection (1)**.
- (3) The debit referred to in **subsection (1)** arises on the date on which the company or nominated group company files a

return of income for the income year in which the dividends are derived.

Compare: 1994 No 164 s ME 41

Subpart MF—Branch equivalent tax accounts

Branch equivalent tax accounts of companies

MF 1 Company may elect to maintain branch equivalent tax account

- (1) A company resident in New Zealand may at any time during an imputation year, or within the time within which the company is required to furnish a return of its income for the income year which corresponds with that imputation year (or within such further time as the Commissioner may allow), elect to maintain a branch equivalent tax account for that imputation year.
- (2) A company that so elects must notify the Commissioner of that fact within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases.
- (3) A company that makes an election under **subsection (1)** must maintain a branch equivalent tax account—
 - (a) for the imputation year in respect of which the election is made; and
 - (b) subject to this section, for every subsequent imputation year.
- (4) A company that has made an election under **subsection (1)** may, during any imputation year subsequent to that in respect of which the election was made, elect that the company is to cease to be a branch equivalent tax account company, and, subject to **subsection (5)**, any company that so elects ceases, as from the commencement of the imputation year succeeding that in which the election to so cease is made, to be a company required to maintain a branch equivalent tax account.
- (5) An election under **subsection (4)** is of no effect unless the company furnishes, within the time provided for in section 69 of the Tax Administration Act 1994, the annual imputation return required in respect of the imputation year in which the election is made.

Compare: 1994 No 164 s MF 1

MF 2 Balance of branch equivalent tax account

For the purposes of **subpart MF** and sections 77 and 78 of the Tax Administration Act 1994, the balance of a branch equivalent tax account at any time is ascertained by calculating the difference in amount between the aggregate of credits and the aggregate of debits to the account existing at that time, and the account has—

- (a) a credit balance to the extent that credits exceed debits:
- (b) a debit balance to the extent that debits exceed credits.

Compare: 1994 No 164 s MF 2

MF 3 Branch equivalent tax account of company

- (1) Every branch equivalent tax account company must record in its branch equivalent tax account for any imputation year—
 - (a) the opening balance of the account for that imputation year, in accordance with **subsection (2)**:
 - (b) credits as they arise in accordance with **section MF 4(1) and (2)**:
 - (c) debits as they arise in accordance with **section MF 4(3) to (6)**.
- (2) The opening balance of the branch equivalent tax account of a company for any imputation year is,—
 - (a) for the imputation year during which the company commences to be a branch equivalent tax account company, nil:
 - (b) for any subsequent imputation year, the amount of the closing balance of the branch equivalent tax account of the company for the immediately preceding imputation year, and such amount is—
 - (i) a credit arising to the account where the closing balance is a credit balance:
 - (ii) a debit arising to the account where the closing balance is a debit balance.

Compare: 1994 No 164 s MF 3

MF 4 Credits and debits arising to branch equivalent tax account of company

- (1) There arise as credits to be recorded in the branch equivalent tax account of a branch equivalent tax account company the following amounts:

- (a) an amount (not less than nil) calculated in accordance with the following formula:

$$\frac{a \times b}{c} - d - e$$

where—

- a is the amount of the company's income tax liability for the income year calculated as if the amount of any rebate under **section KH 1** were nil
- b is the amount that is the lesser of—
- (i) the amount of any attributed CFC income derived by the company for the income year; and
 - (ii) the taxable income of the company for the income year
- c is the taxable income of the company for the income year
- d is the amount of any foreign tax credit allowed in accordance with **section LC 4 or LC 5** that is set off against the company's income tax liability for the income year
- e is the amount set off against the company's income tax liability for the income year by way of crediting the debit balance in the branch equivalent tax account of the company or any other company:
- (b) an amount calculated in accordance with the following formula: $f \times g$

where—

- f is the lesser of—
- (i) the attributed CFC income derived by the company in the income year; and
 - (ii) the amount (including zero) of available net losses offset by the company against the company's net income for the income year
- g is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year:
- (c) the amount of any debit balance in the account that the company elects in accordance with **section MF 5** to set off

- against the income tax liability of the company or of another company:
- (d) an amount equal to any refund of dividend withholding payment paid to the company under **section NH 4** to the extent that the refund is in respect of an amount of dividend withholding payment paid which gave rise to a debit to the branch equivalent tax account under this section, except, to the extent that the refund is in respect of a dividend withholding payment paid before the date that a credit arises under **paragraph (e)**, a credit does not arise to the extent that the amount of the refund does not exceed the amount of the credit that arises on that date:
 - (e) the amount of any particular debit in the company's branch equivalent tax account at any time (in this paragraph referred to as the **specified time**), not being a debit which has before the specified time been cancelled out by a subsequent credit, unless there is a group of persons—
 - (i) the aggregate of whose minimum voting interests in the company in the period from the date upon which the debit arose until the specified time is equal to or greater than 66%; and
 - (ii) in any case where at any time during that period a market value circumstance exists in respect of the company, the aggregate of whose minimum market value interests in the company in the period is equal to or greater than 66%:
 - (f) the amount of any debit balance of the branch equivalent tax account where, during the imputation year, the company ceases to be resident in New Zealand.
- (2) The credits referred to in **subsection (1)** arise,—
- (a) in the case of a credit referred to in **subsection (1)(a) or (b)**, on the date on which the company files a return of income for the income year of the company referred to in that subsection:
 - (b) in the case of a credit referred to in **subsection (1)(c)**, on the date the company elects in accordance with **section MF 5** to set off the amount against the income tax liability of the company or of another company:
 - (c) in the case of a credit referred to in **subsection (1)(d)**, on the date the refund is paid:

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- (d) in the case of a credit referred to in **subsection (1)(e)**, at the specified time referred to in that paragraph:
 - (e) in the case of a credit referred to in **subsection (1)(f)**, on the date on or on the expiry of which the company ceases to be a resident of New Zealand.
- (3) There arise as debits to be recorded in the branch equivalent tax account of a branch equivalent tax account company the following amounts:
- (a) an amount of dividend withholding payment, calculated before any reduction is allowed under **section NH 7**, paid by the company in respect of a dividend derived from an income interest in a controlled foreign company, whether the amount is paid directly or by an election to reduce an amount of net loss:
 - (b) the amount of any credit balance in the account that the company elects in accordance with **section MF 5** to use to reduce an amount of dividend withholding payment payable by the company or any other company under **section NH 2**:
 - (c) an amount equal to any refund of income tax to the extent that the refund would have been made had the company not derived any income other than attributed CFC income in the income year to which the refund relates, except, to the extent that the refund is in respect of income tax paid before the date that a debit arises under **paragraph (d)**, a debit does not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date:
 - (d) the amount of any particular credit in the company's branch equivalent tax account at any time (in this paragraph referred to as the **specified time**), not being a credit which has before the specified time been cancelled out by a subsequent debit, unless there is a group of persons—
 - (i) the aggregate of whose minimum voting interests in the company in the period from the date upon which the credit arose until the specified time is equal to or greater than 66%; and
 - (ii) in any case where at any time during that period a market value circumstance exists in respect of the

- company, the aggregate of whose minimum market value interests in the company in the period is equal to or greater than 66%:
- (e) the amount of any credit balance of the branch equivalent tax account where, during the imputation year, the company ceases to be resident in New Zealand.
- (4) The debits referred to in **subsection (3)** arise,—
- (a) in the case of the debit referred to in **subsection (3)(a)**, on the date the dividend withholding payment is paid:
 - (b) in the case of a debit referred to in **subsection (3)(b)**, on the date by which the company is required by **section NH 3** to pay to the Commissioner the dividend withholding payment that is reduced by the relevant amount of the credit balance:
 - (c) in the case of a debit referred to in **subsection (3)(c)**, on the date the refund is paid:
 - (d) in the case of a debit referred to in **subsection (3)(d)**, at the specified time referred to in that paragraph:
 - (e) in the case of a debit referred to in **subsection (3)(e)**, on the date on or on the expiry of which the company ceases to be resident in New Zealand.
- (5) Subject always to the express provisions of this Act, **subsections (1)(e) and (3)(d)** are intended to limit the circumstances in which a taxpayer, being a company, may carry forward a branch equivalent tax account debit or credit for subsequent utilisation to those where the tax benefit arising from such utilisation is obtained or available to be obtained (directly or indirectly) at least to the extent of 66%, only by the same natural persons holding (directly or indirectly) rights in relation to the company who—
- (a) by virtue of holding (directly or indirectly) such rights, bore the dividend withholding payment or tax liability giving rise to the branch equivalent tax account debit or credit:
 - (b) held (directly or indirectly) such rights at the time of the event giving rise to the branch equivalent tax account debit or credit.
- (6) For the purposes of **subsections (1)(e) and (3)(d)**,—
- (a) in respect of any period referred to in either of those provisions, the minimum voting interest or market

- value interest of any person in the company in the period is equal to the lowest voting interest or market value interest (as the case may be) which that person holds in the company during that period; and
- (b) **section MF 3(2)(b)** does not apply, and—
 - (i) any credit in the company's branch equivalent tax account is treated as continuing to exist until treated as being cancelled out by a subsequent debit in accordance with **paragraph (c)**; and
 - (ii) any debit in the company's branch equivalent tax account is treated as continuing to exist until treated as being cancelled out by a subsequent credit in accordance with **paragraph (d)**; and
 - (c) in determining whether any credit in the company's branch equivalent tax account has been cancelled out by any subsequent debit,—
 - (i) any amount of debit may be taken into account only once for the purpose of ascertaining whether any credit has been so cancelled out; and
 - (ii) the amount of any debit is offset against the amount of any credit in the order in which the credits arise; and
 - (d) in determining whether any debit in the company's branch equivalent tax account has been cancelled out by any subsequent credit,—
 - (i) any amount of credit may be taken into account only once for the purpose of ascertaining whether any debit has been so cancelled out; and
 - (ii) the amount of any credit is offset against the amount of any debit in the order in which the debits arise; and
 - (e) any credit arising on or before 16 December 1988 is deemed to have been cancelled out by a subsequent debit before the specified time referred to in **subsection (3)(d)**; and
 - (f) in the case of any credit arising after 16 December 1988 and before 1 April 1992 (not being a credit cancelled out before 1 April 1992 by a subsequent debit), the credit is deemed first to arise in the company's branch equivalent tax account on 1 April 1992, but a debit is deemed to arise in accordance with **subsection (3)(d)** in respect of that credit at any time if and to the extent that,

at that specified time, that credit still exists and a debit would have arisen in respect of that credit in accordance with section 394ZZP(3)(d) of the Income Tax Act 1976 as that paragraph applied before its repeal and replacement by section 60 of the Income Tax Amendment Act (No 2) 1992, had that paragraph continued to apply but with the figure “75” omitted and the figure “66” substituted.

Compare: 1994 No 164 s MF 4

MF 5 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability

- (1) A branch equivalent tax account company may elect that all or part of any credit balance in its branch equivalent tax account at the time of the election is to be used for the purpose of reducing, so far as the liability extends, the amount of any dividend withholding payment deduction required to be made by the company, or any other company which is at the time the relevant dividend is paid in the same group of companies as the company, under **sections NH 1 and NH 2**.
- (2) Notwithstanding **subsection (1)**, a company is entitled to elect to use a credit balance in its branch equivalent tax account to reduce an amount of dividend withholding payment deduction,—
 - (a) in any case where and to the extent that the credit has arisen under **section MF 4(1)(a)** (determined by applying the procedure set out in **section MF 4(6)**), only to the extent that the company has paid income tax or provisional tax or has received a rebate under **section KH 1** for the income year equal to or exceeding the credit balance so used; and
 - (b) in any case where and to the extent that the credit has arisen under **section MF 4(1)(b)** (as so determined), only if an assessment has been made for the income year in which the attributed CFC income is derived.
- (3) A company makes an election under **subsection (1)** by recording the amount in respect of which it makes the election as a debit in its branch equivalent tax account.
- (4) Where for any income year the income of a company (referred to in this subsection as the **first company**) includes an amount of attributed CFC income derived in respect of an income

interest in a controlled foreign company, the first company, or any other company which is for the income year in the same group of companies as the first company, may elect that all or any part of the debit balance (if any) in the branch equivalent tax account of the first company or the other company, as the case may be, at the time of the election is to be credited against any income tax liability of the first company.

- (5) A company makes an election under **subsection (4)** by recording the amount in respect of which the election is made as a credit in the company's branch equivalent tax account.
- (6) Where a company has made an election under **subsection (4)** in respect of the income tax liability for any income year, the amount of debit balance in respect of which the election is made is set off against any income tax liability of the company or the relevant other company for that income year to the extent that—
 - (a) the amount set off does not exceed an amount equal to the company's income tax liability that would arise if no income were derived by the company other than the attributed CFC income referred to in **subsection (4)**, such amount to be calculated under the formula set out in **section MF 4(1)(a)** (but applying as if item "e" were nil); and
 - (b) the company has made a proper election in accordance with this section; and
 - (c) the company has paid (whether directly or by way of an election to reduce an amount of a net loss or by means of a reduction of dividend withholding payment under **section NH 7**) the dividend withholding payment that gives rise to a debit to the company's branch equivalent tax account.

Compare: 1994 No 164 s MF 5

MF 6 Determinations by Commissioner as to credits and debits arising to branch equivalent tax account

- (1) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's branch equivalent tax account is not the correct amount that should have been recorded in respect of the credit or debit, the Commissioner must determine the amount of the credit or debit properly arising to the account.

- (2) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's branch equivalent tax account should not have been so recorded, the Commissioner must determine accordingly.
- (3) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's branch equivalent tax account should not have been recorded as arising at the time it was recorded as arising, the Commissioner must determine the time at which the credit or debit properly arose to the account.
- (4) Where the Commissioner considers that any amount that has not been recorded as a credit or debit arising to a company's branch equivalent tax account should have been so recorded, the Commissioner must determine—
 - (a) the amount of the credit or debit so arising; and
 - (b) the time at which the credit or debit arose to the account.
- (5) Where the Commissioner makes a determination under any of **subsections (1) to (4)**, then, except in so far as the company establishes by proceedings on a challenge that any credit or debit was correctly recorded, or not recorded as the case may be, in the branch equivalent tax account,—
 - (a) the relevant credit or debit is deemed to have arisen, or not to have arisen, or to have been the amount determined by the Commissioner under **subsection (1)**, as the case may require, effective on the date on which the debit or credit originally arose, or is determined by the Commissioner as having arisen:
 - (b) the company must make such other corrections in respect of any credits or debits or balances recorded as arising to its branch equivalent tax account or imputation credit account or dividend withholding payment account, whether for the imputation year in which the incorrect record the subject of the determination was made or for any subsequent imputation year, as may be necessary or as may be directed by the Commissioner as a consequence of the determination in relation to the amount incorrectly recorded, or not recorded.
- (6) As soon as is convenient after a determination is made under any of **subsections (1) to (4)**, the Commissioner must give notice

of the determination to the company in respect of whose branch equivalent tax account the determination is made.

- (7) Any such notice may be included in a notice of assessment made under section 111(1) of the Tax Administration Act 1994.
- (8) An omission to give the notice referred to in **subsection (6)** does not invalidate the determination.

Compare: 1994 No 164 s MF 6

Consolidated groups

MF 7 Branch equivalent tax accounts and consolidated groups

- (1) A consolidated group—
 - (a) must maintain a branch equivalent tax account for an imputation year if, in that imputation year, any company which is a member of that consolidated group at any time in that imputation year maintains a branch equivalent tax account; and
 - (b) may at any time elect to maintain a branch equivalent tax account for an imputation year,—

which group branch equivalent tax account must be separate from the branch equivalent tax account of each company which is a member of that consolidated group.
- (2) Where a consolidated group has elected to maintain a branch equivalent tax account under **subsection (1)**,—
 - (a) the nominated company for the group must notify the Commissioner of that fact within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases; and
 - (b) the group must maintain a branch equivalent tax account with effect from the date of the election and, subject to **subsection (3)**, for every imputation year subsequent to the imputation year in which the election was made.
- (3) Subject to **subsection (4)**, the nominated company for a consolidated group that maintains a branch equivalent tax account may elect at any time that the group is to cease to maintain a branch equivalent tax account and, where such an election is made, the group ceases to be required to maintain a group

branch equivalent tax account from the commencement of the imputation year succeeding that in which the election so to cease is made.

- (4) An election under **subsection (3)**,—
- (a) in any case where the nominated company for the group has elected to maintain a branch equivalent tax account, may only be made during an imputation year subsequent to the imputation year in which the election to maintain the account was made; and
 - (b) is of no effect if the group is required to maintain a branch equivalent tax account under **subsection (1)(a)** in respect of the imputation year from the commencement of which the election to cease would otherwise take effect; and
 - (c) is of no effect unless the annual group imputation return required in respect of the imputation year in which the election was made is furnished within the time provided for in section 69 of the Tax Administration Act 1994.

Compare: 1994 No 164 s MF 7

MF 8 Debits and credits arising to group branch equivalent tax account

- (1) The opening balance of the branch equivalent tax account of a consolidated group for any imputation year is—
 - (a) nil, for the imputation year during which the consolidated group commences to maintain a branch equivalent tax account; and
 - (b) the amount of the closing balance of the branch equivalent tax account for the preceding imputation year (being a credit or debit as the case may be), in any other case.
- (2) There arise as credits to be recorded in the branch equivalent tax account of a consolidated group the following amounts:
 - (a) an amount calculated in accordance with the following formula:

$$\frac{a \times b}{c} - d - e$$

where—

- a is the amount of the income tax liability of the consolidated group for any income year
- b is the amount that is the lesser of—

- (i) the amount of any attributed CFC income derived by the consolidated group for the income year; and
 - (ii) the taxable income of the consolidated group for the income year
- c is the taxable income of the consolidated group for the income year
- d is the amount of any foreign tax credit allowed to be set off against the income tax liability of the consolidated group for the income year in accordance with **sections LC 4, LC 5, and LC 16**
- e is the amount set off against the income tax liability of the consolidated group for the income year by way of crediting the debit balance in the branch equivalent tax account of the consolidated group or any company:
- (b) an amount calculated in accordance with the following formula: $f \times g$
 - where—
 - f is the lesser of—
 - (i) the attributed CFC income derived by the consolidated group in the income year; and
 - (ii) the amount (including zero) of available net losses offset by the consolidated group against the consolidated group's net income for the income year
 - g is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year:
- (c) the amount of any debit balance in the account that the nominated company for the consolidated group elects in accordance with **section MF 10(3) or (4)** to set off against the income tax liability of the consolidated group or of another company:
- (d) an amount equal to any refund of dividend withholding payment paid under **section NH 4** to the extent that the refund is in respect of any amount of dividend withholding payment paid which gave rise to a debit to the branch equivalent tax account under this section; except, to the extent that the refund is in respect of a

- dividend withholding payment paid before the date that a credit arises under **paragraph (e)**, a credit does not arise to the extent that the amount of the refund does not exceed the amount of the credit that arises on that date:
- (e) the amount of any credit which would arise under **section MF 4(1)(e)** if that provision were to apply, with any necessary modifications, to a consolidated group and its branch equivalent tax account as if it were a single company.
- (3) The credits referred to in **subsection (2)** arise,—
- (a) in the case of the credits referred to in **subsection (2)(a) and (b)**, on the date on which is filed a return of income for the consolidated group for the income year referred to in those paragraphs:
 - (b) in the case of a credit referred to in **subsection (2)(c)**, on the date the nominated company elects in accordance with **section MF 10(3) or (4)** to set off the amount against the income tax liability of the consolidated group or of another company:
 - (c) in the case of a credit referred to in **subsection (2)(d)**, on the date the refund is paid:
 - (d) in the case of a credit referred to in **subsection (2)(e)**, at the relevant specified time referred to in **section MF 4(1)(e)**.
- (4) There arise as debits to be recorded in the branch equivalent tax account of a consolidated group the following amounts:
- (a) the amount of any dividend withholding payment paid (whether directly or by way of an election to reduce an amount of net loss) during the income year by a company which is, at the time of payment of the dividend giving rise to the liability to pay dividend withholding payment, a member of the consolidated group, in respect of a dividend derived by the company in respect of an income interest in a controlled foreign company:
 - (b) the amount of any credit balance in the account that the nominated company for the consolidated group elects in accordance with **section MF 10(1)** to use to reduce an amount of dividend withholding payment deductible under **sections NH 1 and NH 2** by a company which is, at the time of payment of the dividend giving rise to the liability to pay the dividend withholding payment, a member of the consolidated group:

- (c) an amount equal to any refund of income tax to the extent that the refund would have been made had the consolidated group not derived any income other than attributed CFC income in the income year to which the refund relates, except that, to the extent that the refund is in respect of income tax paid before the date that a debit arises under **paragraph (d)**, a debit does not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date:
 - (d) the amount of any debit which would arise under **section MF 4(3)(d)** if that provision were to apply, with any necessary modifications, to a consolidated group and its branch equivalent tax account as if it were a single company.
- (5) The debits referred to in **subsection (4)** arise,—
- (a) in the case of a debit referred to in **subsection (4)(a)**, on the date the dividend withholding payment is paid:
 - (b) in the case of a debit referred to in **subsection (4)(b)**, on the date by which the relevant company is required by **section NH 3** to pay to the Commissioner the dividend withholding payment that is reduced by the relevant amount of the credit balance:
 - (c) in the case of a debit referred to in **subsection (4)(c)**, on the date the refund is paid:
 - (d) in the case of a debit referred to in **subsection (4)(d)**, at the relevant specified time referred to in **section MF 4(3)(d)**.
- (6) **Section MF 6** applies, with any necessary modifications, in the case of a branch equivalent tax account of a consolidated group as if the group were a single company.

Compare: 1994 No 164 s MF 8

MF 9 Debiting and crediting between group and individual branch equivalent tax accounts

Where—

- (a) any credit arises to the branch equivalent tax account of a consolidated group in respect of any attributed CFC income; or
- (b) any debit arises to the branch equivalent tax account of a consolidated group in respect of a refund of income tax paid in respect of attributed CFC income; or

- (c) any debit arises to the branch equivalent tax account of a consolidated group in respect of an amount of dividend withholding payment paid; or
- (d) any credit arises to the branch equivalent tax account of a consolidated group in respect of a refund of dividend withholding payment paid,—

no credit or debit arises to the branch equivalent tax account of any individual company in respect of that attributed CFC income, income tax refund, dividend withholding payment, or dividend withholding payment refund.

Compare: 1994 No 164 s MF 9

MF 10 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability

- (1) Where—
 - (a) there is a credit balance in the branch equivalent tax account of a consolidated group; and
 - (b) the nominated company for the consolidated group elects (by debiting the account) to use all or any part of the credit balance for the purpose of reducing, so far as the liability extends, the amount of any dividend withholding payment deduction required to be made under **sections NH 1 and NH 2** by a company; and
 - (c) the company, at the time of payment of the dividend giving rise to the liability to pay dividend withholding payment,—
 - (i) is a member of the consolidated group; or
 - (ii) would be a member of the same group of companies as the consolidated group if the consolidated group were a single company,—

the dividend withholding payment required to be made is reduced by the amount of the credit balance so elected.
- (2) Notwithstanding **subsection (1)**, a credit balance in a consolidated group's branch equivalent tax account may be used to reduce an amount of dividend withholding payment deduction,—
 - (a) in any case where and to the extent that the credit has arisen under **section MF 8(2)(a)** (determined by applying the procedure set out in **section MF 4(6)**), only to the extent that the consolidated group has paid income tax

- or provisional tax for the income year equal to or exceeding the credit balance so used; and
- (b) in any case where and to the extent that the credit has arisen under **section MF 8(2)(b)** (as so determined), only if an assessment has been made for the income year in which the attributed CFC income is derived.
- (3) Where a consolidated group derives attributed CFC income for an income year,—
- (a) the nominated company of the consolidated group; or
- (b) any member of the consolidated group; or
- (c) any other company which for the income year would be in the same group of companies as the consolidated group if the consolidated group were a single company—
- may elect (by crediting the account) that all or any part of the debit balance in the branch equivalent tax account of the consolidated group or the company (as the case may be) at the time of the election is to be set off against the income tax liability of the consolidated group for the income year.
- (4) Where a company (referred to in this section as the **first company**) derives attributed CFC income in an income year, the nominated company of a consolidated group, which group would be, if the consolidated group were a single company, in the same group of companies as the first company for the income year, may elect (by crediting the account) that all or part of any debit balance in the branch equivalent tax account of the consolidated group at the time of the election is to be set off against the income tax liability of the first company for the income year.
- (5) Where a company has made an election under **subsection (3) or (4)** in respect of an income tax liability for any income year, the amount of debit balance in respect of which the election is made must be set off against the income tax liability to the extent that—
- (a) the amount set off does not exceed an amount equal to the income tax liability that would arise if no income were derived in that income year by the consolidated group or the first company, as the case may be, other than attributed CFC income referred to in **subsection (3) or (4)**, such amount to be calculated under the formula set

- out in **section MF 8(2)(a)** (but applying as if item “e” were nil); and
- (b) the company has made a proper election in accordance with this section; and
 - (c) the consolidated group or relevant other company, as the case may be, has paid (whether directly or by way of an election to reduce an amount of net loss) the dividend withholding payment that gives rise to a debit to the branch equivalent tax account of the entity making the payment.

Compare: 1994 No 164 s MF 10

Branch equivalent tax accounts of persons

MF 11 Person may elect to maintain branch equivalent tax account

- (1) A person resident in New Zealand (not being a company) may at any time during an income year of that person, or within the time within which the person is required to furnish a return of income for that income year (or within such further time as the Commissioner may allow), elect to maintain a branch equivalent tax account for that income year.
- (2) A person who so elects must notify the Commissioner of that fact within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases.
- (3) A person who makes an election under **subsection (1)** must maintain a branch equivalent tax account—
 - (a) for the income year in respect of which the election is made; and
 - (b) subject to this section, for every subsequent income year.
- (4) A person who has made an election under **subsection (1)** may, during any income year subsequent to that in respect of which the election was made, elect to cease to be a branch equivalent tax account person, and, subject to **subsection (5)**, any person who so elects ceases, as from the commencement of the income year succeeding that in which the election to so cease is made, to be a person required to maintain a branch equivalent tax account.

- (5) An election made under **subsection (4)** is of no effect unless the person furnishes, within the time provided for in section 78(3) of the Tax Administration Act 1994, the annual branch equivalent tax account return required in respect of the income year in which the election is made.

Compare: 1994 No 164 s MF 11

MF 12 Branch equivalent tax account of person

- (1) Every branch equivalent tax account person must record in the person's branch equivalent tax account for any income year of that person—
- (a) the opening balance of the account for that income year, in accordance with **subsection (2)**;
 - (b) credits as they arise in accordance with **section MF 13(1) and (2)**;
 - (c) debits as they arise in accordance with **section MF 13(3) and (4)**.
- (2) The opening balance of the branch equivalent tax account of a person for any income year is,—
- (a) for the income year during which the person commences to be a branch equivalent tax account person, nil;
 - (b) for any subsequent income year, the amount of the closing balance of the branch equivalent tax account of the person for the preceding income year, and such amount is—
 - (i) a credit arising to the account where the closing balance is a credit balance;
 - (ii) a debit arising to the account where the closing balance is a debit balance.

Compare: 1994 No 164 s MF 12

MF 13 Credits and debits arising to branch equivalent tax account of person

- (1) There arise from time to time, as credits to be recorded in the branch equivalent tax account of a branch equivalent tax account person, amounts calculated in accordance with the following formula:

$$a \times \frac{b}{c} - d$$

where—

- a is the amount of the person's unadjusted income tax liability for any income year
 - b is the amount that is the lesser of—
 - (i) the amount of any attributed CFC income derived by the person during that income year; and
 - (ii) the taxable income of the person for that income year
 - c is the taxable income referred to in **paragraph (ii)** of item “b”
 - d is any foreign tax credit allowed in accordance with **section LC 4 or LC 5** that is offset against the person's income tax liability for that income year.
- (2) Any such credit arises on the date on which the person files a return of income for the income year of the person in which the attributed CFC income referred to in item “b” of the formula in **subsection (1)** was derived.
- (3) There arise as debits to be recorded in the branch equivalent tax account of a branch equivalent tax account person for any income year the following amounts:
- (a) any of the credit balance of the account that the person elects in accordance with **section MF 14** is to be a credit against the income tax liability of the person:
 - (b) an amount equal to any refund of income tax to the extent that the refund would have been made had the person not derived any income other than attributed CFC income:
 - (c) the amount of the credit balance of the branch equivalent tax account where, during the income year, the person ceases to be resident in New Zealand.
- (4) The debits referred to in **subsection (3)** arise,—
- (a) in the case of a debit referred to in **subsection (3)(a)**, on the date the person makes the election in accordance with **section MF 14**:
 - (b) in the case of a debit referred to in **subsection (3)(b)**, on the date the refund is paid:
 - (c) in the case of a debit referred to in **subsection (3)(c)**, on the date the person ceases to be resident in New Zealand.

Compare: 1994 No 164 s MF 13

MF 14 Debit election to offset income tax payable in respect of foreign dividend

- (1) Where for any income year the income of a branch equivalent tax account person includes the amount of any dividend derived in respect of an income interest in a controlled foreign company, the person may elect that all or any part of the credit balance (if any) in the person's branch equivalent tax account at the time of the election is to be credited against the person's income tax liability for that income year.
- (2) A person makes an election under this section by recording the amount in respect of which the election is made as a debit in the person's branch equivalent tax account.
- (3) Where a person has made an election under this section in respect of the income tax liability for any income year, the amount of credit balance in respect of which the election is made is credited against any income tax liability of the person for that income year to the extent that—
 - (a) the amount credited does not exceed the amount that would be the person's income tax liability for the income year, if the only income of the person were the dividends referred to in **subsection (1)**; and
 - (b) the person has made a proper election in accordance with this section; and
 - (c) the person has paid income tax (including provisional tax), for the income year in respect of which the credit arose to the person's branch equivalent tax account, equal to or exceeding the credit balance so credited in payment.

Compare: 1994 No 164 s MF 14

MF 15 Extension of branch equivalent tax account provisions to certain FIF income

This subpart and **section NH 2** apply as if—

- (a) any FIF income of a person in respect of an attributing interest in a foreign investment fund—
 - (i) calculated under the accounting profits method or the branch equivalent method; or
 - (ii) in any case where **section EX 43(6)** or **EX 46** applies with respect to the FIF income, calculated under any calculation method,—

- were attributed CFC income of the person; and
- (b) the fund were a controlled foreign company; and
- (c) the interest of the person in the fund were an income interest.

Compare: 1994 No 164 s MF 15

Amalgamated companies

MF 16 Debits and credits arising to branch equivalent tax account of amalgamated company on amalgamation

- (1) Where any amalgamating company ceases to exist upon a qualifying amalgamation,—
 - (a) if, immediately before the amalgamation, a credit or debit exists, determined by applying the procedure set out in **sections GC 26 and MF 4(6)**, in the amalgamating company's branch equivalent tax account, the credit or debit is treated with effect from the time of the amalgamation as a credit or debit in the branch equivalent tax account of the amalgamated company and not as a credit or debit in the branch equivalent tax account of the amalgamating company but applying **section MF 4(1)(e) and (3)(d)** as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares as the amalgamating company each holding the same number and class of shares and options over shares as they held in the amalgamating company; and
 - (b) any credit (not being a credit arising under **section MF 4(1)(e)**) or debit (not being a debit arising under **section MF 4(3)(d)**) would have arisen, but for the amalgamation, to be recorded in the branch equivalent tax account of the amalgamating company on a date after the amalgamation, the credit or debit instead arises to be recorded in the branch equivalent tax account of the amalgamated company.
- (2) Where a consolidated group ceases to exist on a qualifying amalgamation which involves all members of the consolidated group amalgamating (whether or not also amalgamating with any company outside the group),—

- (a) if, immediately before the amalgamation, a credit or debit exists, determined by applying the procedure set out in **sections GC 26 and MF 4(6)**, in the consolidated group's branch equivalent tax account, the credit or debit is treated with effect from the time of the amalgamation as a credit or debit in the branch equivalent tax account of the amalgamated company and not as a credit or debit in the branch equivalent tax account of the consolidated group but applying **section MF 4(1)(e) and (3)(d)** as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the consolidated group with the same holders of shares and options over shares as the consolidated group each holding the same number and class of shares and options over shares as they held in the consolidated group; and
- (b) any credit or debit (not being a debit arising under **section MF 8(4)**) would have arisen, but for the amalgamation, to be recorded in the branch equivalent tax account of the consolidated group on a date after the amalgamation, the credit or debit instead arises to be recorded in the branch equivalent tax account of the amalgamated company.

Compare: 1994 No 164 s MF 16

Subpart MG—Dividend withholding payment accounts

MG 1 Balance of dividend withholding payment account

For the purposes of the dividend withholding payment rules, the balance of a dividend withholding payment account at any time is ascertained by calculating the difference in amount between the aggregate of credits and the aggregate of debits to the account existing at that time, and the account has—

- (a) a credit balance to the extent that credits exceed debits:
- (b) a debit balance to the extent that debits exceed credits.

Compare: 1994 No 164 s MG 1

MG 2 Company may elect to maintain dividend withholding payment account

- (1) A company that is resident in New Zealand may at any time elect to maintain a dividend withholding payment account for an imputation year.

- (2) A company that so elects must notify the Commissioner of that fact within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases.
- (3) A company that makes an election under **subsection (1)**—
 - (a) must maintain a dividend withholding payment account with effect from the date on which the company makes the election; and
 - (b) must, subject to this section, maintain a dividend withholding payment account for every imputation year subsequent to the one in which the election was made.
- (4) A company that has made an election under **subsection (1)** may, during any imputation year subsequent to that in which the election was made, elect that the company is to cease to be a dividend withholding payment account company, and, subject to **subsection (5)**, any company that so elects ceases, as from the commencement of the imputation year succeeding that in which the election to so cease is made, to be a company required to maintain a dividend withholding payment account.
- (5) An election under **subsection (4)** is of no effect unless the company—
 - (a) furnishes, within the time provided for in section 71 of the Tax Administration Act 1994, the annual dividend withholding payment return required in respect of the imputation year in which the election was made; and
 - (b) has paid any further dividend withholding payment that may be payable by the company for that imputation year under **section MG 9**.

Compare: 1994 No 164 s MG 2

MG 3 Dividend withholding payment account

- (1) Every dividend withholding payment account company must record in its dividend withholding payment account for each imputation year—
 - (a) the opening balance of the account for the imputation year, in accordance with **subsection (2)**;
 - (b) credits as they arise in accordance with **section MG 4**;
 - (c) debits as they arise in accordance with **section MG 5**.
- (2) The opening balance of the dividend withholding payment account for any imputation year is,—

- (a) for the imputation year during which the company commences to be a dividend withholding payment account company, nil:
- (b) for any subsequent imputation year, the amount of the closing balance of the dividend withholding payment account for the preceding imputation year, and such amount is—
 - (i) a credit arising to the account where the closing balance is a credit balance:
 - (ii) a debit arising to the account where the closing balance is a debit balance.

Compare: 1994 No 164 s MG 3

MG 4 Credits arising to dividend withholding payment account

- (1) There arise as credits to be recorded in a company's dividend withholding payment account for any imputation year the following amounts:
 - (a) the amount of dividend withholding payment paid by the company during the imputation year, other than dividend withholding payment that is paid by way of a crediting of further dividend withholding payment under **section MG 9(5)**:
 - (b) the amount of any dividend withholding payment credit attached to a dividend paid to the company during the imputation year:
 - (ba) the amount debited to the company's imputation credit account under **section ME 5(1)(o)** on account of net foreign attributed income:
 - (bb) the amount of dividend withholding payment payable under **section MI 10(4)** on account of a credit transferred from the company's conduit tax relief account under **section MI 6(2)**:
 - (bc) the amount of a dividend withholding payment paid by the company under **section MI 10(3)**:
 - (c) the amount of any further dividend withholding payment paid by the company during the imputation year under **section MG 9**:
 - (d) the amount of any debit arising to the account under **section MG 5(1)(h)** (which relates to debits arising in respect of dividend withholding payment credits determined to have been the subject of an arrangement to

obtain a tax advantage), to the extent that it is subsequently established that the relevant dividend withholding payment credit should not have been determined to be the subject of such an arrangement.

