

Part G – Avoidance and non-market transactions

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[Note: Amendments made in the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 and the Income Tax Amendment Act 2005 (to the extent coming into effect in 2005) have been incorporated]

Subpart GA – Avoidance: general

GA 1 Commissioner's power to adjust

When this section applies

- (1) This section applies if an arrangement is void under section BG 1 (Tax avoidance).

Commissioner's general power

- (2) The Commissioner may adjust the taxable income of a person affected by the arrangement in a way the Commissioner thinks appropriate, in order to counteract a tax advantage obtained by the person from or under the arrangement.

Commissioner's specific power over tax credits

- (3) The Commissioner may—
 - (a) disallow all or part of a tax credit of a person affected by the arrangement; or
 - (b) allow another person to benefit from all or part of the tax credit.

Commissioner can identify hypothetical situation

- (4) Without limiting the generality of subsections (2) and (3), the Commissioner, when applying this section, can have regard to 1 or more of the amounts listed in subsection (5) which, in the Commissioner's opinion, had the arrangement not occurred, the person—
 - (a) would have had; or
 - (b) would in all likelihood have had; or
 - (c) might be expected to have had.

Reconstruction amounts

- (5) The amounts referred to in subsection (4) are—
 - (a) an amount of income of the person;
 - (b) an amount of deduction of the person;
 - (c) an amount of available net loss of the person;
 - (d) an amount of tax credit of the person.

No double counting

- (6) If the Commissioner includes an amount of income or deduction in calculating the taxable income of the person, it must not be included in calculating the taxable income of another person.

Definition for this section

- (7) In this section, **tax credit** means a reduction in the tax a person must pay because of—
- (a) a credit allowed for a payment by the person of an amount of tax or of another item; or
 - (b) another type of benefit.

Defined in this Act: amount, arrangement, available net loss, Commissioner, deduction, income tax, tax credit, taxable income

Origin:	(1)	GB 1(1)
	(2)	GB 1(1)
	(3)	GB 1(2A)
	(4)	GB 1(1), (2B)
	(5)	GB 1(1), (2B)
	(6)	GB 1(2)
	(7)	GB 1(2C)

Subpart GB – Avoidance: specific

Dividend stripping

GB 1 Dividend stripping arrangements

When this section applies

- (1) This section applies when—
 - (a) a person disposes of shares in a company in an income year; and
 - (b) the disposal is part of a tax avoidance arrangement; and
 - (c) part or all of the consideration the person derives from the disposal is in substitution for a dividend in any income year.

When substitutes for dividend amount

- (2) An amount derived by the person is in substitution for a dividend if it is equivalent to or substitutes for a dividend that, had the arrangement not occurred, the person—
 - (a) would have derived; or
 - (b) would in all likelihood have derived; or
 - (c) might be expected to have derived.

Substitute treated as dividend

- (3) The amount derived in substitution for a dividend is treated as a dividend derived by the person in the income year that the disposal occurs.

Defined in this Act: arrangement, company, dispose, dividend, income year, tax avoidance arrangement

Origin: (1) GB 1(3)
(2) GB 1(3)
(3) GB 1(3)

Transfer pricing arrangements

GB 2 Transfer pricing arrangements

When this section applies

- (1) This section applies if an arrangement has a purpose or effect of defeating the intent and application of section GC 7 (Arm's length consideration substituted) in respect of a person.

Possible examples

- (2) Without limiting the generality of subsection (1), the following arrangements may have that purpose:
- (a) a collateral arrangement with an associated person who is a non-resident:
 - (b) a market sharing arrangement:
 - (c) an arrangement not to enter a market:
 - (d) a back-to-back supply arrangement:
 - (e) an income-sharing arrangement.

Section GC 7 still applies

- (3) Section GC 7 applies to require the substitution of an arm's length amount of consideration, despite section GC 6(2) and (3) (Purpose of rule and when it applies).

Defined in this Act: arrangement, associated person, non-resident

Origin:	(1)	GC 1
	(2)	GC 1
	(3)	GC 1

Net loss arrangements

GB 3 Net loss carry forward arrangements: companies

When this section applies

- (1) This section applies when—
- (a) any shares in a company (the **loss company**) or another company have been subject to an arrangement (including an arrangement altering, directly or indirectly, rights attached to the shares); and
 - (b) the arrangement allows the loss company to meet the requirements of section IF 1(1) (Net losses may be offset against future net income); and
 - (c) a purpose of the arrangement is to defeat the intent and application of section IF 1.

Requirements treated as not satisfied

- (2) The loss company is treated as not meeting the requirements of section IF 1(1) in respect of the shares.

Defined in this Act: arrangement, company, net loss, share

Origin: (1) GC 2
(2) GC 2

GB 4 Net loss grouping arrangements

When this section applies

- (1) This section applies when—
- (a) any shares in a company (the **offset company**) or another company have been subject to an arrangement (including an arrangement altering, directly or indirectly, rights attached to the shares); and
 - (b) the arrangement allows the offset company to meet the requirements of section IG 2 (Net loss offset between group companies); and
 - (c) a purpose of the arrangement is to defeat the intent and application of section IG 2.

Requirements treated as not satisfied

- (2) The offset company is treated as not meeting the requirements of section IG 2 in respect of the shares.

Defined in this Act: arrangement, company, net loss, share

Origin: (1) GC 4
(2) GC 4

Continuity provision arrangements

GB 5 Continuity provision arrangements involving trust beneficiaries

When this section applies

- (1) This section applies when—
- (a) a 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; and
 - (c) a purpose or effect of the change is to defeat the intent and application of a continuity provision.

Share or option treated as disposed of

- (2) The trustee is treated as having disposed of the share or option to an unrelated person, at the time of the change in beneficiaries, and as having reacquired it immediately afterwards.

Subsection does not apply generally

- (3) Subsection (2) applies only for the purpose of the application of the rules in sections OD 3 (Voting interests) and OD 4 (Market value interests) in the case of the continuity provisions.

Defined in this Act: company, continuity provisions, dispose, option, share, trustee

Origin: (1) GC 3
(2) GC 3
(3) GC 3

Qualifying company arrangements

GB 6 Qualifying company arrangements

When this section applies

- (1) This section applies when—
- (a) any shares in a company have been subject to an arrangement at any time; and
 - (b) the arrangement allows the company or another company to be a qualifying company at the time; and
 - (c) a purpose of the arrangement is to defeat the intent and application of subpart HG (Qualifying companies).

Company treated as not being qualifying company

- (2) The relevant company is treated as not being a qualifying company at that time.

Defined in this Act: arrangement, company, qualifying company, share

Origin: (1) GC 5
(2) GC 5

CFC arrangements

GB 7 CFC control interest arrangements

When this section applies

- (1) This section applies when—
 - (a) 2 or more persons who are New Zealand residents enter into an arrangement; and
 - (b) under the arrangement, a control interest in a foreign company is held by another person; and
 - (c) a purpose of the arrangement is to prevent the foreign company being a CFC.

Interest treated as held by residents

- (2) The control interest is treated as being held by the New Zealand residents in equal proportions, for the purposes of determining whether the company is a CFC.

Defined in this Act: arrangement, CFC, control interest, foreign company, New Zealand resident

Origin: (1) GC 7
(2) GC 7

GB 8 CFC attributed repatriation arrangements

When this section applies

- (1) This section applies when—
 - (a) a CFC enters into a loan, security or other type of arrangement (the **CFC arrangement**) with another person; and
 - (b) the CFC arrangement does not directly result in a person having any attributed repatriation from the CFC; and
 - (c) the CFC arrangement has a purpose or effect of allowing a person (the investor) to enter into a loan or other arrangement (the **investor arrangement**); and
 - (d) the investor arrangement would have resulted in a person having some attributed repatriation from the CFC, if it had been made by the CFC; and
 - (e) a purpose or effect of the arrangement is to defeat the intent and application of section CD 34 (When does a person have attributed repatriation from a CFC?).

Investor arrangement treated as CFCs

- (2) The investor arrangement is treated as having been made by the CFC and not the investor, for the purposes of applying section CD 34.

Defined in this Act: arrangement, attributed repatriation, CFC

Origin: (1) GC 8
(2) GC 8

GB 9 Temporary disposals of direct control or income interests

When this section applies

- (1) This section applies when—
- (a) before the end of a quarter, a person (the **disposer**), directly or indirectly, disposes of a direct control interest or direct income interest in a foreign company (the **disposal**); and
 - (b) the disposal is not to a New Zealand resident who has an income interest of 10% or more in the foreign company from which attributed CFC income or attributed repatriation is derived; and
 - (c) within 183 days after the disposal, the disposer acquires, directly or indirectly, a direct control interest or direct income interest in the foreign company (the **reacquisition**); and
 - (d) the disposal has the effect of reducing attributed CFC income or attributed repatriation of—
 - (i) the disposer; or
 - (ii) an associated person of the disposer; or
 - (iii) a person holding an income interest in the disposer, if the disposer is a CFC; and
 - (e) the disposal and reacquisition are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Disposal treated as not occurring

- (2) The disposal is treated as not having occurred, when the person's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent that the reacquisition reverses the disposal.

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Origin: (1) GC 9(1), (4)
(2) GC 9(1)

GB 10 Temporary acquisitions of direct control or income interests*When this section applies*

- (1) This section applies when—
- (a) before the end of a quarter, a person (the **acquirer**), directly or indirectly, acquires a direct control interest or direct income interest in a foreign company (the **acquisition**); and
 - (b) the acquisition is not from a New Zealand resident who has an income interest of 10% or more in the foreign company from which an attributed CFC loss is incurred; and
 - (c) within 183 days after the acquisition, the acquirer, directly or indirectly, disposes of a direct control interest or direct income interest in the foreign company (the **disposal**); and
 - (d) the acquisition has the effect of increasing an attributed CFC loss of—
 - (i) the acquirer; or
 - (ii) an associated person of the acquirer; or
 - (iii) a person holding an income interest in the acquirer, if the acquirer is a CFC; and
 - (e) the acquisition and disposal are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Acquisition treated as not occurring

- (2) The acquisition is treated as not having occurred, when the person's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent that the disposal reverses the acquisition.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Origin: (1) GC 9(1), (4)
(2) GC 9(1)

GB 11 Temporary increases in control interest category totals*When this section applies*

- (1) This section applies when—
- (a) before the end of a quarter, there is an increase in the total of direct control interests in a foreign company in any of the control interest categories (the **total increase**); and

- (b) the total increase results in a person (the **interest holder**) having a reduced income interest or control interest in a foreign company (the **interest reduction**); and
- (c) within 365 days after the total increase, there is a reduction in the total for the control interest category (the **total reduction**); and
- (d) the interest reduction has the effect of reducing attributed CFC income or attributed repatriation of—
 - (i) the interest holder; or
 - (ii) an associated person of the interest holder; or
 - (iii) another person holding an income interest in the interest holder, if the interest holder is a CFC; and
- (e) the total increase and total reduction are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Interest reduction treated as not occurring

- (2) The interest reduction is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent that the total reduction reverses the interest reduction.

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation CFC, control interest, control interest category, direct control interest, foreign company, income interest, international tax rules, quarter

Origin: (1) GC 9(2)
(2) GC 9(2)

GB 12 Temporary reductions in control interest category totals

When this section applies

- (1) This section applies when—
 - (a) before the end of a quarter, there is a reduction in the total of direct control interests in a foreign company in any of the control interest categories (the **total reduction**); and
 - (b) the total reduction results in a person (the **interest holder**) having an increased income interest or control interest in a foreign company (the **interest increase**); and
 - (c) within 365 days after the total reduction, there is an increase in the total for the control interest category (the **total increase**); and
 - (d) the interest increase has the effect of increasing an attributed CFC loss of—
 - (i) the interest holder; or

- (ii) an associated person of the interest holder; or
 - (iii) another person holding an income interest in the interest holder, if the interest holder is a CFC; and
- (e) the total reduction and total increase are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Interest increase treated as not occurring

- (2) The interest increase is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total increase reverses the interest increase.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, control interest category, direct control interest, foreign company, income interest, international tax rules, quarter

Origin: (1) GC 9(2)
(2) GC 9(2)

GB 13 Combination of changes reduces income

When this section applies

- (1) This section applies when—
- (a) before the end of a quarter, either—
 - (i) a person, directly or indirectly, disposes of a direct control interest or direct income interest in a foreign company (the **disposal**); or
 - (ii) there is an increase in the total of direct control interests in a foreign company in any of the control interest categories (the **total increase**); and
 - (b) in the case of the disposal, the disposal is not to a New Zealand resident who has an income interest of 10% or more in the foreign company from which they derive attributed CFC income or attributed repatriation; and
 - (c) in the case of the disposal, within 365 days after the disposal, there is a reduction in the total of direct control interests in the foreign company in any of the control interest categories (the **total reduction**); and
 - (d) in the case of the total increase, within 365 days after the total increase, a person acquires, directly or indirectly, a direct control interest or direct income interest in the foreign company (the **reacquisition**); and

- (e) the disposal or total increase has the effect of reducing attributed CFC income or attributed repatriation of—
 - (i) the person (the **interest holder**); or
 - (ii) an associated person of the interest holder; or
 - (iii) a person holding an income interest in the interest holder, if the interest holder is a CFC; and
- (f) the disposal and total reduction or total increase and reacquisition are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Disposal or total increase treated as not occurring

- (2) The disposal or total increase is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent that the total reduction or reacquisition has the effect of reversing the effect of the disposal or total increase on the level of the interest holder's control interest or income interest.

