

## Part H

### Taxation of certain entities

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***Introductory provisions*** 20

**HA 1 What this subpart does**

*Distributing profits and attributing tax losses*

- (1) The rules in this subpart allow a company to choose, for taxation purposes,—
- (a) to have a distribution of profits to shareholders treated in a similar way to drawings from a partnership's profits; and 25
  - (b) when it has only 1 class of shares, to have tax losses attributed to shareholders treated in a similar way to those of a partnership. 30

*Requirements for attributing companies*

- (2) An attributing company must meet the requirements of **sections HA 5 to HA 9**, and must maintain the conditions set out in **section HA 4**.

*Requirements for loss-attributing companies*

- (3) A loss-attributing company must be an attributing company, and must meet the shareholding requirements of **section HA 10**.

*Income year or part-year*

- (4) In this subpart, a reference to an income year includes a reference to part of an income year. 5

*Elections required*

- (5) For a company to be an attributing company or a loss-attributing company, all the directors of the company, and every shareholder in the company with legal capacity, must sign an election referred to in **section HA 5**. An exception applies for a minority shareholder in the situation described in **section HA 29**. 10

*Shareholder's personal liability*

- (6) A shareholder who makes an election referred to in **subsection (5)** must agree to take personal liability to the extent described in **section HA 8**. 15

Defined in this Act: attributing company, company, director, income year, loss-attributing company, share, shareholder, tax loss

Compare: 2004 No 35 ss HG 1(c), (d), HG 3 (1), HG 4 (1), HG 14

## **HA 2 Meaning of attributing company** 20

In this Act, an **attributing company** means a company other than a unit trust that, for the whole of an income year, meets the requirements of **sections HA 5 to HA 9**.

Defined in this Act: attributing company, company, income year, unit trust

Compare: 2004 No 35 s OB 3(1) 25

## **HA 3 Meaning of loss-attributing company**

In this Act, a **loss-attributing company** means an attributing company that, for the whole of an income year, meets the requirements of **section HA 10**. If **section HA 12** applies, the company is not eligible to be a loss-attributing company. 30

Defined in this Act: attributing company, income year, loss-attributing company

Compare: 2004 No 35 s HG 14

**HA 4 Conditions applying***Becoming and continuing as attributing company*

- (1) The requirements of **sections HA 5 to HA 9** are preconditions of, and ongoing conditions for, attributing companies and loss-attributing companies. For a company to become and to continue as an attributing company, the requirements of those sections must be met. 5

*Losing status*

- (2) **Sections HA 11 and HA 12** apply in relation to a failure to maintain the requirements and avoidance arrangements. 10

*Avoidance*

- (3) **Section GB 6** (Arrangements involving attributing companies) may apply to treat a company as not being an attributing company.

Defined in this Act: arrangement, attributing company, company, loss-attributing company 15

Compare: 2004 No 35 ss HG 7, HG 14(d)

*Attributing company status***HA 5 Elections to become attributing company***Making elections* 20

- (1) A company that meets the requirements of **sections HA 6 to HA 9** may be an attributing company or a loss-attributing company only if all the directors of the company and every shareholder in the company with legal capacity, choose that the company is to become an attributing company. Every director and every shareholder with legal capacity must sign a notice of election and give it to the Commissioner. 25

*Elections remaining in effect*

- (2) The elections referred to in **subsection (1)** must remain in effect and must not have been revoked before the end of the relevant income year. 30

*Director at time*

- (3) For the purposes of an election, a person is considered a director of a company if they hold the office at the time the notice is provided.

*Elections*

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- (4) The elections referred to in this section are dealt with in **sections HA 28 to HA 39**.

Defined in this Act: attributing company, Commissioner, company, director, income year, loss-attributing company, notice, shareholder

Compare: 2004 No 35 ss HG 3(1), HG 4(1), HG 14(a), (b), OB 3(1)(f)

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**HA 6 Corporate requirements***Requirements*

- (1) An attributing company must, in an income year,—
- (a) have 5 or fewer shareholders who meet the requirements of **section HA 7**; or
  - (b) be a flat-owning company.

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*Exclusions*

- (2) A company is not eligible to be an attributing company if, at any time in an income year, it is—
- (a) a company that is not resident in New Zealand; or
  - (b) a company that is resident in New Zealand but is treated under and for the purposes of a double tax agreement, as not resident in New Zealand; or
  - (c) no longer an attributing company under **section HA 11(4)** because its status as a loss-attributing company has ended.

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Defined in this Act: attributing company, company, double tax agreement, flat-owning company, income year, loss-attributing company, resident in New Zealand, shareholder

Compare: 2004 No 35 ss HG 1(a), (b), OB 1 “foreign company”, OB 3(1)(a), (b), (g)

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**HA 7 Shareholding requirements***Natural persons, certain trustees, and attributing companies*

- (1) A shareholder in an attributing company must be 1 of the following:
- (a) a natural person other than a trustee; or

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- (b) a trustee of a trust, but only if **subsection (2)** applies in relation to dividends derived by the trustee; or
- (c) another attributing company.

*Dividends derived by trustees*

- (2) For the purposes of **subsection (1)(b)**, all dividends that the trustee of a trust derives from an attributing company in an income year must be beneficiary income of 1 or more persons who are not trustees or companies other than attributing companies. However, this subsection does not apply to non-cash dividends other than taxable bonus issues. 5 10

*Special shareholding rules*

- (3) When the shares in an attributing company that has 5 or fewer shareholders are held by relatives, other companies, and trustees, the following special rules apply:
- (a) if a shareholder in an attributing company is connected within the first degree of relationship to another shareholder in the company by either blood relationship, marriage, or adoption, they are treated as a single shareholder, and this treatment continues while they remain a shareholder in the company despite any later death or dissolution: 15 20
  - (b) shares in an attributing company that are held by another company are treated as held by the shareholders in that other company:
  - (c) if a shareholder in an attributing company is a trustee, the shareholders are counted, without the trustee, as the larger of the following: 25
    - (i) the group who signed the election as shareholder; or
    - (ii) the group who derived beneficiary income from dividends from the attributing company in the period between the first day of the 1991–92 income year and the time of counting. 30

Defined in this Act: attributing company, beneficiary income, bonus issue, company, dividend, income year, non-cash dividend, relative, share, shareholder, taxable bonus issue, trustee 35

Compare: 2004 No 35 s OB 3(1)(c), (3)

**HA 8 Shareholders' personal liability***Agreement required for election*

- (1) A person making an election as shareholder as described in **section HA 5** must agree for each income year in which the election is in effect, to take personal liability on the basis of their effective interest in the company— 5
- (a) for their share of the company's income tax liability for the income year; and
  - (b) if the company has made an election as shareholder in another company, for any income tax payable in relation to that other company for the income year. 10

*Trustee shareholders*

- (2) A person making an election as trustee under **section HA 28** must agree to take personal liability under **subsection (1)**, modified as follows: 15
- (a) the trustee together with 1 or more beneficiaries who have legal capacity must make the election; and
  - (b) the personal liability as trustee is limited to the extent of the net assets of the trust; and
  - (c) if the election is made for a majority shareholding under **section HA 29**, the personal liability includes the effective interests of the minority shareholding. 20

*Majority shareholders*

- (3) One or more persons whose effective interests in a company at a particular time add up to 50% or more, may make an election under **section HA 29**, agreeing to take personal liability described in **subsection (1)** in relation to the effective interests in the company of the minority shareholding. 25

*Beneficiaries*

- (4) In **subsection (1)**, the person includes a beneficiary who makes an election under **section HA 28** or a person who assumes liability on their behalf. 30

*Nature of liability*

- (5) In **sections HA 13 to HA 27**, when more than 1 person agrees to take personal liability for a percentage of an income tax liability or for income tax payable in an income year, the liability is joint and several. 5

Defined in this Act: company, effective interest, income tax, income tax liability, income year, pay, shareholder, trustee

Compare: 2004 No 35 s HG 4(1)–(3)

**HA 9 Limit on foreign non-dividend income***Dollar limit* 10

- (1) The foreign non-dividend income of an attributing company in an income year must be no more than \$10,000 after subtracting the lesser of—
- (a) any income under **section CC 3** (Financial arrangements); or
  - (b) 10% of the gross income of the company for the income year. 15

*Change in threshold*

- (2) The Governor-General may make an order in Council increasing the sum set out in **subsection (1)**. The order may apply— 20
- (a) from the start of the income year in which it is made; or
  - (b) to amounts of income derived after the date on which the order is made.

Defined in this Act: amount, attributing company, financial arrangement, foreign non-dividend income, gross, income, income year 25

Compare: 2004 No 35 s OB 3(1)(d), (4)

**HA 10 Nature of loss-attributing company shares**

All shares in a loss-attributing company must carry—

- (a) the same right to exercise voting power and take part in decision-making on— 30
  - (i) the distributions to be made by the company; and
  - (ii) the company's constitution; and
  - (iii) varying the capital of the company; and
  - (iv) appointing or electing directors of the company; and
- (b) the same rights when the company distributes its profits or its assets, if the company acquires, redeems, or 35



cancels its shares, or in another way reduces or returns its share capital, whether on liquidation or not.

Defined in this Act: cancellation, director, liquidation, loss-attributing company, share

Compare: 2004 No 35 s HG 14(a), (b)

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## HA 11 When requirements no longer met

*When this section applies*

- (1) This section applies when, through changed circumstances, an attributing company no longer meets the requirements of **sections HA 5 to HA 9**.

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*Status at end*

- (2) The company's status as an attributing company is ended, whether or not it is, or could be, known at the time the circumstances arise that the company no longer meets the requirements.

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*Attributing companies*

- (3) The company's status as an attributing company is treated as ended from the start of the income year in which the change of circumstances occurs. **Subsection (6)** overrides this subsection.

*Loss-attributing companies*

- (4) If the company is a loss-attributing company in an income year, but does not meet the requirements for the next income year, its status as an attributing company is treated as ended from the start of that next income year. However, the company may become an attributing company again if it later meets the requirements.

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*Distribution of dividends*

- (5) Despite **subsection (1)**, a company's status as an attributing company is not ended merely because it does not comply with **section HA 7(2)** if—

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- (a) the dividends available to be distributed are beneficiary income; and
- (b) some dividends derived by the trustee from the company have vested or have been distributed as beneficiary income.

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*Deferring date*

- (6) On an application by an attributing company, the Commissioner may defer the date on which the company's status ends to the start of a later income year if—
- (a) the company did not know, and could not reasonably be expected to have known, at the time the circumstances arose that it no longer met the requirements; and
  - (b) in the circumstances, it would be an unduly harsh or inappropriate outcome.

*Examples for subsection (6)(a)*

- (7) Examples of the circumstances that may apply for the purposes of **subsection (6)(a)** are a reasonable expectation or belief that—
- (a) the company would continue to meet the requirements through an extension under **section HA 34, HA 35, or HA 37**; or
  - (b) an amount of foreign non-dividend income that the company derives would not breach the threshold in **section HA 9**; or
  - (c) the dividends referred to in **section HA 7(2)** would be distributed as beneficiary income.

*Examples for subsection (6)(b)*

- (8) Examples of the circumstances that may apply for the purposes of **subsection (6)(b)** are—
- (a) the length of time between the start of the income year and the date of the change in circumstances;
  - (b) the length of time between the date of the change in circumstances and the date when the company knew, or could reasonably be expected to have known, that the requirements were not met;
  - (c) the kinds of transactions that the company made during the periods of time described in **paragraphs (a) and (b)**.

Defined in this Act: attributing company, beneficiary income, Commissioner, company, dividend, foreign non-dividend income, income year, loss-attributing company, trustee

Compare: 2004 No 35 ss HG 7, HG 18, OB 3(3A)

**HA 12 Avoidance arrangements***When this section applies*

- (1) This section applies in an income year in which a company is a loss-attributing company.

*Failure to meet requirements*

- (2) If a share in the company is or has been part of an arrangement whose purpose is to defeat the intent and application of the rules in this subpart, the company is no longer eligible to be a loss-attributing company.

*Series of arrangements, and 1 among other purposes*

- (3) In **subsection (2)**, the arrangement referred to—
- (a) includes a series of related or connected arrangements; and
- (b) may have more than 1 purpose, and it is sufficient that 1 purpose among those other purposes has the effect described.

Defined in this Act: arrangement, company, income year, loss-attributing company, share

Compare: 2004 No 35 s HG 14(d)

*Treatment of profits, dividends, and tax losses***HA 13 Attributing companies' distributions**

- (1) A distribution that is a transfer of value to a shareholder of an attributing company must be treated in the way set out in **sections HA 14 to HA 18**.

Defined in this Act: attributing company, shareholder, transfer of value

Compare: 2004 No 35 s HG 1(c)

**HA 14 Dividends paid by attributing companies***When this section applies*

- (1) This section applies when an attributing company pays a dividend to a person resident in New Zealand.

*General treatment*

- (2) The dividend is exempt income of the person under **section CW 15** (Dividends paid by attributing companies) to the extent to

which it is more than a fully imputed distribution under **section HA 15**.

*When shareholder has non-standard balance date*

- (3) If the person has a non-standard balance date and the dividend is derived after the end of the tax year but before their balance date, the dividend is allocated to the day after the balance date. 5

*No resident passive income*

- (4) The dividend does not constitute resident passive income. 10
- Defined in this Act: attributing company, dividend, exempt income, non-standard balance date, pay, resident in New Zealand, resident passive income, shareholder, tax year

Compare: 2004 No 35 ss HG 9(1), HG 13(1)

## HA 15 Fully imputed distributions

*When this section applies*

- (1) This section applies when an attributing company with an imputation credit account or FDP account pays a dividend other than to a person resident in New Zealand. However, this section does not apply to a non-cash dividend other than a taxable bonus issue. 15

*Calculating amount of fully imputed distribution*

- (2) The amount of a fully imputed distribution is calculated using the formula— 20
- $$\frac{\text{attached imputation credit} + \text{attached FDP credit}}{\text{tax rate.}}$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**, — 25
- (a) **attached imputation credit** is the amount determined under **subsection (4)**, and the amount is zero if no imputation credit is attached:
- (b) **attached FDP credit** is the amount determined under **subsection (5)**, and the amount is zero if no FDP credit is attached: 30
- (c) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2**, (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year of the shareholder in which the dividend is derived. 35

*ICA companies*

- (4) An attributing company that is an ICA company is treated as having attached an imputation credit to the dividend. The amount of the imputation credit is the lesser of—
- (a) the maximum imputation credit that may be attached to the dividend under **section OA 18** (Calculation of maximum permitted ratios); and 5
  - (b) an amount calculated using the formula in **subsection (6)**.

*FDPA companies*

- (5) An attributing company that is a FDPA company is treated as having attached a FDP credit to the dividend. The amount of the FDP credit is the lesser of—
- (a) the maximum FDP credit that may be attached to the dividend under **section OA 18**, taking into account any imputation credit attached to the dividend under **subsection (4)**; and 10 15
  - (b) an amount calculated using the formula in **subsection (6)**.

*Formula*

- (6) The formula referred to in **subsections (4) and (5)** is—
- $$\frac{\text{attached credits} \times \text{amount of dividend}}{\text{amount paid before credits attached.}} \quad 20$$

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,—
- (a) **attached credits** is the balance in the company's imputation credit account or FDP account, as applicable, on the last day of the tax year in which the dividend is paid before a debit is made for any imputation credits or FDP credits, as applicable, that are attached: 25
  - (b) **amount of the dividend** is the amount before any imputation credits or FDP credits, as applicable, are attached: 30
  - (c) **amount paid before credits attached** is the total amount of dividends, excluding non-cash dividends other than taxable bonus issues, paid by the company during the tax year before any imputation credits or FDP credits, as applicable, are attached. 35

*Relationship with imputation rules and FDP rules*

- (8) An imputation credit or an FDP credit may not be attached to a dividend by an attributing company except under this section.

*Relationship with section HA 16*

- (9) If part of the dividend is exempt income under **section HA 16**, an imputation credit or FDP credit is treated as attached to the part that is not exempt income. 5

Defined in this Act: amount, attributing company, basic rate, bonus issue, dividend, exempt income, FDP, FDP account, FDP rules, FDPA company, ICA company, imputation credit, imputation credit account, imputation rules, non-cash dividend, pay, resident in New Zealand, shareholder, taxable bonus issue, tax year 10

Compare: 2004 No 35 s HG 13(1)–(4)

**HA 16 Exempt income***When amount exempt*

- (1) To the extent to which the amount of a dividend that an attributing company pays to a person resident in New Zealand is more than a fully imputed distribution under **section HA 15**, the amount is exempt income of the person under **section CW 15(1)** (Dividends paid by attributing companies). 15

*Beneficiary income*

- (2) If a dividend described in **subsection (1)** is paid to a trustee shareholder, and it is or becomes beneficiary income of a beneficiary resident in New Zealand, the amount is exempt income of the beneficiary under **section CW 15(2)** as if the beneficiary were the shareholder referred to in **section HA 15**. 20 25

Defined in this Act: amount, attributing company, beneficiary income, dividend, exempt income, income year, pay, resident in New Zealand, shareholder, trustee

Compare: 2004 No 35 s HG 13(1)(a)(i), (1A)

**HA 17 Dividends derived by attributing companies***What this section applies to*

- (1) This section applies to a dividend— 30
- (a) that a company derives after it becomes an attributing company; and
  - (b) to which **section CW 10** (Dividend within New Zealand wholly-owned group) or **CW 11** (Dividend of CTR holding company) applies. 35

*Dividend not exempt income*

- (2) The dividend is not exempt income under **sections CW 10 and CW 11**, except to the extent to which **section CW 9** (Dividend derived by company from overseas) applies to it.

Defined in this Act: attributing company, company, CTR holding company, dividend, exempt income, wholly-owned group

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Compare: 2004 No 35 ss HG 10(a), HG 13(1)(aa)

### **HA 18 Treatment of dividends when attributing company status ends**

*When this section applies*

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- (1) This section applies when a company's status as an attributing company ends under **section HA 11(1)**.

*Dividends distributed in tax year*

- (2) **Section HA 15** applies to a dividend distributed in the period of a tax year from the first day to the day before the date on which the status ends. References in that section to a tax year should be read as references to that period of the year.

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*Group companies: imputation credit accounts*

- (3) On the day before the date on which the status ends, the company's imputation credit account is debited under **section OB 41** (ICA debit for loss of shareholder continuity) by the lesser of—

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- (a) the balance of the credit account on that day after any credits are attached under **section HA 15**; and
- (b) the largest debit to the credit account that would have arisen before that day if **section OB 41** had applied.

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*Group companies: FDP account*

- (4) On the day before the date on which the status ends, the company's FDP credit account is debited under **section OC 24** (FDPA debit for loss of shareholder continuity) by the lesser of—

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- (a) the balance of the credit account on that day after any credits are attached under **section HA 15**; and

- (b) the largest debit to the credit account that would have arisen before that day if **section OC 24** had applied.

Defined in this Act: attributing company, company, dividend, FDP account, imputation credit account, tax year

Compare: 2004 No 35 s HG 13(6)

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## HA 19 Credit accounts and dividend statements

### *When this section applies*

- (1) This section applies when an attributing company pays a dividend that is treated either as a fully imputed distribution under **section HA 15** or as exempt income under **section HA 16**. 10

### *Credit accounts*

- (2) For the purposes of **sections OB 30 to OB 59** (which relate to imputation debits) and **OC 13 to OC 26** (which relate to FDP debits), if an imputation credit or an FDP credit is attached to the dividend, the amount of the credit is debited to the company's imputation credit account or FDP account, as applicable. The debit arises on the day the company pays the dividend. 15

### *Dividend statements*

- (3) For all dividends, whether or not credits have been attached, the company must complete the following statements detailing the extent to which the dividends are assessable income or exempt income: 20
- (a) a company dividend statement under section 67(1) of the Tax Administration Act 1994; and 25
- (b) a shareholder dividend statement under section 29 of that Act.

### *Date for completing statements*

- (4) The company must complete the statements in **subsection (3)** by 31 May after the end of the tax year in which the dividends were paid. 30

### *Non-cash dividends*

- (5) In addition to the information required in a shareholder dividend statement, if a shareholder asks the company to include in the statement the amount of a non-cash dividend that the 35



company has paid them in the tax year, the company must provide the information.

Defined in this Act: assessable income, attributing company, company dividend statement, dividend, exempt income, FDP account, FDP credit, imputation credit, imputation credit account, non-cash dividend, pay, shareholder, shareholder dividend statement, tax year

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Compare: 2004 No 35 s HG 13(5)

#### **HA 20 Attribution of tax losses**

A tax loss of a loss-attributing company is treated as a loss incurred by the shareholders of the company under **sections HA 24 to HA 27**.

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Defined in this Act: loss-attributing company, shareholder, tax loss

Compare: 2004 No 35 ss HG 1(d), HG 9(2), HG 16

#### **HA 21 Loss balances not carried forward**

In an income year in which a company that is not an attributing company becomes an attributing company, **subparts IA and IQ** (which relate to the treatment of foreign losses) do not apply to carry forward a loss balance of the company to the income year or to later income years.

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Defined in this Act: attributing company, company, income year, loss balance

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Compare: 2004 No 35 s HG 11(3)

#### **HA 22 Group companies using tax losses**

*When this section applies*

- (1) This section applies if an attributing company is in the same group of companies as a company with a tax loss (**company A**).

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*When tax losses available*

- (2) The amount of company A's tax loss is available to the attributing company to use under **section IA 3(2)** (Using tax losses in tax year) only if—
- (a) company A is also an attributing company; and
  - (b) the requirements of **section IC 5** (Company B using company A's tax loss) are met.

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Defined in this Act: amount, attributing company, company, group of companies, tax loss, tax year

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Compare: 2004 No 35 s HG 10(b)

**HA 23 Treatment of tax losses on amalgamation**

If a company that is not an attributing company amalgamates with an attributing company and ends its existence on the amalgamation, **subpart 1A** (General rules for tax losses) does not apply to carry forward the amalgamating company's loss balance from earlier income years either to the income year of the amalgamation or to later income years. 5

Defined in this Act: amalgamation, attributing company, company, income year, loss balance, tax loss

Compare: 2004 No 35 s HG 11(3A) 10

*Special tax matters for loss-attributing companies***HA 24 Treatment of tax losses other than certain foreign losses**

*What this section applies to*

- (1) This section applies in a tax year when a loss-attributing company has a tax loss that does not include an attributed CFC net loss or a FIF net loss to which **subsection (6)** applies. 15

*Calculating amounts for shareholders with effective interests*

- (2) Each shareholder in the company is treated as having incurred an amount of loss calculated using the formula— 20  

$$\text{company's tax loss} \times \text{shareholder's effective interest.}$$

*Definition of items in formula*

- (3) In the formula,— 25
- (a) **company's tax loss** is the amount of the tax loss of the company for the tax year:
  - (b) **shareholder's effective interest** is the effective interest of the shareholder in the company for the tax year.

*Incurred in deriving income* 30

- (4) The shareholder's amount of loss is treated as having been incurred in deriving their assessable income. **Section HA 26** overrides this subsection.

*Losses not carried forward*

- (5) If the company has a loss balance remaining for a tax year after the uses described in **section IA 3** (Using tax losses in tax year), the balance is not carried forward to the next income year, and **section HA 21** applies. 5

*Other foreign losses*

- (6) If an election under **section HA 25** has not been made in relation to the tax loss then, to the extent to which it is an attributed CFC net loss or a FIF net loss, the amount is treated as if it were the shareholder's attributed CFC net loss or FIF net loss. 10

Defined in this Act: amount, assessable income, attributed CFC net loss, effective interest, FIF net loss, income year, loss-attributing company, loss balance, shareholder, tax loss, tax year

Compare: 2004 No 35 ss HG 16(1), HG 17(1)(a)

**HA 25 Treatment of certain foreign losses** 15*Electing not to attribute foreign losses to shareholders*

- (1) On notification to the Commissioner, a loss-attributing company may choose to exclude an attributed CFC net loss or a FIF net loss from a tax loss attributed to the company's shareholders under **section HA 24**. 20

*Treatment*

- (2) The amount of an attributed CFC net loss or FIF net loss under **subsection (1)**—
- (a) may be carried forward under **subparts IA and IQ** (which relate to the treatment of foreign losses); and 25
  - (b) is not included in an amount of tax loss attributed to a shareholder under **section HA 24**; and
  - (c) is not available to be used under **section HA 22**.

*Notice of election*

- (3) For the purposes of **subsection (1)**, every person with legal capacity who is, at the time of notifying the Commissioner, a shareholder in the company must sign the notice of election. The notice must be given to the Commissioner before the start of the income year in which it is to apply or, if the company has not previously been required to provide a return of income, in the time allowed by section 37 of the Tax Administration Act 1994, for the company's first income year. 30  
35

*When election applies*

- (4) A notice of election under **subsection (3)** applies in an income year if—
- (a) it is given to the Commissioner before the start of the income year; and
  - (b) the company remains an attributing company for the whole of the income year; and
  - (c) no revocation has effect for the income year.

5

*Revoking notice*

- (5) A company may revoke an election made under this section only by giving a notice of revocation to the Commissioner. Every person with legal capacity who is, at the time of giving the notice, a shareholder in the company must sign the notice of revocation.

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*When revocation takes effect*

- (6) In a notice of revocation, the company may nominate an income year that is later than the year of notice as the income year in which the revocation takes effect, and it takes effect at the start of that income year. If the company does not nominate an income year in the notice, the revocation takes effect at the start of the income year in which the Commissioner receives the notice.

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*When losses carried forward*

- (7) A revocation does not apply to an attributed CFC net loss or a FIF net loss arising in an earlier income year and carried forward under **subparts IA and IQ** to the income year in which the revocation takes effect.

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Defined in this Act: amount, attributed CFC net loss, attributing company, Commissioner, company, FIF net loss, income year, loss-attributing company, notice, notify, return of income, shareholder, tax loss, tax year

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Compare: 2004 No 35 s HG 17

**HA 26 Attribution when balance dates differ***When this section applies*

- (1) This section applies in an income year when—
- (a) a loss-attributing company has a tax loss; and
  - (b) an amount of the tax loss is attributable to a shareholder under **section HA 20, HA 24(2), or HA 25**; and

35

- (c) the company or the shareholder, or both, have a non-standard balance date for the income year; and
- (d) the company's balance date is later than the shareholder's balance date; and
- (e) because of the difference in balance dates, the shareholder cannot practically quantify the amount of the tax loss attributable to them in the time allowed by section 37 of the Tax Administration Act 1994 for providing their return of income. 5

*When loss incurred* 10

- (2) Despite section 38 of the Tax Administration Act 1994, the amount of the shareholder's tax loss is treated as having been incurred on the first day of the next income year.

Defined in this Act: amount, income year, loss-attributing company, non-standard balance date, return of income, shareholder, tax loss 15

Compare: 2004 No 35 s HG 16(2)

## **HA 27 Attribution when loss results in reduction in value of shares**

*When this section applies*

- (1) This section applies in an income year if— 20
  - (a) a loss-attributing company has a tax loss that causes a reduction in the total value of shares in the company; and
  - (b) a shareholder who has an amount of the tax loss attributed to them under **section HA 20, HA 24(2), or HA 25**, suffers no, or substantially no, corresponding economic loss arising from any factor including a call option or a put option. 25

*Treatment of shareholder, company, and amount*

- (2) The shareholder is treated for the income year as having no amount of the company's tax loss component attributed to them. The amount must not be attributed to another shareholder, and **section HA 21** applies. 30

Defined in this Act: amount, income year, loss-attributing company, share, shareholder, tax loss 35

Compare: 2004 No 35 s HG 16(3), (4)

*Elections: attributing companies*

**HA 28 Elections by trustee shareholders**

If a shareholder referred to in **section HA 5** is acting as trustee, they must make an election together with—

- (a) 1 or more beneficiaries of the trust who are natural persons with legal capacity; or 5
- (b) if no beneficiary has legal capacity, a natural person, who may also be the trustee, who assumes liability on behalf of beneficiaries.

Defined in this Act: shareholder, trustee 10

Compare: 2004 No 35 s HG 4(2)(a)

**HA 29 Elections by majority shareholders**

*When this section applies*

- (1) This section applies when 1 or more shareholders (the **majority**) in a company have, at the time of making an election, effective interests in the company of 50% or more, and the effective interest of 1 or more other shareholders (the **minority**) is less than 50%. 15

*Majority assuming minority's liability*

- (2) The majority may sign a notice of election advising the Commissioner that the company is to become an attributing company. The notice has effect only if the majority agree to an extension of their personal liability under **section HA 8(3)**. 20

*Minority treated as making election*

- (3) The minority is treated as having made an election under **section HA 5** in relation to their shareholding in the company at the time the election is made. 25

*Election additional*

- (4) An election under this section may be made in addition to any other election a shareholder may make or have made under **section HA 5**. 30

Defined in this Act: attributing company, Commissioner, company, effective interest, notice, shareholder

Compare: 2004 No 35 s HG 4(3)

**HA 30 When elections take effect***When election takes effect*

- (1) In a notice of election made under **section HA 5**, an income year later than the year of notice may be nominated as the year in which the election is to take effect and, if so, the election takes effect at the start of that income year. If no income year is nominated in the notice, the election takes effect at the start of the income year after the year of notice. 5

*Shareholder's election after company becomes attributing company*

- (2) If a shareholder makes an election when the company is already an attributing company, the election takes effect when the Commissioner receives it. 10

*Company's first income year*

- (3) Despite **subsection (1)**, if the company has not previously been required to provide a return of income, the first income year of the company may be nominated as the year in which the election is to take effect. The Commissioner must be advised of this decision in the notice of election to be received within the time allowed by section 37 of the Tax Administration Act 1994 for providing a return for the company's first income year. 15  
20

*Election in effect until revoked*

- (4) An election remains in effect until revoked. 25

Defined in this Act: attributing company, Commissioner, company, income year, notice, return of income, shareholder

Compare: 2004 No 35 ss HG 3(2), (3), HG 4(4)

**HA 31 Revocation of directors' elections***Revoking election*

- (1) An election by directors under **section HA 5** may be revoked only by a resolution of the board of directors. The board must advise the Commissioner of the resolution by providing a notice of revocation. 30

*When revocation takes effect*

- (2) The revocation of an election takes effect at the start of the income year that the board nominates in the notice of revocation. If the board has not nominated an income year, the revocation takes effect at the start of the income year in which the notice of revocation is provided. 5

Defined in this Act: Commissioner, director, income year, notice

Compare: 2004 No 35 s HG 3(4), (5)

**HA 32 Revocation of shareholders' elections: by notice***Notice* 10

- (1) A person who, as a shareholder in a company, has made an election under **section HA 5**, may revoke it by notifying both the company and the Commissioner.

*When revocation takes effect*

- (2) In the notice, the person may nominate an income year later than the year of notice as the income year in which revocation takes effect, and the revocation takes effect at the start of that income year. If no income year is nominated, it takes effect at the start of the income year in which the Commissioner receives the notice. 15  
20

*Measuring effective interests*

- (3) For measuring the effective interest in the company, as defined in **section HA 43** and measured under **section HA 44**, of the person revoking the election, the revocation takes effect— 25
- (a) when both the company and the Commissioner have received the notice; or
  - (b) on a later date nominated in the notice.

*Periods of grace and Commissioner's power to defer*

- (4) **Sections HA 11(6) and HA 34 to HA 37** override this section. 30

Defined in this Act: Commissioner, company, effective interest, income year, notice, notify, shareholder

Compare: 2004 No 35 s HG 5(1)



**HA 33 Revocation of shareholders' elections: by event***Event*

- (1) An election by a person as shareholder under **section HA 5** is revoked if an event described in the following paragraphs occurs: 5
- (a) the person dies:
  - (b) the person disposes of all of their shares, unless they dispose of them to an existing shareholder in the company for whom an election exists:
  - (c) if **sections HA 28 and HA 29** apply, a beneficiary acquires legal capacity: 10
  - (d) if **section HA 29** applies,—
    - (i) the effective interests of a minority shareholder increase to 50% or more; or
    - (ii) the total effective interests of the majority shareholder or shareholders fall below 50%: 15
  - (e) for an election made jointly by 2 or more persons, 1 person revokes the election or is treated as having revoked the election.

*When revocation by event takes effect* 20

- (2) The revocation of an election under this section takes effect at the start of the income year in which the event occurred.

*Periods of grace and Commissioner's power to defer*

- (3) **Sections HA 11(6) and HA 34 to HA 37** override this section. 25
- Defined in this Act: Commissioner, company, effective interest, income year, share, shareholder

Compare: 2004 No 35 s HG 5(2)

**HA 34 Period of grace following death of shareholder***12-month period*

- (1) Despite **section HA 33(1)(a)**, a company's status as an attributing company does not end because a shareholder or another person has died if, within 12 months of the death of the person, the company meets the requirements of **sections HA 5 to HA 9**. 30

*Extension of time*

- (2) The Commissioner may extend the 12-month period referred to in **subsection (1)** on the application of the company, the 35

personal representative of the deceased person, or a person who is entitled as a shareholder to make an election under **section HA 5**.

Defined in this Act: attributing company, Commissioner, company, shareholder

Compare: 2004 No 35 s HG 6(1)

5

### **HA 35 Period of grace following revocation of election**

*When this section applies*

- (1) This section applies when a company has been an attributing company but no longer meets the requirement of **section HA 5** through revocation of a shareholder's election under **section HA 32 or HA 33**. But this section does not apply when—
- (a) the revocation is brought about by the death of a person; or
- (b) a joint election is revoked.

10

*Revocation by notice*

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- (2) When **section HA 32** applies, the company's status as an attributing company does not end if, within 63 days of the date on which the company received the notice of revocation, a person other than the shareholder who revoked the election makes an election relating to the whole of the relevant shareholding.

20

*Revocation by event*

- (3) When **section HA 33** applies, the company's status as an attributing company does not end if, within 63 days of the date when the event that gave rise to the revocation occurred, an election relating to the whole of the relevant shareholding is made or is in effect.

25

*Extension of time*

- (4) In **subsections (2) and (3)**, the Commissioner may extend the 63-day period on the application of the company or a person who is entitled to make an election under **section HA 5**.

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Defined in this Act: attributing company, Commissioner, company, notice, shareholder

Compare: 2004 No 35 s HG 6(2)(a), (b)

**HA 36 Period of grace following revocation of joint election***When this section applies*

- (1) This section applies when a company has been an attributing company, but an election that shareholders have made jointly has been revoked through an event described in **section HA 33**. 5

*Cause of revocation*

- (2) The company's status as an attributing company does not end if, within the relevant period in **section HA 34(1) or HA 35(2) and (3)**, an election relating to the whole of the relevant shareholding is made. 10

Defined in this Act: attributing company, company, shareholder

Compare: 2004 No 35 s HG 6(2)(c)

**HA 37 Period of grace for new shareholder***When this section applies*

- (1) This section applies when a company has been an attributing company but fails to meet the requirement of **section HA 5** when— 15
- (a) a person other than an existing shareholder acquires shares in the company; or
  - (b) an existing shareholder acquires legal capacity. 20

*Period for making election*

- (2) The company's status as an attributing company does not end if, within 63 days of the date on which either the shares were acquired or the shareholder acquired legal capacity, an election relating to the whole of the relevant shareholding is made. 25

*Extension of time*

- (3) The Commissioner may extend the 63-day period in **subsection (2)** on the application of the company, the new shareholder, the existing shareholder, or a person who is entitled to make an election as shareholder under **section HA 5**. 30

Defined in this Act: attributing company, Commissioner, company, share, shareholder

Compare: 2004 No 35 s HG 6(3)

*Elections: loss-attributing companies*

**HA 38 Elections by directors and shareholders required**

*Election and notification*

- (1) For a company to become a loss-attributing company, every person who is a director of the company, and every shareholder in the company with legal capacity, must advise the Commissioner in a notice of election. 5

*Minority shareholders*

- (2) Despite **subsection (1)** and assuming the other requirements of **sections HA 5 to HA 9** have been met, if a shareholder whose effective interest in a company is less than 50% has not signed the notice, the election nevertheless has effect if 1 or more shareholders in the company whose interests amount to more than 50% have signed the notice. 10

*Notifying Commissioner*

- (3) The notice must be provided before the start of the relevant income year or, if the company has not previously been required to provide a return of income, within the time allowed by section 37 of the Tax Administration Act 1994 for providing a return for the company's first income year. 15  
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*Directors and shareholders at time*

- (4) A person is considered a director of a company under **subsection (1)** if they hold the office at the time the notice is provided. Similarly, a person is considered a shareholder if they have an effective interest in the company at the time the notice is provided. 25

Defined in this Act: Commissioner, company, director, effective interest, income year, loss-attributing company, notice, notify, return of income, shareholder

Compare: 2004 No 35 ss HG 14(c), HG 14A

**HA 39 Revocation of elections** 30

**Sections HA 28 to HA 37** apply to an election made under **section HA 38** as if it were an election by a director or a shareholder under **section HA 5**.

Defined in this Act: director, shareholder

Compare: 2004 No 35 s HG 15

35

*Attributing company election tax*

**HA 40 Liability for attributing company election tax**

*Payment of tax*

- (1) A company that becomes an attributing company must pay an attributing company election tax in relation to the change in status, of an amount calculated under **section HA 41**. The date for payment is set out in **section HA 42**. 5

*Payment on amalgamation*

- (2) If a company that is not an attributing company amalgamates with an attributing company and ends its existence on the amalgamation, the amalgamated company must pay an attributing company election tax under **subsection (1)**. 10

Defined in this Act: amalgamation, amount, attributing company, attributing company election tax, company, pay

Compare: 2004 No 35 s HG 11(1), (1A) 15

**HA 41 Calculating attributing company election tax**

*Formula*

- (1) The amount of attributing company election tax that a company must pay under **section HA 40** is calculated using the formula— 20

$$\left( \text{dividends} + \text{balances} - \text{assessable income} - \frac{\text{balances}}{\text{tax rate}} \right) \times \text{tax rate.}$$

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (6)**. 25

*Dividends*

- (3) **Dividends** is the sum of the amounts that would be dividends if the company—
- (a) disposed of all its property, other than cash, to an unrelated person at market value for cash; and 30
  - (b) met all its liabilities at market value, excluding income tax payable through disposing of the property or meeting the liabilities; and
  - (c) was liquidated, with the amount of cash remaining being distributed to its shareholders without imputation credits or FDP credits attached. 35

*Balances*

- (4) **Balances** is the sum of the following amounts:
- (a) the balance in the company's imputation credit account:
  - (b) the balance in the company's FDP account:
  - (c) an amount of income tax payable for an earlier income year but not paid before the relevant date, less refunds due for the earlier income year but paid after the relevant date: 5
  - (d) FDP payable for a dividend received before the relevant date but not paid before the date, less refunds made or due after that date for a dividend received before that date. 10

*Assessable income*

- (5) **Assessable income** is the total assessable income that the company would derive by taking the actions described in **subsection (3)(a) and (b)** less the amount of any deduction that the company would have for taking those actions. 15

*Tax rate*

- (6) **Tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the relevant income year of the company. 20

*Relevant date*

- (7) In **subsections (3) to (5)**, the relevant date for measuring items in the formula is the date just before the company became an attributing company or, as applicable, at the time the company ended its existence. 25

*Income tax and refund*

- (8) For the purposes of **subsection (4)(c)**,—
- (a) income tax payable is income tax that would, when paid, give rise to a credit in the company's imputation credit account under **sections OB 4 to OB 29** (which relate to imputation credits): 30
  - (b) a refund of income tax due is a refund paid, credited, or available to be credited, that would, when paid or credited, give rise to a debit to the company's imputation credit account under **section OB 30 to OB 59**: 35

- (c) if the company pays income tax or FDP with a purpose or intention of reducing the amount of election tax, the amount of credit in the imputation credit account or FDP account is reduced by the amount of the credit arising from the company's action, unless that purpose is merely incidental. 5

Defined in this Act: amount, assessable income, attributing company, attributing company election tax, basic rate, company, deduction, dividend, FDP, FDP credit, imputation credit, imputation credit account, income tax, income year, pay, shareholder 10

Compare: 2004 No 35 s HG 11(1B), (2), (4)

#### **HA 42 Paying attributing company election tax**

A company must pay an attributing company election tax under **section HA 40** to the Commissioner no later than the company's terminal tax date for the income year in which the company chooses to become an attributing company. 15

Defined in this Act: attributing company election tax, Commissioner, company, income year, terminal tax date

Compare: 2004 No 35 s HG 12

#### ***Effective interests in attributing companies*** 20

#### **HA 43 Meaning of effective interest**

*What this section does*

- (1) This section defines an **effective interest** in a company, which is the measure of a person's liability under **section HA 8**.

*Effective interest* 25

- (2) **Effective interest** for a person and a company, at a particular time or for an income year, means—
- (a) the person's voting interest in the company at the time or for the income year, unless **paragraph (b)** applies:
- (b) if there is a market value circumstance for the company at the time or at some time during the income year, the average of— 30
- (i) the person's voting interest in the company at the time or for the income year; and

- (ii) the person's market value interest in the company at the time or for the income year.

Defined in this Act: company, effective interest, income year, market value circumstance, market value interest, voting interest

Compare: 2004 No 35 s OB 1 "effective interest"

5

#### HA 44 Measuring effective interests

##### *Subpart YC*

- (1) A person's voting interest and market value interest in a company is measured under **subpart YC** (Measurement of company control and ownership). If the person is a company, the voting interest and market value interest are measured at a particular time or for an income year under those sections as if— 10
- (a) the person were not a company; and
- (b) **sections YC 4 and YC 6** (which relate to corporate shareholders and certain excluded securities) did not apply. 15

##### *If interests vary during income year*

- (2) If a person's voting interest or market value interest varies during an income year, the measure of their effective interest is the weighted average of their voting interest or market value interest, as applicable, for the income year. 20

##### *If election made during income year*

- (3) If a shareholder makes an election under **section HA 5** after the start of the income year, their voting interest and market value interest is measured from the earliest day in the income year when they became a shareholder in the company, even if the day is earlier than the date of the election. 25

##### *Shareholders' interests after revocation*

- (4) A person who revokes an election under **section HA 32 or HA 33** is treated as having no voting interest and no market value interest for the period of the income year after the revocation takes effect unless they make a later election for the same income year. In this subsection, the person is a trustee when an election is made under **section HA 28** by a person other than the trustee. 30  
35



*When majority shareholders' liabilities excluded*

- (5) If a majority shareholder has made an election and agreed under **sections HA 8 and HA 29** to take personal liability to the extent of a minority shareholder's effective interest in the company, any effective interest for which the minority shareholder has agreed to be personally liable under **section HA 8** is excluded in measuring the majority shareholder's effective interest. 5

*Minority shareholder's liability after revocation*

- (6) If a majority shareholder's election is revoked under **section HA 32(1) or HA 33(1)(d)**, the effective interest of the minority shareholder for which the majority shareholder is liable is treated as zero for the part of the income year that follows the day on which the revocation takes effect. 10

Defined in this Act: company, effective interest, income year, market value interest, shareholder, trustee, voting interest 15

Compare: 2004 No 35 s HG 2

## Subpart HC—Trusts

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### *Introductory provisions*

#### **HC 1 What this subpart does**

##### *What this subpart does*

- |     |   |    |
|-----|---|----|
| (1) | This subpart, together with the trust rules,—   | 5  |
|     | (a) provides for the taxation of distributions from trusts, for this purpose defining—  |    |
|     | (i) beneficiary income:   |    |
|     | (ii) a taxable distribution:  |    |
|     | (b) provides for the taxation of trustee income:  |    |
|     | (c) classifies trusts into the following 3 categories for the purposes of determining the treatment of distributions that are not beneficiary income: | 10 |
|     | (i) complying trusts:   |    |
|     | (ii) foreign trusts:  |    |
|     | (iii) non-complying trusts:   | 15 |
|     | (d) determines who is a settlor, and sets out their income tax liability:   |    |
|     | (e) sets out the treatment of trusts settled by persons becoming resident in New Zealand.   |    |

##### *Excluded: certain funds and distributions* 20

- |     |  |    |
|-----|--|----|
| (2) | The trust rules do not apply to—   |    |
|     | (a) a unit trust:  |    |
|     | (b) a group investment fund to the extent to which it is treated as a company under this Act:      |    |
|     | (c) a Maori authority:   | 25 |
|     | (d) a distribution under <b>section HZ 1</b> (Distributions from trusts of pre-1989 tax reserves). |    |

##### *Disclosure requirements: non-resident trustees*

- |     |   |    |
|-----|---|----|
| (3) | Section 59 of the Tax Administration Act 1994 requires the disclosure of a settlement on a trust with a non-resident trustee. | 30 |
|-----|---|----|

##### *Avoidance arrangements*

- |     |   |    |
|-----|---|----|
| (4) | <b>Section GB 22</b> (Arrangements involving trust beneficiary income) may apply to treat a beneficiary as receiving property, or enjoying services or benefits, in fact received, or enjoyed, by another person. | 35 |
|-----|---|----|

*Superannuation funds entering trust rules*

- (5) A superannuation scheme that is treated as a company because it is a unit trust and then becomes a superannuation fund is treated as—
- (a) liquidated under **section CD 12** (Superannuation schemes entering trust rules) immediately before the date on which it becomes a superannuation fund; and 5
  - (b) no longer a company. 5
- Defined in this Act: amount, beneficiary income, company, complying trust, distribution, foreign trust, group investment fund, income tax liability, liquidation, Maori authority, non-complying trust, non-resident, resident in New Zealand, settlement, settlor, superannuation fund, superannuation scheme, taxable distribution, trust rules, trustee, trustee income, unit trust 10
- Compare: 2004 No 35 ss HH 1(8), (9), HH 3(6), HH 4(8), HH 7, Income Tax Amendment Act 1988 (No 5) s 9 15

**HC 2 Obligations of joint trustees for calculating income and providing returns***What this section applies to*

- (1) This section applies for the purposes of the obligations imposed by **section BB 2** (Main obligations) on 2 or more persons who derive income jointly as trustees of a trust. 20

*Single person*

- (2) The trustees of the trust are treated in that capacity as if they were a notional single person, and are jointly and severally liable to satisfy the income tax liability of the notional single person. They must— 25
- (a) calculate the trust's taxable income for a tax year; and
  - (b) for that tax year, provide a joint return of income for the trust under section 42(1)(a) of the Tax Administration Act 1994. 30

Defined in this Act: income, return of income, tax year, taxable income, trustee

Compare: 2004 No 35 s HD 1(1)(a)

**HC 3 Multiple settlements**

For the purposes of this subpart, if a settlement is made on a trust and further settlements are made on the same terms, a trustee of the trust may treat all the settlements as 1 trust. 35

Defined in this Act: settlement, trustee

Compare: 2004 No 35 s HH 1A

**HC 4 Corpus of trust***Meaning*

- (1) In the trust rules, **corpus** means an amount that is equal to the market value of a settlement of property on the trust measured at the date of the settlement. **Subsection (2)** overrides this subsection. 5

*Settlements excluded from corpus*

- (2) Corpus does not include an amount equal to the market value of the property settlements described in **subsections (3) to (5)**.

*Settlements on other trusts*

- (3) A property settlement by a trustee of another trust is excluded from corpus to the extent to which, if the property were distributed to a beneficiary of the other trust, and the beneficiary was resident in New Zealand, the distribution would be beneficiary income or a taxable distribution to that beneficiary. 10  
15

*Deductions*

- (4) A property settlement for which the settlor is allowed a deduction is excluded from corpus.

*Income or dividend*

- (5) A property settlement is excluded from corpus if, but for the fact of the settlement,— 20  
25
- (a) it would be income of the settlor; or
  - (b) it would be a dividend liable to FDP under **section RG 2** (Foreign dividends); or
  - (c) it would fall under **paragraph (a) or (b)** if the settlor were resident in New Zealand at the time of the settlement.

Defined in this Act: amount, beneficiary income, corpus, deduction, distribution, dividend, FDP, income, resident in New Zealand, settlement, settlor, taxable distribution, trust rules, trustee 30

Compare: 2004 No 35 s OB 1 “corpus”

***Trust income*****HC 5 Amounts derived by trustees**

An amount of income derived in an income year by a trustee of a trust is either— 35

- (a) beneficiary income under **section HC 6**; or
- (b) trustee income under **section HC 7**.

Defined in this Act: amount, beneficiary income, income, income year, trustee, trustee income

Compare: 2004 No 35 s OB 1 “beneficiary income”, “trustee income”

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## HC 6 Beneficiary income

### *Meaning*

- (1) An amount of income derived in an income year by a trustee of a trust is **beneficiary income** to the extent to which—
  - (a) it vests absolutely in interest in a beneficiary of the trust in the income year; or 10
  - (b) it is paid to a beneficiary of the trust in the income year, or within 6 months after the end of the income year.

### *Exclusions*

- (2) Beneficiary income does not include— 15
  - (a) an amount of income derived by a trustee of a trust in an income year in which the trust is a superannuation fund; or
  - (b) an amount of income derived by a trustee that is income to which **sections CC 3(2)** (Financial arrangements) and **EW 50** (Income when debt forgiven to trustee) apply. 20

### *Applied for benefit of beneficiary*

- (3) For the purposes of **subsection (1)(b)**, an amount paid to a beneficiary includes an amount applied to or for their benefit.

### *When subsection (5) applies*

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- (4) **Subsection (5)** applies when—
  - (a) a trustee is a person with a non-standard income year; and
  - (b) an amount derived by the trustee in the income year is also beneficiary income. 30

*Deriving beneficiary income in same year as trustee*

- (5) The beneficiary is treated as having derived the beneficiary income during the same tax year as that corresponding to the trustee's income year.

Defined in this Act: amount, beneficiary income, financial arrangement, income, income year, pay, superannuation fund, tax year, trustee 5

Compare: 2004 No 35 ss OB 1 "beneficiary income", OF 2(2), (3)

**HC 7 Trustee income***Meaning*

- (1) To the extent to which it is not beneficiary income, an amount of income derived by a trustee of a trust is **trustee income**. 10

*Minors' beneficiary income*

- (2) An amount of beneficiary income to which **section HC 33** applies that is derived in an income year by a person who is a minor is treated as if it were trustee income for the purposes of— 15
- (a) determining the tax rate that applies; and
  - (b) paying the tax; and
  - (c) providing returns of income.

*Exclusions from corpus* 20

- (3) The amount that is the market value of a property settlement referred to in **section HC 4(3) to (5)** is treated as trustee income of the trustee of the recipient trust derived in the income year of settlement.

Defined in this Act: amount, beneficiary income, corpus, income, income year, minor, pay, return of income, settlement, trustee, trustee income 25

Compare: 2004 No 35 ss HH 1(7), HH 3A(1)(a), OB 1 "trustee income"

**HC 8 Amounts received after person's death***When this section applies*

- (1) This section applies when a trustee of an estate of a deceased person receives an amount in an income year that is not income that the person derived during their lifetime, but would have been included in the person's income had they been alive when it was received. 30

*Income*

- (2) The amount is treated under **section CV 12** (Trustees: amounts received after person's death) as income derived by the trustee in the income year.