- (2) The credits referred to in **subsection (1)** arise,—
- (a) in the case of a credit referred to in **subsection (1)(a)**, on the date the dividend withholding payment is paid:
 - (b) in the case of a credit referred to in **subsection (1)(b)**, on the date the dividend is paid:
 - (ba) in the case of the credit referred to in **subsection (1)(ba)**, on the date the debit arises to the imputation credit account:
 - (bb) in the case of the credit referred to in **subsection (1)(bb)**, immediately before the end of the imputation year (whether or not the dividend withholding payment is paid by then):
 - (bc) in the case of the credit referred to in **subsection (1)(bc)**, on the date the dividend withholding payment is paid:
 - (c) in the case of a credit referred to in **subsection (1)(c)**, on the date the further dividend withholding payment is paid:
 - (d) in the case of a credit referred to in **subsection (1)(d)**, on the date that the relevant debit under **section MG 5(1)(h)** arose.
- (3) For the purposes of **subsection (1)**, a credit does not arise where, in accordance with **section NH 3(2) or (3)**, payment of all or part of a dividend withholding payment is satisfied by reducing a net loss.

Compare: 1994 No 164 s MG 4

MG 5 Debits arising to dividend withholding payment account

- (1) There arise as debits to be recorded in a company's dividend withholding payment account for any imputation year the following amounts:
- (a) the amount of any dividend withholding payment credit attached to a dividend paid by the company during the imputation year:
 - (b) in the case of a company carrying on a business of providing life insurance to which the life insurance rules apply, the amount of any credit balance of the

company's dividend withholding payment account that the company elects in accordance with **section MG 7** is to be a credit to the company's policyholder credit account:

- (c) any amount forming all or part of an end of imputation year credit balance in the account that the company elects in accordance with **section MG 11** is to be a credit to the company's imputation credit account:
- (ca) the amount of a credit transferred to the company's conduit tax relief account under **section MI 6(1)**:
- (d) the amount of a refund of dividend withholding payment paid to the company except—
 - (i) to the extent that the refund is for a dividend withholding payment paid prior to the date that a debit arises under **paragraph (i)**; and
 - (ii) a debit does not arise for a refund paid under **section MI 11**:
- (e) the amount of any credit of tax refunded to the company under **section LD 8(1)(a)**:
- (f) the amount of any allocation deficit debit arising in the account under **section MG 8**:
- (g) the amount of any allocation deficit debit arising in the account under **section MG 8(5)**:
- (h) the amount of any further debit arising to the dividend withholding payment account under **section GC 22** in relation to a dividend withholding payment credit determined to be the subject of an arrangement to obtain a tax advantage:
- (i) the amount of any particular credit in the company's dividend withholding payment account at any time (in this paragraph referred to as the **specified time**), not being a credit which has before the specified time been cancelled out by a prior or subsequent debit, unless there is a group of persons—
 - (i) the aggregate of whose minimum voting interests in the company in the period from the date upon which the credit arose until the specified time is equal to or greater than 66%; and
 - (ii) in any case where at any time during that period a market value circumstance exists in respect of the

- company, the aggregate of whose minimum market value interests in the company in the period is equal to or greater than 66%:
- (j) the amount of the credit balance, if any, of the dividend withholding payment account where, during the imputation year, the company ceases to be a dividend withholding payment account company:
 - (k) the amount of any overpaid dividend withholding payment that the Commissioner applies in satisfaction of an amount (other than dividend withholding payment) that is due and payable under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—
 - (i) is in respect of dividend withholding payment paid before the date that a debit arises under **paragraph (i)**; and
 - (ii) does not exceed the amount of the debit that arises on that date.
- (2) The debits referred to in **subsection (1)** arise,—
- (a) in the case of a debit referred to in **subsection (1)(a)**, on the date the dividend is paid:
 - (b) in the case of a debit referred to in **subsection (1)(b)**, on the date the company makes the election in accordance with **section MG 7**:
 - (c) in the case of a debit referred to in **subsection (1)(c)**, at the end of the imputation year in which there was the credit balance:
 - (ca) in the case of the debit referred to in **subsection (1)(ca)**, immediately before the end of the imputation year:
 - (d) in the case of a debit referred to in **subsection (1)(d) or (e)**, on the date the refund is paid:
 - (e) in the case of a debit referred to in **subsection (1)(f) or (g)**, at the end of the imputation year in respect of which the allocation deficit debit arises:
 - (f) in the case of a debit referred to in **subsection (1)(h)**, at the end of the imputation year in respect of which it is determined under **section GC 22** that the tax advantage arrangement occurred or commenced:
 - (g) in the case of a debit referred to in **subsection (1)(i)**, at the specified time referred to in that paragraph:

- (h) in the case of a debit referred to in **subsection (1)(j)**, immediately before the company ceases to be a dividend withholding payment account company:
 - (i) in the case of a debit referred to in **subsection (1)(k)**, on the date that the Commissioner applies the relevant amount in satisfaction of the other amount that is due and payable.
- (3) Subject always to the express provisions of this Act, **subsection (1)(i)** is intended to limit the circumstances in which a taxpayer, being a company, may carry forward a dividend withholding payment account credit for subsequent utilisation to those where the tax benefit arising from such utilisation is obtained or available to be obtained (directly or indirectly), at least to the extent of 66%, only by the same natural persons holding (directly or indirectly) rights in relation to the company who,—
 - (a) by virtue of holding (directly or indirectly) such rights, bore the dividend withholding payment liability giving rise to the dividend withholding payment account credit; or
 - (b) held (directly or indirectly) such rights at the time of the event giving rise to the dividend withholding payment account credit.
- (4) For the purposes of **subsection (1)(i)**,—
 - (a) in respect of any period referred to in that paragraph the minimum voting interest or market value interest of any person in the company in the period is equal to the lowest voting interest or market value interest, as the case may be, which that person holds in the company during that period; and
 - (b) **section MG 3(2)(b)** does not apply and any credit in the company's dividend withholding payment account is treated as continuing to exist until treated as being cancelled out by a prior or subsequent debit in accordance with **paragraph (c)**; and
 - (c) in determining whether any credit in the company's dividend withholding payment account has been cancelled out by any prior or subsequent debit,—
 - (i) any amount of debit may be taken into account only once for the purpose of ascertaining whether any credit has been so cancelled out; and

- (ii) the amount of any debit is offset against the amount of any credit in the order in which the credits arise; and
- (d) any credit arising on or before 16 December 1988 is deemed to have been cancelled out by a subsequent debit before the specified time referred to in that paragraph; and
- (e) in the case of any credit arising after 16 December 1988 and before 1 April 1992 (not being a credit cancelled out before 1 April 1992 by a subsequent debit), the credit is deemed first to arise in the company's dividend withholding payment account on 1 April 1992, but a debit is deemed to arise in accordance with **subsection (1)(i)** in respect of that credit at any time if and to the extent that, at that specified time, that credit still exists and a debit would have arisen in respect of that credit in accordance with section 394ZW(1)(f) of the Income Tax Act 1976 as that paragraph applied before its repeal and replacement by section 57 of the Income Tax Amendment Act (No 2) 1992, had that paragraph continued to apply but with the figure "75" omitted and the figure "66" substituted.

Compare: 1994 No 164 s MG 5

MG 6 Company may attach dividend withholding payment credit to dividend

- (1) A dividend withholding payment account company may, on payment of a dividend by the company, attach a dividend withholding payment credit to the dividend.
- (2) A dividend withholding payment account company that is also a conduit tax relief company may attach a dividend withholding payment credit to a dividend derived by a non-resident, but only to the extent allowed under **section MZ 4**.
- (3) The rules for determining residence in **sections OE 7 and OE 8** apply for the purposes of **subsection (2)**.

Compare: 1994 No 164 s MG 6

MG 7 Transfer by life insurance company of credit balance to policyholder credit account

- (1) Where a dividend withholding payment account company is also a policyholder credit account company but not a conduit

tax relief company, the company may elect that all or any part of the credit balance (if any) in the company's dividend withholding payment account at the time of election is to be a credit to the company's policyholder credit account and a debit to its dividend withholding payment account.

- (2) A company makes an election under this section by recording the amount in respect of which the election is made—
 - (a) as a debit in the company's dividend withholding payment account; and
 - (b) as a credit in its policyholder credit account.
- (3) Where a company that may make an election under **subsection (1)** furnishes a return of income under section 38 of the Tax Administration Act 1994 for a non-standard accounting year, then,—
 - (a) where and to the extent to which, in respect of any imputation year,—
 - (i) any credit has arisen to the company's dividend withholding payment account in accordance with **section MG 4(1)(a)** on or before the last day of that imputation year and during the accounting year in which the last day of that imputation year falls; and
 - (ii) the amount of that credit has not, on or before the last day of that imputation year, been cancelled out by any subsequent debit arising in accordance with **section MG 5(1)(d)**, by virtue of any refund of dividend withholding payment paid during that accounting year; and
 - (iii) the company has not, on or before the last day of that imputation year, elected in accordance with this section that the amount of that credit is to be transferred to the company's policyholder credit account,—

the company is deemed to have so elected on the last day of that imputation year:
 - (b) where and to the extent to which in any imputation year any credit has arisen to the company's dividend withholding payment account in accordance with **section MG 4(1)(b)**, then, notwithstanding any provision of this section, the company may not elect that any part of that credit is to be transferred to the company's policyholder

credit account on any day falling after the last day of that imputation year and during the accounting year in which the last day of that imputation year falls.

- (4) For the purposes of **subsection (3)(a)(ii)**, the amount of any debit referred to in that subparagraph is offset against the amount of any credits referred to in that subparagraph in the order in which the credits arise.

Compare: 1994 No 164 s MG 7

MG 8 Allocation rules for dividend withholding payment credits

- (1) A company must not attach to a dividend a dividend withholding payment credit of such an amount that the dividend withholding payment ratio of the dividend would exceed the ratio calculated in accordance with the following formula:

$$\frac{a}{1 - a}$$

where—

- a is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5** and applying in respect of the income year that is concurrent with the imputation year in which the dividend is paid.
- (2) Where a dividend withholding payment account company has paid a benchmark dividend in any imputation year, the company must, unless it makes a ratio change declaration in accordance with **subsection (3)**, ensure that the dividend withholding payment ratio of every subsequent dividend paid by the company during that imputation year is the same as the dividend withholding payment ratio of the benchmark dividend; and for the purposes of this subsection any benchmark dividend with a dividend withholding payment ratio exceeding the ratio specified in **subsection (1)** is deemed to have the ratio so specified.
- (3) The dividend withholding payment ratio of a subsequent dividend may differ from that of a benchmark dividend if—
- (a) an officer of the company declares, in a ratio change declaration in the prescribed form, that the subsequent dividend is not being paid as part of an arrangement to obtain a tax advantage within the meaning of **section GC 22**, and provides such further information as may be prescribed; and

- (b) the ratio change declaration is delivered to the Commissioner before the date of payment of the subsequent dividend, or before such later date as the Commissioner may allow in any case or class of cases; and
 - (c) the subsequent dividend is not paid as part of an arrangement to obtain a tax advantage within the meaning of **section GC 22**.
- (4) Where the dividend withholding payment ratio of a subsequent dividend differs from the dividend withholding payment ratio of a benchmark dividend in contravention of **subsection (2)**, there arises an allocation deficit debit of an amount calculated in accordance with the following formula: $(a \times b) - c$
- where—
- a is the aggregate of the amount of all dividends paid by the company during the imputation year (exclusive of any imputation credit or dividend withholding payment credit)
 - b is the lesser of—
 - (i) the dividend withholding payment ratio of the dividend with the greatest dividend withholding payment ratio of all dividends paid by the company during the income year; and
 - (ii) the ratio calculated in accordance with the formula stated in **subsection (1)**
 - c is the aggregate of all dividend withholding payment credits attached to dividends paid by the company during the imputation year.
- (5) Where, in respect of any imputation year and any company that is a policyholder credit account company but not a conduit tax relief company, the dividend withholding payment credit transfer fraction calculated in accordance with **subsection (6)** is less than the imputation credit transfer fraction calculated in accordance with **subsection (7)**,—
- (a) there arises (separate from and additional to any allocation deficit debit arising to the company's account under **subsection (4)**) an allocation deficit debit in the company's dividend withholding payment account in respect of that difference; and
 - (b) the amount of that allocation deficit debit is equal to the amount that would require to be added to item "a" of

the formula set out in **subsection (6)**, in relation to the imputation year, in order for the fraction calculated in accordance with that formula to be equal to the fraction calculated in accordance with the formula set out in **subsection (7)**.

- (6) For the purposes of **subsection (5)**, the dividend withholding payment credit transfer fraction in relation to a company and an imputation year is the fraction calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the aggregate of all amounts of credit balance in the company's dividend withholding payment account that the company has elected in accordance with **section MG 7** is to be a credit to the company's policyholder credit account in that imputation year
- b is the aggregate of all credits to the company's dividend withholding payment account that have arisen in that imputation year in accordance with **section MG 4(1)**.
- (7) For the purposes of **subsection (5)**, the imputation credit transfer fraction in relation to a company and an imputation year is the fraction calculated in accordance with the following formula:

$$\frac{e - f}{g}$$

where—

- e is the aggregate of all amounts of credit balance in the company's imputation credit account that the company has elected in accordance with **section ME 7** is to be a credit to the company's policyholder credit account in that imputation year
- f is the aggregate of all amounts of credit balance in the company's policyholder credit account that the company has elected in accordance with **section ME 19** is to be a credit to the company's imputation credit account in that imputation year
- g is the aggregate of all credits to the company's imputation credit account that have arisen in that imputation year in accordance with **section ME 4(1)** (not being credits that have arisen in accordance with **paragraph (j)** of that subsection).

- (8) Nothing in this section applies to a dividend that is the subject of a determination made by a statutory producer board or a co-operative company in accordance with **section ME 30 or ME 35**.

Compare: 1994 No 164 s MG 8

MG 9 Further dividend withholding payment payable by company

- (1) Where there is a debit balance in a company's dividend withholding payment account at the end of any imputation year, and the company is not a company that is liable to pay a further dividend withholding payment under **subsection (3)**, the company is liable to pay to the Commissioner a further dividend withholding payment of an amount equal to that debit balance.
- (2) A company must pay any further dividend withholding payment to which it is liable under **subsection (1)** not later than the 20 June following the end of the imputation year for which there was the debit balance.
- (3) Where there is a debit balance in a company's dividend withholding payment account immediately before the company ceases to be resident in New Zealand, the company is liable to pay to the Commissioner a further dividend withholding payment of an amount equal to that debit balance.
- (4) A company must pay any further dividend withholding payment to which it is liable under **subsection (3)** not later than the last day on which it is still resident in New Zealand.
- (5) Where a company pays any further dividend withholding payment for which it is liable under this section, that further dividend withholding payment may be credited in payment of any dividend withholding payment for which the company becomes liable after the date of that payment, but, to the extent that it cannot be so credited, whether by reason of the company being liquidated or for any other reason, must be retained by the Commissioner.
- (6) Subject to this section and section 103 of the Tax Administration Act 1994, the provisions of this Act and of the Tax Administration Act 1994 (other than the dividend withholding payment rules), so far as they are applicable and with any necessary modifications, apply with respect to any further

dividend withholding payment for which a company is chargeable under this section as if it were income tax.

Compare: 1994 No 164 s MG 9

MG 10 Dividend with both imputation credit and dividend withholding payment credit attached

- (1) Where a company pays a dividend with both an imputation credit and a dividend withholding payment credit attached, the company must ensure that the combined imputation and dividend withholding payment ratio of the dividend does not exceed the ratio calculated in accordance with the following formula:

$$\frac{a}{1 - a}$$

where—

- a is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year that is concurrent with the imputation year in which the dividend is paid.
- (2) Where a company pays a dividend with a combined imputation and dividend withholding payment ratio exceeding the ratio stated in **subsection (1)**, there is an excess credit amount in relation to the dividend of an amount calculated in accordance with the following formula: $a \times (b - c)$

where—

- a is the amount of the dividend paid (excluding the imputation credit and the dividend withholding payment credit)
- b is the combined imputation and dividend withholding payment ratio of the dividend
- c is the combined imputation and dividend withholding payment ratio calculated in accordance with the formula stated in **subsection (1)**.

Compare: 1994 No 164 s MG 10

MG 11 Transfer of credit balance to imputation credit account

- (1) A company, which is not a conduit tax relief company, that has a credit balance in its dividend withholding payment account—
- (a) at the end of any imputation year; or

- (b) immediately before the arising of the debit referred to in **section MG 5(1)(j)**, where the company ceases to be resident in New Zealand,—
may elect that all or any part of that credit balance is to be a credit to the company's imputation credit account and a debit to its dividend withholding payment account for the imputation year in which the credit balance occurred.
- (2) A company makes an election under this section by recording the amount in respect of which it makes the election—
- (a) as a debit in the company's dividend withholding payment account; and
- (b) as a credit in its imputation credit account.

Compare: 1994 No 164 s MG 11

Credits and debits incorrectly recorded

MG 12 Determinations by Commissioner as to credits and debits arising to dividend withholding payment credit account

- (1) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's dividend withholding payment account is not the correct amount that should have been recorded in respect of the credit or debit, the Commissioner must determine the amount of the credit or debit properly arising to the account.
- (2) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's dividend withholding payment account should not have been so recorded, the Commissioner must determine accordingly.
- (3) Where the Commissioner considers that any amount recorded as a credit or a debit arising to a company's dividend withholding payment account should not have been recorded as arising at the time it was recorded as arising, the Commissioner must determine the time at which the credit or debit properly arose to the account.
- (4) Where the Commissioner considers that any amount that has not been recorded as a credit or debit arising to a company's dividend withholding payment account should have been so recorded, the Commissioner must determine—
- (a) the amount of the credit or debit so arising; and

- (b) the time at which the credit or debit arose to the account.
- (5) Where the Commissioner makes a determination under any of **subsections (1) to (4)**, then, except in so far as the company establishes on objection that any credit or debit was correctly recorded, or not recorded, as the case may be, in the dividend withholding payment account,—
- (a) the relevant credit or debit in the account is deemed to have arisen, or not to have arisen, or is deemed to have been the amount determined by the Commissioner under **subsection (1)**, as the case may require, effective on the date on which the debit or credit originally arose, or is determined by the Commissioner as having arisen:
 - (b) the company must make such other corrections in respect of any credits or debits or balances arising to its dividend withholding payment account or imputation credit account or branch equivalent tax account, whether for the imputation year to which the determination related or for any subsequent imputation year, as may be necessary or as may be directed by the Commissioner as a consequence of the determination in relation to the amount incorrectly recorded, or not recorded.
- (6) As soon as is convenient after a determination is made under any of **subsections (1) to (4)**, the Commissioner must give notice of the determination to the company in respect of whose dividend withholding payment account the determination is made.
- (7) Any such notice may be included in a notice of assessment made under section 111(1) of the Tax Administration Act 1994.
- (8) An omission to give the notice referred to in **subsection (6)** does not invalidate the determination.

Compare: 1994 No 164 s MG 12

Consolidated groups

MG 13 Dividend withholding payment accounts and consolidated groups

- (1) A consolidated group—

-
- (a) must maintain a dividend withholding payment account if, in that imputation year, any company which is a member of that consolidated group at any time in that imputation year maintains a dividend withholding payment account; and
- (b) may at any time elect to maintain a dividend withholding payment account for an imputation year,—
which group dividend withholding payment account must be separate from the dividend withholding payment account of each company which is a member of the consolidated group.
- (2) Where a consolidated group has elected to maintain a dividend withholding payment account under **subsection (1)**,—
- (a) the nominated company for the group must notify the Commissioner of that fact within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases; and
- (b) the group must maintain a dividend withholding payment account with effect from the date of the election and, subject to **subsection (4)**, for every imputation year subsequent to that imputation year in which the election was made.
- (3) The opening balance of the dividend withholding payment account of a consolidated group for any imputation year is—
- (a) nil, for the imputation year during which the consolidated group commences to maintain a dividend withholding payment account; and
- (b) the amount of the closing balance of the dividend withholding payment account for the preceding imputation year (being a credit or debit, as the case may be), in any other case.
- (4) Subject to **subsection (5)**, the nominated company for a consolidated group that maintains a dividend withholding payment account may elect at any time that the group is to cease to maintain a dividend withholding payment account and, where such an election is made, the group ceases to be required to maintain a group dividend withholding payment account from the commencement of the imputation year succeeding that in which the election so to cease is made.
- (5) An election under **subsection (4)**—
- (a) in any case where the nominated company for the group has elected to maintain a dividend withholding payment

- account, may only be made during an imputation year subsequent to the imputation year in which the election to maintain the account was made; and
- (b) is of no effect if the group is required to maintain a dividend withholding payment account under **subsection (1)(a)** in respect of the imputation year from the commencement of which the election to cease would otherwise take effect; and
 - (c) is of no effect unless—
 - (i) the annual dividend withholding payment return required in respect of the imputation year in which the election was made is furnished within the time provided for in section 71 of the Tax Administration Act 1994; and
 - (ii) any further dividend withholding payment that may be payable by the group for that imputation year under **section MG 9** is paid by the date specified in **section MG 9(2)**.

Compare: 1994 No 164 s MG 13

MG 14 Credits arising to group dividend withholding payment account

- (1) There arise as credits to be recorded in the dividend withholding payment account of a consolidated group for any imputation year the following amounts:
 - (a) the amount of dividend withholding payment paid during the imputation year by any company that is a member of the consolidated group in respect of a dividend paid to a company which is at the time of payment of the dividend a member of the consolidated group, except where and to the extent that—
 - (i) the dividend withholding payment is paid by way of a crediting of further dividend withholding payment under **section MG 9(5) or MG 16(6)**; or
 - (ii) payment of the dividend withholding payment is satisfied by reducing a net loss under **section NH 5(4)**;
 - (b) the amount of any dividend withholding payment credit attached to a dividend paid during the imputation year to a company which is at the time of payment a member of the consolidated group:

- (c) the amount of any further dividend withholding payment paid during the imputation year in respect of the group's dividend withholding payment account under **section MG 9**;
 - (d) the amount of any debit arising to the account under **section MG 15(1)(h)**, to the extent that it is subsequently established that the relevant dividend withholding payment credit should not have been determined to be the subject of an arrangement to which that paragraph applies;
 - (e) the amount of any credit arising during the imputation year to the dividend withholding payment account under **section MG 16(2)**;
 - (f) the amount debited to the group's imputation credit account under **section ME 12(1)(n)** on account of net foreign attributed income.
- (2) The credits referred to in **subsection (1)** arise,—
- (a) in the case of the credits referred to in **subsection (1)(a), (b), and (c)**, on the date the relevant dividend withholding payment, dividend, or further dividend withholding payment is paid;
 - (b) in the case of a credit referred to in **subsection (1)(d)**, on the date that the relevant debit under **section MG 15(1)(h)** arose;
 - (c) in the case of the credit referred to in **subsection (1)(e)**, immediately before the relevant debit referred to in **section MG 16(2)(b)** arose to the dividend withholding payment account;
 - (d) in the case of a debit referred to in **subsection (1)(f)**, on the date the debit arises in the group's imputation credit account.

Compare: 1994 No 164 s MG 14

MG 15 Debits arising to group dividend withholding payment account

- (1) There arise as debits to be recorded in the dividend withholding payment account of a consolidated group for any imputation year the following amounts:
- (a) the amount of any dividend withholding payment credit attached to a dividend paid during the imputation year

- by any company which is, at the time of payment, a member of the consolidated group:
- (b) the amount of any credit balance of the dividend withholding payment account that the nominated company for the consolidated group elects in accordance with **section NH 6(2)** during the imputation year is a credit to the policyholder credit account of the consolidated group:
 - (c) any amount forming all or part of an end of imputation year balance in the account that the nominated company for the consolidated group elects in accordance with **section NH 6(6)** to be a credit to the imputation credit account of the consolidated group:
 - (d) the amount of any refund of dividend withholding payment paid during the imputation year under **section NH 4** in respect of a dividend withholding payment paid in respect of a dividend paid to a company which at the time of payment of the dividend was a member of the consolidated group, except that, where the refund is in respect of a dividend withholding payment paid before the date that a debit arises under **paragraph (i)**, a debit does not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date:
 - (e) the amount of any credit of tax refunded under **section LD 8(1)(c)** in respect of a dividend paid to a company which is at the time of payment a member of the consolidated group:
 - (f) the amount of any allocation deficit debit arising in the account under **section MG 8** in respect of any company which is at the time of payment of the relevant dividend a member of the consolidated group:
 - (g) the amount of any allocation deficit debit arising in the account under **section MG 8(5)**:
 - (h) the amount of any further debit arising during the imputation year to the dividend withholding payment account under **section GC 22** in relation to a dividend withholding payment credit determined to be the subject of an arrangement to obtain a tax advantage:
 - (i) the amount of any debit that would arise under **section MG 5(1)(i)** if that provision were to apply, with any necessary modifications, to a consolidated group and its

- dividend withholding payment account as if it were a single company:
- (j) the amount of the credit balance, if any, of the dividend withholding payment account where the consolidated group ceases to maintain a dividend withholding payment account:
 - (k) the amount of any debit arising during the imputation year to the dividend withholding payment account under **section MG 16(5)**:
 - (l) the amount of any overpaid dividend withholding payment paid by a company in respect of a dividend derived by the company, which is at the time of derivation a member of the consolidated group, that the Commissioner applies in satisfaction of an amount (other than dividend withholding payment) that is due and payable by a company that is a member of the consolidated group under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—
 - (i) is in respect of dividend withholding payment paid before the date that a debit arises under **paragraph (i)**; and
 - (ii) does not exceed the amount of the debit that arises on that date.
- (2) The debits referred to in **subsection (1)** arise,—
- (a) in the case of a debit referred to in **subsection (1)(a)**, on the date the dividend is paid:
 - (b) in the case of a debit referred to in **subsection (1)(b)**, on the date the company makes the election in accordance with **section NH 6(2)**:
 - (c) in the case of a debit referred to in **subsection (1)(c)**, at the end of the imputation year in which there was the credit balance:
 - (d) in the case of the debits referred to in **subsection (1)(d) and (e)**, on the date the refund is paid:
 - (e) in the case of the debits referred to in **subsection (1)(f) and (g)**, at the end of the imputation year in respect of which the allocation deficit debit arises:
 - (f) in the case of a debit referred to in **subsection (1)(h)**, at the end of the imputation year in respect of which it is determined under **section GC 22** that the tax advantage arrangement occurred or commenced:

- (g) in the case of a debit referred to in **subsection (1)(i)**, at the specified time:
- (h) in the case of a debit referred to in **subsection (1)(j)**, immediately before the consolidated group ceases to maintain a dividend withholding payment account:
- (i) in the case of a debit referred to in **subsection (1)(k)**, at the time first referred to in **section MG 16(5)**:
- (j) in the case of a debit referred to in **subsection (1)(l)**, on the date that the Commissioner applies the relevant amount in satisfaction of the other amount that is due and payable.

Compare: 1994 No 164 s MG 15

MG 16 Debiting and crediting between group and individual dividend withholding payment accounts

- (1) Where—
 - (a) any credit arises to the dividend withholding payment account of a consolidated group in respect of any dividend withholding payment paid or dividend withholding payment credit attached to a dividend derived; or
 - (b) any debit arises to the dividend withholding payment account in respect of any dividend withholding payment credit attached to a dividend paid, any dividend withholding payment or tax credit refunded, or any allocation debit arising under **section ME 8(4)**,—
that credit or debit does not arise to the dividend withholding payment account of any individual company.
- (2) Subject to **subsection (4)**, where and to the extent that at any time—
 - (a) a company which is at that time a member of a consolidated group has a credit in its individual dividend withholding payment account (such credit being in this section referred to as the **company credit**); and
 - (b) a debit arises under **section MG 15** to be recorded in the dividend withholding payment account of the consolidated group; and
 - (c) that debit is not offset, determined by applying the procedure set out in **section MG 5(4)(c)**, against any credit in the consolidated group's dividend withholding payment account which arose before the date or on the same date upon which the company credit arose,—

the company credit is, to the extent of that debit, credited to the dividend withholding payment account of the consolidated group, and that credit to the group's dividend withholding payment account is, for the purposes of section **MG 15(1)(i)**, deemed to have been cancelled out by that debit notwithstanding **section MG 5**.

- (3) Where at any time all or part of any credit in a company's dividend withholding payment account is credited to the dividend withholding payment account of a consolidated group, an amount equal to the credit so arising arises as a debit at that time to be recorded under **section MG 5** in the company's dividend withholding payment account.
- (4) Where under **subsection (2)** credits in the individual dividend withholding payment accounts of 2 or more members of a consolidated group would, but for this subsection, be required to be credited to the group's dividend withholding payment account, those credits must be credited—
 - (a) in the order in which those credits arose, determined by applying the procedure set out in **section MG 5(4)(c)**; and
 - (b) if 2 or more credits arose at the same time,—
 - (i) in the order elected by the consolidated group; or
 - (ii) if no such election is made, on a pro rata basis,—so far as the relevant debit to the group's dividend withholding payment account extends and no further.
- (5) Where and to the extent that at any time—
 - (a) a debit would, but for this subsection, arise in the individual dividend withholding payment account of a company which is at that time a member of a consolidated group; and
 - (b) the arising of that debit would result in or increase a debit balance in the individual dividend withholding payment account of the company,—that debit does not arise to the company's dividend withholding payment account but is debited to the consolidated group's dividend withholding payment account.
- (6) Where at any time—
 - (a) a company has paid any further dividend withholding payment under **section MG 9** in respect of a debit balance in its individual dividend withholding payment account; and

- (b) the company is entitled under **section MG 9(5)** to credit that further dividend withholding payment in payment of any dividend withholding payment for which the company becomes liable at or after that time; and
- (c) the company is at that time a member of a consolidated group,—

the further dividend withholding payment may be credited in payment of any dividend withholding payment payable at or after that time by any company which is at that time a member of the consolidated group and, to the extent so credited, is not available to be credited under **section MG 9(5)**.

Compare: 1994 No 164 s MG 16

MG 16A Application of specific dividend withholding provisions to consolidated groups

- (1) **Section MG 8** applies, with any necessary modifications, to a consolidated group as if it were a single company but, for the purposes of **section MG 8(2) to (4)**, dividends paid by 1 member of the consolidated group to another member of the consolidated group are not taken into account.
- (2) **Section MG 9** and sections 103, 104, 139B, 140C, 140D and 181 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated group and its dividend withholding payment account as if—
 - (a) the consolidated group were a single company; and
 - (b) each reference to a provision of this Act were a reference to the equivalent provision that applies to consolidated groups; and
 - (c) each reference to the liability of a company for further dividend withholding payment, late payment penalty, or dividend withholding payment penalty tax were, subject to the application of **section HB 1(2) to (5)**, a reference to a joint and several liability of each company which is a member of the group at the time the liability becomes payable.
- (3) **Sections GC 22 and MG 12** apply, with any necessary modifications, to the dividend withholding payment account of a consolidated group, as if—
 - (a) the consolidated group were a single company; and

- (b) each reference to a provision of this Act were a reference to the equivalent provision that applies to the accounts of a consolidated group.

Compare: 1994 No 164 s MG 16A

Amalgamated companies

MG 17 Debits and credits arising to dividend withholding payment account of amalgamated company on amalgamation

- (1) Where any amalgamating company ceases to exist upon a qualifying amalgamation,—
- (a) if, immediately before the amalgamation, a credit or debit exists, determined by applying the procedure set out in **sections GC 27 and MG 5(4)**, in the amalgamating company's dividend withholding payment account, the credit or debit is treated with effect from the time of the amalgamation as a credit or debit in the dividend withholding payment account of the amalgamated company (or, if the amalgamated company does not have a dividend withholding payment account, in its imputation credit account) and not as a credit or debit in the dividend withholding payment account of the amalgamating company but applying **section MG 5(1)(i)** as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares as the amalgamating company each holding the same number and class of shares and options over shares as they held in the amalgamating company; and
- (b) any credit or debit (not being a debit arising under **section MG 5(1)(i)**) would have arisen, but for the amalgamation, to be recorded in the dividend withholding payment account of the amalgamating company on a date after the amalgamation, the credit or debit instead arises to be recorded in the dividend withholding payment account of the amalgamated company (or, if the amalgamated company does not have a dividend withholding payment account, its imputation credit account).

- (2) Where a consolidated group ceases to exist on a qualifying amalgamation which involves all members of the consolidated group amalgamating (whether or not also amalgamating with any company outside the group),—
- (a) if, immediately before the amalgamation, a credit or debit exists, determined by applying the procedure set out in **sections GC 27 and MG 5(4)**, in the consolidated group's dividend withholding payment account, the credit or debit is treated with effect from the time of the amalgamation as a credit or debit in the dividend withholding payment account of the amalgamated company (or, if the amalgamated company does not have a dividend withholding payment account, in its imputation credit account) and not as a credit or debit in the dividend withholding payment account of the consolidated group but applying **section MG 5(1)(i)** as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the consolidated group with the same holders of shares and options over shares as the consolidated group each holding the same number and class of shares and options over shares as they held in the consolidated group; and
 - (b) any credit or debit (not being a debit arising under **section MG 15(1)(i)**) would have arisen, but for the amalgamation, to be recorded in the dividend withholding payment account of the consolidated group on a date after the amalgamation, the credit or debit instead arises to be recorded in the dividend withholding payment account of the amalgamated company (or, if the amalgamated company does not have a dividend withholding payment account, its imputation credit account).

Compare: 1994 No 164 s MG 17

Subpart MH—Payment of tax by public authorities

MH 1 Payment of tax by public authorities

All money payable as income tax or any other tax or amount under this Act by any public authority is payable without further appropriation than this section.

Compare: 1994 No 164 s MH 1

Subpart MI—Conduit tax relief accounts

MI 1 Balance of conduit tax relief account

- (1) The balance of a conduit tax relief account is the difference between the aggregate amounts of credits and debits existing in the account.
- (2) The account has—
 - (a) a credit balance if credits exceed debits;
 - (b) a debit balance if debits exceed credits.

Compare: 1994 No 164 s MI 1

MI 2 Company may elect to be conduit tax relief company and maintain conduit tax relief account

- (1) A dividend withholding payment account company may elect to be a conduit tax relief company for an imputation year.
- (2) The company must notify the Commissioner of its election by the date the company must furnish its return of income for the tax year corresponding with the imputation year.
- (3) An election is effective from the date it is notified to the Commissioner for the purposes of **sections LG 1(1), MG 6, MI 7, MZ 4, and NH 7**, but otherwise from the start of the imputation year.
- (4) The company must maintain a conduit tax relief account from the beginning of the imputation year and for every subsequent imputation year until revocation under **subsection (5)** takes effect.
- (5) The company may revoke its election.
- (5A) A revocation of an election is effective from the beginning of the imputation year immediately succeeding the imputation year in which the revocation is made.
- (6) Revocation is of no effect unless the company—
 - (a) furnishes the annual imputation return required for the imputation year in which the revocation election was made within the time limit in section 69 of the Tax Administration Act 1994; and
 - (b) has paid any dividend withholding payment payable in respect of that cessation under **section MI 10(3)**.
- (6A) A company is treated as having revoked its election if it elects to cease to be a dividend withholding payment account company under **section MG 2(4)**.

- (7) A company that revokes its election must maintain the account until the end of the imputation year in which the revocation is made.

Compare: 1994 No 164 s MI 2

MI 3 Conduit tax relief account

- (1) For each imputation year, a company must record the following in its conduit tax relief account:
- the opening balance calculated under **subsection (2)**;
 - credits arising under **section MI 4**;
 - debits arising under **section MI 5**.
- (2) The opening balance of the account is,—
- for the first imputation year the company is a conduit tax relief company, nil; and
 - for subsequent imputation years, the closing balance of the account at the end of the preceding imputation year.