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, control interest category, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Origin: (1) GC 9(3), (4)
 (2) GC 9(3)

GB 14 Combination of changes increases loss

When this section applies

- (1) This section applies when—
 - (a) before the end of a quarter, either—
 - (i) a person, directly or indirectly, acquires a direct control interest or direct income interest in a foreign company (the **acquisition**); or
 - (ii) there is an decrease in the total of direct control interests in a foreign company in any of the control interest categories (the **total decrease**); and
 - (b) in the case of the acquisition, the acquisition is not from a New Zealand resident who has an income interest of 10% or more in the foreign company from which they incur an attributed CFC loss; and
 - (c) in the case of the acquisition, within 365 days after the acquisition, there is an increase in the total of direct control interests in the foreign company in any of the control interest categories (the **total increase**); and

- (d) in the case of the total reduction, within 365 days after the total reduction, a person disposes, directly or indirectly, of a direct control interest or direct income interest in the foreign company (the **disposal**); and
- (e) the acquisition or total reduction has the effect of reducing an attributed CFC loss of—
 - (i) the person (the **interest holder**); or
 - (ii) an associated person of the interest holder; or
 - (iii) a person holding an income interest in the interest holder, if the interest holder is a CFC; and
- (f) the acquisition and total increase or total reduction and disposal are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Acquisition or total reduction treated as not occurring

- (2) The acquisition or total reduction is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent that the total increase or disposal has the effect of reversing the effect of the acquisition or total reduction on the level of the interest holder's control interest or income interest.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, control interest category, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Origin: (1) GC 9(3), (4)
(2) GC 9(3)

GB 15 CFC income or loss: arrangements about quarterly measurement

When this section applies

- (1) This section applies when—
 - (a) an income interest in a CFC is transferred by a person to an associated person; and
 - (b) the associated persons make an arrangement for making or not making the election under section EX 27(3) (Use of quarterly measurement); and
 - (c) the arrangement has an effect of defeating the intent and application of the international tax rules.

Commissioner may treat election as being not made or made

- (2) The Commissioner may treat the election as having been made or not made, as the case may be, to the extent appropriate to prevent the effect of the arrangement.

Defined in this Act: arrangement, associated person, CFC, Commissioner, income interest, international tax rules

Origin: (1) GC 10
(2) GC 10

FIF arrangements

GB 16 FIF income or loss: arrangements about measurement day concessions

When this section applies

- (1) This section applies when—
- (a) an attributing interest in a FIF is transferred by a person to an associated person; and
 - (b) the associated persons make an arrangement for making or not making—
 - (i) the election under section EX 27(3) (Use of quarterly measurement); or
 - (ii) the election under section EX 42(5) (Accounting profits method); or
 - (iii) a combination of those elections; and
 - (c) the arrangement has an effect of defeating the intent and application of the international tax rules.

Commissioner may treat election as being not made or made

- (2) The Commissioner may treat an election as having been made or not made, as the case may be, to the extent appropriate to prevent the effect of the arrangement.

Defined in this Act: arrangement, associated person, attributing interest, FIF, Commissioner, international tax rules

Origin: (1) GC 10
(2) GC 10

Film rights arrangements

GB 17 Excessive amounts for film rights or production expenditure

When this section applies

- (1) This section applies when—
 - (a) a person (the **purchaser**) has a deduction—
 - (i) under section DS 1 (Acquiring film rights), for expenditure incurred in acquiring a film right; or
 - (ii) under section DS 2 (Film production expenditure), for expenditure incurred in acquiring goods or services in relation to a film; and
 - (b) the Commissioner considers that the purchaser and the person from whom the film right, goods or services were acquired (the **vendor**) were not dealing with each other at arm's length; and
 - (c) the amount of expenditure incurred by the purchaser is more than the market value of the film right, goods or services at the time they were acquired.

Deduction reduced to market value

- (2) The deduction is reduced to an amount equal to the market value.

Application to shares in film rights

- (3) If the purchaser acquires only a share in 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.

Defined in this Act: Commissioner, deduction, film right, film production expenditure

- Origin:
- (1) GC 11A(1), GD 12(1)
 - (2) GC 11A(2), GD 12(2)
 - (3) GC 11A(3)

GB 18 Arrangements to acquire film rights or incur production expenditure

When this section applies

- (1) This section applies if the Commissioner considers that 2 persons have made arrangements so that any of the following sections applies more favourably in relation to a person in an income year than it would have applied without the arrangements:
 - (a) section DS 1 (Acquiring film rights):
 - (b) section DS 2 (Film production expenditure):

- (c) section EJ 4 (Expenditure incurred in acquiring film rights in feature films):
- (d) section EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films):
- (e) section EJ 7 (Film production expenditure for New Zealand films):
- (f) section EJ 8 (Film production expenditure for films other than New Zealand films).

Deduction reduced

- (2) The deduction allowed to the person under section DS 1 or DS 2 is reduced to the amount that the Commissioner considers would have been allowed if the arrangements had not been made.

Deduction allocated

- (3) The deduction allocated under section EJ 4, EJ 5, EJ 7 or EJ 8 is allocated to the income year to which the Commissioner considers it would have been allocated if the arrangements had not been made.

Defined in this Act: arrangement, Commissioner, deduction, film right, film production expenditure, income year

- Origin:
- (1) GC 11B, GD 12B
 - (2) GC 11B(a), GD 12B(a)
 - (3) GC 11B(b), GD 12B(b)

GB 19 Film production expenditure payments delayed or contingent

When this section applies

- (1) This section applies when—
 - (a) a person (the **payer**) is liable to pay any of the costs of goods or services applied in producing a film; and
 - (b) under an agreement between the provider of the goods or services and any other person, payment of the costs is deferred; and
 - (c) either—
 - (i) the period of deferral is excessive; or
 - (ii) the payment is contingent.

Costs incurred when paid

- (2) For the purposes of sections DS 2 (Film production expenditure), EJ 7 (Film production expenditure for New Zealand films) and EJ 8 (Film production expenditure for films other than New Zealand films), the payer is treated as incurring the costs at the time of payment.

Defined in this Act: film, film production expenditure

Origin: (1) GD 12A
(2) GD 12A

Petroleum mining arrangements

GB 20 Petroleum mining arrangements

When this section applies

- (1) This section applies if both of the following tests are satisfied:
- (a) an arrangement includes—
 - (i) a disposal of a petroleum mining asset; or
 - (ii) the incurring of petroleum exploration expenditure; or
 - (iii) a farm-out arrangement:
 - (b) the arrangement has the effect or a purpose of tax avoidance.

Commissioner may apply section GA 1

- (2) The Commissioner may apply section GA 1 (Commissioner's power to adjust) to adjust the taxable income of any person affected by the arrangement so as to counteract any tax advantage obtained by the person.

Examples

- (3) Without limiting the generality of subsection (1), arrangements having the effect of tax avoidance include the arrangements described in subsections (4) to (8).

Person acquiring asset relieved or compensated

- (4) An arrangement has the effect of tax avoidance if it involves the disposal of a petroleum mining asset and it is probable, at the time the arrangement is entered into, that the person acquiring the petroleum mining asset—
- (a) will, through a related arrangement, not have to suffer the whole or part of the expenditure of acquiring the petroleum mining asset; or
 - (b) will be effectively compensated in some way for the whole or part of the expenditure.

Person incurring expenditure relieved or compensated

- (5) An arrangement has the effect of tax avoidance if it involves the incurring of petroleum exploration expenditure and it is probable, at the time the arrangement is entered into, that the person who is to incur the petroleum exploration expenditure—
- (a) will, through a related arrangement, not have to suffer the whole or part of the petroleum exploration expenditure; or

- (b) will be effectively compensated in some way for the whole or part of the petroleum exploration expenditure.

Farm-in party relieved or compensated

- (6) An arrangement has the effect of tax avoidance if it involves a farm-out arrangement and it is probable, at the time the arrangement is entered into, that—
 - (a) the farm-in party will through a related arrangement 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
 - (b) the farm-in party or an associated person will be effectively compensated in some way for the whole or part of the farm-in expenditure.

Disposal of asset to associated person for over-value

- (7) An arrangement has the effect of tax avoidance if it involves a petroleum miner disposing of a petroleum mining asset to an associated person for a purpose of ensuring that the associated person has a greater deduction than that which would have been allowed if the asset had been disposed of for its market value.

Farm-out arrangement with associated person for over-value

- (8) An arrangement has an effect of tax avoidance if it involves a petroleum miner entering into a farm-out arrangement with an associated person for the purpose of ensuring that the associated person has 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 who is not associated.

Section applies to miner operating offshore

- (9) 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 CFC; and
 - (b) substantially the same as the petroleum mining activities governed by this Act.

Treatment of partner

- (10) 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.

Disposal of part of asset

- (11) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: arrangement, associated person, CFC, deduction, dispose, farm-in expenditure, farm-out arrangement, New Zealand, petroleum exploration expenditure, petroleum miner, petroleum mining asset, petroleum permit, tax avoidance, taxable income

Origin:	(1)	GC 12(1)
	(2)	GC 12(1)
	(3)	GC 12(2)
	(4)	GC 12(2)(a)
	(5)	GC 12(2)(b)
	(6)	GC 12(2)(c)
	(7)	GC 12(2)(d)
	(8)	GC 12(2)(e)
	(9)	GC 12(3)
	(10)	GC 12(4)
	(11)	GC 12(5)

Financial arrangements

GB 21 Dealing that defeats intention of rules

When this section applies

- (1) This section applies if the Commissioner considers that the parties to a financial arrangement were dealing with each other in a way that defeats the intention of the financial arrangements rules, at the time the financial arrangement was—
 - (a) entered into or otherwise acquired; or
 - (b) varied; or
 - (c) disposed of.

Commissioner may alter consideration

- (2) The Commissioner may treat the relevant transaction as having occurred for the consideration that parties dealing at arm's length would have agreed on.

Defined in this Act: Commissioner, financial arrangement, financial arrangements rules

Origin:	(1)	GD 11
	(2)	GD 11

Trust beneficiary income arrangements

GB 22 Trust beneficiary income arrangements

When this section applies

- (1) This section applies when—
- (a) an arrangement involves a trustee transferring property, or providing services or other benefits, to a person other than a beneficiary of the trust; and
 - (b) the arrangement has the effect of defeating the intent and application of section HH 3 (Income of beneficiaries) in relation to a beneficiary of the trust; and
 - (c) the trust is not a Maori authority.

Section HH 3 applies as if beneficiary benefits

- (2) The beneficiary is treated, for the purposes of section HH 3, as receiving the property, or enjoying the services or benefits.

Defined in this Act: arrangement, Maori authority, trustee

Origin: (1) GC 14(1), (2)
(2) GC 14(1)

Excessive remuneration

GB 23 Excessive remuneration to relatives

When this section applies: first case

- (1) This section applies when—
- (a) a person carries on a business or undertaking; and
 - (b) the person employs or engages a relative, or (in a case where the person is a company but not a close company) a relative of a director or shareholder of the company, to perform services for the business or undertaking; and
 - (c) the Commissioner considers that the income payable to the relative for the services is excessive; and
 - (d) the exemption in section GB 24 does not apply.

When this section applies: second case

- (2) This section also applies when—
- (a) a person carries on a business in partnership; and
 - (b) the partnership employs or engages a relative of the person, or (in a case where the person is a company) a relative of a director or shareholder in the company, to perform services for the business; and
 - (c) the Commissioner considers that the income payable to the relative for the services is excessive; and
 - (d) the exemption in section GB 24 does not apply.

When this section applies: third case

- (3) This section also applies when—
- (a) a person carries on business in partnership; and
 - (b) another partner in the partnership is—
 - (i) a relative of the person; or
 - (ii) if the person is a company, a relative of a director or shareholder in the company; or
 - (iii) a company in which a relative of the person is a director or shareholder; and
 - (c) the Commissioner considers that the other partner's share of partnership profit or losses is excessive; and
 - (d) the exemption in section GB 24 does not apply.

Commissioner may allocate income or losses

- (4) For the purposes of this Act, the Commissioner may allocate the income or losses of the business or undertaking among the parties to the contract or partnership as the Commissioner considers reasonable, without taking into account any amount provided to the relative or other partner.

Amount allocated treated as not belonging to others

- (5) An amount the Commissioner allocates to one person is treated as not belonging to any other person.

Matters that Commissioner can consider

- (6) The Commissioner may take into account each of the following matters when applying this section:
- (a) the nature and extent of the services rendered by the relative;
 - (b) the value of the contributions made by the respective partners, by way of services, capital or otherwise;
 - (c) any other relevant matters.

Amount allocated back to company is dividend

- (7) If an amount provided by a company to a relative of a director or shareholder for services is allocated to the company under subsection (4), it is treated as a dividend paid by the company and derived by the relative.