Defined in this Act: amount, income, income year, trustee

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Compare: 2004 No 35 s HH 8

*Classification of trusts***HC 9 Classifying trusts**

A trust is classified at the time it makes a distribution as—

- (a) a complying trust under **section HC 10**: 10  
 (b) a foreign trust under **section HC 11**:  
 (c) a non-complying trust under **section HC 12**.

Defined in this Act: complying trust, distribution, foreign trust, non-complying trust

**HC 10 Complying trusts**

*Requirements for complying trusts* 15

- (1) A trust is a **complying trust** in relation to a distribution if—
- (a) the following requirements are met for the life of the trust up to the time of distribution:
- (i) no trustee income derived includes an amount of non-resident passive income, or non-residents' foreign-sourced income, or exempt income under **section CW 53** (Foreign-sourced amounts derived by trustees); and 20
- (ii) the tax obligations relating to the trustee's income tax liability have been satisfied for every tax year; or 25
- (b) it is a superannuation fund.

*Foreign trust choosing to become complying trust*

- (2) A foreign trust may become a complying trust to the extent set out in **section HC 30** by— 30
- (a) an election being made under **section HC 30(2)**—
- (i) before the time of distribution; and
- (ii) within 12 months of the date on which the settlor referred to in **section HC 30(1)** becomes resident in New Zealand; and 35



- (b) the requirements of **subsection (1)(a)** are met for trustee income derived after the election date.

*Life of trust*

- (3) The life of the trust referred to in **subsection (1)(a)** includes every income year from the start of the income year in which a settlement was first made on the trust up to the time of the distribution. 5

*Complying trusts: meeting requirements*

- (4) For the purposes of **subsection (1)(a)**,—
- (a) **section HC 29(6)** does not apply in determining whether the requirements are met: 10
- (b) the requirements may be met by a person who has made an election under **section HC 33**.

Defined in this Act: amount, complying trust, distribution, exempt income, foreign-sourced amount, foreign trust, income tax liability, non-resident passive income, non-residents' foreign-sourced income, resident in New Zealand, settlement, settlor, superannuation fund, tax year, trustee, trustee income 15

Compare: 2004 No 35 ss HH 2(2), HH 4(5) proviso, OB 1 “foreign trust”, “qualifying trust”

**HC 11 Foreign trusts** 20

A trust is a **foreign trust** in relation to a distribution if no settlor is resident in New Zealand at any time in the period that—

- (a) starts on the later of 17 December 1987 and the date on which a settlement was first made on the trust; and 25
- (b) ends on the date of distribution.

Defined in this Act: distribution, foreign trust, resident in New Zealand, settlement, settlor

Compare: 2004 No 35 s OB 1 “foreign trust”

**HC 12 Non-complying trusts** 30

A trust is a **non-complying trust** in relation to a distribution if it is neither a complying trust nor a foreign trust.

Defined in this Act: complying trust, distribution, foreign trust, non-complying trust

Compare: 2004 No 35 s OB 1 “non-qualifying trust”

**HC 13 Charitable trusts** 35

In the trust rules, a trust is a **charitable trust** in an income year if—

- (a) all income derived or accumulated by the trustee in that or in any earlier income year is held for charitable purposes; and
  - (b) any income derived by the trustee in the income year is exempt income under either **section CW 40(1)** (Charities: non-business income) or **CW 41(1)** (Charities: business income). 5
- Defined in this Act: business, charitable purpose, charitable trust, exempt income, income, income year, trust rules, trustee
- Compare: 2004 No 35 s HH 1(5), (6) 10

### *Distributions from trusts*

#### **HC 14 Distributions from trusts**

##### *Transfers of value*

- (1) A trustee makes a **distribution** when the trustee transfers value to a person because of a relationship between the trust and the person as a beneficiary of the trust. 15

##### *Transfers to other trusts included*

- (2) A distribution includes a settlement by a trustee on another trust—
  - (a) if the amount or the property being settled would have been beneficiary income of, or a taxable distribution to, a beneficiary, had it been distributed at the time to a beneficiary resident in New Zealand; or 20
  - (b) when **sections EW 50 or EZ 39** (which relate to forgiveness of debt) applies, if the property being settled is an amount forgiven and treated as paid as described in **section EW 44(1) or (2)** (Consideration when debt forgiven for natural love and affection) or **EZ 39(1)**. 25

##### *When distribution made*

- (3) A distribution is made when what is transferred— 30
  - (a) vests absolutely in interest in the person; or
  - (b) is paid to the person; or
  - (c) is provided to the person; or
  - (d) is applied for the benefit of the person.

*Manner of distribution*

- (4) A distribution may be made directly or indirectly, or by 1 transaction or a number of transactions, whether related, connected or otherwise.

*Nil value of beneficiary relationship*

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- (5) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value.

Defined in this Act: beneficiary income, distribution, pay, resident in New Zealand, settlement, taxable distribution, transfer of value, trustee

Compare: 2004 No 35 s OB 1 “distribution”

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### **HC 15 Taxable distributions from non-complying and foreign trusts**

*When subsection (2) applies*

- (1) **Subsection (2)** applies for a trust that is a non-complying trust at the time a distribution to a beneficiary is made.

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*Taxable distributions: non-complying trusts*

- (2) The distribution is a **taxable distribution** to the extent to which it is not a distribution of—
- (a) beneficiary income; or
  - (b) a part of the corpus of the trust; or
  - (c) a payment or a transaction that represents a distribution of the corpus of the trust.

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*When subsection (4) applies*

- (3) **Subsection (4)** applies for a trust that is a foreign trust at the time a distribution to a beneficiary is made.

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*Taxable distributions: foreign trusts*

- (4) The distribution is a **taxable distribution** to the extent to which it is not a distribution of—
- (a) beneficiary income; or
  - (b) a part of the corpus of the trust; or
  - (c) a profit from the realisation of a capital asset or another capital gain; or
  - (d) a payment or a transaction that represents a distribution of either the corpus of the trust referred to in **paragraph (b)** or a capital gain referred to in **paragraph (c)**.

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*Determining amount of gain*

- (5) For the purposes of **subsection (4)(c)**,—
- (a) the profit does not include—
- (i) a gain that must be taken into account for the purposes of determining an income tax liability; 5  
or
- (ii) a capital gain derived by the trustee through a transaction or series of transactions between the trustee and a person associated with them under the parts of **subpart YB** (Associated persons and nominees) that apply for the purposes of the whole Act, excluding the 1973, 1988, and 1990 version provisions: 10
- (b) the amount of the profit is determined after subtracting any capital loss that the trustee incurs in the income year in which the amount was derived. 15

*Amounts not subject to ordering rule*

- (6) To the extent to which a distribution is made from a trust that is not a complying trust by disposing of property at less than market value or providing services to a beneficiary at less than market value, the distribution is a taxable distribution and is not subject to the ordering rule in **section HC 16**. 20

*Inadequate records*

- (7) If the records of a trust that is not a complying trust do not allow an accurate determination of the elements of a distribution under **section HC 16**, the distribution is a taxable distribution. 25

Defined in this Act: 1973 version provisions, 1988 version provisions, 1990 version provisions, amount, associated person, beneficiary income, corpus, distribution, foreign trust, income tax liability, income year, non-complying trust, pay, superannuation fund, taxable distribution, trustee, trustee income 30

Compare: 2004 No 35 ss HH 6(2)(c), (3), OB 1 “taxable distribution”

## **HC 16 Ordering rule for distributions from non-complying and foreign trusts**

*When this section applies* 35

- (1) This section applies for the purposes of the trust rules when a trustee of a non-complying trust or a foreign trust makes a distribution in an income year to a beneficiary. **Subsections (6) and (7)** override this subsection.

*Order of elements of distribution*

- (2) The distribution is treated as consisting of the following elements in the following order:
- (a) first, an amount of income that the trustee derives in the income year: 5
  - (b) second, an amount of income, other than beneficiary income, that the trustee has derived in an earlier income year:
  - (c) third, an amount that the trustee derives in the income year from the realisation of a capital asset of the trust or another capital gain: 10
  - (d) fourth, an amount that the trustee has derived in an earlier income year from the realisation of a capital asset of the trust or another capital gain:
  - (e) last, the corpus of the trust. 15

*Order and elements*

- (3) In **subsection (2)**,—
- (a) an amount must not be treated as included in the distribution if the amount has been treated under this section as being included in an earlier or contemporaneous distribution from the trust: 20
  - (b) the paragraphs are applied in order, and the next paragraph applies only to the extent to which the amount of the distribution is more than the cumulative amounts described in that paragraph and the preceding paragraphs. 25

*Deductions and capital losses subtracted*

- (4) For the purposes of **subsection (2)**,—
- (a) in **paragraphs (a) and (b)**, the amount of income is determined after subtracting the amount of a deduction that is taken into account in the income year in the calculation of net or taxable income for the corresponding tax year: 30
  - (b) in **paragraphs (c) and (d)**, the amount is determined after subtracting the amount of a capital loss that the trustee incurs in the income year. 35

*Transactions that are not genuine*

- (5) In the determination of the elements of a distribution to a beneficiary (**beneficiary A**), no amount of income or capital gain derived by the trustee of the trust is treated as distributed to another beneficiary of the trust (**beneficiary B**) if the effect is that some or all of the distribution to beneficiary A would be treated as not being a taxable distribution, unless the distribution to beneficiary B meets all the following requirements: 5
- (a) it is a genuine transaction entered into and carried out in good faith; and 10
  - (b) it places the amount beyond the possession and control of the trustee in their capacity as trustee; and
  - (c) it does not itself constitute a settlement.

*Exclusions: terms of trust*

- (6) This section does not apply to the following distributions which are instead treated as consisting of the amount that reflects the terms of the trust or the terms of the exercise of the trustee's discretion: 15
- (a) a distribution by the trustee of a complying trust which is treated as exempt income under **section CW 52** (Distributions from complying trusts), unless an election to pay income tax on trustee income has been made for the purposes of **section HZ 2** (Trusts that may become complying trusts); or 20
  - (b) a distribution from a non-discretionary trust— 25
    - (i) created by will or codicil, or by an order of court varying or modifying the provisions of a will or codicil; or
    - (ii) created on an intestacy or partial intestacy; or
    - (iii) on which no settlement has been made after 17 December 1987; or 30
  - (c) a distribution from a trust other than a non-complying trust that is settled by a natural person who makes an election under **section HC 30(2)**.

*Exclusions: taxable distributions*

- (7) This section does not apply to a distribution described in **section HC 15(6)**. 35

*Meaning of non-discretionary trust*

- (8) In this section, a **non-discretionary trust** is a trust in relation to which the trustee has no discretion as to the source, nature, and amount of distributions to beneficiaries, including but not limited to the classification of trust property as capital or income. 5

Defined in this Act: amount, beneficiary income, complying trust, corpus, deduction, distribution, foreign trust, income year, net income, New Zealand resident, non-discretionary trust, pay, settlement, tax year, taxable distribution, taxable income, trust rules, trustee, trustee income 10

Compare: 2004 No 35 s HH 6(1), (2), (4)

***Tax treatment of amounts that beneficiaries derive from trusts*****HC 17 Amounts derived as beneficiary income***Non-minor beneficiaries* 15

- (1) An amount that a person derives in an income year as beneficiary income is income of the person under **section CV 13(a)** (Amounts derived from trusts), except to the extent to which it is beneficiary income to which **section HC 35** applies.

*Minor beneficiaries* 20

- (2) **Subsection (1)** does not apply to beneficiary income derived by a minor. The beneficiary income is excluded income of the minor, and treated as trustee income under **sections CX 55** (Amounts derived by minors from trusts) and **HC 35**.

Defined in this Act: amount, beneficiary income, income year, minor 25

Compare: 2004 No 35 ss HH 3(1), HH 3A(1)(b)

**HC 18 Taxable distributions from foreign trusts**

An amount that a person derives in an income year as a taxable distribution from a foreign trust is income of the person under **section CV 13(b)** (Amounts derived from trusts). 30

Defined in this Act: amount, foreign trust, income, income year, taxable distribution

Compare: 2004 No 35 s HH 3(1)

**HC 19 Taxable distributions from non-complying trusts***Excluded income*

- (1) An amount that a person derives in an income year as a taxable distribution from a non-complying trust is excluded income of the person under **section CX 56** (Taxable distributions from non-complying trusts). 5

*Relationship with other provisions*

- (2) Despite **subsection (1)**, **section BF 1(b)** (Other obligations) applies to impose income tax on the amount of the taxable distribution. **Section HC 22** may apply to reduce the amount of the taxable distribution, and **section HC 34** sets the rate of tax for the purposes of **section BF 1(b)**. 10

Defined in this Act: amount, exempt income, income tax, income year, non-complying trust, taxable distribution

Compare: 2004 No 35 s HH 3(1), (4) 15

**HC 20 Distributions from complying trusts**

An amount that a person derives in an income year is exempt income of the person under **section CW 52** (Distributions from complying trusts) if—

- (a) the amount is a distribution from a complying trust other than a community trust; and 20  
 (b) the amount is not beneficiary income.

Defined in this Act: amount, beneficiary income, community trust, complying trust, distribution, exempt income, income year

Compare: 2004 No 35 s HH 3(5) 25

**HC 21 Distributions from community trusts***What this section applies to*

- (1) This section applies when a community trust distributes an amount other than beneficiary income to a person.

*Exclusion* 30

- (2) **Subsection (1)** does not apply to the extent to which the amount represents—  
 (a) income derived by the trustee in or before the 2003–04 income year:  
 (b) corpus of the trust: 35  
 (c) a capital gain of the trust:



- (d) a distribution, settlement, or dividend made or paid to the trust in the 2004–05 or 2005–06 income year on the winding up of a trust or company, if—
- (i) the community trust provided the corpus of the trust and the trust would have been run for charitable purposes but for the distribution, settlement, or dividend: 5
- (ii) the company is wholly-owned by the community trust and would have been established and run exclusively for charitable purposes but for the distribution, settlement, or dividend. 10

*Income*

- (3) Despite **sections HC 15 and HC 20**, the amount is income of the person under **section CV 14** (Distributions from community trusts) if the person receives the amount as beneficiary of the trust. 15

Defined in this Act: amount, beneficiary income, charitable purpose, community trust, company, corpus, distribution, dividend, income, income year, pay, settlement, trustee, trustee income

Compare: 2004 No 35 s HH 3(5A) 20

## **HC 22 Use of tax losses to reduce taxable distributions from non-complying trusts**

*When this section applies*

- (1) This section applies in an income year when a person—
- (a) has, for the corresponding tax year, a tax loss component or loss balance to which **sections IA 2 to IA 10** (which relate to the use of tax losses) apply; and 25
- (b) derives a taxable distribution from a non-complying trust to which **section HC 19** applies.

*Reducing taxable distribution*

- (2) The person may reduce the amount of the taxable distribution by an amount calculated using the formula— 30

$$\frac{\text{tax loss} \times \text{tax rate}}{\text{distribution rate.}}$$

*Definition of items in formula*

- (3) In the formula,— 35

- (a) **tax loss** is the amount of a tax loss component or loss balance that the person chooses to use:
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 3** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 5
- (c) **distribution rate** is the basic rate of income tax set out in **schedule 1, part A, clause 4**.

*Loss no longer available*

- (4) If a person takes an amount of a tax loss or a loss balance into account under this section, the amount cannot be subtracted from their net income for the corresponding tax year for the purposes of **section IA 2(2)** (Tax losses). 10

Defined in this Act: amount, basic rate, income tax, income year, loss balance, non-complying trust, tax loss, tax year, taxable distribution, taxable income, trustee

Compare: 2004 No 35 s HH 3(4) 15

### HC 23 Temporary absences of beneficiaries

*When this section applies*

- (1) This section applies when—
  - (a) a person who is a beneficiary of a trust and who is resident in New Zealand stops being resident; and 20
  - (b) within a period of 5 years from the date of the end of their residence, they become resident in New Zealand again.

*Income derived during the period*

- (2) The person is treated as deriving income under **section CV 15** (Amounts derived from trusts while person absent from New Zealand) to the extent to which they would have been treated as deriving an amount of beneficiary income or a taxable distribution from a foreign trust or a non-complying trust if they had remained in New Zealand for the period of their absence. 25  
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*Allocation*

- (3) The amount is treated as derived on the day on which the person becomes resident in New Zealand again. 35

Defined in this Act: amount, beneficiary income, foreign trust, income, non-complying trust, resident in New Zealand, taxable distribution

Compare: 2004 No 35 s HH 3(3)

### *Tax treatment of trustee income*

#### **HC 24 Trustees' obligations**

##### *Liability as individual for trustee income*

- (1) A trustee must satisfy the income tax liability for their taxable income as if they were an individual beneficially entitled to the trustee income. 5

##### *No tax credits, cash basis treatment*

- (2) In determining the income tax liability, the trustee is not entitled to—
- (a) have a tax credit under **Part L or M** (which relate to tax credits); or 10
- (b) be a cash basis person, unless **section EW 60** (Trustee of deceased's estate) applies.

##### *Beneficiary income of minors*

- (3) **Section HC 35** applies to treat beneficiary income derived by a minor as if it were trustee income. 15

##### *Calculating trustees' deductions*

- (4) **Section DV 9(2)** (Trusts) applies for the purposes of calculating a trustee's deductions.

##### *Superannuation funds*

- (5) **Sections CX 40, and DV 1 to DV 4** (which relate to superannuation funds) override this section. 20

Defined in this Act: beneficiary income, cash basis person, deduction, income tax liability, income year, superannuation fund, taxable income, trustee, trustee income

Compare: 2004 No 35 ss DV 9(2), HH 4(1), (2)

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#### **HC 25 Foreign-sourced amounts: non-resident trustees**

##### *When this section applies*

- (1) This section applies when a non-resident trustee derives in an income year a foreign-sourced amount that would be assessable income if derived by a person resident in New Zealand. 30

##### *Trustee income*

- (2) Despite **section BD 1(4)(a), (b), and (5)(c)** (Income, exempt income, excluded income, non-residents' foreign-sourced income, and

assessable income), the amount is assessable income of the trustee if, at any time in the income year,—

- (a) a settlor of the trust is a New Zealand resident who is not a transitional resident; or
- (b) the trust is a superannuation fund; or 5
- (c) the trust is a testamentary trust or an inter vivos trust, of which—
  - (i) a trustee is resident in New Zealand; and
  - (ii) a settlor died resident in New Zealand (whether or not they died in the income year). 10

*First exception*

- (3) **Subsection (2)** does not apply if—
  - (a) the trustee is resident outside New Zealand at all times in the income year; and
  - (b) no settlement has been made on the trust after 17 December 1987 and, if an election has been made under **section HZ 2** (Trusts that may become complying trusts), the election has not been made by the trustee. 15

*Second exception*

- (4) **Subsection (2)** does not apply if— 20
  - (a) the trustee is resident outside New Zealand at all times in the income year; and
  - (b) when a settlement has been made on the trust after 17 December 1987, it was made only by a settlor who is not resident in New Zealand— 25
    - (i) at the date of the settlement; and
    - (ii) at any time between 17 December 1987 and the date of settlement.

*Extent to which subsections (3) and (4) apply*

- (5) **Subsections (3) and (4)** do not— 30
  - (a) affect a settlor's income tax liability under the trust rules;
  - (b) apply to determine whether the tax obligations in relation to the trustee's income tax liability are met for the purposes of **section HC 10(1)(a)(ii)** and meeting the requirements for a complying trust. 35

*Treatment of non-resident trustee in other provisions*

- (6) For the purpose only of calculating the taxable income of a trustee referred to in **subsection (2)**, and not otherwise, the trustee is treated as resident in New Zealand for the purposes of— 5
- (a) **sections EW 9 and EW 11** (which relate to financial arrangements):
  - (b) **section LJ 2** (Tax credits for foreign income tax):
  - (c) **section OE 1** (General rules for companies and other persons with branch equivalent tax accounts): 10
  - (d) the international tax rules.

Defined in this Act: amount, assessable income, beneficiary income, branch equivalent tax account, complying trust, excluded income, exempt income, FIF rules, financial arrangement, foreign-sourced amount, income, income tax liability, income year, international tax rules, non-resident, non-residents' foreign-sourced income, resident in New Zealand, settlement, settlor, superannuation fund, taxable income, transitional resident, trust rules, trustee 15

Compare: 2004 No 35 s HH 4(3), (3A), (6) provisos

**HC 26 Foreign-sourced amounts: resident trustees***Exempt income* 20

- (1) A foreign-sourced amount that a New Zealand resident trustee derives in an income year is exempt income under **section CW 53** (Foreign-sourced amounts derived by trustees) if—
- (a) no settlor of the trust is at any time in the income year a New Zealand resident who is not a transitional resident; 25  
and
  - (b) the trust is not—
    - (i) a superannuation fund; or
    - (ii) a testamentary trust or an inter vivos trust of which a settlor died resident in New Zealand 30  
(whether or not they died in the income year).

*When subsection (3) applies*

- (2) **Subsection (3)** applies for an income year to a resident foreign trustee of a foreign trust to which sections 22(2)(fb) and (m), and 59B of the Tax Administration Act 1994 applies. 35

*When knowledge offence committed*

- (3) **Subsection (1)** does not apply if the trustee—
- (a) is not a resident foreign trustee of an approved organisation for the income year; and

- (b) is convicted of an offence under section 143A of the Tax Administration Act 1994; and
- (c) has committed the offence in connection with information relating to the income year.

*Exception*

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- (4) **Subsection (3)** does not apply to an offence under section 143A(1)(b) if the information is supplied to the Commissioner after the conviction is entered.

Defined in this Act: exempt income, foreign-sourced amount, income year, New Zealand resident, resident foreign trustee, settlor, superannuation fund, transitional resident, trustee

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Compare: 2004 No 35 s HH 4(3B), (3BB), (3BC)

*Settlors and their liabilities***HC 27 Who is a settlor?***When this section applies*

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- (1) This section applies for the purposes of—
- (a) the trust rules; and
  - (b) the consolidation rules; and
  - (c) **section CW 58** (New Zealand companies operating in Niue); and
  - (d) **section YA 1** (Definitions), the definition of **settlement**; and
  - (e) **subpart YB** (Associated persons and nominees).

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*Meaning of settlor*

- (2) A **settlor** of a trust is a person who, at any time,—

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- (a) transfers value—
  - (i) to the trust; or
  - (ii) for the benefit of the trust; or
  - (iii) on terms of the trust; or
- (b) provides financial assistance to the trust or for the benefit of the trust with an obligation to pay on demand, and the right to demand is not exercised or is deferred; or
- (c) is treated as a settlor under **section HC 28**.

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*Trusts for retirement benefits for employees*

- (3) Despite **subsection (2)**, this section does not apply for the purposes of the trust rules to a transfer of value that a person

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resident in New Zealand makes as an employer for the benefit of 1 or more employees, if the trust—

- (a) is established or created mainly to provide retirement benefits to natural persons; and
- (b) is neither a foreign superannuation scheme nor a superannuation fund. 5

*Indirect settlement*

- (4) A person may make the transfer or provision in **subsection (2)** directly or indirectly, or by 1 transaction or a number of transactions, whether connected or otherwise. 10

*Nil value of beneficiary relationship*

- (5) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value. 15
- Defined in this Act: associated person, consolidation rules, employee, employer, foreign superannuation scheme, pay, resident in New Zealand, settlement, settlor, superannuation fund, superannuation scheme, transfer of value, trust rules

Compare: 2004 No 35 ss HH 1(10), OB 1 “settlor”

## HC 28 Activities treated as those of settlor

*When this section applies*

- (1) This section applies for the purposes of the trust rules to describe certain activities of a person that result in the person being treated as a settlor. 20

*Avoidance*

- (2) A person is treated as a settlor if, in relation to a trust,—
  - (a) they act, refrain from acting, or enter into a transaction or a series of transactions; and 25
  - (b) what is done or not done has the effect of defeating the intent and application of the trust rules.

*Shareholders in CFCs*

- (3) A person is treated as a settlor of a trust if a CFC settles an amount on a trust, and the person has a control interest of 10% or more in the CFC. 30

*Shareholders in companies*

- (4) A person is treated as a settlor of a trust if—
  - (a) a company settles an amount on the trust; and 35

- (b) the company would have been a CFC at the date of settlement if it had been a foreign company at the time; and
- (c) the person would be treated as having a control interest of 10% or more in the company, if the company had been a foreign company. 5

*Second trusts*

- (5) A person is treated as a settlor of a trust (the **sub-trust**) if—
  - (a) they are a settlor of a trust (the **head-trust**); and
  - (b) a trustee of the head-trust settles an amount on the sub-trust, or makes a distribution to, or on terms of the sub-trust. 10

*Control over trustee or settlor*

- (6) A person is treated as a settlor of a trust if—
  - (a) they acquire, directly or indirectly, rights or powers in relation to a trustee or a settlor of the trust; and 15
  - (b) the acquisition has the purpose or effect of enabling them to require the trustee to treat them, or a nominee, as a beneficiary of the trust.

Defined in this Act: amount, business, CFC, company, control interest, distribution, foreign company, nominee, settlement, settlor, trust rules, trustee 20

Compare: 2004 No 35 ss HH 1(1)–(4), (8), (10), OB 1 “settlor”

**HC 29 Settlers’ liability to income tax***When this section applies*

- (1) This section applies to a person who makes a settlement to or for the benefit of a trust after 17 December 1987, and the settlor is resident in New Zealand in an income year. It applies whether or not they settled property on the trust on or before that date. **Subsections (3) and (4)** override this subsection. 25

*Liable as agent* 30

- (2) If a trustee of the trust derives trustee income in the income year, the settlor is liable as agent of the trustee for income tax payable by the trustee. For a trust with more than 1 settlor, the liability is joint and several. However, this subsection does not apply to income tax that the trustee is liable for as agent under **section HC 32**. 35



*Exclusion: resident trustee*

- (3) This section does not apply if the trust has a resident trustee for the full income year or, if the first settlement on the terms of the trust is made during an income year, from the day on which the settlement is made to the end of the income year. 5

*Exclusion: trust types*

- (4) This section does not apply to the settlor of—
- (a) a charitable trust; or
  - (b) a superannuation fund; or
  - (c) a trust to the extent to which trustee income is derived from the settlor's remitting an amount under a financial arrangement to which **section EW 31 or EZ 38** (which relate to base price adjustments) applies. 10

*Exclusion: settlor not resident at time of settlement*

- (5) This section does not apply if the settlor is a natural person who, unless they make an election under **section HC 33**,—
- (a) is not resident in New Zealand at the time of any settlement on the trust; and
  - (b) had not after 17 December 1987 previously been resident in New Zealand. 15
- 20

*Exclusion: other settlor more appropriately liable*

- (6) This section does not apply to the extent to which the settlor establishes, through full disclosure to the Commissioner of the settlements made, that another person who has settled property on the trust should be liable, having regard to the respective settlements made. 25

*Limited effect of disclosure*

- (7) **Subsection (6)** does not apply to determine whether the tax obligations in relation to the trustee's income tax liability are met for the purposes of **section HC 10(1)(a)(ii)** and meeting the requirements for a complying trust. 30

Defined in this Act: agent, amount, charitable trust, Commissioner, financial arrangement, income tax, income tax liability, income year, pay, resident in New Zealand, settlement, settlor, superannuation fund, trustee, trustee income

Compare: 2004 No 35 s HH 4(4), (5) 35

### *Treatment of transition situations*

#### **HC 30 Treatment of foreign trusts when settlor becomes resident**

##### *What this section applies to*

- (1) This section applies for the purposes of **section HC 15** and the definition of **taxable distribution** when— 5
- (a) a settlor of a trust is a natural person who on a day (the **transition date**)—
- (i) becomes resident in New Zealand and is not a transitional resident: 10
- (ii) stops being a transitional resident and continues to be a New Zealand resident; and
- (b) the trust would be a foreign trust in relation to a distribution if a distribution were made immediately before the settlor became resident. 15

##### *Choosing to satisfy tax liability*

- (2) A settlor, trustee, or beneficiary of the trust may choose to satisfy the income tax liability of the trustee under **section HC 33**. They must make the election by the election expiry date.

##### *Tax consequences of making election*

- (3) If an election under **subsection (2)** is made, the trust is treated as follows: 20
- (a) as a foreign trust to the extent to which the distribution consists of an amount derived by the trustee before the date of the election: 25
- (b) as a complying trust to the extent to which the distribution consists of an amount derived by the trustee on or after the date on which the election is made, if the requirements of **section HC 10(1)(a)** are met for the trustee income derived after the date of the election: 30
- (c) as a non-complying trust if the election is made but the requirements of **section HC 10(1)(a)** are not met, for any distribution not within **paragraph (a)**.

##### *Tax consequences when no election made*

- (4) If an election under **subsection (2)** is not made, the trust is treated as follows: 35

- (a) as a foreign trust to the extent to which the distribution consists of an amount derived by the trustee before the date of the election:
- (b) as a non-complying trust to the extent to which a distribution consists of an amount derived by the trustee on or after the election expiry date. 5

*Election expiry date*

- (5) In this section, the **election expiry date** is the day that is the first anniversary of the transition date.

*Calculating income derived before election or election expiry date* 10

- (6) For the purposes of **subsections (3) and (4)**, the amount derived in the part of the income year before the person makes the election, or before the election expiry date, as applicable, is at the option of the person either— 15
- (a) the amount actually derived in the part year; or
- (b) an amount calculated using the formula—

$$\begin{array}{r} \text{amount derived in} \\ \text{income year of election} \end{array} \times \frac{\begin{array}{l} \text{days before election date} \\ \text{or election expiry date} \end{array}}{365} \quad 20$$

Defined in this Act: amount, complying trust, distribution, election expiry date, foreign trust, income, income tax liability, income year, non-complying trust, resident in New Zealand, settlor, taxable distribution, transitional resident, trustee 25

Compare: 2004 No 35 s HH 2

***Valuation of property, trading stock, and financial arrangements***

**HC 31 When existing trusts come into tax base**

*When this section applies* 30

- (1) This section applies if, through a change in circumstances, an amount derived by a trustee of a trust on a day in an income year is assessable income when it would not have been assessable income had it been derived before that day. Examples of a change in circumstances are— 35
- (a) a non-resident settlor becomes resident in New Zealand, **section HC 30**:
- (b) a charitable trust loses its charitable status, **section HC 13**.

- Person able to make choice*
- (2) The choice given in **subsections (3) and (4)** is to be made by the person who is liable to satisfy the income tax liability of the trustee.
- Establishing cost of trust property* 5
- (3) For the purposes of this Act, the cost of premises, plant, equipment, and trading stock of the trust at the date of the change in circumstances is either—
- (a) the historical cost of the property or trading stock less accumulated depreciation loss, or other value, no higher than market value, that the trustee used at that date for income tax purposes in a country or territory in which the trustee is liable to pay income tax on trustee income; 10  
or
- (b) the value that would be used at that date under this Act, calculated as if the trustee income derived by the trustee had always been assessable income. 15
- Consideration for financial arrangements*
- (4) For the purposes of this Act, the consideration for a financial arrangement of the trust at the date of the change in circumstances is either— 20
- (a) the market value of the financial arrangement on that date; or
- (b) the value calculated using the formula— 25  

$$\text{consideration paid to person} + \text{expenditure} \\ - \text{consideration paid by person} - \text{income}.$$
- Definition of items in formula*
- (5) In the formula,—
- (a) **consideration paid to person** is the consideration that is paid to the person before the date: 30
- (b) **expenditure** is the expenditure that would have been incurred under the financial arrangements rules before the date:
- (c) **consideration paid by person** is the consideration that is paid by the person before the date: 35
- (d) **income** is the income that would have been derived under the financial arrangements rules before the date.

*Non-resident passive income*

- (6) For the purposes of **subsections (1) and (3)(b)**, assessable income does not include an amount derived only as non-resident passive income.

Defined in this Act: amount, assessable income, business, charitable trust, consideration, depreciation loss, financial arrangement, financial arrangements rules, income, income tax liability, income year, non-resident, non-resident passive income, pay, resident in New Zealand, trading stock, trustee, trustee income

5

Compare: 2004 No 35 s HH 5

***Rate and payment of income tax***

10

**HC 32 Liability of trustee as agent***When this section applies*

- (1) This section applies in an income year when a beneficiary of a trust derives an amount of beneficiary income or a taxable distribution.

15

*Exclusion*

- (2) **Subsection (1)** does not apply to a beneficiary of a community trust.

*Agency*

- (3) In their capacity as agent, the trustee must satisfy the income tax liability of the beneficiary for their beneficiary income and taxable distributions derived.

20

*Relationship to other provisions*

- (4) **Section HD 4(b)** (Treatment of principals) overrides this section.

Defined in this Act: agent, amount, beneficiary income, community trust, income tax liability, taxable distribution, trustee

25

Compare: 2004 No 35 ss HH 3(2), HK 3(1A)

**HC 33 Choosing to satisfy income tax liability of trustee***Election to satisfy tax liability*

- (1) A person who is a trustee, settlor, or beneficiary of a trust may choose to satisfy the income tax liability of the trustee of the trust.

30

*Liability of person making election*

- (2) The person making the election is liable for the income tax payable by the trustee, other than income tax that the trustee is liable for as agent.

*Application of election*

5

- (3) The election under **subsection (1)** may apply either for an income year or from the date on which it is made. It then applies for all following income years.

*Time of providing election*

- (4) The person must notify the Commissioner of an election under **subsection (1)** within the time allowed for filing a return of income for the income year. If **section HC 30** applies, they must give notification by the election expiry date.

10

Defined in this Act: agent, Commissioner, income tax, income tax liability, income year, pay, return of income, settlor, trustee

15

Compare: 2004 No 35 s HH 4(7)

**HC 34 Taxable distributions from non-complying trusts***Rate of tax*

- (1) Income tax is imposed on a taxable distribution derived by a person in an income year from a non-complying trust under **section BF 1(b)** (Other obligations) at the basic rate set out in **schedule 1, part A, clause 4** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits).

20

*Due date*

- (2) The income tax is payable on the person's payment date for terminal tax under **section RA 13** (Payment dates for terminal tax) for the corresponding tax year.

25

Defined in this Act: basic rate, income tax, non-complying trust, taxable distribution

Compare: 2004 No 35 s HH 3(4)

**HC 35 Beneficiary income of minors**

30

*When this section applies*

- (1) This section applies when a person who is a minor derives an amount of beneficiary income from a trust in an income year. **Subsection (4)** and **sections HC 36 and HC 37** override this subsection.

35

*Treatment of amount derived*

- (2) The amount is—
- (a) excluded income of the minor under **section CX 55** (Amounts derived by minors from trusts):
  - (b) treated as trustee income for the purposes of determining the rate of tax that applies, who pays the relevant tax, and who provides the return of income. 5

*Meaning of minor*

- (3) For the purposes of this section, and **sections HC 36, HC 37, LE 4 and LF 2** (which relate to the treatment of tax credits of beneficiary minors), a **minor** is a natural person resident in New Zealand who is under 16 years of age on the trust's balance date for the income year. 10

*Exclusions*

- (4) This section does not apply— 15
- (a) if the total amount of beneficiary income that the minor derives in the income year is less than \$1,000; or
  - (b) to beneficiary income derived—
    - (i) from a trust settled in the way described in **section HC 36:** 20
    - (ii) from a testamentary trust described in **section HC 37:**
    - (iii) from a Maori authority:
    - (iv) directly from a group investment fund:
    - (v) by a person for whom a child disability allowance is paid under the Social Security Act 1964. 25

*Relationship with other provisions*

- (5) This section overrides **sections HC 5, HC 18 to HC 20, HC 22, HC 23, and HC 32.** 30
- Defined in this Act: amount, beneficiary income, distribution, excluded income, group investment fund, imputation credit, income year, Maori authority, minor, pay, resident in New Zealand, return of income, trustee, trustee income

Compare: 2004 No 35 ss HH 3A–HH 3C, HH 3E, HH 3F(2), (2A)

**HC 36 Trusts and minor beneficiary rule***Trusts excluded from application of minor beneficiary rule*

- (1) **Section HC 35(2)** does not apply to an amount of beneficiary income derived by a minor if all settlements on the trust were made by— 5
- (a) a person who is neither a relative or a guardian of the minor, nor a person associated with a relative or a guardian; or
  - (b) a person who is a relative, guardian, or a person associated with a relative or guardian, if— 10
    - (i) the settlor is acting as agent of the minor and has received the property from a person other than a relative, guardian, or their associate; or
    - (ii) the settlor is required by a court order to pay damages or compensation to the minor; or 15
    - (iii) the minor is a protected person, as defined in section 2 of the Domestic Violence Act 1995, in relation to a protection order, and the settlement, whether made jointly with another person or not, is made before the protection order is made or during the time the order is in force. 20

*When some settlements do not meet requirements*

- (2) **Subsection (3)** applies when more than 1 settlement is made on a trust, and 1 or more but not all settlements meet the requirements of **subsection (1) or section HC 37(2)**. 25

*Small additional settlements permitted*

- (3) **Section HC 35(2)** does not apply to an amount of beneficiary income derived by a minor if the only settlements that do not meet the requirements are made through—
- (a) the disposal for less than market value of property whose total value is no more than \$5,000 at the end of the trust's income year, valuing each settlement at the date of settlement; or 30
  - (b) providing financial assistance for less than market value in the form of a loan whose total value is no more than \$1,000 on any day in the trust's income year. 35



*Exclusion if significant services provided to trust*

- (4) **Subsection (3)** does not apply if services are provided to the trust by a relative, guardian, or associated person, unless those services are incidental to the operation of the trust. Examples of incidental services are bookkeeping, accounting, or trustee services. 5

*Some definitions*

- (5) In this section,—
- associated person** or **person associated** does not include a person associated only under **sections OC 9 to OC 11** (which refer to relatives who are treated as being associated persons) 10
- financial assistance** may include assistance through a loan, guarantee, security, or in another way, and financial assistance is treated as having been provided to, or for the benefit of, a trust for less than market value if— 15
- (a) the assistance is provided at below market rates; or
- (b) an amount payable for the assistance is payable on demand and the right to demand is not exercised or is deferred
- guardian** has the meaning set out in section 15 of the Care of Children Act 2004, and persons are connected by guardianship if 1 is the guardian of the other, but guardian does not include a guardian appointed under— 20
- (a) section 110(1)(a) to (d) of the Children, Young Persons, and their Families Act 1989; or 25
- (b) section 31 of the Care of Children Act 2004; or
- (c) section 53 of the Public Trust Office Act 1957 by a court order; or
- (d) section 7(4) of the Adoption Act 1955
- relative** means a person referred to in **paragraph (c)** of the definition of **relative** in **section YA 1** (Definitions) extended to include being in a marriage, civil union, or de facto relationship with a person connected to the other through adoption, as described in **paragraph (c)(iv)**, or guardianship. 30
- Defined in this Act: agent, amount, associated person, beneficiary income, financial assistance, guardian, income year, minor, pay, relative, settlement, settlor, trustee 35
- Compare: 2004 No 35 ss HH 3C(1)(a)–(d), (2), (3), HH 3D, HH 3F

**HC 37 Testamentary trusts and minor beneficiary rule***Testamentary trusts not subject to minor beneficiary rule*

- (1) **Section HC 35(2)** does not apply to an amount of beneficiary income derived by a minor if all the settlements on the trust were made under a will, codicil, intestacy, or court variation and— 5
- (a) the minor is alive within 12 months of the date of the settlor's death; or
  - (b) the minor has a brother, sister, half-brother, or half-sister alive within 12 months of the date of the settlor's death. 10

*Small additional settlements permitted*

- (2) **Section HC 36(3)** may apply to extend the application of this exemption. 15
- Defined in this Act: beneficiary income, minor, settlement, settlor
- Compare: 2004 No 35 s HH 3C(1)(e)

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*Introductory provisions***HD 1 What this subpart does***When this subpart applies*

- |     |  |    |
|-----|--|----|
| (1) | This subpart sets out the circumstances in which a person is treated for the purposes of this Act and the Tax Administration Act 1994 as an agent of another person in relation to the tax obligations of that other person. | 20 |
|-----|--|----|

*Provisions relating to agents*

- |     |   |    |
|-----|---|----|
| (2) | The following provisions in other subparts of this Act set up certain agency relationships for income tax purposes, or provide certain tax consequences and requirements of an agency relationship: | 25 |
| (a) | <b>section EY 49(5)</b> (Non-resident life insurers becoming resident):   |    |
| (b) | <b>sections FM 34(2)</b> (Nominated companies):   | 30 |
| (c) | <b>sections FN 6(3)</b> (Nominated companies):  |    |
| (d) | <b>section HA 8</b> (Shareholders' personal liability):   |    |
| (e) | <b>section HC 29(3)</b> (Settlors' liability to income tax):  |    |
| (f) | <b>section HC 32</b> (Liability of trustee as agent):   |    |
| (g) | <b>section LB 2</b> (Tax credits for provisional tax payments):   | 35 |
| (h) | <b>section RA 9</b> (Treatment of amounts withheld as received):  |    |

- (i) **sections RE 4, RE 5, and RE 7 to RE 9** (which relate to requirements for agents or trustees to pay RWT):
- (k) **section RE 22** (When payment treated as non-resident passive income):
- (l) **section RF 4** (Non-resident passive income received by agents and others): 5
- (m) **section YA 1** (Definitions), the definition of **offered or entered into in New Zealand**.
- Defined in this Act: agent, offered or entered into in New Zealand
- Compare: 2004 No 35 s HK 1(1) 10
- HD 2 Joint liability of principal and agent for tax obligations**
- A principal and an agent are jointly and severally liable for the tax obligations relating to the agency, and the Commissioner may issue an assessment for the same tax to both an agent and their principal. The liability of 1 remains despite an assessment of the other. 15
- Defined in this Act: agent, assessment, Commissioner
- Compare: 2004 No 35 ss HK 3(2), HK 7(1)
- HD 3 Agents' duties and liabilities**
- When this section applies* 20
- (1) This section applies for the purposes of **sections HD 8 to HD 27** in relation to all income derived by a principal through a business carried on in New Zealand by an agent.
- Assessments, returns, and payment of tax*
- (2) The agent must— 25
- (a) make the assessments that their principal is required to make; and
- (b) provide all returns required of their principal under the Tax Administration Act 1994; and
- (c) satisfy their principal's income tax liability. 30
- Joint and several liability*
- (3) If 2 or more persons are liable as agents in relation to the same tax, the liability is joint and several.

*Agent as separate person*

- (4) The agent is treated in that capacity as a separate person, and may claim in relation to the agency income only those tax credits or exemptions to which the principal is entitled.

Defined in this Act: agent, assessment, income tax, income tax liability, New Zealand, pay 5

Compare: 2004 No 35 ss HK 1, HK 3(3), HK 7(1)

**HD 4 Treatment of principals**

Despite **section HD 3**,—

- (a) a principal remains liable for their tax obligations, and is not released from them merely through the existence of the agency; and 10
- (b) if the Commissioner agrees, the principal and the agent may decide that the principal is to undertake the duties set out in **section HD 3(1)**. 15

Defined in this Act: agent, Commissioner

Compare: 2004 No 35 s HK 3(1), (1A)

**HD 5 Matters between principals and agents***Assessment as authority*

- (1) The Commissioner's assessment is, as between principal and agent, sufficient authority for the payment of tax by the agent. 20

*Recovering payment*

- (2) On paying tax, an agent is entitled to be reimbursed by the principal, and may— 25
- (a) recover the amount from the principal; or
- (b) subtract the amount from money held by the agent that belongs or is payable to the principal.

*Retaining funds*

- (3) For the purposes of paying tax in relation to which an agent is or may become liable, the agent may retain from money that belongs or is payable to the principal an amount that is reasonably sufficient to pay the tax. This subsection applies at a time in an income year in which the tax is due or in a later income year. 30

*Hardship*

- (4) The Commissioner may set a new due date for an agent to pay a tax liability if—
- (a) the agent—
- (i) is unable to pay the tax liability out of money that the agent holds that belongs to the principal; and 5
- (ii) has not paid away an amount after being assessed in relation to the agency; and
- (b) the enforcement of payment would cause hardship to the agent. 10

Defined in this Act: agent, amount, assessment, Commissioner, income year, pay, tax year

Compare: 2004 No 35 ss HK 4–HK 6, HK 7(2)

### **HD 6 When relationship effectively that of principal and agent** 15

If a person who is carrying on business in New Zealand is sufficiently under the control of another person in business, whether in New Zealand or elsewhere, so that the relationship between them is effectively that of principal and agent, the Commissioner may treat the first business as the principal's business carried on by the agent on behalf of the principal. 20

Defined in this Act: agent, business, Commissioner, New Zealand

Compare: 2004 No 35 s HK 8

### **HD 7 Rate of tax**

#### *Calculating rate* 25

- (1) The rate of tax on the tax liability payable by an agent is calculated by using the formula—
- $$\text{principal's taxable income} \times \text{principal's tax rate} \\ \times \text{proportion of agency taxable income.}$$

#### *Definitions of items in formula* 30

- (2) In the formula,—
- (a) **principal's taxable income** is the amount of their taxable income for a tax year calculated under **section BC 5** (Taxable income):
- (b) **principal's tax rate** is the relevant rate for the principal set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 35

- (c) **proportion of agency taxable income** is the proportion of a principal's taxable income that relates to the agency.

Defined in this Act: agent, pay, tax year, taxable income

Compare: 2004 No 35 s HK 2

5

### *Particular cases*

#### **HD 8 Circumstances giving rise to agency**

For the purposes of this Act and the Tax Administration Act 1994, a person is treated as an agent in relation to the income of another person in the circumstances set out in **sections HD 9 to HD 15**.

10

Defined in this Act: agent, income

#### **HD 9 Guardians**

A person (**person A**) is treated as an agent of another person (**person B**) if, as guardian, manager, or otherwise, person A receives, controls, or disposes of income that person B derives while under a legal disability.

15

Defined in this Act: agent, income

Compare: 2004 No 35 s HK 9

#### **HD 10 Mortgagees in possession**

20

A person (**person A**) is treated as an agent of another person (**person B**) if, as mortgagee in possession of land or other property, person A derives income from the land or property on behalf or for the benefit of person B as mortgagor.

Defined in this Act: agent, income

25

Compare: 2004 No 35 s HK 10

#### **HD 11 Nominated companies**

##### *Consolidated groups*

- (1) A nominated company is treated under **section FM 34(2)** (Nominated companies) as the agent of a consolidated group, and of each company that is at the time a member of that group.

30

*Imputation groups*

- (2) A nominated company is treated under **section FN 6(3)** (Nominated companies) as the agent of an imputation group, and of each company that is at the time a member of that group.

Defined in this Act: agent, company, consolidated group, imputation group, nominated company

5

Compare: 2004 No 35 ss FD 6(1), FDA 5(3)

**HD 12 Trusts***Beneficiary income and taxable distributions*

- (1) If a beneficiary of a trust, other than a beneficiary of a community trust, derives an amount of beneficiary income or taxable distribution in a tax year, the trustee of the trust is treated under **section HC 32** (Liability of trustee as agent) as the agent of the beneficiary. 10

*Settlors*

15

- (2) If a trustee of a trust, other than a charitable trust, derives trustee income in a tax year, and a settlor of the trust is resident in New Zealand in the tax year, the settlor is treated under **section HC 29** (Settlor's liability to income tax) as the agent of the trustee for income tax payable by the trustee (but not for income tax that the trustee is liable for as agent). 20

Defined in this Act: agent, beneficiary income, charitable trust, community trust, income tax, income tax liability, pay, resident in New Zealand, settlor, tax year, taxable distribution, trustee, trustee income

Compare: 2004 No 35 ss HH 3(2), HH 3A(2), HH 4(4)

25

**HD 13 Unit trusts**

A trustee of a unit trust is treated as an agent of the unit trust in relation to income derived by the unit trust.

Defined in this Act: agent, income, trustee, unit trust

Compare: 2004 No 35 s HE 1

30

**HD 14 Companies issuing debentures***Agency*

- (1) A company is treated as an agent of a person if— 35
- (a) the company has issued a debenture; and
  - (b) the person, as a debenture holder, derives income from the debenture.



*Excluded debentures*

- (2) **Subsection (1)** does not apply to a debenture if—
- (a) it is a profit-related debenture to which **section FA 2** (Recharacterisation of certain debentures) applies; or
  - (b) it is issued to a New Zealand resident, and the company provides the Commissioner with a certified list containing particulars of the debentures, the name and details of each person to whom a debenture has been issued, and details of the interest payments before an assessment is made in a tax year of the debenture holder.

*Liability of persons named*

- (3) A person named as a debenture holder in the list referred to in **subsection (2)(b)** is liable for income tax on income derived from the debenture. **Subsection (4)** overrides this subsection.

*Continuing liability until notification*

- (4) Despite **section BB 2** (Main obligations), if a debenture holder disposes of a debenture, they remain liable for income tax unless they notify the Commissioner of the disposal before an assessment is made in a tax year that takes into account the income derived from the debentures. On notification, the subsequent holder is liable in relation to the debentures, and the liability of the transferor is ended.

*Recovery of tax paid*

- (5) If a person who formerly held a debenture pays income tax on taxable income that takes into account income derived by a subsequent holder, the income tax is treated as paid on behalf of the subsequent holder to the extent of the liability of the subsequent holder, and the person may recover that amount from them.

*Matters not taken into account*

- (6) For the purposes of **subsection (1)**, it does not matter whether the debenture is charged on the company's property, nor whether a debenture holder is an absentee.