Compare: 1994 No 164 s MI 3

MI 4 Credits arising to conduit tax relief account

- (1) In an imputation year, a company's conduit tax relief account must be credited by the following amounts:
- an income tax rebate allowed to the company under **section KH 1**;
 - a dividend withholding payment reduction allowed to the company under **section NH 7** for a dividend paid to the company during the imputation year;
 - a conduit tax relief credit attached to a dividend derived by the company;
 - the amount of a debit arising under **section MI 5(1)(d)**, to the extent it is subsequently established that the relevant conduit tax relief credit was not part of an arrangement to obtain a tax advantage;
 - a credit transferred from the company's dividend withholding payment account under **section MI 6(1)**.
- (2) The credits arise at the following times:
- in the case of an income tax rebate credit,—
 - on the last day of the imputation year that corresponds to the tax year, to the extent of the amount calculated under the following formula:
$$\frac{\text{PROV} \times \text{CTR}}{\text{XFER}}$$

where—

PROV is the amount debited on the last day of the imputation year under **section ME 5(2)(l)(i)**

XFER is the total amount to be transferred from the imputation credit account to the dividend withholding payment account under **section ME 5(1)(o)**

CTR is the amount of income tax rebate to be credited under **subsection (1)(a)**; and

- (ii) to the extent that **subparagraph (i)** does not apply, on the date the company files the return of income for the tax year:
 - (b) in the case of a dividend withholding payment reduction credit, on the date the company is required to pay the Commissioner the dividend withholding payment reduced by **section NH 7**:
 - (c) in the case of a credit for a conduit tax relief credit attached to a dividend, on the date the dividend is paid:
 - (d) in the case of the subsequent correction credit, on the date the relevant debit arose under **section MI 5(1)(d)**:
 - (e) in the case of a transferred credit, immediately before the end of the imputation year.

Compare: 1994 No 164 s MI 4

MI 5 Debits arising to conduit tax relief account

- (1) In an imputation year, a company's conduit tax relief account must be debited by the following amounts:
 - (a) a conduit tax relief credit attached to a dividend paid by the company during the imputation year:
 - (b) the amount of conduit tax relief adjustment calculated under **section FH 8(5)**:
 - (c) an allocation deficit debit arising under **section MG 8**, as applied by **section MI 8**:
 - (d) a debit arising to the account under **section GC 22**, as applied by **section MI 9**:
 - (e) a credit in the account at any time (that is not previously cancelled by a debit) if, since the time the credit arose, there has been an increase of 34 or more percentage points in the percentage of the company's shareholders who are resident in New Zealand, as measured under **subsection (3)**:

- (f) a credit in the account at any time (that is not previously cancelled by a debit) if and to the extent that—
 - (i) the credit arose under **section MI 4(1)(a) or (b)**; and
 - (ii) the credit would not have arisen but for **sections OE 7 and OE 8(3)(b)** applying to deem a conduit tax relief group member to be a non-resident; and
 - (iii) the conduit tax relief group member ceases to be a conduit tax relief group member because **section OE 7(3)(c)** is no longer satisfied:
 - (g) a credit in the account at any time (that is not previously cancelled by a debit) if—
 - (i) the company is a conduit tax relief group member in respect of another conduit tax relief company; and
 - (ii) the credit arose under **section MI 4(1)(c)** when the company received a dividend with a conduit tax relief credit attached from the other conduit tax relief company; and
 - (iii) the company ceases at that time to be a conduit tax relief group member because **section OE 7(3)(c)** is no longer satisfied:
 - (h) the credit balance (if any) of the account if the company ceases to be a conduit tax relief company during the imputation year:
 - (i) a credit transferred from the account to the company's dividend withholding payment account under **section MI 6(2)**:
 - (j) the amount of a credit transferred to the conduit tax relief account of a consolidated group under **section MI 19**.
- (2) The debits referred to in **subsection (1)** arise at the following times:
- (a) in the case of a dividend attachment debit, on the date the dividend is paid:
 - (b) in the case of a conduit tax relief adjustment, on the date on which the income tax return for the tax year for which the adjustment is made is filed:
 - (c) in the case of an allocation deficit debit, at the end of the imputation year in which the debit arises:
 - (d) in the case of a tax advantage arrangement debit, at the end of the imputation year in which the arrangement commenced:

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- (e) in the case of a resident shareholder percentage debit, at the time the 34 percentage point change threshold is first reached:
 - (f) in the case of the chain break debits referred to in **subsection (1)(f) and (g)**, at the time the group relationship ceases:
 - (g) in the case of a termination debit, immediately before the company ceases to be a conduit tax relief company:
 - (h) in the case of a credit transfer debit, immediately before the end of the imputation year:
 - (i) in the case of a debit for an amount transferred to the conduit tax relief account of a consolidated group under **section MI 19**, on the date of transfer.
- (3) The percentage of shareholders of a conduit tax relief company who are resident in New Zealand at the time is the highest of—
- (a) the percentage of direct voting interests held in the company by residents; and
 - (b) the percentage of direct market value interests held in the company (if a direct market value circumstance exists) by residents; and
 - (c) the percentage of total dividends payable by a company (if the shares in the company are not all shares of the same class) that would be derived by residents, if the company were liquidated at the relevant time.
- (4) **Subsection (1)(e)** does not apply to the extent that the increase in shareholders resident in New Zealand is solely because **section OE 7(1)(c)** is not satisfied.
- (5) For the purposes of **subsection (1)(e), (f), and (g)**, in determining whether a credit has been cancelled out by a subsequent debit,—
- (a) **section MI 3(2)(b)** does not apply; and
 - (b) an amount of debit can only cancel out a credit once; and
 - (c) a debit is offset against credits in the order in which the credits arise.
- (6) A debit arises under **subsection (1)(e)** if it would have arisen but for an arrangement that affects the shares in the company, if a purpose or effect of the arrangement is to defeat the intent and application of **subsection (1)(e)**.

- (7) The rules for determining residence in **sections OE 7 and OE 8** apply for the purposes of **subsections (1)(f) and (2)**.

Compare: 1994 No 164 s MI 5

MI 6 End of imputation year clearing transfer to or from dividend withholding payment account

- (1) If, immediately before the end of the imputation year and before a transfer is made under this subsection (but after any transfer from the imputation credit account is credited under **section ME 5(2)(l)(i)** and any amount is credited to the conduit tax relief account under **section MI 4(2)(a)(i)**), a conduit tax relief company's dividend withholding payment account is in credit and its conduit tax relief account is in debit, the company must transfer from the dividend withholding payment account to the conduit tax relief account the lesser of the 2 balances.
- (2) If, immediately before the end of the imputation year and before a transfer is made under this subsection (but after any transfer from the imputation credit account is credited under **section ME 5(2)(l)(i)** and any amount is credited to the conduit tax relief account under **section MI 4(2)(a)(i)**), a conduit tax relief company's dividend withholding payment account is in debit and its conduit tax relief account is in credit, the company must transfer from the conduit tax relief account to the dividend withholding payment account the lesser of the 2 balances.

Compare: 1994 No 164 s MI 6

MI 7 Attachment of conduit tax relief credit to dividend

- (1) A conduit tax relief company may attach a conduit tax relief credit to a dividend when it pays the dividend to a non-resident.
- (2) The rules for determining residence in **sections OE 7 and OE 8** apply for the purposes of **subsection (1)**.

Compare: 1994 No 164 s MI 7

MI 8 Allocation rules for conduit tax relief credits

- (1) **Sections MG 8 and MG 10** and the definitions of **dividend withholding payment ratio** and **combined imputation and dividend withholding payment ratio** apply as if a conduit tax relief credit were a dividend withholding payment credit.

- (2) To the extent that an allocation deficit debit arises under **section MG 8** only as a result of **subsection (1)**, the allocation deficit debit is debited to the conduit tax relief account and not the dividend withholding payment account.

Compare: 1994 No 164 s MI 8

MI 9 Arrangement to obtain a tax advantage

- (1) **Section GC 22** and the definitions of **dividend withholding payment ratio** and **combined imputation and dividend withholding payment ratio** apply as if a conduit tax relief credit were a dividend withholding payment credit.
- (2) To the extent that a further debit arises under **section GC 22** only as a result of **subsection (1)**, the further debit is debited to the conduit tax relief account and not the dividend withholding payment account.

Compare: 1994 No 164 s MI 9

MI 10 Further dividend withholding payment payable in respect of conduit tax relief account debits

- (1) If a debit arises to a company's conduit tax relief account under **section MI 5(1)(c), (d), or (e)**, the company must pay, to the Commissioner, a further amount of dividend withholding payment equal to that debit within 20 days of the end of the quarter in which the debit arises.
- (2) The further amount of dividend withholding payment does not give rise to a credit in the company's dividend withholding payment credit account.
- (3) If a debit arises to a company's conduit tax relief account under **section MI 5(1)(f), (g), or (h)**, the company must pay the Commissioner an amount of dividend withholding payment equal to that debit within 20 days of the end of the quarter in which the debit arises.
- (4) If a credit balance is transferred from a company's conduit tax relief account to its dividend withholding payment account under **section MI 6(2)**, the company must pay the Commissioner an amount of dividend withholding payment equal to the amount transferred by 20 June after the imputation year for which the transfer is made.
- (5) Subject to this section and section 103A of the Tax Administration Act 1994, this Act and the Tax Administration Act

1994 (other than the dividend withholding payment rules), so far as they are applicable and with any necessary modifications, apply with respect to any dividend withholding payment for which a company is liable under this section as if it were income tax.

Compare: 1994 No 164 s MI 10

MI 11 Refund of tax in respect of transfer from dividend withholding payment account

- (1) If a credit balance is transferred to a company's conduit tax relief account from its dividend withholding payment account under **section MI 6(1)**, the company is entitled to a refund equal to the amount of the transfer.
- (2) The Commissioner must pay the refund to the company or apply the refund to satisfy an obligation of the company at that time to pay an amount to the Commissioner.

Compare: 1994 No 164 s MI 11

Credits and debits incorrectly recorded

MI 12 Correction by Commissioner of credits and debits

- (1) If the Commissioner considers that a credit or a debit in a company's conduit tax relief account is incorrectly recorded or determines that a debit or a credit has not been recorded at all, the Commissioner must determine the correct debit or credit amount and the date on which the debit or credit should be recorded.
- (2) As soon as is convenient after a determination is made, the Commissioner must give notice of the determination of incorrect entry to the company.
- (3) Unless the company establishes, in proceedings challenging the determination, that the Commissioner is wrong, the account must be corrected accordingly.
- (4) The notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994.
- (5) Failure to give notice does not invalidate the Commissioner's determination.

Compare: 1994 No 164 s MI 12

MI 13 Debits and credits arising to conduit tax relief account of amalgamated company on amalgamation

- (1) This section applies if an amalgamating company ceases to exist upon a qualifying amalgamation.
- (2) If, as a result of applying the procedure under **section MI 5(5) and (6)**, there exists immediately before the amalgamation a credit or a debit in an amalgamating company's conduit tax relief account, the credit or debit must be treated from the commencement of the amalgamation as a credit or debit in the conduit tax relief account of the amalgamated company.
- (3) If the amalgamated company has no conduit tax relief account, the credit or debit referred to in **subsection (2)** must be treated as a credit or debit in the amalgamated company's imputation credit account.
- (4) **Section MI 5(1)(e)** applies to an amalgamated company as if, at all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares as the amalgamating company and with each holding the same number and class of shares and options over shares as they held in the amalgamating company.
- (5) If a credit or debit (not being a debit arising under **section MI 5(1)(e)**) would have arisen and, but for the amalgamation, been recorded in the conduit tax credit account of the amalgamating company on a date after the date of amalgamation, the credit or debit must be recorded in the conduit tax relief account of the amalgamated company.
- (6) If the amalgamated company referred to in **subsection (5)** has no conduit tax relief account, the debit must instead be recorded in that company's imputation credit account.
- (7) If an amalgamated company does not have a conduit tax relief account after a qualifying amalgamation, and a credit is transferred to the imputation account of the amalgamated company under either of **subsection (3) or (6)**,—
 - (a) the amalgamated company must within 20 days of the end of the quarter in which the amalgamation occurs pay an amount of dividend withholding payment equal to the amount of the credit transferred; and
 - (b) a payment required to be made under **paragraph (a)** does not give rise to a credit in the imputation credit account

or the dividend withholding payment account of the amalgamated company.

Compare: 1994 No 164 s MI 13

Consolidated groups

MI 14 Consolidated group to maintain separate conduit tax relief account

- (1) A consolidated group must maintain a group conduit tax relief account for an imputation year if a company which is a member of the consolidated group is a conduit tax relief company at any time during the imputation year.
- (2) A group conduit tax relief account is a separate account from the conduit tax relief account of each company which is a member of the consolidated group.

Compare: 1994 No 164 s MI 14

MI 15 Consolidated group conduit tax relief account

The opening balance of a consolidated group's conduit tax relief account is,—

- (a) for the first imputation year the consolidated group maintains a group conduit tax relief account, nil; and
- (b) for subsequent tax years, the closing balance of the account at the end of the preceding imputation year.

Compare: 1994 No 164 s MI 15

MI 16 Consolidated group member is conduit tax relief company

A company is a conduit tax relief company, whether or not it has so elected under **section MI 2**, if it is a member of a consolidated group that is required to maintain a group conduit tax relief account for an imputation year.

Compare: 1994 No 164 s MI 16

MI 17 Credits arising to group conduit tax relief account

- (1) In an imputation year, a consolidated group's conduit tax relief account must be credited by the following amounts:
 - (a) an income tax rebate allowed to the consolidated group under **section KH 1**:

- (b) a dividend withholding payment reduction allowed under **section NH 7** for a dividend paid during the imputation year to a company that is a member of the consolidated group at the time of the reduction:
 - (c) a conduit tax relief credit attached to a dividend derived by a company that is a member of the consolidated group at the time it derives the dividend:
 - (d) the amount of a debit that previously arose under **section MI 18(1)(d)**, to the extent it is subsequently established that the relevant conduit tax relief credit was not part of an arrangement to obtain a tax advantage:
 - (e) the amount transferred from a company's dividend withholding payment account under **section MI 19**:
 - (f) a credit transferred from the group's dividend withholding payment account under **section MI 20(1)**.
- (2) The credits arise at the following times:
- (a) in the case of an income tax rebate credit,—
 - (i) on the last day of the imputation year that corresponds to the tax year, to the extent of the amount calculated using the formula—
$$\frac{\text{PROV} \times \text{CTR}}{\text{XFER}}$$

where—

PROV is the amount debited on the last day of the imputation year under **section ME 12(2)(l)(i)**

XFER is the total amount to be transferred from the imputation credit account to the dividend withholding payment account under **section ME 12(1)(n)**

CTR is the amount of income tax rebate to be credited under **subsection (1)(a)**; and
 - (ii) to the extent that **subparagraph (i)** does not apply, on the date the company files its return of income for the tax year:
 - (b) in the case of a dividend withholding payment reduction credit, on the date the company is required to pay the Commissioner the dividend withholding payment reduced by **section NH 7**:
 - (c) in the case of a credit for a conduit tax relief credit attached to a dividend, on the date the dividend is paid:

- (d) in the case of a credit under **section MI 17(1)(d)**, on the date the relevant debit arose under **section MI 18(1)(d)**:
- (e) in the case of a credit transferred under **section MI 19**, on the date the credit was transferred:
- (f) in the case of a credit transferred under **section MI 20(1)**, immediately before the end of the imputation year.

Compare: 1994 No 164 s MI 17

MI 18 Debits arising to group conduit tax relief account

- (1) In an imputation year, a consolidated group's conduit tax relief account must be debited by the following amounts:
 - (a) a conduit tax relief credit attached to a dividend paid during the imputation year by a company that is a member of the consolidated group at the time of payment:
 - (b) the amount of conduit tax relief adjustment calculated under **section FH 8(5)** for a company that is a member of the consolidated group on the last day of the tax year for which the adjustment arises:
 - (c) an allocation deficit debit arising under **section MG 8**, as applied by **section MI 8**, for a company that is a member of the consolidated group at the time the relevant dividend is paid:
 - (d) a debit arising to the account under **section GC 22**, as applied by **section MI 9**:
 - (e) a credit in the group account at any time (that has not previously been cancelled by a debit) if, since the time that credit arose, there has been an increase of 34 or more percentage points in the percentage of the group's shareholders who are resident in New Zealand, as measured by applying **section MI 5(3)** to the group as if the group were a conduit tax relief company:
 - (f) the credit balance (if any) of the account if the consolidated group stops being required to maintain a group conduit tax relief account:
 - (g) a credit transferred from the account to the company's dividend withholding payment account under **section MI 20(2)**.
- (2) The debits arise at the following times:
 - (a) in the case of a dividend attachment debit, on the date the dividend is paid:

- (b) in the case of a conduit tax relief adjustment, on the date on which the income tax return for the tax year for which the adjustment is made is filed:
 - (c) in the case of an allocation deficit debit, at the end of the imputation year in which the debit arises:
 - (d) in the case of a tax advantage arrangement debit, at the end of the imputation year in which the arrangement commenced:
 - (e) in the case of a resident shareholder percentage debit, on the date that the 34 percentage point change threshold is first reached:
 - (f) in the case of a termination debit, immediately before the consolidated group stops being required to maintain a conduit tax relief account:
 - (g) in the case of a credit transfer debit, immediately before the end of the imputation year.
- (3) For the purposes of **subsection (1)(e)**, in determining whether a credit has been cancelled by a subsequent debit,—
- (a) **section MI 15** does not apply; and
 - (b) a credit arising under **section MI 17(1)(e)** is treated as arising on the date on which the corresponding credit arose in the conduit tax relief account of the group member; and
 - (c) an amount of debit can cancel out a credit only once; and
 - (d) a debit is offset against credits in the order in which the credits arise.
- (4) A debit arises under **subsection (1)(e)** if it would have arisen but for an arrangement that affects the shares of a company in the consolidated group, if a purpose or effect of the arrangement is to defeat the intent and application of **subsection (1)(e)**.

Compare: 1994 No 164 s MI 18

MI 19 Debiting and crediting between group and individual conduit tax relief accounts

- (1) A credit does not arise to an individual company's conduit tax relief account if a credit arises to a consolidated group's conduit tax relief account for—
- (a) an amount of conduit tax relief arising under **section KH 1 or NH 7**; or

- (b) a conduit tax relief credit attached to a dividend derived.
- (2) A debit does not arise to an individual company's conduit tax relief account if a debit arises to a consolidated group's conduit tax relief account for—
- (a) the amount of conduit tax relief credit attached to a dividend paid; or
 - (b) the amount of any conduit tax relief credit or tax credit refunded; or
 - (c) any amount of conduit tax relief adjustment calculated under **section FH 8(5)**; or
 - (d) any allocation debit arising under **section MG 8**, as applied by **section MI 8**.
- (3) Subject to **subsection (5)**, if a company has a credit in its individual conduit tax relief account (referred to as the **company credit**) and is a member of a consolidated group at that time, the credit must be transferred to the consolidated group's conduit tax relief account to the extent that—
- (a) a debit arises under **section MI 18** to be recorded in the consolidated group's conduit tax relief account at that time; and
 - (b) that debit is not offset, determined by applying **section MI 5(5)**, against a credit in the consolidated group's conduit tax relief account which arose on or before the same date on which the company credit arose; and
 - (c) the credit does not exceed the consolidated group's debit.
- (4) If credit amounts in the individual conduit tax relief accounts of 2 or more members of a consolidated group would, but for this subsection, be required to be transferred to the group's conduit tax relief account under **subsection (3)**, those amounts must be transferred to the group account and must be credited—
- (a) so far as the relevant debit to the group's conduit tax relief account extends and no further; and
 - (b) in the order in which those credits arose, determined by applying **section MI 5(5)**; and
 - (c) if 2 or more credits arose at the same time,—
 - (i) in the order elected by the consolidated group; or
 - (ii) if no such election is made, on a pro rata basis.

- (5) A debit does not arise to a company's conduit tax relief account but does arise to a consolidated group's conduit tax relief account to the extent that—
- (a) a debit would, but for this subsection, arise in the individual conduit tax relief account of a company that is a member of a consolidated group at the time the debit arises; and
 - (b) the arising of the debit would result in or increase the debit balance in the individual company's conduit tax relief account.

Compare: 1994 No 164 s MI 19

MI 20 End of imputation year clearing transfer to or from dividend withholding payment account

- (1) If, immediately before the end of the imputation year and before a transfer is made under this subsection, but after a transfer from the imputation credit account is credited under **section ME 12(2)(I)(i)** and an amount is credited to the conduit tax relief account under **section MI 17(2)(a)(i)**, a consolidated group's dividend withholding payment account is in credit and its group conduit tax relief account is in debit, the consolidated group must—
- (a) apply **section MI 19(3)** as if the debit balance were the debit referred to in **section MI 19(3)(b)**; and
 - (b) to the extent that the debit balance is not eliminated under **paragraph (a)**, transfer from the dividend withholding payment account to the conduit tax relief account the lesser of—
 - (i) the credit balance in the dividend withholding payment account; and
 - (ii) the debit balance remaining in the conduit tax relief account after **paragraph (a)** has been applied.
- (2) If, immediately before the end of the imputation year and before a transfer is made under this subsection, but after a transfer from the imputation credit account is credited under **section ME 12(2)(I)(i)** and an amount is credited to the conduit tax relief account under **section MI 17(2)(a)(i)**, a consolidated group's dividend withholding payment account is in debit and its group conduit tax relief account is in credit, the consolidated group must transfer from the conduit tax relief account

to the dividend withholding payment account the lesser of the two balances.

Compare: 1994 No 164 s MI 20

MI 21 Further dividend withholding payment payable in respect of conduit tax relief account debits

- (1) If a debit arises to a consolidated group's conduit tax relief account under **section MI 18(1)(c), (d), or (e)**, the group must pay to the Commissioner a further amount of dividend withholding payment equal to the debit not later than 20 days after the end of the quarter in which the debit arises.
- (2) The further amount of dividend withholding payment does not give rise to a credit in the group's dividend withholding payment credit account.
- (3) If a debit arises to a consolidated group's conduit tax relief account under **section MI 18(1)(f)**, the group must pay to the Commissioner an amount of dividend withholding payment equal to the debit not later than 20 days after the end of the quarter in which the debit arises.
- (4) If a credit balance is transferred from a consolidated group's conduit tax relief account to its dividend withholding payment account under **section MI 20(2)**, the consolidated group must pay to the Commissioner an amount of dividend withholding payment equal to the amount transferred by 20 June after the imputation year in which the transfer is made.
- (5) Subject to section 103A of the Tax Administration Act 1994, this Act and the Tax Administration Act 1994, other than the dividend withholding payment rules, so far as they are applicable and with any necessary modifications, apply to a dividend withholding payment for which a consolidated group is liable under this section as if it were income tax.

Compare: 1994 No 164 s MI 21

MI 22 Application of specific conduit tax relief account provisions to consolidated groups

- (1) **Section MG 8**, as applied by **section MI 8**, applies with any necessary modifications to a consolidated group as if it were a single company, but, for the purposes of **section MG 8(2) to (4)**, dividends paid by 1 member of the consolidated group to

another member of the consolidated group are not taken into account.

- (2) **Section MI 10(5)** and section 103A of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated group as if—
 - (a) it were a single company; and
 - (b) each reference to a provision of this Act were a reference to the equivalent provision that applies to consolidated groups.
- (3) **Section GC 22**, as applied by **section MI 9**, applies with any necessary modifications to the accounts of a consolidated group, as if—
 - (a) the consolidated group were a single company; and
 - (b) references to provisions of this Act were references to the equivalent provisions that apply to equivalent accounts.
- (4) If a credit balance is transferred to a consolidated group's conduit tax relief account from its dividend withholding payment account under **section MI 20(1)(b)**,—
 - (a) the consolidated group is entitled to a refund of the amount of the transfer; and
 - (b) the Commissioner must pay the refund to the consolidated group or apply the refund to satisfy an obligation of the consolidated group to pay an amount to the Commissioner at that time.

Compare: 1994 No 164 s MI 22

Subpart MJ—Supplementary available subscribed capital accounts

MJ 1 Qualifying unit trust or group investment fund may elect to maintain supplementary available subscribed capital account

- (1) If a qualifying unit trust or a group investment fund that derives category A income issues shares on terms that their redemption will be subject to **section CD 14(4)**, the qualifying unit trust or group investment fund may establish and maintain a supplementary available subscribed capital account on and after the date that the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 receives the Royal assent. In this subpart, the date on which a qualifying unit trust

or a group investment fund establishes a supplementary available subscribed capital account is called the **start date**.

- (2) Despite **subsection (1)**, if **section MJ 4(1)** applies, and a qualifying unit trust or group investment fund makes an actual calculation for a period before an effective date or a notional calculation as at an effective date that is within the period, the **start date** is the day after the effective date of the calculation.

Compare: 1994 No 164 s MJ 1

MJ 2 Balance of supplementary available subscribed capital account

- (1) The balance of a supplementary available subscribed capital account is the difference between the total amount of credits and the total amount of debits existing in the account.
- (2) The account has a credit balance if credits are more than debits.

Compare: 1994 No 164 s MJ 2

MJ 3 Supplementary available subscribed capital account

- (1) For each imputation year, a qualifying unit trust or a group investment fund must record the following in its supplementary available subscribed capital account:
- (a) the opening balance:
 - (b) credits arising under **section MJ 5** in the year:
 - (c) debits arising under **section MJ 6** in the year.
- (2) The opening balance of the account is—
- (a) for the first imputation year in which the start date falls, nil; and
 - (b) for subsequent imputation years, the closing balance of the account for the prior imputation year.

Compare: 1994 No 164 s MJ 3

MJ 4 Supplementary available subscribed capital account—opening balance

- (1) This section applies to a qualifying unit trust or a group investment fund that exists at any time between the date that the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 receives the Royal assent and 30 September 2003 (both dates inclusive).

- (2) Despite **section MJ 3(2)**, for the 2002–03 imputation year, a qualifying unit trust or a group investment fund may calculate the opening balance of its supplementary available subscribed capital account according to either—
- (a) an actual calculation of the total excess for any redemptions, being, for each redemption, the amount by which the available subscribed capital, as calculated under **section CD 14(4)**, was more than the proceeds, calculated under **section CD 3** from the redemption, if the redemption occurred during the period beginning on the date on which the qualifying unit trust or group investment fund became an imputation credit account company and ending on the day before the start date; or
- (b) a notional calculation according to the formula—
- $$\frac{\text{further income tax on liquidation} - \text{tax not available to impute dividends}}{\text{maximum imputation ratio}}$$

where—

further income tax on liquidation	is the further income tax that would be payable under section ME 9 if the qualifying unit trust or group investment fund were liquidated on the day before the start date, and it had paid all tax (including foreign dividend withholding payments) and imputed all dividends (including redemption dividends) at the maximum rate allowed
tax not available to impute dividends	is the amount of further income tax to be paid that arises due to the structural features of the taxation and imputation systems described in subsection (4)
maximum imputation ratio	is the ratio calculated using the formula set out in section ME 8(1) , as if the words “in which the dividend is paid” in item “a” were read as “in which the start date occurs”.

- (3) In **subsection (2)(b)**, tax must be calculated under the item **further income tax on liquidation** based on an orderly realisation of assets in the ordinary course of business.
- (4) For the purpose of **subsection (2)(b)**, the structural features of the taxation and imputation systems that would not allow a company that does not issue shares on terms subject to **section CD 14(4)** to fully impute a distribution made on the liquidation of the company include, for example, the tax effects of—
 - (a) non-taxable gains and losses, including exempt income but excluding dividends subject to **section NH 1**; and
 - (b) imputation credits lost because of a breach in the continuity provisions; and
 - (c) foreign tax credits; and
 - (d) retained earnings generated before the qualifying unit trust or group investment fund established an imputation credit account.

Compare: 1994 No 164 s MJ 4

MJ 5 Credits arising to supplementary available subscribed capital account

- (1) In an imputation year, a qualifying unit trust's, or a group investment fund's, supplementary available subscribed capital account may be credited with the amount by which the available subscribed capital, as calculated under **section CD 14(4)**, is more than the proceeds, calculated under **section CD 3**, from the redemption of shares in the qualifying unit trust or group investment fund.
- (2) The credit arises on the date that the shares are redeemed.
- (3) This section only applies to credits that arise in respect of redemptions that occur on or after the start date.

Compare: 1994 No 164 s MJ 5

MJ 6 Debits arising to supplementary available subscribed capital account

- (1) A qualifying unit trust or a group investment fund that has a credit balance in its supplementary available subscribed capital account at any time in the imputation year may elect to use all or part of the balance for the purpose of recording credits in its imputation credit account to satisfy a debit balance in that account.

- (2) A qualifying unit trust or a group investment fund that has a credit balance in its supplementary available subscribed capital account may, immediately before it ceases to be an imputation credit account company, elect to use all or part of the balance for the purpose of recording credits in its imputation credit account to satisfy a debit balance in that account.
- (3) An election is made by—
 - (a) debiting the available subscribed capital account with the amount of the credit balance so elected; and
 - (b) crediting the imputation credit account with the amount allowed by **section ME 4(1)(da)**.
- (4) The debit arises—
 - (a) on the date on which an election is made under **subsection (1)**;
 - (b) immediately before the qualifying unit trust or group investment fund ceases to be an imputation credit account company if an election is made under **subsection (2)**.

Compare: 1994 No 164 s MJ 6

Liquidation of qualifying unit trust or group investment fund

MJ 7 Special rule for certain qualifying unit trusts and group investment funds

- (1) If a qualifying unit trust or a group investment fund is liquidated and has never established a supplementary available subscribed capital account, the qualifying unit trust or the group investment fund may, upon liquidation, establish a supplementary available subscribed capital account and calculate an opening balance in accordance with **section MJ 4(2)**.
- (2) If **subsection (1)** applies, **section MJ 3** does not apply and the opening balance is treated as the closing balance of the account.

Compare: 1994 No 164 s MJ 7

*Credits and debits incorrectly recorded***MJ 8 Correction by Commissioner of credits and debits**

- (1) If the Commissioner considers that a credit or a debit in a qualifying unit trust's, or group investment fund's, supplementary available subscribed capital account is incorrectly recorded or determines that a debit or a credit has not been recorded at all, the Commissioner must determine the correct debit or credit amount and the date on which the debit or credit should be recorded.
- (2) As soon as is convenient after a determination is made, the Commissioner must give notice of the determination of incorrect entry to the qualifying unit trust or group investment fund.
- (3) Unless the qualifying unit trust or group investment fund establishes in proceedings challenging the determination that the Commissioner is wrong, the account must be corrected accordingly.
- (4) The notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994.
- (5) Failure to give notice does not invalidate the Commissioner's determination.

Compare: 1994 No 164 s MJ 8

Subpart MZ—Terminating provisions**MZ 1 Savings for certain credits arising in relation to overpayment of income tax or dividend withholding payment**

- (1) Where and to the extent that—
 - (a) a windfall credit has been recorded in the imputation credit account or dividend withholding payment account of a company or a consolidated group before 17 August 1995; and
 - (b) that windfall credit has been—
 - (i) offset by a debit in accordance with **section MZ 2**; or
 - (ii) with the approval of the Commissioner, treated as having been simultaneously offset by a debit before 17 August 1995,—

then that credit is not denied to the company or consolidated group by reason of the enactment of section 38 of the Income Tax Act 1994 Amendment Act (No 4) 1995.

- (2) No debit arises to a company's or consolidated group's imputation credit account or dividend withholding payment account under any of **sections ME 5(1)(l) to (n), ME 12(1)(l) and (m), MG 5(1)(k), and MG 15(1)(l)** to the extent that—
- (a) the amount of income tax or dividend withholding payment that is referred to in those provisions as being applied by the Commissioner has, before 17 August 1995, given rise to a credit to that imputation credit account or dividend withholding payment account of the company or group; and
- (b) that credit has been offset before that date by a debit.
- (3) In this section, **windfall credit** means any credit arising to a company's or consolidated group's imputation credit account or dividend withholding payment account by reason of the Commissioner crediting an amount of overpaid income tax or overpaid dividend withholding payment towards payment by the company or, as the case may be, the consolidated group or a member of the consolidated group of income tax or dividend withholding payment respectively.

Compare: 1994 No 164 s MZ 1

MZ 2 Ordering rule for purposes of section MZ 1

For the purpose of determining under **section MZ 1** whether, and if so to what extent, a credit has been offset by a debit,—

- (a) a calculation is made of the credits and debits that would arise in the relevant imputation credit account or dividend withholding payment account as if that account were maintained in accordance with (as the case may require) **section ME 3 or ME 10 or MG 3 or MG 13** subject to the following modifications:
- (i) the account is to be treated as maintained as a single account for the period from its establishment until 17 August 1995, and not as a separate account for each imputation year; and
- (ii) **sections ME 3(2)(b), ME 10(2)(b), MG 3(2)(b), and MG 13(3)(b)** do not apply; and
- (iii) **sections MD 4, ME 5(1)(l) to (n), ME 12(1)(l) and (m), MG 5(1)(k), and MG 15(1)(l)** apply as if the relevant

amendments or inserting of those provisions enacted by the Income Tax Act 1994 Amendment Act (No 4) 1995 had not come into force before 17 August 1995; and

- (b) the amount of any credits is offset successively (in the order in which those credits arise) against the amounts recorded as debits (in the order in which those debits arise).

Compare: 1994 No 164 s MZ 2

MZ 3 Transfers of dividend withholding payment credit balance to imputation credit account

- (1) If—
- (a) a credit in a company's imputation credit account arises from an election under **section MG 11** made by a company before 17 August 1995; and
- (b) the corresponding debit to the company's dividend withholding payment account is attributable in accordance with **section MG 11** to a credit which—
- (i) in accordance with the law that was in force before the enactment of the Income Tax Act 1994 Amendment Act (No 4) 1995, was recorded in the company's dividend withholding payment account before 17 August 1995; and
- (ii) was a credit arising by virtue of—
- (A) the crediting towards dividend withholding payment of an amount of overpaid dividend withholding payment; or
- (B) an amount of overpaid dividend withholding payment that was applied by the Commissioner in satisfaction of an amount (other than a dividend withholding payment) that was due and payable under any provision of this Act or any other of the Inland Revenue Acts,—

then, for the purpose of determining the extent of relief available to a company under **section MZ 1**, the credit to the company's imputation credit account is deemed to be a credit which qualifies for the relief provided by **section MZ 1**.

- (2) **Subsection (1)** applies with any necessary modifications to all or any part of the credit balance in the dividend withholding

payment account of a consolidated group which, in accordance with **section NH 6(6)**, the nominated company for the group elects to be a credit in the group's imputation credit account.

Compare: 1994 No 164 s MZ 3

MZ 4 Attachment of dividend withholding payment credits to dividends to non-residents

- (1) Notwithstanding **section MG 6(2)**, but otherwise subject to this Act, a conduit tax relief company may attach a dividend withholding payment credit to a dividend derived by a non-resident to the extent allowed under this section.
- (2) The rules for determining residence in **sections OE 7 and OE 8** apply for the purposes of **subsection (1)**.
- (3) The dividend must be paid before 1 April 2001.
- (4) The credit attached to the dividend, when aggregated with all dividend withholding payment credits attached under **subsection (1)** to dividends previously paid or paid at the same time, must not exceed the greater of—
 - (a) nil; and
 - (b) the amount calculated as follows: $\text{NRS} \times (\text{DWPA balance} + \text{March DWP})$

where—

NRS is the percentage of the company's shareholders not resident in New Zealand, as calculated under **section NH 7(2)** as if that section applied to a dividend received on 31 March 1998

DWPA balance is the balance of the company's dividend withholding payment account at the end of the 1997–98 imputation year

March DWP is the amount of the credit that arises under **section MG 4(1)(a)** after 31 March 1998 on account of dividends paid to the company in the quarter ended 31 March 1998.

Compare: 1994 No 164 s MZ 4

MZ 5 Application of excess tax to nil period

- (1) To the extent that tax paid in excess by or on behalf of a taxpayer is refundable and, before it is applied under this section, has not been applied to satisfy a tax liability or other

- amount due, the Commissioner must apply all or part of the excess to a nil period if—
- (a) before 21 April 2001,—
 - (i) the taxpayer or their agent requested, in writing, that the Commissioner apply all or part of the excess to the nil period; or
 - (ii) the Commissioner, by notice, declined the taxpayer's or their agent's request to apply all or part of the excess to the nil period; or
 - (iii) the Commissioner provided the taxpayer to whom the tax was applied with a notice or a statement of account that reflected the application of all or part of the excess to the nil period, irrespective of whether the application of the excess is subsequently reversed; and
 - (b) on or after 24 October 2001, the taxpayer identifies themselves, or the taxpayer's agent identifies the taxpayer, to the Commissioner as being a person to whom this section applies.
- (2) To the extent that tax paid in excess by or on behalf of a taxpayer is refundable and, before it is applied under this section, has not been applied to satisfy a tax liability or other amount due, the Commissioner must apply all or part of the excess to a nil period if, on or after 21 February 2001,—
- (a) an assessment is made of a previous tax year's tax liability that gives rise to the excess; and
 - (b) the taxpayer or their agent requests that the Commissioner apply all or a part of the excess to the nil period.
- (3) The Commissioner must apply all or part of an excess to a date in a nil period that occurs after the date the excess tax is paid.
- (4) In this section,—
- nil period** means a period in which a taxpayer does not have an outstanding liability for unpaid tax
- tax** includes a credit allowed to a taxpayer under **Part L**—
- (a) for withholding tax or provisional tax; and
 - (b) in respect of a dividend withholding payment, if the taxpayer is entitled to a refund of that credit under **Part L**.