Defined in this Act: close company, company, director, dividend, income, relative, shareholder

Origin:	(1)	GD 3(1)(a)
	(2)	GD 3(1)(b)
	(3)	GD 3(1)(c)
	(4)	GD 3(1)
	(5)	GD 3(1)
	(6)	GD 3(1)
	(7)	GD 3(2)

GB 24 Exemption for genuine contracts

When section GB 23 does not apply

- (1) Section GB 23 does not apply if the relevant contract of employment or engagement or partnership is a genuine one.

When contracts genuine

- (2) A contract is treated as genuine only if—
- (a) the contract is in writing; and
 - (b) the contract is signed by all the parties to it; and
 - (c) in the case of a contract of employment or engagement, each person employed or engaged under the contract is 20 years or older on the date of signing the contract; and
 - (d) in the case of a contract of partnership, each partner is 20 years or older on the date of signing the contract; and
 - (e) the contract is binding for at least 3 years (except for the reasons set out in sections 36 and 38 of the Partnership Act); and
 - (f) in the case of a contract of employment or engagement, each person employed or engaged has real control over their income under the contract; and
 - (g) in the case of a contract of partnership, each partner has—
 - (i) real control over their share of profits under the contract; and
 - (ii) real liability for their shares or losses under the contract; and
 - (h) no part of the income or share of profits derived by the relative, or company of which the relative is a shareholder or director, is a gift for the purposes of the Estate and Gift Duties Act 1968.

Defined in this Act: director, income, loss, shareholder, year

Origin: (1) GD 3(4)
(2) GD 3(5)

GB 25 Close company remuneration to shareholders, directors or relatives

When this section applies

- (1) This section applies when—
- (a) a close company provides remuneration for services to a person (the **service provider**) who is—
 - (i) a shareholder or director of the company; or
 - (ii) a relative of a shareholder or director of the company; and
 - (b) the Commissioner considers that the amount provided is excessive; and
 - (c) the exemption in subsection (3) does not apply.

Excess treated as dividend

- (2) For the purposes of this Act, the excess is treated as a dividend paid by the company and derived by the service provider.

Exemption: residents working full-time

- (3) This section does not apply when—
- (a) the service provider is an adult employed substantially full-time in the business of the company; and
 - (b) the service provider participates in the management of the company; and
 - (c) the amount provided to the service provider was not influenced by their relationship with a shareholder or director; and
 - (d) the service provider is a New Zealand resident.

Defined in this Act: close company, Commissioner, company, director, dividend, New Zealand resident, shareholder

Origin: (1) GD 5
(2) GD 5
(3) GD 5

Commercial bill repatriation arrangements

GB 26 Commercial bill repatriation arrangements

When this section applies

- (1) This section applies when—
- (a) a commercial bill has been issued by—
 - (i) a New Zealand resident who does not use the money lent in a business carried on through a fixed establishment outside New Zealand; or
 - (ii) a non-resident who uses the money lent in a business carried on through a fixed establishment in New Zealand; and
 - (b) a non-resident who holds the bill transfers it to another person (the **New Zealand transferee**); and
 - (c) the non-resident did not become a party to the bill for the purpose of carrying on a business through a fixed establishment in New Zealand; and
 - (d) the New Zealand transferee is either—
 - (i) a New Zealand resident; or
 - (ii) a non-resident who becomes a party to the commercial bill for the purpose of carrying on a business through a fixed establishment in New Zealand; and
 - (e) the transfer of the bill has the purpose of avoiding non-resident withholding tax or the approved issuer levy.

Redemption payment is income

- (2) If the New Zealand transferee redeems the commercial bill, the redemption payment is income of the New Zealand transferee.

New Zealand transferee treated as redeeming bill

- (3) The New Zealand transferee is treated, for the purposes of this section, as redeeming the bill on the scheduled redemption date even if it is not redeemed.

Defined in this Act: approved issuer, commercial bill, fixed establishment, income, money lent, New Zealand resident, non-resident, non-resident withholding tax, redemption payment

- Origin: (1) GC 14A(1), (3)
(2) GC 14A(1)
(3) GC 14A(2)

Attribution rule for income from personal services

GB 27 Attribution rule for income from personal services

Application of section GB 29

- (1) An amount of income in an income year of a person (the **associated entity**) is attributed to another person (the **working person**) under section GB 29 for the working person's corresponding tax year when—
 - (a) during the income year, a third person (the **purchaser**) purchases services from the associated entity and the services are personally performed by the working person; and
 - (b) the working person is associated with the associated entity; and
 - (c) the threshold test in subsection (2) is met; and
 - (d) none of the exemptions in subsection (3) applies.

Threshold for application of attribution rule

- (2) The attribution occurs only if—
 - (a) 80% or more of the associated entity's total income from personal services during the income year is derived from the sale of services to the purchaser, a person associated with the purchaser or any combination of those people; and
 - (b) 80% or more of the associated entity's income from personal services during the income year is derived through services personally performed by the working person, a relative of the working person or any combination of those people; and
 - (c) the working person's net income for the income year, assuming section GB 29 applies in respect of the associated entity and working person, 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 income referred to in paragraph (a).

Exemptions

- (3) The attribution does not occur—
 - (a) if both the associated entity and the working person are both non-residents at all times during the associated entity's income year;
 - (b) if the associated entity is a natural person and is neither a partner of a partnership nor a trustee of a trust;
 - (c) to the extent that the services personally performed by the working person are essential support for a product supplied by the associated entity;

- (d) if the total amount to be attributed to the working person, for the associated entity and the income year, is less than \$5,000 (unless this paragraph applies to prevent income being attributed to the working person for the income year in respect of another associated entity).

Defined in this Act: associated person, income, income year, net income, non-resident, tax year, trustee

Origin: (1) GC 14B(1)
(2) GC 14B(2)
(3) GC 14B(3), GC 14E

GB 28 Interpretation of section GB 27 terms

When this section applies

- (1) This section applies for the purposes of section GB 27.

Associated persons

- (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) (which relate to associated persons) at the time the services are personally performed by the working person.

Non-associated purchasers

- (3) For the purpose of section GB 27(2)(a), a purchaser is not treated as being associated with another purchaser if either—
 - (a) both purchasers are public authorities; or
 - (b) the working person cannot be reasonably expected to know that a particular purchaser is associated with another purchaser, other than by making a specific enquiry.

Relatives

- (4) For the purpose of section GB 27(2)(b), a person is a relative of the working person only if the person is a relative at the beginning of the relevant income year of the working person.

Income to include fringe benefit

- (5) For the purpose of section GB 27(2)(c), the work person's annual gross income includes the taxable value of a fringe benefit (as determined under subpart ND (Fringe benefit tax)) provided or granted by a person associated with the working person.

Definition of substantial business assets

- (6) **Substantial business assets** means depreciable property that—
 - (a) at the end of the associated entity's corresponding income year, has a total cost of more than either—

- (i) \$75,000; or
 - (ii) 25% or more of the associated entity's total income from services for the income year; and
- (b) is not for private use or enjoyment.

Assets subject to specified lease, finance lease or hire purchase agreement

- (7) For the purpose of subsection (6)(a), the cost of depreciable property includes the cost price, in the case of property subject to a specified lease, and the lessee's acquisition cost, in the case of property subject to a finance lease or a hire purchase agreement.

Private use or enjoyment of assets

- (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.

Calculation of private proportion of use

- (9) For the purpose of subsection (8), the percentage of a property's use for private purposes for an income year is calculated according to—
- (a) the proportion that the number of days for which fringe benefit tax is payable by the associated entity in respect of the property bears to the total number of days in the income year in which the property is owned by (or is subject to a specified lease, finance lease or a hire purchase agreement involving) the associated entity, 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 not allowed to the associated entity, bears to all expenditure incurred by the associated entity in respect of the property in the income year, if the property is not subject to the FBT rules.

Defined in this Act: annual gross income, associated person, cost price, deduction, depreciable property, FBT rules, finance lease, fringe benefit, fringe benefit tax, hire purchase agreement, income, income year, lessee's acquisition cost, public authority, relative, specified lease

Origin:	(1)	GC 14C(1)
	(2)	GC 14C(2)
	(3)	GC 14C(3)
	(4)	GC 14C(4)
	(5)	GC 14C(5)
	(6)	GC 14C(6)
	(7)	GC 14C(7)
	(8)	GC 14C(8)
	(9)	GC 14C(9)

GB 29 Attribution rule: calculation***Amount attributed***

- (1) The working person is treated as deriving income in the income year equal to the least of the following amounts:
 - (a) the associated entity's net income for the income year, calculated as if their only income were derived from personal services:
 - (b) the associated entity's net income for the income year:
 - (c) if and to the extent to which the associated entity is a company or a trust that has a net loss available for carry forward under section IE 1 (Net losses may be offset against future net income) that arises from a business or a trading activity of selling personal services, the associated entity's net income for the income year after the offset of any such net loss carried forward from a previous income year.

Calculation for trustee or partnership

- (2) For the purpose of calculating the associated entity's net income for the income year to apply subsection (1),—
 - (a) if the associated entity is a trustee of a trust, the trustees are treated as not having made a distribution of beneficiary income out of the year's income:
 - (b) if the associated entity is a partnership, the associated entity is treated as a taxpayer and section HD 1(1)(b) (Assessment of partners, co-trustees, and joint venturers) does not apply.

Salary paid or fringe benefits treated as deductions

- (3) For the purpose of calculating the associated entity's net income for the income year to apply subsection (1),—
 - (a) the associated entity is allowed a deduction for employment income paid to the working person during the income year:
 - (b) the associated entity is allowed a deduction for the taxable value of a fringe benefit provided or granted by the associated entity to the working person during the income year and for the fringe benefit tax payable on the fringe benefit.

Reduction of attributable income for distributions

- (4) For the purpose of calculating the associated entity's net income for the income year to apply subsection (1), the amount of net income of the associated entity for the income year is reduced by—
 - (a) in the case of a trustee of a trust, the amount of beneficiary income derived by the working person from the trust in the income year:
 - (b) in the case of a partnership, the share of profits allocated by the partnership to the working person:

- (c) in the case of a company, any dividends paid—
 - (i) by the associated entity to the working person during the income year or before the end of 6 months after the end of the income year; and
 - (ii) from income derived in the income year.

Attribution reduced by market value of administrative services

- (5) If the associated entity 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 the working person is reduced by the market value of the administrative services provided by the other person.

Reduction of beneficiary income where attribution rule results in trust being in net loss position

- (6) If associated entity is a trustee and the amount attributable would cause the associated entity to have a net loss for the income year, for the purposes of the Act,—
 - (a) beneficiary income from the trust for the income year must be reduced to the extent that the associated entity's taxable income for the income year is zero; and
 - (b) the reduction in beneficiary income must be divided amongst the beneficiaries other than the working person—
 - (i) according to proportions determined by the trust's trustees:
 - (ii) if the trustees do not make the determination, according to the proportion that each beneficiary's beneficiary income bears to the total beneficiary income from the trust for the income year.

Attribution to more than 1 working person

- (7) If the amount attributable is to be attributed to more than 1 working person, the share attributed to each working person must reflect the respective value of the services personally performed by each working person.

Defined in the Act: beneficiary income, company, deduction, dividend, fringe benefit, fringe benefit tax, income, income year, net income, net loss, taxpayer, tax year, trustee

Origin:	(1)	GC 14D(1)
	(2)	GC 14D(2)
	(3)	GC 14D(3)
	(4)	GC 14D(4)
	(5)	GC 14D(5)
	(6)	GC 14D(7)
	(7)	GC 14D(8)

Restrictive covenant arrangements

GB 30 Arrangement to avoid taxation of restrictive covenant payment

When this section applies

- (1) This section applies if a person enters into an arrangement that has an effect of avoiding section CE 9 (Restrictive covenants).

Commissioner may treat amount as restrictive covenant payment

- (2) The Commissioner may treat—
- (a) an amount provided under the arrangement as an amount to which section CE 9(2) applies; and
 - (b) a person affected by the arrangement as the person who gave the undertaking referred to in section CE 9(1).

Example

- (3) An example of an arrangement that may be subject to this section is an arrangement that involves a collateral arrangement to dispose of property.

Defined in this Act: arrangement, Commissioner

Origin: (1) GC 14F(1)
(2) GC 14F(1)
(3) GC 14F(2)

Fringe benefit tax arrangements

GB 31 FBT arrangements: general

When this section applies

- (1) This section applies when—
- (a) 2 or more persons enter into an arrangement; and
 - (b) a purpose or effect of the arrangement is to defeat the intent and application of any of the FBT rules; and
 - (c) that purpose or effect is not merely incidental.

Commissioner can treat FBT rules as applying

- (2) The Commissioner may, for the purposes of the FBT rules, treat—
- (a) a party to the arrangement (the **provider**) as the employer of a person (the **recipient**) of whom the Commissioner notifies the provider:
 - (b) the recipient as the employee of the provider:

- (c) a benefit as being provided by the provider to the recipient by virtue of the employment of the recipient.

Benefit must be actual or likely

- (3) The Commissioner may apply subsection (2)(c) only in the case of a benefit that—
 - (a) is in fact provided by the provider to the recipient; or
 - (b) the recipient would have, would in all likelihood have, or might be expected to have obtained but for the arrangement.