Defined in this Act: absentee, agent, assessment, Commissioner, company, debenture holder, debenture, income, income tax, interest, New Zealand resident, notify, pay, profit-related debenture, tax year, taxable income

Compare: 2004 No 35 ss HK 12, HK 13

**HD 15 Shell companies***When this section applies*

- (1) This section applies when—
- (a) an arrangement has been entered into in relation to a company; and 5
  - (b) an effect of the arrangement is that the company cannot meet a tax liability whether existing at the time of the arrangement or arising after that time, for
    - (i) income tax;
    - (ii) a civil penalty, as defined in section 3(1) of the Tax Administration Act 1994; 10
    - (iii) an amount payable under Part 7 of that Act; and
  - (c) it is reasonable to conclude that—
    - (i) a purpose of the arrangement is to have the effect described in **paragraph (b)**; and 15
    - (ii) if a director of the company at the time of the arrangement made reasonable inquiries, they could have anticipated at the time that the income tax liability would, or would likely, be required to be met. 20

*When this section does not apply*

- (2) This section does not apply to an arrangement if—
- (a) the Commissioner is a party to the arrangement;
  - (b) the tax liability is no more than an amount of income tax that arises as a direct result of the performance of the arrangement, and that liability has been met; 25
  - (c) at the time of the arrangement, the company was under statutory management under the Reserve Bank of New Zealand Act 1989 or the Corporations (Investigation and Management) Act 1989. 30

*Director's liability*

- (3) All persons who are directors of the company at the time the arrangement is entered into are treated as agents of the company in relation to the tax obligation, and the liability is joint and several. But a director has no liability if— 35
- (a) they do not derive a benefit from the arrangement, and at the first reasonable opportunity after becoming aware of the arrangement, or the aspects of the arrangement

- that cause this section to apply to it, they record formally their dissent in relation to the arrangement either with the company or with the Commissioner; or
- (b) they were not at the relevant time involved in the executive management of the company and had no knowledge of the arrangement, or the aspects of the arrangement that cause this section to apply to it. 5

*Shareholder's liability*

- (4) A person who is a controlling shareholder or an interested shareholder at the time of the arrangement is treated as an agent of the company in relation to the tax obligation other than penalties or interest but, despite **section HD 3(2)**, the liability is limited to the greater of— 10
- (a) the market value of the person's direct and indirect shareholding in the company at the time of the arrangement; and 15
- (b) the value of the benefit that the person derives from the arrangement.

*Shareholder's liability for penalties and interest*

- (5) A person who is a controlling shareholder or an interested shareholder at the time of the arrangement is treated as an agent of the company in relation to penalties and interest in proportion to their liability for the tax obligation under **subsection (4)**. 20

*Company liquidations*

- (6) In order to give effect to this section, if a company has been liquidated, the Commissioner may at any time after the liquidation make an assessment of a company for an income tax liability of the company as if it had not been liquidated. The time bar applies, but this subsection overrides other provisions in this Act and the Tax Administration Act 1994. 25 30

*Agents for purposes of notification or objection procedures*

- (7) In making an assessment under **subsection (6)**, the Commissioner must nominate 1 or more persons as having the tax liability set out in the assessment. The nominated person or persons are treated as agents of the company in relation to any 35

notification or objection procedure concerning the assessment.

*When liability does not arise*

- (8) No liability arises under this section for a tax year in relation to which— 5
- (a) a company has provided returns within the time allowed by section 37 of the Tax Administration Act 1994 for providing returns for the tax year in which the company is liquidated; and
  - (b) the Commissioner has not issued a notice of assessment of the company for the tax year before the end of 4 years following the end of the tax year in which the company is liquidated. 10

*Some definitions*

- (9) In this section,— 15
- director** means,—
- (a) a person who occupies the position of director, whether or not the position has that title;
  - (b) for an entity that is treated as a company under this Act, a person who acts in the same or similar way as a director would if the entity were a company incorporated in New Zealand under the Companies Act 1993 20
- controlling shareholder**, for a company, means—
- (a) a person whose voting interest or market value interest in the company at the time of the arrangement, together with any interests of an associated person, is 50% or more; and 25
  - (b) if the person or associated person is a company, the voting interest or market value interest of the person or associated person is calculated as if they were not a company and as if **sections YD 4** (Look-through rule for corporate shareholders) and **YC 6** (Disregarding certain securities) did not apply 30
- interested shareholder** means a person who, at the time the arrangement is entered into, has a voting interest or market value interest in the company, calculated in either case if the person is a company as if the person were not a company, and because of the size of the benefit that the person derives from 35

the arrangement, it is reasonable to conclude that the person is a party to the arrangement

**penalties and interest** means a civil penalty or amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax obligation

5

**tax obligation** means the tax liability referred to in **subsection (1)(b)**.

Defined in this Act: agent, amount, arrangement, assessment, associated person, civil penalty, Commissioner, company, controlling shareholder, director, income tax, income tax liability, interest, interested shareholder, market value interest, New Zealand, notice, notify, penalties and interest, return of income, tax obligation, tax year, time bar, voting interest

10

Compare: 2004 No 35 s HK 11

## HD 16 Non-resident general insurers

*When this section applies*

15

- (1) This section applies when an insurer derives income under **section CR 3** (Income of non-resident general insurer) to determine who is liable to provide a return of income and pay income tax on the income.

*Insurer*

20

- (2) To the extent to which the insurer provides the return and pays the income tax, no other person described in this section is liable to do so.

*Person acting on insurer's behalf*

- (3) To the extent to which a person on behalf of the insurer, including a broker or other agent who pays a premium on behalf of another person, provides the return and pays the income tax, no agent described in any of **subsections (4) to (6)** is liable to do so.

25

*Agent paying premium or providing funds*

30

- (4) The person liable in the first place as an agent is—
- (a) a person, including a broker or agent, who pays the premium to the insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand; or
- (b) a person described in **subsection (7)(b)**.

35

*Person paying premium*

- (5) The person liable in the second place as agent is a person who pays the premium, whether or not through a broker or agent.

*Insured person*

- (6) The person liable in the third place as agent is the insured person. 5

*Bank or building society*

- (7) If a premium is paid by a registered bank, as defined in section 2 of the Reserve Bank of New Zealand Act 1989, or a building society on behalf of a person to the insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand,— 10
- (a) the bank or building society is not an agent of the insurer; and
- (b) the person who provides the bank or building society with the funds from which the premium is paid is an agent of the insurer. 15

Defined in this Act: agent, building society, business, fixed establishment, income, income tax, insured person, insurer, New Zealand, non-resident, pay, premium, registered bank, return of income 20

Compare: 2004 No 35 s FC 16

**HD 17 Agent paying premiums to residents of Switzerland***When this section applies*

- (1) This section applies when— 25
- (a) an insurer derives income under **section CR 3** (Income of non-resident general insurer); and
- (b) an agent of the insurer under **section HD 16** pays the premium to an insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand; and 30
- (c) the insurer or other person is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland.

*Disclosure*

- (2) The agent must disclose details of the payment of the premium to the Commissioner in the manner, if any, required by the Commissioner.

Defined in this Act: agent, business, Commissioner, double tax agreement, fixed establishment, income, insurer, New Zealand, non-resident, pay, premium

5

Compare: 2004 No 35 s FC 17

*Absentees***HD 18 Agency in relation to absentees generally**

*What sections HD 19 to HD 25 do*

10

- (1) **Sections HD 19 to HD 25** apply for the purposes of this Act to treat a person as an agent in relation to the income of an absentee when certain conditions are met. The person must meet the tax obligations set out in **section HD 3** in relation to the income to which the agency applies.

15

*Meaning of absentee*

- (2) In this subpart, **absentee** means—

- (a) a natural person who is for the time being out of New Zealand:
- (b) a foreign company, unless it has a fixed and permanent place of business in New Zealand at which it carries on business in its own name:
- (c) a foreign company when the Commissioner declares that it is an absentee for the purposes of this Act by giving notice to the company, or its agent or representative in New Zealand.

20

25

Defined in this Act: absentee, agent, business, Commissioner, company, foreign company, gross, income, New Zealand, notice

Compare: 2004 No 35 ss HK 1, HK 16, OB 1 “absentee”

**HD 19 Persons receiving absentees’ income**

30

A person is treated as an agent if they receive, control, or dispose of income derived by an absentee.

Defined in this Act: absentee, agent, income

Compare: 2004 No 35 s HK 20

**HD 20 Persons carrying on business for or with absentees**

A person is treated as an agent if they carry on in New Zealand—

- (a) a business for an absentee, whether or not the income is received by the agent: 5
- (b) a business in partnership with an absentee, in relation to the amount that would be the taxable income of the absentee derived from the business in a tax year without any apportionment under **section YD 5** (Apportionment of income derived partly in New Zealand). 10

Defined in this Act: absentee, agent, amount, business, income, New Zealand, tax year, taxable income

Compare: 2004 No 35 ss HK 16, HK 17

**HD 21 Companies**

*Paying dividends* 15

- (1) A New Zealand company is an agent of an absentee to whom it pays or credits dividends as a shareholder, or as a holder of a debenture to which **section FA 2** (Recharacterisation of certain debentures) applies.

*Relationship with NRWT rules* 20

- (2) **Section RF 2(3) and (4)** (Non-resident passive income) overrides this section.

Defined in this Act: absentee, agent, company, debenture, dividend, New Zealand, NRWT rules, pay, shareholder

Compare: 2004 No 35 s HK 21 25

**HD 22 Banking companies**

*Receiving deposit in course of business activities*

- (1) A person, including a banking or other company, or a local authority or public authority, is treated as an agent if in the course of their business activities, they receive or hold money as a deposit and pay interest to an absentee on the money deposited by the absentee. 30

*Threshold*

- (2) This section applies only if the interest paid on the deposit is more than \$100. 35



*Relationship with NRWT rules*

- (3) **Section RF 2(3) and (4)** (Non-resident passive income) overrides this section.

Defined in this Act: absentee, agent, banking company, business, company, interest, local authority, pay, public authority

5

Compare: 2004 No 35 s HK 23

**HD 23 Trustees of group investment funds**

A person is treated as an agent if they are a trustee of a group investment fund and an absentee is an investor to whom a dividend is paid or credited.

10

Defined in this Act: absentee, agent, dividend, group investment fund, pay, trustee

Compare: 2004 No 35 s HK 22

**HD 24 Shipping businesses**

A person is treated as an agent if they are the master of a ship owned by or under charter to an absentee who carries on a business carrying goods or passengers.

15

Defined in this Act: absentee, agent, business

Compare: 2004 No 35 s HK 18(1)

**HD 25 Persons remitting amounts outside New Zealand***Absentee landlords, mortgagors, or creditors*

20

- (1) A person is treated as an agent if they are a tenant, mortgagor, or other person who remits an amount from New Zealand to an absentee who is their landlord, mortgagee, or creditor, when the amount is income derived by the absentee. But this subsection applies only after the Commissioner has notified the person that they are accountable as the absentee's agent.

25

*When fund outside New Zealand*

- (2) If the amount referred to in **subsection (1)** is paid by or on account of a person resident in New Zealand from a fund outside New Zealand, it is treated as an amount to which this section applies.

30

Defined in this Act: absentee, agent, amount, Commissioner, income, New Zealand, notify, resident in New Zealand

Compare: 2004 No 35 s HK 19

*Non-residents***HD 26 Agency in relation to non-residents generally***What sections HD 27 and HD 28 do*

- (1) **Sections HD 27 and HD 28** apply for the purposes of this Act to treat a person as an agent in relation to the income of a non-resident taxpayer when certain conditions are met. The person must meet the tax obligations set out in **section HD 3** in relation to the gross income to which the agency applies. 5

*Meaning of non-resident taxpayer*

- (2) In **sections HD 27 and HD 28**, a **non-resident taxpayer** means a person who— 10
- (a) is liable for income tax on employment income derived in New Zealand; and
- (b) has no fixed and permanent place to live in New Zealand. 15

Defined in this Act: agent, employment income, gross, income, income tax, New Zealand, non-resident, non-resident taxpayer

Compare: 2004 No 35 s HK 24(1), (4)

**HD 27 Employers***Employment of non-resident persons* 20

- (1) An employer who employs a non-resident person with an income tax liability is treated as an agent in relation to the employment income derived in New Zealand by the non-resident person. If the person does not meet their income tax liability, the employer must withhold the amount of income tax payable from their employment income and pay it to the Commissioner on the person's behalf. 25

*Employment by non-resident traders*

- (2) A non-resident trader who employs a person in New Zealand is treated as an agent in relation to the person's employment income. If the trader has an agent in New Zealand, the agent must meet the trader's obligations under **section HD 3**. 30

Defined in this Act: agent, Commissioner, employer, employment income, income tax, income tax liability, New Zealand, non-resident, non-resident trader, pay

Compare: 2004 No 35 ss HK 24(2), HK 25 35

### HD 28 Government pensions and payments under superannuation schemes

If a non-resident person who has an income tax liability derives a pension or annuity from the government of New Zealand or under an unregistered superannuation scheme established in New Zealand, the income tax payable must be withheld from 1 or more instalments of the pension or annuity and paid to the Commissioner on the person's behalf. 5

Defined in this Act: Commissioner, income tax, New Zealand, non-resident, pay, superannuation scheme 10

Compare: 2004 No 35 s HK 24(3)

### HD 29 Persons buying goods from overseas

*Who this section applies to*

- (1) This section applies, in relation to a purchase of goods, to— 15
- (a) a person in New Zealand (**person A**); and
  - (b) person A's principal who is resident in a country or territory outside New Zealand, and not resident in New Zealand (**person B**).

*Treatment of persons buying goods*

- (2) If person A is instrumental in arranging the purchase of goods from person B, and the goods are either in New Zealand or are to be imported into New Zealand under the contract of purchase, person A and person B and the income are treated as follows: 20
- (a) person B is treated as carrying on a business in New Zealand; and 25
  - (b) person A is treated as person B's agent in relation to the income derived from the business; and
  - (c) the income from the business is treated as derived from New Zealand. 30

*Exemption*

- (3) Person A is not liable as agent for the payment of income tax if the Commissioner is satisfied that in corresponding circumstances in a country or territory outside New Zealand, person

B, if resident in New Zealand, would not be liable for income tax in that country or territory.

Defined in this Act: agent, business, Commissioner, derived from New Zealand, income, income tax, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s HK 26

5

## Subpart HE—Mutual associations

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### HE 1 Income and deductions of mutual associations

*Income and allocation* 15

- (1) The treatment of amounts derived by mutual associations and from mutual associations is dealt with in—
- (a) **section CB 32** (Amounts derived by mutual associations); and
  - (b) **section CB 33** (Amounts derived by members from mutual associations). 20

*Deductions and allocation*

- (2) The treatment of association rebates that a mutual association pays to a member is dealt with in **section DV 19** (Association rebates). 25

Defined in this Act: amount, association, association rebate, deduction, income, member

### HE 2 Classes of mutual transaction

*When mutual transactions arise*

- (1) In this subpart, and **sections CB 32, CB 33, and DV 19** (which relate to income and deductions relating to mutual transactions), a mutual transaction arises when an association—
- (a) enters into a transaction with members of the association, or a transaction with members of the association and other persons; and 35

- (b) the association takes the transaction into account in an income year in determining its net income or net loss under **section BC 4** (Net income and net loss).

*Types of transaction*

- (2) For the purposes of **subsection (1)**, a transaction is a trading transaction between an association and its member, and is 1 or more of the following: 5
- (a) the borrowing by the association of money from 1 or more members, to the extent to which the money is applied as a loan to a member: 10
- (b) the lending by the association of money to 1 or more members:
- (c) for an association that is a statutory producer board other than a body that derives only exempt income— 15
- (i) a levy paid by 1 or more members:
- (ii) a produce transaction.

Defined in this Act: association, income year, levy, member, mutual transaction, net income, net loss, produce transactions, statutory producer board

Compare: 2004 No 35 s HF 1(8)

**HE 3 Association rebates** 20

*Meaning*

- (1) In this subpart, and in **sections CB 32, CB 33, and DV 19** (which relate to income and deductions relating to mutual transactions), an **association rebate** means a payment by an association to a member that is made— 25
- (a) through a distribution of profits of the association:
- (b) not later than 6 months after the end of the accounting year of the association in relation to which the payment is made.

*Exclusion* 30

- (2) An association rebate does not include—
- (a) a cash distribution in relation to which the association has made an election under **section OB 73(1) or OB 78(1)** (which relate to imputation credits of statutory producer boards or co-operative companies); or 35
- (b) a distribution described in **section CD 26** (Capital distributions on liquidation or emigration) or **CD 33** (Payments

corresponding to notional distributions of producer boards and co-operative companies).

Defined in this Act: accounting year, association, association rebate, member

Compare: 2004 No 35 s HF 1(9) “rebate”

#### **HE 4 Apportionment when transactions with members and non-members** 5

*When this section applies*

- (1) This section applies when an association takes into account transactions with both members and non-members.

*Apportioning expenditure or loss* 10

- (2) In determining its net income or net loss for an income year under **section BC 4** (Net income and net loss), the association must apportion the expenditure or loss that it incurs in the income year between those transactions with members, and those with persons who are not members. 15

Defined in this Act: association, income year, member, net income, net loss

Compare: 2004 No 35 s HF 1(4)

#### **HE 5 Association rebates paid by shares or credit**

*When this section applies*

- (1) This section applies when an association that enters into mutual transactions with members pays an association rebate to 1 or more members through— 20
- (a) issuing fully or partly paid-up shares in the association; or
  - (b) providing credit for all or part of an amount unpaid on shares in the association. 25

*Not bonus issue*

- (2) The amount, or the relevant part of it, is not treated as a bonus issue. 30

Defined in this Act: association, association rebate, bonus issue, member, shares

Compare: 2004 No 35 s HF 1(7)

## Subpart HF—Maori authorities

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*Introductory provisions***HF 1 Maori authorities and the Maori authority rules**

*Who is a Maori authority?* 20

- (1) A Maori authority is a person eligible under **section HF 2** who has made an election under **section HF 11**.

*Maori authority rules*

- (2) The **Maori authority rules** means the following: 25
- |     |  |    |
|-----|--|----|
| (a) | this subpart:  | 25 |
| (b) | <b>sections GB 42 and GB 43</b> (which relate to Maori authority credit arrangements to obtain a tax advantage): |    |
| (c) | <b>sections LA 4, LA 6, LO 1, LO 4, and LO 5</b> (which relate to Maori authority credits):                      |    |
| (d) | <b>subpart OK</b> (Maori authority credit accounts):   | 30 |
| (e) | <b>section RM 22 to RM 27</b> (which relate to limits on refunds of tax in relation to Maori authorities):       |    |
| (f) | <b>schedule 1, part A, clause 6</b> (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits):    |    |

- (g) sections 31, 57, 68B, 69B, 70B, 97B, 140CB, 140DB, and 181B of the Tax Administration Act 1994.

Defined in this Act: arrangement, income tax, Maori authority, Maori authority credit account, Maori authority rules, tax advantage

Compare: 2004 No 35 s OB 1 “Maori authority”, “Maori authority rules”

5

## HF 2 Who is eligible to be a Maori authority?

*What this section does*

- (1) This section sets out the persons eligible to choose under **section HF 11** to become a Maori authority.

*Companies*

10

- (2) The following are eligible to make an election:

- (a) a company established by an order made under Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993):
- (b) a company that owns land that is subject to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993): 15
- (c) a company that is—
- (i) established by a mandated iwi organisation to be an asset-holding company, as contemplated by section 12(1)(d) of the Maori Fisheries Act 2004:
- (ii) recognised by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under section 13(1) of the Maori Fisheries Act 2004: 20
- (d) a company that,—
- (i) on behalf of Maori claimants, receives and manages assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and 25
- (ii) is contemplated by the deed of settlement of the claim as performing the functions described in **subparagraph (i)**. 30

*Trusts*

- (3) The following are eligible to make an election:

- (a) the trustees of a trust established by an order made under Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993): 35
- (b) the trustees of a trust who own land that is subject to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993):



- 
- (c) the trustees of a trust that is recognised by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under section 13(1) of the Maori Fisheries Act 2004:
- (d) the trustees of trusts that are established by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under sections 79 and 92 of the Maori Fisheries Act 2004: 5
- (e) the trustees of a trust who,—
- (i) on behalf of Maori claimants, receive and manage assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and 10
- (ii) are contemplated by the deed of settlement of the claim as performing the functions described in **subparagraph (i)**. 15
- Maori Trustee*
- (4) The Maori Trustee in the Maori Trustee's capacity as an agent for an owner of land that is subject to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993) is eligible to make an election. 20
- Maori Trust Board*
- (5) A Maori Trust Board, as defined in section 2 of the Maori Trust Boards Act 1955, is eligible to make an election.
- Crown Forestry Rental Trust*
- (6) The Crown Forestry Rental Trust, established by deed in accordance with section 34 of the Crown Forest Assets Act 1989, is eligible to make an election. 25
- Te Ohu Kai Moana Trustee Limited*
- (7) Te Ohu Kai Moana Trustee Limited, established under section 33 of the Maori Fisheries Act 2004, is eligible to make an election. 30
- Aotearoa Fisheries Limited*
- (8) Aotearoa Fisheries Limited, established under section 60 of the Maori Fisheries Act 2004, is eligible to make an election. 35
- Defined in this Act: agent, Commissioner, company, Maori authority, trustee
- Compare: 2004 No 35 s HI 2

**HF 3 Applying provisions to Maori authorities***Relationship with provisions generally*

- (1) A provision in the Maori authority rules overrides any other provision in this Act that may apply to a Maori authority unless a provision specifically provides otherwise. 5

*Relationship with company rules*

- (2) A Maori authority must not—
- (a) amalgamate with a company that is not a Maori authority; or
  - (b) be part of a consolidated group that includes a company that is not a Maori authority; or 10
  - (c) be a co-operative company if a shareholder is not a Maori authority.

*Treatment of tax losses*

- (3) Under **section IA 6** (Restrictions on companies grouping tax losses) and **subpart IC** (Grouping tax losses),— 15
- (a) a Maori authority may subtract from its net income some or all of a tax loss component or loss balance only of another Maori authority;
  - (b) a Maori authority may use some or all of its tax loss component or loss balance in relation to the net income only of another person who is a Maori authority. 20

Defined in this Act: amalgamation, company, consolidated group, co-operative company, loss balance, Maori authority, Maori authority rules, net income, shareholder, tax loss component 25

Compare: 2004 No 35 s HI 1

***Maori authority distributions*****HF 4 What constitutes a Maori authority distribution?***Transfer of value*

- (1) A transfer of value from a Maori authority to a person is a Maori authority distribution if the cause of the transfer is the membership of the person in the Maori authority. 30

*Distributions*

- (2) A Maori authority distribution includes an amount advanced to a member by a Maori authority, to the extent to which the advance is not a genuine investment by the authority entered 35

into and carried out in good faith but in effect a distribution of an amount that falls within **sections BD 1(1) and CA 1(2)** (which relate to amounts that are income).

*Taxable bonus issues*

- (3) A taxable bonus issue made by a Maori authority to a member is a taxable Maori authority distribution. 5

*Exclusion: services*

- (4) A Maori authority distribution does not include the provision of services to a person by a Maori authority.

*Distributions with credits attached*

- (5) A Maori authority distribution includes the amount of a Maori authority credit attached to it. 10

*Dividends*

- (6) A Maori authority distribution that, but for this subsection, would be a dividend for a member, is treated as not being a dividend except for the purposes of **section CW 10** (Dividend within New Zealand wholly-owned group). 15

*Value of distribution by reference to market values*

- (7) For the purposes of this section, if the transfer of value is—
- (a) the disposal of property to a member without consideration, or for a consideration that is less than the market value of the property, the value of the Maori authority distribution is the amount by which the market value of the property is more than the consideration; and 20
- (b) the acquisition of property from a member for a consideration that is more than the market value of the property, the value of the Maori authority distribution is the amount by which the market value is less than the consideration. 25

Defined in this Act: amount, dividend, income, Maori authority, member, transfer of value, wholly-owned group 30

Compare: 2004 No 35 ss HI 4(1), (2), HI 5(4), HI 7

**HF 5 Notional distributions of co-operative companies**

A Maori authority that is a co-operative company may make a notional distribution to a member under **section OB 79** (Co- 35

operative companies attaching imputation credits to notional distributions) as if a Maori authority credit were an imputation credit.

Defined in this Act: co-operative company, imputation credit, Maori authority, Maori authority credit, member

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Compare: 2004 No 35 s HI 4(3)

### **HF 6 Tax treatment of Maori authority distributions**

A Maori authority distribution to a member is—

- (a) income of the member under **section CV 11** (Maori authorities), if the amount is—
  - (i) a taxable Maori authority distribution; or
  - (ii) a notional distribution:
- (b) exempt income of the member under **section CW 54** (Maori authority distributions), if **paragraph (a)** does not apply.

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Defined in this Act: amount, exempt income, income, Maori authority, member, taxable Maori authority distribution

Compare: 2004 No 35 s HI 5(1)

### **HF 7 Taxable Maori authority distributions**

A Maori authority distribution is a **taxable Maori authority distribution** if the source is income of the Maori authority that is—

- (a) derived by the Maori authority in the 2004–05 income year or a later income year; and
- (b) not exempt income of the Maori authority; and
- (c) not a cash distribution made to a member in relation to a notional distribution for which the Maori authority has made an election under **section OB 82** (When and how co-operative company makes election).

25

30

Defined in this Act: exempt income, income, income year, Maori authority, member, taxable Maori authority distribution

Compare: 2004 No 35 s HI 5(2), (3)

### **HF 8 Proportional allocation**

If a Maori authority distribution consists of a taxable Maori authority distribution and another amount, the Maori authority

35

must allocate an equal proportion of each type of distribution to every member to whom the distribution is made.

Defined in this Act: amount, Maori authority, member, taxable Maori authority distribution

Compare: 2004 No 35 s HI 6

5

*Changing status*

Table H1  
Consequences of change in entity status for  
purposes of Maori authority rules

Row	Entity	Changing to	Consequences	
1	Company	Maori authority	The company stops being an ICA company, and the rules relating to the ending of ICA company status apply  Retained earnings, accumulated profits, and capital reserves are treated as an amount from which a distribution that is not a taxable Maori authority distribution may be made	
2	Trust	Maori authority	Trustee income is treated as an amount from which a distribution that is not a taxable Maori authority distribution may be made	
3	Maori authority	Company that is not a Maori authority	The Maori authority may transfer a credit balance in the Maori authority credit account to the company's imputation credit account, and <b>section OK 18</b> applies to a debit balance in the Maori authority credit account  Taxable income derived by the Maori authority in the 2003–04 or an earlier tax year is available subscribed capital	
4	Maori authority	Trust that is not a Maori authority	Taxable income of the Maori authority in the 2003–04 or an earlier tax year is treated as trustee income	
Row	Entity	Changing to	Reverting to	Consequences
5	Maori authority	Company that is not a Maori authority	Maori authority	Market value calculations are required under <b>section HF 10</b> . The company must apply row 1
6	Maori authority	Trust that is not a Maori authority	Maori authority	Market value calculations are required under <b>section HF 10</b> . The company must apply row 2
<b>How to use this table</b>				
Read columns from left to right according to the row that fits the situation.				

## HF 9 Treatment of companies and trusts that choose to apply this subpart

### *Company becoming Maori authority*

- (1) If a company becomes a Maori authority in a tax year, the company must apply **table H1, row 1**. 5

### *Trust becoming Maori authority*

- (2) If a trust becomes a Maori authority in a tax year, the trustee must apply **table H1, row 2**.

### *Maori authority becoming company*

- (3) If a Maori authority is a company that stops being a Maori authority in a tax year, it must apply **table H1, row 3**. 10

### *Maori authority becoming trust*

- (4) If a Maori authority is a trust that stops being a Maori authority in a tax year, the trustee must apply **table H1, row 4**.

Defined in this Act: company, Maori authority, tax year, trustee 15

Compare: 2004 No 35 s HI 8

## HF 10 Market value calculations

### *When this section applies*

- (1) This section applies to property of a company or a trust when the company or the trustees of the trust, having stopped being a Maori authority, reverts to being a Maori authority. 20

### *Treatment*

- (2) The company or the trustees, as applicable, are treated as— 25
- (a) disposing of the company's property, or the trust's property, immediately before becoming a Maori authority for a consideration that is the market value of the property on the date of disposal; and
  - (b) acquiring the property of the Maori authority for a consideration that is the market value of the property on the date of disposal referred to in **paragraph (a)**. 30

### *Market value for both*

- (3) In **subsection (2)**, the market value of the property is the market value for both the company, or the trustees, as applicable, and the Maori authority.

*Depreciation*

- (4) Despite **sections EE 56 to EE 61, and EZ 23** (which relate to depreciation), the cost to a Maori authority of property to which this section applies is the lesser of—
- (a) the market value of the property on the date it was acquired; and 5
  - (b) the original cost of the property to the company or the trust.

Defined in this Act: company, Maori authority, trustee

Compare: 2004 No 35 s HI 9 10

**HF 11 Choosing to become Maori authority***Notice*

- (1) A person who is eligible under **section HF 2** may choose to become a Maori authority by notifying the Commissioner.

*Acceptance notified*

- (2) Having received a notice under **subsection (1)**, the Commissioner must notify the person of the acceptance of the election. The Commissioner must provide an acceptance date in the notice. 15

*When election takes effect*

- (3) The election takes effect on the first day of— 20
- (a) the income year in which the notice is given; or
  - (b) the next income year, if the person nominates that date in the notice.

*When election no longer effective*

- (4) An election under this section stops having effect if the person— 25
- (a) notifies the Commissioner that the election is cancelled, and the election no longer has effect from the date set out in the notice: 30
  - (b) stops being a Maori authority.

Defined in this Act: Commissioner, income year, Maori authority, notice, notify

Compare: 2004 No 35 s HI 3



## Subpart HR—Other entities Contents

### *Partnerships and joint ventures*

HR 1	Partnerships and joint ventures	
	<i>Funds</i>	5
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### *Partnerships and joint ventures* 15

#### **HR 1 Partnerships and joint ventures**

##### *Partnership joint return*

- |     |   |    |
|-----|---|----|
| (1) | The partners in a partnership are treated, in their capacity as partners, as if the partnership were a separate person. The partners must—  | 20 |
|     | (a) calculate the net income of the partnership for a tax year; and   |    |
|     | (b) for that tax year, provide a joint return of income for the partnership under section 42(1)(b) of the Tax Administration Act 1994, in addition to the partners' individual returns of income. | 25 |

##### *Partner's separate income tax obligations*

- |     |  |    |
|-----|--|----|
| (2) | Despite <b>subsection (1)</b> , each partner in a partnership has a separate obligation under <b>section BB 2</b> (Main obligations) for calculating and satisfying their income tax liability, including an obligation in relation to their share of income derived by the partnership. | 30 |
|-----|--|----|

*Joint income*

- (3) A person (**person A**), other than a partner or co-trustee, who derives income or has a deduction jointly with another person must—
- (a) calculate the net income of person A for a tax year, taking into account their share of the joint income or deduction; and 5
  - (b) for that tax year, provide a separate return of income under section 42(1)(c) of the Tax Administration Act 1994. 10

*Airport operators excluded*

- (4) **Subsection (3)** does not apply to an amount derived or incurred by an airport operator in relation to activities carried on as an airport operator. 15
- Defined in this Act: airport operator, amount, income, income tax liability, net income, return of income, tax year, taxable income
- Compare: 2004 No 35 s HD 1(1)(b), (c), (2)

**Funds****HR 2 Group investment funds***Separate returns* 20

- (1) The trustee of a group investment fund must provide for a tax year under section 33 of the Tax Administration Act 1994, separate returns of its category A income and its category B income.

*Designated group investment fund, category B income: application of trust rules* 25

- (2) If the trustee of a group investment fund derives an amount that is income derived from investments and funds of a designated group investment fund or category B income, the amount is treated as income derived by the trustee and the trust rules apply. 30

*Category A income: application of company rules*

- (3) If the trustee of a group investment fund derives from the investments and funds of the group investment fund an

amount that is category A income, the amount is treated as income of a notional company.

Defined in this Act: amount, category A income, category B income, designated group investment fund, group investment fund, income, income tax liability, return of income, tax year, trust, trust rules, trustee

5

Compare: 2004 No 35 s HE 2(1), (1A)

**HR 3 Definitions for section HR 2: group investment funds**

*Category A income*

- (1) **Category A income**, for a group investment fund other than a designated group investment fund in an income year, means the amount of income derived from the investments and funds of the group investment fund that is calculated using the formula— 10

$$\frac{\text{last day value} - \text{designated source investments} - \text{pre-1983 investments}}{\text{last day value}} \times \text{income} \quad 15$$

*Definitions for items in formula*

- (2) In the formula,—
  - (a) **last day value** is the current value of all investments and funds of the group investment fund on the last day of the income year: 20
  - (b) **designated source investments** is the current value of the designated source investments in the group investment fund on the last day of the income year:
  - (c) **pre-1983 investments** is the current value of the pre-1983 investments in the group investment fund on the last day of the income year: 25
  - (d) **income** is the total income derived from all investments and funds of the group investment fund in the income year. 30

*Category B income*

- (3) **Category B income**, for a group investment fund other than a designated group investment fund, means the income derived from investments and funds of the group investment fund that is not category A income for the income year. 35

*Current value*

- (4) **Current value**, for a group investment fund and a day in an income year, means the capital value, as defined by the Trustee Companies Act 1967 or the Public Trustee Act 2001, of the investments and funds of the group investment fund that is— 5
- (a) either—
- (i) last determined before the day under section 31 of the Trustee Companies Act 1967 or section 66 of the Public Trust Act 2001; or 10
- (ii) determined on the day, if that day is the day on which the capital value is determined; and
- (b) for the purposes of the definition of **designated source investments in subsection (7)**, and **pre-1983 investments in subsection (8)**, determined as if those investments and funds comprised all the investments and funds in the group investment fund at the time. 15

*Designated sources*

- (5) **Designated sources**, for a group investment fund, means a trust, other than the trust under which the fund is established, whose trustee is a trustee of the group investment fund, that— 20
- (a) is created—
- (i) by will or codicil, or by order of court varying or modifying the provisions of a will or codicil; or
- (ii) on intestacy, including a partial intestacy, or by an order of court varying or modifying, in relation to an estate, the application of the law relating to the distribution of intestate estates; or 25
- (iii) by an order of court; or
- (iv) by an enactment; or 30
- (v) to administer funds that are compensation or other money arising from the death of, or injury to, a person; or
- (vi) to vary the terms of a will or codicil or, in relation to an estate, to vary the application of the law relating to the distribution of intestate estates, in either case for the sole purpose of effecting a settlement out of court of an application made, or proposed to be made, under the Family Protection Act 1955 or a claim, or a proposed claim, to be made under the Law Reform (Testamentary 35 40

Promises) Act 1949, if the terms are mainly the same as those likely to have been ordered by the court:

- (b) is not carried on for the private benefit of an individual whose funds are applied entirely or mainly for benevolent, philanthropic, cultural, or public purposes in New Zealand. 5

*Designated group investment fund*

- (6) **Designated group investment fund** means a group investment fund whose investments and funds are invested wholly— 10
- (a) in investments authorised under section 4(1)(a) to (j) of the Trustee Act 1956, which is interpreted as if the Trustee Amendment Act 1988 had not been enacted, and are not investments authorised solely by the instrument creating the trust under which the fund is established; or 15
- (b) in, and for the purposes of, the carrying on of a forestry business on land in New Zealand, to the extent to which the investments and funds are invested in the land that the fund owned or otherwise held on 22 June 1983 for the purposes of the forestry business. 20

*Designated source investments*

- (7) **Designated source investments**, for a group investment fund at any time, means investments and funds from designated sources invested at the time in the group investment fund. 25

*Pre-1983 investments*

- (8) **Pre-1983 investments**, for a group investment fund at any time, means investments and funds that were invested in the group investment fund at 22 June 1983, other than designated source investments, as if those investments and funds had continued to be invested at the time, including— 30
- (a) money deposited between 15 June and 23 June 1983 with the trustee of the group investment fund for investment in the fund; and 35

- (b) money deposited between 22 June and 16 July 1983 with the trustee of the group investment fund for investment in the fund, which, on or before 22 June 1983, was subject to a binding commitment to deposit that money.

Defined in this Act: amount, business, category A income, category B income, Commissioner, current value, designated group investment fund, designated source investments, designated sources, group investment fund, income, income year, New Zealand, pre-1983 investments, trustee

5

Compare: 2004 No 35 ss HE 2(2), (3), OB 1 “category A income”, “category B income”, “current value”, “designated group investment fund”, “group investment fund”

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#### **HR 4 Government Superannuation Fund**

The Government Superannuation Fund Authority is treated for income tax purposes as if the Government Superannuation Fund were a superannuation scheme that is a trust and the Authority the trustee of that scheme.

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Defined in this Act: income tax, Government Superannuation Fund, superannuation scheme, trust, trustee

Compare: 2004 No 35 s HJ 1

#### *Airport operators*

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#### **HR 5 Airport operators: general**

*When this section applies*

- (1) This section and **sections HR 6 and HR 7** apply to determine for this Act certain aspects of the treatment of an airport operator that is a joint venture between the Crown and a local authority.

25

*Company*

- (2) The airport operator is treated as a company.

*Shares in company*

- (3) Each joint venturer is treated as holding shares in the company in proportion to their share of the profits of the joint venture, as determined under the joint venture agreement (after allowing for adjustments for earlier income years).

30

*Separate from joint ventures*

- (4) The airport operator is treated as a person separate from—
- (a) the Crown; and
  - (b) each airport authority; and

35

- (c) each other person.

*Neither public nor local authority*

- (5) The airport operator is treated as neither a public authority nor a local authority.

*Not subject to mutual association rules*

5

- (6) The airport operator is treated as not a mutual association for the purposes of **subpart HE** (Mutual associations).

*Interest-bearing funding*

- (7) **Subsection (8)** applies to the extent to which—
- (a) a joint venturer provides funds for the airport operator's activities; and 10
- (b) the joint venturers expressly agree that the funds are to be provided for the airport operator's activities; and
- (c) the funds are provided for consideration in the nature of interest payable by the airport operator. 15

*Funding*

- (8) The funds are treated as money borrowed by the airport operator and the consideration is treated as interest.

Defined in this Act: airport operator, airport operator's activities, company, interest, local authority, public authority, share 20

Compare: 2004 No 35 s OC 1(2)

**HR 6 Airport operator's assets**

*Ownership of airport assets*

- (1) An airport operator is treated as owning each of its airport assets. 25

*Time of acquisition*

- (2) An airport operator is treated as having acquired an asset at the time—
- (a) it acquired it other than by way of purchase:
- (b) it agreed to use it: 30
- (c) it started to have the power to use it.

*Cost of acquisition*

- (3) An airport operator is treated as having incurred, in acquiring an asset, its market value at the time of acquisition.

- Ceasing to be airport asset*
- (4) If an asset ceases to be an airport asset of the airport operator, other than on sale, the airport operator is treated as having sold it, at the time, for a price equal to its market value at the time.
- Disputes concerning value or timing* 5
- (5) **Subsection (6)** applies if a question arises concerning—
- (a) the market value of an asset:
  - (b) the cost of an airport asset:
  - (c) the time at which an airport operator acquired, agreed to use, or started to have the power to use an asset. 10
- Resolved by agreement or Commissioner*
- (6) The question must be resolved by agreement between the airport operator and the Commissioner or, failing agreement, by the Commissioner.
- Meaning of airport asset* 15
- (7) In this section, for an airport operator, **airport asset** means—
- (a) an asset that, under the joint venture agreement and for the purposes of the airport operator's activities, the airport authority—
    - (i) acquires: 20
    - (ii) agrees to use:
    - (iii) is given the power to use:
  - (b) an asset owned by a person for the purposes of a depreciation sinking fund for an airport asset:
  - (c) an asset owned by a person for the purposes of a loan redemption sinking fund for a loan on which the interest payments are a charge against the joint venture income of the airport operator: 25
  - (d) an asset acquired by the airport operator using funds that are, or by exchanging property that is, acquired in carrying on the airport operator's activities and not allocated or distributed to the joint venturers. 30
- Exclusion*
- (8) **Subsection (7)(a)** does not apply to an asset that—
- (a) the airport operator has— 35
    - (i) disposed of:
    - (ii) ceased to agree to use:



- (iii) ceased to have the power to use:
- (b) the airport operator has acquired, agreed to use or acquired the power to use under a lease, unless the lease is a specified lease or a finance lease.

Defined in this Act: acquire, airport asset, airport operator, Commissioner, finance lease, interest, specified lease 5

Compare: 2004 No 35 s OC 1(2)–(6)

## HR 7 Meaning of airport operator's activities

### *Meaning of airport operator's activities*

- (1) In **sections HR 5 and HR 6, airport operator's activities** means the following activities undertaken for the purposes of the airport operator's joint venture agreement concerning the airport, including the airport's approaches, buildings and equipment: 10
  - (a) its establishment: 15
  - (b) its improvement:
  - (c) its maintenance:
  - (d) its operation:
  - (e) its management.

### *Meaning of airport* 20

- (2) In this section, **airport** has the meaning given in section 2 of the Airport Authorities Act 1966.

Defined in this Act: airport, airport operator, airport operator's activities

Compare: 2004 No 35 s OC 1(6)

## *Transitional residents* 25

## HR 8 Transitional residents

### *Person deriving foreign-sourced amount*

- (1) A person who derives a foreign-sourced amount is treated as being a non-resident in relation to the amount if the person derives the amount when they are a transitional resident. 30

### *Meaning of transitional resident*

- (2) A person is a **transitional resident** if—
  - (a) they have a permanent place of abode in New Zealand; and

- (b) immediately before acquiring a permanent place of abode in New Zealand, the person was a non-resident for a continuous period (the **non-residence period**) of at least 10 years; and
- (c) they were not a transitional resident before the non-residence period. 5

*Natural persons*

- (3) A natural person who meets the requirements of **subsection (2)** is a transitional resident for a period—
  - (a) beginning from the first day of the month in which they acquire a permanent place of abode in New Zealand; and 10
  - (b) ending on the day that is the earlier of—
    - (i) the day before the person ceases to be a New Zealand resident: 15
    - (ii) the last day of the 48th month after the month in which they acquire a permanent place of abode in New Zealand.

Defined in this Act: foreign-sourced amount, New Zealand, transitional resident

Compare: 2004 No 35 ss FC 22—FC 24 20

## Subpart HZ—Terminating provisions

### Contents

- HZ 1 Distributions from trusts of pre-1989 tax reserves
- HZ 2 Trusts that may become complying trusts

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## **HZ 1 Distributions from trusts of pre-1989 tax reserves** 25

*When this section applies*

- (1) This section applies if, and to the extent to which, a distribution is received from a trust that is not a unit trust, a group investment fund, or a superannuation scheme, when the distribution— 30
  - (a) consists of an amount of income or a capital gain derived by the trustee in the 1987–88 or earlier tax year; and
  - (b) is not also beneficiary income to which an entitlement exists in the tax year. 35

*Treatment of distribution*

- (2) The distribution is not income, and the provisions of this Act and the Tax Administration Act 1994 that correspond to the provisions of the Income Tax Act 1976, the Income Tax Act 1994, the Income Tax Act 2004, and the Income Tax Amendment Act (No 5) 1988 specified in the proviso to section 9 of the Act last referred to, do not apply. 5

Defined in this Act: beneficiary income, distribution, group investment fund, income, superannuation scheme, tax year, trustee, trustee income, unit trust

Compare: 2004 No 35 s HZ 1 10

**HZ 2 Trusts that may become complying trusts***When this section applies*

- (1) This section applies in relation to a settlement made on a trust on or before 17 December 1987, whether or not further settlements have been made on the trust after that date, when a settlor, trustee, or beneficiary of the trust chose under section 228(7) of the Income Tax Act 1976 on or before 31 May 1989 to pay income tax on trustee income derived in the 1988–89 and subsequent tax years. 15

*Trustee income derived in earlier tax years* 20

- (2) Trustee income that is derived from outside New Zealand, or derived from New Zealand only as non-resident passive income in relation to which the income tax obligations have been satisfied, in the 1987–88 and earlier tax years when no trustee was resident in New Zealand is treated as liable to income tax, other than only as non-resident passive income. 25

*Trustee's obligations*

- (3) The trustee's obligations in relation to their income tax liability on the trustee income are treated as having been satisfied. 30

Defined in this Act: complying trust, derived from New Zealand, income tax, income tax liability, New Zealand, non-resident passive income, pay, resident in New Zealand, settlement, settlor, tax year, trustee, trustee income

Compare: 2004 No 35 s HZ 2

## Part I Treatment of tax losses

### Subpart IA—General rules for tax losses

#### Contents

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IA 7	Restrictions relating to ring-fenced tax losses	
IA 8	Restrictions relating to schedular income	
IA 9	Ordering rules	
IA 10	Amended assessments	
<hr style="width: 20%; margin: 10px auto;"/>		
<b>IA 1</b>	<b>What this subpart does</b>	<b>15</b>
	This subpart—	
	(a) defines the relationship between the core provisions of this Act, the provisions of this Part, and other provisions in this Act that allow a person with a tax loss to use the amount of the loss; and	20
	(b) establishes the general rules for using a tax loss.	
	Defined in this Act: amount, tax loss	
	Compare: 2004 No 35 s IE 1(1)(a), (4)	
<b>IA 2</b>	<b>Tax losses</b>	
	<i>What is a tax loss?</i>	25
(1)	A person's tax loss for a tax year is found by adding together the amounts referred to in <b>subsections (2) to (4)</b> .	
	<i>Loss balances carried forward</i>	
(2)	If the person has a loss balance carried forward to the tax year, the amount is included in their tax loss for the tax year to the extent to which it is not subtracted from their net income for the tax year.	30

*Net losses*

- (3) If the person has a net loss under **section BC 4** (Net income and net loss) for the tax year, the amount is a tax loss component included in their tax loss for the tax year.

*Additional amounts*

- (4) If the person is described in 1 or more of the following paragraphs and has the amount described in the paragraph, the amount is included as a tax loss component in their tax loss for the tax year:
- (a) a member fund that incurs excess expenditure: 10
    - (i) the amount that is included in the tax loss under **section DV 5(4)(b)** (Investment funds: transfer of expenditure to master funds); and
    - (ii) the amount that the fund chooses under **section DV 7(2)** (Carry forward of expenditure) to treat as an amount added to the tax loss under this section: 15
  - (b) a person whose imputation credits are included in their annual gross income for the tax year: the amount of converted imputation credits arising under **section LE 1** (Tax credits for imputation credits) for the tax year: 20
  - (c) a person who has an unallocated deduction for the payment of a supplementary dividend in the corresponding income year: the amount referred to in **section LP 10** (Limitation on deductions) for the tax year:
  - (d) a company (**company A**) if an Australian ICA company has chosen under **section OB 69(5)** (Further income tax paid satisfying liability for income tax) to have a payment treated as a tax loss component of company A: the payment referred to in **section OB 69(5)** for the tax year: 25
  - (e) a person who has an unused attributed CFC net loss for the corresponding income year: the amount referred to in **section IQ 2(3)** (Ring-fencing cap on attributed CFC net losses) for the corresponding income year: 30
  - (f) a person who has an unused FIF net loss for the corresponding income year: the amount referred to in **section IQ 3(4)** (Ring-fencing cap on FIF net losses) for the corresponding income year: 35
  - (g) a person with a specified activity net loss for the corresponding income year: the amount referred to in **section IZ 1(1)** (Use of specified activity net losses) for the corresponding income year. 40

*Ring-fenced amounts*

- (5) This section, and **sections IA 3 and IA 4**, do not apply to the amounts referred to in **section IA 7**, which are subject to particular rules in other Parts or subparts that limit the way in which a person may use them. 5

*Exclusion: net losses from schedular income*

- (6) When a person with a schedular income tax liability for a tax year has an amount that would be a net loss for the tax year, if their only income for the tax year were schedular income, the amount is not a net loss under **subsection (3)** that is included in a tax loss for the tax year. 10

*Meaning of tax loss component*

- (7) For the purposes of this Part, a **tax loss component** means an amount included in a tax loss for a tax year under **subsection (3) or (4)**. 15

Defined in this Act: amount, annual gross income, attributed CFC income, attributed CFC net loss, Australian ICA company, corresponding income year, deduction, FIF net loss, further income tax, imputation credit, income tax liability, loss balance, net income, net loss, specified activity net loss, supplementary dividend, tax loss, tax loss component, tax year 20

Compare: 2004 No 35 ss BC 4, DV 5(4)(b), DV 7(2), IE 1(1), (3)(a), IQ 3(5), LB 2(3), (3A), LC 4(6), LE 4(5), ME 9(5B)

**IA 3 Using tax losses in tax year***Paying shortfall penalties*

- (1) A person who has a tax loss for a tax year may use some or all of the amount of the tax loss under **section IW 1** (Shortfall penalties) to pay a shortfall penalty. 25

*Companies using tax losses*

- (2) A company that has a tax loss for a tax year may— 30
- (a) make the amount available to another company under **section IC 5** (Company B using company A's tax loss) to subtract from the other company's net income for the tax year; or
  - (b) use the amount under **section RG 6** (Using loss balances) to satisfy a liability for FDP payable in the corresponding income year; or 35

- (c) use the amount under **sections FM 26 to FM 28, or RM 21**, (which relate to FDP) to obtain a refund of an overpayment of FDP made in the corresponding income year.

*Taxable distributions*

- (3) The amount of a tax loss for a tax year of a beneficiary of a non-complying trust may be used under **section HC 22** (Use of tax losses to reduce taxable distributions from non-complying trusts) to adjust the amount of a taxable distribution derived in the corresponding income year. 5

*Remaining loss balances carried forward*

- (4) If a person has a balance of tax loss remaining for a tax year after the uses described in this section, the balance is carried forward to the next tax year as a loss balance. 10

*Relationship with sections IA 5 to IA 8*

- (5) **Sections IA 5 to IA 8** override this section. 15

Defined in this Act: amount, company, corresponding income year, FDP, foreign dividend, loss balance, net income, non-complying trust, shortfall penalty, tax loss, tax year, taxable distribution, trustee

Compare: 2004 No 35 ss BC 4(4), HH 3(4), IE 1(1), (2), IG 10, NH 3(2), NH 4(5), (6), NH 5(6), (7) 20

**IA 4 Using loss balances carried forward to tax year**

*Priority uses*

- (1) A person's loss balance carried forward under **section IA 3(4)** to a tax year, must— 25
- (a) first, be subtracted from their net income, so far as it extends, for the tax year; and
- (b) secondly, to the extent of a remaining loss balance, be included in their tax loss for the tax year.

*Relationship with other provisions*

- (2) **Sections IA 5 to IA 8** override this section. **Section IP 3** (Continuity breach: tax loss components of companies carried forward) modifies this section for a company's part-year calculations. **Sections IZ 4 to IZ 6** (which relate to tax losses for earlier tax years) modify this section for certain tax years. 30

Defined in this Act: amount, loss balance, net income, tax loss, tax year 35

Compare: 2004 No 35 s IE 1(2)

**IA 5 Restrictions on companies' loss balances carried forward***General statement*

- (1) A company's tax loss component is carried forward in a loss balance only if the minimum requirements of **subsections (2) and (3)** are met. 5

*Continuity of voting interests*

- (2) A tax loss component is carried forward in a loss balance under **section IA 3(4)** only if a group of persons holds for the continuity period minimum voting interests in the company that add up to at least 49%. 10

*Continuity of market value interests*

- (3) If a market value circumstance exists for the company at any time during the continuity period, the group of persons must also hold for the continuity period, minimum market value interests in the company that add up to at least 49%. 15

*Breach of continuity of ownership in period*

- (4) If the requirements of **subsection (2) or (3)** are not met, **section IP 3** (Continuity breach: tax loss components of companies carried forward) applies to determine whether some or all of a tax loss component is carried forward in a loss balance. 20

*Avoidance arrangements*

- (5) **Section GB 3** (Arrangements for carrying forward loss balances: companies) may apply to treat a company as not meeting the requirements of **subsection (2) or (3)**.