Compare: 1994 No 164 s MZ 5

MZ 6 Application of excess tax for 2001–02 tax year

- (1) To the extent that tax for the 2001–02 tax year is paid in excess by or on behalf of a taxpayer and, before it is applied under this section, has not been applied to satisfy a tax liability or other amount due, the Commissioner must apply all or part of the excess to a nil period if the taxpayer or their agent requests that the Commissioner apply all or a part of the excess to the nil period.
- (2) The Commissioner must apply all or part of an excess to a date in a nil period that occurs after the date the excess tax is paid.
- (3) In this section,—

nil period means a period in which a taxpayer does not have an outstanding liability for unpaid tax

tax includes a credit allowed to a taxpayer under **Part L**—

- (a) for withholding tax or provisional tax; and
- (b) in respect of a dividend withholding payment, if the taxpayer is entitled to a refund of that credit under **Part L**.

Compare: 1994 No 164 s MZ 6

MZ 7 Application of allocation debit rules to certain dividends

Section ME 8(4) does not apply to a dividend described in **section GZ 2**, irrespective of whether a ratio change declaration was filed in respect of the dividend.

Compare: 1994 No 164 s MZ 7

Part N

Withholding taxes and taxes on income of others

Subpart NB—General

NB 1 Withholding tax obligations of consolidated group members

Notwithstanding any provision of the consolidation rules, each company which is at any time a member of a consolidated group is, individually and not jointly with other members of that consolidated group, liable to comply with that company's obligations under the FBT rules, the NRWT rules, the PAYE rules, the RWT rules, and the SSCWT rules.

Compare: 1994 No 164 s NB 1

Subpart NC—Withholding of tax by employers: PAYE

Tax deductions

NC 1 Application of PAYE rules

- (1) The PAYE rules apply notwithstanding anything in this Act, other than **subpart KD**.
- (2) If any question is raised as to whether or not a source deduction payment is as to the whole or any part subject to the PAYE rules, it is, subject to any regulations made for the purposes of the PAYE rules, determined by the Commissioner.

Compare: 1994 No 164 s NC 1

NC 2 Tax deductions to be made by employers

- (1) For the purpose of enabling the collection of income tax from employees by instalments, where an employee receives a source deduction payment from an employer, the employer or other person by whom the payment is made must, at the time of making the payment, make a tax deduction from the payment in accordance with the PAYE rules:
provided that no tax deduction need be made from any source deduction payment made to any employee in respect of the employee's employment as a private domestic worker:
provided also that if a tax deduction is not made by the employer in any such case **section NC 16** applies to the employee.

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- (2) Where in the case of a regular full-time employment an employee receives salary or wages from any 1 employer for part only of the pay period, that salary or wages is deemed to be for the whole of the pay period.
- (3) For the purposes of this section, where an employee receives salary or wages in respect of work performed by the employee as a piece worker or out-worker and the employee is paid on a production basis, that salary or wages is deemed to be for the period from the commencement of the performance of the work until the completion of the work.
- (4) Where a source deduction payment for any pay period is paid in 2 or more separate sums, all sums so paid must, for the purpose of calculating the amount of the tax deduction, be aggregated, and the employer may, at the employer's option, make the tax deduction wholly from 1 sum or in part from each of any 2 or more sums:
provided that where, by reason of the size or nature of the employer's business or organisation, the dispersal of employees, or difficulty in assembling particulars, or for any other reason approved by the Commissioner, it is impracticable for an employer to pay overtime pay for a pay period at the same time as the other salary or wages for the pay period, the overtime pay of any employee for the pay period may, for the purpose of calculating the amount of the tax deduction, be aggregated with the employee's salary or wages (other than overtime pay) for a subsequent pay period if, in respect of both pay periods,—
- (a) the amounts of the employee's salary or wages (other than overtime pay) are substantially the same; and
 - (b) the amounts of the tax deductions applicable to the employee's salary or wages are the same; and
 - (c) the tax code applicable to the employee is the same:
- provided also that, where it is the practice of an employer to pay overtime pay for an interval of time which is of the same length as a pay period of an employee but does not coincide with any such period, the overtime pay of the employee for any such interval may, for the purposes of the first proviso to this subsection, be deemed to be overtime pay for the pay period during which that interval ends, if the amounts of the employee's salary or wages (other than overtime pay) for that interval and for that pay period are substantially the same.

- (5) When an extra pay is paid by an employer to an employee and the sum of the extra pay and the annualised value of all source deduction payments (excluding extra pays) paid to the employee by the employer in the previous 4 weeks (ending on the date the extra pay is paid) is—
- (a) more than \$38,000 but not more than \$60,000, the employer must deduct tax from the extra pay at the basic tax deduction rate specified in **schedule 19, clause 8(b)**;
 - (b) more than \$60,000, the employer must deduct tax from the extra pay at the basic tax deduction rate specified in **schedule 19, clause 8(c)**.

Compare: 1994 No 164 s NC 2

NC 3 Tax deductions from amounts credited to or applied for employees

Where a source deduction payment, though not actually paid, is credited to or applied on account of any employee entitled to that payment, the amount so credited or applied is, for the purposes of the PAYE rules, deemed to be paid when it is so credited or applied, and a tax deduction in respect of the payment must be made accordingly.

Compare: 1994 No 164 s NC 3

NC 4 Benefits and superannuation and other payments deemed to be salary or wages

- (1) Where in respect of an employee's employment the employee receives or enjoys a benefit referred to in **section CE 1(d) or paragraph (b)(i)** of the definition of **salary or wages**, or any other benefit in kind which is included in the employee's salary or wages, or receives a payment by way of superannuation, pension, retiring allowance, or other allowance, or annuity which is included in salary or wages, the value of the benefit (whether in money or otherwise), or the amount of the payment, is deemed to accrue from day to day, and accordingly in each case the amount so accrued for any days in a pay period of the employee is deemed to be the employee's salary or wages for the pay period, or, as the case may be, part of the employee's salary or wages for the pay period.
- (2) Where a benefit to which **subsection (1)** applies is received or enjoyed by an employee otherwise than in money, the value of

the benefit for a pay period is deemed to be paid to the employee at the time when the residue of the salary or wages for the pay period is paid or deemed to be paid to the employee, and must be aggregated with that residue for the purpose of calculating the amount of the tax deduction: provided that, where the value of the benefit constitutes the only salary or wages of the employee for the pay period, the value of the benefit is deemed to be paid to the employee on the last day of the pay period.

Compare: 1994 No 164 s NC 4

NC 5 Payment to be made by employee where tax deduction exceeds source deduction payment

- (1) Where, at the time when a source deduction payment is made or deemed to be made, the amount of the source deduction payment available in money is less than the amount of the tax deduction, or there is no amount available in money, the employee must immediately pay to the employer the amount of the deficiency in the tax deduction or, as the case may be, the amount of the tax deduction, and every amount so paid on any date is deemed to be a tax deduction made by the employer on that date from the source deduction payment made or deemed to be made to the employee.
- (2) If an employee makes default in paying to the employer any amount payable under this section, or any part of any such amount, the amount in respect of which default has been made is deemed for the purposes of **section NC 16** to be a tax deduction that should have been made and was not made, and that section applies accordingly.

Compare: 1994 No 164 s NC 5

Amounts of tax deductions

NC 6 Amounts of tax deductions

- (1) A tax deduction must be of an amount fixed by an annual taxing Act.
- (1A) For a period for which the amount of a tax deduction is not fixed by an annual taxing Act, the tax deduction must be of an amount fixed by the basic tax deductions specified in **schedule 19**.

- (1B) If the amount of tax deduction from a withholding payment is not fixed by an annual taxing Act or by the basic tax deductions, the tax deduction must be of an amount fixed by regulations under this Act.
- (1C) If,—
- (a) by reason of the size of a source deduction payment; or
 - (b) in the case of a reduced deduction, by reason of the number of the employee's dependants; or
 - (c) for any other reason,—
- the amount of a tax deduction is not fixed by an annual taxing Act or by the basic tax deductions or by regulations, the tax deduction must be of an amount fixed by the Commissioner, taking into account the factors taken into account in fixing the amounts of other tax deductions of a like nature.
- (1D) Despite **subsections (1A) to (1C)**, the amount of a tax deduction from a source deduction payment that is—
- (a) a payment of an income-tested benefit; or
 - (b) an allowance paid under regulations made under section 303 of the Education Act 1989,—
- must be of an amount determined by the Commissioner in consultation with—
- (c) the chief executive of the department currently responsible for administering the Social Security Act 1964; or
 - (d) the Secretary of Education.
- (2) The annual taxing Act for any tax year may fix the amounts of tax deductions for periods throughout that tax year or during any part of that tax year or during any part of the next tax year, or indefinitely until the amounts are varied by a subsequent annual taxing Act.
- (3) Except as otherwise provided in this Act, the amount of every tax deduction must be the maximum amount for the time being in force having regard to the nature and amount of the source deduction payment:
provided that where a reduced deduction applies to the employee the tax deduction must be of an amount equal to the amount of the reduced deduction.

Compare: 1994 No 164 s NC 6

Reduced deductions

NC 7 Delivery of withholding declaration

- (1) Every person to whom a withholding payment is to be made by another person must, before that withholding payment is made, deliver to that other person a withholding declaration in a form authorised by the Commissioner, and containing such particulars as the Commissioner requires.
- (2) In any case where the withholding declaration required to be delivered under **subsection (1)** is not so delivered, the amount of the tax deduction that would, apart from this subsection, be made from the withholding payment must, except where the withholding payment is a payment of the class specified in part B, clause 4(b) of the schedule to the Income Tax (Withholding Payments) Regulations 1979, be increased by an amount calculated according to the amount of the withholding payment at the rate of 15 cents for every dollar.
- (3) The Commissioner may vary any of the requirements of this section in relation to any person or class of person to whom a withholding payment is to be made, or in respect of any class of withholding payment, in such cases and to such extent as the Commissioner thinks fit, and in every such case this section applies as so varied.

Compare: 1994 No 164 s NC 7

NC 8 Application of tax codes specified in tax code declarations or tax code certificates

- (1) For the purposes of the PAYE rules, the tax code of any employee in relation to any source deduction payment (not being a source deduction payment that is an extra pay and not being a source deduction payment that is a withholding payment and not being a source deduction payment that is a payment of an income-tested benefit) must be such 1 of the following codes as applies to the employee in respect of that source deduction payment in accordance with this section, namely:
 - (a) “No declaration”, signifying an employee who has not delivered to the employer a tax code declaration in the form authorised by the Commissioner and containing such particulars as the Commissioner requires, nor a tax code certificate:

- (b) “ML”, signifying an employee who is entitled to a rebate of income tax under **section KC 3** and in relation to whom the source deduction payment is a payment that is primary employment earnings:
 - (c) “M”, signifying an employee who is not entitled to a rebate of income tax under **section KC 3** and in relation to whom the source deduction is a payment that is primary employment earnings:
 - (d) “S”, signifying an employee in relation to whom the source deduction payment is a payment that is secondary employment earnings to which neither **paragraph (da) nor (db)** applies:
 - (da) “SH”, signifying an employee in relation to whom the source deduction payment is a payment, other than a payment of the kind referred to in **schedule 19, clause 6**, that is secondary employment earnings to which neither **paragraph (d) nor (da)** applies:
 - (db) “ST”, signifying an employee in relation to whom the source deduction payment is a payment, other than a payment of the kind referred to in **schedule 19, clause 6**, that is secondary employment earnings to which neither **paragraph (d) nor (da)** applies:
 - (e) “CAE”, signifying an employee in relation to whom the source deduction payment is a payment of salary or wages for employment as a casual agricultural employee:
 - (h) “EDW”, signifying an employee in relation to whom the source deduction payment is a payment of salary or wages for employment as an election day worker:
provided that where the employee is receiving 1 or more source deduction payments that are payments of income-tested benefits and 1 or more source deduction payments that are not payments of income-tested benefits, the tax code “S” applies to that employee in relation to those source deduction payments that are not payments of income-tested benefits.
- (1A) An employee may elect, by providing a tax code declaration to the employer, that an extra pay be subject to the basic tax deduction rate specified in **schedule 19, clause 8(b) or (c)**.
- (2) Subject to this Act, where any employee desires that a reduced deduction applies to the employee (whether or not the same or any other reduced deduction has previously applied), the

employee may deliver to the employee's employer a tax code declaration in a form authorised by the Commissioner, and containing such particulars as the Commissioner requires, and specifying the employee's tax code as determined by those particulars, and that tax code applies to the employee in accordance with this section.

- (3) Where any employee considers that it is or will be undesirable or impracticable for the employee to deliver a tax code declaration to the employee's employer, the employee may deliver the declaration to the Commissioner, and in any such case the Commissioner must issue to the employee a tax code certificate addressed to the employer and specifying the employee's tax code as determined by the particulars contained in the declaration. The employee may deliver that certificate to the employee's employer, and that tax code applies to the employee in accordance with this section.
- (4) Where an employee has delivered a tax code declaration or a tax code certificate to the employee's employer, the tax code, subject to this Act, applies to the employee in respect of all source deduction payments made by the employer to the employee after the delivery of the declaration or certificate and before the tax code ceases in accordance with **subsection (7)** to apply to the employee:
provided that, except in the case of salary or wages for the first pay period of a new employment of the employee, the tax code does not apply in respect of the salary or wages for any pay period commencing before the date of the delivery of the declaration or certificate to the employer.
- (7) Where an employee, being an employee to whom an "M" or "ML" or "S" or "SH" or "ST" or "CAE" or "EDW" tax code previously applied, ceases to be entitled to the use of that tax code, the tax code does not apply to the employee in respect of any source deduction payment made by the employer to the employee after the date on which that entitlement so ceased, not being a payment of salary or wages for a pay period current on that date:
provided that where the employee delivers a further tax code declaration or tax code certificate to the employer not later than 3 days after the date of giving the notice required by **subsection (8)**, the tax code specified in that declaration or certificate is deemed to have commenced to apply to the

employee immediately after the former tax code ceased to apply to the employee.

- (8) Where a tax code ceases under **subsection (7)** to apply to an employee by reason of the employee, being an employee to whom an “M” or “ML” or “S” or “SH” or “ST” or “CAE” or “EDW” tax code previously applied, ceasing to be entitled to the use of that code, the employee must, not later than 4 days after the date on which the employee became aware that the tax code ceased to apply, give notice of that fact to the employer or (where the tax code declaration was delivered to the Commissioner) to the Commissioner, stating the reason why an “M” or “ML” or “S” or “SH” or “ST” or “CAE” or “EDW” tax code, as the case may be, ceased to apply and the date it ceased to apply. No employer or other person making a source deduction payment is liable for making a reduced deduction according to a tax code after it has ceased under **subsection (7)** to apply to the employee but before the employer has received notice (whether under this subsection or otherwise) that an “M” or “ML” or “S” or “SH” or “ST” or “CAE” or “EDW” tax code has ceased to apply to the employee.
- (9) A reduced deduction applying to an employee in respect of the employee’s employment by any employer does not apply to the employee in respect of the employee’s employment by any other employer, not being a successor of the first-mentioned employer in the same employment.
- (10) The Commissioner may vary any of the requirements of this section in relation to any employee or class of employees in such cases and to such extent as the Commissioner thinks fit, and in every such case this section applies as so varied.
- (11) For the purposes of this Act, a tax code declaration or tax code certificate which is delivered to an employer before the beginning of any tax year but is expressed to relate to that tax year is deemed to be delivered on 1 April in that tax year.
- (12) Where any employee desires that a tax code apply in respect of the employee’s employment as a private domestic worker, the employee may deliver a tax code declaration to the Commissioner, and upon delivery of the declaration this section, with any necessary modifications, applies in respect of that employment as if the Commissioner were the employer.

Compare: 1994 No 164 s NC 8

NC 8A Entitlement to undertake employment

- (1) The Commissioner must ensure that all tax code declaration forms provided by the Commissioner after 31 March 2003 contain a means for the employee concerned to state that he or she is entitled under the Immigration Act 1987 to undertake employment in the service of the employer concerned.
- (2) The Commissioner may, before 1 April 2003, provide forms complying with **subsection (1)**.

Compare: 1994 No 164 s NC 8A

NC 9 Cessation of transitional tax allowance for purposes of tax code

An employee who, in any tax year, is entitled under **section NC 8(1)** to the application of the tax code “ML” ceases to be so entitled if and when, before that tax code ceases to apply to the employee, the employee knows or anticipates, or should have known or anticipated, that the employee will not be entitled, for whatever reason, to a rebate of income tax under **section KC 3**.

Compare: 1994 No 164 s NC 9

NC 10 Amount of total tax deduction where several deductions made for 1 week

Except as otherwise provided in this Act, where during any week ending with a Saturday an employee has engaged in more than 1 employment (whether with the same employer or with 2 or more employers), the amount of the total tax deduction required to be made in respect of all payments of salary or wages made to the employee for that week or any part of that week is deemed to be the amount of the tax deduction that would have been required to be made if all those payments had been 1 payment made by 1 employer for that week, and where that total tax deduction is not made in full **section NC 16** applies accordingly:

provided that, where the employee left 1 regular full-time employment before the employee engaged in another regular full-time employment, the employee is not deemed for the purposes of this section to have been engaged in both those employments in the 1 week:

provided also that where the employee is employed as a shearer, a shearing shed hand, a casual agricultural worker, or

an election day worker, the salary or wages of the employee for that employment are not taken into account for the purposes of this section.

Compare: 1994 No 164 s NC 10

NC 11 Increased deductions to cover deficiency in deductions from advance payments

- (1) Where the amount of the tax deduction to be made from any salary or wages is increased, and before the date of the increase an employee has received from an employer a payment of salary or wages to the whole or a part of which the increase applies, and the proper tax deduction, taking the increase into account as far as it applies, has not been made in full at the time of the payment, the amount of the deficiency is added to the tax deduction required to be made from the next payment of salary or wages made to the employee in the same employment, and the amount of the tax deduction so required to be made is deemed to be increased accordingly.
- (2) Where any salary or wages become subject to tax deductions under the PAYE rules, and before the date of its becoming so subject an employee has received from an employer a payment of salary or wages of which the whole or a part is so subject, and the proper tax deduction has not been made in full at the time of the payment, the amount of the deficiency must be added to the tax deduction required to be made from the next payment of salary or wages made to the employee in the same employment, and the amount of the tax deduction so required to be made is deemed to be increased accordingly.

Compare: 1994 No 164 s NC 11

NC 12 Amount of tax deductions for pay period current when tax deductions altered

- (1) Notwithstanding anything in the PAYE rules, this section applies where the amount of the tax deduction for the time being in force in relation to any payment of salary or wages is reduced or increased by an annual taxing Act or by an amendment made to the basic tax deductions.
- (2) Where this section applies, the amount of the tax deduction to be made from a payment of salary or wages to an employee for a pay period current on the date on which an altered tax deduction commences to apply is as follows:

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- (a) where the pay period does not exceed a month, the tax deduction in respect of the whole of the payment for the pay period is the amount of the altered tax deduction:
 - (b) where the pay period exceeds a month, the tax deduction is ascertained—
 - (i) by calculating, on the basis specified in **schedule 19, clause 3(a)**, the parts of the payment for the pay period that are for the respective portions of the pay period before and after the altered tax deduction commences to apply; and
 - (ii) by calculating, in respect of each such part of the payment, the amount of the tax deduction that would be required to be made from a payment of salary or wages equal to that part for a pay period equal to the portion of the pay period to which that part relates; such calculation to be made according to the tax deduction in force in that portion of the pay period and in the manner provided in **schedule 19, clause 3, paragraphs (b) and (c)**,—and the total of the amounts of the tax deductions calculated under **subparagraph (ii)** is the amount of the tax deduction to be made from the payment of salary or wages for the pay period.
- (3) Where this section applies and **section NC 10** also applies, the amount of the total tax deduction required to be made in accordance with **section NC 10** in respect of all payments of salary or wages made to an employee for a week current on the date on which an altered tax deduction commences to apply must be calculated in accordance with the altered tax deduction:
provided that where all the payments made to an employee for that week are for services rendered before that date, the amount of that total tax deduction must be calculated in accordance with the tax deduction in force in the portion of the week in which the services were rendered.
- (4) Where this section applies, and on or after the date on which an altered tax deduction commences to apply a payment of salary or wages is made to an employee—
- (a) for a pay period that ended before that date; or
 - (b) where **section NC 10** applies, for services rendered in a week that ended before that date,—

the amount of the tax deduction to be made, or the amount of the total tax deduction required to be made, must be calculated in accordance with the tax deduction in force in that pay period or week.

Compare: 1994 No 164 s NC 12

NC 12A Employee using incorrect tax code

- (1) If the Commissioner considers an employer has applied an incorrect tax code to source deduction payments made to an employee, the Commissioner may, by notice to the employer, specify the employee's tax code declaration and notify the employer of the tax code that the Commissioner considers should apply to source deduction payments made to the employee.
- (2) An employer who receives a notice under **subsection (1)** must apply the tax code specified by the Commissioner to source deduction payments made to the employee after the date of notification, despite **section NC 8(2)**.
- (3) An amended tax code specified by the Commissioner under **subsection (1)** does not apply on and after the date that the employee gives notice to the employer that the employee's circumstances have changed and a different tax code is applicable.

Compare: 1994 No 164 s NC 12A

NC 13 Power of Commissioner to reduce tax deductions

- (1) Notwithstanding **sections NC 1 to NC 12**, the Commissioner may, in such circumstances and to such extent as the Commissioner thinks fit, reduce the amount of the tax deduction required to be made from any source deduction payment that has been or will be made to any employee or class of employees, or may make such adjustment as in the Commissioner's opinion is equitable, for the purpose in either case of meeting the special circumstances of any case or class of cases, upon or subject to such terms and conditions as the Commissioner may require.
- (2) In every such case the PAYE rules apply as if they had been amended in accordance with the decisions or requirements of the Commissioner for the time being in force under this section.

Compare: 1994 No 164 s NC 13

NC 14 Special tax code certificates

- (1) Where the Commissioner in any case thinks fit (whether by reason of the employee being employed in 2 or more employments, or being entitled to have any net loss carried forward under **section IE 1**, or by reason of any reduction under **section NC 13**, or for any other reason), the Commissioner may issue to an employee a special tax code certificate under this section.
- (2) A special tax code certificate may, as the Commissioner thinks fit, do all or any of the following things:
 - (a) specify a tax code to be applicable to the employee in respect of payments of salary or wages made to the employee during the period specified in the certificate by the employer or by all or any of the employers of the employee:
 - (b) specify any source deduction payments to be made to the employee during the period specified in the certificate in respect of which—
 - (i) no tax deductions are made; or
 - (ii) the tax deductions are of such amount or rate as is specified in the certificate, or are made from a specified proportionate part of each payment as if that part were the whole of the payment.
- (2A) The Commissioner must calculate, for the source deduction payments and the period specified in the certificate, the amount or rate of tax deductions to be specified in the certificate having regard to the amount of any tax deduction that would otherwise be required under **section NC 6**.
- (3) A special tax code certificate does not enable the employee to receive any benefit by way of a credit of tax to which **subpart KD** applies.
- (4) Where a special tax code certificate bearing the signature of the employee is produced to an employer at the time when the employer makes to the employee a payment to which the certificate relates, the provisions of the certificate in respect of that payment, subject to **section NC 16**, apply notwithstanding anything in this Act.
- (5) Where a special tax code certificate so produced to an employer provides for the making of a tax deduction from a specified proportionate part of any source deduction payment, the PAYE rules as to tax deductions, other than this

section and **section NC 16**, so far as they are applicable, apply in respect of the specified proportionate part as if that part constituted the whole of the source deduction payment.

- (6) The Commissioner may at any time cancel any special tax code certificate.
- (7) Not later than 7 days after the Commissioner has given notice of the cancellation of a special tax code certificate to the employee named in the certificate, the employee must return the certificate to the Commissioner.

Compare: 1994 No 164 s NC 14

Duties of employer as to deductions

NC 15 Payment of tax deductions to Commissioner

- (1) Every employer who makes tax deductions from source deduction payments made to employees must—
 - (a) unless **paragraph (c) or (d)** applies, not later than the 20th day of the month in which the employer makes such a deduction in the first PAYE period, pay to the Commissioner the amount of the tax deduction and deliver to the Commissioner a remittance certificate:
 - (b) unless **paragraph (c) or (d)** applies, not later than the 5th day of the month following a month in which the employer makes a deduction in the second PAYE period, or the 15th day of January if December is the month in which the deduction is made, pay to the Commissioner the amount of the tax deductions and deliver to the Commissioner by electronic means and in the prescribed electronic format (unless section 36B of the Tax Administration Act 1994 applies) an employer monthly schedule, and a remittance certificate:
 - (c) if the employer was an employer in the preceding tax year and gross tax deductions payable and specified superannuation contribution withholding tax payable in that preceding tax year were, in total, less than \$100,000, not later than the 20th of the month following a month in which the employer has made a deduction (**deduction month**), pay to the Commissioner the amount of the tax deductions, deliver to the Commissioner an employer monthly schedule, and deliver to the Commissioner a remittance certificate:

- (d) if the employer was not an employer in the preceding tax year, until the time when gross tax deductions and specified superannuation contribution withholding tax payable in the current tax year in total exceeded \$100,000, not later than the 20th of the month following a month in which the employer has made a deduction, pay to the Commissioner the amount of the tax deductions, deliver to the Commissioner an employer monthly schedule, and deliver to the Commissioner a remittance certificate:
 - (e) not later than the 15th day of the second month after the month in a tax year in which the employer disposes of or otherwise stops carrying on a business in respect of which the employer has made tax deductions, notify the Commissioner of the disposal or cessation of conduct of the business in respect of which tax deductions were made.
- (2) The Commissioner may exempt an employer or a class of employers from the requirement to provide a remittance certificate under **section NC 15(1)(b) or (c) or (d)** if the information required to be included in a remittance certificate is provided in an employer monthly schedule.
- (2B) An employer monthly schedule or a remittance certificate that is delivered to the Commissioner by non-electronic means is required to be signed by the employer.
- (3) The Commissioner may vary any of the requirements of this section in relation to any employer or class of employers in such cases and to such extent as the Commissioner thinks fit, and in every such case this section applies as so varied.
- (4) The executor or administrator of a deceased employer must fulfil such of the obligations of the employer under this section as have not been fulfilled by the employer before the employer's death.
- (5) For the purposes of **subsection (1)(c)**,—
 - (a) 2 or more companies where, at any time during the relevant tax year, those companies were a group of companies; and
 - (b) all partners in a partnership; and
 - (c) all persons in whom property has become vested or to whom the control of property has passed in the case of each estate of a deceased person or each trust or each

- company in liquidation or each assigned estate or each other case where property is vested or controlled in a fiduciary capacity,—
are deemed to be 1 employer.
- (6) For the purposes of **subsection (1)(c)**, where at any time during a tax year an employer ceases business and begins a new business, or operates 2 or more businesses simultaneously, the gross tax deductions relating to all businesses carried on by the employer must be aggregated.
- (7) Where any amalgamating company ceases to exist on an amalgamation, **subsection (1)(c)** applies from the time of the amalgamation as if gross tax deductions and specified superannuation contribution withholding tax deductions payable by the amalgamating company in the year preceding the year in which the amalgamation takes place were payable by the amalgamated company.
- (8) In this section, **PAYE period** means the first PAYE period or the second PAYE period, as the case may require.

Compare: 1994 No 164 s NC 15

Employee's duties where deductions not made

NC 16 Employee to pay deductions to Commissioner

Where for any reason a tax deduction or a combined tax and earner premium deduction or combined tax and earner levy deduction is not made or is not made in full at the time of the making of any source deduction payment or payments, the employee must—

- (a) not later than the 20th day of the month that next follows the month in which payment of the source deduction payment was made, furnish to the Commissioner an employer monthly schedule containing those particulars that apply to the employee; and
- (b) unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Commissioner an amount equal to the total of the tax deductions or combined tax and earner premium deductions or combined tax and earner levy deductions that should have been made and were not made, and that amount is due and payable to the Commissioner on the

20th of the month following the month in which payment of the source deduction payment or payments was made.

Compare: 1994 No 164 s NC 16

Assessment and payment of tax

NC 17 Assessment and payment of tax

- (1) The amount of income tax for which an employee who is not a non-filing taxpayer is liable in respect of the taxable income of the employee in any tax year must be included in an assessment.
- (2) Income tax payable under an assessment made under **subsection (1)** and not otherwise due and payable is due and payable on—
 - (a) 7 February in the next tax year; or
 - (b) 7 April in the tax year following the next tax year if—
 - (i) the taxpayer's return of income to which the assessment relates was linked to a tax agent; or
 - (ii) the taxpayer requests an income statement under section 80C of the Tax Administration Act 1994 or is issued an income statement under section 80D of that Act and the Commissioner has been notified that a tax agent will correctly respond to the income statement issued to the taxpayer; or
 - (c) an earlier date specified in a notice given to the taxpayer as long as the date specified is not less than 30 days after the date of that notice.
- (3) Income tax payable under an income statement that is treated as an assessment under section 92 of the Tax Administration Act 1994 by virtue of section 80H(1) of that Act is due and payable on the applicable date set out in **subsection (2)(a) or (b)**.

Compare: 1994 No 164 s NC 17

*Miscellaneous provisions***NC 18 Bond in lieu of tax deductions in case of certain non-resident employees**

- (1) Where the Commissioner is satisfied on the written application of any employer that it cannot be reasonably determined, at the time that a tax deduction is or will be required to be made from a source deduction payment under the PAYE rules, whether or not that source deduction payment will in respect of any employee of that employer be exempt income under this Act under—
 - (a) a double tax agreement; or
 - (b) **section CW 15**,—
the Commissioner may accept from the employer a bond or other form of security satisfactory to the Commissioner securing the payment, on terms acceptable to the Commissioner, of the tax deductions that would, but for this section, have been required to be deducted under the PAYE rules from source deduction payments made to the employee.
- (2) If the Commissioner accepts from an employer a bond or other security under **subsection (1)**, then, in respect of an employee and the period to which the bond or security applies,—
 - (a) no tax deduction under the PAYE rules must be made by an employer from a source deduction payment made to the employee; and
 - (b) information in relation to an employee that is, but for this paragraph, required to be included in an employer monthly schedule must not be included in that schedule; and
 - (c) the non-declaration rate must not be applied in relation to a source deduction payment made to the employee.
- (3) **Subsection (2)** ceases to apply in respect of any employer and employee immediately upon the earlier of—
 - (a) the occurrence of any event (including the passing of any date or period) that, in terms of any provision of arrangements to which effect is given by an Order in Council made under **section BH 1**, or in terms of **section CW 15**, renders the employee liable to income tax under this Act; or

- (b) such date as may be specified by the Commissioner by notice to the employer (being a date not earlier than that on which the notice is given) as that after which tax deductions are to be made from source deduction payments made to the employee,—
and tax deductions must from that time be made by the employer in accordance with the PAYE rules.
- (4) Where the Commissioner is satisfied that an employee is liable for income tax in respect of any source deduction payment from which no tax deduction was made by virtue of **subsection (2)**,—
- (a) the Commissioner must advise the employer accordingly by notice; and
- (b) the employer must account for, and pay to the Commissioner, an amount equal to the tax deductions that would have been due in respect of that employee if **subsection (2)** had not applied, or such lesser amount as may be determined by the Commissioner.
- (5) Any amount paid to the Commissioner under **subsection (4)** is deemed to be a tax deduction made from a source deduction payment under the PAYE rules and, subject to section 120U of the Tax Administration Act 1994, is deemed to have been made on the date that notice was given by the Commissioner under that subsection.

Compare: 1994 No 164 s NC 18

NC 19 Amount of tax deductions deemed to be received by employee

Where any amount has been deducted from a source deduction payment by way of tax deduction, or combined tax and earner premium deduction, or combined tax and earner levy deduction under the PAYE rules and, where applicable, section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, the amount so deducted,—

- (a) as between the employer and the employee, is deemed to have been received by the employee at the time of the source deduction payment:
- (b) for the purposes of this Act, is deemed to have been derived by the employee at the same time and in the

same way as the residue of the source deduction payment.

Compare: 1994 No 164 s NC 19

NC 20 Application of other provisions to amounts payable under PAYE rules

- (1) Subject to the PAYE rules, this Act and the Tax Administration Act 1994 apply with respect to every amount other than any earner premium deduction payable in accordance with section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or an earners' levy payable under section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 that any employer, employee, or other person is liable to account for or pay to the Commissioner under the PAYE rules as if the amount were income tax; but nothing in the PAYE rules should be construed so as to include any such amount in the terms "income tax" or "tax" for the purposes of section 120K of the Tax Administration Act 1994.
- (2) Sections 156 to 165 and 211 of the Tax Administration Act 1994 apply with respect to combined tax and earner premium deductions or combined tax and earner levy deductions as if those deductions were income tax.
- (3) For the purposes of the PAYE rules, sections 156 to 165, 143, and 143A of the Tax Administration Act 1994, and section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, nothing in those Acts or in this Act should be treated as requiring or having required—
 - (a) the separate identification of those amounts of a combined tax and earner premium deduction or combined tax and earner levy deduction that are attributable to—
 - (i) a tax deduction required to be made by an employer under the PAYE rules; or
 - (ii) a deduction required to be made by an employer under section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, on account

of the earner's premium or earner's levy payable under that section; or

- (b) the bringing of separate proceedings or other separate treatment in relation to the collection, recovery, or imposition of penalties in relation to those types of deduction,—

in respect of any such deductions that, on or after 5 August 1993, have not been paid to the Commissioner in accordance with either of those Acts or this Act by the employer required to make the deductions.

Compare: 1994 No 164 s NC 20

NC 21 Regulations

Without limiting the general power to make regulations under the Tax Administration Act 1994, regulations may be made under this Act or that Act for all or any of the following purposes:

- (a) declaring any specified payment or payments of any specified class—
 - (i) to be included in or excluded from the definition of **extra pay**; or
 - (ii) to be included in or excluded from the definition of **salary or wages**; or
 - (iii) to be a withholding payment or payments, or not to be a withholding payment or payments, for the purposes of the PAYE rules:
- (b) prescribing the amounts of the tax deductions to be made from withholding payments or from any specified withholding payment or from withholding payments of any specified class:
- (c) providing that the Commissioner may, on the application of any person, specify an amount or a rate of tax deduction, other than the prescribed rate of tax deduction, to be made from withholding payments made to that person:
- (d) providing, in relation to any specified withholding payment, or withholding payments of any specified class, or withholding payments not exceeding any specified amount, that, subject to any provisions of the regulations, the amount of income tax for which the person receiving the payment or payments is liable in respect

of the payment or payments must be determined exclusively and finally by the total amount of the tax deductions required under the PAYE rules to be made from the payment or payments:

- (e) providing that a tax deduction may be made from a withholding payment, notwithstanding that the payment may be protected against assignment or charge:
- (f) providing that a tax deduction may be made from the gross amount of a withholding payment, whether or not it consists wholly or partly of income, or from so much of a withholding payment as remains after the subtraction from the withholding payment of any part of it regarded as expenditure incurred in the production of the payment:
- (g) providing that the Commissioner may determine, on such basis as the Commissioner thinks fit, what amount or proportion of any specified withholding payment, or withholding payments of any specified class, is to be regarded as expenditure incurred in the production of the payment or payments, and for the determination of the Commissioner to be final and conclusive, subject to any revocation or variation of the determination by the Commissioner:
- (h) providing that a tax deduction may be made from a withholding payment, whether the amount of the deduction relates exclusively to the income tax liability of the person receiving the payment or relates partly to that income tax and partly to the income tax liability of any employee or subcontractor of that person; and providing in the latter case for that person to recover from the employee or subcontractor a part of the tax deduction and to retain that part but otherwise to comply with the PAYE rules in respect of any tax deduction made by that person from any payment to the employee or subcontractor:
- (i) providing that the regulations or any of them do not apply in respect of payments made to any specified person, or to persons of any specified class, to whom the Commissioner gives notice to that effect.