Defined in this Act: arrangement, Commissioner, employee, employer, employment, FBT rules

Origin	(1)	GC 17
	(2)	GC 17
	(3)	GC 17

GB 32 Benefit provided to employee's associate

When this section applies

- (1) This section applies when—
 - (a) a benefit is provided to a person who is associated with an employee of an employer; and
 - (b) the benefit would be a fringe benefit if provided to the employee; and
 - (c) the benefit is provided either by the employer or by another person under an arrangement with the employer for providing the benefit; and
 - (d) the exemption in subsection (2) does not apply.

Exemption for shareholder-employee and corporate associates

- (2) Subsection (3) does not apply when—
 - (a) the benefit is provided by an employer that is a company; and
 - (b) the employee is a shareholder in the company; and
 - (c) the person associated with the employee is a company; and
 - (d) the benefit is not provided under an arrangement that has a purpose of providing the benefit either—
 - (i) in place of employment income; or
 - (ii) free from fringe benefit tax.

Benefit treated as being provided to employee

- (3) The benefit is treated as being provided by the employer to the employee, for the purposes of the FBT rules.

Application of section CX 16A

- (4) Section CX 16A (Benefits provided to associates of both employees and shareholders) applies to determine when a benefit provided to an associate of both an employee and a shareholder is treated as a fringe benefit, and not a dividend.

Defined in this Act: arrangement, associated person, company, dividend, employee, employer, employment income, FBT rules, fringe benefit, fringe benefit tax

- Origin: (1) GC 15(1)
(2) GC 15(2)
(3) GC 15(1)
(4) GC 15(4), (5)

GB 33 Arrangements to reduce motor vehicle cost

When this section applies

- (1) This section applies when—
- (a) the cost price of a motor vehicle acquired by a person is less than the market value at the time of acquisition; and
 - (b) an arrangement between the person and an associated person has reduced the cost price; and
 - (c) the arrangement has the purpose of defeating the intent and application of the FBT rules.

Cost price is market value

- (2) The cost price is treated as being equal to the market value, for the purposes of schedule 2, part A.

Defined in this Act: arrangement, associated person, Commissioner, FBT rules, motor vehicle

- Origin: (1) GC 17(b)
(2) GC 17(b)

Imputation rules arrangements

GB 34 ICA carry forward arrangements

When this section applies

- (1) This section applies when—
- (a) any shares in a company (the **ICA company**) or another company have been subject to an arrangement (including an arrangement altering, directly or indirectly, rights attached to the shares); and

- (b) the arrangement allows the ICA company to meet the requirements of section ME 5(1)(i) (Debits arising to imputation credit account); and
- (c) a purpose of the arrangement is to defeat the intent and application of section ME 5(1)(i).

Requirements treated as not satisfied

- (2) The ICA company is treated as not meeting the requirements in respect of the shares.

Defined in this Act: arrangement, imputation credit account, company, share

Origin: (1) GC 21
(2) GC 21

GB 35 Imputation arrangements to obtain a tax advantage

Application of section GB 36

- (1) Section GB 36 applies if there is an arrangement to obtain a tax advantage as described in either subsection (2) or (3).

Share disposal or issue arrangements

- (2) An arrangement is an arrangement to obtain a tax advantage if—
 - (a) the arrangement is for the disposal or issue of shares; and
 - (b) a party to the arrangement might reasonably have anticipated that a dividend would be paid in respect of the shares with an imputation credit or dividend withholding payment credit attached; and
 - (c) a party might reasonably have anticipated that a party will (or will not) be able to obtain a tax advantage from the credit; and
 - (d) a purpose of the arrangement is that a party will obtain such a tax advantage; and
 - (e) the purpose is not a merely incidental one.

Dividend or credit streaming arrangements

- (3) An arrangement is an arrangement to obtain a tax advantage if—
 - (a) the arrangement is in respect of 1 or more distributions by a company (including bonus issues) during 1 or more imputation years; and
 - (b) under the arrangement, the company streams—
 - (i) the payment of dividends; or
 - (ii) the attachment of imputation credits; or
 - (iii) the attachment of dividend withholding payment credits; or
 - (iv) the attachment of both imputation credits and dividend withholding payment credits; and

- (c) the streaming will give a higher credit value to a person who will obtain a tax advantage from the higher credit value than to a person who will not or may reasonably be expected to obtain a lesser benefit.

Mean of higher credit value

- (4) A dividend has a higher credit value than another dividend if any of the following applies:
 - (a) the dividend has an attached imputation credit 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 an attached dividend withholding payment credit 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 attached both an imputation credit and a dividend withholding payment credit and the other dividend has no credit or only 1 type of credit attached:
 - (f) the combined imputation ratio and dividend withholding payment ratio of the dividend is higher than that of the other dividend.

Defined in this Act: arrangement, combined imputation and dividend withholding payment ratio, dividend, dividend withholding payment ratio, imputation credit, imputation ratio, share, tax advantage

- Origin:
- (1) GC 22(1)
 - (2) GC 22(1)(a)
 - (3) GC 22(1)(b)
 - (4) GC 22(2)

GB 36 Reconstruction of arrangements to obtain a tax advantage

Reconstruction of either type of arrangement

- (1) In the case of a share disposal or issue arrangement as described in section GB 35(2) or a streaming arrangement as described in section GB 35(3) (if the Commissioner decides this subsection should apply), the following provisions apply:
 - (a) a person who would get a tax credit advantage from the arrangement is denied it:
 - (b) a company that would get an account advantage from the arrangement has a debit to its imputation credit account or dividend withholding payment account, as the case may be, in the imputation year the arrangement commenced.

Reconstruction of streaming arrangement

- (2) In the case of a streaming arrangement as described in section GB 35(3), in which the company is the only party or if the Commissioner decides this subsection should apply, the company has a debit to its imputation credit account or dividend withholding payment account (as the case may be) in the imputation year the arrangement commenced.

Amount of subsection (1) and (2) adjustment

- (3) The amount of the credit or refund denied under subsection (1)(a) and the debit arising under subsection (1)(b) or (2) is in each case the amount of the imputation credit or dividend withholding payment credit that the Commissioner determines is subject to the arrangement.

Commissioner's powers of determination

- (4) The Commissioner can make determinations for the purposes of this section under section 90AF of the Tax Administration Act 1994.

Some definitions

- (5) In this section and section 90AF of the Tax Administration Act 1994,—

account advantage means—

- (a) a credit arising to an imputation credit account under section ME 4 (Credits arising to imputation credit account); or
- (b) a credit arising to a dividend withholding payment account under section MG 4 (Credits arising to dividend withholding payment account)

tax credit advantage means—

- (a) a credit of tax allowed under section LB 2 (Credit of tax for imputation credit); or
- (b) a credit of tax allowed under section LD 8 (Credit of tax for dividend withholding payment credit in hands of shareholder); or
- (c) a refund of dividend withholding payment obtained under section LD 9 (Refund to non-resident or exempt shareholders).

Defined in this Act: account advantage, arrangement, Commissioner, company, dividend withholding payment credit, dividend withholding payment credit account, imputation credit, imputation credit account, imputation year, notice, tax credit advantage

- Origin: (1) GC 22(4)
(2) GC 22(5)
(3) GC 22(4)(c), (5)(b)
(4) -
(5) GC 22(9)

GB 37 Arrangement for dividend from another company

When this section applies

- (1) This section applies when—
- (a) an arrangement is entered into in respect of a company (the **first company**) and a shareholder in the first company; and
 - (b) the arrangement has a purpose of allowing a dividend to be paid by another company to any of the following parties (the **payee**); and
 - (i) the shareholder;
 - (ii) if the shareholder is a trustee in respect of the shareholding, a beneficiary of the trust;
 - (iii) an associated person of the shareholder;
 - (iv) an associated person of a beneficiary of the trust.

Applies to direct or indirect payments

- (2) The arrangement may include—
- (a) the payee acquiring shares in the other company;
 - (b) any form of indirect payment of a dividend from the other company.

Dividend treated as paid by first company

- (3) The dividend is treated as if it were paid by the first company, for the purposes of the imputation rules.

Imputation credit denied

- (4) Any imputation credit attached to the dividend paid by the other company—
- (a) is not included in the amount of the dividend derived by the payee; and
 - (b) is not treated as an imputation credit for the purposes of section LB 2 (Credit of tax for imputation credit); and
 - (c) is a debit under section ME 5(1)(a) (Debits arising to imputation credit account) of the first company.

Defined in this Act: arrangement, associated person, company, dividend, imputation credit, imputation credit account, income, share, shareholder, trustee

- Origin: (1) GC 23(1)
(2) GC 23(1)
(3) GC 23(2)
(4) GC 23(2)

GB 38 Application of provisions to consolidated groups

Tax advantage arrangements

- (1) Sections GB 35 and GB 36 apply, with any necessary modifications, in a case that 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.

Arrangement for dividend from another company

- (2) Section GB 37 applies, in a case where the company treated by section GB 37(3) 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) (Debits arising to imputation credit account) were a reference to section ME 12(1)(a) (Debits arising to imputation credit account of group).

Defined in this Act: company, consolidated group, dividend

Origin: (1) GC 24(2)
(2) GC 24(1)

Dividend withholding payment arrangements

GB 39 Dividend withholding payment arrangements: general

When this section applies

- (1) This section applies if both of the following tests are satisfied:
 - (a) 2 or more persons enter into an arrangement:
 - (b) a purpose or effect of the arrangement is to defeat the intent and application of any of the dividend withholding payment rules.

Commissioner can treat payment as subject to rules

- (2) The Commissioner may, for the purposes of the dividend withholding payment rules, treat a payment that is subject to the arrangement as a foreign withholding payment dividend.

Defined in this Act: arrangement, Commissioner, dividend withholding payment rules, foreign withholding payment dividend

Origin: (1) GC 25
(2) GC 25

GB 40 BETA carry forward arrangements

When this section applies

- (1) This section applies when—
 - (a) any shares in a company (the **BETA company**) or another company have been subject to an arrangement (including an arrangement altering, directly or indirectly, rights attached to the shares); and
 - (b) the arrangement allows the BETA company to meet the requirements of section MF 4(1)(e) or (3)(d) (Credits and debits arising to branch equivalent tax account of company); and
 - (c) a purpose of the arrangement is to defeat the intent and application of the relevant provision.

Requirements treated as not satisfied

- (2) The BETA company is treated as not meeting the requirements of the relevant provision in respect of the shares.

Defined in this Act: arrangement, branch equivalent tax account, company, share

Origin: (1) GC 26
(2) GC 26

GB 41 DWP account carry forward arrangements

When this section applies

- (1) This section applies when—
 - (a) any shares in a company (the **DWP account company**) or another company have been subject to an arrangement (including an arrangement altering, directly or indirectly, rights attached to the shares); and
 - (b) the arrangement allows the DWP account company to meet the requirements of section MG 5(1)(i) (Debits arising to dividend withholding payment account); and
 - (c) a purpose of the arrangement is to defeat the intent and application of section MG 5(1)(i).

Requirements treated as not satisfied

- (2) The DWP account company is treated as not meeting the requirements of section MG 5(1)(i) in respect of the shares.

Defined in this Act: arrangement, dividend withholding payment account company, share

Origin: (1) GC 27
(2) GC 27

Maori authority credit arrangements

GB 42 Maori authority credit arrangements to obtain a tax advantage

Application of section GB 43

- (1) Section GB 43 applies if there is an arrangement to obtain a tax advantage as described in either subsection (2) or (3).

Share disposal or issue arrangements

- (2) An arrangement is an arrangement to obtain a tax advantage if—
- (a) the arrangement is for the disposal or issue of shares in a Maori authority that is a company; and
 - (b) a party to the arrangement might reasonably have anticipated that a taxable Maori authority distribution would be paid in respect of the shares with a Maori authority credit attached; and
 - (c) a party might reasonably have anticipated that a party will (or will not) be able to obtain a tax advantage from the credit; and
 - (d) a purpose of the arrangement is that a party will obtain such a tax advantage; and
 - (e) the purpose is not a merely incidental one.

Distribution or credit streaming arrangements

- (3) An arrangement is an arrangement to obtain a tax advantage if—
- (a) the arrangement is in respect of 1 or more taxable Maori authority distributions by a Maori authority during 1 or more imputation years; and
 - (b) under the arrangement, the Maori authority streams—
 - (i) the distributions; or
 - (ii) the attachment of Maori authority credits; and
 - (c) the streaming will give a higher credit value to a member who will obtain a tax advantage from the higher credit value than to a member who will not or may reasonably be expected to obtain a lesser benefit.

Meaning of higher credit value

- (4) A taxable Maori authority distribution has a higher credit value than another distribution if either of the following applies:
- (a) the distribution has an Maori authority credit and the other distribution does not;
 - (b) the base ratio of the distribution is higher than that of the other distribution.