*Some definitions* 25

- (6) In this section,—
- continuity period** means the period of time from the start of the income year that corresponds to the tax year in which a tax loss component is included in the tax loss to the end of the income year that corresponds to the tax year in which the company uses the tax loss component 30
- minimum market value interest**, for a person and a period, means the lowest market value interest they have in the company during the continuity period



**minimum voting interest**, for a person and a period, means the lowest voting interest they have in the company during the continuity period.

Defined in this Act: company, continuity period, group of persons, income year, loss balance, market value interest, minimum market value interest, minimum voting interest, tax loss component, tax year, voting interest

5

Compare: 2004 No 35 s IF 1(1)

## IA 6 Restrictions on companies grouping tax losses

### *Groups of companies*

- (1) A company that is part of a group of companies may use a tax loss under **subpart IC** (Grouping tax losses) only if it meets the requirements of **section IC 5** (Company B using company A's tax loss). 10

### *Consolidated groups*

- (2) **Subpart ID** (Use of tax losses by consolidated groups) applies to the grouping of tax losses by a consolidated group of companies. 15

### *Avoidance arrangements*

- (3) **Section GB 4** (Arrangements for grouping tax losses: companies) may apply to treat a company as not meeting the requirements referred to in **subsection (1)**. 20

Defined in this Act: company, consolidated group, group of companies, tax loss

Compare: 2004 No 35 s IG 1(1)

## IA 7 Restrictions relating to ring-fenced tax losses

### *Non-application of sections IA 2 to IA 4*

25

- (1) **Sections IA 2 to IA 4** (the **general rules**) do not apply to an amount referred to in **subsections (2) to (8)**.

### *Tax losses of loss-attributing companies*

- (2) The general rules do not apply to a loss-attributing company's net loss calculated under **section BC 4** (Net income and net loss). The provisions that deal with this net loss are **sections HA 24 to HA 27** (which relate to tax losses of loss-attributing companies). 30

- Policyholder net losses*
- (3) The general rules do not apply to a life insurer's policyholder net loss under **section EY 43(10)** (Policyholder income formula). The provision that deals with this net loss is **section IT 1** (Life insurers' policyholder net losses). 5
- Investment funds' excess expenditure*
- (4) The general rules do not apply to excess expenditure of an investment fund under **sections DV 5 and DV 7** (which relate to investment funds) except for—
- (a) the amount under **section DV 5(4)(b)** that the fund must treat as tax loss component under **section IA 2(4)(b)(i)**; and 10
- (b) the amount under **section DV 7(2)** that the fund chooses to treat as a tax loss component under **section IA 2(4)(b)(ii)**.
- Attributed CFC net losses*
- (5) The general rules do not apply to an attributed CFC net loss except a surplus under **section IQ 2(3)** (Ring-fencing cap on attributed CFC net losses). The provisions that deal with this net loss are **sections IQ 2, IQ 4, and IQ 6 to IQ 9** (which relate to foreign losses). 15
- FIF net losses*
- (6) The general rules do not apply to a FIF net loss except a surplus under **section IQ 3(4)** (Ring-fencing cap on FIF net losses). The provisions that deal with this net loss are **sections IQ 3, IQ 5, and IQ 6 to IQ 9**. 20
- Mining net losses*
- (7) The general rules do not apply to a net loss of a mining company, a resident mining operator, or a non-resident mining operator to the extent to which the net loss relates to a mining permit area. The provisions that deal with these net losses are **sections IS 1 to IS 4 and IS 6** (which relate to mining companies' tax losses). 25 30
- Petroleum net losses*
- (8) The general rules do not apply to a petroleum mining company's net loss to the extent to which the net loss relates to a permit area. The provisions that deal with this net loss are 35

**section IS 5, IZ 2, and IZ 3** (which relate to petroleum mining companies' use of loss balances).

*Amounts remitted*

- (9) The general rules do not apply to an amount that an associated person has remitted as a condition of a new start grant under **section CX 48** (Amounts remitted as condition of new start grant) or **EW 46** (Consideration when debtor released as condition of new start grant). 5

Defined in this Act: amount, attributed CFC net loss, FIF net loss, life insurer, loss-attributing company, mining company, mining permit area, net loss, non-resident mining operator, permit area, petroleum mining company, policyholder net loss, resident mining operator, tax loss component 10

Compare: 2004 No 35 ss DV 5(4)(b), DV 7(2), EY 42(10), HG 16, IE 3(5), IE 4(6), IG 4(4), IG 5(4), IG 7(2), (3), IH 1, IH 2(1), IH 3–IH 5, IT 1

**IA 8 Restrictions relating to schedular income** 15

*Certain schedular income*

- (1) For the purposes of **section BC 7** (Income tax liability of person with schedular income), a person must not take a tax loss into account in calculating a schedular income tax liability for a tax year for income described in the following paragraphs of the definition of **schedular income**: 20
- (a) **paragraph (c)**, which relates to non-resident entertainers; or
  - (b) **paragraph (e)**, which relates to non-resident general insurers; or 25
  - (c) **paragraph (f)**, which relates to non-resident shippers; or
  - (d) **paragraph (g)**, which relates to non-resident film renters; or
  - (e) **paragraph (h)**, for non-resident passive income described in **section RB 3** (Schedular income tax liability for filing taxpayers for non-resident passive income). 30

*Grouping tax losses*

- (2) For the purposes of **subsection (1)**, a company that is part of a group of companies must not take a tax loss of another company in the same group into account under **section IC 5 or ID 2** (which relate to companies' use of tax losses) in calculating a schedular income tax liability for the tax year. 35

*Relationship with sections IA 3 to IA 7*

- (3) This section overrides **sections IA 3 to IA 7**.

Defined in this Act: company, group of companies, income, income tax liability, insurer, net loss, non-resident, non-resident entertainer, non-resident passive income, schedular income, schedular income tax liability, tax loss, tax year

5

Compare: 2004 No 35 s ID 1(1)

**IA 9 Ordering rules***Tax loss components*

- (1) Tax loss components that are included in a tax loss must be used in the order in which they arose.

10

*Ring-fenced tax losses*

- (2) Ring-fenced tax losses must be used in the order in which they arose.

*Losses in same tax year: consolidated groups and amalgamated companies*

15

- (3) For a consolidated group or on the amalgamation of companies, tax loss components that the consolidated group or the companies have for the same tax year must be used in the order decided, as applicable, by the consolidated group or the amalgamated company, who must also notify the Commissioner of the decision. Without notification, the amounts must be used on a pro rata basis.

20

Defined in this Act: amalgamated company, amalgamation, amount, Commissioner, company, consolidated group, loss balance, notify, ring-fenced tax loss, tax loss, tax loss component, tax year

25

Compare: 2004 No 35 ss IE 1(3)(b), IF 5, IG 6(5)

**IA 10 Amended assessments***When this section applies*

- (1) This section applies if, in a tax year, the Commissioner amends under section 113 of the Tax Administration Act 1994 a person's assessment for an earlier tax year, and the amendment adjusts the amount of a tax loss component or a ring-fenced tax loss for the earlier tax year.

30

*Reduced losses*

- (2) If the amount is reduced in the adjustment, the person must reduce their loss balance or ring-fenced tax loss for the earlier

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tax year by the amount of the adjustment. If the loss balance or ring-fenced tax loss has been used in earlier tax years, they must similarly apply the reduction to the use of the loss balance or ring-fenced tax loss.

	<i>Increased losses</i>	5
(3)	If the amount is increased in the adjustment, the person must add an amount to their loss balance or ring-fenced tax loss for the earlier tax year.	
	Defined in this Act: amount, assessment, Commissioner, loss balance, ring-fenced tax loss, tax loss, tax loss component, tax year	10

### Subpart IC—Grouping tax losses

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#### *Introductory provisions*

#### **IC 1 Company A making tax loss available to company B**

##### *When this subpart applies*

(1)	This subpart applies if 1 company that is part of a group of companies ( <b>company A</b> ) has a tax loss for a tax year that it makes available to another group company ( <b>company B</b> ) to subtract from its net income for the tax year.	30
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*Requirements for grouping tax losses*

- (2) The amount of a tax loss that company A has for a tax year may be made available to company B to subtract from its net income for the tax year only if—
- (a) the threshold levels in **section IC 2** are met; and 5
  - (b) the companies meet all the requirements of **section IC 5**.

*Losing continuity or commonality in tax year*

- (3) If company A or company B fail to meet 1 or both of the threshold levels referred to in **subsection (2)(a)**, a tax loss may not be grouped unless **section IP 4 or IP 5** (which relate to the grouping of part-year losses) applies. 10

*References to years*

- (4) In this subpart, a reference to a tax year of a company includes a reference to a non-standard accounting year of the company that corresponds with the tax year. 15

*Relationship with sections IA 3 and IA 4*

- (5) This section overrides **sections IA 3 and IA 4** (which relate to the general use of tax losses). 20
- Defined in this Act: amount, company, group of companies, net income, tax loss, tax year
- Compare: 2004 No 35 ss IG 1(1), (3), IG 2(1), (2)(c), (e)

**IC 2 Threshold levels for grouping tax losses in tax year***Company A: continuity of ownership*

- (1) Company A may group a tax loss in a tax year under **section IC 5** only if the requirements of **section IA 5** (Restrictions on companies' loss balances carried forward) are met. 25

*Company A and company B: common ownership*

- (2) In addition to meeting the requirements referred to in **subsection (1)**, company A and company B must have the required common ownership under **section IC 3** for the period referred to in **section IC 6**. 30

*Part years: relationship with subpart IP*

- (3) **Subpart IP** (Meeting requirements for part-years) applies in a tax year that is part of the commonality period if the following requirements are met for the relevant part-year: 35

- (a) continuity of ownership in company A for the purposes of **subsection (1)**; and
- (b) common ownership of company A and company B for the purposes of **subsection (2)**.

Defined in this Act: commonality period, company, group of companies, group of persons, income year, tax loss, tax year 5

Compare: 2004 No 35 ss IG 1(1), (3), IG 2(1), (2)(c), (e)

### IC 3 Common ownership: group of companies

#### *Meaning*

- (1) A **group of companies** means 2 or more companies in relation to which a group of persons holds— 10
  - (a) common voting interests that add up to at least 66%; and
  - (b) if a market value circumstance exists for a company that is part of a group of companies, common market value interests that add up to at least 66%. 15

#### *Part of group at time or for period*

- (2) A company is treated as part of a group of companies at a particular time or for a particular period if the minimum common interests referred to in **subsection (1)** exists at the relevant time or is kept for the whole of the relevant period. But it is not necessary that the group of persons holding the interests stays the same for the whole of the relevant period. 20

#### *Measuring common voting interests*

- (3) In **subsection (1)(a)**, if the percentage interests are the same for each company, a person's common voting interest in the relevant companies at a particular time is the percentage of their voting interests under **section YC 2** (Voting interests) in each of the companies at that time. If the percentage interests in the companies differ, the percentage that counts is the lowest percentage voting interest in each of the companies for the period. 25 30

#### *Measuring common market value interests*

- (4) In **subsection (1)(b)**, if the percentage interests are the same for each company, a person's common market value interest in the relevant companies at a particular time is the percentage of their market value interests under **section YC 3** (Market value 35

interests) in each of the companies at that time. If the percentage interests in the companies differ, the percentage that counts is the lowest percentage voting interest in each of the companies for the period.

Defined in this Act: common market value interest, common voting interest, company, group of companies, group of persons, market value circumstance, voting interest

5

Compare: 2004 No 35 s IG 1(2), (5)

#### **IC 4 Common ownership: wholly-owned groups of companies**

##### *Interests held*

10

(1) A **wholly-owned group of companies** means 2 or more companies in relation to which a group of persons holds, for the relevant period,—

- (a) common voting interests that add up to 100%; and
- (b) if a market value circumstance exists for a company that is part of a group of companies, common market value interests that add up to 100%.

15

##### *Employees' share purchase schemes*

(2) In **subsection (1)**, company shares held by the trustee of, or by employees or former employees of the company as a consequence of the operation of, a share purchase scheme are disregarded to the extent to which they represent voting interests in the company that add up to no more than 3%, or, as applicable, market value interests in the company that add up to no more than 3%.

20

25

Defined in this Act: common market value interest, common voting interest, company, employee, group of companies, group of persons, market value circumstance, market value interest, share, share purchase scheme, trustee, voting interest, wholly-owned group of companies

Compare: 2004 No 35 s IG 1(3)

30

### ***Requirements and methods***

#### **IC 5 Company B using company A's tax loss**

##### *Requirements*

(1) Company A may make a tax loss available to company B to subtract from its net income under **section IA 3(2)** (Using tax losses in tax year) only if—

35



- (a) company A and company B have minimum common ownership for the relevant period as set out in **sections IC 2(2) and IC 6**; and
- (b) company A meets the residence requirements of **section IC 7**; and 5
- (c) company A has the required continuity of ownership under **section IC 2(1)** and, if it applies, **section IC 10(2)(a)**; and
- (d) the amount falls within the limits set by **section IC 8(1) and (2)**; and 10
- (e) the payment and notification requirements of **section IC 9** are met.

*Method: election or subvention payment*

- (2) Having met all the requirements set out in **subsection (1)**, company A may either— 15
  - (a) choose to make a tax loss that it has in a tax year available to company B to use in the tax year; or
  - (b) agree with company B that company B should bear the amount of company A's tax loss, or take a share in it, in return for a payment by company B to company A; or 20
  - (c) apply both **paragraphs (a) and (b)** in relation to the tax loss.

*Amounts used in tax year*

- (3) Company B must subtract the amount of the tax loss referred to in **subsection (2)(a)** or the payment referred to in **subsection (2)(b)**, as applicable, from its net income for the tax year in relation to which company A makes the amount available or receives the payment. 25

*When decisions made*

- (4) If company A chooses to make the amount available to company B under **subsection (2)(a)**, the decision is irrevocable. 30

*Nature of payment*

- (5) To the extent to which an amount of tax loss is subtracted from net income, a payment from company B to company A under **subsection (2)(b)** is not a dividend.

*Part-year tax losses*

- (6) **Sections IP 4 and IP 5** (which relate to losses in part-years) modify this section for part-year calculations.

*Tax years before 1981–82 and between 1981–82 and 1991–92*

5

- (7) **Section IZ 7** (Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92) modifies the requirements of—

- (a) **subsection (1)(a)** for a tax loss component that arises in tax years between 1981–82 and 1991–92; and  
 (b) **subsection (1)(b)** for a tax loss component that arises in tax years before the 1991–92 tax year; and  
 (c) **subsection (1)(a)** for a tax loss component that arises in tax years before the 1981–82 tax year.

10

Defined in this Act: amount, company, dividend, net income, notify, tax loss, tax loss component, tax year

15

Compare: 2004 No 35 s IG 2(2)

**IC 6 Common ownership for period***Commonality period*

- (1) For the purposes of **section IC 2(2)**, common ownership under **section IC 3** must exist from the start of the income year in which company A has a tax loss component that is included in the tax loss to the end of the income year in which company B subtracts the amount of the tax loss component from its net income. In this Part, this length of time is called the **commonality period**.

20

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*Multiple net losses*

- (2) The requirement set out in **subsection (1)** applies to net losses as they arise in an income year on an individual basis.

*When companies have different balance dates*

30

- (3) If the balance dates of company A and company B are different, **section IC 10(2)(b)** applies to extend the commonality period.

*Relationship with section IZ 7*

- (4) **Section IZ 7(1) and (2)** (Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92) overrides **subsections (1) and (2)**.

Defined in this Act: balance date, commonality period, company, income year, loss balance, net income, tax loss, tax loss component

5

Compare: 2004 No 35 ss IG 1(1), (2), IG 2(2)(c), (4)(d)(ii), (5)(c)(ii)

**IC 7 Residence of company A***Incorporation or carrying on business*

- (1) Company A, for the commonality period, must be either— 10
- (a) incorporated in New Zealand; or
  - (b) carrying on a business in New Zealand through a fixed establishment in New Zealand.

*Residence in New Zealand*

- (2) In addition to meeting the requirements of **subsection (1)**, company A, for the commonality period, must not be a company resident in New Zealand that is— 15
- (a) treated under a double tax agreement, and for the purposes of the agreement, as not resident in New Zealand; or 20
  - (b) liable by the law of another country or territory to income tax in that country or territory through domicile, residence, or place of incorporation.

*Relationship with section IZ 7*

- (3) **Section IZ 7(4)** (Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92) overrides this section. 25

Defined in this Act: business, commonality period, company, double tax agreement, fixed establishment, income tax, New Zealand, resident in New Zealand

Compare: 2004 No 35 s IG 2(2)(d), (11)

30

**IC 8 Limitations on amounts used***Limit on amounts*

- (1) A tax loss made available, or a payment made, under **section IC 5(2)** must be no more than the amount that would be company B's net income for the tax year in which it subtracts the amount of the tax loss. 35

*Limit for payments*

- (2) An amount that company B agrees to pay company A under section **IC 5(2)(b)** must be no more than the amount of company A's tax loss.

*No accounting for amount by companies*

5

- (3) Company A and company B must ignore this section in calculating their net incomes, but for the purposes of grouping tax losses, company B's net income is found after taking into account—

- (a) first, its own losses; and  
 (b) secondly, a tax loss made available to company B by another company.

10

Defined in this Act: amount, company, net income, pay, tax loss, tax year

Compare: 2004 No 35 s IG 2(2)(f), (g)

**IC 9 Date for payment and notice to Commissioner**

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*Last date for payment*

- (1) A payment under **section IC 5(2)(b)** must be made no later than the extended return date, or by a later date if the Commissioner allows.

*Date and method for notifying Commissioner*

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- (2) Company A must notify the Commissioner of an election or payment under **section IC 5(2)** by the extended return date or, if applicable, the later date allowed by the Commissioner. The notification may be made in the company's annual return of income.

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*Extended return date*

- (3) In **subsection (1), extended return date** means the 31 March that, for company A and the tax year in which the amount of the tax loss is subtracted, is the latest date to which the time for providing the return of income may be extended under section 37(5) of the Tax Administration Act 1994.

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Defined in this Act: amount, Commissioner, company, extended return date, notify, pay, return of income, tax loss, tax year

Compare: 2004 No 35 s IG 2(2)(g), (3)

**IC 10 When companies have different balance dates***When this section applies*

- (1) This section applies in a tax year when company A and company B do not have the same balance date.

*Extensions for continuity and common ownership*

- (2) If company B's income year ends after the last day of company A's income year, for **section IC 5** to apply to a tax loss in a corresponding tax year,—
- (a) continuity of ownership in company A under **section IC 2(1)** must extend to the end of company B's income year; and 10
- (b) common ownership of company A and company B under **section IC 3 or IC 4** must extend to the end of company B's income year.

*Part-year tax losses*

- (3) This section applies for part-year calculations through **section IP 2(4)** (Group companies' common span). 15

Defined in this Act: balance date, company, group of companies, income year, tax loss, tax year

Compare: 2004 No 35 s IG 2(2)(c), (e) 20

**IC 11 Reduction of amounts used by companies***When this section applies*

- (1) This section applies in a tax year if—
- (a) company A has a tax loss for the tax year that is made available to, and subtracted by, more than 1 company that is part of the group of companies; and 25
- (b) the Commissioner determines under section 113 of the Tax Administration Act 1994 that the actual total tax loss for the tax year is less than the sum of the amounts subtracted by the companies in the group, and notifies company A. 30

*Reduced amounts*

- (2) The relevant companies must reduce the amounts they subtracted either in the way company A allocates under **subsection (3)** or, if no allocation is made, proportionately under **subsection (4)**. 35

*Company A's allocation*

- (3) Company A may choose how the amount by which the total must be reduced is allocated between or among the companies. But if company A allocates an amount to a company that is no longer part of the group at the time of the allocation, and the amount is more than a proportionate amount, the allocation is disregarded. **Subsection (6)** sets out the notice requirements for this subsection. 5

*Proportionate amounts*

- (4) If company A does not allocate the amounts by which the total must be reduced, the amounts subtracted by the group companies are reduced in the same proportion as that by which the total amount was reduced in determining the actual total tax loss. 10

*Subvention payments*

- (5) If the reduction results in a payment under **section IC 5(2)(b)** being treated as a dividend, the dividend is reduced to the extent to which the payment is repaid by company A within the notification period referred to in **subsection (6)**. 15

*Notifying Commissioner*

- (6) For the purposes of **subsections (3) and (5)**, company A must notify the Commissioner of the allocation within 6 months after the date on which the Commissioner notifies company A that the reduction is required. However, the Commissioner may agree to extend this notification period. 20  
25

Defined in this Act: amount, Commissioner, company, dividend, group of companies, notify, tax loss, tax year

Compare: 2004 No 35 s IG 2(7)

**IC 12 Bad debts or decline in value of shares***When this section applies* 30

- (1) This section applies to companies that are part of a group of companies in the tax year of deduction and in later tax years if—
- (a) a company other than company A in the group has a deduction under **section DB 32** (Bad debts) for a bad debt or a decline in the value of shares; and 35

- (b) the amount of the debt or the payment for the subscription of the shares has been taken into account in calculating company A's tax loss for a tax year; and
- (c) the relevant tax year in which the deduction is made is the 1993–94 tax year or a later tax year. 5

*No additions to loss balances*

- (2) The amount of the tax loss cannot be added to the loss balance, except to the extent to which the tax loss is more than the total amount of the deduction.

*Determining decline in value of shares* 10

- (3) For the purposes of this section, shares are treated as declining in value if,—
  - (a) on the disposal of the shares, the amount for which they were disposed of is less than the deduction for the cost of the shares; or 15
  - (b) when the shares have not been disposed of, their value as calculated under **subpart EB** (Valuation of trading stock (including dealer's livestock)) or otherwise declines.

Defined in this Act: amount, company, deduction, group of companies, loss balance, pay, share, tax loss, tax year 20

Compare: 2004 No 35 s IG 2(6)

## Subpart ID—Use of tax losses by consolidated groups

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- ID 2 Pre-consolidation losses: general treatment
- ID 3 Pre-consolidation losses: use by group companies
- ID 4 Pre-consolidation losses on entry: part-year rule
- ID 5 Pre-consolidation losses on exit: part-year rule

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## **ID 1 Treatment of tax losses by consolidated groups** 30

### *Consolidated group's net losses*

- (1) A tax loss of a consolidated group of companies is treated as the consolidated group's tax loss, not the tax loss of a company that is part of the consolidated group. **Subparts IA and IC** (which relate to the general use and grouping of tax losses), as modified by this subpart, apply as if the consolidated group were 1 company. 35

*Ring-fenced tax losses*

- (2) Nothing in this subpart applies to a consolidated group whose companies are mining companies.

Defined in this Act: company, consolidated group, mining company, tax loss

Compare: Compare 2004 No 35 s IG 6(1A)–(3)

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**ID 2 Pre-consolidation losses: general treatment***When this section applies*

- (1) This section applies in a tax year when a company that meets the requirements of **section IA 5** (Restrictions on companies' loss balances carried forward) and is part of a consolidated group has a pre-consolidation loss balance carried forward to the tax year. 10

*First use*

- (2) The first use of the loss balance must be to make the amount of the loss balance available to the consolidated group to subtract from its net income, so far as it extends, for the tax year. 15

*Second use*

- (3) If, after **subsection (2)** is applied, some of the loss balance remains, the company may choose to do 1 or more of the following: 20
- (a) subtract the remaining amount from its net income for the tax year:
  - (b) make the remaining amount available to another consolidated group to subtract from its net income for the tax year: 25
  - (c) make the remaining amount available under **section IC 5** (Company B using company A's tax loss).

*Third use*

- (4) If, after **subsections (2) and (3)** are applied, a loss balance remains, the remaining amount is carried forward to the next tax year. 30



*Relationship with sections IA 3, IA 4, IC 5, and provisions in this subpart*

- (5) This section overrides **sections IA 3, IA 4, and IC 5** (which relate to the general use and grouping of tax losses). **Sections ID 3 to ID 5** override this section. 5

Defined in this Act: amount, company, commonality period, consolidated group, net income, loss balance, tax year

Compare: Compare 2004 No 35 s IG 6(4), (6), (7)

### **ID 3 Pre-consolidation losses: use by group companies**

*When this section applies* 10

- (1) This section applies in a tax year if—
- (a) a company (**company A**) that is part of a consolidated group has a loss balance to which **section ID 2** applies; and
  - (b) the company was, in the continuity period relating to the loss balance, part of the same group of companies as 1 or more companies that are in the consolidated group in the tax year in which the loss balance is used. 15

*Limit on amount available*

- (2) The amount made available under **section ID 2(2)** to the consolidated group is limited as follows: 20
- (a) if all the companies, including company A, in the consolidated group meet the requirements of **section IC 6(1)** (Common ownership for period): the amount available is limited to the amount of the loss balance to the extent of the net income of the consolidated group for the tax year: 25
  - (b) if some of the companies in the consolidated group meet the requirements of **section IC 6(1)**: the amount available is limited to the total of— 30
    - (i) the amount that company A could subtract from its net income for the tax year if it were not in the tax year part of a consolidated group; and
    - (ii) the amount that could be made available under **section IC 5** (Company B using company A's tax loss) to the other group companies in the tax year, ignoring the consolidation of the companies and presuming all steps required under **section IC 5** were taken in order for the section to apply. 35

*Relationship with section FM 3*

- (3) In **subsection (2)**, the calculation of the consolidated group's net income must be made in accordance with **section FM 3** (Liability of consolidated groups and group companies).

*Relationship with section ID 2*

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- (4) This section overrides **section ID 2**.

Defined in this Act: amount, company, consolidated group, continuity period, group of companies, loss balance, net income, tax loss, tax year

Compare: 2004 No 35 s IG 6(6)

**ID 4 Pre-consolidation losses on entry: part-year rule**

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*When this section applies*

- (1) This section applies if a company that is part of a consolidated group has a loss balance to which **section ID 2** applies in a tax year when the company joins the consolidated group.

*Limit on amount available*

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- (2) The amount of the loss balance to be made available to the consolidated group under **section ID 2(2)** is the lesser of the amount the company establishes in financial statements under **subsection (3)**, or the amount calculated using the formula in **subsection (4)**, but in either case, it must not be more than the limit set out in **section ID 3(2)**.

20

*Financial statements*

- (3) The company may establish the amount to be made available by providing the Commissioner, at the time of providing the consolidated group's return of income, with adequate financial statements that—

25

- (a) relate to the part of the tax year when the company was part of the consolidated group; and
- (b) discloses the amount that would be the net income attributable to the part of the tax year when the company was part of the consolidated group, determined on a fair and reasonable basis of attribution.

30

*Formula*

- (4) The amount that may be made available under **section ID 2(2)** and referred to in **subsection (2)** is calculated using the formula—

35

unused amount  
– (part-year net income + part-year net loss).

*Definition of items in formula*

- (5) In the formula,—
- (a) **unused amount** is the loss balance carried forward from an earlier tax year or years that would be subtracted from the consolidated group’s net income for the tax year in the absence of **section ID 3** or this section: 5
- (b) **part-year net income** is the company’s net income for the part of the tax year before the company joins the consolidated group: 10
- (c) **part-year net loss** is the amount of a pre-consolidation tax loss that must be subtracted under **section ID 2** from the net income of another consolidated group of which the company was part in the tax year before joining the consolidated group referred to in **subsection (1)**. 15

*Relationship with section ID 2*

- (6) This section overrides **section ID 2**. 20
- Defined in this Act: amount, Commissioner, company, consolidated group, loss balance, net income, return of income, tax loss, tax year
- Compare: 2004 No 35 s IG 6(7)

**ID 5 Pre-consolidation losses on exit: part-year rule**

*When this section applies*

- (1) This section applies if a company that is part of a consolidated group has a loss balance to which **section ID 2** applies in a tax year when the company leaves the consolidated group. 25

*Limit on amount available*

- (2) In addition to the amount available under **section IP 3(3)** (Continuity breach: tax loss components of companies carried forward) but subject to the limit in **section ID 3(2)**, the amount of the company’s loss balance that is carried forward to the tax year must be no more than the consolidated group’s net income for the relevant part of the tax year. For part-year calculations, see **subpart IP** (Meeting requirements for part-years). 30  
35

*Financial statements*

- (3) The consolidated group must provide the Commissioner with adequate financial statements that disclose the amount that would be the consolidated group's net income for the relevant part of the tax year, determined on a fair and reasonable basis of attribution. The statements must be filed with the consolidated group's return of income for the tax year. 5

*Continuity requirements*

- (4) For the purposes of this section, the company must meet the threshold level set out in **section IC 2(1)** (Threshold levels for grouping tax losses in tax year) for the relevant part of the tax year. 10

*Relationship with section ID 2*

- (5) This section overrides **section ID 2**. 15  
 Defined in this Act: amount, Commissioner, company, consolidated group, loss balance, net income, return of income, tax loss, tax year  
 Compare: 2004 No 35 s IG 6(8)

## Subpart IE—Treatment of tax losses on amalgamation of companies

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 IE 2 Treatment of tax losses by amalgamating company  
 IE 3 Treatment of tax losses by amalgamated company  
 IE 4 Group companies' treatment of tax losses on amalgamation 25  
 IE 5 Applying the continuity provisions when companies amalgamate

#### IE 1 When this subpart applies

This subpart applies if, in an amalgamation,—

- (a) either the amalgamating company or the amalgamated company has, before the date of the amalgamation, a tax loss component or ring-fenced tax loss: 30  
 (b) a company that is part of a group of companies has a tax loss for the tax year of amalgamation that may be made

available to the amalgamated company to subtract from its net income for the tax year.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, group of companies, net income, ring-fenced tax loss, tax loss, tax loss component, tax year

5

Compare: 2004 No 35 ss IF 4–IF 6

## IE 2 Treatment of tax losses by amalgamating company

### *When this section applies*

- (1) This section applies if an amalgamating company that meets the requirements of **section IA 5** (Restrictions on companies' loss balances carried forward) ends its existence on a resident's restricted amalgamation, and has a tax loss for a tax year that—
- (a) has not, before the date of amalgamation, been used by the company; and
- (b) could be made available and subtracted from the amalgamated company's net income for the part of the tax year that ends with the date of amalgamation.

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### *Attributing losses to amalgamated company*

- (2) If the amalgamated company meets the requirements of **section IE 5**, the tax loss is attributed to the amalgamated company. The amalgamated company may, after the date of amalgamation, subtract the amount of the tax loss from its net income for the tax year, or make it available to another company to subtract from its net income for the tax year.

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25

### *Other amalgamating companies*

- (3) In **subsection (1)(b)**, the amalgamated company includes a company that has amalgamated with the amalgamating company before or during the tax year in which the amount is used. The tax year referred to in that subsection means the tax year of the relevant company.

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### *New companies*

- (4) **Subsection (1)(b)** does not apply if the amalgamated company is incorporated only on the amalgamation.

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Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, company, net income, resident's restricted amalgamation, tax loss, tax year

Compare: 2004 No 35 s IF 4

**IE 3 Treatment of tax losses by amalgamated company***When this section applies*

- (1) This section applies if an amalgamated company that meets the requirements of **section IA 5** (Restrictions on companies' loss balances carried forward) has a loss balance carried forward to the tax year in which the amalgamation takes place, and the loss balance— 5
- (a) has not, before the date of amalgamation, been used by the company; and
  - (b) could be made available under and subtracted by each amalgamating company from the net income attributable to the part of the relevant company's tax year that ends with the date of amalgamation. 10

*Loss balances carried forward*

- (2) If the requirements of **sections IA 5, IC 2, and IC 5** (which relate to the use and grouping of tax losses) are met, the amalgamated company's loss balance is carried forward to the tax year in which the amalgamation takes place or to a later tax year. 15

*Attributed CFC net losses and FIF net losses*

- (3) For the purposes of **subsection (1)(b)**, if the tax loss is an attributed CFC net loss or a FIF net loss, it may be made available only to a wholly-owned group of companies. 20

*Relationship with sections IA 3 and IA 4*

- (4) This section overrides **sections IA 3 and IA 4** (which relate to the general use of tax losses). 25

Defined in this Act: amalgamated company, amalgamating company, amalgamation, attributed CFC net loss, FIF net loss, loss balance, net income, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IF 6

**IE 4 Group companies' treatment of tax losses on amalgamation** 30*When this section applies*

- (1) This section applies on an amalgamation if a company that is part of a group of companies— 35
- (a) meets the requirements of **section IA 5** (Restrictions on companies' loss balances carried forward); and

- (b) has a tax loss for part of a tax year before the date of amalgamation; and
- (c) may use the tax loss under **section IC 5, IQ 4, or IQ 5** (which relate to a company's use of another company's loss, including foreign losses). 5

*Use by amalgamated company*

- (2) The amount of the tax loss may be subtracted from the net income of the amalgamated company for the tax year only if both the company and the amalgamated company, and each company that before or during the amalgamation amalgamated with the amalgamated company, meet the requirements of **subparts IA, IC, and IQ** (which relate to the general loss rules and certain foreign losses) that allow companies to group tax losses. 10

Defined in this Act: amalgamated company, amalgamation, amount, company, group of companies, net income, tax loss, tax year 15

Compare: 2004 No 35 s IG 9

## **IE 5 Applying the continuity provisions when companies amalgamate**

The provisions of this Act apply as if the amalgamated company did not exist separately before amalgamation, and was instead the amalgamating companies with the same holders of shares and options over shares, each with the same number and class of shares and options over shares, as they held in the amalgamating company, to determine whether a tax loss or loss balance,— 20

- (a) may be used or is carried forward under **sections IA 3 and IA 4** (which relate to the general use of tax losses):
- (b) may be subtracted from the net income of another company under **section IC 5, IQ 4, or IQ 5** (which relate to a company's use of another company's loss, including foreign losses): 30
- (c) in the case of a group company, may be subtracted from the net income of the amalgamated company under **section IC 5, IQ 4, or IQ 5**. 35

Defined in this Act: amalgamated company, amalgamating company, amalgamation, company, loss balance, net income, option, share, tax loss

Compare: 2004 No 35 ss IF 4, IG 8, IG 9

## **Subpart IP—Meeting requirements for part-years**

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### *Introductory provisions*

#### **IP 1 When this subpart applies**

##### *Breaches of continuity and commonality*

- |     |   |    |
|-----|---|----|
| (1) | This subpart applies if either or both the following breaches occur:  |    |
|     | (a) when commonality of ownership required by <b>section IC 5(1)(a)</b> (Company B using company A's tax loss) is lost during a tax year (a <b>commonality breach</b> ):                  | 20 |
|     | (b) when continuity of ownership required by <b>section IA 5(1)</b> (Restrictions on companies' loss balances carried forward) is broken during a tax year (a <b>continuity breach</b> ). | 25 |

##### *Relationship with subparts IA, IC, and ID: part-year calculations*

- |     |  |    |
|-----|--|----|
| (2) | The general rules for the treatment of tax losses in <b>subparts IA, IC, and ID</b> (which relate to the general use and grouping of tax losses) apply, as modified or overridden by the provisions of this subpart, to— | 30 |
|     | (a) a part-year tax loss as if it were a tax loss for a tax year:  |    |
|     | (b) part-year net income as if it were net income for a tax year:  | 35 |



- (c) the common span as if the period of time were a tax year.

Defined in this Act: common span, net income, tax loss, tax year

Compare: 2004 No 35 s IG 2(4)(e), (f), (5)(e), (f)

<b>IP 2 Group companies' common span</b>	5
<i>Common span</i>	
(1) In this subpart, the corresponding parts of company A's income year and company B's income year when the requirements for commonality of ownership under <b>section IC 5(1)(a)</b> (Company B using company A's tax loss) are met is called the <b>common span</b> .	10
<i>Common span when balance dates differ</i>	
(2) If the income years of company A and company B do not end on the same date, the common span is that part of company B's income year or income years in which the requirements for commonality are met. <b>Section IC 10(2)(b)</b> (When companies have different balance dates) may apply to extend the period.	15
<i>Calculating group companies' tax losses</i>	
(3) For the purposes of this subpart and the grouping of tax losses, the amount of a tax loss component is found after taking into account any amount of the tax loss component subtracted from the net income of any group company.	20
Defined in this Act: amount, balance date, common span, company, income year, net income, tax loss, tax loss component	
Compare: 2004 No 35 s IG 2(2)(e), (4)(c), (d), (5)(b), (c)	25
<b><i>Tax loss components carried forward</i></b>	
<b>IP 3 Continuity breach: tax loss components of companies carried forward</b>	
<i>When this section applies</i>	
(1) This section applies for the purposes of <b>section IA 4</b> (Using loss balances carried forward to tax year) if a breach occurs in the requirements for continuity of ownership of <b>section IA 5</b> (Restrictions on companies' loss balances carried forward) that enable a tax loss component included in a company's loss balance to be carried forward to or from a tax year.	35

*Tax loss components for earlier income years*

- (2) Despite the breach, a tax loss component arising in an earlier income year is carried forward to a tax year (**year A**) to the extent to which—
- (a) the requirements for continuity of ownership would be met if the continuity period included only part of the income year of the company that corresponds to year A; and 5
  - (b) the company has net income for part of the corresponding income year; and 10
  - (c) the company provides the Commissioner with adequate financial statements under **section IP 6** calculating the amount of the company's net income for the relevant part of the corresponding income year.

*Limit on tax loss components carried forward to year A* 15

- (3) The total tax loss components carried forward under **subsection (2)** must be no more than the amount calculated under **subsection (2)(b) and (c)**, although the amount may be increased if **section IP 5** applies.

*Tax loss components of year of breach* 20

- (4) Despite the breach, a tax loss component is carried forward to the tax year (**year B**) from year A to the extent to which—
- (a) the requirements for continuity of ownership would be met if the continuity period included only part of the income year that corresponds to year A; and 25
  - (b) the company provides the Commissioner with adequate financial statements under **section IP 6** calculating the amount of the company's net loss for the part of year A.

*Limit on tax loss components carried forward to year B*

- (5) The amount of the tax loss component carried forward under **subsection (4)** must be the least of— 30
- (a) the part-year net loss calculated under **subsection (4)(b)**;
  - (b) if the company has net income for year A, zero;
  - (c) if the company has a net loss for year A, the company's net loss for year A. 35

Defined in this Act: amount, Commissioner, company, continuity period, corresponding income year, income year, loss balance, net income, net loss, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IF 1(2), (3)

### *Grouping part-year tax losses*

#### **IP 4 Breach in income year in which tax loss component arises**

##### *When this section applies*

- (1) This section applies for the purposes of **sections IA 6 and IC 5** (which relate to the use and grouping of tax losses) when company A has a tax loss component arising in an income year in which either the continuity or commonality requirements for grouping tax losses are breached. 5

##### *Modified requirements*

- (2) The tax loss component is included in a tax loss that company A makes available under **section IA 3(2)** (Using tax losses in tax year) to company B only to the extent to which following requirements, which modify those set out in **section IC 5** (Company B using company A's tax loss), are met: 10
- (a) the tax loss component arises in the common span; and
- (b) continuity of ownership in company A under **section IC 2(1)** (Threshold levels for grouping tax losses in tax year) applies from the beginning to the end of the common span; and 15
- (c) company A and company B provide the Commissioner with adequate financial statements under **section IP 6**; and 20
- (d) company A notifies the Commissioner of the treatment of the tax loss under **section IP 7**. 25

##### *Determining amounts*

- (3) For the purposes of determining the amount of tax loss that company A and company B may use, **sections IC 5 and IC 8** (which relate to the treatment of tax losses by companies) apply as if the common span were a corresponding income year. 30

Defined in this Act: amount, Commissioner, common span, company, corresponding income year, income year, net income, notify, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IG 2(4)

35

**IP 5 Breach in tax year in which loss balance is grouped***When this section applies*

- (1) This section applies for the purposes of **sections IA 6 and IC 5** (which relate to the use and grouping of tax losses) when company A has a loss balance carried forward to a tax year in which either the continuity or commonality requirements for grouping tax losses are breached. 5

*Modified requirements*

- (2) The loss balance is included in a tax loss that company A makes available under **section IA 3(2)** (Using tax losses in tax year) to company B only to the extent to which the following requirements, which modify those set out in **section IC 5** (Company A using company B's tax loss), are met: 10
- (a) a tax loss component included in the loss balance arises in the common span; and 15
  - (b) continuity of ownership in company A under **section IC 2(1)** (Threshold levels for grouping tax losses in tax year) applies in the common span; and
  - (c) company B provides the Commissioner with adequate financial statements under **section IP 6**; and 20
  - (d) company A notifies the Commissioner of the treatment of the tax loss under **section IP 7**.

*Determining amounts*

- (3) For the purposes of determining the amount of the loss balance that company A and company B may use, **sections IC 5 and IC 8** (which relate to the treatment of tax losses by companies) apply as if the common span were a tax year. 25

Defined in this Act: amount, Commissioner, common span, company, loss balance, notify, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IG 2(2)(b)–(f), (5) 30

*Statements and notices***IP 6 Financial statements required***Financial statements required from company: section IP 3*

- (1) For the purposes of this subpart, a company must provide the Commissioner with adequate financial statements under **section IP 3(2)(c) and (4)(b)** relating to the continuity period. 35

*Financial statements required from company A: section IP 4*

- (2) For the purposes of this subpart, company A must provide the Commissioner with adequate financial statements under **section IP 4(2)(c)** relating to the common span, calculating the amount of the tax loss component, determined on a fair and reasonable basis of attribution. 5

*Financial statements required from company B: sections IP 4 and IP 5*

- (3) For the purposes of this subpart, company B must provide the Commissioner with adequate financial statements under **sections IP 4(2)(c) and IP 5(2)(c)** relating to the common span, calculating the amount of the net income in the common span, determined on a fair and reasonable basis of attribution. 10

*Different balance dates*

- (4) For the purposes of **subsections (2) and (3)**, if the balance dates of company A and company B differ, the common span is taken as the period of time in the tax year in which the tax loss or loss balance is used— 15
- (a) that includes, but is not limited to, all or part of the tax year in which company A is in the same group of companies as company B; and 20
- (b) in which company A and company B are at all times part of the same group of companies; and
- (c) in which company A meets the continuity requirements of **section IC 2(1)** (Threshold levels for grouping tax losses in tax year). 25

*Applying provisions to part-year periods*

- (5) In preparing the financial statements described in this section, the company must, to the extent possible, apply the provisions of this Act to the common span as if it were a tax year. 30

Defined in this Act: amount, balance date, Commissioner, common span, company, continuity period, extended return date, group of companies, loss balance, net income, notify, tax loss, tax loss component, tax year

Compare: 2004 No 35 ss IF 1(2), (3), IG 2(4)(c), (d), (5)(c),(d), (10) 35

**IP 7 Notices required***Notifying Commissioner*

- (1) In **sections IP 4(2)(d) and IP 5(2)(d)**, company A must notify the Commissioner by its extended return date that it intends to treat a tax loss or loss balance in the way described in the relevant section. 5

*Meaning of extended return date*

- (2) In **subsection (1), extended return date** has the meaning set out in **section IC 9** (Date of payment and notice to Commissioner), and includes a later date allowed by the Commissioner. 10

Defined in this Act: Commissioner, company, extended return date, loss balance, notify, tax loss

Compare: 2004 No 35 s IG 2(4), (5)

Subpart IQ—Attributed CFC net losses and FIF net losses 15

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- IQ 6 Pre-consolidation losses: general treatment
- IQ 7 When group membership lacking in loss period
- IQ 8 When group membership lacking in tax year of use 25
- IQ 9 When attributed CFC net loss becomes FIF net loss

**IQ 1 General treatment of attributed CFC net losses and FIF net losses***General statement*

- (1) The treatment of amounts of attributed CFC net loss and FIF net loss is dealt with under **subpart IA** (General rules for tax losses) and in section 92 of the Tax Administration Act 1994, as modified by this subpart. 30

*When net losses arise*

- (2) An attributed CFC net loss or a FIF net loss arises on the last day of the tax year in which the loss is attributed. 35

*Treatment of net losses by consolidated groups*

- (3) If a consolidated group has an amount of attributed CFC net loss or FIF net loss, no part of the amount belongs to a company that is part of the consolidated group.

*Treatment of net losses on amalgamation*

- (4) The treatment of tax losses, including amounts of attributed CFC net loss and FIF net loss, on the amalgamation of companies is dealt with under **subpart IE** (Treatment of tax losses on amalgamation of companies) and the provisions of this subpart do not apply.

Defined in this Act: amalgamation, amount, attributed CFC net loss, company, consolidated group, FIF net loss, tax loss, tax year

Compare: 2004 No 35 s IE 3(1), IE 4(1), IF 3, IF 6, IG 4(1), IG 5(1), IG 7(1)

**IQ 2 Ring-fencing cap on attributed CFC net losses***Limit on amount*

- (1) If a person's attributed CFC net loss is carried forward to a tax year, the maximum amount that they may subtract from their net income for the tax year must be no more than the total of—
- (a) all attributed CFC income that they derive in the tax year in relation to a CFC resident in the country in which the loss arose; and
  - (b) all FIF income calculated under the branch equivalent method that they derive in the tax year in relation to a FIF resident in the country in which the loss arose.

*Income only once*

- (2) In **subsection (1)**, the person may take into account an amount of attributed CFC income or FIF income only to the extent to which they have not accounted for it in—
- (a) calculating a deduction under **sections DN 4 or DN 9** (which relate to ring-fencing caps); or
  - (b) establishing their entitlement to make the tax loss available under **sections IC 5** (Company B using company A's tax loss) **or IQ 4**; or
  - (c) applying **subsection (1)** in relation to another attributed CFC net loss.

*Treatment of excess*

- (3) If the person cannot use all of an amount as described in **subsection (1)**, the surplus is no longer available to them as an attributed CFC net loss, but becomes a tax loss component under **section IA 2(4)** (Tax losses). 5

Defined in this Act: amount, attributed CFC income, attributed CFC net loss, branch equivalent method, CFC, deduction, FIF, FIF income, net income, net loss, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IE 3(2), (3), (5)

**IQ 3 Ring-fencing cap on FIF net losses** 10*Limit on amount: branch equivalent method*

- (1) If a person's FIF net loss is carried forward to a tax year, and they have calculated the amount of FIF net loss under the branch equivalent method, the maximum amount that they may subtract from their net income must be no more than the total FIF income that they derive in the tax year from a FIF resident in the country in which the loss arose. 15

*Limit on amount: not branch equivalent method*

- (2) If a person's FIF net loss is carried forward to a tax year, and they have calculated the amount of FIF net loss under a method other than the branch equivalent method, the maximum amount that they may subtract from their net income must be no more than the total FIF income that they derive in the tax year. For this purpose, the net income must also be calculated under a method other than the branch equivalent method. 20  
25

*Income only once*

- (3) For the purposes of **subsection (2)**, the person may take into account an amount of FIF income only to the extent to which they have not accounted for it in— 30
- (a) calculating a deduction under **section DN 8** (Ring-fencing cap on deduction: not branch equivalent method); or
  - (b) establishing their entitlement to make the tax loss available under **sections IC 5** (Company B using company A's tax loss) **and IQ 5**; or 35
  - (c) applying **subsection (1)** in relation to another FIF net loss.



*When net income insufficient*

- (4) If the person cannot use some of the amount referred to in **subsection (1) or (2)** in the tax year because the net income is insufficient, the surplus is no longer available to them as a FIF net loss, but becomes a tax loss component under **section IA 2(4)** (Tax losses). 5

*Relationship with section CQ 5*

- (5) Despite this section, if the person's FIF net loss is carried forward to a tax year and **section CQ 5(1)(d)** (When FIF income arises) applies, they may subtract the amount from their net income for the tax year, but only to the extent to which the amount is no more than their assessable income from interests that would be interests in a FIF for the tax year in the absence of that section. 10

Defined in this Act: amount, assessable income, branch equivalent method, deduction, FIF, FIF income, FIF net loss, net income, net loss, tax loss, tax loss component, tax year 15

Compare: 2004 No 35 s IE 4(2)–(6)

**IQ 4 Group companies using attributed CFC net losses***What this section does* 20

- (1) This section supplements the general rules relating to the grouping of net losses when—
- (a) a company that is part of a group of companies (**company A**) has an attributed CFC net loss for a tax year or has an amount of attributed CFC net loss carried forward under **sections IA 4, IA 5, and IA 7** (which relate to the general use of tax losses); and 25
- (b) company A is not able to use the amount under **section IC 5** (Company B using company A's tax loss).

*General loss rules modified* 30

- (2) If the group of companies is a wholly-owned group of companies, **subpart IC** (Grouping tax losses) and **section GB 4** (Arrangements for grouping tax losses: companies) apply to the attributed CFC net loss.

*Ring-fencing cap rule modified* 35

- (3) **Section IQ 2** applies to the attributed CFC net loss, but is supplemented as follows:

- (a) the amount of the tax loss that company A may make available to another group company (**company B**) in the tax year to subtract from their net income for the tax year must be no more than the total of—
- (i) the amount of attributed CFC income that company B derives in the tax year from a CFC resident in the country in which the loss arose; and 5
  - (ii) the amount of FIF income calculated under the branch equivalent method that company B derives in the tax year from a FIF resident in the country in which the loss arose: 10
- (b) the amount of company B's attributed CFC income or FIF income may be taken into account only to the extent to which it has not been accounted for—
- (i) in calculating a deduction of company B under **section DN 4 or DN 9** (which relate to ring-fencing caps on deductions); or 15
  - (ii) in establishing company B's entitlement to use an attributed CFC net loss under **section IC 5** (Company B using company A's tax loss) **or IQ 2:** 20
- (c) if company A cannot use some of the amount referred to in **paragraph (a)** in the tax year because company B's net income is insufficient, the surplus is no longer available to company A as an attributed CFC net loss, but becomes, for company B, a tax loss component under **section IA 2(4)** (Tax losses). 25

Defined in this Act: amount, attributed CFC income, attributed CFC net loss, CFC, company, deduction, FIF, FIF income, group of companies, net income, net loss, resident, tax loss, tax loss component, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IG 4 30

## **IQ 5 Group companies using FIF net losses**

*What this section does*

- (1) This section supplements the rules relating to grouping of tax losses when—
- (a) a company that is part of a group of companies (**company A**) has a FIF net loss for a tax year, or has an amount of FIF net loss carried forward to a tax year; and 35
  - (b) company A is not able to use the amount under **section IC 5** (Company B using company A's tax loss).