Compare: 1994 No 164 s NC 21

Subpart ND—Fringe benefit tax

ND 1 Employer's liability for fringe benefit tax

- (1) Subject to **section ND 1V**, an employer who has provided or granted a fringe benefit to an employee is liable to pay a special tax by way of an income tax to be known as fringe benefit tax.
- (2) An employer must do 1 of the following—
 - (a) elect to pay fringe benefit tax at the rate of either 49% or 64% of the taxable value of a fringe benefit for the first 3 quarters of a tax year in accordance with **section ND 2** and pay fringe benefit tax for the final quarter in accordance with both **sections ND 5 and ND 6**; or
 - (b) pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit for the first 3 quarters of a tax year and either—
 - (i) pay fringe benefit tax for the final quarter in accordance with both **sections ND 5 and ND 6**; or
 - (ii) pay fringe benefit tax for the final quarter at the rate of 64% of the taxable value of a fringe benefit; or
 - (c) if the employer pays fringe benefit tax on either an annual or an income year basis under **section ND 13 or ND 14** respectively, either—
 - (i) apply **sections ND 5 and ND 6** to a year and calculate and pay the resulting fringe benefit tax liability; or
 - (ii) pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit.
- (3) An employer who applies **subsection (2)(c)(i)** must apply **sections ND 5 and ND 6** as if references to the final quarter of the year were read as being to the tax year, or the income year, as the case may be.
- (4) An employer who has elected to pay fringe benefit tax under **subsection (1)(b)(ii)** may request the Commissioner to amend the fringe benefit tax liability calculated by providing the Commissioner with the necessary information to amend the fringe benefit liability so that it is calculated under **subsection (1)(b)(i)**.
- (5) An employer who has elected to pay fringe benefit tax under **subsection (1)(c)(ii)** may request the Commissioner to amend the fringe benefit tax liability calculated by providing the

Commissioner with the necessary information to amend the fringe benefit liability so that it is calculated under **subsection (1)(c)(i)**.

- (6) An employer must provide the information to the Commissioner during the 2 months that occur after the date of the notice advising that an assessment for the final quarter, or the year, has been made.

Compare: 1994 No 164 s ND 1

Value of fringe benefits

ND 1A Private use of motor vehicle: value of benefit

- (1) This section determines the value of the benefit that an employer provides to an employee by making a motor vehicle available for their private use. The taxable value of the fringe benefit when the vehicle is owned in part by an employee or a person associated with the employee is dealt with in **sections NC 1U to NC 1V**.

- (2) If fringe benefit tax is paid quarterly, the value of the benefit is calculated using the formula—

$$\frac{\text{days} \times \text{schedule 2 amount}}{90}$$

- (3) If fringe benefit tax is paid annually, the value of the benefit is the total of the amounts calculated under **subsection (2)** for the 4 quarters in the applicable tax year.

- (4) If fringe benefit tax is paid on an income year basis, the value of the benefit is calculated using the formula—

$$\frac{\text{days} \times \text{schedule 2 amount}}{365}$$

- (5) In the formula,—

- (a) in **subsection (2)**, **days** refers to the number of days in the quarter on which the motor vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle, or 90, whichever is less:
- (b) in **subsection (4)**, **days** refers to the number of days in the income year on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle:

- (c) **schedule 2 amount** refers to the amount calculated under **schedule 2, part A**, as the value of the benefit that would have been received for unlimited private use of the vehicle in that quarter or income year, as applicable.
- (6) To calculate the value of the benefit, an employer may choose to use a test period to establish private use.

Compare: 1994 No 164 s CI 3(1), CI 11(1)

ND 1B Private use of motor vehicle: test period to establish private use

- (1) To establish the value of the benefit provided through a motor vehicle being made available to an employee for their private use, an employer may choose to record the details of the use of the vehicle by the employee for a test period. The number of days on which a vehicle is available for an employee's private use that is ascertained in the test period is the number used in the calculation in **section ND 1A(2)**. The number used in the calculation in **section ND 1A(4)** is the number of days ascertained in the test period multiplied by 4.
- (2) If fringe benefit tax is paid quarterly or annually, the test period is a quarter. If fringe benefit tax is paid on an income year basis, the test period is 3 consecutive months of an income year.
- (3) The employer must choose a test period that shows, or is likely to show, a pattern of use of the motor vehicle by the employee that fairly represents the use of the vehicle by the employee over the whole of the applicable term. The employer must keep a record of the test period, including accurate details of the days in the period on which the vehicle is available for the employee's private use. For this purpose, a day on which the vehicle is a work-related vehicle is treated as a day on which the vehicle is not available for private use.
- (4) The number of days of availability for private use ascertained in the test period applies for a term of 3 years. The term starts, as applicable, as follows:
 - (a) if fringe benefit tax is paid quarterly, on the first day of the test period:
 - (b) if fringe benefit tax is paid annually, on the first day of the tax year in which the test period occurs:

- (c) if fringe benefit tax is paid on an income year basis, on the first day of the income year in which the test period occurs.
- (5) The term is reduced if the actual number of days of actual private use of the motor vehicle is 20 or more percentage points higher than the number ascertained in the test period. In this case, the term ends on the last day of the applicable quarter, year, or income year. If the employer chooses to start another test period, the existing term ends immediately before the start of the new term.
- (6) If the Commissioner considers that the result ascertained in the test period does not, or does no longer, fairly represent the actual private use of the motor vehicle by the employee, the Commissioner may give notice to the employer that the term will end on a specified date. Following notification, the employer must not use that result again.
- (7) A replacement motor vehicle is treated in the same way as the vehicle it replaces if the result ascertained in the test period is likely to be fairly representative of the average availability for the private use of the vehicle during the term.

Compare: 1994 No 164 s CI 11

ND 1C Subsidised transport: value of benefit

- (1) If an employer provides their employee with subsidised transport, the value of the benefit is 25% of the highest published market fare the employer charges the public for the equivalent transport (in terms of class, extent, and occasion). This subsection is overridden by **subsection (2)**.
- (2) Despite **section CX 4**, if the fringe benefit is provided under an arrangement with a third person, the value of the benefit is determined under **subsection (3)**.
- (3) If a third person provides the employee with subsidised transport under an arrangement with their employer, the value of the benefit is the greater of—
 - (a) 25% of the highest published market fare the person charges the public for the equivalent transport (in terms of class, extent, and occasion); and
 - (b) the amount that the employer has paid or is liable to pay the person for the benefit provided.

- (4) In this section, for a registered person who may claim input tax for subsidised transport, **amount** means the GST-inclusive amount.

Compare: 1994 No 164 s CI 3(6), (8A)

ND 1D Employment-related loans: value of benefit

The value of a benefit provided by way of an employment-related loan in a period is the amount by which the prescribed interest on the loan is more than—

- (a) the amount of interest that accrued on the loan in that period; or
- (b) when the loan is a financial arrangement, the income that would have accrued to the employer's benefit in that period as if calculated under the yield to maturity method.

Compare: 1994 No 164 s CI 3(2)

ND 1E Employment-related loans: repayment

- (1) For the purposes of **section ND 1D**, an amount of income that is applied in a tax year to repay an employment-related loan is treated as having been applied towards repayment on the first day of the tax year or, if the date of the advance of the loan falls after that day, that later date.
- (2) **Subsection (1)** applies only to income that—
 - (a) an employee derives from their employer by way of salary or wages, extra pay, dividend, or interest; and
 - (b) is not resident withholding income, non-resident withholding income, or an amount subject to tax deduction under the PAYE rules; and
 - (c) is income of the employee in the tax year in which it is applied to repay the loan or in an earlier tax year.
- (3) If the amount that the employee derives and that is applied in this way relates to a tax year following the tax year in which it is applied to repay the loan, the employee may treat the amount as having been derived in that earlier tax year. If so, the employee must give notice to the Commissioner of their decision within the time allowed to the employer for filing a return of income or within a longer time that the Commissioner allows.

- (4) If the employer has a non-standard accounting year, references in this section to an employer's tax year are treated as references to that accounting year.

Compare: 1994 No 164 s CI 3(3)–(5)

ND 1F Employment-related loans: regulations

- (1) The Governor-General may make regulations by Order in Council to declare the rate of interest applying to employment-related loans.
- (2) When regulations referred to in **subsection (1)** are made, they apply to quarters starting from a date at least 1 month after the date the regulations were made. Regulations that reduce the rate of interest from the prescribed rate of interest at the time, if made at least 1 month before the quarter ends, may apply for that quarter.

Compare: 1994 No 164 s CI 6

ND 1G Meaning of prescribed interest

In **sections ND 1E and ND 1F**, **prescribed interest** means,—

- (a) for loans made after 31 March 1985, the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of that loan at the prescribed rate of interest:
- (b) for loans made on or before 31 March 1985, if the interest on that loan is not subject to review, the non-concessionary rate of interest for the tax year in which the agreement to make the loan was signed or, if the agreement was not in writing, the year in which the loan was agreed to by all parties.

Compare: 1994 No 164 s OB 1 “prescribed interest”

ND 1H Contributions to superannuation schemes: value of benefit

- (1) The value of a benefit by way of an employer's contribution to a superannuation scheme is the amount of the contribution made by the employer.

- (2) In this section, for a registered person who may claim input tax for a contribution to a superannuation scheme, **amount** means the GST-inclusive amount.

Compare: 1994 No 164 s CI 3(8), (8A)

ND 1I Insurance contributions: value of benefit

- (1) The value of a benefit provided by way of a contribution to a sick, accident, or death benefit fund is the amount of the contribution made by the employer.
- (2) The value of a benefit provided by way of a specified insurance premium is the amount of the premium paid by the employer.
- (3) The value of a benefit provided by way of a contribution to an insurance fund of a friendly society is the amount of the contribution made by the employer.

Compare: 1994 No 164 s CI 3(7), (8)

ND 1J Goods: value of benefit

- (1) The value of a fringe benefit that consists of the provision of goods is determined as follows:
- (a) when the person providing the goods manufactured, produced, or processed them, their market value:
 - (b) when the person providing the goods bought them, or paid for them to be bought, dealing at arm's length with the supplier of the goods, the cost of the goods to the person or, if that cost would be more than the market value of the goods, their market value:
 - (c) if the person providing the goods is a company included in a group of companies, then, as the person chooses, the value of the benefit under either **paragraph (a) or (b)**, applying the provisions as if the group of companies were 1 company.

This subsection is overridden by **subsection (2)**.

- (2) If the value of the fringe benefit as determined under **subsection (1)** would be more than the amount that would have been obtained if the goods had been offered for retail sale at the time at which the employer provided the benefit, the value is treated as the amount that an arm's length buyer from the public would have paid in the open market in New Zealand in a sale freely offered and made on ordinary trade terms.

(3) In this section,—

cost, for a registered person who may claim input tax for the goods, means the GST-inclusive cost of the goods bought or the amount that the person paid for the goods

market value means the lowest price, at the time at which the goods were provided to the employee, for which identical goods were sold by the same person to an arm's length buyer (whether wholesaler, retailer, or the public) in the open market in New Zealand in a sale freely offered and made on ordinary trade terms

price, for a registered person who may claim input tax for goods that they manufacture, produce, or process, means the GST-inclusive price of those goods to that person.

Compare: 1994 No 164 s CI 3(9), (9A)

ND 1K Services: value of benefit

(1) The value of a fringe benefit that consists of providing services (other than making available a motor vehicle for private use, providing an employment-related loan, or providing subsidised transport) is,—

- (a) when an employer normally provides the services as part of their business, the price at the time they provided the services for the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms between buyers and sellers independent of each other:
- (b) when an employer pays for the services to be provided, dealing at arm's length with the supplier of the services, the amount paid or payable:
- (c) if neither **paragraph (a) nor (b)** applies, the price or fee that the employer or supplier providing the services would at that time have charged the public, had they provided the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms.

(2) In this section,—

amount, for a registered person who may claim input tax for that service, means the GST-inclusive amount

fee and price, for a registered person who may claim input tax for that service, mean the GST-inclusive fee or price.

Compare: 1994 No 164 s CI 3(10), (10A)

ND 1L When value of fringe benefit cannot be ascertained

- (1) If, under **sections ND 1A, ND 1C to ND 1E, and ND 1I to ND 1K**, the value of a fringe benefit cannot be ascertained, the value is the market value or otherwise as the Commissioner determines.
- (2) In this section, **market value** means the lowest price, at the time at which the goods or services were provided to the employee, for which the identical goods or services were sold by the same person to an arm's length buyer from the public in the open market in New Zealand in a sale freely offered and made on ordinary trade terms.

Compare: 1994 No 164 s CI 3(11)

ND 1M Meaning of identical goods

In the fringe benefit tax rules, **identical goods**, for any goods, means other goods that are the same in terms of physical characteristics, quality, and reputation, except for minor differences in appearance that do not affect the value of the goods.

Compare: 1994 No 164 s OB 1 "identical goods"

ND 1N Goods at staff discount

- (1) This section applies to goods that an employer sells in the normal course of their business to an employee when all the following apply:
 - (a) the retail price of identical goods is \$200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and
 - (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer normally provides to employees; and
 - (c) at the time of the sale, the staff discount is no more than 5% of the price of identical goods in the circumstances referred to in **paragraph (a)**.

- (2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer.

Compare: 1994 No 164 s CI 2(6)

ND 10 Goods on special with staff discount

- (1) This section applies to goods that an employer sells to an employee on a day when the employer is selling identical goods at a special price and when all the following apply:
- (a) the price of the identical goods is \$200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and
 - (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer offers to the employee in addition to any other discount; and
 - (c) on the day of the sale, a reasonable quantity of those goods is available in the open market in New Zealand; and
 - (d) the price is at least 95% of the cost of the goods to the employer, or at least 95% of the price on the day of the sale of the identical goods to the public in the open market in New Zealand, whichever is less.
- (2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer.

Compare: 1994 No 164 s CI 2(5)

ND 1P Definitions for sections ND 1N and ND 10

- (1) In **sections ND 1N and ND 10**,—
- cost**, for a registered person who may claim input tax for the cost of the goods, means the GST-inclusive cost of the goods to the person
- price**, for a registered person who may claim input tax for goods provided to an employee, means the GST-inclusive price.
- (2) For the purposes of **sections ND 1N and ND 10**, if a company that is included in a group of companies sells goods to an employee of another company in the group, the sale is treated as if it were made directly from employer to employee.

Compare: 1994 No 164 s CI 2(6A), (7)

ND 1Q Unclassified benefits

- (1) An employer is liable to pay fringe benefit tax on an unclassified benefit only within the limits described in this section.
- (2) When fringe benefit tax is paid quarterly, an employer is liable for fringe benefit tax on an unclassified benefit provided to an employee in a quarter only if—
 - (a) the total taxable value of all unclassified benefits provided in the quarter to the employee is more than \$75; or
 - (b) the total taxable value of all unclassified benefits provided in the quarter to all employees of the employer (whether accounted for on a quarterly or an income year basis) is more than \$450.
- (3) When fringe benefit tax is paid either annually or on an income year basis, an employer is liable for fringe benefit tax on unclassified benefits provided to an employee in the tax year or income year only if—
 - (a) the total taxable value of all unclassified benefits provided in the tax year or income year to the employee is more than \$300; or
 - (b) the total taxable value of all unclassified benefits provided in the tax year or income year to all employees of the employer is more than \$1,800.
- (4) When an employer accounts for fringe benefit tax on an income year basis, or when the period for which they have accounted under **section ND 14** differs from an income year for the reasons described in **subsection (5)**, an employer is liable for fringe benefit tax on unclassified benefits provided in the period only if—
 - (a) the total taxable value of all unclassified benefits provided in the period to an employee is more than the figure that is the same fraction or multiple of \$300 as the number of days in the period is a fraction or multiple of 365; or
 - (b) the total taxable value of all unclassified benefits provided in the period to all employees of the employer is more than the figure that is the same fraction or multiple of \$1,800 as the number of days in the period is a fraction or multiple of 365.

- (5) In **subsection (4)**, the income year for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—
- (a) started or ceased business during that income year; or
 - (b) chosen (with the agreement of the Commissioner) to file a return under this subpart for the income year ending with the date of the annual balance of their accounts.

Meaning of employer

- (6) In this section, **employer** includes a person associated with an employer at any time in the relevant period.

Compare: 1994 No 164 s CI 5

ND 1R Adjustments for unclassified benefits on amalgamation

- (1) This section applies when a company that is an employer ceases to exist through amalgamation or when a new company is established on amalgamation. An adjustment is allowed for unclassified benefits in the period in which the amalgamation occurs.
- (2) If the amalgamating company pays fringe benefit tax quarterly, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$450 referred to in **section ND 1Q(2)(b)** by an amount calculated using the formula—
- $$\frac{450 \times \text{number of days in the quarter after amalgamation}}{\text{days in the quarter.}}$$
- (3) If an amalgamated company pays fringe benefit tax quarterly, and the amalgamated company is a new company established on amalgamation, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$450 referred to in **section ND 1Q(2)(b)** by an amount calculated using the formula—
- $$\frac{450 \times \text{number of days in the quarter before amalgamation}}{\text{days in the quarter.}}$$
- (4) If the company pays fringe benefit tax annually, the formulas in **subsections (2) and (3)** apply as if the references were to—
- (a) a year instead of a quarter;
 - (b) the figure of \$1,800 referred to in **section ND 1Q(3)(b)** instead of \$450.

Compare: 1994 No 164 s CI 7

Taxable value of fringe benefits

ND 1S Payments towards fringe benefits

- (1) The taxable value of a fringe benefit is the value of the benefit.
- (2) If an employee pays a sum for receiving a fringe benefit, the value of the benefit is reduced by the amount paid.
- (3) When **section GC 15(1)** applies, the value of the benefit is reduced if a person associated with the employee pays an amount for the benefit.
- (4) This section does not apply to—
 - (a) an employment-related loan:
 - (b) a payment to acquire or improve an asset if receiving or using the asset does not constitute a fringe benefit.

Compare: 1994 No 164 s CI 4(1)(a)

ND 1T Private use of motor vehicle: determining taxable value in cases of part ownership

When a fringe benefit is provided by way of a motor vehicle being made available to an employee for their private use, and the vehicle is owned in part by the employee (or, when **section GC 15(1)** applies, a person associated with the employee), the taxable value of the fringe benefit is determined under either **section ND 1U or ND 1V**.

Compare: 1994 No 164 s CI 4(1)

ND 1U Private use of motor vehicle: when schedular value not used

- (1) This section applies when the employer has not valued the motor vehicle at cost price or market value (excluding GST) under **schedule 2, part A, clause 3**.
- (2) To calculate the taxable value of the fringe benefit, the value of the benefit determined under **section ND 1A** is reduced by an amount that is the applicable percentage of the cost price (determined including GST under **schedule 2, part A, clause 2**) of the motor vehicle to the employee or the associated person in the following way:
 - (a) if fringe benefit tax is paid quarterly, by an amount equal to 2.5% of the cost price of the vehicle:
 - (b) if fringe benefit tax is paid annually, by an amount equal to 2.5% of the cost price of the vehicle for each

quarter in which the vehicle was part owned by the employee or the associated person:

- (c) if fringe benefit tax is paid on an income year basis, by an amount equal to 10% of the cost price of the vehicle.
- (3) In **subsection (2)(c)**, if the period for which the employer accounts for fringe benefit tax differs from a normal income year for the reasons described in **subsection (4)**, the amount by which the taxable value of the fringe benefit is reduced is calculated using the formula—
- $$\frac{10\% \text{ of the number of days more or less than normal income year}}{365}.$$
- (4) The period for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—
- (a) begun or ceased business during that income year; or
 - (b) chosen (with the agreement of the Commissioner) to file a fringe benefit return for the income year ending with the date of the annual balance of their accounts.
- (5) If an employee has not been part-owner of the motor vehicle for the whole of the income year (or the period referred to in **subsection (4)**), the reduction is calculated by reference to the proportion of the number of days of that income year or accounting period for which the employee was not a part-owner to the total number of days of that income year or accounting period.

Compare: 1994 No 164 s CI 4(1)(b), (2), (3)

ND 1V Private use of motor vehicle: when schedular value used

- (1) This section applies when the employer has valued the motor vehicle on a cost price or market value (excluding GST) under **schedule 2, part A, clause 3**.
- (2) To calculate the taxable value of the fringe benefit, the value of the benefit determined under **section ND 1A** is reduced by an amount that is the applicable percentage of the cost price (determined excluding GST) under **schedule 2, part A, clause 3(b)(i)** in the following way:
 - (a) when fringe benefit tax is paid quarterly, by a percentage calculated using the formula—

$$2.5 + (2.5 \times \text{schedule 2 rate}):$$

- (b) when fringe benefit tax is paid annually, by a percentage for each quarter in which the vehicle was part-owned by the employee or associated person calculated using the formula—
$$2.5 + (2.5 \times \text{schedule 2 rate});$$
- (c) when fringe benefit tax is paid on an income year basis, by a percentage calculated using the formula—
$$10 + (10 \times \text{schedule 2 rate}).$$
- (3) In the formula, **schedule 2 rate** is the rate of GST specified in **schedule 2, part A, clause 3(b)(ii) or (iii)** for the employer and the relevant quarter and relevant income year, as applicable.

Compare: 1994 No 164 s CI 4(1)(c)

Application

ND 1W Application

- (1) The fringe benefit tax rules bind the Crown.
- (2) The provisions of this Act and of the Tax Administration Act 1994 apply to fringe benefit tax as if it were income tax imposed under **section BB 1**, and as if a reference to a tax year were a reference to a quarter or a tax year or an income year, as required. Nothing in the fringe benefit tax rules may be construed to include fringe benefit tax in the words “income tax” or “tax” for the purposes of **section OB 6(3)**.

Compare: 1994 No 164 ss CI 8, CI 10

Payment of fringe benefit tax

ND 2 Election to pay fringe benefit tax per quarter

- (1) An employer may elect to pay fringe benefit tax at the rate of 49% of the taxable value of a fringe benefit provided or granted to an employee for any 1 or all of the first 3 quarters of a tax year.
- (2) An employer must pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee for any of the first 3 quarters of the tax year for which the employer does not pay fringe benefit tax at the rate of 49%.
- (3) An employer makes an election under this section by filing a return and paying fringe benefit tax at the rate elected.

- (4) An election under this section is irrevocable.
- (5) Despite **subsection (1)**, an employer must pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee for the quarters beginning 1 April 2000 and 1 July 2000.

Compare: 1994 No 164 s ND 2

ND 3 Attributed fringe benefits

- (1) For each tax year or income year, as the case may be, an employer must attribute the following fringe benefits to the employee to whom the fringe benefit is provided or granted:
 - (a) a benefit to which either **section CX 8 or CX 15** applies; and
 - (b) a benefit with a taxable value of \$1,000 or more per category per year to which any 1 of **sections CX 14 and CX 18 to CX 20** applies; and
 - (c) benefits with a total taxable value of \$2,000 or more per year to which **section CX 22** applies.
- (1A) **Subsection (1)(a)** does not apply to a loan to which **section CX 17** applies (loans owing to life insurers).
- (2) If an employer provides or grants a fringe benefit to more than 1 employee and the fringe benefit is 1 that must be attributed under **subsection (1)**, the employer must attribute the fringe benefit to the employee who principally uses, enjoys, or receives the fringe benefit during a quarter or, if the employer is one to whom **section ND 14** applies, during an income year or to the employee to whom the fringe benefit is principally available for private use during a quarter or, if the employer is one to whom **section ND 14** applies, during an income year.
- (3) An employer who cannot determine which employee principally uses, enjoys, or receives a fringe benefit must pool the fringe benefit under **section ND 6**.
- (4) **Subsection (5)** applies if an employer provides or grants a fringe benefit to an employee and the fringe benefit—
 - (a) has a taxable value of less than \$1,000 per category per year to which any 1 of **sections CX 14 and CX 18 to CX 20** applies; or
 - (b) has a taxable value of less than \$2,000 per category per year to which **section CX 22** applies.
- (5) An employer must either—

- (a) attribute the fringe benefit as if it were a benefit to which **subsection (1)(b)** or, as the case may be, **subsection (1)(c)** applies; or
 - (b) pool the fringe benefit in accordance with **section ND 6**.
- (6) If an employer attributes a fringe benefit in the manner allowed by **subsection (5)(a)**, the employer must attribute all fringe benefits that have an annual taxable value of less than \$1,000 or, as the case may be, \$2,000 that fall within that fringe benefit category.
- (7) For the purpose of **subsection (1)**, each of **sections CX 14 and CX 18 to CX 20** is a fringe benefit category.

Compare: 1994 No 164 s ND 3

ND 4 Attributed fringe benefits: exception for subsidised transport

Despite **section ND 3(1)**, an employer may pool a fringe benefit with a taxable value of \$1,000 or more per year to which **section CX 14** applies if all of the employer's employees have the same or similar entitlement to the fringe benefit.

Compare: 1994 No 164 s ND 4

ND 5 Multi-rate calculation for attributed fringe benefits

- (1) An employer who attributes a fringe benefit to an employee who is not a major shareholder must calculate the employee's fringe benefit inclusive cash remuneration according to the formula—

$$\begin{aligned} & \text{cash remuneration} - \text{tax on cash remuneration} \\ & + \text{taxable value of fringe benefit} \end{aligned}$$

where—

cash remuneration is the cash remuneration determined under **section ND 7**

tax on cash remuneration is the tax calculated using the basic rates of tax for every \$1 of taxable income set out in **schedule 1, part B**, as if the cash remuneration were taxable income, the only taxable income received by the employee and any rebate of tax allowed under **section KC 1**, applied as if the employee were resident in New Zealand for the full tax year for the purpose of that section, were taken into account

taxable value of fringe benefit is the taxable value of all fringe benefits attributed to the employee in the tax year.

- (2) An employer who attributes a fringe benefit to an employee who is a major shareholder must calculate the employee's fringe benefit inclusive cash remuneration according to the formula—

$$\begin{aligned} & \text{cash remuneration} - \text{tax on cash remuneration} \\ & + \text{taxable value of fringe benefit} \end{aligned}$$

where—

cash remuneration is the cash remuneration determined under **section ND 7**

tax on cash remuneration is the tax calculated using the basic rates of tax for every \$1 of taxable income set out in **schedule 1, part B**, as if the cash remuneration were taxable income received by the employee and any rebate of tax allowed under **section KC 1**, applied as if the employee were resident in New Zealand for the full income year for the purpose of that section, were taken into account taxable value of fringe benefit is—

- (a) the taxable value of all fringe benefits attributed to the employee in the income year; and
 - (b) the taxable value of all fringe benefits attributed to an associate of the employee in the income year if the fringe benefits are not received by the associate as an employee of the employer.
- (3) An employer must calculate the tax on each employee's fringe benefit inclusive cash remuneration using the rates specified in **schedule 2, part B**.
- (4) An employer's fringe benefit tax liability for each employee is the result of the formula—

$$\begin{aligned} & \text{tax on fringe benefit inclusive cash remuneration} \\ & - \text{tax on cash remuneration} \end{aligned}$$

where—

tax on fringe benefit inclusive cash remuneration is the result of **subsection (3)**

tax on cash remuneration is the amount of tax calculated under either **subsection (1) or (2)**, as the case may be.

- (5) An employer who applies **section ND 5A(2)(a)** must deduct from the result of the formula the fringe benefit tax payable at the

rate of 49% on attributable fringe benefits in the tax year in which this section is applied to the benefits.

- (6) Despite **subsections (1) to (5)**, an employer may disregard the calculations required by this section and instead pay fringe benefit tax at the rate of 63.93% on the taxable value of the attributed fringe benefits.

Compare: 1994 No 164 s ND 5

ND 5A Special rule for fringe benefits attributed to shareholder-employees or employees receiving attributed income

- (1) If at the time an employer files their return the employer does not have sufficient information to undertake the calculations required by **section ND 5**, **section ND 5** does not apply—
- (a) in respect of—
- (i) a shareholder-employee who derives salary, wages, or income to which **section OB 2(2)** applies; or
- (ii) an employee who receives attributed income from their employer, being a company or a trust, in accordance with **section GC 14D**; and
- (b) in the year in which the employer must attribute fringe benefits under **section ND 3** to an employee who receives income described under **paragraph (a)**.
- (2) In respect of fringe benefits to be attributed to those particular employees, the employer must either—
- (a) pay fringe benefit tax at the rate of 49% of the taxable value of the fringe benefits attributed for the tax year and apply **section ND 5** to the benefits in the following tax year; or
- (b) pay fringe benefit tax at the rate of 63.93% of the taxable value of the fringe benefits attributed for the year and, despite **section ND 3**, not apply **section ND 5** to the benefits.

Compare: 1994 No 164 s ND 5A

ND 6 Calculation of fringe benefit tax on non-attributed fringe benefits

- (1) An employer must pool non-attributed fringe benefits that—
- (a) have a taxable value of less than \$1,000 per category per year, being benefits to which any 1 of **sections CX 14**

- and CX 18 to CX 20** applies, and have not been attributed to a particular employee; or
- (b) have a taxable value of less than \$2,000 per year, being benefits to which **section CX 23** applies, and have not been attributed to a particular employee; or
 - (c) fall within **section ND 4**, being benefits that have a taxable value of \$1,000 or more per year to which **section CX 14** applies; or
 - (d) cannot be attributed to a particular employee; or
 - (e) were provided or granted to a former employee; or
 - (f) are loans to which **section CX 17** applies (loans owing to life insurers).
- (2) For the final quarter of the tax year or the income year, an employer must—
- (a) create 2 pools and allocate fringe benefits to each pool according to whether a recipient of the pooled fringe benefits is—
 - (i) either—
 - (A) an employee who is a major shareholder; or
 - (B) an associate of an employee who is a major shareholder if the associate does not receive the fringe benefit as an employee of the employer:
 - (ii) an employee to whom **subparagraph (i)** does not apply; and
 - (b) calculate fringe benefit tax on the annual taxable value of the pooled fringe benefits—
 - (i) at the rate of 64% for pooled fringe benefits received or enjoyed by either—
 - (A) an employee who is a major shareholder; or
 - (B) an associate of an employee who is a major shareholder if the fringe benefit is not received by the associate as an employee of the employer:
 - (ii) at the rate of 49% in all other cases.

Compare: 1994 No 164 s ND 6

ND 7 Definition of cash remuneration

- (1) For the purposes of **section ND 5**, if an employee is not a major shareholder, the employee's cash remuneration for the tax year in which a fringe benefit is attributed is the remuneration paid to, credited to, or applied on account of the employee by the employer (**employer A**) or a related employer during the tax year but does not include the taxable value of a fringe benefit provided or granted by the employer or a related employer.
- (2) For the purpose of **section ND 5**, if an employee is a major shareholder, the employee's cash remuneration for the income year in which a fringe benefit is attributed is the remuneration paid to, credited to, or applied on account of the employee by the employer (**employer A**) or a related employer, plus—
 - (a) dividends and interest derived by the employee from employer A; or
 - (b) dividends and interest derived by the employee from a related employer if the related employer is the one who pays or credits remuneration, or who applies remuneration on account of the employee.
- (3) For the purposes of **subsections (1) and (2)**, an employer (**employer B**) is a related employer if employer B is treated as a separate employer from employer A and is—
 - (a) a branch or division of employer A; or
 - (b) a person associated with employer A.
- (4) In this section, **remuneration** means—
 - (a) salary or wages; and
 - (b) salary, wages, or income to which **section OB 2(2)** applies; and
 - (ba) an amount attributed in accordance with **section GC 14D**; and
 - (c) extra pays; and
 - (d) withholding payments; and
 - (e) a payment to a specified office holder.

Compare: 1994 No 164 s ND 7

ND 7A Timing of certain cash remuneration

- (1) **Subsection (2)** applies if—
 - (a) a shareholder-employee derives salary, wages, or income to which **section OB 2(2)** applies; or

- (b) an amount is attributed by a company or a trust in accordance with **section GC 14D**.
- (2) For the purposes of **section ND 5**, all of an employee's cash remuneration is treated as being cash remuneration in the year following the year in which the amount was derived or attributed.

Compare: 1994 No 164 s ND 7A

ND 8 Special rule for employer who stops employing staff during tax year

- (1) An employer who stops employing staff and does not intend to replace them during a tax year must apply **sections ND 5, ND 6, ND 9, and ND 10** as if the final quarter of the year were the quarter in which the employer stops employing staff.
- (2) This section does not apply to an employer who continues to provide or grant a fringe benefit to a former employee.

Compare: 1994 No 164 s ND 8

ND 9 Payment of fringe benefit tax: first 3 quarters of tax year

- (1) This section and **sections ND 10 to ND 12** do not apply to an employer who pays fringe benefit tax—
 - (a) on an annual basis under **section ND 13**; or
 - (b) on an income year basis under **section ND 14**.
- (2) For each of the first 3 quarters of a tax year or an income year, an employer to whom **section BE 1(4)** applies must forward to the Commissioner a return, in a form prescribed by the Commissioner, setting out—
 - (a) for the fringe benefits received or enjoyed by each of the employer's employees in a quarter, such details as are prescribed in the form; and
 - (b) a calculation of the amount of fringe benefit tax payable on the taxable value of the fringe benefits.
- (3) An employer must forward the return no later than 20 days after the end of the quarter, and is liable to pay to the Commissioner the amount calculated on or before the end of the 20th day.

Compare: 1994 No 164 s ND 9

ND 10 Payment of fringe benefit tax: final quarter of tax year

- (1) If an employer elects to pay fringe benefit tax in accordance with **sections ND 5 and ND 6**, the employer's fringe benefit tax liability for the final quarter of the tax year is the total of all amounts calculated under **sections ND 5(4) and ND 6(2)** less the amount of the fringe benefit tax payable for the previous 3 quarters of the tax year.
- (2) For the final quarter of a year, an employer to whom **section BE 1(4)** applies must forward a return to the Commissioner setting out—
 - (a) for the fringe benefits received or enjoyed by the employer's employees, such details as are prescribed in the form; and
 - (b) the amount of fringe benefit tax payable on the taxable value of the fringe benefits.
- (3) An employer must forward the return no later than 31 May next following the end of the quarter.
- (4) If an employer elects to pay fringe benefit tax in accordance with **sections ND 5 and ND 6** and the amount calculated is—
 - (a) a negative amount, the employer is entitled to a refund of the excess tax;
 - (b) a positive amount, the employer must pay the difference on or before 31 May next following the end of the quarter.
- (5) If **subsection (4)** does not apply, an employer is liable to pay to the Commissioner the amount calculated on or before the 31 May next following the end of the quarter.
- (6) **Subsection (7)** applies if an employer has elected to pay fringe benefit tax at the rate of 49% of the taxable value of a fringe benefit for the quarter beginning 1 October 2000 and the employer does not have the necessary records and systems to calculate and pay fringe benefit tax for the final quarter of the year in accordance with **sections ND 5 and ND 6**.
- (7) For the final quarter of the year, the employer must furnish a return and pay fringe benefit tax in accordance with this section as if all the fringe benefits provided or granted during the year were pooled fringe benefits to which **section ND 6(2)(b)(i)** applies.

Compare: 1994 No 164 s ND 10

ND 11 Payment of fringe benefit tax: no fringe benefit provided during quarter

- (1) If a fringe benefit has not been provided or granted by an employer during a quarter, the employer must forward to the Commissioner a return for the quarter, in a form prescribed by the Commissioner, setting out such details as are prescribed in the form.
- (2) An employer must forward the return—
 - (a) for any 1 of the first 3 quarters of a tax year, no later than 20 days after the end of the quarter:
 - (b) for the final quarter of a tax year, no later than 31 May next following the end of the quarter.
- (3) Despite **subsection (1)**, the Commissioner may, for the purpose of meeting the special circumstances of a case or class of cases, and upon or subject to such terms as the Commissioner may require, relieve an employer in whole or in part from any obligation imposed by **subsection (1)**.

Compare: 1994 No 164 s ND 11

ND 12 Special filing rule for employer who stops employing staff during tax year

An employer to whom **section ND 8** applies must apply **section ND 10(4) and (5) and paragraph (d)** of the definition of **date interest starts** in section 120C(1) of the Tax Administration Act 1994 as if the references to “31 May next following the end of the quarter” and “31 May next following the end of the final quarter” were to “the end of 2 months immediately following the end of the quarter in which the employer stops employing staff”.