Defined in this Act: arrangement, base ratio, Maori authority, Maori authority credit, member, share, tax advantage, taxable Maori authority distribution

Origin:	(1)	GC 27A(1)(2)
	(2)	GC 27A(1)
	(3)	GC 27A(2)
	(4)	GC 27A(3)

GB 43 Reconstruction of arrangements to obtain a tax advantage

Reconstruction of either type of arrangement

- (1) In the case of a share disposal or issue arrangement as described in section GB 42(2) or a streaming arrangement as described in section GB 42(3) (if the Commissioner decides this subsection should apply), the following provisions apply:
 - (a) a member who would get a tax credit advantage from the arrangement is denied it:
 - (b) a Maori authority that would get both a tax credit advantage and an account advantage from the arrangement has a debit to its Maori authority credit account in the imputation year the arrangement commenced.

Reconstruction of streaming arrangement

- (2) In the case of a streaming arrangement as described in section GB 42(3), in which the Maori authority is the only party or if the Commissioner decides this subsection should apply, the Maori authority has a debit to its Maori authority credit account in the imputation year the arrangement commenced.

Amount of subsection (1) and (2) adjustment

- (3) The amount of the credit denied under subsection (1)(a) and the debit arising under subsection (1)(b) or (2) is in each case the amount of the Maori authority credit that the Commissioner determines is subject to the arrangement.

Commissioner's powers of determination

- (4) The Commissioner may make determinations for the purposes of this section under section 90AG of the Tax Administration Act 1994.

Some definitions

- (5) In this section and section 90AG of the Tax Administration Act 1994,—

account advantage means a credit arising to a Maori authority credit account under section MK 4 (Credits arising to Maori authority credit account)

tax credit advantage means a credit of tax allowed under section LD 3A (Maori authority credit to be credited against income tax assessed).

Defined in this Act: account advantage, arrangement, Commissioner, imputation year, Maori authority, Maori authority credit, Maori authority credit account, member, notice, tax credit advantage

Origin:	(1)	GC 27A(5)
	(2)	GC 27A(6)
	(3)	GC 27A(5)(c), (6)(b)
	(4)	-
	(5)	GC 27A(10)

Family support credit arrangements

GB 44 Family support credit arrangements

When this section applies

- (1) This section applies if both of the following tests are satisfied:
 - (a) a person (the **claimant**) enters into an arrangement with another person:
 - (b) a purpose of the arrangement is that subpart KD (Tax credits for family support and family plus) has a more favourable effect for the claimant than would otherwise have occurred.

Credit reduced

- (2) The person's tax credit under subpart KD is reduced to the amount which the Commissioner considers would have arisen if the arrangement had not been made.

Defined in this Act: arrangement, Commissioner, family plus

Origin:	(1)	GC 28
	(2)	GC 28

Arrangements involving money not at risk

GB 45 Arrangements involving money not at risk

Relevant arrangements

- (1) Section GB 46 applies to an arrangement when—
 - (a) there is a person who sells or issues, or promotes the selling or issuing of, the arrangement, whether or not for remuneration; and
 - (b) a person who is a party to the arrangement or affected by it (the **participant**), and any affected associates, considered together, have

for an assessment period a total amount of deductions from the arrangement which exceed their total amount of assessable income from the arrangement, having regard to the rules in subsection (2); and

- (c) as part of or for the purposes of the arrangement, the participant or an affected associate borrows a limited-recourse amount under a limited recourse loan; and
- (d) on the relevant balance date, of the limited recourse loans, of the participant and affected associates, is more than half of the total cost of their arrangement property on the relevant balance date; and
- (e) on the relevant balance date, the total cost of their arrangement property is more than 142.85% of the total cost of the part of the property that is acceptable property.

Certain deductions or income disregarded

- (2) For the purposes of subsection (1)(b), the following amounts are disregarded:
 - (a) deductions under section GB 46:
 - (b) net losses of a loss attributing qualifying company, to the extent attributed to shareholders under section HG 16 (Net losses of loss attributing qualifying company to be attributed to shareholders):
 - (c) income under section GB 46.

Some definitions

- (3) In this section,—

arrangement property means property held, as part of the arrangement, by the participant and affected associates

relevant balance date means the balance date, or the latest balance date, of the participant and affected associates that ends the assessment period.

Defined in this Act: acceptable property, affected associate, arrangement, assessable income, assessment period, deduction, income, limited-recourse amount, limited-recourse loan, loss attributing qualifying company, net loss, shareholder

Origin: (1) GC 29(1)
(2) GC 29(1)(b)

GB 46 Deferral of surplus deductions from arrangement

When this section applies

- (1) This section applies when—
 - (a) there is an arrangement of the type described in section GC 45; and

- (b) a person is a party to the arrangement or affected by it (the **participant**); and
- (c) the participant is not a loss attributing qualifying company; and
- (d) the participant has, for an income year, a total amount of deductions from the arrangement which exceeds their total amount of assessable income from the arrangement, having regard to the rules in subsection (6); and
- (e) the participant and the affected associates of the participant (excluding any loss attributing qualifying company that has incurred a net loss from the arrangement for the income year), considered together, have, for the income year, a total amount of deductions from the arrangement which exceeds their total amount of assessable income from the arrangement, having regard to the rules in subsection (6); and
- (f) on the balance date, or the latest balance date, of the participant and affected associates for the income year, the arrangement involves a limited-recourse loan of which the participant or an affected associate of the participant is a borrower.

Income amount for participant

- (2) The participant is treated as deriving in the income year an amount of assessable income calculated using the formula:

$$\left[\frac{\text{participant's excess deductions}}{\text{total individual excess deductions}} \right] \times \text{total ineligible amount}$$

Definition of items in formula

- (3) In the formula,—
- (a) **participant's excess deductions** is the amount of excess deductions of the participant for the income year described in subsection (1)(d):
 - (b) **total individual excess deductions** is the amount, for the income year, by which the total deductions from the arrangement exceed the total assessable income from the arrangement, having regard to the rules in subsection (6), for the group that consists of—
 - (i) the participant; and
 - (ii) each affected associate of the participant who is not a loss attributing qualifying company and who has, for the income year, a total amount of deductions from the arrangement which exceeds their total assessable income from the arrangement, having regard to the rules in subsection (6):

- (c) total ineligible amount is the lesser of—
 - (i) the total excess deductions amount, for the group and the income year, described in subsection (1)(e); and
 - (ii) the total of limited-recourse amounts that, on the balance date or the latest balance date of the participant and the affected associates, the participant and the affected associates have undischarged obligations to repay as part of or for the purposes of the arrangement.

Matching deduction in following year

- (4) A participant who has an amount of assessable income for an income year under subsection (2) has a deduction of an equal amount for the following income year.

Obligation to repay limited-recourse amount not discharged

- (5) For the purposes of subsection (1) and (3)(c)(ii), an obligation to repay a limited-recourse amount is not discharged by a transaction to the extent that the transaction—
 - (a) involves the use, as part of the arrangement, of either—
 - (i) a put or call option that is not a contract for the sale for future delivery of goods at market value; or
 - (ii) a contract of insurance or guarantee; and
 - (b) does not give rise to assessable income for the person who is the borrower of the limited-recourse amount under the limited-recourse loan.

Some deductions included, some income excluded

- (6) For the purposes of subsections (1)(d) and (e) and (3)(b),—
 - (a) deductions of a person include—
 - (i) a deduction under subsection (4); and
 - (ii) a deduction under section HG 16 (Net losses of loss attributing company to be attributed to shareholders); and
 - (b) income of a person excludes income arising under subsection (2).

Defined in this Act: arrangement, assessable income, associated person, deduction, income year, limited-recourse amount, limited-recourse loan, loss attributing qualifying company, net loss, person

- Origin: (1) GC 31(1)
(2) GC 31(2)
(3) GC 31 (2)
(4) GC 31(3)
(5) GC 31(4)
(6) GC 31(1)(a), (b), GC 31(2)

GB 47 Calculation rules for sections GB 45 to GB 48

Consolidation of assessable income and deductions, and cost of property

- (1) The deductions and assessable income from the arrangement for each person in a group of persons and the cost of property that is held by each person in the group as part of the arrangement are calculated on a basis of consolidation for the elimination of intra-group balances in accordance with generally accepted accounting practice.

Calculation of assessable income and deductions, and cost of property

- (2) The deductions and assessable income from an arrangement for each person in a group and the cost of property that is held by each person in a group as part of the arrangement are calculated using the proportionate method in accordance with generally accepted accounting practice for partnerships, if the group is any of—
- (a) persons who are a partnership and the partners in a partnership;
 - (b) a joint venture and the partners in the joint venture;
 - (c) a loss attributing qualifying company and the shareholders in the loss attributing qualifying company.

Defined in this Act: assessable income, arrangement, deduction, generally accepted accounting practice, loss attributing qualifying company, shareholder

- Origin: (1) GC 29(2)
(2) GC 29(3)

GB 48 Defined terms for sections GB 45 to GB 48

Assessment period

- (1) The **assessment period** is any of—
- (a) the earliest income year (the **first income year**) in which an interest in the arrangement was acquired by the participant or an affected associated of the participant;
 - (b) the first income year and the next income year;
 - (c) the first income year and the next two income years.

Affected associate

- (2) For an arrangement, a person is an **affected associate** of another person if each person is a party to the arrangement or is affected by the arrangement, and either—
- (a) 1 person is a loss attributing qualifying company and the other person is a shareholder in the loss attributing qualifying company; or
 - (b) the persons are associated under a provision of section OD 7 (Defining when 2 persons are associated persons) or OD 8(3) (Further definitions of associated persons).

Limited-recourse amount

- (3) The **limited-recourse amount** for a limited-recourse loan means the total for the limited-recourse loan of the amounts for which the obligations of a borrower are affected in a way that is described in subsection (4)(c).

Limited-recourse loan

- (4) Limited-recourse loan means a financial arrangement that satisfies each of the following tests—
- (a) it is not an excepted financial arrangement:
 - (b) it involves the provision of money by a person (**lender**) to another person (**borrower**):
 - (c) it has one of the following effects (or an effect which is substantially similar)—
 - (i) relieving the borrower from the obligation to repay all or some of the money, whether the relief is contingent or not:
 - (ii) requiring the borrower to make no repayment for a period of 10 or more years from the date on which the loan is made, other than repayments for the purpose of defeating the intent and application of section GB 46:
 - (iii) providing that the repayment of the money is in substance secured solely against assets that are employed in the arrangement:
 - (d) if the lender is not an associated person of the borrower under a provision of section OD 7 or OD 8(3), the lender provides the money on terms which are not arm's length and the lender is either—
 - (i) not a person who regularly provides money to persons on arm's length terms under arrangements that do not satisfy paragraphs (a) to (c); or
 - (ii) a person who is neither a New Zealand resident nor carrying on business in New Zealand through a fixed establishment in New Zealand:

- (e) if the lender is an associated person of the borrower under a provision of section OD 7 or OD 8(3), the lender obtains the money under an arrangement that satisfies paragraphs (a) to (c).

Acceptable property

(5) **Acceptable property** is—

- (a) land:
- (b) buildings:
- (c) plant:
- (d) machinery:
- (e) shares in a listed company that in total represent a direct voting interest of 10% or less in the listed company:
- (f) shares and options that are acquired or created with an intention that the shares or options will produce income that is employment income of a participant under section CE 1(d) (Amounts derived in connection with employment):
- (g) shares in a foreign company, if the proceeds of a disposal of the shares would not be assessable income of the holder other than under the FIF rules.

Defined in this Act: acceptable property, affected associate, arrangement, assessable income, assessment period, associated person, direct voting interest, dispose, employment income, excepted financial arrangement, FIF rules, financial arrangement, fixed establishment, foreign company, income, income year, limited-recourse amount, limited-recourse loan, listed company, loss attributing qualifying company, money, resident in New Zealand, share, shareholder, year

Origin:	(1)	GC 29(1)(c)
	(2)	GC 30(1)
	(3)	GC 30(2)
	(4)	GC 30(3)
	(5)	GC 29(1)(e)(ii)

Subpart GC – Market value substituted

Disposal of trading stock or similar property

GC 1 Disposal of trading stock for below market value

When this section applies

- (1) This section applies if a person (the **seller**) disposes of trading stock to another person (the **buyer**) for an amount of consideration that is less than the market value of the trading stock at the time of disposal.

Disposal treated as being for market value

- (2) For the purposes of the Act, the consideration received by the seller and provided by the buyer is treated as being an amount equal to the market value at the time.

Application to shares in trading stock

- (3) In this section, the term trading stock includes a share in trading stock.

Section inapplicable in some cases

- (4) This section does not apply to a disposal of trading stock—
- (a) under a relationship agreement:
 - (b) as a result of an event within paragraph (a) or (b) of the definition of **qualifying event**.

Defined in this Act: amount, qualifying event, relationship agreement, trading stock

Origin: (1) GD 1(1)
(2) GD 1(1)
(3) GD 1(3)
(4) GD 1(4)

GC 2 Disposal of timber rights or standing timber

Section GC 1 applies

- (1) Section GC1 applies to both of the following disposals as if it were a disposal of trading stock—
- (a) a grant of a right to take timber (other than in favour of the grantor):
 - (b) a disposal of standing timber as part of the disposal of the land on which it stands.