*General loss rules modified*

- (2) If the group of companies is a wholly-owned group of companies, **subpart IC** (Grouping tax losses) and **section GB 4** (Arrangements for grouping tax losses: companies) apply to the FIF net loss. 5

*Ring-fencing cap rule modified*

- (3) **Section IQ 3** applies to the FIF net loss, but is modified as follows:
- (a) if the FIF net loss is calculated under the branch equivalent method, the maximum amount that may be made available in the tax year must be no more than the total FIF income that another group company derived in the tax year from a FIF resident in the country in which the loss arose: 10
  - (b) if the FIF net loss is calculated under a method other than the branch equivalent method, the maximum amount that company A may make available to another group company (**company B**) in the tax year to subtract from its net income for the tax year must be no more than the amount that company B would be able to use under **section IQ 3(1) and (3)** if the amount of FIF net loss were, for company B, a loss balance carried forward: 15
    - (c) for the purposes of **paragraph (b)**, an amount of FIF income may be taken into account only to the extent to which it has not been accounted for in— 20
      - (i) calculating company A's deduction under **section DN 8** (Ring-fencing cap on deduction: not branch equivalent method); or
      - (ii) establishing company A's entitlement to use the amount under **section IC 5** (Company B using company A's tax loss) **or IQ 3**; or 30
      - (iii) applying **paragraph (a)** in relation to another FIF net loss: 25
    - (d) if company A cannot use some of the amount referred to in **paragraph (a) or (b)** in the tax year because company B's net income is insufficient, the surplus is no longer available to company A as a FIF net loss, but becomes, for 35

company B, a tax loss component under **section IA 2(4)** (Tax losses).

Defined in this Act: amount, branch equivalent method, company, deduction, FIF, FIF income, FIF net loss, group of companies, loss balance, net income, tax loss, tax loss component, tax year, wholly-owned group of companies

5

Compare: 2004 No 35 s IG 5

## **IQ 6 Pre-consolidation losses: general treatment**

*When this section applies*

- (1) This section applies if a company that is part of a consolidated group has under **section ID 2** (Pre-consolidation losses: general treatment) an attributed CFC net loss or FIF net loss carried forward to a tax year. 10

*First use*

- (2) The first use of the amount must be by the company under **subsection (3) or (4)** in making the amount available to the consolidated group to subtract from its net income, so far as it extends, for the tax year. 15

*CFC net losses*

- (3) If the amount is an attributed CFC net loss, it may be used only to the extent to which it is no more than the attributed CFC income that the consolidated group derives in the tax year from a CFC resident in the country in which the loss arose. 20

*FIF net losses*

- (4) If the amount is a FIF net loss, it may be used only to the extent to which it is no more than the FIF income that the consolidated group derives in the tax year from a FIF resident in the country in which the loss arose. 25

*Second use*

- (5) If, after applying **subsection (2)**, some of the amount remains, the company may— 30
- (a) subtract the remaining amount from its net income for the tax year; or
  - (b) make the remaining amount available to another consolidated group to subtract from its net income for the tax year under **section IQ 4 or IQ 5**; or 35

- (c) make the remaining amount available under **section IC 5** (Company B using company A' s tax loss).

Defined in this Act: amount, attributed CFC income, attributed CFC net loss, CFC, company, consolidated group, FIF, FIF income, FIF net loss, net income, tax year

Compare: 2004 No 35 s IG 7(2)

5

## IQ 7 When group membership lacking in loss period

*When this section applies*

- (1) This section applies if—
- (a) a company that is part of a consolidated group has a ring-fenced tax loss consisting of either an attributed CFC net loss or FIF net loss, or both, that is carried forward to a tax year and must be used under **section ID 2(2)** (Pre-consolidation losses: general treatment); and 10
  - (b) the company was not part of the consolidated group in the earlier tax year; and 15
  - (c) the company and 1 or more of the companies in the consolidated group do not meet the requirements for common ownership of **section IC 5(1)(a)** (Company B using company A' s tax loss) for the loss period.

*Limit on amount*

20

- (2) The amount that may be subtracted from the net income of the consolidated group in the tax year under **section ID 2(2)** must be no more than the total of—
- (a) the amount of ring-fenced tax loss that the company could use to reduce its net income in the tax year under **sections IA 3 to IA 5** (which relate to the general use of tax losses), and **section IQ 2 or IQ 3** as applicable, if it were not in the tax year part of a consolidated group; and 25
  - (b) the amount of ring-fenced tax loss that the company could group with other companies in the group under **section IC 5**, and **section IQ 4 or IQ 5**, as applicable, determining— 30
    - (i) the net income for each of the companies using the group's calculation of each company's net income; and 35
    - (ii) the maximum amount of tax loss to be made available, ignoring the consolidation of the companies and presuming all steps required under

those sections were taken in order for them to apply.

*Relationship with section FM 3*

- (3) In **subsection (2)**, the amount of net income must be calculated in accordance with **section FM 3** (Liability of consolidated groups and group companies). 5

*Meaning of loss period*

- (4) In this section, the **loss period** means the tax year in which the ring-fenced tax loss arose and any tax years falling between that tax year and the tax year in which the amount is subtracted from net income. 10

Defined in this Act: amount, attributed CFC net loss, company, consolidated group, FIF net loss, loss period, net income, ring-fenced tax loss, tax loss, tax year, taxable income

Compare: 2004 No 35 s IG 7(4) 15

## **IQ 8 When group membership lacking in tax year of use**

*When this section applies*

- (1) This section applies if a company joins a consolidated group in a tax year with a ring-fenced tax loss consisting of an attributed CFC net loss or FIF net loss, or both, carried forward to the tax year, which must be used in the tax year under **section ID 2(2)** (Pre-consolidation losses: general treatment). 20

*Limit on amount*

- (2) The amount that may be subtracted from the net income of the consolidated group for the tax year under **section ID 2(2)** is the lesser of— 25
- (a) the amount of ring-fenced tax loss that the company could subtract from—
    - (i) the amount that would be the company's net income for the part of the tax year in which it was not part of a consolidated group; and 30
    - (ii) the net income for the tax year of another consolidated group of which the company was part before joining the present group; and
  - (b) the amount that would be the group's net income for the part of the tax year in which the company was part of 35

the consolidated group, established by giving the Commissioner, at the time of providing the group's return of income for the tax year, adequate financial statements that—

- (i) relate to the part of the tax year when the company was part of the group; and 5
- (ii) disclose the amount that would be the company's net income for the part of the tax year in which the company was part of the consolidated group, determined on a fair and reasonable basis of attribution. 10

Defined in this Act: amount, attributed CFC net loss, Commissioner, company, consolidated group, FIF net loss, net income, return of income, ring-fenced tax loss, tax loss, tax year

Compare: 2004 No 35 s IG 7(5) 15

## **IQ 9 When attributed CFC net loss becomes FIF net loss**

*When this section applies*

- (1) This section applies if, in a tax year, a person has an attributed CFC net loss that, under section 38 of the Income Tax Amendment Act (No 2) 1993, becomes a FIF net loss. 20

*Treatment of net losses*

- (2) The attributed CFC net loss is treated as a FIF net loss of the person with effect from the tax year, as if the CFC were a FIF.

*Calculation methods*

- (3) For the purposes of **subsection (2)** and the calculation of the amount of the loss, the branch equivalent method is not used unless the person calculates their FIF income or net loss under the branch equivalent method in relation to the interest on the date of the transition from an attributed CFC net loss to a FIF net loss. 25  
30

Defined in this Act: attributed CFC net loss, branch equivalent method, CFC, FIF, FIF income, FIF net loss, tax year

Compare: 2004 No 35 s IE 3(4)

## **Subpart IS—Mining companies' and petroleum miners' tax losses 35**

### **Contents**

- IS 1 General treatment of mining companies' tax losses

IS 2	Treatment of tax losses resulting from certain expenditure	
IS 3	Holding companies' tax losses	
IS 4	Adjustments in certain circumstances	
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## IS 1 General treatment of mining companies' tax losses

### *Groups of companies*

- (1) In a tax year in which a company is a mining company, **section IC 5** (Company B using company A's tax loss) does not apply, and the company is not included in a group of companies for the purposes of the section. 10

### *Consolidated groups*

- (2) A tax loss of a mining company that is part of a consolidated group is dealt with under this subpart and not **subpart ID** (Use of tax losses by consolidated groups of companies). 15

Defined in this Act: company, consolidated group, group of companies, mining company, tax loss, tax year

Compare: 2004 No 35 ss IG 6(2), IH 4(2)

## IS 2 Treatment of tax losses resulting from certain expenditure 20

### *When this section applies*

- (1) This section applies if a company that is a mining company, or a resident mining operator, or a non-resident mining operator— 25
- has a tax loss for a tax year as a result of incurring mining exploration expenditure or mining development expenditure in a mining permit area; and
  - has a loss balance carried forward to a later tax year.

### *Using loss balances* 30

- (2) The company may subtract the amount of the loss balance from its net income for the later tax year, even though the continuity of ownership required under **section IA 5** (Restrictions on companies' loss balances carried forward) is broken or is treated as absent under **section GB 3** (Arrangements for carrying forward loss balances: companies), but only to the extent set out in **subsection (3)**. 35



*Limit on amount*

- (3) The amount subtracted under **subsection (2)** must be no more than the amount that would be the mining company's net income if its only assessable income for the later tax year were from the mining permit area. 5

*Amounts carried forward*

- (4) If the company cannot use all the loss balance in the later tax year, the amount is carried forward to later tax years and **subsection (2)** applies to the remaining balance. 10

Defined in this Act: amount, assessable income, company, loss balance, mining company, mining development expenditure, mining exploration expenditure, mining permit area, net income, non-resident mining operator, resident mining operator, tax loss, tax year

Compare: 2004 No 35 ss IH 1(1), IH 5

### **IS 3 Holding companies' tax losses** 15

*When this section applies*

- (1) This section applies in a tax year if—
- (a) a mining company has net income for the tax year after having subtracted an amount of any loss balance that is carried forward; and 20
  - (b) the company and a holding company, which is not a mining company, would be included in a wholly-owned group of companies in the absence of **section IS 1(1)**; and
  - (c) the holding company has a tax loss for the tax year that it cannot make available under **section IC 5** (Company B using company A's tax loss) to another company that is part of the wholly-owned group. 25

*Using tax losses*

- (2) The mining company may subtract some or all of the amount of the holding company's tax loss from its net income, so far as it extends, for the tax year. 30

*Determining amounts*

- (3) The amount of the holding company's tax loss is found without taking into account a deduction that the holding company may have under **section DU 12** (Amount written off by holding company) for an amount written off a loan from the holding company to the mining company. 35

*Relationship with section IS 1*

- (4) This section overrides **section IS 1(1)**.

Defined in this Act: amount, deduction, holding company, loan, loss balance, mining company, net income, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IH 4(3)

5

**IS 4 Adjustments in certain circumstances***When this section applies*

- (1) This section applies if, under **section IS 3**, the amount of a holding company's tax loss for a tax year is subtracted from a mining company's net income for the tax year instead of being carried forward to a later tax year. 10

*Adjustments by Commissioner*

- (2) If the holding company applies for an adjustment and the Commissioner agrees, the Commissioner may adjust the returns of income of the mining company and the holding company to reflect what is fair in the circumstances. This subsection applies in the tax year in which the holding company has the tax loss referred to in **subsection (1)**, and to any of the 8 tax years following that tax year. 15

*Time for applying to Commissioner*

- (3) The holding company must apply within 8 tax years after the end of the tax year in which the holding company has the tax loss referred to in **subsection (1)** or, despite the time bar, by a later date if the Commissioner allows. 20

Defined in this Act: amount, Commissioner, deduction, holding company, mining company, net income, return of income, tax loss, tax year, time bar 25

Compare: 2004 No 35 s IH 4(3) proviso

**IS 5 Petroleum miners' tax losses***When this section applies*

- (1) This section applies in a tax year in which a petroleum miner with a tax loss for the tax year— 30
- (a) relinquishes a petroleum permit for which they have a deduction under **section DT 7** (Exploratory well expenditure); or

- (b) incurs expenditure on removal or restoration operations for which they have a deduction under **section DT 16** (Removal or restoration operations).

*Net losses reduced*

- (2) The petroleum miner's tax loss is reduced by the amount of the deduction but only to the extent of the amount of the tax loss. The petroleum miner is then allowed a deduction for the amount of the reduction in an earlier tax year allocated under **section EJ 14** (Spreading deduction backwards). 5

*Petroleum mining activities outside New Zealand*

- (3) This section applies to a petroleum miner who undertakes petroleum mining activities that are— 10
- (a) outside New Zealand and undertaken through a branch or a CFC; and
- (b) substantially the same as the petroleum mining activities governed by this Act. 15

*Using tax loss components*

- (4) A shareholder company may use a tax loss component referred to in **section IZ 2(2)** (Petroleum mining companies: treatment of payments from shareholders) but only in the way described in **section IZ 2(3) to (6)**. 20

Defined in this Act: amount, CFC, deduction, New Zealand, petroleum miner, petroleum permit, relinquishment, removal or restoration operations, tax loss, tax year, time bar

Compare: 2004 No 35 s IH 3 25

**IS 6 When company stops being mining company**

For the purposes of **sections IS 1 to IS 5**, if a mining company whose loss balance is carried forward to a tax year stops being a mining company at or before the end of the tax year, the company is nevertheless treated for the tax year as if it had continued as a mining company. 30

Defined in this Act: loss balance, mining company, tax year

Compare: 2004 No 35 ss IH 1, IH 4(1)(e)

Subpart IT—Life insurers' net losses

**Contents**

35

- IT 1 Life insurers' policyholder net losses

**IT 1 Life insurers' policyholder net losses***Amounts available*

- (1) A life insurer may use a tax loss in calculating their policyholder base income tax liability, but only to the extent to which the amount of the tax loss is no more than their policyholder net loss. **Section IA 3(4)** (Using tax losses in tax year) applies to any surplus amount. 5

*Use of policyholder net losses*

- (2) A life insurer may use a policyholder net loss only for the purpose of calculating their policyholder base income tax liability. 10

*Transfer of life insurance business*

- (3) If a life insurer transfers their life insurance business to another company in the way described in **section EY 45(1)** (Policyholder income formula: when life insurance business transferred), the life insurer may choose to have their policyholder net loss for the tax year of the transfer treated as the other company's policyholder net loss instead of their own. This subsection applies to both a policyholder net loss calculated for a tax year and a loss balance carried forward to a tax year. 15  
20

*Notifying Commissioner*

- (4) If the life insurer chooses to have the policyholder net loss treated as the other company's policyholder net loss, they must notify the Commissioner of their election. 25

Defined in this Act: amount, business, Commissioner, company, life insurance, life insurer, loss balance, notify, policyholder base income tax liability, policyholder net loss, tax loss, tax year

Compare: 2004 No 35 ss II 1(3), (4), II 3

**Subpart IV—Treatment of certain supplementary dividends** 30

**Contents**

- IV 1 Supplementary dividend holding companies

**IV 1 Supplementary dividend holding companies***When this section applies*

- (1) This section applies when a supplementary dividend holding company derives a supplementary dividend in a tax year.

*Limit on amount*

5

- (2) If the company has a tax loss that is a tax loss component under **section IA 2(4)** (Tax losses), and is entitled to use the amount under **section IA 3, IA 4, IC 5, IS 3, or IS 4** (which relate to a company's use of tax losses), the maximum amount that it may use must be no more than the amount calculated using the formula—

10

$$\text{net income} - \frac{\text{credits} + \text{supplementary dividends}}{\text{tax rate.}}$$

*Definition of items in formula*

15

- (3) In the formula,—
- (a) **net income** is the company's net income for the tax year:
- (b) **credits** is the total amount of non-refundable tax credits and convertible credits that the company has available under **Part L** (Tax credits and other credits) to use in reducing its income tax liability:
- (c) **supplementary dividends** is the total amount of supplementary dividends that the company derives in the tax year:
- (d) **tax rate** is the relevant basic tax rate applying in the tax year.

20

25

*Calculating credits under Part L*

- (4) **Subsection (2)** does not affect the calculation under **Part L** of the non-refundable tax credits and convertible credits of a supplementary dividend holding company.

30

Defined in this Act: amount, basic rate, convertible credit, income tax liability, net income, non-refundable tax credit, supplementary dividend, supplementary dividend holding company, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IF 7

35

**Subpart IW—Use of tax losses to pay shortfall penalties****Contents**

- IW 1 Shortfall penalties

## IW 1 Shortfall penalties

### *When this section applies*

- (1) This section applies in a tax year when a person has a shortfall penalty for an income tax liability.

### *Persons choosing to use tax losses*

5

- (2) If the person has a tax loss for the tax year, they may use the amount of the tax loss to pay the penalty, notifying the Commissioner by the due date for payment of the penalty.

### *Wholly-owned groups choosing to use tax losses*

- (3) If a company that is part of a wholly-owned group of companies has a tax loss for a tax year, the wholly-owned group may use the amount of the tax loss to pay the penalty imposed on the company, notifying the Commissioner by the due date for the payment of the penalty. 10

### *Time of use*

15

- (4) The tax loss is used at the time of notification.

### *Lowest marginal tax rate and availability*

- (5) Each dollar of an amount of tax loss that is used under this section—
- (a) is equal to 1 dollar multiplied by the rate of tax or lowest marginal rate of tax that would apply to the person in the return period to which the tax shortfall relates if the person had tax to pay: 20
- (b) cannot, from the date the tax loss is used, be used or made available for use, or be carried forward to a later tax year. 25

### *Tax years and part-years*

- (6) In this section, a **tax year** includes a part of a tax year that may be taken into account under this Part for continuity or grouping purposes. 30

Defined in this Act: amount, Commissioner, income tax liability, notify, shortfall penalty, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IG 10

## Subpart IZ—Terminating provisions

## Contents

IZ 1	Use of specified activity net losses	
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IZ 3	Petroleum mining companies: use of loss balances	
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IZ 5	Companies' tax losses for tax years before 1991–92 tax year	
IZ 6	Companies' tax losses for 1990–91 and 1991–92 tax years	10
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**IZ 1 Use of specified activity net losses***Limit on amount* 15

- (1) A person's specified activity net loss that is carried forward to a tax year and subtracted from the person's net income for the tax year must be no more than the sum of the net income for the tax year from the conduct of the same specified activity that gave rise to the net loss and \$10,000. If the person makes the net loss available to another person, the maximum amount that can be subtracted by the other person is \$10,000. 20

*When person conducts 2 or more specified activities*

- (2) For the purposes of **subsection (1)**, if the specified activity net loss arises from the conduct of 2 or more specified activities— 25
- (a) the amount subtracted from the net income for the tax year must be no more than the lesser of—
- (i) the sum of the person's specified activity net income from each of the specified activities; and 30
- (ii) \$10,000; and
- (b) the person may choose by notice which amounts of net income from the specified activities to subtract from their net income.

*When 2 or more persons conduct specified activity*

- (3) If 2 or more persons conduct a specified activity, this section applies as if every reference to— 35
- (a) a person were a reference to each person; and

- (b) an amount of specified activity net loss attributable to the conduct of the specified activity were a reference to the amount of each person's share of the amount of any joint specified activity net loss for the tax year.
- Income from personal exertion and hardship* 5
- (4) The Commissioner may determine that the limit under **subsection (1)** does not apply, and may increase the amount of specified activity net loss that may be subtracted from a person's net income under that subsection if—
- (a) the person is engaged mainly in conducting a specified activity as their livelihood, and they derive income from personal exertion that—
- (i) is derived as a result of the conduct of the specified activity but is not income from the specified activity; and 15
- (ii) is made for the purpose of enabling the person to meet expenditure essential for the maintenance of either them and their dependants or for the continuation of the specified activity; and
- (b) the person, in the opinion of the Commissioner would suffer hardship from the application of **subsections (1) to (3)**. 20
- Relationship with general loss rules*
- (5) **Subparts IA, IC, ID, IE, and IP** (which relate to the general use of tax losses) apply to a specified net loss except to the extent to which **subsections (1) to (3)** override them. 25
- Established activities excluded*
- (6) This section does not apply to a specified activity net loss that relates to an established activity.
- Related activities* 30
- (7) A specified activity is related to another specified activity, and is treated as part of the other specified activity, if—
- (a) it is usually conducted in association with and is complementary to the other specified activity that an existing farmer is already conducting; or 35



- (b) it is conducted on land that an existing farmer has owned or held under lease, licence, or other agreement for 5 years before the activity is started and—
- (i) the existing farmer is carrying on the other specified activity immediately before the related activity is started; or 5
  - (ii) the existing farmer elects by notice in their return of income for the tax year in which they start the activity to have the activity treated as related; or
  - (iii) the Commissioner determines the activity is related. 10

*Modification for specified activity*

- (8) If this section would have a more favourable effect if the following words in **paragraph (c)(ii)** of the definition of **specified activity** in **section YA 1** (Definitions) were omitted, this section applies as if those words were omitted: 15
- “not including crops for which the preparation of the land, the planting and cultivation of the tree or plant, and the harvesting of the crop are accomplished within 12 months”. 20

*Some definitions*

- (9) In this section,—
- established activity**, for a person who is an existing farmer, means a specified activity, except an activity within the meaning of **paragraph (j)** of the definition of **specified activity** in **section YA 1**, that the person conducted on 11 October 1982, if the Commissioner considers the conduct of the specified activity constituted the livelihood of the person and their principal source of income 25
- income from personal exertion** means income of a kind referred to in **sections CB 1 and CE 1** (which relate to amounts derived from business and in connection with employment), but does not include income from a business of renting, or lending money, or making financial investments 30
- related activity**, for a specified activity conducted by a person in a tax year, means another specified activity that is treated as a related activity under **subsection (7)**, whether or not it is conducted on the same land as the specified activity 35

**specified activity net income** means, for a specified activity conducted by a person in a tax year, the result of subtracting from the sum of the income of the person allocated to that activity and the tax year the sum of the deductions of the person allocated to that activity and the tax year, if that result is a positive amount 5

**specified activity net loss** means, for a specified activity conducted by a person in a tax year preceding the 1986–87 tax year in the case of an activity referred to in **paragraphs (a) to (i)** of the definition of **specified activity** in **section YA 1**, and the 1990–91 tax year in the case of an activity referred to in **paragraph (j)** of that definition, a loss from that specified activity referred to in section 188A of the Income Tax Act 1976. 10

Defined in this Act: amount, business, Commissioner, conduct, deduction, established activity, existing farmer, income from personal exertion, land, net income, notice, related activity, return of income, specified activity, specified activity net income, specified activity net loss, tax year 15

Compare: 2004 No 35 s IE 2

## **IZ 2 Petroleum mining companies: treatment of payments from shareholders** 20

*When this section applies*

- (1) This section applies if—
- (a) a tax loss arises from the allowance to a petroleum mining company in the 1990–91 tax year, or earlier tax year, of a deduction or further deduction under sections 214B(6), (13)(b), (14)(b), and (18)(c) of the Income Tax Act 1976 (or under section DZ 6(4) or (9)(c) (which relate to partnership interests) of the Income Tax Act 1994); and 25
  - (b) a payment has been made by a company, which is at the time of the payment a shareholder of the petroleum mining company, to the petroleum mining company an amount that was used for the purposes of petroleum development expenditure of the kind referred to in section DZ 6(4) for which the deduction or further deduction referred to in **paragraph (a)** is allowed. 30 35

*Shareholder companies' tax loss components*

- (2) The shareholder company has a tax loss component equal to the amount that bears to the tax loss the same proportion as the payment bears to the petroleum development expenditure. 40

However, the amount of the tax loss component must be no more than the total amount paid.

*Elections by shareholder companies*

- (3) For the purposes of **subsection (2)**, the shareholder company must make an election by notice under section 214B(22)(d) of the Income Tax Act 1976 or section DZ 6(12)(d) of the Income Tax Act 1994. 5

*Treatment of tax losses*

- (4) The tax loss may not be carried forward and used except to the extent to which the amount of the tax loss is more than the total of all amounts deducted under **subsection (2)** in the tax year in which the tax loss arises. 10

*Further deductions*

- (5) Despite **subsection (4)**, if the tax loss arises from the allowance of a further deduction under the second proviso to section 214B(6) of the Income Tax Act 1976 or under section DZ 6(4), the tax loss is treated as a tax loss arising in the tax year which in section DZ 6(4) is referred to as the year of cessation. 15

*Relationship with section CV 1*

- (6) **Section CV 1** (Group companies) does not apply to— 20
- (a) a tax loss referred to in this section except to the extent to which it is more than the total of all amounts deducted under **subsection (2)** in the tax year in which the tax loss arises; or
- (b) a tax loss for the 1978–79 or earlier tax year. 25

Defined in this Act: amount, company, deduction, group of companies, notice, petroleum development expenditure, petroleum mining company, shareholder, tax loss, tax year

Compare: 2004 No 35 s IH 2

**IZ 3 Petroleum mining companies: use of loss balances** 30

*When this section applies*

- (1) This section applies when—
- (a) some or all of a loss balance of a petroleum mining company for the 1990–91 tax year or earlier tax year arises from the allowance of— 35

- (i) a deduction of an amount of petroleum exploration expenditure that the company incurs on or before 30 September 1990 in exploring or searching for petroleum in an area that is or is subsequently comprised in a petroleum permit or in 2 or more such areas; or 5
- (ii) a deduction of an amount for petroleum development expenditure that the company incurs before 30 September 1990; and
- (b) at the start of a tax year following the tax year in which the tax loss arose, a loss balance relating to the permit area remains after taking into account any deductions that the petroleum mining company, or another company, has for the expenditure or any amounts the company has subtracted from its net income for earlier tax years; and 10 15
- (c) the petroleum mining company was immediately before the commencement of section 214B of the Income Tax Act 1976 a company to which section 216 of that Act applied. 20

*Using loss balances*

- (2) Despite **section IA 5** (Restrictions on companies' loss balances carried forward) or **GB 3** (Arrangements for carrying forward loss balances: companies), the loss balance may be subtracted from the petroleum mining company's net income for the tax year referred to in **subsection (1)(b)** to the extent to which it is no more than the net income of the company for the tax year if the company's only source of assessable income were from the relevant permit area. 25

*Loss balances carried forward*

- (3) If, after applying **subsection (2)**, the company has a loss balance remaining, the amount is carried forward to the next tax year and **subsection (2)** applies in that tax year, and so on. 30

*References in section*

- (4) For the purposes of this section,— 35
  - (a) a reference in this section to expenditure in exploring or searching for petroleum in an area that is or is subsequently comprised in a petroleum permit is taken as including a reference to expenditure in exploring or

searching for petroleum in an area that is outside but continuous or geologically contiguous with the area, being exploring or searching that was included, whether originally or additionally, in the programme of exploring or searching as a consequence of which application was made for the petroleum permit: 5

- (b) **petroleum permit** means—
- (i) a petroleum mining permit issued under the Crown Minerals Act 1991; or
  - (ii) an existing privilege referred to in **paragraph (d)** of the definition of **existing privilege** in section 106 of that Act: 10
- (c) **permit area** means an area, and may include more than 1 area, of an existing privilege referred to **paragraph (d)** of the definition of **existing privilege** in section 106 of the Crown Minerals Act 1995. 15

*Relationship with section IZ 2*

- (5) **Section IZ 2** overrides this section.

Defined in this Act: amount, assessable income, company, deduction, loss balance, net income, permit area, petroleum development expenditure, petroleum exploration expenditure, petroleum mining company, petroleum permit, tax loss, tax year 20

Compare: 2004 No 35 s IH 1(2)

**IZ 4 Tax losses for tax years before 1977–78 tax year**

A person's loss balance for a tax year before the 1977–78 tax year is carried forward and may be used under **section IA 4** (Using loss balances carried forward to tax year) if the person would have been entitled to have the tax loss carried forward for the purpose of assessing income tax under section 137 of the Land and Income Tax Act 1954 if the Income Tax Act 1976, the Income Tax Act 1994, the Income Tax Act 2004, and this Act had not been passed. 25 30

Defined in this Act: assessment, loss balance, tax loss, tax year

Compare: 2004 No 35 s IF 1(5)

## **IZ 5 Companies' tax losses for tax years before 1991–92 tax year**

### *Loss balances carried forward*

- (1) A company's loss balance for a tax year before the 1991–92 tax year may be used under **section IA 4** (Using loss balances carried forward to tax year) if— 5
- (a) the company would have been entitled to have some or all of the tax loss under section 188 of the Income Tax Act 1976 carried forward to a later tax year, if that section had continued to apply in the later tax year, as modified by section 188AA of that Act and as if the continuity percentage referred to in section 188(7) of that Act were always 40%; and 10
- (b) for the period starting on the first day of the 1992–93 tax year and ending on the last day of the later tax year, a group of persons holds total minimum voting interests in the company that add up to at least 49%. 15

### *Market value circumstances and minimum interests*

- (2) For the purposes of **subsection (1)(b)**,—
- (a) if during the period a market value circumstance exists for the company, the group of persons must also hold for the period total minimum market value interests in the company that add up to at least 49%: 20
- (b) a minimum interest of any person in the company in the period is equal to the lowest interest that the person has in the period. 25

Defined in this Act: company, group of persons, loss balance, market value circumstance, minimum market value interest, minimum voting interest, tax loss, tax year

Compare: 2004 No 35 s IF 1(6)

## **IZ 6 Companies' tax losses for 1990–91 and 1991–92 tax years** 30

### *When this section applies*

- (1) This section applies to a company that has a tax loss for the 1990–91 or 1991–92 tax year and section 188(7B) of the Income Tax Act 1976 would not have applied to prevent some or all of the tax loss being carried forward if regard were had to only part of the relevant tax year. 35

*Part-year tax losses carried forward*

- (2) Section 188(7B) does not apply to prevent the part of the tax loss attributable to the relevant part-period being carried forward under section 188(2).

*Financial statements*

5

- (3) For the purposes of **subsection (2)**, the company must provide the Commissioner with adequate financial statements relating to the relevant part-period that disclose the amount that would be the tax loss for the relevant part of the tax year, on a fair and reasonable basis of attribution.

10

*Application of subsection (7B)*

- (4) In **subsection (1)**, the reference to subsection (7B) applies to the extent to which regard was required to be had to that part of the period starting with 8.00pm New Zealand Standard Time on 30 July 1991 which falls within the tax year in which the tax loss component arises, and without prejudice to the application of that subsection to the extent to which it required regard to be had to later periods.

15

Defined in this Act: amount, Commissioner, company, tax loss, tax loss component, tax year

20

Compare: 2004 No 35 s IF 2

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

*Commonality period: between 1981–82 and 1991–92*

- (1) For the purposes of **section IC 5(1)(a)** (Company B using company A's tax loss), if company A has a tax loss in a tax year between the 1981–82 and 1991–92 tax years, company A and company B may group the tax loss in a tax year that is later than the tax year in which the tax loss component arises only if company B is in the same group of companies as company A in the earlier tax year.

25

30

*Commonality period: before 1981–82*

- (2) For the purposes of **section IC 5(1)(a)**, if company A has a tax loss in a tax year before the 1981–82 tax year, company A and company B may group the tax loss in a tax year that is later than the tax year in which the tax loss component arises only if

35

company B is in the same group of companies as company A in the tax year in which the tax loss is used.

*When companies have different balance dates*

- (3) For the purposes of **subsections (1) and (2)**, the tax year is extended under **section IC 10(2)(b)** (When companies have different balance dates) if company B's balance date is later than company A's balance date. 5

*Residence of company A*

- (4) For the purposes of **section IC 5(1)(b)**, if company A's tax loss component arose in a tax year before the 1991–92 tax year, company A and company B may group the tax loss component in a tax year that is later than the tax year first referred to only if company A is, in both the earlier and the later tax year— 10
- (a) incorporated in New Zealand, or carrying on a business in New Zealand through a fixed establishment in New Zealand; and 15
- (b) resident in New Zealand, and not treated under a double tax agreement, and for the purposes of the agreement, as not resident in New Zealand, or liable by the law of another country or territory to income tax in that country or territory through domicile, residence, or place of incorporation. 20

*Relationship with sections IC 5 and IC 6*

- (5) **Subsections (1) and (2)** override **sections IC 5(1)(a) and IC 6** (which relate to grouping requirements) and **subsection (4)** overrides **sections IC 5(1)(b) and IC 6**. 25

Defined in this Act: balance date, business, company, double tax agreement, fixed establishment, group of companies, New Zealand, resident in New Zealand, tax loss, tax loss component, tax year 30

Compare: 2004 No 35 s IG 2(2)(c), (d)(ii)(B)



## Part L Tax credits and other credits

### Subpart LA—General rules for tax credits

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#### LA 1 What this Part does

This Part—

- (a) identifies when a person's tax credit arises; and
- (b) provides the rules that govern the use of a tax credit in satisfying an obligation under **section BB 2** (Main obligations). 20

Defined in this Act: tax credit

#### LA 2 Satisfaction of income tax liability

A person must use their total tax credit for a tax year to satisfy their income tax liability for the tax year. 25

Defined in this Act: tax credit, income tax liability, tax year, total tax credit

Compare: 2004 No 35 s BC 9

#### LA 3 When total tax credit less than or equal to income tax liability

30

*Unsatisfied income tax liability*

- (1) If a person's total tax credit for a tax year is less than their income tax liability for the tax year, the person has an amount of unsatisfied income tax liability for the tax year.

*Amount*

- (2) The amount of unsatisfied income tax liability is—
- (a) equal to the difference between the person's total tax credit for the tax year and their income tax liability for the tax year: 5
  - (b) satisfied when the person pays their terminal tax for the tax year.
- Defined in this Act: amount, tax credit, income tax liability, tax year, terminal tax, total tax credit
- Compare: 2004 No 35 s BC 9 10

**LA 4 When total credit more than income tax liability***Satisfied income tax liability*

- (1) If a person's total tax credit for a tax year is greater than their income tax liability for the tax year, the person must use their total tax credit, including the credits listed in **paragraphs (a) to (d)**, to satisfy their income tax liability by using— 15
- (a) first, a non-refundable tax credit:
  - (b) second, a tax credit for a supplementary dividend:
  - (c) third, a tax credit for an imputation credit:
  - (d) fourth, a refundable tax credit. 20

*Remaining tax credits*

- (2) A person who has satisfied their income tax liability under **subsection (1)** must deal with their remaining tax credits for the tax year under **section LA 5**. 25
- Defined in this Act: tax credit, imputation credit, income tax liability, non-refundable tax credit, refundable tax credit, supplementary dividend, tax year, total tax credit
- Compare: 2004 No 35 ss BC 8(2), BC 9(1), BC 10, KD 4(2), LD 3(3), LD 3A(4), LE 2(6)

**LA 5 Treatment of remaining credits** 30*What this section applies to*

- (1) This section applies to a remaining tax credit referred to in **section LA 4(2)**.

*Non-refundable credits*

- (2) A non-refundable tax credit is extinguished. However, this subsection does not apply to a tax credit for income tax and 35

foreign income tax paid in relation to foreign attributed income used under **section LK 4** (Use of remaining credits).

*Credits for supplementary dividends*

- (3) A person uses a tax credit for a supplementary dividend by applying **section LP 3** (Use of remaining credits). 5

*Credits for imputation credits*

- (4) A person uses a tax credit for an imputation credit by applying **section LE 2 or LE 3** (which relate to the use of remaining tax credits). 10

*Refundable credits*

- (5) The Commissioner refunds a refundable tax credit by applying **section LA 6, LA 7, or LA 8**. 15

Defined in this Act: Commissioner, tax credit, foreign attributed income, foreign income tax, imputation credit, income tax, non-refundable tax credit, refundable tax credit, supplementary dividend 15

Compare: 2004 No 35 ss BC 9, BC 10

**LA 6 Remaining refundable credits: PAYE, RWT, and certain other items**

*What this section applies to*

- (1) This section applies to a person's tax credit remaining for a tax year under **section LA 5(5)** if it is a tax credit under— 20
- (a) **section LB 1** (Tax credits for PAYE income payments):
  - (b) **section LB 2** (Tax credits for provisional tax payments):
  - (c) **section LB 3** (Tax credits for RWT):
  - (d) **subpart LF** (Tax credits for FDP credits): 25
  - (e) **subpart LO** (Tax credits for Maori authority credits).

*Use of credits*

- (2) The Commissioner must— 30
- (a) first, use a tax credit to satisfy the person's income tax liability for a tax year that is before the tax year referred to in **subsection (1)**: 30
  - (b) second, use a tax credit to satisfy the person's income tax liability for a tax year that is later than the tax year referred to in **subsection (1)**, applying this paragraph to earlier tax years before later tax years: 35

- (c) third, pay the person's provisional tax for a tax year that is later than the tax year referred to in **subsection (1)**, applying this paragraph to earlier tax years before later tax years:
- (d) fourth, treat a tax credit as tax paid in excess and as transferable under Part 10B of the Tax Administration Act 1994: 5
- (e) fifth, refund a tax credit by applying **sections RB 4, RM 2 to RM 8, and RM 10** (which relate to refunds and their use), as applicable, and the Tax Administration Act 1994. 10

*Time bar*

- (3) The Commissioner may amend an assessment or a determination to give effect to this section despite the time bar.
  - Defined in this Act: assessment, Commissioner, tax credit, income tax liability, provisional tax, tax year, time bar 15
  - Compare: 2004 No 35 ss LD 1, LD 3, LD 3A, LD 6–LD 8, MD 1

**LA 7 Remaining refundable credits: family scheme income**

*What this section applies to*

- (1) This section applies to a person's tax credit remaining for a tax year under **section LA 5(5)**, if it is a tax credit under **section LB 4** (Tax credits for family scheme income). 20

*Use of credits*

- (2) The Commissioner must treat the person's tax credit as transferable under Part 10B of the Tax Administration Act 1994 or refundable under **sections RB 4, RM 2 to RM 8, and RM 10** (which relate to refunds and their use), as applicable. 25

Defined in this Act: Commissioner, tax credit, tax year

Compare: 2004 No 35 ss BC 8(1), KD 4(2), MD 1

**LA 8 Remaining refundable credits: NRWT**

*What this section applies to* 30

- (1) This section applies to a person's tax credit remaining for a tax year under **section LA 5(5)**, if it is a tax credit under **section LB 5** (Tax credits for NRWT).

*Use of credits*

- (2) The Commissioner must— 35

- (a) first, treat the tax credit as tax paid in excess and as transferable under Part 10B of the Tax Administration Act 1994:
- (b) second, refund the tax credit under **sections RB 4, RM 2 to RM 8, and RM 10** (which relate to refunds and their use), as applicable. 5

Defined in this Act: Commissioner, tax credit, tax year

Compare: 2004 No 35 ss LD 2, MD 1

### LA 9 Use of tax credits

An amount of a tax credit is used once, so far as it extends. 10

Defined in this Act: amount, tax credit

Compare: 2004 No 35 ss BC 9(1), LB 2(2), LE 2(4), (8)

### LA 10 Meaning of tax credit

An amount is a **tax credit** of a person if it is their tax credit under a provision in this Part. 15

Defined in this Act: amount, tax credit

Compare: 2004 No 35 s BC 9

## Subpart LB—Tax credits for payments, deductions, and family income assistance

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- LB 1 Tax credits for PAYE income payments
- LB 2 Tax credits for provisional tax payments
- LB 3 Tax credits for RWT
- LB 4 Tax credits for family scheme income
- LB 5 Tax credits for NRWT 25
- LB 6 Tax credits for caregivers

### LB 1 Tax credits for PAYE income payments

#### *Amount of credit*

- (1) A person who is an employee has a tax credit for a tax year equal to the amount of tax received by the Commissioner for a PAYE income payment relating to the person for the tax year. 30

*Exclusions*

- (2) The person's credit under **subsection (1)** is extinguished if the Commissioner does not receive an employer monthly schedule for the relevant amount of tax, or when the relevant particulars of the schedule are incorrect. 5

*When matters corrected*

- (3) Despite **subsection (2)**, the person has the credit under **subsection (1)** when the Commissioner is satisfied that the matters referred to in **subsection (2)** have been corrected. 10

Defined in this Act: amount, Commissioner, tax credit, employee, employer monthly schedule, PAYE income payment, tax, tax year

Compare: 2004 No 35 s LD 1(2), (2A), (4), (5)

**LB 2 Tax credits for provisional tax payments**

A person has a tax credit for a tax year equal to the amount of provisional tax for the tax year paid by— 15

- (a) the person; or  
 (b) an agent of the person, if the agent is liable to pay provisional tax on behalf of the person.

Defined in this Act: agent, amount, tax credit, provisional tax, tax year

Compare: 2004 No 35 ss LD 6, LD 7 20

**LB 3 Tax credits for RWT***Tax credit*

- (1) A person has a tax credit for a tax year equal to the amount of tax withheld and paid in relation to their resident passive income for the tax year if the evidential requirements of section 78D of the Tax Administration Act 1994 are met. 25

*Exclusion*

- (2) No credit exists under **subsection (1)** for an amount of tax for resident passive income that is a replacement payment. 30

Defined in this Act: amount, tax credit, replacement payment, resident passive income, RWT, tax withheld, tax year

Compare: 2004 No 35 s LD 3(2)

**LB 4 Tax credits for family scheme income**

A person has a tax credit for a tax year equal to the total amount of their family assistance credit under **subpart MD** 35

(Family assistance credits) and their family tax credit under **subpart ME** (Family tax credit) for the tax year.

Defined in this Act: amount, tax credit, family assistance credit, family tax credit, tax year

Compare: 2004 No 35 ss KD 1A(2), KD 2(1), KD 3(2)

5

## LB 5 Tax credits for NRWT

### *Tax credit*

- (1) A person has a tax credit for a tax year equal to the amount of tax withheld and paid in relation to their non-resident passive income for the tax year.

10

### *Exclusion*

- (2) No credit exists under **subsection (1)** for NRWT for non-resident passive income that is a replacement payment.

Defined in this Act: amount, tax credit, non-resident passive income, NRWT, pay, tax withheld, tax year

15

Compare: 2004 No 35 ss LD 2, NF 8B(b)

## LB 6 Tax credits for caregivers

### *When this section applies*

- (1) This section applies when a person—
- (a) receives a schedular payment that is an accident compensation payment for attendant care from which an amount of tax has been withheld and paid under **section RD 4** (Payment of amounts of tax to Commissioner); and
  - (b) pays an amount to a caregiver for providing attendant care to the person for a period.

20

25

### *Tax credit*

- (2) The caregiver has a tax credit for the tax year corresponding to their income year in which the payment is received equal to the lesser of—

30

- (a) the amount of tax for the schedular payment under **subsection (1)(a)**;
- (b) the amount paid under **subsection (1)(b)**.

*Accident compensation payment for attendant care*

- (3) For the purposes of this section, **accident compensation payment for attendant care** means a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation, as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act. 5

Defined in this Act: accident compensation payment for attendant care, amount, amount of tax, tax credit, pay, schedular payment

Compare: 2004 No 35 s LD 1B 10

## Subpart LC—Tax credits for natural persons

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- LC 4 Tax credits for transitional circumstances  
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*Tax credits for persons on low incomes*

**LC 1 When net income under low income amount**

*When this section applies*

- (1) This section applies to a natural person who is not an absentee and whose net income for the tax year is equal to or less than the low income amount set out in **schedule 1, part B** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 5

*New Zealand superannuation and veteran's pensions*

- (2) A New Zealand superannuitant or a person receiving a veteran's pension has a tax credit equal to an amount calculated using the formula— 10
- $$\text{person's net income} \times 0.045.$$

*Other persons*

- (3) A person who is not a New Zealand superannuitant or a person receiving a veteran's pension has a tax credit equal to an amount calculated using the formula— 15
- $$(\text{person's net income} - (\text{total assessable income} - \text{total deductions})) \times 0.045.$$

*Definition of items in formulas* 20

- (4) In the formulas in **subsections (2) and (3)**,—
- (a) **person's net income** is the person's net income for the tax year in complete dollars:
- (b) **total assessable income** is the total amount of the person's assessable income that consists of interest, dividends, royalties, rents, beneficiary income, taxable distributions under **sections HC 17 to HC 23** (which relate to income of beneficiaries), and taxable Maori authority distributions allocated to the tax year referred to in **paragraph (a)**: 25
- (c) **total deductions** is the total amount of deductions— 30
- (i) allowed for expenditure incurred in deriving the person's assessable income as described in **paragraph (b)** to the extent to which it is no more than the amount of the assessable income; and 35

- (ii) allocated to the tax year referred to in **paragraph (a)**.

Defined in this Act: absentee, amount, assessable income, beneficiary income, tax credit, deduction, dividend, interest, net income, New Zealand superannuation, New Zealand superannuitant, tax year, taxable distribution, taxable Maori authority distribution, veteran's pension

5

Compare: 2004 No 35 s KC 1(1)(a), (b), (4)

## LC 2 When net income in low income abatement range

*When this section applies*

- (1) This section applies to a natural person who is not an absentee and whose net income for the tax year is in the low income abatement range set out in **schedule 1, part B** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 10

*New Zealand superannuation and veteran's pensions*

- (2) A New Zealand superannuitant or a person receiving a veteran's pension has a tax credit equal to an amount calculated using the formula— 15

$$\$427.50 - ((\text{person's net income} - \$9,500) \times 0.015).$$

*Other persons*

- (3) A person who is not a New Zealand superannuitant or a person receiving a veteran's pension has a tax credit equal to an amount calculated using the formula— 20

$$\begin{aligned} & \text{regulated amount} \\ & - ((\text{person's net income} - \$9,500) \times 0.015). \end{aligned}$$

*Definition of items in formulas in subsections (2) and (3)*

- (4) In the formulas in **subsections (2) and (3)**,— 25
- (a) **person's net income** is the person's net income for the tax year in complete dollars:
- (b) **regulated amount** is the lesser of— 30
- (i) \$427.50; and
- (ii) an amount calculated using the formula in **subsection (5)** in complete dollars.

*Formula*

- (5) The formula referred to in **subsection (4)(a)(ii)** is— 35
- $$(\text{person's net income} - (\text{total assessable income} - \text{total deductions})) \times 0.045.$$

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,—
- (a) **person's net income** is the person's net income for the tax year in complete dollars:
  - (b) **total assessable income** is the total amount of the person's assessable income that consists of interest, dividends, royalties, rents, beneficiary income, taxable distributions under **sections HC 17 to HC 23** (which relate to income of beneficiaries), and taxable Maori authority distributions allocated to the tax year referred to in **paragraph (a)**: 5
  - (c) **total deductions** is the total amount of deductions—
    - (i) allowed for expenditure incurred in deriving the person's assessable income as described in **paragraph (b)** to the extent to which it is no more than the amount of the assessable income; and 15
    - (ii) allocated to the tax year referred to in **paragraph (a)**. 10

Defined in this Act: absentee, amount, assessable income, beneficiary income, tax credit, deduction, dividend, interest, net income, New Zealand superannuation, New Zealand superannuitant, tax year, taxable distribution, taxable Maori authority distribution, veteran's pension 20

Compare: 2004 No 35 s KC 1(1)(c)

*Tax credits for children***LC 3 Child's income**

*When this section applies* 25

- (1) This section applies for a tax year when a person derives income and is younger than—
- (a) 15; or
  - (b) 18, and is attending—
    - (i) a private primary school or a state primary school or a private secondary school or a state secondary school (in each case as defined in the Education Act 1964); or 30
    - (ii) an integrated school (as defined in section 2 of the Private Schools Conditional Integration Act 1975); or 35
    - (iii) a school providing special education (as defined in the Education Act 1964 and the Education Act 1989); or

- (c) 19, and—
- (i) during the previous tax year was a person to whom **paragraph (b)** applied; and
  - (ii) turned 18 on or after 1 January in that previous tax year; and 5
  - (iii) continues to attend a school of any of the kinds referred to in **paragraph (b)**.

*Exclusion*

- (2) Despite **subsection (1)**, if the person has a tax credit under **section LC 4**, they are not allowed a credit under this section. 10

*Amount of credit*

- (3) The person has a tax credit equal to an amount that is the lesser of—
- (a) \$351; and
  - (b) an amount calculated using the formula in **subsection (4)**. 15

*Formula*

- (4) The formula referred to in **subsection (3)(b)** is—
- $$(\text{net income} - \text{resident passive income}) \times \frac{15}{100}. \quad 20$$

*Definition of items in formula*

- (5) In the formula,—
- (a) **net income** is the person's net income for the tax year:
  - (b) **resident passive income** is the resident passive income derived by the person in the tax year. 25

Defined in this Act: amount, child, tax credit, income, net income, resident passive income, tax year

Compare: 2004 No 35 s KC 2

*Tax credits for transitional circumstances*

**LC 4 Tax credits for transitional circumstances** 30

*When this section applies*

- (1) This section applies in a tax year to a person who is engaged in full-time work other than a person who—

- (a) is a child younger than 18, other than a child older than 15 who has stopped going to a school of any of the kinds referred to in **section LC 3(1)(b)**:
- (b) is treated under **section YD 1** (Residence of natural persons) as not resident in New Zealand throughout the tax year: 5
- (c) has a tax credit for the tax year under **subpart MB** (Adjustment of net income for family scheme):
- (d) is throughout the tax year, the spouse, civil union partner, or de facto partner of a person who has a tax credit for the tax year under **subpart MB**. 10

*Amount of credit*

- (2) The person has a tax credit equal to an amount calculated using the formula— 15
- $$\text{person's net income} \times \frac{\text{weekly periods}}{52}.$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,— 20
- (a) **person's net income** is—
- (i) \$728, if the net income of the person for the tax year is less than \$6,241; or
- (ii) an amount calculated using the formula in **subsection (4)**, if the net income of the person for the tax year is \$6,241 or more: 25
- (b) **weekly periods** is the number of periods of 1 week for which the person is engaged in full-time work.