Compare: 1994 No 164 s ND 12

ND 13 Payment of fringe benefit tax on annual basis for employees who are not shareholder-employees

- (1) An employer may elect to pay fringe benefit tax on an annual basis for fringe benefits provided or granted to employees who are not shareholder-employees if, in respect of any tax year,—
 - (a) gross tax deductions and specified superannuation contribution withholding tax deductions payable by the employer in the preceding tax year were not more than \$100,000; or

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- (b) the employer was not an employer in the preceding tax year.
 - (2) An employer makes an election by giving notice to the Commissioner stating the first tax year to which the election applies.
 - (3) An employer must give the notice of election to the Commissioner no later than—
 - (a) 30 June in the tax year in which the election first applies, if the employer was an employer in the preceding tax year; or
 - (b) the last day of the quarter that first ends after the day on which the employer first becomes an employer, if the employer was not an employer in the preceding tax year.
 - (4) An employer who makes an election must,—
 - (a) subject to **section ND 15**, pay fringe benefit tax on the taxable value of fringe benefits provided or granted to employees of the employer, other than shareholder-employees, in the tax year of election and in every subsequent year; and
 - (b) except as otherwise provided in the FBT rules, calculate the fringe benefit tax payable in the same manner as it would be calculated for fringe benefits provided or granted in the 4 consecutive quarters that comprise a tax year.
 - (5) For a tax year, an employer must forward to the Commissioner a return, in a form prescribed by the Commissioner, setting out the fringe benefit tax payable on the taxable value of fringe benefits received or enjoyed by each of the employer's employees, other than shareholder-employees, in that tax year.
 - (6) An employer must forward the form no later than the 31 May that first follows the end of the tax year to which the form relates and is liable to pay to the Commissioner the amount calculated no later than that 31 May.
 - (7) For the purpose of **subsection (1)**, if an employer ceases business and begins a new business, or operates 2 or more businesses simultaneously, the gross tax deductions and specified superannuation contribution withholding tax deductions relating to all business carried on by the employer must be aggregated.

- (8) If an amalgamating company ceases to exist on an amalgamation, **subsection (1)(a)** applies on and after the date of amalgamation as if gross tax deductions and specified superannuation contribution withholding tax deductions payable by the amalgamating company in the tax year preceding the tax year in which the amalgamation takes place were payable by the amalgamated company.

Compare: 1994 No 164 s ND 13

ND 14 Payment of fringe benefit tax on income year basis for shareholder-employees

- (1) An employer that is a close company may elect to pay fringe benefit tax on an income year basis for fringe benefits provided or granted to shareholder-employees if, in respect of an income year,—
- (a) gross tax deductions and specified superannuation contribution withholding tax deductions payable by the employer in the preceding year were not more than—
 - (i) \$100,000; or
 - (ii) if the employer has an early balance date, the proportion of \$100,000 that is equivalent to the proportion that the period beginning on 1 April in the preceding year and ending on the date by which the employer's notice of election is required by **subsection (3)** to be furnished to the Commissioner bears to a full year; or
 - (b) the employer was not an employer in the preceding income year.
- (2) An employer makes an election by giving notice to the Commissioner stating the first year to which the election applies.
- (3) An employer must give the notice of election to the Commissioner no later than—
- (a) the last day of the quarter that first ends after the beginning of the income year in which the election first applies, if the employer was an employer in the preceding income year; or
 - (b) the last day of the quarter that first ends after the day on which the employer first becomes an employer of employees, if the employer was not an employer in the preceding year.

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- (4) Subject to **section ND 15**, an employer who makes an election must pay fringe benefit tax on the taxable value of fringe benefits provided or granted to shareholder-employees in the income year of election and in every subsequent income year.
 - (5) For an income year, an employer must forward to the Commissioner a return, in a form prescribed by the Commissioner, setting out the fringe benefit tax payable on the taxable value of the fringe benefits received or enjoyed by each of the employer's shareholder-employees in that income year.
 - (6) An employer must forward the form no later than the employer's terminal tax date for the income year to which the form relates and is liable to pay to the Commissioner the amount calculated no later than that terminal tax date.
 - (7) For the purpose of **subsection (1)**, if an employer ceases business and begins a new business, or operates 2 or more businesses simultaneously, the gross tax deductions and specified superannuation contribution withholding tax deductions relating to all business carried on by the employer must be aggregated.
 - (8) If an amalgamating company ceases to exist on an amalgamation, **subsection (1)(a)** applies on and after the date of amalgamation as if gross tax deductions and specified superannuation contribution withholding tax deductions payable by the amalgamating company in the income year preceding the income year in which the amalgamation takes place were payable by the amalgamated company.
 - (9) In this section, **preceding year** means, in relation to an employer and an income year,—
 - (a) for an employer with a standard balance date, the year ending on the 31 March that immediately precedes the income year:
 - (b) for an employer with a late balance date, the year ending on the 31 March that last ends before the beginning of the employer's income year:
 - (c) for an employer with an early balance date,—
 - (i) the year beginning on 1 April before the beginning of the employer's income year and ends on the 31 March that occurs within the employer's income year; or
 - (ii) for the purpose of **subsections (1)(a)(ii) and (3)(b)** only, that part of the year referred to in **paragraph**

(c)(i) that begins on 1 April and ends on the day before the beginning of the employer's income year.

Compare: 1994 No 164 s ND 14

ND 15 Change in period for which fringe benefit tax payable

- (1) If, for a tax year, an employer has elected under **section ND 13** to pay fringe benefit tax on an annual basis and the employer does not meet the criteria specified in **section ND 13(1)** that are required for an election for that tax year, the employer must furnish returns and pay fringe benefit tax on a quarterly basis in accordance with **sections ND 9 and ND 10** for fringe benefits provided or granted by the employer to employees on or after the first day of the tax year.
- (2) If, for an income year, an employer has elected under **section ND 14** to pay fringe benefit tax on an income year basis, and the employer does not meet the criteria specified in **section ND 14(1)** that are required for an election for that income year, the employer must furnish returns and pay fringe benefit tax on a quarterly basis in accordance with **sections ND 9 and ND 10** for fringe benefits provided or granted by the employer to shareholder-employees on or after the first day of the employer's income year.
- (3) An employer who has elected to pay fringe benefit tax on an annual or an income year basis may at any time elect, by giving notice to the Commissioner, to pay fringe benefit tax on a quarterly basis.
- (4) An employer who elects must furnish returns and pay fringe benefit tax on a quarterly basis in accordance with **sections ND 9 and ND 10** for fringe benefits provided or granted by the employer on or after—
 - (a) the 1 April that first follows the date of the employer's election under **subsection (3)**, if the employer had previously elected to pay fringe benefit tax on an annual basis; or
 - (b) the first day of the income year of the employer that first follows the date of the employer's election under **subsection (3)**, if the employer had previously elected to pay fringe benefit tax on an income year basis; or

- (c) such other date agreed by both the employer and the Commissioner and notified by the Commissioner to the employer.
- (5) **Subsection (6)** applies if—
- (a) an employer transfers from paying fringe benefit tax on an income year basis to paying fringe benefit tax on a quarterly basis; and
 - (b) the day specified in **subsection (2) or (4)(b)** as the day on and after which fringe benefit tax is payable on a quarterly basis is not the same day as the first day of a quarter.
- (6) The employer must furnish a return and pay fringe benefit tax in accordance with **sections ND 9 and ND 10** as if the period beginning on the day specified and ending on the day before the first day of the quarter that begins after that specified day were a quarter.
- (7) **Subsection (8)** applies if—
- (a) an employer has made an election in accordance with **section ND 14** to pay fringe benefit tax on an income year basis for an income year; and
 - (b) the first day of the employer's income year in which the election first applies is not the same day as the first day of a quarter.
- (8) The employer must furnish a return and pay fringe benefit tax in accordance with **sections ND 9 and ND 10** as if the period beginning on the first day of the quarter in which the first day of the first income year falls and ending on the day before the first day of the first income year were a quarter.

Compare: 1994 No 164 s ND 15

ND 16 Amendment to thresholds for fringe benefit categories by Order in Council

- (1) The Governor-General may, by Order in Council, determine monetary thresholds for benefits that are categorised under **section ND 3** and referred to in **section ND 6**.
- (2) An Order in Council made pursuant to this section must specify the tax year from which a new monetary threshold applies.

Compare: 1994 No 164 s ND 16

Subpart NE—Specified superannuation contribution
withholding tax

NE 1 Application

Except as otherwise provided in the SSCWT rules, the SSCWT rules apply notwithstanding anything in any other provision of this Act.

Compare: 1994 No 164 s NE 1

NE 2 Specified superannuation contribution withholding tax imposed

- (1) A specified superannuation contribution made to a superannuation fund is subject to specified superannuation contribution withholding tax at the rate specified in **schedule 1, part A, clause 10(b)**, unless either **section NE 2AA(2) or NE 2A(2)** applies.
- (2) For the purposes of the SSCWT rules, unless the context otherwise requires, the amount of a specified superannuation contribution is deemed to be the aggregate of—
 - (a) the amount of the specified superannuation contribution received by the superannuation fund; and
 - (b) the amount of any specified superannuation contribution withholding tax payable under the SSCWT rules in respect of the contribution.

Compare: 1994 No 164 s NE 2

NE 2AA Employee election that specified superannuation contributions be subject to higher rate of specified superannuation contribution withholding tax

- (1) With the agreement of their employer, an employee may elect, by giving notice to the employer, that all or part of a specified superannuation contribution made by an employer on behalf of the employee on or after 1 October 2000 be subject to specified superannuation contribution withholding tax at the rate specified in **schedule 1, part A, clause 10(a)**.
- (2) If an employee makes an election, the employer must pay specified superannuation contribution withholding tax at the rate specified in **schedule 1, part A, clause 10(a)**.
- (3) An employee's election is valid until revoked in writing.

Compare: 1994 No 164 s NE 2AA

NE 2A Employee election that specified superannuation contributions be treated as salary or wages

- (1) With the agreement of their employer, an employee may elect, by giving notice to the employer, that all or part of a specified superannuation contribution made by the employer on behalf of the employee be treated as salary or wages, irrespective of their employment contract.
- (2) If an employee makes an election under **subsection (1)**, the specified superannuation contribution is salary and wages of the employee and subject to the PAYE rules.
- (3) An employee's election notice is valid until revoked in writing.

Compare: 1994 No 164 s NE 2A

NE 3 Specified superannuation contribution withholding tax to be deducted

Where an employer makes a specified superannuation contribution, the employer must, at the time of making the contribution, make a deduction of specified superannuation contribution withholding tax from the contribution of an amount determined in accordance with either **section NE 2 or NE 2AA**.

Compare: 1994 No 164 s NE 3

NE 4 Period for payment

Every employer who makes a deduction of specified superannuation contribution withholding tax from a specified superannuation contribution must pay to the Commissioner the amount of the deduction,—

- (a) subject to **paragraph (c)**, where the employer has made that deduction during the first PAYE period, not later than the 20th of the month during which that deduction was made:
- (b) subject to **paragraph (c)**, where the employer has made that deduction during the second PAYE period, not later than—
 - (i) the 5th of the month following the month in which the deduction was made; or
 - (ii) the 15th of January where the month in which the deduction was made is December:

- (c) notwithstanding **paragraphs (a) and (b)**, where the employer is required to pay tax deductions to the Commissioner in accordance with **section NC 15(1)(c)**, not later than the 20th of the month following the month in which that deduction was made.

Compare: 1994 No 164 s NE 4

NE 5 Failure to deduct tax

Where an employer fails to make any deduction of specified superannuation contribution withholding tax from any specified superannuation contribution in accordance with the obligations under **section NE 3**,—

- (a) the amount in respect of which default has been made is, notwithstanding any other provision of this Act, deemed for the purposes of this Act to be an amount calculated in accordance with the following formula:

$$\frac{a}{1 - a} \times b - c$$

where—

- a is the rate of specified superannuation contribution withholding tax, expressed as a percentage, stated in **schedule 1, part A, clause 10**, and applying at the time the contribution was made
- b is the amount of the contribution (exclusive of any amount of specified superannuation contribution withholding tax) received by the superannuation fund
- c is the amount (if any) of specified superannuation contribution withholding tax already paid in respect of the contribution; and
- (b) that amount constitutes a debt payable by the employer to the Commissioner and is deemed to have become due and payable to the Commissioner,—
- (i) subject to **subparagraph (iii)**, where the specified superannuation contribution was made during the first PAYE period, on the 20th of the month during which that contribution was made:
- (ii) subject to **subparagraph (iii)**, where the specified superannuation contribution was made during the second PAYE period, on the 5th of the month

following the month in which that contribution was made:

- (iii) notwithstanding **subparagraphs (i) and (ii)**, where the employer is required to pay tax deductions to the Commissioner in accordance with **section NC 15(1)(c)**, on the 20th of the month following the month in which that contribution was so made.

Compare: 1994 No 164 s NE 5

NE 6 Tax deemed for certain purposes to have been received by superannuation fund

The amount of any specified superannuation contribution withholding tax payable by an employer in respect of any specified superannuation contribution in accordance with the SSCWT rules or the amount of any PAYE payable by an employer in respect of any specified superannuation contribution in accordance with the PAYE rules as a result of an employee's election under **section NE 2A** is, for the purpose of determining whether the employer has satisfied the employer's obligations or commitments to pay contributions to a superannuation fund, deemed to have been paid to and received by the superannuation fund, as a contribution made in satisfaction of the employer's obligations or commitments, at the same time as the amount of the specified superannuation contribution actually received by the superannuation fund is so received.

Compare: 1994 No 164 s NE 6

NE 7 Application of other provisions to specified superannuation contribution withholding tax

- (1) Subject to the SSCWT rules, **section GC 18**, and sections 167 and 169 of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, for the purposes of the SSCWT rules, apply as if—
 - (a) every reference in those sections to a tax deduction were a reference to a deduction of specified superannuation contribution withholding tax:
 - (b) every reference in those sections to the PAYE rules were a reference to the SSCWT rules.

- (2) Subject to the SSCWT rules, the other provisions of this Act (other than **section GC 18**) and of the Tax Administration Act 1994 (other than sections 167 and 169), as far as they are applicable and with any necessary modifications, apply with respect to specified superannuation contribution withholding tax as if it were income tax levied under **section BB 1**; but nothing in the SSCWT rules should be construed so as to include specified superannuation contribution withholding tax in the terms “income tax” or “tax” for the purposes of section 121 or 122 of the Tax Administration Act 1994.

Compare: 1994 No 164 s NE 7

Subpart NEA—Tax on certain withdrawals from superannuation funds

NEA 1 Recovery of tax paid by superannuation fund

- (1) If **section CS 1** applies to a withdrawal in respect of a person’s membership in a superannuation fund, the trustee of the fund may deduct from the withdrawal an amount according to the formula in **subsection (2)**.
- (2) The formula is—

$$\text{tax rate} \times \text{income}$$

where—

tax rate is the basic rate of income tax stated in **schedule 1, part A, clause 4**

income is the superannuation fund’s income under **section CS 1**.

Compare: 1994 No 164 s NEA 1

Subpart NF—Resident withholding tax

Application

NF 1 Application of RWT rules

- (1) The RWT rules apply notwithstanding any other provision of this Act.
- (2) The RWT rules apply to any amount paid (referred to as **resident withholding income**) that consists of—
- (a) interest, not being interest that is—
 - (i) exempt interest; or
 - (ii) interest derived by a person who holds a valid certificate of exemption; or

- (iii) interest which constitutes non-resident withholding income; or
 - (iv) interest derived from outside New Zealand by a person not resident in New Zealand; or
 - (v) interest paid by a company and derived by another company where both companies are, at the time of payment, members of the same group of companies; or
 - (vii) interest payable by a taxpayer in accordance with Part 7 of the Tax Administration Act 1994:
- (b) dividends, not being—
- (i) dividends that are exempt income by virtue of the application of **section CW 9 or CW 10 or CZ 9**; or
 - (ii) any amount that is deemed to be a dividend under **section GD 3 or GD 5** or the proviso to **section HF 1(5)**; or
 - (iii) attributed repatriation; or
 - (iv) dividends derived by a person who holds a valid certificate of exemption; or
 - (v) dividends that constitute non-resident withholding income; or
 - (vi) dividends, other than dividends derived from New Zealand, derived by a person not resident in New Zealand; or
 - (vii) dividends paid by a company and derived by another company where both companies are, at the time of payment, members of the same group of companies; or
 - (viii) dividends that are exempt income under **section CW 46**:

provided that, for the purposes of each of the subparagraphs of **paragraphs (a) and (b)**, where any amount is derived by a person (in this proviso referred to as the **trustee**) in that person's capacity as trustee for any other person or persons and that amount is beneficiary income, that amount is deemed not to be derived by the trustee.

- (3) In the case of interest payable by the Commissioner under Part 7 of the Tax Administration Act 1994, being interest paid in respect of the tax on taxable income for the 1994–95 tax year or any subsequent tax year,—
- (a) all resident withholding tax deductions made by the Commissioner from that interest are deemed to have

- been paid to the Commissioner on the date on which they are made; and
- (b) the provisions of **section GC 20**, and of sections 50, 55, 99, 171, 172, and Part 9 of the Tax Administration Act 1994, do not apply in relation to the Commissioner and any such interest; and
 - (c) the other provisions of the RWT rules apply in respect of the Commissioner and any such interest so far as applicable and with all necessary modifications.
- (3A) If the Commissioner is required to pay interest under Part 7 of the Tax Administration Act 1994 on overpaid tax and the amount of interest on the overpaid tax is recalculated, the Commissioner must calculate the resident withholding tax on the recalculated amount of interest taking into account resident withholding tax deductions already made.
- (4) For the purposes of the RWT rules, dividends paid by any building society to its members in relation to withdrawable shares in that building society are deemed to be interest and not dividends.
 - (5) For the purposes of the RWT rules, dividends paid by any friendly society in relation to shares in that friendly society to its members are deemed to be interest and not dividends.

Compare: 1994 No 164 s NF 1

Deduction of resident withholding tax

NF 2 Deduction of resident withholding tax

- (1) Subject to this section, where a person makes a payment which consists in whole or in part of resident withholding income, that person must, at the time of making the payment, make a deduction of tax (in this Act referred to as **resident withholding tax**) from the resident withholding income—
- (a) to the extent to which that payment consists of interest, of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

- a is the appropriate rate of resident withholding tax, expressed as a percentage, specified in **schedule 14, clause 1 or 1C**

- b is the amount of interest paid (before the deduction of resident withholding tax)
- c is the amount of foreign withholding tax paid or payable in respect of that amount of interest paid; and
- (b) to the extent to which that payment consists of dividends (not being non-cash dividends), of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in **schedule 14, clause 2**
- b is the amount of dividend paid (before the deduction of resident withholding tax)
- c is—
- (i) in the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or
- (ii) in the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend withholding payment credit attached to the dividend; and
- (c) to the extent to which the payment consists of non-cash dividends other than a bonus issue in lieu, of an amount calculated in accordance with the following formula:

$$\frac{a}{1 - a} \times b - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in **schedule 14, clause 2**
- b is the amount of the dividend paid (disregarding any deduction of resident withholding tax)
- c is—
- (i) in the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding

- tax paid or payable in respect of that amount of dividend paid; or
- (ii) in the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend withholding payment credit attached to the dividend; and
- (d) to the extent to which that payment consists of dividends being a bonus issue in lieu, the amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in **schedule 14, clause 2**
- b is the amount of the money or money's worth offered as an alternative to the bonus issue (before the deduction of resident withholding tax)
- c is,—
- (i) in the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or
- (ii) in the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend withholding payment credit attached to the dividend:

provided that in no case may the amount of resident withholding tax to be deducted be less than zero.

- (2) Where any company in any month pays in respect of its shares resident withholding income, being dividends that are non-cash dividends from which resident withholding income that company is required, in accordance with the RWT rules, to deduct resident withholding tax, that company may not make any deduction of resident withholding tax from the dividends in accordance with **subsection (1)**, but is liable to pay to the Commissioner an amount (which is treated as a deduction of resident withholding tax made from those dividends for the purposes of this Act and the Tax Administration Act 1994)

equal to the resident withholding tax that, but for this subsection, would have been required to be deducted and to pay that amount in the same manner in all respects as if it were the resident withholding tax that, but for this subsection, would have been required to be deducted.

- (3) Where any resident withholding tax deduction is required to be made by any person (in this subsection called the **first person**) in accordance with the RWT rules in relation to any payment of resident withholding income, which resident withholding income is in a currency other than New Zealand currency, that resident withholding tax deduction may be made in that foreign currency and, if so,—
- (a) for the purposes of this Act, in calculating in relation to the person deriving the resident withholding income (in this subsection called the **second person**) the amount of resident withholding tax deduction to be credited against income tax assessed or treated as a dividend withholding payment in accordance with the RWT rules, the resident withholding tax deduction must be converted into New Zealand currency at the option of the second person either at—
- (i) the close of trading spot exchange rate on the day on which the resident withholding tax deduction was made; or
- (ii) such exchange rate as the Commissioner may specify for this purpose in relation to the month in which the resident withholding tax deduction was made; and
- (b) for the purposes of this Act and the Tax Administration Act 1994, in calculating in relation to the first person the amount of resident withholding tax deduction required to be paid to the Commissioner, the amount of resident withholding tax deduction made by the first person must be converted into New Zealand currency at the close of trading spot exchange rate on the first working day of the month succeeding the month in which the resident withholding tax deduction is made.
- (4) A person is liable to deduct resident withholding tax from any payment of resident withholding income only if—
- (a) that person is, at the time of the payment, either—

- (i) resident in New Zealand for the purposes of this Act; or
- (ii) not resident in New Zealand for the purposes of this Act but carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand:

provided that, for the purposes of this paragraph only, no person is treated in relation to any payment as being resident or carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand where the person establishes to the satisfaction of the Commissioner that—

- (A) in the case of a payment of interest or dividends, the payment is attributable to or effectively connected with a fixed establishment of that person outside New Zealand or, in the case of a payment of dividends payable in respect of shares issued by that person, being a company, that company is not resident in New Zealand for the purposes of this Act; and
 - (B) all amounts payable in relation to the money lent or shares to which the payment relates are payable in a currency other than New Zealand currency; and
- (b) either—
- (i) that person holds at the time of payment a valid certificate of exemption issued to that person; or
 - (ii) that payment is made wholly or partly in the course of or furtherance of a taxable activity, whether that person is acting in the capacity of agent or trustee for any other person or persons, or otherwise; or
 - (iii) that payment is a payment by a company of dividends in relation to shares issued by that company.
- (5) Notwithstanding **subsection (4)(b)**, any person who makes a payment of resident withholding income, being interest, and—
- (a) is either—
 - (i) a person who does not hold at the time of payment a valid certificate of exemption; or

- (ii) a person who holds at the time of payment a certificate of exemption issued in accordance with **section NF 9(1)(i) or (j) or (12)**; and
 - (b) has made payments of resident withholding income, being interest, totalling less than \$5,000 in the tax year immediately preceding the tax year during which the time of payment falls; and
 - (c) is a person who, but for the application of this subsection, would be liable to deduct resident withholding tax from that payment,—
is liable to deduct resident withholding tax from that payment only if that payment exceeds (when aggregated with earlier payments of resident withholding income, being interest, paid by that person in the tax year in which the time of payment falls) a total of \$5,000.
- (6) Where any person (in this subsection referred to as the **first person**) makes or receives a payment which consists in whole or in part of resident withholding income and resident withholding tax has already been deducted by any person in accordance with the RWT rules from that resident withholding income, the first person is not required to deduct resident withholding tax from the payment to the extent to which resident withholding tax has already been deducted.
- (7) Where any person (in this subsection referred to as the **first person**) in relation to any other person (in this subsection referred to as the **second person**)—
 - (a) makes a payment to the second person; or
 - (b) receives a payment as agent or bare trustee for that second person,—
for the purpose only of determining the first person's liability to make a deduction of resident withholding tax from that payment in accordance with the RWT rules, that payment is deemed not to constitute resident withholding income if, in the case of a payment of either interest or dividends,—
 - (c) either—
 - (i) the first person has taken reasonable steps to confirm that the second person is a person to whom at the time of payment any of **section NF 9(1)(a) to (d)** applies; or
 - (ii) except in any case where the second person is a person to whom either **section NF 9(1)(i) or (j)** applies

- or a person holding a certificate of exemption issued in accordance with **section NF 9(12)**, the first person has been provided with the second person's tax file number and has been notified by the second person that the second person holds a certificate of exemption; or
- (iii) the first person has sighted a certificate of exemption issued to the second person and has taken reasonable steps to confirm that the second person is the person named in that certificate; and
 - (d) there has been no notice of cancellation of a certificate of exemption held by the second person published in any issue of the *Gazette*, in the case of a payment of interest, more than 5 working days before the time when the money was lent or, in the case of a payment of dividends, more than 5 working days before the day on which the payment is made or, if such notice of cancellation has been so published, either the first person has sighted a certificate of exemption issued, on a date subsequent to the date of the issue of the *Gazette* including the notice of cancellation, to the second person; and
 - (e) in the case of a payment of interest, no notice of cancellation of a certificate of exemption held by the second person has been published in any issue of the *Gazette* more than 5 working days before the day on which the payment is made or if such notice of cancellation has been so published, either—
 - (i) there has been published in any issue of the *Gazette* subsequent to the publication of the notice of cancellation and more than 5 working days before the day on which payment is made, notice of issue of a further certificate of exemption to the second person; or
 - (ii) the first person has sighted a certificate of exemption issued, on a date subsequent to the date of the issue of the *Gazette* including the notice of cancellation, to the second person; and
 - (f) the first person has not been advised by the Commissioner or the second person of cancellation of a certificate of exemption issued to the second person more than 5 working days before the day on which payment

is made or, if the first person has been so advised, either—

- (i) there has been published in any issue of the *Gazette*, subsequent to the date of that advice being received and more than 5 working days before the day on which payment is made, notice of issue of a further certificate of exemption to the second person; or
 - (ii) the first person has sighted a certificate of exemption issued, on a date subsequent to the date of that advice being received, to the second person; and
 - (g) the first person does not have any other grounds for believing that the second person is a person not eligible to be issued with a certificate of exemption; and
 - (h) in any case where the second person is a person to whom any of **section NF 9(1)(a) to (c)** applies and the payment is not interest or dividends derived by the second person as trustee holding an asset on behalf of some third person, the first person does not have any grounds for believing that the interest or dividends are income derived by any person other than the second person.
- (8) Where any person (in this subsection referred to as the **first person**), being a person to whom any of **section NF 9(1)(a) to (c)** applies, in relation to any other person (in this subsection referred to as the **second person**),—
- (a) receives a payment from that second person; or
 - (b) makes a payment at the request of that second person,— for the purpose only of determining the first person's liability to make a deduction of resident withholding tax from that payment in accordance with the RWT rules and without affecting the liability of the second person or any other person to make a deduction of resident withholding tax from that payment in accordance with the RWT rules, that payment is deemed not to constitute resident withholding income if and to the extent that—
 - (c) the first person could not reasonably be expected to be aware that the payment constituted resident withholding income; or

- (d) in any case of a payment to the extent to which it is a redemption payment, the first person could not reasonably be expected to be aware of the extent to which the payment constituted resident withholding income.

Compare: 1994 No 164 s NF 2

NF 2A Election to apply higher rate of deduction

- (1) A person entitled to receive a payment to which **section NF 2(1)** applies may elect, in the manner prescribed by the interest payer, to make that payment subject to the deduction of resident withholding tax at 1 of the rates specified in **schedule 14, clause 1(a), (b), or (c)**.
- (2) An election under **subsection (1)** may be made for each source of payment that is subject to resident withholding tax on or after 1 April 1999.
- (3) A notice of election under this section applies to each deduction of resident withholding tax required to be made on or after the date on which the notice is furnished to the person required to make the deduction.

Compare: 1994 No 164 s NF 2A

NF 2B Companies to notify interest payer

- (1) A company, other than a company that is a trustee, that becomes entitled to receive a payment to which **section NF 2(1)** applies on or after 1 April 2001, must notify the interest payer that they are a company on becoming entitled to receive the payment.
- (2) An interest payer who receives a notice from a company must deduct resident withholding tax at the appropriate rate specified in **schedule 14, clause 1C**, from payments made on and after the date on which the notice is received.
- (3) An interest payer who does not receive a notice from a company must treat the company as a person to whom **section NF 2A** applies.

Compare: 1994 No 164 s NF 2B

NF 2C Transitional rule: notifications by companies between 1 April 2001 and 31 May 2001 (both dates inclusive)

- (1) A company, other than a company that is a trustee, that has an entitlement on 31 March 2001 to receive a payment to which

section NF 2(1) applies, must notify the interest payer, between 1 April 2001 and 31 May 2001 (both dates inclusive), that they are a company to which this section applies.

- (2) An interest payer who receives a notice from a company during the period 1 April 2001 to 31 May 2001 (both dates inclusive) must deduct resident withholding tax at the appropriate rate specified in **schedule 14, clause 1C**, from payments made on and after the end of 1 month after the date on which the notice is received.
- (3) Despite the 1 month time period in **subsection (2)**, an interest payer may make deductions of resident withholding tax at the rates specified in **schedule 14, clause 1 or 1C**, from payments made during the period starting on the date on which the notice is received and ending on the last day of the 1 month period.

Compare: 1994 No 164 s NF 2C

NF 2D Election rates of deduction for companies

- (1) A company entitled to receive a payment to which **section NF 2(1)** applies may elect, in the manner prescribed by the interest payer, to make the payment subject to the deduction of resident withholding tax at the rate specified in **schedule 14, clause 1C(a) or (b)**.
- (2) An election may be made for each source of payment that is subject to resident withholding tax on or after 1 April 2001.
- (3) A notice of election applies to each deduction of resident withholding tax required to be made on or after the date on which notice is given to the interest payer.

Compare: 1994 No 164 s NF 2D

NF 3 Requirements for agents or trustees to make resident withholding tax deductions on receipt of payments

- (1) Where—
 - (a) a payment which consists in whole or in part of resident withholding income has been made; and
 - (b) the recipient of the payment either—
 - (i) holds at the time of that payment a valid certificate of exemption issued to the recipient; or

- (ii) receives that payment wholly or partly in the course of or furtherance of a taxable activity carried on by that recipient; and
 - (c) resident withholding tax was not deducted from that payment or was not deducted in full in accordance with the RWT rules; and
 - (d) the recipient of that payment is, in relation to that payment, an agent or a trustee for another person or persons,—
the recipient of that payment must (subject to this section and **section NF 2**, with the exception of **section NF 2(4)(b)**) at the time of receiving that payment make a deduction from that payment of the amount of the resident withholding tax or, as the case may be, the amount of the deficiency in that tax, and must pay to the Commissioner the amount of that deduction no later than the 20th of the month following the month in which the payment is received.
- (2) **Subsection (1)** does not apply to require a recipient of a payment of resident withholding income to make a deduction of resident withholding tax where that recipient—
 - (a) holds at the time of the payment a valid certificate of exemption issued to that person; and
 - (b) receives that payment as trustee of a trust (not being a bare trust).
- (3) Where any person is required in accordance with this section to make a deduction of resident withholding tax from a dividend (not being a specified dividend), that resident withholding tax deduction is for the purposes of the RWT rules (including in particular but without limiting the generality of **sections LD 3, NF 6, and NF 8**, and sections 25 and 51 of the Tax Administration Act 1994) treated as being a resident withholding tax deduction made in respect of a specified dividend.
- (4) Where any person is required in accordance with this section to make a deduction of resident withholding tax from resident withholding income, being dividends which are non-cash dividends, that person may not make a deduction of resident withholding tax from that resident withholding income but is liable to pay to the Commissioner an amount (which is treated as a deduction of resident withholding tax for the purposes of this Act and the Tax Administration Act 1994)

equal to the resident withholding tax that, but for this subsection, would have been required to be deducted, and to pay that amount in the same manner in all respects as if it were the resident withholding tax that, but for this subsection, would have been required to be deducted.

- (5) Subject to **section NF 2(6)**, the provisions of this section do not restrict the application of **section NF 2** to require any person to make a deduction of resident withholding tax when making a payment, whether acting in the capacity of agent or trustee for another person or persons or otherwise.

Compare: 1994 No 164 s NF 3

Payment of resident withholding tax

NF 4 Payment of deductions of resident withholding tax to Commissioner

- (1) All persons who estimate in relation to any tax year that they will be required by the RWT rules to make resident withholding tax deductions of \$500 or more in aggregate in relation to payments of interest during each month of that tax year must pay to the Commissioner the amount of all resident withholding tax deductions made during that tax year in accordance with the RWT rules on a monthly basis, with the deductions made during any month being paid to the Commissioner no later than the 20th of the following month.
- (2) Subject to **subsections (3) and (5) to (8)**, all persons who estimate in relation to any tax year that they will not be required by the RWT rules to make resident withholding tax deductions of more than \$500 in aggregate in accordance with the RWT rules in relation to payments of interest during each month of that tax year must pay to the Commissioner the amount of all resident withholding tax deductions made during that tax year in accordance with the RWT rules in 2 instalments as follows:
- (a) the first instalment is due and payable on 20 October in that tax year, and on that date all resident withholding tax deductions made in relation to payments of interest made during the period beginning on 1 April in that tax year and ending on 30 September in that year must be paid to the Commissioner; and
 - (b) the second instalment is due and payable on 20 April in the following tax year, and on that date all resident

withholding tax deductions made in relation to payments of interest made during the period beginning on 1 October in that tax year and ending on 31 March in that following tax year must be paid to the Commissioner.

- (3) If, as at the end of any month (in this subsection referred to as the **specified month**) in any tax year, any person has made resident withholding tax deductions, in relation to payments of interest, of more than \$500 in aggregate since the beginning of the last month (in this subsection referred to as the **month of prior payment**) during which that person was required in accordance with this section to pay to the Commissioner an amount of resident withholding tax deductions made in relation to payments of interest, that person must pay to the Commissioner all resident withholding tax deductions made in relation to payments of interest since the beginning of the month of prior payment until the end of the specified month no later than the 20th of the month following the specified month.
- (4) All persons who make resident withholding tax deductions in accordance with the RWT rules in relation to payments of dividends must pay all such deductions to the Commissioner on a monthly basis, with the deductions made during any month being paid to the Commissioner no later than the 20th of the following month.
- (5) Where any person (not being a person who continues to hold a valid certificate of exemption issued to that person, notwithstanding the cessation in carrying on a taxable activity) in any month—
- (a) ceases to carry on any taxable activity in respect of which that person has been required to make any resident withholding tax deductions; or
 - (b) ceases to carry on any such taxable activity in New Zealand,—
- that person must pay to the Commissioner all resident withholding tax deductions made by that person with respect to that taxable activity and not earlier paid to the Commissioner no later than the 20th of the following month.
- (6) Where any person in any month ceases to be a person holding a valid certificate of exemption issued to that person (not being a person who continues to be required to make resident

withholding tax deductions by virtue of making payments in the course of or furtherance of a taxable activity notwithstanding that cessation in holding a valid certificate of exemption), that person must pay to the Commissioner all resident withholding tax deductions made by that person and not earlier paid to the Commissioner no later than the 20th of the following month.

- (7) Every person who is required by section 51(1), (4), or (5) of the Tax Administration Act 1994 to provide information to the Commissioner in respect of deductions or payments of resident withholding tax, that are made or should be made from resident withholding income paid or derived in a tax year or part year, must pay to the Commissioner, not later than—
- (a) 20 April following the end of the tax year (in the case of information provided under section 51(1) of that Act); and
 - (b) the last date by which the information is to be provided (in the case of information provided under section 51(4) or (5) of that Act),—
- an amount equal to all unpaid deductions and payments for the tax year or part year that are identified as discrepancies in the information.
- (8) **Subsection (7)** does not apply to any unpaid deductions or payments of resident withholding tax that the Commissioner assesses as due and payable in respect of a particular return period.

Compare: 1994 No 164 s NF 4

NF 5 Non-resident withholding tax deducted in substitution for resident withholding tax

- (1) No person is liable to pay any amount to the Commissioner by virtue of any of the provisions of the RWT rules where, in relation to any payment or (in any case where that person is acting as agent or trustee for another person) receipt, that person—
- (a) on reasonable grounds and having made all reasonable inquiries, concluded that that payment or receipt constituted non-resident withholding income as being an amount derived by a person not resident in New Zealand and was for that reason not resident withholding income; and

- (b) complied with all the obligations on the part of that person which would have been applicable under this Act or the Tax Administration Act 1994 had that payment or receipt constituted non-resident withholding income.
- (2) Where any person has, by virtue of the application of this section, been relieved from liability under the RWT rules, for the purpose only of determining any liability of that person under the RWT rules, the payment or (in any case where that person is acting in relation to that receipt as agent or trustee for any other person) receipt in question is deemed to be derived by a person not resident in New Zealand.