Section CB 23(2) exclusions apply

- (2) Subsection (1) does not apply to a disposal of land with standing timber if the disposal is within 1 of the exclusions in section CB 23(2) (Disposal of land with standing timber).

Section GC 1(3) limited

- (3) Section GC 1(3) does not apply if the disposal is of land with standing timber subject to a right to take timber.

Defined in this Act: timber, trading stock

Origin: (1) GD 1(2)
(2) GD 1(2)
(3) GD 1(3A)

GC 3 Life insurer disposing of property

Section GC 1 applies to a life insurer which disposes of any property (other than a financial arrangement), in the course of their business of life insurance, as if the property were trading stock.

Defined in this Act: financial arrangement, life insurance, life insurer, property, trading stock

Origin: GD 7

GC 4 Disposals and acquisitions of FIF attributing interests

When subsection (2) applies

- (1) Subsection (2) applies if when—
- (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) the consideration, if any, for the disposal is below the market value of the interest at the time.

Disposal treated as being for market value

- (2) The person is treated as having disposed of the interest for an amount equal to its market value at the time.

When subsection (4) applies

- (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) the consideration, if any, for the acquisition is not equal to the market value of the interest at the time.

Acquisition treated as being for market value

- (4) The person is treated as having acquired the interest for an amount equal to its market value at the time.

Defined in this Act: attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, FIF loss

Origin:	(1)	GD 14(1)
	(2)	GD 14(2)
	(3)	GD 14(3)
	(4)	GD 14(4)

Leases

GC 5 Lease for inadequate rent

When this section applies

- (1) This section applies if and to the extent to which—
 - (a) a property is leased; and
 - (b) the lease is one of the types referred to in subsection (2); and
 - (c) the lessee uses the property in deriving income; and
 - (d) there is no rent, or the Commissioner considers that the rent is inadequate.

Types of leases

- (2) The following types of leases are subject to this section:
 - (a) a lease by a company:
 - (b) a lease by a person to a relative or a related company:
 - (c) a lease by 2 or more persons to a relative, or a related company, of any of those persons:
 - (d) a lease by a partnership to a relative of a partner or a related company of the partnership.

Lease treated as having adequate rent

- (3) The lessee is treated as paying, and the lessor is treated as deriving as income, an adequate rent determined by the Commissioner.

Timing

- (4) The adequate rent is treated as—
- (a) being paid on the rent payment dates set out in the lease, if there are any; and
 - (b) being paid on a daily basis on each day of the lease term, if there are not such payments dates; and
 - (c) income derived by the lessor or the date on which is treated as being paid; and
 - (d) accruing on a daily basis.

Some definitions

- (5) In this section,—

lease means a tenancy of any duration (including a sublease or bailment)

related company means a company that is under the control of—

- (a) the lessor, one or more relatives of the lessor, or any combination of those people, in the case of a single lessor:
- (b) the lessors, one or more relatives of any of the lessors, or any combination of those people, in the case of multiple lessors (including a partnership).

Defined in this Act: Commissioner, company, income, lease, related company, relative, rent

Origin:	(1)	GD 10(1), (2)
	(2)	GD 10(1)
	(3)	GD 10(1)
	(4)	GD 10(4)

Cross-border arrangements between associated persons

GC 6 Purpose of rule and when it applies

Purpose of rule

- (1) The purpose of this section and sections GC 7 to GC 9 is to substitute an arm's length consideration in the calculation of a person's net income if the person's net income is reduced by the terms of a cross-border arrangement with an associated person for the acquisition or supply of goods, services or anything else.

When rule applies

- (2) Section GC 7 applies to an arrangement (a transfer pricing arrangement) if—
- (a) the arrangement involves the supply and acquisition of goods, services, money, other intangible property or anything else; and
 - (b) the supplier and acquirer are associated persons; and
 - (c) the arrangement is a cross-border arrangement under subsection (3).

When arrangement is a cross-border arrangement

- (3) An arrangement is a cross-border arrangement if any of the following tests is satisfied:
- (a) the supplier and acquirer are a New Zealand resident and non-resident, unless both of the following tests are satisfied:
 - (i) 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;
 - (ii) 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;
 - (b) the supplier and acquirer are 2 New Zealand residents if either or both enter into the arrangement for the purposes of a business carried on by the person outside New Zealand;
 - (c) the supplier and acquirer are 2 non-residents, 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.

Application of section GB 2

- (4) Section GC 7 may also apply to an arrangement under section GB 2 (Transfer pricing arrangements).

Defined in this Act: acquisition, arrangement, associated person, fixed establishment, net income, New Zealand, New Zealand resident, non-resident, supply

Origin:	(1)	GD 13(1)
	(2)	GD 13(2)
	(3)	GD 13(2)
	(4)	-

GC 7 Arm's length consideration substituted***Excess amount payable by person***

- (1) If the amount of consideration payable by a person (the **taxpayer**) under a transfer pricing arrangement exceeds an arm's length amount, an amount equal to the arm's length amount is treated as the amount payable by the taxpayer for the purposes of the calculation of the taxpayer's income tax liability for any tax year.

Insufficient amount receivable by person

- (2) If the amount of consideration receivable by a person (the **taxpayer**) under a transfer pricing arrangement is less than an arm's length amount, an amount equal to the arm's length amount is treated as the amount receivable by the taxpayer for each of the following purposes:
- (a) the calculation of the taxpayer's income tax liability for any tax year;
 - (b) the determination of the obligation of the taxpayer under subpart NH (Dividend withholding payments) to make a withholding or deduction from the amount;
 - (c) the determination of the obligation of any person other than the taxpayer to make a withholding or deduction under Part N (Withholding taxes and taxes on income of others) from the amount.

Non-resident's exemption: deduction to payer

- (3) Subsection (2) does not apply when—
- (a) 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
 - (b) the amount receivable 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 (Apportionment of interest costs) if an arm's length amount of interest were substituted); and
 - (c) the amount receivable is interest, royalties, or an insurance premium to which section FC 13 (Premiums derived by non-resident general insurers treated as being derived in New Zealand) applies.

Non-resident's exemption: fixed rate share dividend

- (4) Subsection (2) does not apply if both of the following tests are satisfied:
- (a) 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;
 - (b) the amount is a dividend receivable on a fixed rate share.

Compensating arrangement: person pays below arm's length amount

- (5) Subsection (6) applies when—
- (a) a person (the **taxpayer**) is a party to a transfer pricing arrangement with another person; and
 - (b) an adjustment is made for a tax year either—
 - (i) under subsection (1) to an amount payable by the taxpayer under the transfer pricing arrangement; or
 - (ii) under subsection (2) to an amount receivable by the taxpayer under the transfer pricing arrangement; and
 - (c) an amount of consideration payable by a taxpayer in the same tax year (or the preceding or succeeding tax year) for an acquisition (the **compensating acquisition arrangement**) from the same person is less than an arm's length amount; and
 - (d) either—
 - (i) the transfer pricing arrangement involves goods, services, money, other intangible property, or anything else of the same type as that acquired in the compensating acquisition arrangement; or
 - (ii) the amount of consideration actually payable or receivable in the transfer pricing arrangement is set having regard to the amount of consideration payable under the compensating acquisition arrangement.

Taxpayer treated as paying arm's length amount

- (6) The amount paid by the taxpayer in the compensating acquisition arrangement is treated as being an amount equal to the arm's length amount determined under section GC 8, for the purposes of calculating the taxpayer's income tax liability.

Compensating arrangement: person receives above arm's length amount

- (7) Subsection (8) applies when—
- (a) a person (the **taxpayer**) is a party to a transfer pricing arrangement with another person; and
 - (b) an adjustment is made for a tax year either—
 - (i) under subsection (1) to an amount payable by the taxpayer under the transfer pricing arrangement; or
 - (ii) under subsection (2) to an amount receivable by the taxpayer under the transfer pricing arrangement;
 - (c) an amount of consideration receivable by a taxpayer in the same tax year (or the preceding or succeeding tax year) for a supply (the **compensating supply arrangement**) to the same person is more than an arm's length amount:

- (d) either—
 - (i) the transfer pricing arrangement involves goods, services, money, other intangible property, or anything else of the same type as that acquired in the compensating supply arrangement; or
 - (ii) the amount of consideration actually payable or receivable in the transfer pricing arrangement is set having regard to the amount of consideration receivable under the compensating supply arrangement.

Taxpayer treated as receiving arm's length amount

- (8) The amount received by the taxpayer in the compensating supply arrangement is treated as being an amount equal to the arm's length amount determined under section GC 8, for each of the following purposes:
 - (a) the calculation of the taxpayer's income tax liability for any tax year;
 - (b) the determination of the obligation of the taxpayer under subpart NH (Dividend withholding payments) to make a withholding or deduction from the amount;
 - (c) the determination of the obligation of any person other than the taxpayer to make a withholding or deduction under Part N (Withholding taxes and taxes on income of others) from the amount.

Other party may request matching treatment

- (9) Subsection (10) applies when—
 - (a) an arm's length amount of consideration is substituted under subsection (1) or (2) in respect of a transfer pricing arrangement entered into by a person (the **taxpayer**); and
 - (b) the other party to the arrangement (or, if the other party is a CFC, any person with an income interest in the CFC) applies to the Commissioner in writing within 6 months after an assessment is made for the taxpayer which reflects the substitution; and
 - (c) the Commissioner considers it is fair and reasonable to apply subsection (10), having regard to any adjustment made under a double tax agreement or any other matter; and
 - (d) the Commissioner has notified the other party.

Substitution applies for other party

- (10) The substitution applies for the purposes of the application of this Act to the other party—
 - (a) excluding the determination of the extent to which the other party has derived or been paid a dividend; and
 - (b) including, in any case where the other party is a CFC, 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 an attributed CFC loss or attributed CFC net loss of any person.

Generally, no effect on taxpayer's withholding obligations

- (11) An adjustment under any of subsections (1), (2), (6) and (8) has no effect on an obligation of the taxpayer to make a withholding or deduction in respect of the amount under Part N (Withholding taxes and taxes on income of others), other than—
- (a) an obligation under subpart NH (Dividend withholding payments); or
 - (b) to the extent that subsection (10) applies.

Defined in this Act: acquisition, amount, arrangement, assessment, attributed CFC income, attributed CFC loss, attributed CFC net loss, branch equivalent income, branch equivalent loss, CFC, deduction, dividend, dividend withholding payment, double tax agreement, fixed establishment, income interest, income tax liability, interest, New Zealand, resident in New Zealand, royalty, supply, tax year, taxpayer

Origin:	(1)	GD 13(3)
	(2)	GD 13(4)
	(3)	GD 13(5)
	(4)	GD 13(5)
	(5)	GD 13(10)
	(6)	GD 13(10)
	(7)	GD 13(10)
	(8)	GD 13(10)
	(9)	GD 13(11)
	(10)	GD 13(11)
	(11)	GD 13(12)

GC 8 Calculation of arm's length amount

Use of most reliable measure

- (1) The arm's length amount of consideration must be determined by applying whichever 1 or a combination of the methods listed in subsection (2) produces the most reliable measure of the amount completely independent parties would have agreed upon after real and fully adequate bargaining.

Four available methods

- (2) The arm's length amount of consideration must be calculated under any 1 or a combination of—
- (a) the comparable uncontrolled price method:
 - (b) the resale price method:
 - (c) the cost plus method:
 - (d) the profit split method:
 - (e) the comparable profits methods.

Criteria for choice and application of method

- (3) The choice of method (or methods) for calculation and the resultant application of the method (or methods) must be made having regard to each of the following factors:
- (a) the degree of comparability between the uncontrolled transactions used for comparison and the controlled transactions of the taxpayer;
 - (b) the completeness and accuracy of the data relied on;
 - (c) the reliability of all assumptions;
 - (d) the sensitivity of any results to possible deficiencies in the data and assumptions.

Taxpayer initially determines arm's length amount

- (4) The arm's length amount of consideration is determined by the taxpayer under subsections (1) to (3), and the amount so determined is the arm's length amount for the purposes of section GC 7, unless either—
- (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 sections GC 6 to GC 9 in relation to the taxpayer and the non-co-operation has materially affected the Commissioner in that administration.

Commissioner determines arm's length amount

- (5) If subsection (4)(a) or (b) applies, the Commissioner determines the amount under subsections (1) to (3) for the purposes of section GC 7.

Defined in this Act: amount, Commissioner

Origin:	(1)	GD 13(6)
	(2)	GD 13(7)
	(3)	GD 13(8)
	(4)	GD 13(9)
	(5)	GD 13(9)

GC 9 Some definitions

In sections GC 6 to GC 8,—

acquisition—

- (a) includes obtaining the availability of anything; but
- (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

supply—

- (a) includes making anything available; but
- (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).

Defined in this Act: acquisition, amount, company, fixed rate share, share, supply

Origin: GD 13(13)

Subpart GZ - Terminating provisions

GZ 1 Additional depreciation loss: acquisition between 16 December 1991 and 1 April 1994

When this section applies

- (1) This section applies when—
- (a) an asset of a person has been subject to an arrangement; and
 - (b) the arrangement allows the person or another person to have a deduction under section EZ 16 (Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994) and Part D (Deductions); and
 - (c) a purpose of the arrangement is to defeat the intent and application of that section.