*Formula*

- (4) The formula referred to in **subsection (3)(a)(ii)** is— 30
- $$\$728 - ((\text{person's net income} - \$6,240) \times 0.020).$$

*Definition of item in formula*

- (5) In the formula in **subsection (4)**, **person's net income** means the person's net income for the tax year in complete dollars. 35
- Defined in this Act: amount, child, tax credit, engaged in full-time work, net income, resident in New Zealand, spouse, tax year

Compare: 2004 No 35 s KC 3(1)

**LC 5 Meaning of engaged in full-time work***Meaning*

- (1) For the purposes of **section LC 4**, a person who is **engaged in full-time work** for a week, means a person who, in the week, is engaged in paid work for at least 20 hours. 5

*Inclusions*

- (2) A person **engaged in full-time work** includes a person who is not engaged in paid work for the following reasons:
- (a) if they suffer incapacity due to personal injury by accident for which compensation is or will be paid when otherwise they would have been engaged in paid work: 10
  - (b) if they are on parental leave during a week for which a parental leave payment is payable under Part 7A of the Parental Leave and Employment Protection Act 1987:
  - (c) if they are temporarily, or for an indefinite period, incapacitated for work through sickness or accident in relation to which a sickness benefit is or will be paid under the Social Security Act 1964 when otherwise they would have been engaged in paid work. 15

*Uniform daily rate* 20

- (3) For the purposes of the definition of **engaged in full-time work**, if a person performs paid work in a pay period that consists of a period longer than 1 week, the person is treated as having been engaged in paid work at a uniform daily rate throughout that pay period. 25

*Meaning of personal injury by accident, and compensation*

- (4) For the purposes of **subsection (2)(a)**,—
- (a) **personal injury by accident** means—
    - (i) personal injury by accident within the meaning of section 2 of the Accident Compensation Act 1982: 30
    - (ii) personal injury within the meaning of section 4 of the Accident Rehabilitation and Compensation Insurance Act 1992:
    - (iii) personal injury within the meaning of section 13 of the Accident Insurance Act 1998: 35

- 
- (iv) personal injury within the meaning of section 6 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:
- (b) **compensation** means—
- (i) earnings related compensation under section 2 of the Accident Compensation Act 1982: 5
- (ii) compensation for loss of earnings payable under sections 38, 39, and 43 of the Accident Rehabilitation and Compensation Insurance Act 1992:
- (iii) a vocational rehabilitation allowance payable under section 25 of the Accident Rehabilitation and Compensation Insurance Act 1992: 10
- (iv) compensation for loss of potential earning capacity payable under section 45 or 46 of the Accident Rehabilitation and Compensation Insurance Act 1992: 15
- (v) weekly compensation payable under section 58, 59, or 60 of the Accident Rehabilitation and Compensation Insurance Act 1992:
- (vi) continued compensation payable under section 138 of the Accident Rehabilitation and Compensation Insurance Act 1992: 20
- (vii) weekly compensation payable under section 428(2) or 429(2) or schedule 1, part 2 of the Accident Insurance Act 1998: 25
- (viii) compensation payable under section 445, 446, or 447 or schedule 1, clauses 67, 70, and 71 of the Accident Insurance Act 1998 that is or will be paid when the person would have been engaged in full-time work, if not for the death of another person: 30
- (ix) weekly compensation within the meaning of sections 6 and 365 and schedule 1, part 2 of the Injury Prevention, Rehabilitation, and Compensation Act 2001: 35
- (x) compensation payable under sections 383, 384, and 385 and schedule 1, clauses 66, 70, and 71 of Injury Prevention, Rehabilitation, and Compensation Act 2001.

*Meaning of paid work*

- (5) **Paid work**, for a person, means work from, by, or through the performance of which the person derives assessable income.

Defined in this Act: assessable income, compensation, engaged in full-time work, paid work, pay period, personal injury by accident

5

Compare: 2004 No 35 s KC 3(3) “full-time earner”, “remunerative work”

***Tax credits for housekeeping*****LC 6 Tax credits for housekeeping***Amount of credit*

- (1) A person who makes housekeeping payments in a tax year for the services of a housekeeper and who meets the requirements of section 41A of the Tax Administration Act 1994, has a tax credit equal to the lesser of—
- (a) \$310; and
- (b) an amount calculated using the formula in **subsection (2)**.

10  
15*Formula*

- (2) The formula referred to in **subsection (1)(b)** is—  
housekeeping payments  $\times$  0.033.

*Definition of item in formula*

- (3) In the formula, **housekeeping payments** is the amount of housekeeping payments that the person makes during the tax year in complete dollars.

20

*Refundable credits*

- (4) A credit under this section is a refundable tax credit under **section LA 7** (Remaining refundable credits: family scheme income) and excluded from the application of **sections LA 2 to LA 6** (which relate to a person’s income tax liability).

25

Defined in this Act: amount, tax credit, housekeeper, housekeeping payments, refundable tax credit, tax year

Compare: 2004 No 35 s KC 4(1), (1A)

30

**LC 7 Meaning of housekeeper***Definition*

- (1) For the purposes of **section LC 6**, **housekeeper**, for a person (**person A**) and a tax year, means,—



- (a) if person A is a widow, a widower, a surviving civil union partner, a surviving de facto partner, a divorced person, a person whose civil union has been dissolved, a person who is not in a marriage, civil union, or de facto relationship, or a separated person,— 5
- (i) a person or an institution that has the care and control of a household member, either in person A's home or elsewhere; or
- (ii) a person who tends person A's home if the person's services are necessary because of a mental or physical infirmity or disability of person A; or 10
- (b) if person A is living with their spouse, civil union partner, or de facto partner—
- (i) a person or an institution that has the care and control of a household member, either in person A's home or elsewhere, if the services of the person or the institution are necessary because of a mental or physical infirmity or disability of person A or their spouse, civil union partner, or de facto partner; or 15 20
- (ii) a person who tends person A's home, if the services of the person or the institution are necessary because of a mental or physical infirmity or disability of person A or their spouse, civil union partner, or de facto partner; or 25
- (c) if person A is living with their spouse, civil union partner, or de facto partner, a person or an institution that has the care and control of a household member, either in person A's home or elsewhere, if the services of the person or the institution are necessary because of the employment or business activities of both person A and their spouse, civil union partner, or de facto partner. 30

*When both partners have credits*

- (2) Despite **subsection (1)(c)**, if person A and their spouse, civil union partner, or de facto partner have a credit under **section LC 6**, the Commissioner may apportion the amount of the credit as is fair and equitable. The maximum amount that may be apportioned in this way is \$310. 35

Defined in this Act: amount, business, Commissioner, employment, home, household member, institution, separated person, spouse, tax year 40

Compare: 2004 No 35 s KC 4(2)

**LC 8 Some definitions**

For the purposes of **section LC 7**,—

**home**, for a person and a tax year,—

- (a) means the dwelling in which the person resides during the tax year: 5
- (b) does not include a motel, hotel, boardinghouse, guest house, convalescent home, nursing home, rest home, hospital, hospice, or other similar establishment, other than a part of an establishment that is occupied by any person regularly engaged in carrying on the activity of operating the establishment or by the person's spouse, civil union partner, or de facto partner 10

**household member** means a person who is—

- (a) younger than 18; or
- (b) suffering from a mental or physical infirmity or disability affecting their ability to earn a living 15

**housekeeping payments**, in relation to a person and a tax year, means payments—

- (a) that are made by the person during the tax year for the services of a housekeeper; and 20
- (b) for which no credit under any other provision of this Act is allowed to the person or to any other person

**institution**—

- (a) means a creche, day nursery, play centre, kindergarten, or similar body: 25
- (b) does not, in relation to the care and control of a household member who is 5 or older, include an institution that is, in any way, concerned with the education of the household member. 30

Defined in this Act: home, household member, housekeeper, institution, separated person, spouse, tax year

Compare: 2004 No 35 s KC 4(2)

### *Tax credits for absentees*

**LC 9 Tax credits for absentees**

*When this section applies* 35

- (1) This section applies when—

- (a) an absentee has derived assessable income from their personal services while they are personally present in New Zealand in a tax year; and
- (b) the absentee would have a tax credit under any of **sections LC 1 to LC 6** if they were not an absentee. 5

*Amount of tax credit under applicable section*

- (2) The absentee has a tax credit under the applicable section equal to an amount calculated using the formula—
 
$$\text{credit amount} \times \frac{\text{days}}{365}.$$
 10

*Definition of items in formula*

- (3) In the formula,—
  - (a) **credit amount** is the tax credit that the person would have under the applicable section if they were not an absentee: 15
  - (b) **days** is the total number of days in the period for which the person is paid for regular pay periods for the personal services.

Defined in this Act: absentee, amount, assessable income, tax credit, New Zealand, pay period, tax year 20

Compare: 2004 No 35 s KF 3

*Adjustments to certain tax credits*

**LC 10 Adjustment for change in return date**

*When this section applies* 25

- (1) This section applies when—
  - (a) section 39 of the Tax Administration Act 1994 applies to a person; and
  - (b) for the purposes of that section, the person provides a return of income for a period that is— 30
    - (i) less than a year; or
    - (ii) more than a year.

*Adjustment*

- (2) The amount of the total tax credits that the person has under this subpart is adjusted using the formula— 35

$$\text{person's total credits} \times \frac{\text{days}}{365}.$$

*Definition of items in formula*

- (3) In the formula,— 5
- (a) **person's total credits** is the total of the person's tax credits under **sections LC 1 to LC 6**;
- (b) **days** is the number of days in the period in relation to which the person provides the return.
- Defined in this Act: amount, return of income, year 10
- Compare: 2004 No 35 s KB 2

**LC 11 Adjustment when person is non-resident for part of tax year**

*When this section applies*

- (1) This section applies— 15
- (a) for the purposes of **sections LC 1, LC 2, and LC 4**; and
- (b) when a person is a non-resident for part of a tax year.

*Amount of tax credit under applicable section*

- (2) The person's tax credit under the applicable section is calculated— 20
- (a) first, by determining an annualised amount for the person's net income calculated using the formula in **subsection (3)**; and
- (b) second, by using the annualised amount calculated under **paragraph (a)** in the calculation of the credit in the applicable section; and 25
- (c) third, by reducing the amount of the credit by using the formula in **subsection (5)**.

*Formula: increasing net income*

- (3) The formula referred to in **subsection (2)(a)** is— 30
- $$\text{person's net income} \times \frac{365}{\text{days}}.$$

*Formula: reducing amount of credit*

- (4) The formula referred to in **subsection (2)(c)** is— 35
- $$\text{person's total credit} \times \frac{\text{days}}{365}.$$

*Definition of items in formulas*

- (5) In the formula in **subsections (3) and (4)**,—
- (a) **person's net income** is the amount of the person's net income for the period that the person is a New Zealand resident: 5
  - (b) **days** is the total number of days for which the person is a New Zealand resident:
  - (c) **person's total credit** is the total of the person's tax credits under the applicable section.

*Relationship with section LC 12*

- (6) This section is overridden by **section LC 12**. 10
- Defined in this Act: amount, tax credit, New Zealand resident, net income, non-resident, tax year
- Compare: 2004 No 35 ss KC 1(2), KC 3(2)

**LC 12 Assessment when person is non-resident** 15*When this section applies*

- (1) This section applies—
- (a) for the purposes of **sections LC 1, LC 2, and LC 4**; and
  - (b) when a person derives for a tax year assessable income from New Zealand during the part of the tax year when the person is a non-resident. 20

*Determination of net income*

- (2) The Commissioner may determine the amount of the net income of the person for the tax year.

*Fairness of determination*

- (3) A determination under **subsection (2)** must be fair, having regard to— 25
- (a) the kind of assessable income derived by the person; and
  - (b) the circumstances in which the assessable income is derived; and 30
  - (c) any other matters the Commissioner considers relevant.

Defined in this Act: amount, assessable income, assessment, Commissioner, derived from New Zealand, net income, non-resident, tax year

Compare: 2004 No 35 ss KC 1(3), KC 3(2) 35

**Subpart LD—Tax credits for public benefit gifts**

### Contents

- LD 1 Tax credits for public benefit gifts  
 LD 2 Exclusions  
 LD 3 Meaning of public benefit gift

<b>LD 1 Tax credits for public benefit gifts</b>	<b>5</b>
<i>Amount of credit</i>	
(1) A person who makes a public benefit gift in a tax year and who meets the requirements of section 41A of the Tax Administration Act 1994 has a tax credit for the tax year equal to the lesser of—	10
(a) \$630; and	
(b) an amount calculated using the formula in <b>subsection (2)</b> .	
<i>Formula</i>	
(2) The formula referred to in <b>subsection (1)(b)</b> is—	
total gifts × 33%.	15
<i>Definition of item in formula</i>	
(3) In the formula, <b>total gifts</b> means the total amount of all public benefit gifts made by the person in the tax year.	
<i>Administrative requirements</i>	
(4) Despite <b>subsection (1)</b> , the requirements of section 41A are modified if a tax agent applies for a refund under that section on behalf of a person, and—	20
(a) the tax agent sees the receipt for the person's public benefit gift; and	
(b) the person retains the receipt for 4 tax years after the tax year to which the claim relates.	25
<i>Refundable credits</i>	
(5) A credit under this section is a refundable tax credit under <b>section LA 7</b> (Remaining refundable credits: family scheme income) and is excluded from the application of <b>sections LA 2 to LA 6</b> (which relate to a person's income tax liability).	30

Defined in this Act: amount, public benefit gift, refundable tax credit, tax agent, tax credit, tax year

Compare: 2004 No 35 s KC 5

**LD 2 Exclusions**

This subpart does not apply to any of the following persons:

- (a) an absentee: 5
- (b) a company:
- (c) a public authority: 5
- (d) a Maori authority:
- (e) an unincorporated body:
- (f) a trustee liable for income tax under **subpart HC, and section HZ 2** (which relate to trusts and distributions from trusts). 10

Defined in this Act: absentee, company, income tax, Maori authority, public authority, trustee

Compare: 2004 No 35 s KC 5(1)

**LD 3 Meaning of public benefit gift**

*Meaning* 15

- (1) For the purposes of this subpart, a **public benefit gift**—
  - (a) means a gift of \$5 or more that is paid to a society, institution, association, organisation, trust, or fund, described in **subsection (2)** or listed in **schedule 32** (Recipients of public benefit gifts): 20
  - (b) includes a subscription paid to a society, institution, association, organisation, trust, or fund, only if the subscription does not confer any rights arising from membership in that or any other society, institution, association, organisation, trust, or fund: 25
  - (c) does not include a testamentary gift.

*Description of organisations*

- (2) The following are the entities referred to in **subsection (1)(a)**:
  - (a) a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand: 30
  - (b) a public institution maintained exclusively for any 1 or more of the purposes within New Zealand set out in **paragraph (a)**: 35
  - (c) a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in **paragraph (a)**, by

a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual:

- (d) a public fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in **paragraph (a)**. 5

Defined in this Act: charitable purpose, gift, New Zealand, trust

Compare: 2004 No 35 s KC 5(1)(aa)–(cp), (4)

## Subpart LE—Tax credits for imputation credits 10

### Contents

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### LE 1 Tax credits for imputation credits

#### *Amount of credit*

- (1) A person whose assessable income for an income year includes an imputation credit has a tax credit for the tax year corresponding to the income year of an amount equal to the sum of the amount of the imputation credit and any credit carried forward from an earlier tax year. 25

#### *Exclusion*

- (2) For a returning share transfer, a share user does not have a tax credit for an imputation credit attached to a dividend derived in a period in which they hold a share acquired under the transfer. However, a person providing a share under a returning share transfer is allowed a tax credit for the amount of an imputation credit recorded in the credit transfer notice, *see* **section LE 7**. 30  
35



*When amount altered*

- (3) The amount of the person's credit in **subsection (1)** may be reduced or increased if any of **sections LE 4 to LE 10** apply.

*Arrangements for tax advantage*

- (4) A person's credit under this section is extinguished if any of the following sections apply: 5
- (a) **section GB 36** (Reconstruction of imputation arrangements to obtain tax advantage):
  - (b) **section GB 37** (Arrangement for payment of dividend by other companies): 10
  - (c) **section GB 38** (When sections GB 35 to GB 37 apply to consolidated groups).

Defined in this Act: amount, assessable income, corresponding income year, tax credit, imputation credit, income year, returning share transfer, share user, tax year

Compare: 2004 No 35 ss LB 1(1)(j), (k), LB 2(1), (1B), (1C) 15

**LE 2 Use of remaining credits by companies and trustees***When this section applies*

- (1) This section applies when a person described in **subsection (2)** has an amount of tax credit remaining for a tax year under **section LA 5(4)** (Treatment of remaining credits). 20

*Certain persons only*

- (2) The person referred to in **subsection (1)** must be— 25
- (a) a company; or
  - (b) a trustee (other than the Maori trustee); or
  - (c) a Maori authority.

*Calculating amount of tax loss component*

- (3) The person has a tax loss component for the corresponding income year equal to an amount calculated using the formula— 30
- $$\frac{\text{person's remaining credit}}{\text{tax rate.}}$$

*Definition of items in formula*

- (4) In the formula,— 35
- (a) **person's remaining credit** is the amount of the tax credit remaining for the tax year under **section LA 5(4)**:

- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits).

Defined in this Act: basic rate, company, corresponding income year, tax credit, income year, Maori authority, tax loss component, tax year, trustee

5

Compare: 2004 No 35 s LB 2(2B), (3)

### LE 3 Use of remaining credits by others

*When this section applies*

- (1) This section applies when a person other than a person referred to in **section LE 2(2)** has an amount of tax credit remaining for a tax year under **section LA 5(4)** (Treatment of remaining credits). 10

*Amount carried forward*

- (2) The amount may be carried forward to the next tax year as a credit carried forward. 15

*Amount of reduction*

- (3) The person's credit is reduced by an amount equal to the amount carried forward and extinguished by the Commissioner under section 177C of the Tax Administration Act 1994. 20

Defined in this Act: amount, tax credit, tax year

Compare: 2004 No 35 ss LB 1(1)(hb), LB 2(2B), (3B), (3C)

### LE 4 Trustees for minor beneficiaries

*When this section applies*

- (1) This section applies when a person who has a tax credit under **section LE 1** is the trustee of a trust for a minor who derives beneficiary income from the trust. 25

*Trustee treated as beneficiary*

- (2) To the extent to which **section HC 7(2)** (Trustee income) applies, the person is treated as deriving the minor's beneficiary income as a beneficiary. 30

Defined in this Act: beneficiary income, tax credit, minor, trust, trustee

Compare: 2004 No 35 ss LB 1(1)(ab), LB 1A

**LE 5 Beneficiaries of trusts***When this section applies*

- (1) This section applies when a person who has a tax credit under **section LE 1** is the beneficiary of a trust and, in that capacity, derives a dividend with an imputation credit attached. 5

*Limitation on amount of credit*

- (2) The person's tax credit is limited to an amount calculated using the formula—
- $$\frac{\text{person's distributions}}{\text{trust distributions}} \times \frac{\text{total beneficiary credits} - \text{person's supplementary dividend}}{\text{person's supplementary dividend}} \quad 10$$

*Definition of items in formula*

- (3) In the formula,— 15
- (a) **person's distributions** is the total distributions for the tax year made to the person in their capacity as beneficiary of the trust:
- (b) **trust distributions** is the total distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries and includes all supplementary dividends paid to them: 20
- (c) **total beneficiary credits** is the total imputation credits attached to dividends for the tax year paid to all beneficiaries of the trust in their capacity as beneficiaries: 25
- (d) **person's supplementary dividend** is the total supplementary dividends for the tax year paid to the person in their capacity as beneficiary of the trust.

Defined in this Act: amount, tax credit, distribution, dividend, imputation credit, supplementary dividend, tax year, trust 30

Compare: 2004 No 35 s LB 1(1)(a), (3)

**LE 6 Partners in partnerships***When this section applies*

- (1) This section applies when a person who has a tax credit under **section LE 1** is a partner in a partnership and, through the partnership, derives a dividend with an imputation credit attached. 35

*Limitation on amount of credit*

- (2) The person's credit is limited to an amount calculated using the formula—

$$\frac{\text{partner's income}}{\text{partnership income}} \times \text{partnership imputation credits} - \text{partner's supplementary dividend.} \quad 5$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **partner's income** is the total assessable income of the person for the tax year derived as a partner of the partnership excluding— 10
- (i) an imputation credit or FDP credit attached to a dividend derived by the person:
- (ii) a supplementary dividend derived by the person as a non-resident partner of the partnership: 15
- (b) **partnership income** is the total assessable income for the tax year of all the partners of the partnership excluding—
- (i) all imputation credits and FDP credits attached to dividends derived by the partners: 20
- (ii) all supplementary dividends derived by non-resident partners of the partnership:
- (c) **partnership imputation credits** is the total imputation credits attached to dividends for the tax year derived by all partners of the partnership: 25
- (d) **partner's supplementary dividend** is the total supplementary dividends for the tax year derived by the person as a non-resident partner of the partnership.

Defined in this Act: amount, assessable income, tax credit, dividend, FDP credit, imputation credit, non-resident, supplementary dividend, tax year 30

Compare: 2004 No 35 s LB 1(1)(b), (4), (4A), (4B)

**LE 7 Credit transfer notices***When this section applies*

- (1) This section applies when a share supplier is given a credit transfer notice under section 30C of the Tax Administration Act 1994 by a share user under a share-lending arrangement. 35

*Amount of reduction*

- (2) The person's credit is limited to the amount shown in the credit transfer notice.

Defined in this Act: amount, tax credit, credit transfer notice, share-lending arrangement, share user

5

Compare: 2004 No 35 s LB 2(1C)

**LE 8 Application of imputation ratio***When this section applies*

- (1) This section applies when a person who has a tax credit under **section LE 1** receives an imputation credit attached to a dividend, and the dividend has an imputation ratio greater than the maximum permitted ratio calculated under **section OA 18** (Calculation of maximum permitted ratios).

10

*Amount of reduction*

- (2) The person's credit is reduced by an amount equal to the amount by which the credit is greater than the maximum permitted ratio.

15

Defined in this Act: amount, tax credit, dividend, imputation credit, imputation ratio, maximum permitted ratio

Compare: 2004 No 35 s LB 1(1)(c)

20

**LE 9 Application of combined imputation and FDP ratio***When this section applies*

- (1) This section applies when—
- (a) a person who has a tax credit under **section LE 1** receives an imputation credit and an FDP credit attached to a dividend; and
  - (b) an excess credit amount arises in relation to the dividend; and
  - (c) the FDP credit is equal to or less than the excess credit amount.

25

30

*Amount of reduction*

- (2) The person's credit for the dividend is reduced by an amount calculated using the formula—

excess credit amount for dividend – attached FDP credit.

Defined in this Act: amount, combined imputation and FDP ratio, tax credit, dividend, excess credit amount, FDP credit, imputation credit

Compare: 2004 No 35 s LB 1(1)(e), (5)

## LE 10 When income tax unpaid 5

*When this section applies*

- (1) This section applies when—
- (a) a person has a tax credit under **section LE 1** and an imputation credit is attached to a dividend; and
  - (b) the dividend is paid by a company that has a debit balance in its imputation credit account at the end of the tax year; and 10
  - (c) the company has not paid further income tax by the due date in **section OB 65(3)** (Further income tax for ICA closing debit balance). 15

*Amount of reduction*

- (2) The Commissioner may reduce the person's credit by an amount equal to their proportion of the unpaid amount under **subsection (1)(c)**.

*When failure to pay remedied* 20

- (3) To the extent to which a company remedies the failure after the due date, this section does not apply.

Defined in this Act: amount, Commissioner, company, tax credit, dividend, further income tax, imputation credit, imputation credit account, tax year

Compare: 2004 No 35 ss LB 1(1)(h), LB 2(5), (6) 25

## LE 11 Evidential requirements

If a person who has a tax credit under **section LE 1** does not meet the evidential requirements of section 78D of the Tax Administration Act 1994, the person's credit may be reduced.

Defined in this Act: tax credit 30

Compare: 2004 No 35 ss LB 1(1)(f), LB 2(4)

## Subpart LF—Tax credits for FDP credits

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- LF 2 Trustees for minor beneficiaries 35

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<hr/>		
<b>LF 1</b>	<b>Tax credits for FDP credits</b>	<b>10</b>
	<i>Amount of credit</i>	
(1)	A person whose assessable income for an income year includes an FDP credit has a tax credit equal to the amount of the FDP credit for the tax year corresponding to the income year.	15
	<i>Exclusion</i>	
(2)	For a returning share transfer, a share user does not have a tax credit for an imputation credit attached to a dividend derived in a period in which they hold a share acquired under the transfer. However, a person providing a share under a returning share transfer is allowed a tax credit for the amount of an imputation credit recorded in the credit transfer notice, <i>see section LF 5</i> .	20
	<i>When amount adjusted</i>	
(3)	The amount of the person's credit in <b>subsection (1)</b> may be reduced or increased if any of <b>sections LF 2 to LF 9</b> apply.	25
	<i>Arrangements for tax advantage</i>	
(4)	A person's tax credit under this section is extinguished if either of the following sections apply:	
(a)	<b>section GB 36</b> (Reconstruction of imputation arrangements to obtain tax advantage):	30
(b)	<b>section GB 38</b> (When sections GB 35 to GB 37 apply to consolidated groups).	

*Relationship of sections in this subpart*

- (5) **Sections LF 1 to LF 7, LF 9, and LF 10** do not apply in relation to a non-resident or a person who receives exempt income as set out in **section LF 7**.

Defined in this Act: amount, assessable income, corresponding income year, tax credit, credit transfer notice, FDP credit, income year, tax year

5

Compare: 2004 No 35 ss LB 1(1)(l), LD 8(1)

**LF 2 Trustees for minor beneficiaries***When this section applies*

- (1) This section applies when a person who has a tax credit under **section LF 1** is the trustee of a trust for a minor who derives beneficiary income from the trust. 10

*Trustee treated as beneficiary*

- (2) To the extent to which **section HC 7(2)** (Trustee income) applies, the person is treated as deriving the minor's beneficiary income as a beneficiary. 15

Defined in this Act: beneficiary income, tax credit, minor, trust, trustee

Compare: 2004 No 35 ss LB 1(1)(ab), LB 1A

**LF 3 Beneficiaries of trusts***When this section applies*

- (1) This section applies when a person who has a tax credit under **section LF 1** is the beneficiary of a trust and, in that capacity, derives a dividend with an FDP credit attached. 20

*Limitation on amount of credit*

- (2) The person's tax credit is limited to an amount calculated using the formula— 25

$$\frac{\text{person's distributions}}{\text{trust distributions}} \times \frac{\text{total beneficiary credits} - \text{person's supplementary dividend}}{\text{person's supplementary dividend}} \quad 30$$

*Definition of items in formula*

- (3) In the formula,— 35
- (a) **person's distributions** is the total distributions for the tax year made to the person in their capacity as beneficiary of the trust:



- (b) **trust distributions** is the total distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries, and includes all supplementary dividends paid to them:
- (c) **total beneficiary credits** is the total FDP credits attached to dividends for the tax year paid to all beneficiaries of the trust in their capacity as beneficiaries: 5
- (d) **person's supplementary dividend** is the total supplementary dividends for the tax year paid to the person in their capacity as beneficiary of the trust. 10

Defined in this Act: amount, tax credit, distribution, dividend, FDP credit, supplementary dividend, tax year, trust

Compare: 2004 No 35 s LB 1(1)(a), (2), (3), (3A)

#### LF 4 Partners in partnerships

*When this section applies* 15

- (1) This section applies when a person who has a tax credit under **section LF 1** is a partner in a partnership and, through the partnership, derives a dividend with an FDP credit attached.

*Limitation on amount of credit*

- (2) The person's credit is limited to an amount calculated using the formula— 20

$$\frac{\text{partner's income}}{\text{partnership income}} \times \text{partnership FDP credits} - \text{partner's supplementary dividend.}$$

*Definition of items in formula* 25

- (3) In the formula,—
- (a) **partner's income** is the total assessable income of the person for the tax year derived as a partner of the partnership excluding—
- (i) an imputation credit or FDP credit attached to a dividend derived by the person: 30
- (ii) a supplementary dividend derived by the person as a non-resident partner of the partnership:
- (b) **partnership income** is the total assessable income for the tax year of all the partners of the partnership excluding— 35
- (i) all imputation credits and FDP credits attached to any dividends derived by the partners:

- (ii) all supplementary dividends derived by non-resident partners of the partnership:
- (c) **partnership FDP credits** is the total FDP credits attached to dividends derived for the tax year by all partners of the partnership: 5
- (d) **partner's supplementary dividend** is the total supplementary dividends for the tax year derived by the person as a non-resident partner of the partnership.
- Defined in this Act: amount, assessable income, tax credit, dividend, FDP credit, imputation credit, non-resident, supplementary dividend, tax year 10
- Compare: 2004 No 35 s LB 1(1)(b), (4), (4A), (4B)

### LF 5 Credit transfer notices

*When this section applies*

- (1) This section applies when a share supplier is given a credit transfer notice under section 30C of the Tax Administration Act 1994 by a share user under a share-lending arrangement. 15

*Amount of reduction*

- (2) The share supplier's tax credit is limited to the amount of FDP shown in the credit transfer notice. 20
- Defined in this Act: amount, credit transfer notice, FDP, share-lending arrangement, share user, tax credit
- Compare: 2004 No 35 s LD 8(1C)

### LF 6 Application of FDP ratio

*When this section applies*

- (1) This section applies when a person who has a tax credit under **section LF 1** receives an FDP credit attached to a dividend, and the dividend has an FDP ratio greater than the maximum permitted ratio calculated under **section OA 18** (Calculation of maximum permitted ratios). 25

*Amount of reduction* 30

- (2) The person's credit is reduced by an amount equal to the amount by which the credit is greater than the maximum permitted ratio. 35
- Defined in this Act: amount, tax credit, dividend, FDP credit, FDP ratio, maximum permitted ratio
- Compare: 2004 No 35 s LB 1(1)(d)

**LF 7 Application of combined imputation and FDP ratio***When this section applies*

- (1) This section applies when—
- (a) a person who has a tax credit under **section LF 1** receives an imputation credit and an FDP credit attached to a dividend; and 5
  - (b) an excess credit amount arises in relation to the dividend; and
  - (c) the FDP credit is equal to or less than the excess credit amount. 10

*Amount of reduction*

- (2) The person's credit is reduced by an amount calculated using the formula—
- excess credit amount for dividend – FDP credit attached.
- Defined in this Act: amount, combined imputation and FDP ratio, tax credit, dividend, excess credit amount, FDP credit, imputation credit 15
- Compare: 2004 No 35 s LB 1(1)(e), (5)

**LF 8 Credits for persons who are non-resident or who receive exempt income***When this section applies* 20

- (1) This section applies for a tax year when a person is a shareholder of a company resident in New Zealand that pays a dividend to the person with an FDP credit attached, and the person is—
- (a) non-resident; or 25
  - (b) resident in New Zealand but a person for whom the dividend is exempt income other than under **sections CW 9 to CW 11** (which relate to income from equity).

*Amount of tax credit*

- (2) The person has a tax credit for the tax year equal to the amount of the FDP credit attached to the dividend. 30

*When amount altered*

- (3) The amount of the person's credit in **subsection (2)** may be reduced or increased to the extent to which—
- (a) any of **sections LF 2 to LF 7** apply; or 35

- (b) an FDP credit is used for a tax year to reduce the person's liability under **section RF 14** (Treatment of FDP credits).

*Arrangements for tax advantage*

- (4) A person's tax credit under this section is extinguished if **sections GB 35** (Imputation arrangements to obtain tax advantage) and **GB 36** (Reconstruction of imputation arrangements to obtain tax advantage) apply. 5

*Refunds*

- (5) To obtain a refund of the credit, the person must— 10
- (a) ask the Commissioner for the refund after the 31 May that follows the end of the tax year; and
- (b) meet the requirements of section 78D of the Tax Administration Act 1994.

Defined in this Act: amount, arrangement, Commissioner, company, tax credit, dividend, exempt income, FDP credit, non-resident, resident in New Zealand, shareholder, tax year 15

Compare: 2004 No 35 ss LB 1(1)(d), (l), LD 9

**LF 9 When income tax unpaid**

*When this section applies* 20

- (1) This section applies when—
- (a) a person has a tax credit under **section LF 1** and an FDP credit is attached to a dividend; and
- (b) the dividend is paid by a company that has a debit balance in its FDP account at the end of the tax year; 25
- and
- (c) the company has not paid further income tax by the due date referred to in **section OB 65(3)** (Further income tax for ICA closing debit balance).

*Amount of reduction* 30

- (2) The Commissioner may reduce the person's credit by an amount equal to their proportion of the unpaid amount under **subsection (1)(c)**.

*When failure to pay remedied*

- (3) To the extent to which a company remedies the failure after the due date, this section does not apply.

Defined in this Act: amount, Commissioner, company, tax credit, dividend, FDP credit, FDP account, further income tax, tax year

5

Compare: 2004 No 35 ss LB 1(1)(i), LD 8(4), (5)

**LF 10 Evidential requirements**

If a person who has a tax credit under **section LF 1** does not meet the evidential requirements of section 78D of the Tax Administration Act 1994, the person's credit may be reduced.

10

Defined in this Act: tax credit

Compare: 2004 No 35 ss LB 1(1)(g), LD 8(3)

**Subpart LJ—Tax credits for foreign income tax****Contents**

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**LJ 1 What this subpart does***When tax credits allowed*

- (1) This subpart provides the rules for dividing assessable income from foreign-sourced amounts into segments and allows a tax credit for foreign income tax paid in relation to a segment of that income.

25

*Limited application of rules*

- (2) The rules in this subpart apply only when—
- a person resident in New Zealand derives assessable income that is not derived from New Zealand; and
  - foreign income tax is not paid in a country or territory listed in **schedule 27** (Countries and types of income with unrecognised tax) to the extent to which the foreign income tax is paid on the types of income listed in the schedule.

30

35

*When treated as assessable income*

- (3) An amount that would in the absence of **section EX 47** (Codes: comparative value and deemed rate methods) be assessable income of a person in relation to an attributing interest in a FIF for a period is treated as if it were assessable income for the purposes of determining the person's entitlement to a credit under **section LJ 2** based on the amount of income to be taken into account in determining item segment in the formula in **section LJ 5(2)**. 5

*Source of dividends*

- (4) If a company is not resident in New Zealand, and for the purposes of a law of another territory in relation to which a double tax agreement has been made is resident in that territory, and the law imposes foreign tax, a dividend paid by the company is treated as being derived from a source in that other territory for the purposes of the double tax agreement. 10  
15

*Double tax agreements*

- (5) This subpart and **sections BH 1** (Double tax agreements) and **CD 19(1)** (Foreign tax credits and refunds linked to dividends) and sections 88 and 108(3B) of the Tax Administration Act 1994 as far as they are applicable, modified as necessary, for the purposes of **section LJ 2**, as if that section were a double tax agreement. 20

Defined in this Act: assessable income, tax credit, derived from New Zealand, foreign income tax, resident in New Zealand 25

Compare: 2004 No 35 ss LC 1(1)–(5), LC 14(1), LC 14A

**LJ 2 Tax credits for foreign income tax***Amount of credit*

- (1) A person described in **section LJ 1(2)(a)** has a tax credit for a tax year for an amount of foreign income tax paid on a segment of foreign-sourced income, determined as if the segment were the net income of the person for the tax year. The amount of the New Zealand tax payable is calculated under **section LJ 5**. 30

*Limitation on amount of credit*

- (2) The amount of the person's credit in **subsection (1)** must not be more than the person's notional income tax liability calculated under **section LJ 5(5)**. 35

*Amount adjusted*

- (3) The amount of the person's credit in **subsection (1)** may be reduced or increased if either **section LJ 6 or LJ 7** applies.

*When person both resident in New Zealand and another country*

- (4) A person described in **section LJ 1(2)(a)** who has, because they are a citizen or resident of or are domiciled in a foreign country, paid foreign income tax on their assessable income, has a credit under **subsection (1)**. However, the amount of the credit is limited to the amount of foreign income tax that would have been paid in the foreign country if the person were treated as not a citizen or resident of or domiciled in that foreign country. 5

Defined in this Act: amount, assessable income, tax credit, foreign income tax, income tax liability, net income, New Zealand, resident in New Zealand, segment of foreign-sourced income, tax year 10

Compare: 2004 No 35 ss LC 1(1), LC 2 15

**LJ 3 Meaning of foreign income tax**

For the purposes of this Part, **foreign income tax** means an amount that, if paid, would satisfy a person's obligations in a foreign country in relation to amounts that have the same nature as income tax. 20

Defined in this Act: amount, income tax

Compare: 2004 No 35 s LC 1(1)

**LJ 4 Meaning of segment of foreign-sourced income** 25

For the purposes of this Part, a person has a **segment of foreign-sourced income** equal to an amount of assessable income derived from 1 foreign country that comes from 1 source or is of 1 nature.

Defined in this Act: amount, assessable income, segment of foreign source income 30

Compare: 2004 No 35 s LC 14(1)

**LJ 5 Calculation of New Zealand tax***What this section does*

- (1) This section provides the rules for calculating the amount of New Zealand tax that relates to a segment of foreign-sourced income of a person. 35

*Calculation for single segment*

- (2) If the person has a notional income tax liability of more than zero, the amount of New Zealand tax relating to the segment is calculated using the formula—

$$\frac{(\text{segment} - \text{person's deductions})}{\text{person's net income}} \times \text{notional liability.} \quad 5$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **segment** is the amount of the segment of foreign-sourced income: 10
  - (b) **person's deductions** is the amount of the person's deductions for the tax year attributable to the segment of foreign-sourced income:
  - (c) **person's net income** is the person's net income for the tax year under **section BC 4(1) to (3)** (Net income and net loss): 15
  - (d) **notional liability** is the person's notional income tax liability under **subsection (5)**.

*Modification to results of formula for single segment* 20

- (4) The amount referred to in **subsection (2)** is modified if the net income that the person would have if their only income were from their segments of foreign-sourced income for the tax year is greater than their actual net income for the tax year. The result of the calculation in **subsection (2)** is adjusted for each segment by multiplying the individual amounts by the following ratio: 25

$$\frac{\text{person's notional income tax liability}}{\text{NZ tax under subsection (2) for all segments.}}$$

*Person's notional income tax liability* 30

- (5) For the purposes of this section, a person's notional income tax liability for a tax year is calculated using the formula—

$$(\text{person's net income} - \text{losses}) \times \text{tax rate.}$$

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,— 35
- (a) **person's net income** is the person's net income for the tax year:



- (b) **losses** is an amount of tax loss component that the person has subtracted from their net income under **section IA 3** (Using tax losses in tax year) determined before the use of any loss balance carried forward to the tax year: 5
- (c) **tax rate** is the basic rate of income tax set out in **schedule 1, part A** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 10
- Defined in this Act: amount, basic rate, deduction, net income, New Zealand, segment of foreign-sourced income, tax loss component, tax year
- Compare: 2004 No 35 s LC 14

## LJ 6 Taxable distributions and NRWT rules

### *When this section applies*

- (1) This section applies when a person who is a beneficiary of a trust and resident in New Zealand derives a taxable distribution in their capacity as beneficiary of the trust. 15

### *When credit not allowed*

- (2) The person is not allowed a tax credit in relation to any foreign income tax paid on the taxable distribution unless the tax has substantially the same nature as NRWT. 20

### *Amount of credit*

- (3) The person's tax credit is equal to an amount calculated using the formula— 25
- $$\frac{\text{person's taxable distribution}}{\text{total distribution}} \times \text{foreign tax paid.}$$

### *Definition of items in formula*

- (4) In the formula,—
- (a) **person's taxable distribution** is the amount of the taxable distribution derived by the person in their capacity as beneficiary of the trust, including a payment of tax that meets the requirements of **subsection (2)**: 30
- (b) **total distribution** is the total amount of the distribution derived by the person in their capacity as beneficiary of the trust, including a payment of tax that meets the requirements of **subsection (2)**: 35

- (c) **foreign tax paid** is the payment of tax that meets the requirements of **subsection (2)**.

Defined in this Act: amount, tax credit, distribution, foreign income tax, NRWT, NRWT rules, resident in New Zealand, taxable distribution

Compare: 2004 No 35 s LC 1(2)

5

## LJ 7 Repaid foreign tax

*When this section applies*

- (1) This section applies for a tax year when a person described in **section LJ 1(2)(a)** has paid an amount of foreign tax and they, or another person who paid the tax, or a person associated with either of them, receive repaid foreign tax that is— 10
- (a) a refund or repayment of some or all of the foreign tax; or
- (b) an amount or a benefit, including the remission of a debt, determined directly or indirectly by reference to some or all of the amount of the foreign tax. 15

*Liability for amount*

- (2) If the person has used, under **section LA 2 or LA 4** (which relate to the person's income tax liability), a credit under **section LJ 2** for the tax year, they are liable to pay to the Commissioner an amount equal to the amount of repaid foreign tax. 20

*When repaid tax relates to CFCs*

- (3) If the person has used, under **section LA 2 or LA 4**, a credit under **section LK 1** (Tax credits relating to attributed CFC income) for the tax year, and the repaid foreign tax relates to a CFC— 25
- (a) the amount of credit of the person carried forward is extinguished to the extent of the repaid foreign tax; and
- (b) the person is liable to pay to the Commissioner an amount of the repaid foreign tax that remains after **paragraph (a)** is applied. 30

*When liability payable*

- (4) The liability under **subsections (2) and (3)** is treated as income tax payable 30 days after the later of the following dates: 35
- (a) the date of the notice of assessment in relation to which the person has used the credit:

- (b) the date on which the person or another person who paid the tax, or a person associated with either of them, receives the repaid foreign tax.

Defined in this Act: amount, assessment, associated person, Commissioner, tax credit, foreign tax, income tax, notice, tax year

5

Compare: 2004 No 35 ss LC 1(3A), (3B), LC 3

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income  
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*Amounts of credits*

**LK 1 Tax credits relating to attributed CFC income**

*Amount of credit*

- (1) A person who has an amount of attributed CFC income for an income year has a tax credit for the tax year corresponding to

35

- the income year equal to the amount of income tax or foreign income tax paid or payable in relation to the attributed CFC income by the person or the CFC from which the income is derived.
- Amount adjusted* 5
- (2) The amount of the person's credit in **subsection (1)** may be reduced or increased if **section LK 7** applies.
- Limitation to quarantined amount*
- (3) The person's use under **section LA 2** (Satisfaction of income tax liability) of a credit referred to in **subsection (1)** is limited to the amount (the **quarantined amount**) that would be their income tax liability for the tax year if their only assessable income were attributed CFC income derived from a CFC resident in the foreign country referred to in **subsection (1)** in the accounting period in which the amount of tax giving rise to the credit was paid or payable. The quarantined amount is determined as if the amount of any tax credit for a CTR company under **subpart LL** (Underlying foreign tax credits) were zero. 10  
15
- Tax withheld* 20
- (4) In **subsection (1)**, a payment of income tax or foreign income tax by the CFC includes a payment of an amount of tax withheld from income.
- Defined in this Act: accounting period, amount, assessable income, attributed CFC income, CFC, CTR company, corresponding income year, tax credit, foreign income tax, income tax, income tax liability, income year, New Zealand, quarantined amount, tax withheld, tax year 25
- Compare: 2004 No 35 s LC 4(1), (4)
- LK 2 Calculation of amount of credit**
- Amount of credit* 30
- (1) For the purposes of **section LK 1(1)**, the amount of a tax credit for a tax year for a person is equal to an amount calculated using the formula—
- section EX 18 income interest  
× (tax paid - excluded foreign tax). 35

*Definition of items in formula*

- (2) In the formula,—
- (a) **section EX 18 income interest** is the income interest of the person used to calculate attributed CFC income under **section EX 18** (Formula for calculating attributed CFC income or loss) for the accounting period corresponding to the tax year: 5
- (b) **tax paid** is the amount of income tax or foreign income tax paid or payable by the CFC in relation to the person's attributed CFC income for the accounting period corresponding to the tax year, including an amount withheld by another person and paid or payable on behalf of the CFC: 10
- (c) **excluded foreign tax** is an amount of foreign income tax paid in a country or territory listed in **schedule 27** (Countries and types of income with unrecognised tax) to the extent to which the foreign income tax is paid on the types of income listed in the schedule. 15

Defined in this Act: accounting period, amount, attributed CFC income, CFC, corresponding income year, tax credit, foreign income tax, income interest, income tax, tax year 20

Compare: 2004 No 35 s LC 4(1)–(3)

**LK 3 Currency conversion**

If foreign income tax is paid or payable by a CFC in a currency other than New Zealand currency, the amount must be converted into New Zealand currency by applying— 25

(a) the close of trading spot exchange rate on the date when the income tax is paid or becomes payable; or

(b) the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the period to which the attributed CFC income relates. 30

Defined in this Act: amount, attributed CFC income, CFC, close of trading spot exchange rate, foreign income tax, New Zealand

Compare: 2004 No 35 s LC 4(1)

### *Use of credits in later tax years*

#### **LK 4 Use of remaining credits**

##### *When this section applies*

- (1) This section applies for the purposes of **section LA 5(2)** (Treatment of remaining credits) when a person has a tax credit remaining for a tax year after applying **section LA 4(1)** (When total credit more than income tax liability). 5

##### *Amount carried forward*

- (2) The amount is carried forward to the next tax year as a credit carried forward. 10

Defined in this Act: amount, tax credit, tax year

Compare: 2004 No 35 s LC 4(4)

#### **LK 5 Companies' credits carried forward**

##### *Company carrying credit forward*

- (1) A tax credit carried forward under **section LK 4** may be carried forward to a later tax year only if, by treating the credit as a tax loss component to which **sections IA 2 to IA 10** (which relate to the treatment of tax losses) apply, those sections would allow the amount to be carried forward. 15

##### *Timing*

- (2) For the purposes of this section, the credit is treated as a tax loss component arising on the last day of the income year corresponding to the tax year for which the person has the credit. 20

Defined in this Act: amount, company, corresponding income year, tax credit, tax loss component, tax year 25

Compare: 2004 No 35 s LC 4(4), (5)

#### **LK 6 Use of credits by group companies**

##### *When this section applies*

- (1) This section applies when a company (**company A**) in a group of companies has a tax credit under **section LK 1** in relation to an income interest in a CFC (**company B**) of an amount other than a quarantined amount. 30

*Making credit available*

- (2) Company A may choose to make the amount of the tax credit available to another company (**company C**) that is part of the group of companies for the tax year in which the credit is available to the company if the requirements of **subsections (3) and (4)** are met. 5

*Amount limited*

- (3) The amount of the credit must not be more than the amount that would be company C's income tax liability if that company's only assessable income were the attributed CFC income derived in the corresponding income year from a CFC resident in the same country in which company B was resident in the accounting period in which the income tax giving rise to the credit was paid or payable. 10

*Use limited*

- (4) Company A may make an amount of a tax credit available to company C to use only if the amount would be able to be used under **subpart IC** (Grouping tax losses), reading the subpart by substituting— 15
- (a) a wholly-owned group of companies for a group of companies: 20
  - (b) a credit of company A for a tax loss component of the loss company:
  - (c) the use of the credit to satisfy an income tax liability for the use of a tax loss component to reduce net income, in both **subpart IC and section GB 4** (Arrangements for grouping tax losses: companies): 25
  - (d) company C for the company B:
  - (e) the income tax liability of company C for the net income of company B: 30
  - (f) **sections LK 1 to LK 5** for sections **IA 3 to IA 5** (which relate to the use of tax losses generally).

Defined in this Act: accounting period, amount, assessable income, attributed CFC income, CFC, company, corresponding income year, tax credit, group of companies, income interest, income tax, income tax liability, net income, quarantined amount, tax loss component, tax year, wholly-owned group of companies 35

Compare: 2004 No 35 s LC 5

### *Treatment of taxable distributions*

#### **LK 7 Taxable distributions and NRWT rules**

##### *When this section applies*

- (1) This section applies when a CFC receives a taxable distribution in an accounting period and, for a person with an income interest of 10% or more in the CFC under the rules in **sections EX 14 to EX 17** (which relate to the 10% threshold and variations in income interest level), the taxable distribution gives rise to attributed CFC income to which **section EX 19** (Taxable distribution from non-complying trust) applies. 5  
10

##### *When credit not allowed*

- (2) The person does not have a tax credit in relation to tax paid on the taxable distribution unless the tax is substantially the same as NRWT.

##### *Amount of tax on distribution*

- (3) The amount of tax that gives rise to the credit must not be more than an amount calculated using the formula— 15  
20
- $$\frac{\text{person's taxable distribution}}{\text{total distribution}} \times \text{foreign tax paid.}$$

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

- (4) In the formula in **subsection (3)**,— 25
- (a) **person's taxable distribution** is the amount of the taxable distribution derived by the CFC, including a payment of tax that meets the requirements of **subsection (2)**: 30
- (b) **total distribution** is the total amount of the distribution derived by the CFC, including a payment of tax that meets the requirements of **subsection (2)**: 30
- (c) **foreign tax paid** is the payment of tax that meets the requirements of **subsection (2)**. 30

##### *Amount of person's credit*

- (5) The amount of a credit of a person under this section is equal to an amount calculated using the formula— 35
- $$\text{section EX 18 income interest} \times \text{amount of tax.}$$



*Definition of items in formula*

- (6) In the formula in **subsection (5)**,—
- (a) **section EX 18 income interest** is the income interest of the person used to calculate attributed CFC income under **section EX 18** (Formula for calculating attributed CFC income or loss) for the accounting period corresponding to the tax year: 5
- (b) **amount of tax** is the amount of tax determined under **subsection (3)**. 10
- Defined in this Act: accounting period, amount, attributed CFC income, CFC, corresponding income year, tax credit, distribution, income interest, NRWT, NRWT rules, tax year, taxable distribution
- Compare: 2004 No 35 s LC 4(7)

*Consolidated companies*

- LK 8 Tax credits of consolidated companies** 15
- If a consolidated group has a tax credit under **section LK 1**, the credit is treated as the consolidated group's credit and not the credit of a group company.
- Defined in this Act: company, consolidated group, tax credit
- Compare: 2004 No 35 s LC 16(1) 20

**LK 9 Use of company's credits carried forward***When this section applies*

- (1) This section applies when a company that is part of a consolidated group of companies in an income year has a credit carried forward for the tax year corresponding to the income year. 25

*First use by consolidated group*

- (2) The amount must first be used to satisfy the income tax liability of the consolidated group for the income year. However, the amount must not be more than the consolidated group's quarantined amount. 30

*Second use by group company or another consolidated group*

- (3) If, after applying **subsection (2)**, an amount remains, the amount may be used to satisfy the income tax liability of the company 35

or the income tax liability of another consolidated group in the income year. **Sections LK 10 and LK 11** override this subsection.

*Third use: amount carried forward*

- (4) If, after applying **subsections (2) and (3)**, a balance remains, the amount must be carried forward to the next income year under **section LK 4(2)**. 5

Defined in this Act: amount, company, consolidated group, corresponding income year, income tax liability, income year, quarantined amount, tax year

Compare: 2004 No 35 s LC 16(2)

## **LK 10 When group membership lacking in tax year in which credit arises** 10

*When this section applies*

- (1) This section applies when a company that is part of a consolidated group of companies has a credit carried forward for a tax year, but the company was not part of the same consolidated group as 1 or more companies in the consolidated group in an earlier tax year in which the credit arises. 15

*Limitation on amount used*

- (2) The amount of the credit carried forward and made available for the consolidated group to use under **section LK 9(2)** is limited to the sum of— 20
- (a) the amount of the credit carried forward that the company could use under **section LA 2 or LA 4** (which relate to the company's income tax liability), if the company were not part of the consolidated group for the tax year; and 25
- (b) the amount that each company in the consolidated group would have under **section LK 6** in relation to the amount of credit carried forward if—
- (i) the consolidation of the companies is ignored; 30  
and
- (ii) all required steps are presumed taken for **section LK 6** to apply.