Compare: 1994 No 164 s NF 5

Miscellaneous provisions

NF 6 Resident withholding tax deductions varied to correct errors

- (1) Where any person (in this subsection referred to as the **first person**) required to make a deduction of resident withholding tax from any payment of—
- (a) interest; or
 - (b) specified dividends—
- to any person (in this subsection referred to as the **second person**) has failed to make such a deduction or has failed to make it in full, the first person may (except to the extent to which a deduction of resident withholding tax has already been made by any other person to correct the deficiency) either—
- (c) deduct a sufficient amount or amounts to correct the deficiency from any subsequent payment of such interest or dividends to the second person in the same year in which the first payment was made; or
 - (d) otherwise recover from the second person a sufficient amount or amounts to correct the deficiency.
- (2) Where a person deducts from any payment an amount on account of resident withholding tax that is in excess of the amount of resident withholding tax required to be deducted under the RWT rules due to an error on the part of that person, the person may pay the excess to the recipient of the payment

- at any time on or before 31 March in the tax year in which the deduction was made if, at that time,—
- (a) in the case of an excess deduction from a payment of interest or specified dividends, either—
 - (i) a resident withholding tax deduction certificate including that excess deduction has not been issued; or
 - (ii) any resident withholding tax deduction certificate including that excess deduction has been returned and cancelled:
 - (b) in the case of an excess deduction from a payment of dividends other than specified dividends, either—
 - (i) a shareholder dividend statement including the excess deduction has not been issued for the purposes of section 29 of the Tax Administration Act 1994; or
 - (ii) any such shareholder dividend statement including the excess deduction has been returned and cancelled.
- (3) Where a person refunds an excess amount to a recipient in accordance with **subsection (2)**,—
- (a) that excess amount ceases for the purposes of this Act and the Tax Administration Act 1994 to be a resident withholding tax deduction; and
 - (b) the person must, if any previously issued resident withholding tax deduction certificate or shareholder dividend statement that includes the excess deduction has been returned and cancelled, give to the recipient an amended certificate or statement; and
 - (c) the person may, where the excess deduction has been paid to the Commissioner, either—
 - (i) offset the amount of the refunded excess against any tax deductions subsequently payable to the Commissioner in accordance with **section NF 4** (which offset must be noted in the statement required by section 50 of the Tax Administration Act 1994); or
 - (ii) apply for a refund of the excess under **section NF 7**.
- (4) Where a person deducts from any payment on account of resident withholding tax an amount in excess of the amount of

resident withholding tax required to be deducted in accordance with the RWT rules due to an act or omission on the part of the recipient of that payment, the person must pay the full amount of the resident withholding tax deducted to the Commissioner in accordance with **section NF 4**, and is, upon such payment, not liable to refund the amount of that excess to the recipient of that payment or any other person.

Compare: 1994 No 164 s NF 6

NF 7 Refunds of deductions

- (1) Where—
 - (a) any deduction is made by any person in accordance with the procedure set out in the RWT rules; and
 - (b) the amount so deducted is paid to the Commissioner; and
 - (c) the amount so deducted exceeds the resident withholding tax deduction (if any) required in accordance with the RWT rules,—the Commissioner must, subject to this section, pay by way of refund an amount equal to that excess.
- (2) Any refund under **subsection (1)** must be paid to—
 - (a) the person deriving the amount from which the deduction was made; or
 - (b) the person who made the excess deduction, if that person has, in accordance with **section NF 6(2)**, paid the excess to the person deriving the amount from which the deduction was made and has not offset that amount under **section NF 6(3)(c)**.
- (3) Any person who becomes entitled to a refund under this section may make an application for the refund in such form as may be approved by the Commissioner.
- (4) The Commissioner may not pay a refund under this section unless the Commissioner receives such evidence as the Commissioner considers necessary that the requirements of **subsection (1)** (and, where appropriate, **section NF 6(2)**) have been met.
- (5) Where any amount (in this subsection referred to as the **amount due**) is due to be paid to the Commissioner in accordance with any provision of this Act or the Tax Administration Act 1994 by any person to whom any refund is payable at that time in accordance with this section, the Commissioner

may apply the refund in satisfying (so far as that refund extends) the obligation of the person to pay the amount due in accordance with a taxpayer's, or their agent's, request under section 173T of the Tax Administration Act 1994 or otherwise.

Compare: 1994 No 164 s NF 7

NF 8 Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits

- (1) Where any resident withholding tax deduction is made by a company in accordance with the RWT rules from a dividend (not being a specified dividend) paid in relation to shares issued by that company, that deduction is deemed to be a dividend withholding payment credit attached to that dividend by the company and that company is deemed to be a dividend withholding payment account company for the purposes of the following provisions:
 - (a) **sections LB 1 and LD 9:**
 - (b) section 185 of the Tax Administration Act 1994.
- (2) Where any resident withholding tax deduction is in any tax year made by a company in accordance with the RWT rules from a dividend (not being a specified dividend) in relation to shares issued by that company, that company must provide to the Commissioner such information as the Commissioner may require in relation to that deduction, and such information must be provided—
 - (a) in the case of any company required to furnish an annual dividend withholding payment account return, in that return:
 - (b) in the case of any company (not being a company to which in relation to that tax year **paragraph (a)** applies) required to furnish an annual imputation return, in that return.
- (3) Where any company pays in any tax year any dividend (not being a specified dividend) in relation to its shares from which dividend any resident withholding tax is deducted in accordance with the RWT rules, the company must at the time of paying that dividend complete such information in relation to that dividend as the Commissioner may require, and such information must,—

- (a) if the company is an imputation credit account company in that year, be included in the company dividend statement prepared in accordance with section 67 of the Tax Administration Act 1994; and
 - (b) in any other case, be included in such form as the Commissioner may approve, containing also the information set out in section 67(a) to (c) and (f) of the Tax Administration Act 1994, and be furnished to the Commissioner not later than the 31 May that follows the end of that tax year.
- (4) In this section,—
- dividend withholding payment account return** means an annual dividend withholding payment account return required to be furnished in accordance with section 71 of the Tax Administration Act 1994
- imputation return** means an annual imputation return required to be furnished in accordance with section 69 of the Tax Administration Act 1994.

Compare: 1994 No 164 s NF 8

NF 9 Certificates of exemption

- (1) Any of the following persons may apply to the Commissioner to be issued with a certificate of exemption:
- (a) any registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989:
 - (b) any building society:
 - (c) any company formed under section 4 of the Trustee Banks Restructuring Act 1988:
 - (d) any of Public Trust or any company that would be a member of the same wholly-owned group of companies as Public Trust were Public Trust a company for the purposes of this Act or the Maori Trustee or a trustee company:
 - (e) any person whose principal form of business is—
 - (i) the borrowing of money or accepting of deposits, whether on demand or for a fixed term, or the receiving of credit or the selling of any credit instrument; and
 - (ii) the lending of money or granting of credit or buying or discounting of any credit instrument:

- or any person which is—
- (iii) a solicitors' nominee company to which rules made by the Council of the New Zealand Law Society under section 17(2)(g) of the Law Practitioners Act 1982 apply; or
 - (iv) a broker's nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply:
- (f) any solicitor in relation to the operations of that solicitor's trust account, being a trust account maintained in accordance with section 89 of the Law Practitioners Act 1982:
 - (g) any person who has furnished all returns of income that that person is required to furnish under the Income Tax Act 1976, the Income Tax Act 1994, or the Tax Administration Act 1994 within the time period prescribed in the relevant Act (or within such further time as the Commissioner has allowed), and who has for the tax year to which that person's most recently furnished income tax return relates annual gross income in excess of \$2,000,000:
 - (h) any person in any accounting year who has reasonable grounds for believing that the annual gross income of that person for the next accounting year of that person will exceed \$2,000,000:
 - (i) any person who derives in any tax year amounts that are exempt income under any of **sections CW 28 to CW 40 and CW 46** in relation to the activities of that person in the capacity in which that person derived that exempt income:
 - (j) any person to whom **section DV 9** applies and who would, but for that section, have net income, in that person's most recently completed accounting year, of an amount less than the amount for the time being specified in that section.
- (2) Any application under **subsection (1)** must be made in writing in the form prescribed by the Commissioner, and must state which paragraph of **subsection (1)** applies to the applicant (the requirements of the paragraph specified in the application being referred to in this section and in **section NF 11** as the **basis of exemption**), and must be accompanied by a declaration made by the applicant or any duly authorised officer of the

- applicant stating that the applicant comes within the basis of exemption.
- (3) An applicant for a certificate of exemption must provide such further information as the Commissioner may require in relation to the application, including any books of account or other accounting information or records of or relating to the applicant.
 - (4) Where the Commissioner has received an application under **subsection (1)**, and any further information that may be required under **subsection (3)** in relation to that application, and the Commissioner is satisfied that the applicant is a person to whom **subsection (1)** applies, the Commissioner must issue a certificate of exemption to the applicant for such period as the Commissioner determines (if any), which certificate must—
 - (a) be a valid certificate of exemption from the date that the Commissioner determines and states in the certificate; and
 - (b) bear the date of issue of the certificate and the date of termination of the certificate (if any); and
 - (c) bear that applicant's tax file number.
 - (5) In the event that any certificate of exemption issued is lost or destroyed, on receipt of satisfactory evidence of that fact the Commissioner may issue a replacement certificate of exemption.
 - (6) Any person to whom is issued a certificate of exemption on the basis that **subsection (1)(h)** applies to that person must, within 3 months after the end of the accounting year last referred to in that paragraph, furnish to the Commissioner evidence, to the satisfaction of the Commissioner, of that person's annual gross income for the relevant accounting year, and must provide such supporting information or further evidence as the Commissioner may require for the purposes of this section and **section NF 11**.
 - (7) In the event that any person to whom **subsection (6)** applies has during the relevant 12 month period less than \$2,000,000 of annual income, that person (in this subsection referred to as the **first person**) is liable for late payment penalties in relation to amounts received or derived by the first person that would, had the first person not held that certificate of exemption, have been deducted under the RWT rules from payments made by any other person, and section 139B of the Tax Administration

Act 1994 must apply to the first person as if the first person had failed to make a deduction under the RWT rules, and as if that default had occurred on each day that the first person received or derived a payment from which a deduction would otherwise have been made under the RWT rules.

- (8) When calculating the annual gross income of any company for the purposes of **subsection (1)(g)**, being a company that was for the relevant tax year under **section IG 1** a member of a group of companies, the annual gross income of that company is deemed to include all of the annual gross income in that tax year of any other members of that group.
- (9) When calculating the estimated annual gross income of any company for the purposes of **subsections (1)(h), (6), and (7)**, being a company which anticipates that it will be a member of a group of companies under **section IG 1** for the relevant 12 month period, the estimated annual gross income in that period of that company is deemed to include the estimated annual gross income of all other companies in that group.
- (10) For the purposes of **subsections (1)(g) and (h) and (6) to (9)**, when calculating the annual gross income of any company, there is excluded from the annual gross income calculations any counted income derived by that company (or derived by another company in the same group of companies) from any transaction or series of related or connected transactions with another company in the same group of companies.
- (11) The Commissioner may—
 - (a) issue a certificate of exemption; or
 - (b) permit the retention of a certificate of exemption; or
 - (c) remit the whole or any part of any late payment penalty payable by virtue of **subsection (7)**,—

notwithstanding the failure of the applicant for the certificate or the holder of the certificate to satisfy the basis of exemption in **subsection (1)(h)** or to derive during the relevant 12 month period referred to in **subsection (7)** annual gross income of at least \$2,000,000, where the Commissioner is satisfied that the failure is solely as a consequence of extraordinary circumstances that are—

 - (d) beyond the reasonable control of the applicant or holder of the certificate of exemption; and
 - (e) not likely to be repeated in subsequent tax years; and

- (f) in the case of any remission of any late payment penalty payable by virtue of **subsection (7)**, circumstances which the applicant for the certificate of exemption could not reasonably have been expected to foresee at the time of application.
- (12) Notwithstanding any other provision of this section, the Commissioner may at any time issue to a person, being a person to whom at that time **subsection (1)** does not apply, a certificate of exemption which is valid until the date of termination (if any) specified in the certificate where the Commissioner is satisfied that in the period of validity of any certificate of exemption issued to that person either—
- (a) the person will or is likely to have an annual total deduction in accordance with this Act not less than the annual gross income of that person; or
 - (b) the person would, but for the application of this subsection, in each tax year any part of which tax year falls within the period of validity of the certificate of exemption, be or be likely to be entitled to claim aggregate resident withholding tax credits in accordance with **section LD 3** exceeding the income tax liability of that person for such tax year by an amount not less than \$500:
- provided that the Commissioner may not issue to any person a certificate of exemption in accordance with this subsection unless the Commissioner has received from that person an application in writing in the form prescribed by the Commissioner, which application must be accompanied by—
- (c) a set of budgeted accounts detailing the projected annual gross income, annual total deduction, resident withholding tax credits, and income tax liability of the person for the proposed period of validity of the certificate of exemption; and
 - (d) such further information in relation to the person or the budgeted accounts as the Commissioner may require.
- (13) Where any certificate of exemption issued in accordance with **subsection (12)** ceases to be a valid certificate of exemption at the date of termination specified in the certificate and is not immediately replaced by a valid certificate of exemption in substitution, the provisions of **section NF 11** apply as if the

certificate were on the date of termination cancelled in accordance with that section, and such cancellation on that date notified by the Commissioner to the holder of the certificate.

- (14) No person (in this subsection referred to as the **first person**) issued with a certificate of exemption in accordance with **subsection (12)** may notify any other person that the first person holds that certificate of exemption without providing the other person with a copy of that certificate of exemption.

Compare: 1994 No 164 s NF 9

NF 10 Unincorporated bodies

- (1) Where any body that carries on any taxable activity is issued with a certificate of exemption in relation to the carrying on of that taxable activity,—
- (a) the members of that body are not themselves issued with a certificate of exemption in relation to the carrying on of that taxable activity; and
 - (b) any payments made in the course of carrying on that taxable activity are deemed for the purposes of the RWT rules to be made by that body, and are deemed not to be made by any member of that body; and
 - (c) any payments to any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity are deemed for the purposes of the RWT rules to be payments to that body, and are deemed not to be payments to that member; and
 - (d) that certificate of exemption is in the name of the body or, where that body is the trustee of a trust, in the name of the trust; and
 - (e) subject to **subsection (2)**, any change of members of that body has no effect for the purposes of the RWT rules.
- (2) Notwithstanding anything in this section, every member is liable jointly and severally with any other members for all resident withholding tax payable by the body while that member remains a member of that body, and, where that member is an individual, after that member's death, that member's estate is severally liable in due course of administration for such resident withholding tax payable as far as it remains unpaid: provided that where any such body is a partnership, joint venture, or the trustees of a trust, a member does not cease to be a member for the purposes of this section until the date on

which any change of membership of that body is notified to the Commissioner.

- (3) For the purposes of the RWT rules, any notice served in accordance with the RWT rules which is addressed to a body by the name in which it is issued with a certificate of exemption registered under this Act is deemed to be served on that body and on all members of that body.
- (4) Subject to **subsection (5)**, where anything is required to be done under the RWT rules by or on behalf of any body, it is the joint and several liability of all members to do any such thing: provided that any such thing done by 1 member is sufficient compliance with any such requirement.
- (5) Notwithstanding anything in this section, but subject to **subsection (2)**, where anything is required to be done under the RWT rules by or on behalf of any body, not being a partnership, joint venture, or trustees of a trust, the affairs of which are managed by its members or a committee or committees of its members, it is the joint and several responsibility of—
- (a) every member holding office as president, chairperson, treasurer, secretary, or any similar office; or
 - (b) in default of any such member, every member holding office as a member of a committee:
- provided that if it is done by any official or committee member referred to in **paragraph (a) or (b)**, that is sufficient compliance with any such requirement.

- (6) In this section,—

body means an unincorporated body of persons, and includes—

- (a) a partnership:
- (b) a joint venture:
- (c) the trustees of a trust

member means a partner, a joint venturer, a trustee, or a member of any body

partnership and **partner** have the same meanings as in the Partnership Act 1908.

Compare: 1994 No 164 s NF 10

NF 11 Cancellation of certificates of exemption

- (1) Where any person who holds a certificate of exemption ceases to be a person who comes within the basis of exemption that

- was specified in that person's application for that certificate, that person must, within 5 working days after the first day upon which that person became aware of that fact,—
- (a) give notice to the Commissioner of that fact; and
 - (b) deliver to the Commissioner any certificate of exemption held by that person; and
 - (c) if requested by the Commissioner and within 5 working days after that request, provide the Commissioner with the full names and last known addresses of all persons to whom that person has shown the certificate of exemption for the purpose of obtaining an exemption from the deduction of resident withholding tax under the RWT rules.
- (2) The Commissioner may cancel any person's certificate of exemption at any time in the following circumstances:
- (a) if the Commissioner has reason to believe that the person no longer satisfies the basis of exemption that was specified in the application made for that certificate of exemption; or
 - (b) if that person is not within the basis of exemption specified in the application made by that person for that certificate of exemption and obtained that certificate of exemption on the basis of misleading information or otherwise should not have been issued with a certificate of exemption; or
 - (c) where the basis of exemption for that certificate of exemption was **section NF 9(1)(h)**, if—
 - (i) the evidence required to be furnished by that person under **section NF 9(6)** shows that that person did not derive annual gross income in excess of \$2,000,000 in the relevant accounting year; or
 - (ii) that person fails to furnish satisfactory evidence of annual gross income as required under **section NF 9(6)**; or
 - (iii) the Commissioner has reason to believe the evidence furnished by that person under **section NF 9(6)** is incorrect in any material respect or is misleading; or
 - (d) if that person has not made payment of any income tax which is payable by that person under this Act by the due date for payment of that tax,—

and in each such event the Commissioner must notify the person of the fact that that person's certificate of exemption has been cancelled and that person must, within 5 working days of receiving the notification, deliver up that person's certificate of exemption to the Commissioner, if not delivered up previously, and must, if requested by the Commissioner, provide the Commissioner with the full names and last known addresses of all persons to whom that person has shown the certificate of exemption for the purpose of obtaining an exemption under the RWT rules:

provided that, except in the circumstance specified in **paragraph (d)**, in any case where the Commissioner is satisfied that the person is a person to whom **section NF 9(6)** applies in relation to a further basis of exemption other than that specified in the application made for the certificate of exemption, the Commissioner may not cancel the certificate of exemption except to issue with immediate effect a certificate of exemption in substitution for that certificate.

- (3) The Commissioner may give notice to any persons of the fact of cancellation of any certificate of exemption at any time.
- (4) Any person who receives notification from the Commissioner that that person's certificate of exemption has been cancelled must, within 5 working days of receipt of that notification, give notice to all persons to whom that person has shown that certificate of exemption for the purpose of obtaining an exemption under the RWT rules and from whom that person expects to receive further payments of resident withholding income of the cancellation of that certificate.
- (5) The Commissioner must publish in the *Gazette*, whether or not that information has been published under **subsection (9)**,—
 - (a) on or before 30 June in each tax year,—
 - (i) a list of all certificates of exemption that were cancelled during the immediately preceding tax year (not including any such certificates of exemption held prior to cancellation by a person to whom a further certificate of exemption was issued subsequently in that tax year); and
 - (ii) a list of all certificates of exemption that were issued during the immediately preceding tax year to persons who had previously held a certificate of exemption (not including any such certificates

- of exemption that were issued to a person who previously in that tax year held a certificate of exemption which was cancelled); and
- (b) in April, July, October, and January (in this subsection referred to respectively as the **month of publication**),—
- (i) a list of all certificates of exemption that were cancelled during the 3 month period ending with the last day of the month immediately preceding the relevant month of publication (not including any such certificates of exemption held prior to cancellation by a person to whom a further certificate of exemption was issued subsequently in that 3 month period); and
- (ii) a list of all certificates of exemption that were issued during the 3 month period ending with the last day of the month immediately preceding the relevant month of publication to a person who had previously held a certificate of exemption (not including any such certificates of exemption that were issued to a person who previously in that 3 month period held a certificate of exemption which was cancelled).
- (6) Where any person is required to deliver up a certificate of exemption held by that person, that person must deliver up all original copies of that certificate of exemption issued to that person by the Commissioner.
- (7) A certificate of exemption ceases to be a valid certificate of exemption on the 5th working day after the date of publication of the cancellation of that certificate in the *Gazette*, and, in relation to persons who are notified by the Commissioner or the previous holder of that certificate that a certificate of exemption has been cancelled, a certificate of exemption ceases to be a valid certificate of exemption as from the day which is 5 working days after the date the person is so notified.
- (8) The Commissioner may, at any time after publication of the lists of certificates required to be published under **subsection (5)**, publish those lists of certificates by electronic means.

- (9) **Subsection (8)** applies to lists of certificates the issue or cancellation of which was required to be published in the *Gazette* before the commencement of this subsection.

Compare: 1994 No 164 s NF 11

NF 12 Amount of resident withholding tax deduction deemed to have been received

Where any amount has been deducted by way of resident withholding tax deduction under the RWT rules from any payment, the amount so deducted,—

- (a) as between the payer and the recipient, is deemed to have been received by the recipient at the time of receiving the payment from which the tax deduction was made; and
- (b) for the purposes of this Act, is deemed to have been derived at the same time and in the same way as the payment from which the tax deduction was made.

Compare: 1994 No 164 s NF 12

NF 13 Application of other provisions in relation to resident withholding tax

Subject to the RWT rules, the other provisions of this Act and of the Tax Administration Act 1994 apply with respect to every amount that any person is liable to account for or pay to the Commissioner under those rules as if the amount were income tax.

Compare: 1994 No 164 s NF 13

Subpart NG—Non-resident withholding tax

General

NG 1 Application of NRWT rules

- (1) The NRWT rules apply notwithstanding anything in any other provision of this Act or of the Tax Administration Act 1994.
- (2) The NRWT rules apply to income (in this Act referred to as **non-resident withholding income**) deemed under this Act to be derived from New Zealand and that consists of—
- (a) dividends (other than investment society dividends) or royalties that are derived by a person who is not resident in New Zealand; or

- (b) interest or investment society dividends, being interest or investment society dividends that are derived by a person who is not resident in New Zealand, not being a person who is engaged in business in New Zealand through a fixed establishment in New Zealand,—
not being income that is—
 - (c) income calculated under the financial arrangements rules; or
 - (d) income to which **section FC 21** applies.
- (3) For the purposes of the NRWT rules, an amount of interest is treated as being paid by an approved issuer in respect of a registered security only where that amount is treated as being so paid under section 86I of the Stamp and Cheque Duties Act 1971.
- (4) In the case of interest payable by the Commissioner under Part 7 of the Tax Administration Act 1994,—
- (a) all non-resident withholding tax deductions made by the Commissioner from that interest are deemed to have been paid to the Commissioner on the date on which they are made; and
 - (b) the provisions of sections 50, 55, and 100, and Part 9 of the Tax Administration Act 1994 do not apply in relation to the Commissioner and any such interest; and
 - (c) the other provisions of the non-resident withholding tax rules apply in respect of the Commissioner and any such interest so far as applicable and with all necessary modifications.

Compare: 1994 No 164 s NG 1

NG 2 Non-resident withholding tax imposed

- (1) Every person who derives non-resident withholding income is liable to pay non-resident withholding tax upon that income—
- (a) at the rate of 30% on non-resident withholding income that is dividends, but not to the extent that those dividends are—
 - (i) investment society dividends; or
 - (ii) supplementary dividends payable as a result of **subpart LE**; or
 - (iii) conduit tax relief additional dividends payable as a result of **subpart LG**; or
 - (iv) fully imputed; or

- (v) fully dividend withholding payment credited; or
 - (vi) fully conduit tax relief credited:
 - (ab) if it is interest that is derived by 2 or more persons jointly and at least 1 of those persons is a New Zealand resident, at the rate of resident withholding tax that applies under **section NF 2(1)(a)** as if the non-resident withholding income were resident withholding income from which the payer must deduct resident withholding tax and the other rules in **section NF 2** do not apply:
 - (b) at the rate of zero % of so much of that non-resident withholding income as consists of—
 - (i) interest, other than interest to which **paragraph (ab)** applies, paid by an approved issuer in respect of a registered security and derived by a person who is not an associated person of the approved issuer; or
 - (ii) non-cash dividends to the extent fully imputed; or
 - (iii) non-resident withholding income derived by a life insurer from a company resident in New Zealand deemed to exist as a result of the life insurer making an election under **section EY 48**:
 - (c) at the rate of 15% of so much of that non-resident withholding income as consists of non-resident withholding income to which none of **paragraph (a), (ab), or (b)** applies.
- (2) Every person liable under the NRWT rules to pay or deduct an amount of non-resident withholding tax in respect of any non-resident withholding income consisting of dividends is deemed to have paid or deducted (as the case may be) the non-resident withholding tax to the extent of any dividend withholding payment credit that is included within the non-resident withholding income.
- (3) For the purposes of this section, the extent to which any dividends are fully imputed must be calculated under the following formula:

$$(IC + SD) \times \frac{1 - T}{T}$$

where—

IC is the amount of imputation credits attached to the dividends

SD is the amount of supplementary dividends payable as a result of **subpart LE** in respect of the dividends

T is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the tax year that is concurrent with the imputation year in which the dividends are paid.

- (4) For the purposes of this section, the extent to which any dividends are fully dividend withholding payment credited must be calculated under the following formula:

$$DWPC \times \frac{1}{T}$$

where—

DWPC is the amount of dividend withholding payment credits attached to the dividends

T is the rate of resident companies' tax, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the tax year that is concurrent with the imputation year in which the dividends are paid.

Compare: 1994 No 164 s NG 2

NG 3 Non-resident withholding tax to be final tax in certain cases

- (1) Notwithstanding anything in this Act, where a person derives in any tax year non-resident withholding income that consists of—
- (a) a dividend (other than an investment society dividend); or
 - (b) a royalty that is for the use, production, or reproduction of, or for the privilege of using, producing, or reproducing, a literary, dramatic, musical, or artistic work in which copyright subsists; or
 - (ba) interest or royalties derived by a life insurer from a company resident in New Zealand deemed to exist as a result of the life insurer making an election under **section EY 48**; or
 - (c) interest or an investment society dividend, in any case where the person by whom that interest or that investment society dividend is derived and the person by whom that interest or that investment society dividend is paid are not associated persons,—

the income tax liability of that person for that year is, subject to **section KF 1(2) and (3)**, the sum of—

- (d) the total amounts of non-resident withholding tax for which that person is liable in respect of that non-resident withholding income under **section NG 2**; and
 - (e) the amount that would be that person's income tax liability for that tax year if that person had not derived that non-resident withholding income in that tax year.
- (2) If a taxpayer derives a dividend to which **subsection (1)** applies, the taxpayer is not entitled to a credit of tax under **section LB 2** for any imputation credit attached to the dividend.

Compare: 1994 No 164 s NG 3

NG 4 Non-resident withholding tax to be minimum tax in certain cases

Where a person derives in any tax year non-resident withholding income that consists of interest, or of an investment society dividend (other than interest or an investment society dividend referred to in **section NG 3(1)(c)**), or of a royalty (not being a royalty referred to in **section NG 3(1)(b)**), the income tax liability of that person for that tax year is the greater of—

- (a) the sum of—
 - (i) the total amount of non-resident withholding tax for which that person is liable in accordance with **section NG 2** in respect of all non-resident withholding income; and
 - (ii) the amount that would be that person's income tax liability for that tax year if that person had not derived any non-resident withholding income in that tax year:
- (b) the amount that would, but for the application of this section and calculated under **section NG 3** if applicable, be the income tax liability of that person for that tax year: provided that where, in the case of a company, the aggregate of the amount of that non-resident withholding income and any other counted income derived by the company in that tax year does not exceed \$1,000, the income tax liability of the company under this Act in respect of that tax year, is an amount ascertained in accordance with **paragraph (a)**.

Compare: 1994 No 164 s NG 4

NG 5 Persons who may apply for approval

Any person to whom money is, has been, or may in future be lent may apply to the Commissioner, in writing and in such form as the Commissioner may approve, for approval of that person as an approved issuer for the purposes of the NRWT rules.

Compare: 1994 No 164 s NG 5

NG 6 Approval of person as approved issuer

- (1) Where the Commissioner has received from any person any duly completed application for approval in accordance with **section NG 5**, that person is deemed to be approved as an approved issuer for the purposes of the NRWT rules from the date upon which the Commissioner received the application, unless the Commissioner gives notice to that person under **subsection (2)**.
- (2) Where the Commissioner considers that any person who has made an application for approval under **section NG 5** has, within the 2 year period ending with the date of application, been responsible for serious default or neglect in complying with that person's obligations under the Inland Revenue Acts, the Commissioner may, by giving notice to the person within 20 working days after the date of receipt of the application, decline the application for approval.

Compare: 1994 No 164 s NG 6

NG 7 Revocation of approval

- (1) The Commissioner may, at any time, on being satisfied that an approved issuer has, within the 2 year period ending with that time, been responsible for serious default or neglect in complying with the approved issuer's obligations under the Inland Revenue Acts, revoke the approval given to the approved issuer under **section NG 6**, and notify the issuer accordingly.
- (2) The Commissioner must, on receipt of a written request in that behalf by an approved issuer, revoke the approval given to that approved issuer under **section NG 6**, and notify the issuer accordingly.
- (3) Notwithstanding any provision of the NRWT rules, where the Commissioner revokes under **subsection (1) or (2)** the approval given to an approved issuer, that approved issuer is deemed to remain an approved issuer for the purposes of the NRWT

rules and for the purposes of Part 6B of the Stamp and Cheque Duties Act 1971 in relation to any payments of interest made after the date of the revocation in respect of money that was lent to the person under a registered security—

- (a) before the date of the revocation; and
- (b) while the person was an approved issuer.

Compare: 1994 No 164 s NG 7

Deduction of non-resident withholding tax

NG 8 Deduction of non-resident withholding tax

- (1) Where a person makes a payment consisting of non-resident withholding income, the person must, at the time of making the payment, make a deduction of non-resident withholding tax from that payment of an amount determined in accordance with **section NG 2**.

- (2) Where—

- (a) a payment consisting of non-resident withholding income has been made to an agent or other person in New Zealand for or on behalf of the person entitled to the payment; and
- (b) the non-resident withholding tax payable in respect of that non-resident withholding income has not been deducted, or has not been deducted in full, under **subsection (1)**,—

that agent or other person must, at the time of receiving the payment, make a deduction from that payment of the amount of the non-resident withholding tax or, as the case may be, of the amount of the deficiency in that tax.

- (3) Where—

- (a) a person makes a deduction of non-resident withholding tax under **subsection (1)** from a payment consisting of non-resident withholding income; and
- (b) the payment of that non-resident withholding income is made by the person to an agent or other person in New Zealand for or on behalf of the person entitled to the payment,—

that first-mentioned person must, at the time of making the payment, give notice to that agent or other person of the

amount of the deduction made by the person from the payment.

Compare: 1994 No 164 s NG 8

NG 9 Non-resident withholding tax on dividends not paid in money

(1) Notwithstanding any provision of the NRWT rules, but subject to this section, where a person is required under the NRWT rules to make a deduction of non-resident withholding tax from a payment of non-resident withholding income which consists of non-cash dividends (to the extent not fully imputed, as described in **section NG 2(3)**), the amount required to be deducted is equal—

(a) to the extent to which the payment consists of dividends not being a taxable bonus issue, to an amount calculated in accordance with the following formula:

$$\frac{a}{1-a} \times b + (c \times d)$$

where—

a is,—

- (i) in the case of conduit tax relief additional dividends paid as a result of **subpart LG** or dividends to the extent fully conduit tax relief credited, the rate of non-resident withholding tax, expressed as a percentage, specified in **section NG 2(1)(c)**; and
- (ii) in any other case, the rate of non-resident withholding tax, expressed as a percentage, specified in **section NG 2(1)(a)**

b is the amount of the dividends paid—

- (i) to the extent neither fully imputed nor fully dividend withholding payment credited (as described in **section NG 2(3) and (4)**); and
- (ii) disregarding any deduction of non-resident withholding tax

c is the rate of non-resident withholding tax, expressed as a percentage, specified in **section NG 2(1)(c)**

d is the amount of the dividends paid—

- (i) to the extent fully dividend withholding payment credited (as described in **section NG 2(4)**); and
 - (ii) disregarding any deduction of non-resident withholding tax; and
- (b) to the extent to which the payment consists of a taxable bonus issue, to an amount calculated according to the formula—

$$(a \times e) + (c \times (f + g))$$

where—

- a is the rate of non-resident withholding tax, expressed as a percentage, specified in **section NG 2(1)(a)**
 - e is the amount of the dividends, other than dividends referred to in item “g”, calculated under **sections CD 6(2) and CD 7(3)**—
 - (i) to the extent neither fully imputed nor fully dividend withholding payment credited (as described in **section NG 2(3) and (4)**); and
 - (ii) before any deduction of non-resident withholding tax
 - c is the rate of non-resident withholding tax, expressed as a percentage, specified in **section NG 2(1)(c)**
 - f is the amount of the dividends calculated under **sections CD 6(2) and CD 7(3)** together with the amount of any dividend withholding payment credit attached to the dividends—
 - (i) to the extent fully dividend withholding payment credited (as described in **section NG 2(4)**); and
 - (ii) before any deduction of non-resident withholding tax
 - g is the amount of the dividends, to the extent fully conduit tax relief credited plus the conduit tax relief additional dividends paid in respect of the taxable bonus issue as a result of **subpart LG**.
- (1A) For the purposes of **subsection (1)**, in determining the extent to which the dividend is fully conduit tax relief credited, and **section MI 8**, an amount that must be deducted from a non-

cash dividend to the extent fully conduit tax relief credited is treated as being part of the non-cash dividend.

- (2) Notwithstanding any provision of the NRWT rules, where any person is required under this Act to make a deduction of non-resident withholding tax from a payment of non-resident withholding income consisting of non-cash dividends, that person may not make any deduction from that payment in accordance with the NRWT rules, but is liable to pay to the Commissioner an amount (which is treated as a deduction of non-resident withholding tax made from those dividends for the purposes of this Act and the Tax Administration Act 1994) equal to the non-resident withholding tax that, but for this subsection, would have been required to be deducted, and is liable to pay that amount in the same manner in all respects as if it were the non-resident withholding tax that, but for this subsection, would have been required to be deducted.

Compare: 1994 No 164 s NG 9

NG 10 Power of Commissioner to grant relief from or vary amount of deductions

- (1) The Commissioner may, for the purpose of meeting the special circumstances of any case or class of cases and to such extent as the Commissioner thinks fit, and upon or subject to such terms and conditions as the Commissioner may require,—
- (a) relieve any person from an obligation to make a deduction of non-resident withholding tax imposed upon that person by **section NG 8**, or from an obligation to comply with **section NG 9**; or
- (b) vary the amount to be deducted under **section NG 8** by any person from any payments consisting of non-resident withholding income or from any class or classes of such payments.
- (1A) **Subsection (1)(b)** does not apply to non-resident withholding income to which **section NG 2(1)(ab)** applies.
- (2) In every such case the NRWT rules apply as if they had been amended in accordance with the decisions or requirements of the Commissioner for the time being in force under this section.