Deduction not allowed

- (2) The relevant person is not allowed the deduction.

Defined in this Act: arrangement, Commissioner, deduction

Origin: (1) GC 6
(2) GC 6

GZ 2 Limitation on section GB 20: petroleum mining arrangements

Section GB 20 (Petroleum mining arrangements) does not apply to an arrangement if—

- (a) the petroleum mining asset was disposed of before 1 July 1992;
- (b) the petroleum exploration expenditure was incurred before 1 July 1992;
- (c) the farm-out arrangement was entered into before 16 December 1991.

Defined in this Act: arrangement, dispose, farm-out arrangement, petroleum mining asset, petroleum mining expenditure

Amendments to other Income Tax Act provisions or other Acts

Part C

Add to section CB 22:

Disposal for below market value

- (3) Section GC 2 (Disposal of timber rights or standing timber) may apply to treat a person as deriving an amount on the grant of a right to take timber or disposal of standing timber.

Add “standing timber” to section CB 22 list of defined terms.

Insert:

CD 7D Avoidance arrangements

An amount treated as a dividend under any of the following sections is a dividend:

- (a) section GB 1 (Dividend stripping arrangements):
- (b) section GB 23(7) (Excessive remuneration to relatives):
- (c) section GB 25 (Close company remuneration to shareholders, directors, or relatives).

Defined in this Act: amount, close company, director, dividend, relative, shareholder

Add to section CD 9:

Arrangement for dividend from another company

- (4) Section GB 37 (Arrangement for dividend from another company) may apply to treat an imputation credit as not being included in the amount of a dividend.

Add “arrangement” and “income” to section CD 9 list of defined terms.

Add to section CD 36:

Avoidance arrangements

- (5) Section GB 8 (CFC attributed repatriation arrangements) may apply to treat the CFC as having entered into an arrangement made in fact by another person.

Add “arrangement” to section CD 36 list of defined terms.

Add to section CE 9:

Avoidance arrangements

- (6) Section GB 30 (Arrangement to avoid taxation of restrictive covenant payment) may apply to treat an amount as income under this section.

Add “arrangement” to section CE 9 list of defined terms.

Insert:

Avoidance and non-market transactions

CH 6 Adjustment for avoidance arrangements

An amount treated as income of a person under any of the following sections is income of the person:

- (a) section GA 1 (Commissioner’s power to adjust):
- (b) section GB 23 (Excessive remuneration to relatives):
- (c) section GB 26 (Commercial bill repatriation arrangements):
- (d) section GB 29 (Attribution rule: calculation):
- (e) section GB 46 (Deferral of surplus deductions from arrangement).

Defined in this Act: amount, arrangement, Commissioner, income, relative

CH 7 Market value substituted

Transfer pricing arrangements

- (1) An amount treated as income of a person under section GC 7 (Arm’s length consideration substituted) is income of the person.

Disposal of trading stock

- (2) Section GC 1 (Disposal of trading stock for below market value) may apply to treat a person as receiving an amount on disposal of trading stock.

Defined in this Act: amount, income, trading stock

Add to section CR 1:

Disposals for below market value

- (6) Section GC 3 (Life insurer disposing of property) may apply to treat a life insurer as receiving an amount on disposal of property.

Insert:

Treatment of loans to members

CS 18 Value of loan treated as fund income

When this section applies

- (1) This section applies if both of the following tests are satisfied:
- (a) a superannuation fund provides a loan in an income year to a member of the fund, directly or indirectly and whether by one transaction or a series of transactions:
 - (b) the interest, if any, accruing on the loan is less than the prescribed rate of interest which applies for fringe benefit tax purposes.

Interest shortfall if fund income

- (2) The fund is treated as deriving income in the income year equal to the amount, if any, by which the interest that would have accrued on the loan for the income year at the prescribed rate of interest exceeds the actual interest, if any, that arises on the loan for the income year.

Defined in this Act: fringe benefit tax, income year, interest, member, prescribed rate of interest, superannuation fund

Origin: (1) GD 6(1)
(2) GD 6(2)

Add to section CX 2:

Arrangements

- (5) A benefit may be treated as being provided by an employer to an employee under—
- (a) section GB 31 (FBT arrangements: general);
 - (b) section GB 32 (Benefit provided to employee’s associate).

Add “associated person” to section CX 2 list of defined terms.

Insert:

CX 16A Benefits provided to associates of both employees and shareholders

When this section applies

- (1) This section applies when—
- (a) a benefit provided to an associated person of an employee would be treated as a fringe benefit under section GB 32 (Benefit provided to employee’s associate) if section CX 4 (Relationship with assessable income) did not exist; and
 - (b) the employer is a company; and
 - (c) the associated person is also associated with a shareholder in the company; and
 - (d) the associated person is not a company; and
 - (e) the associated person is not a shareholder in the company; and
 - (f) the benefit would be a dividend if provided to the shareholder.

FBT rules apply, not dividend rules

- (2) The benefit is subject to the FBT rules and is treated as not being a dividend.

Defined in this Act: associated person, company, dividend, employee, employer, FBT rules, fringe benefit, shareholder

Origin: (1) GC 15(3), (4)
(2) GC 15(3)

Insert:

Avoidance arrangements

CX 49A Avoidance arrangements

An amount is exempt income if it is treated as exempt income under—

- (a) section GA 1 (Commissioner's power to adjust):
- (b) section GB 23 (Excessive remuneration to relatives).

Defined in this Act: amount, Commissioner, exempt income, relative

Insert:

Avoidance arrangements

CY 44A Avoidance arrangements

An amount is excluded income if it is treated as excluded income under—

- (a) section GA 1 (Commissioner's power to adjust):
- (b) section GB 23 (Excessive remuneration to relatives).

Defined in this Act: amount, Commissioner, excluded income, relative

Insert:

CZ 20 Superannuation fund loans to members before 1989-90 year

When this section applies

- (1) This section applies for the purposes of section CS 18 (Value of loan treated as fund income) in the case of a loan made by a superannuation fund to a member if—
 - (a) it was made before 1 April 1989; and
 - (b) the rate of interest payable on the loan cannot be reviewed.

Prescribed rate of interest varied

- (2) The prescribed rate of interest is treated as being—
- (a) the non-concessionary rate of interest for the tax year in which the loan agreement was signed or, if not in writing, agreed to by all parties, in the case of a loan made before 1 April 1985:
 - (b) the prescribed rate of interest for the quarter in which the loan agreement was signed or, if not in writing, agreed to by all parties, in any other case.

Defined in this Act: interest, member, non-concessionary rate of interest, prescribed rate of interest, quarter, superannuation fund, tax year

Origin: (1) GD 6(3)
(2) GD 6(3)

Part D

Insert:

Payments to spouses or civil union partners

DB 45 Payments to spouses or civil union partners: not for services

No deduction without approval

- (1) A person is not allowed a deduction for a payment to their spouse or civil union partner, for something other than services, without the Commissioner's approval.

When Commissioner can give consent

- (2) The Commissioner may approve the deduction only if—
- (a) the Commissioner considers that the payment is genuine; and
 - (b) the payment is incurred by the person exclusively in deriving their assessable income; and
 - (c) the approval is granted before the deduction is claimed.

Link with subpart DA

- (3) This section overrides the general permission.

Defined in this Act: assessable income, Commissioner, deduction, general permission

Origin: (1) GD 4
(2) GD 4
(3) GD 4

Avoidance and non-market transactions

DB 46 Adjustment for avoidance arrangements

Deduction denied

- (1) An amount is not a deduction of a person if the deduction is denied under—
- (a) section GA 1 (Commissioner's power to adjust):
 - (b) section GB 17 (Excessive amounts for film rights or production expenditure):
 - (c) section GB 18 (Arrangements to acquire film rights or incur production expenditure):

- (d) section GB 23 (Excessive remuneration to relatives):
- (e) section GB 25 (Close company remuneration to shareholders, directors or relatives):
- (f) section GZ 1 (Additional depreciation loss: acquisition between 16 December 1991 and 1 April 1994).

Deduction

- (2) An amount treated as a deduction of a person under any of the following sections is a deduction of the person:
 - (a) section GA 1 (Commissioner's power to adjust):
 - (b) section GB 23 (Excessive remuneration to relatives):
 - (c) section GB 29 (Attribution rule: calculation):
 - (d) section GB 46 (Deferral of surplus deductions from arrangement).

Link with subpart DA

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

Defined in this Act: amount, arrangement, close company, Commissioner, deduction, depreciation loss, director, film production expenditure, film rights, general limitation, general permission, relative, shareholder

DB 47 Market value substituted

Transfer pricing arrangements

- (1) A person may be denied a deduction under section GC 7 (Arm's length consideration substituted).

Acquisition for below market value

- (2) A person may be treated as providing an amount—
 - (a) for acquisition of trading stock, under section GC 1 (Disposal of trading stock for below market value):
 - (b) for lease of a property, under section GC 5 (Leases for inadequate rent).

Link with subpart DA

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

Defined in this Act: deduction, general limitations, general permission, lease, trading stock

Insert:

DC 4A Payments to spouses or civil union partners: services

No deduction without approval

- (1) A person is not allowed a deduction for a payment to their spouse or civil union partner for services without the Commissioner's approval.

When Commissioner can give consent

- (2) The Commissioner may approve the deduction only if—
- (a) the Commissioner considers that the payment is for services rendered; and
 - (b) the services are not domestic services or otherwise services connected with the home; and
 - (c) the payment is incurred by the person exclusively in deriving their assessable income; and
 - (d) the approval is granted before the deduction is claimed.

Relationship with section GB 23

- (3) This section is overridden by section GB 23 (Excessive remuneration to relatives).

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: assessable income, Commissioner, deduction, general permission

Origin	(1)	GD 4
	(2)	GD 4
	(3)	GD 4
	(4)	GD 4

Replace section DC 7 with:

DC 7 Attribution of personal services

When this section applies

- (1) This section applies when, under sections GB 27 to GB 29 (which relate to the attribution rule), an amount of income of a person (the **associated entity**) is attributed to another person (the **working person**).

Deduction

- (2) The associated entity is allowed a deduction for the amount attributed.

Timing of deduction

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

Link with subpart DA

- (4) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: amount, deduction, general limitation, general permission, income year, supplement

Origin: DJ 19, EO 6

Insert in section DS 1:

Avoidance arrangements

- (4A) The amount of the deduction may be reduced under—
- (a) section GB 17 (Excessive amounts for film rights or production expenditure):
 - (b) section GB 18 (Arrangements to acquire film rights or incur film production expenditure).

Add “arrangement” to section DS 1 list of defined terms.

Insert in section DS 2:

Avoidance arrangements

- (5A) The amount of the deduction may be reduced or the timing of the deduction may be delayed under—
- (a) section GB 17 (Excessive amounts for film rights or production expenditure):
 - (b) section GB 18 (Arrangements to acquire film rights or incur film production expenditure):
 - (c) section GB 19 (Film production expenditure payments delayed or contingent).

Add “arrangement” to section DS 2 list of defined terms.

Part E

Insert:

EJ 8A Avoidance arrangements

The allocation of a deduction under any of sections EJ 4, EJ 5, EJ 7 and EJ 8 may be subject to adjustment under—

- (a) section GB 18 (Arrangements to acquire film rights or incur film production expenditure):
- (b) section GB 19 (Film production expenditure payments delayed or contingent).

Defined in this Act: deduction, film production expenditure, film right

Amend cross-references in section EW 49.

Replace section EX 3 with:

EX 3 Control interest: total of direct, indirect, and associated person interests

Calculation of control interest

- (1) A New Zealand resident's control interest in a foreign company at any time is the total of the following for the relevant control interest category:
 - (a) any direct control interest that the New Zealand resident holds in the company:
 - (b) any direct control interests in the company held by persons associated with the New Zealand resident:
 - (c) any indirect control interests that the New Zealand resident holds in the company:
 - (d) any indirect control interests in the company held by persons associated with the New Zealand resident.

Avoidance arrangements: first type

- (2) Section GB 7 (CFC control interest arrangements) may apply to treat a control interest as being held by a group of New Zealand residents in equal proportions.

Avoidance arrangements: other types

- (3) Any of the following sections may apply to the calculation of a person's control interest:
- (a) section GB 9 (Temporary disposals of direct control or income interests):
 - (b) section GB 10 (Temporary acquisitions of direct control or income interests):
 - (c) section GB 11 (Temporary increases in control interest category totals):
 - (d) Section GB 12 (Temporary reductions in control interest category totals):
 - (e) section GB 13 (Combination of changes reduces income):
 - (f) section GB 14 (Combination of changes increases loss).

Defined in this Act: associated person, control interest, direct control interest, foreign company, New Zealand resident

Replace section EX 8 with:

EX 8 Income interests: total of direct and indirect interests

Calculation of income interest

- (1) A person's income interest in a CFC at any time is the total of the following:
- (a) any direct income interest that the person holds in the CFC:
 - (b) any indirect income interest that the person holds in the CFC.