*Relationship with section FM 3*

- (3) In **subsection (2), section FM 3** (Liability of consolidated groups and group companies) applies to the calculation of the income tax liability.

Defined in this Act: amount, company, consolidated group, income tax liability, tax year

5

Compare: 2004 No 35 s LC 16(4)

**LK 11 When group membership lacking in tax year in which credit used**

*When this section applies*

10

- (1) This section applies when a company that is part of a consolidated group of companies has a credit carried forward for a tax year, but the company is not part of the consolidated group for the whole tax year in which the credit carried forward is used.

15

*Limitation on amount*

- (2) The amount of the credit carried forward and made available for the consolidated group to use under **section LK 9(2)** is limited to the least of—

(a) the amount of the credit carried forward shown in financial statements provided with the consolidated group's return of income for the income year corresponding to the tax year that—

20

(i) relate to the part of the income year when the company was part of the consolidated group; and

25

(ii) disclose the amount that would be the net income attributable to the part of the income year when the company is part of the consolidated group, determined on a fair and reasonable basis of attribution:

30

(b) the amount of the credit calculated using the formula in **subsection (3)**:

(c) the amount referred to in **section LK 10(2)**.

*Formula*

- (3) The amount referred to in **subsection (2)(b)** is calculated using the formula—

35

$$\begin{aligned} & \text{amount carried forward} \\ & - (\text{part-year credits} + \text{pre-consolidation credits}). \end{aligned}$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **amount carried forward** is the amount of the credit carried forward under **section LK 9(2)** before applying **section LK 10** and this section: 5
  - (b) **part-year credits** is the amount of the credit carried forward that the company may use under **section LA 2 or LA 4** (which relate to the company's income tax liability) for the part of the tax year before the company becomes part of the consolidated group: 10
  - (c) **pre-consolidation credits** is the amount of the credits carried forward that the company must make available for another consolidated group of which it was part before becoming part of the consolidated group. 15
- Defined in this Act: amount, company, consolidated group, corresponding income year, income year, net income, return of income, tax year 15
- Compare: 2004 No 35 s LC 16(5)

*Amalgamations of companies*

- LK 12 Treatment of credits when companies amalgamate** 20
- On an amalgamation, for the purposes of determining whether a credit carried forward is available under **section LK 5** or whether the requirements of **section LK 6** are met, the amalgamated company is treated as if it were the amalgamating company with the same holders of shares and options over shares. 25
- Defined in this Act: amalgamated company, amalgamating company, amalgamation, share
- Compare: 2004 No 35 ss LC 8, LC 11, LC 12

- LK 13 Use of credits by amalgamated company** 30
- When this section applies* 30
- (1) This section applies when an amalgamating company ends its existence on a resident's restricted amalgamation and the company has a tax credit under this subpart that—
- (a) has not otherwise been used by the amalgamating company before the date of amalgamation: 35
  - (b) if treated as a credit remaining for a tax year under **section LA 4(1)** (When total credit more than income tax

liability), could be made available to each of the amalgamated company, unless it is a company incorporated only on amalgamation, and a company that is amalgamated with the amalgamated company.

*Amalgamated company's credit* 5

- (2) The tax credit is treated as a credit of the amalgamated company for the tax year in which the amalgamation occurs.

Defined in this Act: amalgamated company, amalgamating company, company, tax credit, resident's restricted amalgamation, tax year

Compare: 2004 No 35 s LC 8 10

#### **LK 14 Use by amalgamated company of credits carried forward**

*When this section applies*

- (1) This section applies when an amalgamated company has a tax credit under this subpart for a tax year before that in which the amalgamation takes place, and the credit has not been used before the date of amalgamation. 15

*Restrictions on carrying credit forward: year of amalgamation*

- (2) The credit may be carried forward to the tax year of amalgamation or a later tax year only if— 20
- (a) the requirements of **sections LK 1 to LK 5** are met; and
  - (b) the credit could be made available under **section LK 6** for the part of the tax year ending with the date of the amalgamation to each amalgamating company. 25

*Restrictions on carrying credit forward: order*

- (3) If the tax credits of 2 or more amalgamating companies are credited under **section LK 13** against the amalgamated company's income tax liability for a tax year, those tax credits must— 30
- (a) if resulting from tax payable in 2 or more tax years, be credited in the same order as arising; and
  - (b) if resulting from tax payable in the same tax year, be credited, so far as the tax extends,— 35
    - (i) in the order chosen by the amalgamated company by notice to the Commissioner; or

- (ii) otherwise, on a pro rata basis.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, tax credit, tax year

Compare: 2004 No 35 ss LC 9, LC 10

## **LK 15 Use of amalgamating company's credits** 5

*When this section applies*

- (1) This section applies when a company has a tax credit under this subpart arising in whole or in part before an amalgamation.

*Restrictions on use* 10

- (2) The amalgamated company may use the credit only if the company and each amalgamating company meet the requirements of **section LK 6**.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, company, tax credit 15

Compare: 2004 No 35 s LC 12

## **Subpart LL—Underlying foreign tax credits**

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### **LL 1 What this subpart does**

This subpart provides for a tax credit for a person for an amount of underlying foreign tax. The person uses the credit to reduce a liability for FDP under **section RG 3** (Obligation to pay FDP). 30

Defined in this Act: amount, FDP, foreign dividend, tax credit

Compare: 2004 No 35 s LF 1(1)(a)

**LL 2 Tax credits for underlying foreign tax***When this section applies*

- (1) This section applies when a person—
- (a) is a company resident in New Zealand; and
  - (b) derives a foreign dividend from a foreign dividend company that is—
    - (i) a branch equivalent company; or
    - (ii) a grey list company; or
    - (iii) a CFC; or
    - (iv) a company that is a New Zealand resident and treated as a New Zealand resident under a double tax agreement; and
  - (c) has the required interest in the foreign dividend company when they derive the foreign dividend; and
  - (d) meets the evidential requirements of section 78F of the Tax Administration Act 1994.

*Exclusions*

- (2) This section does not apply when—
- (a) the person is an attributing company;
  - (b) the foreign dividend is a non-creditable dividend.

*Grey list dividends*

- (3) For an accounting year and for a grey list dividend, the person has a tax credit equal to an amount calculated using the formula—

$$\frac{\text{grey list dividend} \times \text{tax rate}}{(1 - \text{tax rate})}. \quad 25$$

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—
- (a) **grey list dividend** is the amount of the foreign dividend of the person to the extent to which it is a grey list dividend under **section LL 3**: 30
  - (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year in which the foreign dividend is derived. 35

*Non-grey list dividends*

- (5) For an accounting year and for a dividend other than a grey list dividend, the person has a tax credit equal to an amount calculated using the formula—

$$\frac{\text{non-grey list dividend}}{\text{earnings amount}} \times (\text{total tax paid} + \text{total UFTCs}). \quad 5$$

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,—
- (a) **non-grey list dividend** is the amount of the foreign dividend of the person for the accounting year, determined before any amount of tax is withheld or any reduction is made under **section CD 18** (Dividend reduced if foreign tax paid on company's income), to the extent to which the amount is not a grey list dividend under **section LL 3**: 10
- (b) **earnings amount** is the amount of the person's foreign dividend company net earnings under **section LL 5**: 15
- (c) **total tax paid** is the total income tax or foreign income tax paid or payable by the foreign dividend company for its UFTC accounting period: 20
- (d) **total UFTCs** is the total amount of foreign dividend company lower tier UFTCs under **section LL 6** less the sum of—
- (i) the total amount of credits that the person would have under this subpart in relation to all dividends paid by the foreign dividend company during its UFTC accounting period, excluding dividends paid during the current accounting year, and treating the dividends as derived by the person at a time when they have the required interest in the foreign dividend company; and 25
- (ii) the total amount of credits that the person would have under **subsection (3)** if all dividends paid by the foreign dividend company in its current accounting year are treated as derived by the person at a time when they have the required interest in the foreign dividend company. 30
- 35



*Misreported foreign dividend company net earnings*

- (7) When a person calculates the amount of their credit under **subsection (5)** using an amount of foreign dividend company net earnings calculated under **section LL 5(2)**, the person is not entitled to a credit for the relevant accounting year and the accounting years immediately before and after the accounting year, if— 5
- (a) the person or the Commissioner decides, for the accounting year, that the amount of foreign dividend company net earnings is based on financial statements that do not fairly present the net earnings of the foreign dividend company; or 10
- (b) the amount of foreign dividend company net earnings is not supported by the documentation. 15

*Evidential requirements and consequences*

- (8) For the purposes of **subsection (1)(d)**, the Commissioner may require the person to provide information under section 78E of the Tax Administration Act 1994. The person is treated as having no income tax paid or payable for the purposes of this subpart if,— 15
- (a) when asked, the person does not provide the information referred to in section 78E; or 20
- (b) the Commissioner is not satisfied on the basis of other evidence; or
- (c) the person does not have a credit under **section LL 6(1)**. 25

Defined in this Act: accounting year, amount, amount of tax, attributing company, basic rate, branch equivalent company, CFC, Commissioner, company, current accounting year, dividend, double tax agreement, foreign dividend, foreign dividend company, foreign dividend company net earnings, grey list company, grey list dividend, income tax, New Zealand resident, non-creditable dividend, required interest, resident in New Zealand, tax credit, tax year, UFTC accounting period 30

Compare: 2004 No 35 ss LF 1(1)(a), (2), LF 2(2), (3), LF 3(1), LF 6(4)–(6)

**LL 3 Meaning of grey list dividend***Calculation*

- (1) **Grey list dividend**, for an accounting year, means an amount calculated using the formula— 35

$$\text{person's dividend} \times \frac{(1 - \text{tracking account balance})}{\text{total grey list dividends.}}$$

*Definition of items in formula*

- (2) In the formula,—
- (a) **person's dividend** is the amount of a foreign dividend, determined before FDP is paid or any reduction made under **section CD 18** (Dividend reduced if foreign tax paid on company's income), that is derived by a person for an accounting year in relation to which the foreign dividend company—
- (i) is liable for the UFTC accounting period to income tax in a foreign country in the grey list because the company is domiciled, resident, incorporated, or has its place of management in the country, or because the laws of the country impose on a person holding an income interest in the company a liability for income tax on the company's income and at least 80% of the company's income has a source in the country; and
- (ii) maintains a tracking account under **section LL 4** that the person can provide to the Commissioner, if asked; and
- (iii) has not, for the UFTC accounting period, had its liability to income tax under **subparagraph (i)** reduced by applying the concessions listed in **schedule 24, part B** (International tax rules: grey list countries), excluding the concessions listed in **clause 1** to the extent to which the company has derived income from another foreign country in the grey list; and
- (iv) either is part of the same wholly-owned group of companies as the foreign dividend company when the foreign dividend is paid, or has been a foreign company for the whole of the period ending on the day that the foreign dividend is paid, and beginning on the starting date:
- (b) **tracking account balance** is the balance of the tracking account maintained for the foreign dividend company under **section LL 4** on the last day of the accounting year:
- (c) **total grey list dividends** is the total dividends that the foreign dividend company pays during the current accounting year that are foreign dividends, or would be foreign dividends if they were derived by the person.

*Starting date*

- (3) In this section, **starting date** means—
- (a) the first day of the foreign dividend company's accounting year that is 3 years before the accounting year in which the person first has the required interest in the foreign dividend company; or 5
  - (b) the date on which the foreign dividend company is incorporated, if the person has the required interest in the foreign dividend company on that date or within 3 years of that date. 10

Defined in this Act: accounting year, amount, Commissioner, company, current accounting year, dividend, FDP, foreign company, foreign dividend, foreign dividend company, grey list, grey list dividend, income tax, required interest, starting date, tracking account, trust, UFTC accounting period, wholly-owned group of companies 15

Compare: 2004 No 35 s LF 5(1)

**LL 4 Tracking accounts***When tracking accounts required*

- (1) A person who derives a grey list dividend must maintain a tracking account in relation to the foreign dividend company that pays the grey list dividend for all transactions occurring on and after the first tracking date of the foreign dividend company. The person may maintain a tracking account for another company for all transactions occurring on and after the first tracking date of the other company. 20  
25

*Credits to tracking account*

- (2) The person must credit the following amounts to a tracking account:
- (a) an amount of a standard dividend in relation to which the company is not liable for income tax or foreign income tax: 30
  - (b) an amount of a dividend paid by a tracking associate in relation to which the company is not liable for income tax, excluding—
    - (i) an amount of attributed repatriation: 35
    - (ii) an amount of a standard dividend:
    - (iii) an amount of a dividend arising from a loan calculated under **section CD 39** (Calculation of amount of dividend when property made available) using the benchmark rate under **section CD 39(5) to (8)**, to 40

- the extent to which the amount of the loan is otherwise credited under **paragraph (d)** to the tracking account:
- (c) an amount subscribed for shares issued by the company or contributed as additional equity of the company to the extent to which the amounts are subscribed or contributed by a tracking associate who has retained earnings at the time of subscription or contribution: 5
  - (d) an amount advanced by a tracking associate as a loan to the company to the extent to which the tracking associate has retained earnings at the time the amounts are advanced, excluding amounts repaid within 5 years: 10
  - (e) an amount that is not a dividend paid by a tracking associate for which the company is not liable for income tax and, if the company were a New Zealand resident, the amount would be assessable income of the company: 15
  - (f) an amount of the retained earnings of the company for an accounting year before the first tracking date of the company, if the person has chosen a first tracking date under **paragraph (c)** in the definition of **first tracking date**. 20

*Debits to tracking account*

- (3) The person must debit the following amounts to a tracking account: 25
  - (a) an amount credited under **subsections (2)(a) to (e)** that is—
    - (i) a dividend derived by the company that would be a grey list dividend under **section LL 3** if derived by the person; or
    - (ii) a dividend paid by another company resident in New Zealand: 30
  - (b) an amount paid by the company on or after the first tracking date of the company and before the end of the current accounting year if it is—
    - (i) derived by another company; and 35
    - (ii) credited under **subsections (2)(a) to (e)** in a tracking account maintained for the other company and the first tracking date of the other company is earlier than the first tracking date of the company:
  - (c) an amount of a dividend, other than a dividend debited under **paragraph (a) or (b)**, paid by the company in the 40

UFTC accounting period, excluding the current accounting year, if the dividend is a grey list dividend under **section LL 3**, or would be a grey list dividend if derived by the person.

- Income tax liability* 5
- (4) If a credit, deduction, or similar benefit arising under the relevant foreign taxation laws has the direct or indirect effect of reducing the company's income tax or foreign income tax, a company is treated as not liable to income tax or foreign income tax in relation to those amounts for the purposes of **subsection (2)**. 10
- Exclusions*
- (5) **Subsection (4)** does not apply if the credit, deduction, or benefit relates merely to the use under the relevant taxation laws of the equivalent of— 15
- (a) a tax loss component:
- (b) a tax credit arising under **subpart LJ or LK** (which relate to tax credits for foreign tax or attributed CFC income) or this subpart.
- When company is life insurance company* 20
- (6) If a company carries on a business of providing life insurance, the amounts that must be credited to a tracking account under **subsection 2(a) to (e)** are calculated using an actuarial determination of the part of the profit or loss of the company for the shareholders, not the policyholders, unless— 25
- (a) the Commissioner considers the amounts calculated using an actuarial determination are not reasonable and fair; or
- (b) the Commissioner has asked for information to review the actuarial determination and the person fails to provide the information. 30

Defined in this Act: accounting year, amount, assessable income, attributed repatriation, business, CFC, Commissioner, company, tax credit, current accounting year, deduction, dividend, first tracking date, foreign dividend company, grey list dividend, income tax, loss, New Zealand resident, resident in New Zealand, retained earnings, share, shareholder, standard dividend, tax loss component, tracking account, tracking associate, UFTC accounting period 35

Compare: 2004 No 35 s LF 5(2)–(5)

**LL 5 Meaning of foreign dividend company net earnings***Definition*

- (1) **Foreign dividend company net earnings**, for a person and an accounting year, means the greater of—
- (a) an amount calculated using the formula in **subsection (2)**; 5  
and
  - (b) the total amount of dividends that the foreign dividend company pays during the current accounting year, excluding—
    - (i) a dividend derived by the person that is a non-creditable dividend or a grey list dividend; and 10
    - (ii) a dividend that would be a non-creditable dividend or would be a grey list dividend, if derived by the person.

*Calculation of amount*

15

- (2) The formula referred to in **subsection (1)(a)** is—  
after-tax earnings – after-tax losses – excluded dividends.

*Definition of items in formula*

- (3) In the formula,—
- (a) **after-tax earnings** is the total after-income tax earnings of the foreign dividend company for the company's UFTC accounting period: 20
  - (b) **after-tax losses** is the total after-income tax losses of the foreign dividend company for the company's UFTC accounting period: 25
  - (c) **excluded dividends** is the total amount of dividends paid by the foreign dividend company limited to—
    - (i) the dividends paid during its UFTC accounting period, excluding the current accounting year: 30
    - (ii) the dividends derived by the person, paid during the current accounting year as non-creditable dividends or grey list dividends: 30
    - (iii) the dividends paid during the current accounting year that would be non-creditable dividends or grey list dividends if derived by the person. 35

Defined in this Act: accounting year, after-income tax earnings, after-income tax losses, amount, company, current accounting year, dividend, foreign dividend company, foreign dividend company net earnings, grey list dividend, non-creditable dividend, UFTC accounting period

Compare: 2004 No 35 s LF 3(1)(f), (g), (h)

40

**LL 6 Foreign dividend company lower tier UFTCs***When UFTC arises*

- (1) A person has a foreign dividend company lower tier UFTC if—
- (a) a company pays a standard dividend to a foreign dividend company during that company's UFTC accounting period; and 5
  - (b) the person has the required interest in the company and in the foreign dividend company when the company pays the standard dividend. 10

*Amount of UFTC*

- (2) The amount of the foreign dividend company lower tier UFTC is equal to the credit that the person would have under this subpart for the standard dividend, treating—
- (a) a dividend other than a standard dividend as not existing; and 15
  - (b) a standard dividend as a foreign dividend received by the person.

*Limitation on amount*

- (3) The amount under **subsection (2)** is limited to the lesser of— 20
- (a) the imputation credits attached to the standard dividend if the company is resident in New Zealand and is an ICA company; and
  - (b) an amount calculated using the formula—
- $$\frac{\text{(relevant standard dividend + lower tier UFTC + tax withheld)}}{\text{(company rate - tax withheld)}} \quad 25$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **relevant standard dividend** is the amount of the standard dividend after the subtraction of tax withheld in relation to the dividend: 30
  - (b) **lower tier UFTC** is the amount of the foreign dividend company lower tier UFTC under **subsection (2)** for the standard dividend:
  - (c) **tax withheld** means the tax withheld and paid in relation to the standard dividend: 35

- (d) **company rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year in which the standard dividend is paid.

Defined in this Act: amount, basic rate, company, dividend, foreign dividend, foreign dividend company, ICA company, imputation credit, required interest, resident in New Zealand, standard dividend, tax withheld, tax year, UFTC accounting period

5

Compare: 2004 No 35 s LF 4

## LL 7 Conduit financing arrangements

10

*When this section applies*

- (1) This section applies when—
- (a) a company derives a dividend from a foreign company (**foreign company A**), or a person resident in New Zealand and associated at the time with the company derives a dividend from a foreign company; and 15
- (b) the company or associate has a tax credit for the dividend under **section LL 2(3) or (5)** as a foreign dividend company lower tier UFTC under **section LL 6**; and
- (c) in the tax year in which the dividend is derived, or in an earlier tax year, the company incurs— 20
- (i) interest expenditure; or
- (ii) expenditure under the financial arrangements rules; and
- (d) an amount paid or payable by the company which gives rise to the expenditure referred to in **paragraph (c)** is paid directly or indirectly, through 1 or more transactions, to foreign company A, or to another foreign company (**foreign company B**) that is associated with foreign company A; and 25 30
- (e) at the time when an amount described in **paragraph (d)** is paid to foreign company A or to foreign company B, or at the time when the dividend described in **paragraph (a)** is derived,— 35
- (i) foreign company A is not a CFC:
- (ii) foreign company B is not a CFC, if a payment is made to foreign company B:
- (iii) a non-resident has voting interests of 50% or more in foreign company A and in foreign company B, if applicable or, if a market value circumstance exists, market value interests of 50% or 40



more in foreign company A and in foreign company B, if applicable.

*Limited deduction*

- (2) For the purposes of **subsection (1)(c)**, and despite **sections DB 6 to DB 8** (which relate to deductions for interest expenditure), the company is allowed a deduction for the expenditure for a tax year only to the extent to which the expenditure is greater than an amount calculated using the formula—
- $$\text{grey list UFTC dividends} \\ - (\text{earlier expenditure} + \text{financial arrangements income}).$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **grey list UFTC dividends** is the total amount of dividends, before subtracting the tax withheld, that is derived from foreign company A for the tax year or an earlier tax year to the extent to which the dividends give rise to an amount of credit under **section LL 2(3)** for the company or the associated person: 15
- (b) **earlier expenditure** is expenditure for a tax year earlier than that in which a deduction is not allowed under **subsection (2)**, because the company or the associated person has a credit under **section LL 2(3)**: 20
- (c) **financial arrangements income** is the income that the company derives under a financial arrangement that foreign company A or foreign company B, as applicable, is party to, if the company incurs expenditure under the financial arrangement in an earlier tax year. 25

Defined in this Act: amount, associated person, company, tax credit, deduction, dividend, financial arrangement, financial arrangements rules, foreign company, foreign dividend company, interest, market value circumstance, market value interest, non-resident, resident in New Zealand, tax withheld, tax year, voting interest 30

Compare: 2004 No 35 s LF 7

**LL 8 Currency conversion**

*Calculations performed in accounting currency* 35

- (1) If the financial statements of a foreign dividend company use a currency that is not New Zealand currency, the calculations for a credit, including the tracking account required under

**section LL 4**, are undertaken in the currency used in the financial statements.

*Conversion of other currencies to currency of financial statements*

- (2) If a foreign dividend company receives an amount that is not in New Zealand currency and not in the currency used in its financial statements, the amount is converted to the currency of the financial statements at the close of trading spot exchange rate on the day on which the foreign dividend company pays a foreign dividend to a person. For this purpose, the definition of **close of trading spot exchange rate** is applied as if a reference to New Zealand currency is a reference to the currency of the financial statements. 5 10

*Conversion to NZ currency*

- (3) An amount provided in a currency used in a foreign dividend company's financial statements is converted to New Zealand currency on the day on which the company pays a foreign dividend to a person, applying the close of trading spot exchange rate. 15

Defined in this Act: amount, close of trading spot exchange rate, dividend, foreign dividend, foreign dividend company, New Zealand, tracking account 20

Compare: 2004 No 35 ss LF 3(2), LF 5(2)(e)

**LL 9 Some definitions**

In this subpart,—

**first tracking date**, for a company, means the later of— 25

- (a) 20 October 1992;  
 (b) the first day of the relevant UFTC accounting period;  
 (c) a day chosen by the person who maintains the tracking account, if the day is the first day of an accounting year in the UFTC accounting period 30

**fixed-rate share** means a share for which a payment of a dividend is—

- (a) at a rate that is a specific fixed percentage of the amount subscribed for the issue of the shares; or  
 (b) at a rate that is a percentage of the amount subscribed for the issue of the shares, and the percentage is determined by a fixed relationship to economic, commodity, 35

- industrial, or financial indexes, or to banking rates or general commercial rates of interest; or
- (c) at a rate that would be a percentage under **paragraph (a) or (b)** but for variations in the rate due to either or both of,— 5
- (i) a fixed relationship to a rate of income tax:
- (ii) compensation to shareholders for default by the paying company, or expenditure or loss suffered by the shareholder, or a person associated with the shareholder, related to the holding of the shares; or 10
- (d) the equivalent of the payment of interest for money lent, having regard to—
- (i) whether or not the share is redeemable:
- (ii) any security provided to the shareholder, including put or call options over the shares or any amount payable determined by reference to the amount of dividends payable: 15
- (iii) the variability or lack of variability of the dividends payable 20
- foreign dividend company** means a company that pays a foreign dividend
- non-creditable dividend** means a foreign dividend—
- (a) for which a deduction is allowed in the calculation of the foreign dividend company's income tax liability: 25
- (b) sourced directly or indirectly out of an amount paid to the foreign dividend company from another company if—
- (i) the foreign dividend company was not liable for income tax on the amount paid; and 30
- (ii) the other company is allowed a deduction in the calculation of its income tax liability for paying the amount paid to the dividend company:
- (c) paid in relation to fixed rate shares:
- (d) that is an attributed repatriation and the shares taken into account in calculating the income interest which gives rise to the attributed repatriation are fixed rate shares 35
- required interest**, for a person, means—
- (a) in relation to a CFC, when the person has an income interest of 10% or more in the company under the rules 40

- in **sections EX 14 to EX 17** (which relate to the 10% threshold and variations in income interest level):
- (b) if **paragraph (a)** does not apply, when a person has a voting interest of 10% or more in the company, and—
    - (i) the voting interest is determined as if **paragraphs (a) to (c)** of the definition of **shareholder decision-making rights** do not apply, and the voting interest that the person has, or is treated as having, is not treated as held by any other person under **section YC 4** (Look-through rule for corporate shareholders); and 5
    - (ii) if a market value circumstance exists, the person also has a market value interest of 10% or more in the company, and the market value interest is determined as if the market value interest the person has, or is treated as having, is not treated as held by any other person under **section YC 4** 10
- retained earnings** means the shareholders' funds of a company at the end of the accounting year before the first tracking date, calculated under generally accepted accounting practice, but reduced by— 20
- (a) the company's paid up share capital, excluding an amount resulting from—
    - (i) a bonus issue made by the company; or
    - (ii) a direct or indirect re-investment of a distribution made by the company: 25
  - (b) the company's share premium account, excluding an amount resulting from—
    - (i) a bonus issue made by the company; or
    - (ii) a direct or indirect re-investment of a distribution made by the company: 30
  - (c) an amount previously subscribed for shares issued by another company, if the amount has been credited to the tracking account of the other company under **section LL 4(2)(c)**: 35
  - (d) an outstanding principal amount for a loan to another company, when the outstanding principal amount is credited to the tracking account of the other company under **section LL 4(2)(d)**: 35
  - (e) total amounts excluded from **paragraphs (a) and (b)** by the relevant subparagraphs, to the extent to which those amounts: 40

- (i) have been credited to the tracking account of another company under **section LL 4(2)**; or
  - (ii) are foreign dividends; or
  - (iii) are derived by a shareholder of the company subject to income tax: 5
  - (f) an amount previously paid to another company, if the amount—
    - (i) has not been included in **paragraphs (a) to (e)**; and
    - (ii) is credited to the tracking account of the other company under **section LL 4** 10
- tracking account** means a tracking account that a person maintains under **section LL 4** for a company
- tracking associate** means a company associated with both the company for which a tracking account is maintained and the person maintaining the tracking account, and the associated company is either resident in New Zealand or a CFC. 15
- Defined in this Act: accounting year, amount, associated person, attributed repatriation, bonus issue, company, deduction, distribution, first tracking date, fixed rate share, foreign dividend, foreign dividend company, generally accepted accounting practice, income interest, income tax, income tax liability, interest, loss, market value circumstance, market value interest, money lent, non-creditable dividend, pay, required interest, resident in New Zealand, retained earnings, share, shareholder, tracking account, tracking associate, UFTC accounting period, voting interest 20
- Compare: 2004 No 35 ss LF 1(2), LF 2(2), (3), LF 5(1)(e), (5) 25

## Subpart LO—Tax credits for Maori authority credits

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### LO 1 Tax credits for Maori authority credits

#### *Amount of credit*

- (1) A person who derives a taxable Maori authority distribution in a tax year has a tax credit for the tax year equal to the amount of the Maori authority credit attached to the distribution. 35

*Amount altered*

- (2) The amount of the person's credit in **subsection (1)** may be reduced or increased if any of **sections LO 2 to LO 4** apply.

*Arrangements for tax advantage*

- (3) A person's credit under this section is extinguished if **sections GB 42 and GB 43** (which relate to Maori authority arrangements to obtain tax advantage) apply. 5

Defined in this Act: amount, tax credit, Maori authority credit, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss LB 1(1)(m), LD 3A(1) 10

**LO 2 Beneficiaries of trusts***When this section applies*

- (1) This section applies when a person who has a tax credit under **section LO 1** is a beneficiary of a trust and, in that capacity, derives a taxable Maori authority distribution. 15

*Limitation on amount of credit*

- (2) The person's credit is limited to an amount calculated using the formula—

$$\frac{\text{person's distributions}}{\text{trust distributions}} \times \frac{\text{total beneficiary credits} - \text{person's supplementary dividend}}{\text{person's supplementary dividend}} \quad 20$$

*Definition of items in formula*

- (3) In the formula,— 25
- (a) **person's distributions** is the total taxable Maori authority distributions for the tax year made to the person in their capacity as beneficiary of the trust:
- (b) **trust distributions** is the total distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries, and includes all supplementary dividends paid to them: 30
- (c) **total beneficiary credits** is the total Maori authority credits attached to taxable Maori authority distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries: 35

- (d) **person's supplementary dividend** is the total supplementary dividends for the tax year paid to the person in their capacity as beneficiary of the trust.

Defined in this Act: tax credit, distribution, Maori authority credit, supplementary dividend, tax year, taxable Maori authority distribution

5

Compare: 2004 No 35 s LB 1(3), (3A)

### LO 3 Application of Maori authority distribution ratio

*When this section applies*

- (1) This section applies when a person who has a tax credit under **section LO 1** derives a taxable Maori authority distribution that has a Maori authority credit ratio greater than the maximum permitted ratio calculated under **section OA 18** (Calculation of maximum permitted ratios). 10

*Amount of reduction*

- (2) The person's credit is reduced by an amount equal to the amount by which the credit is greater than the maximum permitted ratio. 15

Defined in this Act: amount, tax credit, Maori authority credit ratio, maximum permitted ratio, taxable Maori authority distribution

Compare: 2004 No 35 s LB 1(1)(ea)

20

### LO 4 When income tax unpaid

*When this section applies*

- (1) This section applies when—
- (a) a person has a tax credit under **section LO 1** and a Maori authority credit is attached to a dividend; and 25
  - (b) the dividend is paid by a Maori authority that has a debit balance in their Maori authority credit account at the end of the tax year; and
  - (c) the authority has not paid further income tax by the due date referred to in **section OK 21** (Further income tax for closing debit balance). 30

*Amount of reduction*

- (2) The Commissioner may reduce the person's credit by an amount equal to their proportion of the unpaid amount under **subsection (1)(c)**. 35

*When failure to pay remedied*

- (3) To the extent to which a Maori authority remedies the failure after the due date, this section does not apply.

Defined in this Act: amount, Commissioner, tax credit, further income tax, Maori authority, Maori authority credit, Maori authority credit account, tax year

5

Compare: 2004 No 35 s LD 3A(6)

**LO 5 Evidential requirements**

If a person who has a tax credit under **section LO 1** does not meet the evidential requirements of section 78D of the Tax Administration Act 1994, the person's credit may be reduced.

10

Defined in this Act: tax credit

Compare: 2004 No 35 s LD 3A(5)

Subpart LP—Tax credits for supplementary dividends  
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### *Introductory provision*

#### **LP 1 What this subpart does**

##### *Supplementary dividends*

- (1) This subpart provides the rules for the treatment of a tax credit for a supplementary dividend. The amount of the credit is determined by reference to an imputation credit attached to a dividend paid by a company to a non-resident. For a credit to arise under this subpart, the company must pay a supplementary dividend, and the amount of the credit is equal to the amount of the supplementary dividend. 5  
10

##### *Supplementary dividend holding companies*

- (2) Some special rules exist for a supplementary dividend holding company that allow a supplementary dividend and a tax credit for a supplementary dividend to pass through a chain of companies. 15

Defined in this Act: amount, company, tax credit, imputation credit, non-resident, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 1

### *Use of credits*

#### **LP 2 Tax credits for supplementary dividends** 20

##### *When this section applies*

- (1) This section applies when a company resident in New Zealand pays a dividend and a related supplementary dividend to—  
(a) a non-resident; or  
(b) a supplementary dividend holding company that is not part of the same consolidated group as the company. 25

##### *Amount of credit*

- (2) For the year of payment, the company has a tax credit equal to an amount calculated using the formula—  
attached imputation credit  $\times \frac{67}{187}$ . 30

*Definition of item in formula*

- (3) In the formula, **attached imputation credit** is the imputation credit that would, in the absence of this subpart, be attached to the dividend.

*Limitation on use of credit*

5

- (4) A company that is a supplementary dividend company may choose under **section LA 2 or LA 4** (which relate to the satisfaction of the company's income tax liability) to limit the amount of a tax credit for a tax year. The reduced amount must not be less than the amount of supplementary dividends that the company derives for the income year corresponding to the tax year.

10

*Meaning of year of payment*

- (5) In this subpart, **year of payment** means—
- (a) unless **paragraph (b)** applies, the tax year corresponding to the income year in which the company pays the dividend: 15
- (b) if the company and the supplementary dividend holding company are associated and, because their balance dates do not match, the supplementary dividend holding company derives the dividend in an income year that is later than the income year of the company in which it pays the dividend, the tax year corresponding to the income year in which the supplementary dividend holding company derives the dividend. 20

20

*Associated persons test*

25

- (6) For the purposes of the definition of **year of payment** in **subsection (5)**, the test of association for the company and the supplementary dividend holding company is set out in **subpart YB** (Associated persons and nominees) but on the basis that a reference there to “50% or more” is treated as a reference to “more than 50%”. 30

30

Defined in this Act: amount, associated person, company, consolidated group, corresponding income year, tax credit, imputation credit, non-resident, pay, resident in New Zealand, supplementary dividend, supplementary dividend holding company, tax year, year of payment

35

Compare: 2004 No 35 ss LE 2(1), (2), (2A), LE 3(5)

**LP 3 Use of remaining credits***When this section applies*

- (1) This section applies when a company has a tax credit remaining for a tax year under **section LA 5(3)** (Treatment of remaining credits). 5

*Grouping amount*

- (2) The company may make the amount available to another company (**company B**) that is part of the same wholly-owned group of companies as the company for the corresponding income year in which the remaining credit arises. 10

*Carrying back and using or grouping amount*

- (3) If the amount of the remaining credit has never been carried forward from an earlier tax year, the company may either— 15
- (a) use the amount for any 1 of the 4 tax years that are immediately before the tax year in which the remaining credit arises; or
  - (b) make the amount available to company B, if both companies are part of the same wholly-owned group of companies for the relevant tax year in the 4-year period.

*Carrying amount forward* 20

- (4) If, after applying **subsections (2) and (3)**, the company has an amount of tax credit remaining for the tax year, the amount must be carried forward to the next tax year as a credit carried forward.

*Notifying Commissioner* 25

- (5) The company makes a choice under **subsection (3)** by notifying the Commissioner in their return of income for the income year that corresponds to the tax year.

*When companies in same group*

- (6) For the purposes of **subsections (2) and (3)**, the company and company B must be part of the same wholly-owned group of companies for the whole of the relevant income year or, if 1 of the companies exists for only part of the year, for the whole of 30

the period of the income year when both companies are in existence.

Defined in this Act: amount, Commissioner, company, corresponding income year, tax credit, income year, notify, return of income, tax year, wholly-owned group of companies

5

Compare: 2004 No 35 s LE 2(3), (4), (6), (7)

#### LP 4 Continuity rules for carrying credits forward

*When this section applies*

- (1) This section applies for the purposes of **section LA 5(3)** (Treatment of remaining credits) when a company has an amount of a tax credit that must be carried forward under **section LP 3(4)**. 10

*Minimum interests required*

- (2) The amount is available for use under **section LP 3(4)** if a group of persons exists that has, for the continuity period,— 15
- (a) minimum voting interests in the company that add up to 49% or more; or
- (b) minimum market value interests in the company that add up to 49% or more.

*Some definitions*

- (3) In this section,— 20
- continuity period** means the period that starts on the first day of the income year that corresponds to the tax year in which the tax credit first arises and ends on the last day of the income year that corresponds to the tax year to which the amount of the credit has been carried forward 25
- minimum market value interest** means the lowest market value interest that a person has in the company for the continuity period
- minimum voting interest** means the lowest voting interest that a person has in the company for the continuity period. 30

Defined in this Act: amount, company, continuity period, tax credit, income year, market value interest, minimum market value interest, minimum voting interest, tax year, voting interest

Compare: 2004 No 35 s LE 2(5)

## LP 5 Application of benchmark dividend rules and imputation credit ratio

### *Applying benchmark dividend rules*

- (1) The benchmark dividend rules in **sections OB 61 and OC 28** (which relate to the allocation of imputation and FDP credits) and **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage) apply as if the company had never paid the supplementary dividend. 5

### *Increase in imputation credit*

- (2) The maximum permitted ratio referred to in **section OB 60(5)** (Imputation credits attached to dividends) and **sections GB 35 and GB 36** apply to a dividend as if the imputation credit attached to the dividend were increased by an amount equal to the related supplementary dividend. 10

Defined in this Act: amount, benchmark dividend, company, imputation credit, maximum permitted ratio, supplementary dividend 15

Compare: 2004 No 35 s LE 2(9), (10)

## LP 6 Deriving supplementary dividend and breach of terms of trust

### *Class of shares* 20

- (1) The payment of a supplementary dividend on only some shares in a class of shares does not constitute a breach of—
- (a) section 53 of the Companies Act 1993; or
  - (b) the company's constitution or its articles of association; or 25
  - (c) any other provision.

### *Trusts*

- (2) If a trustee derives a dividend and is required under the terms of a trust to distribute it as beneficiary income to a beneficiary, the trustee's distribution of a supplementary dividend does not breach the terms of the trust. 30

Defined in this Act: beneficiary income, company, distribution, pay, share, supplementary dividend, trustee

Compare: 2004 No 35 s LE 2(11), (12)

### *Supplementary dividend holding companies*

#### **LP 7 Requirements for supplementary dividend holding companies**

*When sections LP 8 and LP 9 apply*

- (1) This section, and **sections LP 8 and LP 9**, apply for an income year when a company— 5
- (a) is a supplementary dividend company when it derives a dividend and a related supplementary dividend; and
  - (b) is not part of the same consolidated group as the company paying the dividends, as described in **section LP 2(1)(b)**. 10

*When requirements no longer met*

- (2) The company must notify each company from which it may derive a supplementary dividend if it no longer meets the requirements set out in the definition of **supplementary dividend holding company**. 15

Defined in this Act: company, consolidated group, income year, notify, pay, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(1), (3), (11)

#### **LP 8 Relationship with exempt income rules** 20

*What this section applies to*

- (1) This section applies to a supplementary dividend holding company that derives a dividend and related supplementary dividend in an income year when, but for this section, both dividends would be exempt income under **section CW 10** (Dividend within New Zealand wholly-owned group). 25

*Income*

- (2) The supplementary dividend holding company derives assessable income equal to an amount calculated using the formula— 30

$$(\text{attached credit} + \text{dividend}) \times \frac{(1 - \text{tax rate})}{\text{tax rate}} + \text{attached credit}.$$

*Definition of items in formula*

- (3) In the formula,— 35

- (a) **attached credit** is the imputation credit attached to the dividend:
- (b) **dividend** is the supplementary dividend related to the dividend:
- (c) **tax rate** is the basic rate of income tax set out in **schedule 1, part A** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 5

*Treatment of imputation credit*

- (4) The imputation credit referred to in **subsection (3)** is assessable income of the supplementary dividend holding company for the income year for the purposes of **section LE 1** (Tax credits for imputation credits). 10

Defined in this Act: amount, assessable income, basic rate, exempt income, imputation credit, income year, New Zealand, supplementary dividend, supplementary dividend holding company 15

Compare: 2004 No 35 s LE 3(6), (8)

## LP 9 Relationship with RWT rules

*When this section applies*

- (1) This section applies to a supplementary dividend holding company that derives a dividend and related supplementary dividend in an income year. 20

*When rules do not apply*

- (2) The RWT rules do not apply to the dividend or the related supplementary dividend to the extent to which the amount is no more than the amount calculated under **section LP 8(2)**. The RWT rules do not apply to the imputation credit referred to in that section. 25

Defined in this Act: amount, imputation credit, income year, RWT rules, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(7), (9) 30

## LP 10 Limitation on deductions

*Limitation on total annual deductions*

- (1) Despite **section BD 4** (Allocation of deductions to particular income years), the annual total deduction of a supplementary dividend holding company under **section BC 3** (Annual total deduction) that is allocated to a tax year must not be more than an amount calculated using the formula— 35

$$\frac{\text{company's income} - (\text{company's total credits} + \text{supplementary amount})}{\text{tax rate.}}$$

*Definition of items in formula*

- (2) In the formula,— 5
- (a) **company's income** is the supplementary dividend holding company's income for the income year that corresponds to the tax year:
- (b) **company's total credits** is the supplementary dividend holding company's total amount of tax credits that are non-refundable tax credits, tax credits for imputation credits, and tax credits for FDP credits for the income year that corresponds to the tax year: 10
- (c) **supplementary amount** is the total amount of supplementary dividends derived by the supplementary dividend holding company for the income year that corresponds to the tax year: 15
- (d) **tax rate** is the basic rate of income tax set out in **schedule 1, part A** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 20

*Tax loss components*

- (3) A deduction that would, in the absence of **subsection (1)**, be allocated to the tax year is a tax loss component that may be carried forward under **Part I** (Treatment of tax losses) if the relevant requirements of that Part are met. 25

*Calculating credits under this Part*

- (4) **Subsection (1)** does not affect the calculation of the amount of a supplementary dividend holding company's tax credit under this Part. 30
- Defined in this Act: amount, annual total deduction, basic rate, company, tax credit, deduction, FDP, FDP credit, imputation credit, income year, non-refundable tax credit, supplementary dividend, supplementary dividend holding company, tax loss component, tax year

Compare: 2004 No 35 ss LE 3(10), LE 4

## Subpart LQ—Tax credits of CTR companies 35

### Contents

- LQ 1 Tax credits of CTR companies
- LQ 2 Limitation on amount of credit



- LQ 3 Determining percentage of non-resident shareholders  
 LQ 4 Date for determining percentage of non-resident shareholders  
 LQ 5 CTR additional dividends

- 
- LQ 1 Tax credits of CTR companies** 5
- When this section applies*
- (1) This section applies for a tax year to a CTR company that remains a CTR company when it provides its return of income for the tax year.
- Amount of credit* 10
- (2) The company has a tax credit equal to an amount calculating using the formula—
- $$\begin{aligned} & \text{percentage of shareholders} \times ((\text{tax rate} \\ & \times (\text{company's income} - \text{company's losses} \\ & \quad - \text{excess interest allocation})) \\ & - \text{company's credits} - \text{amounts credited}). \end{aligned}$$
- 15
- Definition of items in formula*
- (3) In the formula,—
- (a) **percentage of shareholders** is the percentage of the company's shareholders who are not resident in New Zealand determined under **section LQ 3**: 20
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits):
- (c) **company's income** is the company's foreign attributed income for the tax year: 25
- (d) **company's losses** is the amount of the company's tax loss components referred to in **section IA 7(5) and (6)** (Restrictions relating to ring-fenced tax losses) for the tax year: 30
- (e) **excess interest allocation** is the excess interest allocation for the tax year calculated under **section FF 6** (Conduit tax relief):
- (f) **company's credits** is the amount of the company's credit under **subpart LK** (Tax credits relating to attributed CFC income) that could be used to satisfy the company's income tax liability for the tax year: 35
- (g) **amounts credited** is the sum of the following:

- (i) the amount that the company has available to satisfy their income tax liability for the tax year under **section OE 7** (BETA payment of income tax); and
- (ii) the amount that another company in the same group of companies makes available to satisfy the company's income tax liability under **section OE 7**. 5
- Determining certain amounts*
- (4) In **subsection (3)(f) and (g)**, the amounts are determined before applying this section. 10
- Defined in this Act: amount, basic rate, CTR company, tax credit, foreign attributed income, group of companies, income tax liability, resident in New Zealand, return of income, shareholder, tax year
- Compare: 2004 No 35 s KH 1(1), (2)
- LQ 2 Limitation on amount of credit** 15
- Minimum*
- (1) An amount of a tax credit under **section LQ 1** must not be less than zero.
- Maximum*
- (2) An amount of a tax credit under **section LQ 1** must not be more than an amount calculated using the formula— 20
- $$\begin{aligned} & \text{percentage of shareholders} \\ & \times (\text{company's terminal tax} \\ & + \text{company's refundable credits}). \end{aligned}$$
- Definition of items in formula* 25
- (3) In the formula,—
- (a) **percentage of shareholders** is the percentage of the company's shareholders who are not resident in New Zealand determined under **section LQ 3**:
- (b) **company's terminal tax** is the company's terminal tax for the tax year: 30
- (c) **company's refundable credits** is the company's refundable credits for the tax year.

*Determining certain amounts*

- (4) For the purposes of **subsection (3)(b)**, the amount is determined before applying this section.

Defined in this Act: amount, company, tax credit, resident in New Zealand, shareholder, tax year, terminal tax

5

Compare: 2004 No 35 s KH 1(3)

**LQ 3 Determining percentage of non-resident shareholders***When this section applies*

- (1) This section applies for the purposes of **sections LQ 1(3)(a) and LQ 2(3)(a)** to determine the percentage of shareholders of a CTR company that are not resident in New Zealand. The rules for determining residence in **sections YD 9 to YD 11** (which relate to CTR companies) apply for the purposes of this section.

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*Determining percentage*

- (2) The percentage of shareholders who are not resident in New Zealand is the lowest of—
- (a) the percentage of direct voting interests that non-residents held in the company at the applicable time:
  - (b) if a direct market value circumstance exists, the percentage of direct market value interests that non-residents held in the company at the applicable time:
  - (c) if the shares in the company are not all shares of the same class, the percentage of total dividends payable by the company that non-residents would derive if the company were liquidated at the applicable time.

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*Applicable time*

- (3) For the purposes of determining direct voting interests under **subsection (2)(a)** or direct market value interests under **subsection (2)(b)**,—
- (a) the applicable time is the date on which the company is treated as having paid a dividend to all shareholders under **section LQ 4(2)**; and
  - (b) for each class of shares, the company is treated as having on the applicable date the same shareholders in the class as it had on the last date in the tax year on which a dividend was paid to all the shareholders of the class.

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35

*Treasury stock*

- (4) For the purposes of this section, treasury stock is disregarded.

Defined in this Act: CTR company, direct market value circumstance, direct market value interest, direct voting interest, non-resident, resident in New Zealand, share, shareholder, shares of the same class, tax year, voting interest

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Compare: 2004 No 35 s KH 2(3), (5)–(7)

#### **LQ 4 Date for determining percentage of non-resident shareholders**

*Date generally*

- (1) The determination of a percentage of a CTR company's non-resident shareholders under **section LQ 3** is made either—
- (a) on the last date in the tax year on which the company pays a dividend to all shareholders; or
- (b) on the last day of the tax year, if the company does not pay a dividend to all shareholders during the tax year.

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*When company has more than 1 class of shares*

- (2) For the purposes of **subsection (1)(a)**, when a company with more than 1 class of shares pays a dividend to all shareholders of each class of shares in a tax year, the company is treated as having paid a dividend to all shareholders on the last date on which it paid a dividend to all shareholders of 1 of the classes.

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*Listed companies*

- (3) If the company referred to in **subsection (1)** is a listed company, it may use—
- (a) the date on which an entitlement to a dividend is determined instead of the date on which the dividend is paid; or
- (b) a date in the tax year on which the company, for whatever commercial reason, determines the percentage of non-resident shareholders.

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*CTR group members*

- (4) If the company referred to in **subsection (1)** is part of a wholly-owned group of companies and a CTR company is also part of the group, **subsection (1)** applies, modified as applicable by **subsection (3)**, as if the company referred to in that subsection were the company—

35

- (a) in which 1 or more non-residents have a direct voting interest; and
- (b) that has a 100% voting interest in the company that is part of the wholly-owned group.

*Calculating voting interests*

5

- (5) In **subsection (4)(b)**, the voting interest is calculated as if **section YC 4** (Look-through rule for corporate shareholders) did not apply to treat the company's interest as held by others.

Defined in this Act: company, CTR company, direct voting interest, non-resident, pay, share, shareholder, tax year, voting interest, wholly-owned group of companies

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Compare: 2004 No 35 s KH 2(1)–(2A), (4)

## **LQ 5 CTR additional dividends**

*When this section applies*

- (1) This section applies when a CTR company pays a dividend to a non-resident, and a CTR credit is attached to the dividend. The rules for determining residence in **sections YD 9 to YD 11** (which relate to CTR companies) apply for the purposes of this section.

15

*Payment of additional dividend required*

- (2) The company must pay a CTR additional dividend relating to the dividend when the dividend is paid. The additional dividend is exempt income under **section CW 11(2)** (Dividend of CTR holding company) of the company receiving the dividend.

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*Amount of additional dividend*

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- (3) The amount of the CTR additional dividend must be equal to the amount of the CTR credit attached to the dividend.

*Relationship with rules on imputation credits*

- (4) **Sections GB 35, GB 36, OA 18, OB 60, OB 61, OC 27, and OC 28** (which relate to the allocation of imputation credits and FDP credits) apply as if the company had never paid a CTR additional dividend.

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*Class of shares*

- (5) The payment of an additional dividend to all non-resident shareholders who hold shares in a particular class does not constitute a breach of—
- (a) section 53 of the Companies Act 1993; or 5
  - (b) the company's constitution or its articles of association; or
  - (c) any other provision.

*Trusts*

- (6) If a trustee derives a dividend and is required under the terms of a trust to distribute it as beneficiary income to a beneficiary, the trustee's distribution of an additional dividend to the same beneficiary does not breach the terms of the trust. 10

Defined in this Act: amount, beneficiary income, company, CTR additional dividend, CTR company, CTR credit, distribution, exempt income, imputation credit, non-resident, pay, share, shareholder, trustee 15

Compare: 2004 No 35 s LG 1

## Subpart LR—Tax credits for policyholder income

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- LR 1 Tax credits for policyholder income 20

**LR 1 Tax credits for policyholder income***Amount of credit*

- (1) A person who has a credit in their policyholder credit account for a tax year has a tax credit equal to the amount, as limited under **subsection (2)**, of the balance of the account determined under **sections OJ 8, OJ 9, OJ 16, OP 115, and OP 116** (which relate to the use of credit balances against policyholder base income tax liability). 25

*Limitation*

- (2) The person's use, under **section LA 2** (Satisfaction of income tax liability), of a credit referred to in **subsection (1)** is limited to the amount that would be their income tax liability for the tax year if their only assessable income were policyholder income in 30

the accounting period in which the amount of tax giving rise to the credit was paid or payable.