Compare: 1994 No 164 s NG 10

Payment of non-resident withholding tax

NG 11 Payment of deductions of non-resident withholding tax to Commissioner

- (1) Except as otherwise provided in this section, every person who makes deductions of non-resident withholding tax from payments consisting of non-resident withholding income must pay the deductions to the Commissioner on a monthly basis, with the deductions made during any month being paid to the Commissioner not later than the 20th of the following month.
- (2) Subject to **subsections (3) and (4)**, a person who estimates in relation to any tax year that the person will not be required by the NRWT rules to make non-resident withholding tax deductions of \$500 or more in aggregate may pay the deductions to the Commissioner in 2 instalments as follows:
 - (a) the first instalment is due and payable on 20 October in that tax year, and consists of the amount of all deductions required by the NRWT rules to be made from payments of non-resident withholding income made by the person during the period 1 April to 30 September (both dates inclusive) in the tax year:
 - (b) the second instalment is due and payable on 20 April in the following tax year, and consists of the amount of all deductions required by the NRWT rules to be made from payments of non-resident withholding income made by the person during the period 1 October to 31 March (both dates inclusive) in the tax year.
- (3) Where the \$500 aggregate referred to in **subsection (2)** is reached at any time during a tax year,—
 - (a) the person must pay to the Commissioner, not later than the 20th of the month following that in which the \$500 aggregate is reached, all non-resident withholding tax deductions made by the person between the beginning of the tax year and the end of the month in which the aggregate is reached; and
 - (b) the person must for the remainder of the tax year pay all non-resident withholding tax deductions to the Commissioner on a monthly basis in accordance with **subsection (1)**.
- (4) Where in any month a person—

- (a) ceases to carry on a taxable activity in respect of which the person has been required to make any non-resident withholding tax deductions; or
 - (b) ceases to carry on any such taxable activity in New Zealand,—
the person must pay to the Commissioner, not later than the 20th of the following month, all non-resident withholding tax deductions made by the person with respect to the taxable activity and not earlier paid to the Commissioner.
- (5) The Commissioner may extend the time for payment of any amount of non-resident withholding tax in such cases and to such extent as the Commissioner thinks fit.
- (6) Every person who is required by section 49(1) or (2) of the Tax Administration Act 1994 to provide information to the Commissioner in respect of deductions or payments of non-resident withholding tax, that are made or should be made from non-resident withholding income paid or derived in a tax year or part year, must pay to the Commissioner, not later than—
- (a) 20 April following the end of the tax year (in the case of information provided under section 49(1) of that Act); and
 - (b) the last day by which the information is to be provided, (in the case of information provided under section 49(2) of that Act),—
an amount equal to all unpaid deductions and payments for the tax year or part year that are identified as discrepancies in the information.
- (7) **Subsection (6)** does not apply to any unpaid deductions or payments of non-resident withholding tax that the Commissioner assesses as due and payable in respect of a particular return period.

Compare: 1994 No 164 s NG 11

NG 12 Person deriving non-resident withholding income to pay non-resident withholding tax to Commissioner

Where for any reason—

- (a) a deduction of non-resident withholding tax is not made or is not made in full in accordance with the NRWT rules from any payment consisting of non-resident withholding income; or

- (b) a payment that is required to be made to the Commissioner, in accordance with **section NG 9**, of an amount equal to the non-resident withholding tax in relation to a dividend has, in contravention of that section, not been made or not been made in full to the Commissioner; or
- (c) a deduction of non-resident withholding tax in respect of non-resident withholding income consisting of dividends is not made, or is not made in full, because allowance for a dividend withholding payment credit included in the non-resident withholding income is in excess of the proper amount of the dividend withholding payment credit,—

the person who derives the non-resident withholding income must pay to the Commissioner an amount equal to the amount of the deduction or, as the case may be, the payment that should have been made and was not made, and that amount is due and payable to the Commissioner on the 20th of the month following the month in which the deduction was required to be made, or, as the case may be, the dividend was paid, or, in either case, on such later date as the Commissioner may in any case allow.

Compare: 1994 No 164 s NG 12

NG 13 Failure to make deductions of non-resident withholding tax or to make payments to Commissioner

- (1) Where a person fails to make any deduction of non-resident withholding tax from any payment consisting of non-resident withholding income in accordance with that person's obligations under **section NG 8**, the amount in respect of which default has been made constitutes a debt payable by that person to the Commissioner, and is deemed to have become due and payable to the Commissioner in accordance with **section NG 11** as if the person had made the deduction.
- (2) Where a person has, in contravention of **section NG 9**, paid non-resident withholding income consisting of a dividend without payment to the Commissioner of an amount equal to the non-resident withholding tax in relation to the dividend, that amount, or so much of that amount as has not been paid to the Commissioner, constitutes a debt payable by that person to the Commissioner, and is deemed to have become due and payable to the Commissioner in accordance with **section NG 11** as if

the person had made a deduction of the relevant amount from that non-resident withholding income consisting of a dividend.

- (3) The right of the Commissioner to recover the amount in respect of which default has been made in the manner referred to in **subsection (1) or (2)** from a person who has made default is in addition to any right of the Commissioner to recover that amount from the person chargeable with the non-resident withholding tax to which that amount relates; and nothing in the NRWT rules should be construed as preventing the Commissioner from taking such steps as the Commissioner thinks fit to recover that amount from both of those persons concurrently, or from recovering that amount wholly from 1 of those persons, or partly from 1 and partly from the other of those persons.
- (4) Where any amount recoverable in accordance with the NRWT rules from the person chargeable with the non-resident withholding tax to which that amount relates is in fact paid by another person, the amount so paid may be recovered by that other person from that first-mentioned person.

Compare: 1994 No 164 s NG 13

Miscellaneous provisions

NG 14 Non-resident withholding tax on dividends paid to company under control of non-resident

Where—

- (a) shares in a company that is resident in New Zealand were formerly held by a person not resident in New Zealand and while those shares were so held the company was under the control of that person or was deemed under this Act to be under the control of persons of whom that person was one; and
- (b) that person has sold or otherwise disposed of those shares to another company that is resident in New Zealand and is under the control of that person or is deemed under this Act to be under the control of persons of whom that person is one; and
- (c) any part of the price at which that other company acquired those shares remained unpaid after the acquisition by that other company of those shares or after the

acquisition remained owing in any way directly or indirectly to that person and whether or not secured by mortgage or otherwise,—
any dividends paid in respect of those shares to that other company while any part of that price remains unpaid or owing are, to the extent to which that price is unpaid or owing at the time when the dividends are paid to that other company, deemed to have been paid to that person and to have been derived as dividends by that person at that time, and this Act applies accordingly.

Compare: 1994 No 164 s NG 14

NG 15 Deductions of non-resident withholding tax deemed to be received by person entitled to payment

Where any non-resident withholding tax has been deducted from a payment consisting of non-resident withholding income, the amount so deducted,—

- (a) as between the person by whom the deduction was made and the person entitled to the payment consisting of the non-resident withholding income from which the deduction was made, is deemed to have been received by the person entitled to that payment,—
 - (i) in any case where the deduction was made under **section NG 8(1)**, at the time at which the payment consisting of the non-resident withholding income was made:
 - (ii) in any case where the deduction was made under **section NG 8(2)**, at the time at which the payment consisting of the non-resident withholding income was received, for or on behalf of the person entitled to that payment, by an agent or other person in New Zealand:
- (b) for the purposes of this Act (including the NRWT rules), is deemed to have been derived by the person entitled to the payment consisting of the non-resident withholding income at the same time and in the same manner as the residue of that payment.

Compare: 1994 No 164 s NG 15

NG 16 Non-resident withholding tax deducted in error

- (1) Where—

-
- (a) any deduction is made by a person in accordance with the procedure set out in the NRWT rules; and
 - (b) the amount deducted is paid to the Commissioner; and
 - (c) the amount deducted exceeds the non-resident withholding tax deduction (if any) required in accordance with the NRWT rules,—
- the Commissioner must, subject to this section, pay by way of refund an amount equal to that excess.
- (1A) Any refund under **subsection (1)** must be paid to—
 - (a) the person deriving the amount from which the deduction was made; or
 - (b) the person who made the excess deduction, if that person has paid the excess to the person deriving the amount from which the deduction was made and has not offset that amount under **section NG 16A(2)**.
 - (2) Any person who becomes entitled to a refund under this section may make an application for the refund in such form as may be approved by the Commissioner.
 - (3) The Commissioner may not pay a refund under this section unless the Commissioner receives such evidence as the Commissioner considers necessary that the requirements of **subsection (1)** (and, where appropriate, **subsection (1A)(b)**) have been met.
 - (4) Where any amount (in this subsection referred to as the **amount due**) is due to be paid to the Commissioner in accordance with any provision of this Act, the Income Tax Act 1994, or the Tax Administration Act 1994 by any person to whom any refund is payable at that time in accordance with this section, the Commissioner may apply the refund in satisfying (so far as that refund extends) the obligation of the person to pay the amount due in accordance with a taxpayer's, or their agent's, request under section 173T of the Tax Administration Act 1994 or otherwise.
 - (5) Where the Commissioner is satisfied that any amount refunded to a person under this section is in excess of the amount properly refundable, the Commissioner may recover the amount of the excess in the same manner, with any necessary modifications, as if it were income tax payable by that person due,—

- (a) in any case where the person by wilful default or neglect led the Commissioner to pay the refund, on the date upon which the refund was paid; or
- (b) in any other case, on the 5th working day of the month following the month in which the person is notified that the excess is payable.

Compare: 1994 No 164 s NG 16

NG 16A Variation in non-resident withholding tax deductions to correct errors

- (1) Where a person required to make a deduction of non-resident withholding tax from any payment of non-resident withholding income has failed to make the deduction, or has failed to make it in full, the person may (except to the extent to which a deduction of non-resident withholding tax has already been made by any other person to correct the deficiency) either—
 - (a) deduct a sufficient amount to correct the deficiency from any subsequent payment of non-resident withholding income to the same person in the same year in which the first payment was made; or
 - (b) otherwise recover from that person a sufficient amount to correct the deficiency.
- (2) Where—
 - (a) a person deducts from a payment of non-resident withholding income an amount on account of non-resident withholding tax that is in excess of the amount required to be deducted by the NRWT rules, and pays that excess deduction to the Commissioner; and
 - (b) the excess deduction is due to an error on the part of the person making the deduction; and
 - (c) the person has subsequently refunded the excess to the recipient of the non-resident withholding income,—
the person may either offset the amount of that excess against any tax deductions subsequently payable to the Commissioner under **section NG 11** or apply for a refund of the excess under **section NG 16**.
- (3) Where—
 - (a) a person deducts from a payment of non-resident withholding income an amount on account of non-resident withholding tax that is in excess of the amount required to be deducted by the NRWT rules; and

- (b) the excess deduction is due to an act or omission on the part of the recipient of the payment,—
the person must pay the full amount deducted to the Commissioner in accordance with **section NG 11**, and upon such payment is not liable to refund the amount of the excess to the recipient of the payment or any other person.

Compare: 1994 No 164 s NG 16A

NG 17 Application of other provisions to non-resident withholding tax

- (1) Subject to the NRWT rules, **section GC 18** and sections 167 and 169 of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, for the purposes of the NRWT rules, apply as if—
- (a) every reference in those sections to a tax deduction were a reference to a deduction of non-resident withholding tax:
- (b) every reference in those sections to an employer were a reference to a person by whom a deduction of non-resident withholding tax has been or, as the case may be, is required to be made:
- (c) every reference in those sections to the PAYE rules were a reference to the NRWT rules.
- (2) Subject to the NRWT rules, the other provisions of this Act (other than **section GC 18**) and of the Tax Administration Act 1994 (other than sections 167 and 169), as far as they are applicable and with any necessary modifications, apply with respect to non-resident withholding tax as if it were income tax levied under **section BB 1**, but nothing in the NRWT rules should be construed so as to include non-resident withholding tax in the terms “income tax” or “tax” for the purposes of section 120K of the Tax Administration Act 1994.

Compare: 1994 No 164 s NG 17

Subpart NH—Dividend withholding payments

NH 1 Liability to make deduction in respect of foreign withholding payment dividend

- (1) Every company resident in New Zealand that is paid a dividend to which this section applies must deduct from that dividend an amount by way of dividend withholding payment calculated in accordance with **section NH 2**.

- (2) This section applies to the following dividends:
- (a) dividends paid by a foreign company where the dividend is exempt income in accordance with **sections CW 9 to CW 11** upon derivation by a company resident in New Zealand;
 - (b) dividends paid by a company resident in New Zealand, where and to the extent that—
 - (i) the company previously was not resident in New Zealand; and
 - (ii) the amount of the dividend is less than the amount the company had available, immediately before becoming resident in New Zealand, for distribution by way of dividend (calculated after deduction from that available amount of the amount of any previous dividend paid by the company to which this paragraph applied); and
 - (iii) the dividend is exempt income in accordance with **sections CW 9 to CW 11** upon derivation by the company resident in New Zealand.
- (3) In **section NH 1(2)(a)**, dividends paid by a foreign company exclude dividends that would be exempt income under **sections CW 30 to CW 40** if **sections CW 9 to CW 11** did not apply.

Compare: 1994 No 164 s NH 1

NH 2 Amount of dividend withholding payment to be deducted

- (1) The amount by way of dividend withholding payment to be deducted from any foreign withholding payment dividend under **section NH 1** is, subject to the provisions of this section, the greater of nil and the amount calculated in accordance with the following formula:

$$((a + b + c) \times d) - b - c$$

where—

- a is the amount of the dividend paid (after deduction of foreign withholding tax paid in respect of the dividend)
- b is the amount of any foreign withholding tax (not being foreign withholding tax paid in a country or territory specified in **schedule 6**) paid in respect of the dividend
- c is the amount of underlying foreign tax credit calculated with respect to the dividend under **section LF 2**

- d is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year that is concurrent with the imputation year in which occurred the quarter in which the dividend was paid.
- (2) Where—
- (a) a foreign withholding payment dividend is paid to a company in respect of an income interest in a controlled foreign company; and
- (b) the company or another company which is, at the time the dividend is paid, in the same group of companies as the company is, at the time the dividend is paid, a branch equivalent tax account company,—
- the amount to be deducted by the company under **subsection (1)** is reduced by such amount of the credit balance in the company's or such other company's branch equivalent tax account, being a credit balance that exists at the time the foreign dividend is paid, as the company or such other company elects under **section MF 5(1)** to use for the purpose.
- (3) For the purposes of **subsection (2)(a)**, a foreign withholding payment dividend paid to a company is deemed to have been paid in respect of an income interest in a controlled foreign company where the company held the income interest in the controlled foreign company—
- (a) at any time during the period commencing with the start of the income year of the company in which the dividend was paid and ending with the date of payment of the dividend; or
- (b) at any time during the income year of the company immediately preceding the income year of the company in which the dividend was paid.
- (4) Where the amount of any dividend withholding payment deduction is reducible under this section by the amount of any foreign withholding tax paid in respect of the dividend, no such reduction may be made unless the Commissioner is furnished, within such time as the Commissioner may allow in any case or class of cases having regard to the period stated in **section LC 13**, with all information necessary for determining the amount of the foreign withholding tax.

- (5) Where any dividend withholding payment deduction is required to be made in accordance with the dividend withholding payment rules in relation to any amount of foreign withholding payment dividend and that foreign withholding payment dividend is in a currency other than New Zealand currency, for the purpose of calculating the amount of dividend withholding payment required to be deducted and paid to the Commissioner in accordance with the dividend withholding payment rules, that foreign withholding payment dividend must be converted into New Zealand currency either at—
- (a) the close of trading spot exchange rate on the day upon which the dividend withholding payment deduction is required to be made or, where the company required to make the dividend withholding payment deduction so elects, on the next succeeding day; or
 - (b) where the foreign withholding payment dividend has been converted for the purposes of payment into New Zealand currency at an exchange rate which is a market rate for transactions entered into at arm's length, that exchange rate.

Compare: 1994 No 164 s NH 2

NH 3 Payment and recovery of dividend withholding payment

- (1) A company that during any quarter is paid foreign dividends in respect of which it is required by **section NH 1** to make dividend withholding payment deductions must, not later than 20 days after the end of that quarter, pay the amount of the deductions to the Commissioner.
- (2) Where, in relation to a company that is liable to pay dividend withholding payment in respect of any foreign dividend paid to the company during any quarter, the company—
 - (a) has a net loss that may be carried forward and offset in accordance with **sections IE 1 and IF 1** against the net income of the company for the income year in which the foreign dividend is paid to the company; or
 - (b) believes on reasonable grounds that, in respect of the income year in which the foreign dividend is paid to the company, the company will have a net loss that may be carried forward and offset in accordance with **sections IE 1 and IF 1** against the net income of the company for the succeeding income year,—

the company may by notice to the Commissioner elect, within the period for payment specified in **subsection (1)** (or by such later date as the Commissioner may allow), that payment of all or part of the dividend withholding payment is satisfied by reducing any such net loss, in so far as the balance of the net loss extends, by an amount not exceeding an amount calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the dividend withholding payment payable under **section NH 2**
 - b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year that is concurrent with the imputation year in which the quarter for which the liability arose occurred.
- (3) Where, in relation to a company (in this subsection referred to as the **first company**) that is liable to pay dividend withholding payment in respect of any foreign dividend paid to the company during the quarter, any other company (in this subsection referred to as the **loss company**)—
- (a) has, in any income year prior to the income year during which the foreign dividend is paid to the first company, a net loss that may, in accordance with **section IG 2**, be offset against the net income of the first company for the income year in which the foreign dividend is paid to the first company; or
 - (b) believes on reasonable grounds that it will, in respect of the income year in which the foreign dividend is paid to the first company, have a net loss that may in accordance with **section IG 2** be offset against the net income of the first company for the income year in which the foreign dividend is paid to the first company,—

the loss company may by notice to the Commissioner elect, within the period for payment specified in **subsection (1)** (or by such later date as the Commissioner may allow), that payment of all or part of the dividend withholding payment payable by the first company is satisfied by reducing any such net loss, so far as the balance of the net loss extends, by an amount not

- exceeding an amount calculated in accordance with the formula specified in **subsection (2)**.
- (4) Where a company elects under **subsection (2) or (3)** to satisfy a liability to pay all or part of any dividend withholding payment by way of a reduction of net loss, and the company does not in fact have a net loss or does not have a net loss sufficient to justify the full amount of the reduction of net loss under the relevant subsection, or, in the case of an election under **subsection (3)**, the 2 companies are members of the same group of companies for part only of a relevant income year and the net loss referred to in that subsection could be offset against the net income of the company deriving the dividend by virtue only of **section IG 2(4) or (5)**,—
- (a) the Commissioner may disallow the election in respect of so much of the amount of the dividend withholding payment as the Commissioner considers appropriate, having regard to—
- (i) the amount of the actual net loss of the electing company; and
- (ii) where appropriate, the amount or proportion, or likely amount or proportion, of the net loss of the electing company that could under **section IG 2(4) or (5)** be offset against the net income of the company deriving the dividend; and
- (b) the company with the initial liability to pay the dividend withholding payment is liable to pay the amount of dividend withholding payment the subject of that disallowance, and any penalty under section 150 of the Tax Administration Act 1994, as if the company had failed to pay that amount within the time for payment provided for in **subsection (1)** in respect of the initial liability to pay the dividend withholding payment.
- (5) Where a company fails to deduct any amount that it is liable to pay to the Commissioner by way of dividend withholding payment, the amount in respect of which default has been made—
- (a) constitutes a debt payable by the company to the Commissioner; and
- (b) is deemed to have become payable within 20 days of the end of the quarter in respect of which the initial liability arose.

- (6) Where the amount of any dividend withholding payment is reduced by any amount claimed in respect of foreign withholding tax, but the information referred to in **section NH 2(4)** has not been furnished to the Commissioner in accordance with that provision, the Commissioner may recover an amount equal to the amount of the claimed foreign withholding tax as if it were income tax payable by the company.
- (7) Subject to the dividend withholding payment rules, the other provisions of this Act and of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, apply with respect to dividend withholding payment and further dividend withholding payment as if it were income tax payable by the company.

Compare: 1994 No 164 s NH 3

NH 4 Refund for overpayment and to company in loss

- (1) Where the Commissioner is satisfied that the amount of dividend withholding payment paid by a company is in excess of the amount properly payable, the company is, except as otherwise provided by this section, entitled to a refund of the excess.
- (2) Where during an imputation year a company becomes entitled to a refund of dividend withholding payment under this section in relation to dividend withholding payment paid by the company during a previous imputation year,—
- (a) the refund to be paid to the company may not exceed,—
- (i) in the case of a company that is a dividend withholding payment account company, the credit balance (if any) of the company's dividend withholding payment account at the end of the imputation year preceding that in which the entitlement to the refund arises; or
 - (ii) in the case of a company that is an imputation credit account company but is not a dividend withholding payment account company, the credit balance (if any) of the company's imputation credit account at the end of the imputation year preceding that in which the entitlement to the refund arises; or
 - (iii) in the case of a company that has ceased to be resident in New Zealand, the credit balance (if

- any) of the company's dividend withholding payment account that arose as a debit to the account under **section MG 5(1)(j)** immediately before the company ceased to be so resident, or, where the company was an imputation credit account company but not a dividend withholding payment account company, the credit balance (if any) of the company's imputation credit account that arose as a debit under **section ME 5(1)(k)** immediately before the company ceased to be so resident; but
- (b) any amount of dividend withholding payment that is not refunded because it exceeds that credit balance is credited in payment of a dividend withholding payment payable by the company for any imputation year.
- (3) For the purposes of **subsection (2)**, any credit balance referred to in that subsection is deemed to be reduced by any earlier refund paid to the company during the same imputation year, being a refund of dividend withholding payment or a refund of income tax that may not, under this section or **section MD 2**, exceed that credit balance.
- (4) Where any company is entitled to a refund of dividend withholding payment under **section CD 40(10) to (13)**,—
- (a) for the purpose of applying **subsections (1) and (2)(a)** with respect to the refund, the amount of the credit balance referred to in **subsection (2)(a)(i) or (ii) or (iii)** is deemed to be increased by an amount equal to any debit in the company's dividend withholding payment account or imputation credit account which arose under **section ME 5(1)(i) or MG 5(1)(i)**, as the case may be, after the date of payment of the dividend withholding payment and before the date upon which the credit balance is to be determined under **subsection (2)(a)(i) or (ii) or (iii)**; and
 - (b) the amount of dividend withholding payment not refunded by reason of **subsection (2)(a)(i) or (ii) or (iii)**—
 - (i) is credited in payment of any income tax, provisional tax, or dividend withholding payment payable by the company after the entitlement to a refund arose:

- (ii) to the extent to which it cannot be credited under **subparagraph (i)**, whether by reason of the company being liquidated or for any other reason, is retained by the Commissioner.
- (5) Where, and to the extent that, in respect of any income year (referred to in this subsection as the **current year**) of a company (referred to in this subsection as the **first company**) during which the first company has paid a dividend withholding payment—
 - (a) either—
 - (i) the company has in the current or any earlier income year, a net loss that may be carried forward and offset in accordance with **sections IE 1 and IF 1** against the net income of the company for the income year succeeding the current year; or
 - (ii) another company (in this subsection referred to as the **group company**) has, in the current or any earlier income year, a net loss that may, in accordance with **section IG 2**, be offset against the net income of the first company for the current year, which net loss the group company wishes to apply in enabling the first company to obtain a refund of dividend withholding payment; and
 - (b) the first company has—
 - (i) in any case to which **paragraph (a)(i)** applies, furnished a return under section 33 of the Tax Administration Act 1994 for the income year in respect of which the net loss arose; and
 - (ii) furnished a return under section 33 of the Tax Administration Act 1994 for the current year; and
 - (iii) applied in writing to the Commissioner for a refund of the dividend withholding payment; and
 - (c) in any case to which **paragraph (a)(ii)** applies, the group company has—
 - (i) furnished a return under section 33 of the Tax Administration Act 1994 for the income year in respect of which the net loss arose; and
 - (ii) elected by notice to the Commissioner that payment of all or part of the dividend withholding payment is satisfied by reducing its relevant net loss,—

the first company is entitled to a refund of dividend withholding payment of an amount that is equal to the least of—

- (d) the amount of dividend withholding payment paid by the first company during the current year; or
- (e) the amount of the net loss of the first company or the group company (as the case may be) referred to in **paragraph (a)**, multiplied by the basic rate of income tax for companies referred to in item “b” of the formula stated in **subsection (6)**; or
- (f) the credit balance of the first company’s dividend withholding payment account at the end of the most recently ending imputation year,—

and to a refund of any late payment penalty imposed under section 139B of the Tax Administration Act 1994 with respect to failure to pay the amount refunded.

- (6) Where a company is paid a refund under **subsection (5)**, the amount of the net loss referred to in that subsection is reduced by an amount calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the refund paid to the company under **subsection (5)**
 - b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year that is concurrent with the imputation year referred to in **subsection (5)(f)**.
- (8) Where an amalgamating company ceases to exist upon a qualifying amalgamation, this section applies with effect from the time of the amalgamation, with any necessary modifications, in respect of any tax paid by the amalgamating company as if it and the amalgamated company were a single company.
 - (9) Where a consolidated group ceases to exist on a qualifying amalgamation which involves all members of the consolidated group amalgamating (whether or not also amalgamating with any company outside the group), this section applies with effect from the time of the amalgamation, with any necessary modifications, in respect of any tax paid by the consolidated

group as if it and the amalgamated company were a single company.

Compare: 1994 No 164 s NH 4

Consolidated groups

NH 5 Dividend withholding payments and consolidated groups

- (1) Where—
 - (a) a foreign withholding payment dividend is, within the meaning of **section NH 2(3)**, paid to a company in respect of an income interest in a controlled foreign company; and
 - (b) that company is at the time of payment a member of a consolidated group; and
 - (c) that consolidated group, at the time of payment, maintains a branch equivalent tax account under **section MF 7**,—

the amount to be deducted by the company under **section NH 2(1)** is reduced by such amount of the credit balance in the group's branch equivalent tax account, being a credit balance that exists at the time the foreign dividend is paid, as the nominated company for the group elects under **section MF 10(1)** to use for the purpose, and **section NH 2(2)** does not apply in the case of such a dividend.
- (2) For the purposes of **subpart LF and section NH 2** with respect to determining whether any person has at any relevant time a sufficient interest in a company, a consolidated group is treated as if it were a single company.
- (3) Where—
 - (a) a company is liable to pay dividend withholding payment in respect of a foreign dividend paid to the company during a quarter; and
 - (b) the company is at the time of payment of the dividend a member of a consolidated group,—

all companies which are at the time members of the consolidated group are jointly and severally liable for the dividend withholding payment and the Commissioner may make an assessment under section 102 of the Tax Administration Act 1994 accordingly.
- (4) Where—

- (a) a company is liable to pay dividend withholding payment in respect of a foreign dividend paid to the company during a quarter; and
- (b) the company is at the time of payment of the dividend a member of a consolidated group,—

section NH 3(2) does not apply, but where—

- (c) the group has a net loss that may be carried forward and offset under **sections IE 1, IF 1, and IG 6** against the net income of the group for the income year in which the foreign dividend is paid to the company; or
- (d) the nominated company for the consolidated group has reasonable grounds to believe that, in respect of the income year in which the foreign dividend is paid to the company, the group will have a net loss that may be carried forward and offset under **sections IE 1, IF 1, and IG 6** against the net income of the group for the succeeding income year,—

the nominated company may by notice to the Commissioner elect, within the period for payment specified in **section NH 3(1)**, that payment of all or part of the dividend withholding payment is satisfied by reducing any such net loss, so far as the balance of the net loss extends, by an amount not exceeding an amount calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the dividend withholding payment payable under **section NH 2**
- b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year that is concurrent with the imputation year in which the quarter for which the liability occurred,—

and **section NH 3(4)** applies with any necessary modifications to such an election as if the group were a single company.

- (5) Where during an imputation year a company becomes entitled to a refund of dividend withholding payment under **section NH 4(1)** in relation to dividend withholding payment that was paid by the company during a previous imputation year in respect of a dividend or dividends paid to the company

- at a time when the company was a member of a consolidated group, **section NH 4(2)** does not apply, and—
- (a) the refund to be paid to the company must not exceed,—
 - (i) in any case where the consolidated group, at the time when the entitlement to refund arises, has a dividend withholding payment account, the credit balance (if any) of the group's dividend withholding payment account at the end of the imputation year preceding that in which the entitlement to the refund arises; or
 - (ii) in any case where the consolidated group, at the time at which the entitlement to the refund arises, has no dividend withholding payment account, the credit balance (if any) of the group's imputation credit account at the end of the imputation year preceding that in which the entitlement to the refund arises; but
 - (b) any amount of dividend withholding payment that is not refunded because it exceeds that credit balance is credited in payment of a dividend withholding payment payable by the company for any imputation year in which the company was a member of the consolidated group.
- (6) For the purposes of **subsection (5)**, the credit balance referred to in that subsection is deemed to be reduced by any earlier refund paid during the imputation year—
- (a) to the company; or
 - (b) to any other company which was, at the time of payment of the dividend giving rise to the liability to pay the refunded dividend withholding payment or in respect of the income year in relation to which the refunded income tax was paid, a member of the same consolidated group,—
- being a refund of dividend withholding payment or a refund of income tax that may not, under this section or **section MD 2**, exceed that credit balance.
- (7) Where—
- (a) a company has paid dividend withholding payment during an income year; and

(b) at the time of payment of the dividend giving rise to the liability to make that dividend withholding payment the company was a member of a consolidated group,—

section NH 4(5) does not apply, and where—

(c) the consolidated group has a net loss for that income year that may under **sections IE 1, IF 1, and IG 6** be carried forward and offset against the net income of the group for a succeeding income year; and

(d) the consolidated group has furnished a single return under **section HB 1** for the income year in respect of which the net loss arose,—

the company is, upon application in writing to the Commissioner, entitled to a refund of dividend withholding payment of an amount that is the smallest of—

(e) the amount of dividend withholding payment paid during that income year; or

(f) the amount of the net loss referred to in **paragraph (c)**, multiplied by the basic rate of income tax for companies referred to in item “b” of the formula stated in this subsection; or

(g) the credit balance of the group’s dividend withholding payment account at the end of the most recently ending imputation year,—

and the amount of the loss is reduced by an amount calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

a is the amount of the refund paid to the company

b is the basic rate of income tax for companies, expressed as a percentage, stated in **schedule 1, part A, clause 5**, and applying in respect of the income year that is concurrent with the imputation year referred to in **paragraph (g)**.

(8) **Section NH 4(2)** does not apply to limit a refund of dividend withholding payment to a company which is a member of a consolidated group to the extent that, if that refund had been of a dividend withholding payment paid in respect of a dividend paid to the company at a time when the company was a member of the consolidated group, **subsection (5)** would not have limited the refund.

- (9) **Section LD 8(4)** applies, in any case where the company referred to is a member of a consolidated group, as if the reference to dividend withholding payment or further dividend withholding payment paid by the company were a reference to such amounts paid by any company which was, at the time of payment, a member of the consolidated group.

Compare: 1994 No 164 s NH 5

NH 6 Application of specific dividend withholding payment provisions to consolidated groups

- (1) **Section MG 6** applies as if the reference to a dividend withholding payment account company included a reference to any company where at the time of payment of the dividend,—
- (a) the company is a member of a consolidated group; and
 - (b) the consolidated group maintains a dividend withholding payment account.
- (2) Where a consolidated group has a policyholder credit account and a dividend withholding payment account,—
- (a) the nominated company for that consolidated group may elect that all or any part of the credit balance (if any) in the group's dividend withholding payment account at the time of election is a credit to the group's policyholder credit account and a debit to the group's dividend withholding payment account, which election is made by recording the debit and credit in the respective accounts; and
 - (b) **section MG 7(3) and (4)** applies in the case of a consolidated group with a non-standard balance date with any necessary modifications as if—
 - (i) each reference in those subsections to a company were a reference to the group; and
 - (ii) each reference to provisions of this Act applicable to an individual company were a reference to the equivalent provision of this section or of **sections MG 13 to MG 16 and NH 5** applicable to consolidated groups.
- (3) **Section MG 8(1) to (4)** applies, with any necessary modifications, to a consolidated group as if it were a single company but, for the purposes of **subsections (2) to (4)** of that section, dividends paid by 1 member of the consolidated group to another member of the consolidated group are not taken into account.

- (4) **Section MG 8(5), (6), and (7)** applies with any necessary modifications in any case where a consolidated group has a policyholder credit account as if—
- (a) each reference to the company were a reference to the consolidated group; and
 - (b) each reference to a provision of this Act were a reference to the equivalent provision of this section or of **sections MG 13 to MG 16 and NH 5** applicable to consolidated groups,—
- but dividends paid by 1 member of the consolidated group to another member of the consolidated group are not taken into account.
- (5) Sections 30 and 68 of the Tax Administration Act 1994 apply with any necessary modifications in the case of a consolidated group as if each reference to a dividend withholding payment account company were a reference to a company which is a member of a consolidated group that maintains a dividend withholding payment account.
- (6) Where there is a credit balance in the dividend withholding payment account of a consolidated group at the end of any imputation year, the nominated company for that consolidated group may elect that all or any part of that credit balance is a credit to the group's imputation credit account and a debit to the group's dividend withholding payment account, which election is made in the manner specified in **section MG 11(2)**.
- (7) **Sections MG 9 and MG 12**, and sections 103, 104, 139B, 140C, and 140D, and 181 of the Tax Administration Act 1994, apply, with any necessary modifications, to a consolidated group and its dividend withholding payment account as if—
- (a) the group were a single company; and
 - (b) each reference to a provision of this Act were a reference to the equivalent provision applicable to consolidated groups; and
 - (c) each reference to liability of a company for further dividend withholding payment, dividend withholding payment penalty tax, and late payment penalty were (subject to the application of **section HB 1(2) to (5)**) a reference to joint and several liability for such tax of each company which is a member of the group at the

time the further dividend withholding payment, dividend withholding payment penalty tax, or late payment penalty becomes payable.

Compare: 1994 No 164 s NH 6

Conduit tax relief

NH 7 Reduction in liability under conduit tax relief

- (1) A company that is a conduit tax relief company at the time it is required to pay the Commissioner a dividend withholding payment may reduce the dividend withholding payment by the following amount:

$$NR \times DWP$$

where—

NR is the percentage of the company's shareholders not resident in New Zealand as calculated under **subsections (2) and (4)**

DWP is the dividend withholding payment that would need to be deducted but for this section, calculated after any loss offsets claimed under **section NH 3**.

- (2) The percentage of shareholders not resident in New Zealand is calculated at the most recent of—
- (a) the last date prior to the receipt on which the company paid a dividend to all shareholders; or
 - (b) the end of the second tax year before the year of receipt; or
 - (c) for a company incorporated after the second tax year before the year of receipt, the last day of the quarter in which the dividend was received.
- (3) If a company to which **subsection (2)** applies is a listed company, the company may use—
- (a) the record date (the date on which entitlement to a dividend is determined) for a dividend instead of the date on which the dividend is paid; or
 - (b) any date in the tax year on which the company, for whatever commercial reason, calculates the percentage of non-resident shareholders.
- (3A) If there is a conduit tax relief group member in respect of a company (referred to in this section as the **first company**), **subsection (2)** (as modified, if applicable, by **subsection (3)**)

- applies as if the company referred to in that subsection were the company—
- (a) in which 1 or more non-residents have a direct voting interest; and
 - (b) that has a 100% voting interest (calculated as if **section OD 3(3)(d)** did not apply to deem the company's interests to be held by others) in the first company.
- (3B) **Subsection (3A)** does not apply if the date that would be determined for measuring non-resident shareholders under that subsection is before the date of incorporation of the first company.
- (4) The percentage is the lowest of—
- (a) the percentage of direct voting interests held in the company by non-residents at the relevant time; and
 - (b) the percentage of direct market value interests (if a direct market value circumstance exists) held in the company by non-residents at the relevant time; and
 - (c) the percentage of total dividends payable by a company (if the shares in the company are not all shares of the same class) that would be derived by non-residents, if the company were liquidated at the relevant time.
- (5) For the purposes of **subsection (2)(a)**, a company with more than 1 class of shares that pays a dividend to all shareholders of each class of shares in a tax year is treated as if a dividend had been paid to all shareholders on the latest date on which it paid a dividend to all holders of shares of 1 of the classes.
- (6) For the purposes of determining direct voting interests under **subsection (4)(a)** or direct market value interests under **subsection (4)(b)**,—
- (a) the relevant time is the date on which the company is treated as having paid a dividend to all shareholders under **subsection (5)**; and
 - (b) in relation to each class of shares, the company is treated as having the same shareholders on the relevant date in relation to that class that it had on the last date in the tax year on which a dividend was paid to all shareholders of that class.
- (7) For the purposes of this section, treasury stock is to be disregarded.

- (8) The rules for determining residence in **sections OE 7 and OE 8** apply in this section.

Compare: 1994 No 164 s NH 7

Subpart NZ—Terminating provisions

NZ 1 Adjustment of dividends payable to preference shareholders

Any company that was entitled, under the section for which section 142A of the Land and Income Tax Act 1954 was substituted by section 3(1) of the Land and Income Tax Amendment Act (No 3) 1968, to reduce the amount of dividends payable to any shareholder by the amount specified in the section for which that section was so substituted may, notwithstanding anything in any contract with any shareholder or in the terms on which any of its shares were issued, reduce the amount of dividends payable to any shareholder by an amount calculated on the amount of the dividends at the rate of 7.5%.

Compare: 1994 No 164 s NZ 1