Avoidance arrangements

- (2) Any of the following sections may apply to the calculation of a person's income interest:
- (a) section GB 9 (Temporary disposals of direct control or income interests):
 - (b) section GB 10 (Temporary acquisitions of direct control or income interests):
 - (c) section GB 11 (Temporary increases in control interest category totals):
 - (d) Section GB 12 (Temporary reductions in control interest category totals):
 - (e) section GB 13 (Combination of changes reduces income):
 - (f) section GB 14 (Combination of changes increases loss).

Defined in this Act: CFC, control interest category, direct control interest, direct income interest, income, income interest, indirect income interest

Amend cross-references in sections EX 27(2) and EX 42(6)(b) to refer to sections GB 9 to 16.

Insert:

EY 10A Superannuation schemes providing life insurance

Benefits treated as life insurance

- (1) The provision by a trustee of a superannuation scheme of a benefit to a member or beneficiary of the scheme is treated as the provision of life insurance if the trustee provides life insurance to any member or beneficiary, unless subsection (2) applies.

Exemption for certain schemes

- (2) A trustee of a superannuation fund is treated as not carrying on the business of life insurance for a tax year if the fund satisfies all the tests in subsections (3) to (9) for the tax year.

Fund must be registered

- (3) At all times in the tax year, the fund must be registered by the Government Actuary under the Superannuation Schemes Act 1989.

Trustee cannot be a life insurance company

- (4) At all times in the tax year, no trustee of the fund is a company carrying on the business of providing life insurance to which the Life Insurance Act 1908 applies.

Fund must be for employees or related parties

- (5) At all times in the tax year, the fund must be 1 of the following types:
 - (a) a fund established by an employer, or group of employers who are associated, to provide benefits only to persons who are employees of or related by employment to such an employer (or to another associated employer who agrees after the fund's establishment to make contributions to it):
 - (b) a fund constituted under the National Provident Fund Restructuring Act 1990, the National Provident Fund Act 1950 or the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of or related by employment to an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund:

- (c) a fund different from the type described in paragraph (b) and constituted under—
 - (i) the National Provident Fund Restructuring Act 1990 to provide benefits to persons (and relatives and dependants of persons) who, before 1 April 1991, were members of a superannuation fund that satisfied the requirements of paragraph (b):
 - (ii) 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 that satisfied the requirements of paragraph (b):
 - (iii) the National Provident Fund Restructuring Amendment Act 1997 to provide benefits to persons (and relatives, dependants, and nominated beneficiaries of persons) who, immediately before becoming members of the superannuation fund, were members of a superannuation fund that satisfied the requirements of either paragraph (b) or subparagraph (ii).

Only certain fund beneficiaries allowed

- (6) At all times in the tax year, each beneficiary of the fund must be—
 - (a) a natural person that is an employee of or related by employment to an employer of the type referred to in subsection (5)(a) or (b):
 - (b) a natural person that is a beneficiary of the fund, in the case of a fund referred to in subsection (5)(c) (which refers to funds related to the National Provident Fund):
 - (c) an employer of members of the fund, to the extent of the employer's contingent interest in a fund surplus.

Significant employer contributions required

- (7) At all times in the tax year, each employer is required by the trust deed or Act constituting the fund to make or is making (or having made on their behalf) contributions to provide to a significant extent the fund benefits, except to the extent subsection (10) applies.

No avoidance effect

- (8) The fund must not have been established, and must not be being used at any time in the tax year, in a way that has the effect of defeating the intent and application of the life insurance rules.

Government Actuary approval required

- (9) The trustee of the fund must have made a written application to the Government Actuary for, and the Government Actuary must have granted, approval that the fund is for the tax year one which complies with subsections (3) to (8).

Exemptions to subsection (7) requirement

- (10) Subsection (7) does not apply if—
- (a) the Government Actuary is satisfied that, for the tax year, subsection (7) would have been complied with but for the fund assets exceeding the accrued benefits from the fund:
 - (b) the fund is one referred to in subsection (5)(c) (which refers to funds related to the National Provident Fund).

Limited contributions disregarded for subsection (7)

- (11) For the purposes of subsection (7), contributions that are merely nominal or that only meet the costs of administration and investment management are disregarded.

Notice by Government Actuary

- (12) The Government Actuary must notify the trustee of a superannuation fund as soon as practicable after determining that—
- (a) the fund complies with subsections (3) to (8) for a tax year:
 - (b) the fund ceases to comply with the subsections for a tax year.

Objection under Superannuation Schemes Act

- (13) A person dissatisfied with the Government Actuary's decision can object under section 23 of the Superannuation Schemes Act 1989 and has no right of objection under the Tax Administration Act 1994.

Meaning of related by employment

- (14) In this section, a person is **related by employment** to an employer if the person is—
- (a) a former employee, in the case of deferred benefits relating to prior employment:
 - (b) a relative or dependent of an employee, in the case of benefits arising from the employees or former employee's membership in the fund.

Defined in this Act: associated, company, employee, employer, life insurance, life insurance rules, related by employment, relative, superannuation fund, superannuation scheme, tax year, trustee

Origin:	(1)	GD 8(1)
	(2)	GD 8(3)
	(3)	GD 8(4)(a)
	(4)	GD 8(4)(b)
	(5)	GD 8(4)(c)
	(6)	GD 8(4)(d)
	(7)	GD 8(4)(e)
	(8)	GD 8(4)(f)
	(9)	GD 8(4)
	(10)	GD 8(4)(e), (5)
	(11)	GD 8(4)(e)
	(12)	GD 8(6), (7)

- (13) GD 8(8)
- (14) GD 8(4)

Add to section EZ 15:

Avoidance arrangements

- (6) Section GZ 1 (Additional depreciation loss: acquisition between 16 December 1991 and 1 April 1994) may apply to deny a deduction that would arise under this section and Part D (Deductions).

Add “arrangement” and “deduction” to section EZ 15 list of defined terms.

Part H

Add to section HH 3:

Avoidance arrangements

- (6A) Section GB 22 (Trust beneficiary income arrangements) may apply to treat a beneficiary as receiving property, or enjoying services or benefits, in fact received, or enjoyed, by another person.

Part I

Add to section IF 1:

Avoidance arrangements

- (7) Section GB 3 (Net loss carry forward arrangements: companies) may apply to treat a company as not meeting the requirements of this section.

Add to section IG 2:

Avoidance arrangements

- (13) Section GB 4 (Net loss grouping arrangements) may apply to treat a company as not meeting the requirements of this section.

Part K

Insert:

KD 9A Avoidance arrangements

Section GB 44 (Family support credit arrangements) may apply to reduce a credit of tax under this subpart.

Defined in this Act: arrangement, family support credit

Part L

Add to section LB 2:

Avoidance arrangements

- (8) A credit of tax may be denied under any of the following sections:
- (a) section GB 36 (Reconstruction of arrangements to obtain a tax advantage):
 - (b) section GB 37 (Arrangement for dividend from another company):
 - (c) section GB 38 (Application of provisions to consolidated groups).

Add to section LD 8:

Avoidance arrangements

- (10) A credit of tax under this section or a refund under section LD 9 may be denied under either of the following sections:
- (a) section GB 36 (Reconstruction of arrangements to obtain a tax advantage):
 - (b) section GB 38 (Application of provisions to consolidated groups).

Part M

Insert in section ME 5:

Avoidance arrangements

- (3A) Section GB 34 (ICA carry forward arrangements) may apply to treat a company as not meeting the requirements of subsection (1)(i).

Add to section ME 5:

Arrangement for dividend from another company

- (9) Section GB 37 (Arrangement for dividend from another company) may apply to treat an amount as a debit under subsection (1)(a).

Add to section ME 12:

Arrangement for dividend from another company

- (6) Section GB 38 (Application of provisions to consolidated groups) may apply to treat an amount as a debit under subsection (1)(a).

Insert in section MF 4:

Avoidance arrangements

- (5A) Section GB 40 (BETA carry forward arrangements) may apply to treat a company as not meeting the requirements of subsection (1)(e) or (3)(d).

Insert in section MG 5:

Avoidance arrangements

- (3A) Section GB 41 (DWP account carry forward arrangements) may apply to treat a company as not meeting the requirements of subsection (1)(i).

Part N

Add to section NH 1:

Avoidance arrangements

- (3) Section GB 39 (Dividend withholding payment arrangements: general) may apply to treat a payment as a dividend subject to this section.

Part O

Insert or amend in section OB 1:

acceptable property is defined in section GB 48 (Defined terms for sections GB 45 to GB 48) for the purposes of sections GB 45 to GB 48 (which related to arrangements involving money not at risk)

account advantage [*refer to new sections 90AF and 90AG of the TAA*]

acquisition [*update cross-references*]

affected associate [*update cross-references*]

amount [*update cross-references*]

arrangement property is defined in section GB 45(3) (Arrangements involving money not at risk) for the purposes of that section

assessment period is defined in section GB 48 (Defined terms for sections GB 45 to GB 48) for the purposes of sections GB 45 to GB 48 (which related to arrangements involving money not at risk)

insurance premium: omit the definition

lease: amend paragraph (e) of definition to refer to new section DB 47 (Market value substituted) and update other cross-references.

limited recourse amount [*update cross-references*]

limited recourse loan [*update cross-references*]

related by employment is defined in section EY 10A(14) (Superannuation schemes providing life insurance) for the purposes of that section

related company [*update cross-references*]

relevant balance date is defined in section GB 45(3) (Arrangements involving money not at risk) for the purposes of that section

substantial business assets [*update cross-references*]

supply [*update cross references*]

tax credit advantage [*refer to new sections 90AF and 90AG of the TAA*]

trading stock: amend paragraph (b) of the definition to refer to new sections CH 7(2) (Market value substituted) and DB 47(2) (Market value substituted).

Add to section OB 3:

Avoidance arrangements

(4A) Section GB 6 (Qualifying company arrangements) may apply to treat a company as not being a qualifying company.

Add to section OD 5:

Arrangements involving trust beneficiaries

(9A) Section GB 5 (Continuity provision arrangements involving trust beneficiaries) may apply to treat a share or option held by a trustee as being disposed of at the time of a change in trust beneficiaries.

Insert in section OE 2:

(2A) Despite subsections (1) and (2), for the purposes of the international tax rules, a company is treated as remaining resident in New Zealand if it becomes a foreign company but is resident in New Zealand again within 183 days afterwards.

Defined in this Act: company, foreign company, resident in New Zealand

Origin: (2A) GC 9(6)

Schedules

In Schedule 2, Part A, clause 2:

Omit the “.” and substitute “:”.

Add the following paragraphs:

- “(c) in a case where the vehicle has, within the period of 2 years preceding its acquisition by the person providing it to the employee, been previously owned by the person or someone associated with them, the cost price is treated as being the highest of the cost prices paid for the vehicle by the person or an associate since its manufacture:
- (d) subject to paragraph (c), if a person acquired the vehicle for no cost or the person cannot establish the cost to the satisfaction of the Commissioner, the cost price for the person’s acquisition is treated as being the market value of the vehicle on the date of the person’s acquisition:
- (e) despite the preceding paragraphs, section GB 33 (Arrangements to reduce motor vehicle cost) may apply to treat the cost price as being equal to the market value.

Origin: 2(c) GC 16(a)
2(d) GC 16(b)

Tax Administration Act

Insert:

90AF Imputation arrangement to obtain a tax advantage

- (1) If there is an arrangement to obtain a tax advantage as described in section GB 30 of the Income Tax Act 2004, the Commissioner may make any of the following determinations:
 - (a) a determination whether the arrangement results in an account advantage, a tax credit advantage or both:
 - (b) a determination whether a streaming arrangement as described in section GB 30(3) is subject to section GB 36(1) or (2) of the Income Tax Act 2004:
 - (c) a determination of the amount of the imputation credit or dividend withholding payment credit that is subject to the arrangement:
 - (d) a determination of the imputation year in which the arrangement commenced (being the year in which the first reasonably identifiable step in the arrangement took place).
- (2) The Commissioner must give notice of any determination under subsection (4) to the company whose account is affected by the arrangement, as soon as is convenient.
- (3) The notice may be included in—
 - (a) a notice of assessment under section 111(1) of this Act; or
 - (b) a determination under section ME 40 or MG 12 of the Income Tax Act 2004.
- (4) Failure to comply with subsection (2) does not invalidate the determination.

90AG Maori authority arrangements to obtain a tax advantage

- (1) If there is an arrangement to obtain a tax advantage as described in section GB 42 of the Income Tax Act 2004, the Commissioner may make any of the following determinations:
 - (a) a determination whether the arrangement results in an account advantage, a tax credit advantage or both:
 - (b) a determination whether a streaming arrangement as described in section GB 42(3) is subject to section GB 43(1) or (2) of the Income Tax Act 2004:
 - (c) a determination of the amount of the Maori authority credit that is subject to the arrangement:

- (d) a determination of the imputation year in which the arrangement commenced (being the year in which the first reasonably identifiable step in the arrangement took place).
- (2) The Commissioner must give notice of any determination under subsection (1) to the Maori authority whose account is affected by the arrangement, as soon as is convenient.
- (3) The notice may be included in—
 - (a) a notice of assessment under section 111(1) of this Act; or
 - (b) a determination under section MK 9 of the Income Tax Act 2004.
- (4) Failure to comply with subsection (2) does not invalidate the determination.