Defined in this Act: accounting period, amount, assessable income, tax credit, income tax liability, policyholder base income tax liability, policyholder credit account, policyholder income, tax year

5

Compare: 2004 No 35 ss ME 19, ME 24, ME 28

## Subpart LZ—Terminating provisions Contents

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### *Underlying foreign tax credits*

#### **LZ 1 Low tax jurisdiction companies**

##### *Earnings and income tax*

(1)	If a company is treated under <b>section YD 3</b> (Country of residence of foreign companies) for the purposes of the international tax rules as resident in a country or territory listed in <b>schedule 26</b> (Low tax jurisdictions or territories) during any part of an accounting year ending before 28 September 1993 (a <b>low tax year</b> ), the earnings of, and the income tax paid or payable by, the company for the low tax year are treated as not	30
		35

existing for purposes of **subpart LL** (Underlying foreign tax credits), unless—

- (a) the earnings are dividends derived from another company that is not a company listed in **schedule 26**;
- (b) income tax is paid or payable in relation to the dividends referred to in **paragraph (a)**, and the income tax is payable in the country or territory where the other company referred to in **paragraph (a)** is resident. 5

*Exclusion*

- (2) **Subsection (1)** does not apply if the foreign dividend company is a CFC for the whole of a low tax year, and the low tax year is an accounting year that ends on or after 1 April 1988. 10

Defined in this Act: accounting year, CFC, company, dividend, income tax, foreign dividend company, income tax

Compare: 2004 No 35 ss LF 6(1), (3) 15

***Credits for certain non-resident investment companies***

**LZ 2 Certain development projects**

*When this section and sections LZ 3 to LZ 5 apply*

- (1) This section and **sections LZ 3 to LZ 5** apply to a non-resident investment company in relation to the development projects set out in the orders listed in **subsection (2)**. 20

*Development projects*

- (2) The development projects are specified in the following orders:
  - (a) the Income Tax (Non-Resident Investment Companies) Order 1970 (SR 1970/138); or 25
  - (b) the Income Tax (Non-Resident Investment Companies) Order 1972 (SR 1972/19); or
  - (c) the Income Tax (Non-Resident Investment Companies) Order (No 2) 1972 (SR 1972/248); or 30
  - (d) the Income Tax (Non-Resident Investment Companies) Order (No 3) 1974 (SR 1974/277).

*Relationship with sections KF 1, NF 1(2)(a)(vi), NG 1(2)(f), and OB 5*

- (3) Sections KF 1, NF 1(2)(a)(vi), NG 1(2)(f), and OB 5 (as they were immediately before their repeal by sections 13, 21, 22, 35



and 26 of the Income Tax Act 1994 Amendment Act (No 3) 1995) apply for the purposes of this section and **sections LZ 3 to LZ 5**.

Defined in this Act: non-resident investment company

Compare: 2004 No 35 s KZ 3(1), (4)

5

### **LZ 3 Interest derived from development investments**

*When this section applies*

- (1) This section applies when—
- (a) the only assessable income of the non-resident investment company in a tax year is interest derived from development investments; and 10
  - (b) the amount of the non-resident investment company's income tax liability for the interest is more than the amount of income tax payable by the non-resident investment company on the interest if it had been derived from a source in the country or territory in which the investment company is resident. 15

*Tax credit*

- (2) The non-resident investment company is entitled to a tax credit equal to the amount of the excess referred to in **subsection (1)(b)**. 20

*Income tax liability under 15% of gross amount of interest*

- (3) Despite **subsection (2)**, if the non-resident investment company and the person by whom the interest is paid are not associated persons, the amount of the non-resident investment company's income tax liability for that interest must not be more than 15% of the gross amount of the interest. 25

Defined in this Act: amount, assessable income, associated person, tax credit, development investments, gross, income tax, income tax liability, interest, non-resident investment company, resident, tax year

30

Compare: 2004 No 35 s KZ 3(2)

### **LZ 4 Dividends derived from development investments**

*When this section applies*

- (1) This section applies when—

- (a) the only assessable income of the non-resident investment company in a tax year consists of dividends derived from development investments; and
- (b) the amount of the non-resident investment company's income tax liability for those dividends is more than the amount of income tax payable by the non-resident investment company on those dividends if they had been derived from a source in the country or territory in which the non-resident investment company is resident. 5

*Tax credit* 10

- (2) A non-resident investment company is entitled to a tax credit equal to the amount of the excess referred to in **subsection (1)(b)**.

Defined in this Act: amount, assessable income, tax credit, development investments, dividend, income tax, income tax liability, non-resident investment company, resident, tax year 15

Compare: 2004 No 35 s KZ 3(3)

## **LZ 5 Some definitions**

In **sections LZ 2 to LZ 4**,—

**development investments** has the same meaning as in section OB 1 of the Income Tax Act 1994 immediately before its repeal by section 25(6) of the Income Tax Act 1994 Amendment Act (No 3) 1995 20

**non-resident investment company** has the same meaning as in section OB 5 of the Income Tax Act 1994 immediately before its repeal by section 26 of the Income Tax Act 1994 Amendment Act (No 3) 1995. 25

Defined in this Act: development investments, non-resident investment company

Compare: 2004 No 35 s KZ 3(1)

### *Credits for interest on home vendor mortgages*

## **LZ 6 Interest on home vendor mortgages** 30

*When this section applies*

- (1) This section applies when, in a tax year, a person derives interest in relation to a home vendor mortgage.

*Exclusions*

- (2) This section does not apply to— 35

- (a) an absentee; or
- (b) a company; or
- (c) a public authority; or
- (d) a Maori authority; or
- (e) an unincorporated body; or 5
- (f) a trustee liable for income tax under **subpart HC** (Trusts) and **HZ 2** (Trusts that may become complying trusts).

*Tax credit*

- (3) The person is entitled to a tax credit equal to an amount calculated using the formula— 10
- $$\text{interest} \times 0.020.$$

*Definition of item in formula*

- (4) In the formula, **interest** means the amount of interest in complete dollars that the person derives in the tax year in relation to a home vendor mortgage. 15

*Relationship to section LZ 7*

- (5) This section is overridden by **section LZ 7**. 20
- Defined in this Act: absentee, amount, company, tax credit, distribution, home vendor mortgage, income tax, interest, Maori authority, public authority, tax year, trust, trustee

Compare: 2004 No 35 s KE 1(1)

**LZ 7 Maximum amount of credit under section LZ 6***Maximum amount: 1 person*

- (1) If only 1 person has provided the loan secured by a home vendor mortgage, the maximum amount of tax credit that the person is entitled to under **section LZ 6** in a tax year is \$500. 25

*Maximum amount: 2 or more persons*

- (2) When 2 or more persons have provided the loan secured by a home vendor mortgage, for each person who has provided the loan, the maximum amount of tax credit under **section LZ 6** in a tax year is calculated using the formula— 30

$$\frac{\text{loan provided}}{\text{loan secured}} \times \$500.$$

*Definition of items in formula* 35

- (3) In the formula,—

- (a) **loan provided** is the amount of the loan provided by the persons:
- (b) **loan secured** is the total amount of the loan secured by the home vendor mortgage.

Defined in this Act: amount, tax credit, home vendor mortgage, tax year

5

Compare: 2004 No 35 s KE 1(1)

### **LZ 8 Meaning of home vendor mortgage**

In **sections LZ 6 and LZ 7, home vendor mortgage** means a mortgage—

- (a) that secures a loan provided by the vendor or vendors of a house; and 10
- (b) that is guaranteed by the Housing New Zealand Corporation under its housing mortgage guarantee scheme; and
- (c) that has been approved by the Housing New Zealand Corporation, on or before 5 August 1982, for the purpose of the credit under this section; and 15
- (d) for which notice of such guarantee and approval and of any variation has been delivered by the Housing New Zealand Corporation to the Commissioner. 20

Defined in this Act: Commissioner, home vendor mortgage, notice

Compare: 2004 No 35 s KE 1(3)

### ***Credits for savings in special home ownership accounts***

#### **LZ 9 Savings in special home ownership accounts**

*When this section applies* 25

- (1) This section applies when a person operates a special home ownership account in a tax year.

*Tax credit*

- (2) The person is entitled to a tax credit equal to an amount calculated using the formula— 30
- $$\text{increase in savings} \times 0.045.$$

*Definition of item in formula*

- (3) In the formula, **increase in savings** is the total amount in complete dollars of the person's increase in savings for all special accounts in the tax year. 35

*Relationship with sections LZ 10 and LZ 11*

- (4) **Sections LZ 10 and LZ 11** override this section.

Defined in this Act: amount, tax credit, increase in savings, special home ownership account, tax year

Compare: 2004 No 35 s KG 1(1)

5

**LZ 10 Maximum amount for 1 special home ownership account for 1 tax year**

For the purpose of calculating the amount of a credit under **section LZ 9**, the maximum amount of a single increase in savings for a special home ownership account for a tax year is \$3,000.

10

Defined in this Act: amount, increase in savings, special home ownership account, tax year

Compare: 2004 No 35 s KG 1(1) proviso

**LZ 11 Maximum amount for all special home ownership accounts for all tax years**

15

For the purpose of calculating the amount of a credit under **section LZ 9**, the maximum amount of increase in savings for all special home ownership accounts of the person for all tax years is \$10,250 for a special home ownership account.

20

Defined in this Act: amount, increase in savings, special home ownership account, tax year

Compare: 2004 No 35 s KG 1(2)

**LZ 12 Meaning of increase in savings**

*Meaning*

25

- (1) In **sections LZ 9 to LZ 11, increase in savings**, in relation to a special home ownership account of a person and a tax year, means the total of—

(a) the amount by which the amount standing to the credit of that special home ownership account at the end of that tax year or the date of the closure of that account, whichever is the earlier, is more than the amount standing to the credit of that account, if any, at the end of the tax year immediately before that tax year; and

30

(b) the amount of RWT withheld during that tax year from interest paid for the account.

35

*Withdrawals*

- (2) For the purposes of the definition of **increase in savings**,—
- (a) an amount withdrawn from a special home ownership account in accordance with a withdrawal certificate is treated as not having been withdrawn: 5
  - (b) an amount withdrawn from a special home ownership account in accordance with a withdrawal certificate, and subsequently redeposited in the account, is treated as not having been redeposited. 10

Defined in this Act: amount, increase in savings, interest, RWT, special home ownership account, tax year, withdrawal certificate

Compare: 2004 No 35 s KG 1(3), (4)

## Part M Tax credits for families

### Subpart MA—General provisions

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<hr style="width: 25%; margin: 10px auto;"/>		
<b>MA 1</b>	<b>What this Part does</b>	
	This Part identifies the tax credits to which a person is entitled in a tax year under the family scheme.	15
	<small>Defined in this Act: family scheme, tax credit, tax year</small>	
<b>MA 2</b>	<b>Relationship with core provisions</b>	
	<b>Section BC 8</b> (Satisfaction of income tax liability) deals with how a tax credit arising under this Part is applied.	20
	<small>Defined in this Act: tax credit</small>	
<b>MA 3</b>	<b>Excluded income</b>	
	A tax credit that a person has under this Part is excluded income of the person.	
	<small>Defined in this Act: excluded income, tax credit</small>	25
	<small>Compare: 2004 No 35 s KD 8</small>	
<b>MA 4</b>	<b>Calculation of amounts of credit producing negative amounts</b>	
	If a calculation under this Part produces a result that is negative for the amount of a tax credit or the amount of a component of a credit, the amount of the credit or component is zero.	30
	<small>Defined in this Act: amount, tax credit</small>	
	<small>Compare: 2004 No 35 s KB 3</small>	

**MA 5 Advice from outside agencies**

In determining a person's entitlement to a tax credit under this Part, the Commissioner may obtain the advice of the chief executive or, as applicable, the person appointed under section 61A of the Defence Act 1990 for the purposes of the War Pensions Act 1954. 5

Defined in this Act: chief executive, Commissioner, tax credit

Compare: 2004 No 35 s KD 9

**MA 6 Avoidance arrangements**

**Section GB 44** (Arrangements involving family support credits) may apply to reduce a tax credit under this Part. 10

Defined in this Act: tax credit

**MA 7 Meaning of full-time earner***Weekly employment*

- (1) In this Part, a **full-time earner** means a person who, for a week,— 15
- (a) is employed for 20 hours or more in the week, and does not have a spouse, civil union partner, or de facto partner at a time in the week; or
  - (b) is employed for 30 hours or more in the week and has a spouse, civil union partner, or de facto partner at a time in the week; or 20
  - (c) is a spouse, civil union partner, or de facto partner at a time in the week of another person who is employed for 30 hours or more in the week; or 25
  - (d) is employed in the week, and is a spouse, civil union partner, or de facto partner at a time in the week of another person who is employed, when the total employment in the week of both persons is 30 hours or more. 30

*Modifications to weekly employment*

- (2) For the purposes of **subsection (1)(a)**,—
- (a) a person who is employed in a pay period that is longer than 1 week is treated as undertaking the employment activities to a uniform daily extent for the period: 35
  - (b) a person who is employed becomes incapacitated as described in **subsection (3)** and is unable to undertake employment in a week in which but for the incapacity



they would be employed for the number of hours set out in **subsection (1)(a) to (c)** or to the extent described in **subsection (1)(d)** is treated as having been employed for the hours referred to:

- (c) a person who is taking parental leave under the Parental Leave and Employment Protection Act 1987 for which a parental leave payment under Part 7A of that Act is payable, is treated as employed in the week for the number of hours for which they would have worked but for the period of parental leave. 5  
10

*Incapacity*

- (3) The incapacity referred to in **subsection (2)(b)** is an incapacity due to personal injury by accident for which an accident compensation earnings-related payment has been, is being, or will be paid. 15

Defined in this Act: accident compensation earnings-related payment, civil union partner, de facto partner, pay, pay period, spouse, tax credit

Compare: 2004 No 35 s OB 1 “full-time earner”

**MA 8 Some definitions**

In this Part,— 20

**chief executive** means the chief executive of the department currently responsible for administering the Social Security Act 1964

**child tax credit** means the component of the family assistance credit that is calculated using the formula in **section MZ 2** (Calculation of child tax credit) 25

**family assistance credit** means a tax credit under **section MD 1** (Family assistance credit)

**family credit abatement** means the component of the family assistance credit that is calculated using the formula in **section MD 13** (Calculation of family credit abatement) 30

**family plus** means the total of—

- (a) the amount for an entitlement period, after abatement, if any, under **section MD 13**, of whichever is appropriate of— 35
- (i) the in-work payment calculated using the formula in **section MD 10** (Calculation of in-work payment):

- (ii) the child tax credit calculated using the formula in **section MZ 2**; and
  - (b) the parental tax credit for an entitlement period calculated using the formula in **section MD 12** (Calculation of parental tax credit) after abatement, if any, under **section MD 13**; and 5
  - (c) the family tax credit calculated using the formula in **section ME 1** (Family tax credit)
- family scheme** means all the entitlements and tax credits arising under this Part 10
- family support** means the component of the family assistance credit calculated using the formula in **section MD 3** (Calculation of family support)
- family tax credit** means a tax credit under **section ME 1**
- in-work payment** means the component of the family assistance credit calculated using the formula in **section MD 10** 15
- New Zealand resident**—
- (a) means ordinarily resident; and
  - (b) does not include being unlawfully resident in New Zealand; and 20
  - (c) does not include being lawfully resident in New Zealand only through having—
    - (i) a visitor’s permit; or
    - (ii) a temporary work permit; or
    - (iii) a permit to be in New Zealand for the purposes of 25
      - study at a New Zealand school or university or other tertiary educational establishment
- parental tax credit** means the component of the family assistance credit calculated using the formula in **section MD 12**
- social assistance payment** means— 30
- (a) an income-tested benefit; or
  - (b) a veteran’s pension; or
  - (c) New Zealand superannuation; or
  - (d) a basic grant or an independent circumstances grant, made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or a substituted provision; or 35
  - (e) an accident compensation earnings-related payment, when the compensation relates to a day forming part of

	a continuous period of eligibility for the compensation and the day falls after the earlier of—	
	(i) the day with the same date as the first day of the continuous period of eligibility for compensation and occurring in the third calendar month after that first day; and	5
	(ii) the last day of the third calendar month after the first day of the continuous period of eligibility for compensation.	
	Defined in this Act: accident compensation earnings-related payment, child tax credit, Commissioner, entitlement period, family assistance credit, family tax credit, income-tested benefit, in-work payment, net income, New Zealand, New Zealand superannuation, parental tax credit, relationship period, resident in New Zealand, veteran's pension	10
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<hr/>		
<b>MB 1</b>	<b>Adjustments for calculation of family scheme income</b>	
	<i>Assessable income derived at uniform daily rate</i>	25
(1)	To determine the net income (the <b>family scheme income</b> ) on which the calculation of an entitlement and tax credit under the family scheme is based, the following paragraphs apply in relation to the assessable income derived by the person in a relationship period in an income year:	30
(a)	to the extent to which the income is derived from employment during all or part of the income year, it is treated as derived at a uniform daily rate during the period of the employment; and	
(b)	to the extent to which the income is derived as an income-tested benefit, it is treated as derived at a uniform daily rate during the period in the income year for which the benefit is paid to the person; and	35
(c)	despite section 38(1) of the Tax Administration Act 1994,—	40

- (i) to the extent to which the income is derived otherwise than under **paragraph (a) or (b)**, it is treated as derived at a uniform daily rate during the income year; and
- (ii) any expenditure incurred in deriving the income referred to in **subparagraph (i)** that is allowed as a deduction is treated as incurred at a uniform daily rate during the income year. 5
- Exempt income included*
- (2) For the purposes of **subsection (1)**, an amount referred to in **section CW 28(1)(e) or CW 31** (which relate to overseas pensions and maintenance payments) derived by the person in the income year is not treated as exempt income. 10
- Deduction*
- (3) For the purposes of **subsection (1)**, the person is allowed a deduction for— 15
- (a) the amount of any payment, made by the person during the tax year, of the kind referred to in **section CW 31** (Maintenance payments); and
- (b) the amount of any payment made by the person during the tax year under section 27K of the Social Security Act 1964, as saved by section 256 of the Child Support Act 1991. 20
- Tax loss of attributing company*
- (4) For the purposes of **subsection (1)**, an amount of a tax loss of an attributing company that is attributed to the person as a shareholder of the attributing company under **sections HA 20 and HA 24** (which relate to the treatment of tax losses of loss-attributing companies) is not included in family scheme income. 25
- All known income sources* 30
- (5) The Commissioner must have regard to—
- (a) the income from all sources known to the Commissioner; and
- (b) if the person has been issued an income statement under Part 3A of the Tax Administration Act 1994, the sum of all amounts of assessable income included in an income statement issued to the person. 35

*Transitional adjustments*

- (6) The amounts described in **section MZ 2** (Calculation of child tax credit) are not included in the person's family scheme income.

Defined in this Act: amount, assessable income, attributing company, child tax credit, Commissioner, deduction, family scheme income, gross, income, income from employment, income statement, income-tested benefit, income year, overseas pension, pay, relationship period, shareholder, tax loss, tax year

5

Compare: 2004 No 35 s KD 1(1)(a), (b), (e)(vii), (i), (3)

**MB 2 Adjustment for period that is less or more than 1 year***Calculation of adjustment*

10

- (1) If a person's income is calculated for a period that is less or more than a year, their family scheme income must be adjusted by an amount calculated using the formula—

$$\text{person's family scheme income} \times \frac{365}{\text{days}}.$$

15

*Definition of items in formula*

- (2) In the formula,—
- (a) **person's family scheme income** is the person's income calculated under this Part:
- (b) **days** is the total number of days in the period for which the income has been derived.

20

Defined in this Act: amount, family scheme income, income, year

Compare: 2004 No 35 s KD 1(4)–(6)

**MB 3 When person carries on 1 or more businesses**

25

*When this section applies*

- (1) This section applies for the purposes of determining the amount that represents the family scheme income of a person for an income year if—

(a) the person carries on 1 or more businesses in the income year; and

30

(b) the person derives an amount of income that would be their net income or net loss for the income year if the carrying on of the business or businesses were their only source of assessable income.

35

*Calculation for each business*

- (2) The amount that would be the net income or the net loss of the person for the income year must be calculated for each business.

*Net loss*

5

- (3) If a calculation referred to in **subsection (2)** is a net loss, the amount is treated as zero.

*Depreciation of asset used in more than 1 business*

- (4) If, in the income year, an asset of the person is used in more than 1 business carried on by the person, the person must allocate expenditure or amounts of depreciation loss appropriately in relation to the use of the asset. 10

*Businesses may be treated as single business*

- (5) The Commissioner may treat 2 or more businesses carried on by the person in the income year as a single business if the Commissioner considers that the businesses are of the kind that are normally carried on in association with each other. 15

Defined in this Act: amount, assessable income, business, Commissioner, depreciation loss, family scheme income, income year, net income, net loss

Compare: 2004 No 35 s KD 1(1)(f), (2)

20

**MB 4 Family scheme income of major shareholders in close companies***When this section applies*

- (1) This section applies for the purposes of determining the amount that represents the family scheme income of a person for an income year when the person is a major shareholder in a close company on the company's balance date. 25

*What is included in family scheme income*

- (2) The person's family scheme income includes an amount calculated using the formula— 30

$$\frac{\text{person's shares}}{\text{company's shares}} \times (\text{company's income} - \text{total dividends}).$$

*Definition of items in formula*

- (3) In the formula,— 35

- (a) **person's shares** is the number of shares issued by the company and held by the person, excluding shares with only a fixed rate of dividend, on the last day of the company's accounting year:
- (b) **company's shares** is the number of shares issued by the company, excluding shares with only a fixed rate of dividend, on the last day of the company's accounting year: 5
- (c) **company's income** is the net income of the company for the company's accounting year: 10
- (d) **total dividends** is the amount of all dividends that the company pays for the company's accounting year.

*Adjustment when dividends less than net income*

- (4) For the purposes of **subsection (2)**, if the amount of the total dividends paid by the company to the person in the tax year is less than the amount of the company's net income for the tax year, the person's family scheme income is adjusted to include an amount equal to a proportion of the difference between the amount of the dividends and the amount of the net income, determined on the basis of the proportion of shares held by the person to the total number of issued shares. For the purposes of this subsection, fixed-rate shares are excluded from the calculation. 15

Defined in this Act: accounting year, amount, close company, dividend, family scheme income, income year, major shareholder, net income, pay, share 25

Compare: 2004 No 35 s KD 1(1)(g)

## **MB 5 Treatment of distributions from superannuation schemes**

*When this section applies*

- (1) This section applies when— 30
- (a) a person receives a distribution from a superannuation scheme in an income year; and
- (b) an employer of the person has made contributions to the superannuation scheme in—
- (i) the income year in which the distribution was received; or 35
- (ii) the 2 income years immediately before that income year; and

- (c) the person continues to work for the employer for 1 month or more after the date of the distribution.

*When this section does not apply*

- (2) This section does not apply to a person who receives a distribution from a superannuation scheme as a result of and on or after the person's retirement from employment with an employer who was a contributor to the scheme. 5

*Assessable income*

- (3) For the purposes of this subpart, the distribution referred to in **subsection (1)** is assessable income of the person derived in the tax year or years that corresponds to the income year or years in which the contributions were made. The amount does not include an amount of a contribution by the person as a member of the superannuation scheme. 10

Defined in this Act: assessable income, employer, employment, income year, superannuation scheme 15

Compare: 2004 No 35 s KD 1(1)(h)

## Subpart MC—Entitlements under family scheme

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### MC 1 What this subpart does

*Rules about entitlements under family scheme*

- (1) This subpart provides the rules for determining whether a person and their spouse, civil union partner, or de facto partner are entitled to family support and family plus as entitlements and tax credits under the family scheme. 35



*Family support*

- (2) Family support is the amount of a person's entitlement and tax credit calculated under **section MD 3** (Calculation of family support).

*Family plus*

5

- (3) Family plus is made up of—
- (a) the in-work payment, *see* **sections MD 4 to MD 10** (which relate to the entitlement to and calculation of the in-work payment), or the child tax credit continued under **section MZ 1** (Entitlement to child tax credit); and 10
  - (b) the parental tax credit, *see* **sections MD 11 and MD 12** (which relate to the entitlement to and calculation of the parental tax credit); and
  - (c) the family tax credit, *see* **section ME 1** (Family tax credit).

*Classification of credits*

15

- (4) For the purposes of the calculation of the amount of a tax credit, entitlements and tax credits under the family scheme are divided into—
- (a) family assistance credits, made up of family support, the in-work payment or child tax credit, and the parental tax credit; and 20
  - (b) family tax credits.

Defined in this Act: amount, child tax credit, civil union partner, Commissioner, de facto partner, family scheme, family plus, family support, family tax credit, in-work payment, parental tax credit, spouse, tax credit 25

Compare: 2004 No 35 ss KD A1, KD 1A

**MC 2 Who qualifies for entitlements under family scheme?**

A person qualifies for an entitlement under the family scheme if, for an entitlement period, they meet—

- (a) the qualifying criteria set out in **sections MC 3 to MC 7**; and 30
- (b) the continuing requirements set out in **section MC 8**.

Defined in this Act: entitlement period, family scheme

**MC 3 First requirement: person's age**

The first requirement is that the person referred to in **section MC 2** is 16 or older. 35

Compare: 2004 No 35 ss KD 2AA (4), KD 3(1) OB 1 "qualifying person" (a)(i)

**MC 4 Second requirement: principal care**

The second requirement is that the person referred to in **section MC 2** is the principal caregiver for 1 or more dependent children.

Defined in this Act: dependent child, principal caregiver

5

Compare: 2004 No 35 ss KD 2AA (4), KD 3(1), OB 1 “qualifying person” (a)(ii)

**MC 5 Third requirement: residence***Third requirement*

- (1) The third requirement is that the person referred to in **section MC 2** and child referred to in **section MC 4** meets the residence requirements of **subsections (2) and (3)**. 10

*When person meets residence requirements*

- (2) The person meets the residence requirements of **subsection (1)** if the person—
- (a) is a New Zealand resident who has been both resident and present in New Zealand for a continuous period of 12 months at any time, and is tax resident and resident in New Zealand on the date on which a tax credit arises under **section MD 1** (Family assistance credit) or **ME 1** (Family tax credit); and 15
- (b) is neither a transitional resident, nor the spouse, civil union partner, or de facto partner of a transitional resident. 20

*When child meets residence requirements*

- (3) The child meets the residence requirements of **subsection (1)** if the child is both resident and present in New Zealand for the entitlement period. 25

Defined in this Act: child, civil union partner, de facto partner, entitlement period, New Zealand, New Zealand resident, resident, spouse, tax credit, transitional resident

30

Compare: 2004 No 35 ss KD 3(1), OB 1 “qualifying person” (a)(iii)

**MC 6 When person does not qualify**

Despite **sections MC 3 to MC 5**, a person does not qualify for—

- (a) a family assistance credit if, during the relationship period, they receive a parent’s allowance under section 32(2) of the War Pensions Act 1954: 35

- (b) a family tax credit if, during the relationship period, they receive—
- (i) an income-tested benefit; or
  - (ii) a veteran's pension; or
  - (iii) a parent's allowance. 5

Defined in this Act: family assistance credit, family tax credit, income-tested benefit, parent's allowance, relationship period, veteran's pension

Compare: 2004 No 35 s KD 3(1)

### MC 7 When spouse or partner entitled under family scheme

*When this section applies* 10

- (1) This section applies when a person has a spouse, civil union partner, or de facto partner throughout an entitlement period, and during the period—
- (a) the person meets the criteria in **sections MC 3 to MC 5** in relation to 1 or more dependent children; and 15
  - (b) the spouse or partner meets the criteria in **sections MC 3 to MC 5** in relation to 1 or more dependent children; and
  - (c) the dependent child, or at least 1 of the dependent children, referred to in **paragraph (b)** is not a dependent child referred to in **paragraph (a)**. 20

*Single person*

- (2) In the circumstances described in **subsection (1)**,—
- (a) this section applies as if—
    - (i) the person or their spouse or partner meets the qualifying criteria in relation to all those children; 25
    - and
    - (ii) the other person does not meet the qualifying criteria in relation to any of the children; and
  - (b) the Commissioner must determine which of the persons referred to in **paragraph (a)** meets the qualifying criteria. 30

Defined in this Act: civil union partner, de facto partner, dependent child, entitlement period, spouse

Compare: 2004 No 35 s KD 3A(2)–(4)

### MC 8 Continuing requirements

To receive entitlements and tax credits under the family scheme, a person who meets the qualifying criteria set out in **sections MC 3 to MC 7** must also meet the following requirements throughout the entitlement period: 35

- (a) the person meets the qualifying criteria on each day of the period; and
  - (b) another person does not on any day start or stop being a spouse, civil union partner, or de facto partner of the person; and 5
  - (c) the person does not start or stop being the principal caregiver of a dependent child other than on the first or, as applicable, the last day; and
  - (d) a child for whom the person is the principal caregiver does not stop being a dependent child other than on the first or, as applicable, the last day; and 10
  - (e) the composition of a family assistance credit does not change, other than on the first, or as applicable, the last day. 15
- Defined in this Act: child, civil union partner, de facto partner, dependent child, entitlement period, family assistance credit, family scheme, principal caregiver, spouse
- Compare: 2004 No 35 s OB 1 “eligible period”

### MC 9 Credits for person aged 18

*For person aged 18* 20

- (1) A person is entitled to a tax credit under **sections MD 1** (Family assistance credit) and **ME 1** (Family tax credit) for a person aged 18 who—
  - (a) is not financially independent; and
  - (b) is attending school or a tertiary educational establishment. 25

*Determining period*

- (2) The Commissioner must determine the period for which a person is entitled to a family assistance credit or a family tax credit for a person who is 18 years of age. 30

*When period expires*

- (3) The period determined by the Commissioner ends on or before the first day fixed by the Commissioner for payments of instalments of tax credits under **section 80KI** of the Tax Administration Act 1994 in the calendar year following that in which the person turns 18 years of age. 35

Defined in this Act: Commissioner, entitlement period, family assistance credit, family tax credit, financially independent, pay, tax credit, year

Compare: 2004 No 35 s KD 2AA (7)–(9), KD 3A(5)–(9)

**MC 10 Principal caregiver**

*Meaning for family assistance credit, family support, child tax credit*

- (1) For the purposes of **sections MD 3 and MZ 1** (which relate to family support and the child tax credit), a person is a **principal caregiver** of a dependent child if the person— 5
- (a) lives apart from another person who qualifies under **section MC 2** in relation to the dependent child; and
  - (b) has the dependent child in their exclusive care for periods totalling at least one-third of the tax year. 10

*Meaning for in-work payment*

- (2) For the purposes of **section MD 6** (Second requirement: principal care), a person is a **principal caregiver** of a dependent child for an entitlement period if the person—
- (a) lives apart from another person who qualifies under **section MC 2** in relation to the dependent child; and 15
  - (b) has the dependent child in their exclusive care for periods totalling at least one-third of the tax year, whether or not those periods coincide with the entitlement period. 20

*Entitlement to in-work payment*

- (3) If **subsection (2)** applies, **section MD 10(3)** (Calculation of in-work payment) is to be read as applying to the periods during which the principal caregiver has exclusive care of the dependent child. 25

*Meaning for parental tax credit*

- (4) For the purposes of **sections MD 11** (Entitlement to parental tax credit), a person is a **principal caregiver** of a dependent child if the person—
- (a) lives apart from another person who qualifies under **section MC 2** in relation to the dependent child; and 30
  - (b) has the dependent child in their exclusive care for periods totalling at least one-third of the parental entitlement period.

*Principal caregiver to notify Commissioner of change* 35

- (5) A person who is a principal caregiver under this section must notify the Commissioner immediately of a change in the

arrangements for the care of the child that has, or will have, the effect of ending the person's status as a principal caregiver.

Defined in this Act: child tax credit, Commissioner, dependent child, entitlement period, family assistance credit, family support, in-work payment, notify, parental entitlement period, parental tax credit, principal caregiver, tax year

5

Compare: 2004 No 35 s KD 2AA(2)–(3)

## MC 11 Relationship periods and entitlement periods

### *Meaning*

- (1) In this Part,— 10
- (a) a **relationship period** means an unbroken period in a tax year, whether the period consists of some or all of the days in the tax year:
- (b) an **entitlement period**, for a person, means a period that forms all or part of a relationship period during which the person meets the continuing requirements set out in **section MC 8**. 15

### *When day included in more than 1 period*

- (2) If a day is part of more than 1 entitlement period or 1 relationship period, the day is treated as part only of the particular period that the Commissioner determines is fair in the circumstances. 20

Defined in this Act: Commissioner, entitlement period, relationship period, tax year

Compare: 2004 No 35 ss KD 2AA(1), (11), OB 1 “specified period”, “eligible period”

25

## Subpart MD—Family assistance credit

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### *Calculating amount of credit*

#### **MD 1 Family assistance credit**

##### *Tax credit*

- (1) A person who qualifies under **section MC 2** (Who qualifies for entitlements under family scheme?) is entitled to a tax credit (the **family assistance credit**) equal to an amount calculated using the formula in **subsection (2)**. 15

##### *Formula*

- (2) The formula is—
- $$\begin{aligned} & \text{family support} + (\text{payment or credit}) && 20 \\ & + \text{parental tax credit} - \text{family credit abatement.} \end{aligned}$$

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

- (3) In the formula,—
- (a) **family support** is the family support for the entitlement period calculated using the formula in **section MD 3**: 25
- (b) **payment or credit** is 1 of the following, as applicable:
- (i) the in-work payment for the entitlement period calculated using the formula in **section MD 10**, if the person is entitled to the in-work payment for the entitlement period; or 30
- (ii) the amount of child tax credit for the entitlement period calculated using the formula in **section MZ 2** (Calculation of child tax credit), if the person is not entitled to the in-work payment for the entitlement period, and is entitled to the child tax 35

- credit for the entitlement period under **section MZ 1**  
(Entitlement to child tax credit):
- (c) **parental tax credit** is the amount of parental tax credit for the entitlement period calculated using the formula in **section MD 12**: 5
- (d) **family credit abatement** is the amount of family credit abatement for the entitlement period calculated using the formula in **section MD 13**.
- Extra instalment*
- (4) This section is overridden by section 80KW of the Tax Administration Act 1994. 10
- Defined in this Act: amount, child tax credit, entitlement period, family credit abatement, family support, in-work payment, parental tax credit, tax credit, tax year
- Compare: 2004 No 35 s KD 2(1), (2)
- MD 2 Calculating net contributions to credits** 15
- When this section applies*
- (1) This section applies when the Commissioner calculates the amounts making up the family support, the in-work payment, the child tax credit, and the parental tax credit that relate to a period under this subpart. 20
- Calculating net contributions*
- (2) The Commissioner must—
- (a) treat the family support, in-work payment, the child tax credit, and the parental tax credit as tax credits corresponding to the period; and 25
- (b) treat as a debit the amount of family credit abatement corresponding to the period; and
- (c) apply the amount of the family credit abatement corresponding to the period,—
- (i) first, to reduce the amount of the family support corresponding to the period; and 30
- (ii) second, to reduce the amount of the in-work payment or, as applicable, the child tax credit corresponding to the period; and



- (iii) third, to reduce the amount of the parental tax credit corresponding to the period.

Defined in this Act: amount, child tax credit, Commissioner, family credit abatement, family support, in-work payment, parental tax credit, tax credit

Compare: 2004 No 35 s KD 2A

5

### *Family support*

#### **MD 3 Calculation of family support**

##### *Entitlement*

- (1) A person who qualifies under **section MC 2** (Who qualifies for entitlements under family scheme?) is entitled to an amount of family support calculated using the formula in **subsection (2)**. 10

##### *Formula*

- (2) The formula is—

$$\text{prescribed amount} \times \frac{\text{days}}{365} \quad 15$$

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

- (3) The items in the formula are defined in **subsections (4) and (5)**.

##### *Prescribed amount*

- (4) **Prescribed amount** is the sum of the following amounts: 20
- (a) for the eldest dependent child for whom the person is a principal caregiver during the entitlement period, 1 of the following, as applicable:
- (i) \$4,264, if the child is younger than 16: 25
- (ii) \$4,940, if the child is 16 or older: 25
- (iii) a weighted average of the amounts in **subparagraphs (i) and (ii)** that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period; and 30
- (b) for each dependent child for whom the person is a principal caregiver during the entitlement period, other than the eldest dependent child, 1 of the following, as applicable:
- (i) \$2,964, if the child is younger than 13: 35
- (ii) \$3,380, if the child is 13, 14, or 15:
- (iii) \$4,420, if the child is 16 or older:

- (iv) a weighted average of the amounts in **subparagraphs (i) and (ii)** that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 13 during the entitlement period: 5
- (v) a weighted average of the amounts in **subparagraphs (ii) and (iii)** that reflects the proportion of the entitlement period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period. 10
- Days*
- (5) **Days** is the number of days in the entitlement period.
- Order in Council increasing amount*
- (6) In **subsection (4)(a)(i) and (ii), and (b)(i) to (iii)**, the amount referred to may be increased as prescribed by the Governor-General by Order in Council under **section MF 7** (Orders in Council). 15
- When another person cares for dependent child*
- (7) Family support must be reduced in proportion to the time in the entitlement period that a dependent child spends in the exclusive care of another person who qualifies under **section MC 2**. 20
- Defined in this Act: amount, child, dependent child, entitlement period, family assistance credit, family support, principal caregiver  
Compare: 2004 No 35 ss KD 2(3), KD 2AA(3)
- In-work payment*** 25
- MD 4 Entitlement to in-work payment**
- Requirements*
- (1) A person is entitled to an in-work payment for a child if, for an entitlement period, the person meets the 5 requirements of **sections MD 5 to MD 9**. 30

*When another person entitled to in-work payment or child tax credit*

- (2) If 2 persons are entitled to an in-work payment or a child tax credit for a child for an entitlement period, the entitlement of each is not affected by the entitlement of the other person. 5

Defined in this Act: child, entitlement period, in-work payment, tax credit

Compare: 2004 No 35 s KD 2AAA(1), (3A)

### **MD 5 First requirement: person's age**

The first requirement for an entitlement to an in-work payment is that the person referred to in **section MD 4** is 16 or older. 10

Defined in this Act: in-work payment

Compare: 2004 No 35 s KD 2AAA(1)(a)

### **MD 6 Second requirement: principal care**

*When child financially dependent*

- (1) The second requirement for an entitlement to an in-work payment is that the person referred to in **section MD 4** is the principal caregiver for a child who is financially dependent on them. 15

*Inclusions*

- (2) A child for whom payments are made under section 363 of the Children, Young Persons, and Their Families Act 1989, or a child for whom a benefit is paid under section 28 or 29 of the Social Security Act 1964, is treated as financially dependent on the person. 20

Defined in this Act: child, financially dependent, in-work payment, principal caregiver 25

Compare: 2004 No 35 s KD 2AAA(1)(b)

### **MD 7 Third requirement: residence**

*Third requirement*

- (1) The third requirement for an entitlement to an in-work payment is that the person or child referred to in **section MD 4** meets the residence requirements of **subsections (2) and (3)**. 30

*When person meets residence requirements*

- (2) The person meets the residence requirements of **subsection (1)** if the person— 35

- (a) is a New Zealand resident who has been both resident and present in New Zealand for a continuous period of 12 months at any time, and is tax resident and resident in New Zealand on the date on which a tax credit arises under **section MD 1**; and 5
- (b) is neither a transitional resident, nor the spouse, civil union partner, or de facto partner of a transitional resident.

*When child meets residence requirements*

- (3) The child meets the residence requirements of **subsection (1)** if the child is both resident and present in New Zealand for the entitlement period. 10

Defined in this Act: child, civil union partner, de facto partner, entitlement period, in-work payment, New Zealand, New Zealand resident, resident, tax credit

Compare: 2004 No 35 s KD 2AAA(1)(c), (3), (4) 15

**MD 8 Fourth requirement: person not receiving benefit**

The fourth requirement for an entitlement to an in-work payment is that the person referred to in **section MD 4** and their spouse, civil union partner, or de facto partner, do not receive— 20

- (a) an income-tested benefit; or
- (b) a basic grant and an independent circumstances grant made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections; or 25
- (c) a parent's allowance under section 32(2) of the War Pensions Act 1954.

Defined in this Act: civil union partner, de facto partner, income-tested benefit, in-work payment, parent's allowance, spouse

Compare: 2004 No 35 s KD 2AAA(1)(e) 30

**MD 9 Fifth requirement: full-time earner**

*Income from employment or compensation*

- (1) The fifth requirement for an entitlement to an in-work payment is that either or both the person referred to in **section MD 4** and their spouse, civil union partner, or de facto partner, is normally a full-time earner receiving income from a work activity, and derives— 35

- (a) income as set out in **subsections (2) and (3)** as a full-time earner; or
- (b) an amount of compensation described in **subsection (4)**.

*Income*

- (2) The income referred to in **subsection (1)(a)** is— 5
  - (a) a PAYE income payment that is not excluded under **subsection (3)**; or
  - (b) income to which **section RD 3(2) to (4)** (PAYE income payments) applies; or
  - (c) income from a business carried on for profit. 10

*Exclusions from income*

- (3) The following PAYE income payments are excluded from income under **subsection (2)**:
  - (a) a PAYE income payment described in **section RD 6(1)(b)(iii), (4), and (6)** (Salary or wages), being payments such as benefits, pensions, compensation, and government grants; 15
  - (b) a schedular payment that is a contract payment for a contract activity or service of a non-resident contractor.

*Compensation payments for personal injury* 20

- (4) A person meets the fifth requirement if—
  - (a) they receive a child tax credit for an entitlement period ending on 31 March 2006; and
  - (b) on or after 1 January 2006, they or their spouse, civil union partner, or de facto partner suffers an incapacity due to personal injury by accident within the meaning of section 26 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and 25
  - (c) weekly compensation within the meaning of section 6 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, is or will be paid for the incapacity; and 30
  - (d) the person or their spouse, civil union partner, or de facto partner would have met the fifth requirement and been eligible for the tax credit calculated using the formula in **section MD 10** at the time of the incapacity had this section come into force before the date of the incapacity. 35

*Absence from work due to birth of child*

- (5) Despite **subsection (1)**, a person also meets the fifth requirement if they are normally a full-time earner as described in **subsection (1)(a)** but, in a 1-week period, they do not work, or work less than, the number of hours required to be a full-time earner because of the birth of a child. However this subsection applies only if the person is entitled to receive the parental tax credit for the child. 5

Defined in this Act: amount, business, child, child tax credit, civil union partner, contract activity or service, contract payment, de facto partner, entitlement period, full-time earner, income, income from employment, in-work payment, non-resident contractor, parental tax credit, pay, PAYE income payment, schedular payment, spouse, tax credit 10

Compare: 2004 No 35 s KD 2AAA(1)(d), (5)–(8)

**MD 10 Calculation of in-work payment** 15*Entitlement*

- (1) A person who meets the requirements of **section MD 4** is entitled to an in-work payment calculated using the formula in **subsection (2)**.

*Formula* 20

- (2) The formula is—

$$(\text{amount A} + (\text{amount B} \times (\text{children} - 3))) \times \frac{\text{weekly periods}}{52}.$$

*Definition of items in formula* 25

- (3) In the formula,—
- (a) **amount A** is \$3,120:
  - (b) **amount B** is \$780:
  - (c) **children** is the greater of—
    - (i) 3; and 30
    - (ii) the number of children for whom the person is allowed the in-work payment:
  - (d) **weekly periods** is the number of periods of 1 week in the entitlement period for which the person or their spouse, civil union partner, or de facto partner has, from 35  
the work activity, income to which **section MD 9(2)** refers.

*Order in Council increasing amount*

- (4) In **subsection (3)(a) and (b)**, the amount referred to may be increased as prescribed by the Governor-General by Order in Council under **section MF 7** (Orders in Council).

Defined in this Act: amount, child, civil union partner, de facto partner, entitlement period, in-work payment, spouse

Compare: 2004 No 35 s KD 2AAA(2)

5

*Parental tax credit***MD 11 Entitlement to parental tax credit***When this section applies*

10

- (1) This section applies when—

(a) a person qualifies under **section MC 2** (Who qualifies for entitlements under family scheme?) in relation to a dependent child; and

(b) neither the person nor their spouse, civil union partner, or de facto partner receives—

15

(i) a social assistance payment or has a suspended entitlement to an income-tested benefit at any time during the first 56 days after the date of the dependent child's birth (the **parental entitlement period**); or

20

(ii) a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 at any time for the child.

*Entitlement*

25

- (2) The person is entitled to a parental tax credit for the parental entitlement period.

*If dependent child dies during parental entitlement period*

- (3) The person continues to be entitled to the parental tax credit if—

30

(a) the dependent child dies during the parental entitlement period; and

(b) the person and their spouse, civil union partner, or de facto partner otherwise meet the requirements of **subsection (1)**.

35

*When another person cares for dependent child*

- (4) The parental tax credit must be reduced in proportion to the time in the parental entitlement period that a dependent child spends in the exclusive care of another person who qualifies under **section MC 2**. 5

*Relationship with section 2B of Parental Leave and Employment Protection Act 1987*

- (5) Section 2B of the Parental Leave and Employment Protection Act 1987 applies for the purposes of **subsection (1)(b)** if a person— 10
- (a) gives birth to 2 or more children as a result of 1 pregnancy; or
  - (b) assumes the care of 2 or more children with a view to adoption.

*Payment of parental tax credit* 15

- (6) The parental tax credit is paid to the person either—
- (a) as a tax credit in an end-of-year assessment; or
  - (b) in the 56 days after the date on which an application is made if— 20
    - (i) the person applies to receive the parental tax credit by instalment under **section MF 1** (Application for payment of tax credit by instalment); and
    - (ii) at any time during the period of 56 days, the person and their spouse, civil union partner, or de facto partner do not receive a social assistance payment and do not have a suspended entitlement to an income-tested benefit. 25

Defined in this Act: assessment, civil union partner, de facto partner, dependent child, income-tested benefit, parental entitlement period, parental tax credit, social assistance payment, spouse, tax credit 30

Compare: 2004 No 35 ss KD 2AA(3), KD 2AB

**MD 12 Calculation of parental tax credit***Entitlement*

- (1) A person who meets the requirements of **section MD 11** is entitled to a parental tax credit calculated using the formula in **subsection (2)**. 35



*Formula*

- (2) The formula is—

$$\text{prescribed amount} \times \frac{\text{days}}{56}. \quad 5$$

*Definition of items in formula*

- (3) In the formula,—

- (a) **prescribed amount** is \$1,200 for each dependent child born on or after 1 October 1999: 10
- (b) **days** is the number of days in the parental entitlement period, up to a maximum of 56 days, for which the person and their spouse, civil union partner, or de facto partner do not receive a social assistance payment and do not have a suspended entitlement to an income-tested benefit. 15

*Order in Council increasing amount*

- (4) In
- subsection (3)(a)**
- , the amount referred to may be increased as prescribed by the Governor-General by Order in Council under
- section MF 7**
- (Orders in Council).

Defined in this Act: amount, civil union partner, de facto partner, dependent child, income-tested benefit, parental entitlement period, parental tax credit, social assistance payment, spouse 20

Compare: 2004 No 35 s KD 2(5)

***Family credit abatement*****MD 13 Calculation of family credit abatement** 25*When this section applies*

- (1) This section applies for the purposes of
- section MD 1**
- to determine the amount of a person's family credit abatement for an entitlement period.

*Formula*

- (2) The formula is—

$$\text{full-year abatement} \times \frac{\text{days}}{365}. \quad 30$$

*Definition of items in formula*

- (3) In the formula,—

- (a) **full-year abatement** is,—
- (i) if the person has no spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income for the relationship period containing the entitlement period is more than \$35,000, 20 cents for each complete dollar of the excess; or 5
- (ii) if the person has a spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for the relationship period containing the entitlement period is more than \$35,000, 20 cents for each complete dollar of the excess: 10 15
- (b) **days** is the number of days in the entitlement period excluding the days of any calendar months in which the person receives protected family support as described in **section MD 14**. 15
- When 56-day period includes 31 March* 20
- (4) If a person who qualifies under **section MC 2** (Who qualifies for entitlements under family scheme?) receives fortnightly instalments of the parental tax credit in a 56-day period that includes 31 March, the formula is applied so that—
- (a) instalments of the parental tax credit received in the first tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year; and 25
- (b) instalments of the parental tax credit received in the second tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year. 30
- Order in Council increasing amount* 35
- (5) In **subsection (3)(a)**, the amounts referred to may be increased as prescribed by the Governor-General by Order in Council under **section MF 7** (Orders in Council).
- Defined in this Act: amount, assessable income, business, civil union partner, de facto partner, entitlement period, family credit abatement, family scheme income, 40

income from employment, income year, parental tax credit, protected family support, relationship period, spouse, tax year

Compare: 2004 No 35 s KD 2(6), (7)

## MD 14 Person receiving protected family support

### *Requirements*

5

(1) For the purposes of **section MD 13(3)(b)**, a person who receives protected family support for a calendar month in an entitlement period, is a person who, in the calendar month,—

(a) has no spouse, civil union partner, or de facto partner, receives an income-tested benefit, and derives family scheme income that is less than the amount set out in **section MD 13(3)(a)(i)**:

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(b) has a spouse, civil union partner, or de facto partner, receives an income-tested benefit, and derives family scheme income that together with the family scheme income of their spouse is less in total than the amount set out in **section MD 13(3)(a)(ii)**.

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### *Annualised equivalent*

(2) **Section MB 2** (Adjustment for period that is less or more than 1 year) applies to adjust the amount of family scheme income to provide an annualised equivalent.

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Defined in this Act: civil union partner, de facto partner, entitlement period, family scheme income, income-tested benefit, protected family support

Compare: 2004 No 35 s KD 2(6B)

## MD 15 Family scheme income for purposes of section MD 14

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For the purposes of **section MD 14**, in the calculation of family scheme income,—

(a) **section MB 1(1)(a) and (b)** (Adjustments for calculation of family scheme income) does not apply; and

(b) any income from employment that is derived in the calendar month as a result of an extra pay period that occurs in that month is disregarded; and

30

(c) for a person who derives, for part of an income year, income to which **section RD 3(2) to (4)** (PAYE income payments) applies, or income from a business, the assessable income and any expenditure incurred in deriving that income that is allowed as a deduction are

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treated as derived and incurred, respectively, at a uniform daily rate throughout that part of the income year.

Defined in this Act: assessable income, business, deduction, family scheme income, income, income from employment, income year, pay period

Compare: 2004 No 35 s KD 2(6C)

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## Subpart ME—Family tax credit

### Contents

ME 1 Family tax credit

ME 2 Meaning of employment for this subpart

---

**ME 1 Family tax credit** 10

#### *Tax credit*

(1) A person who qualifies under **sections MC 3 to MC 6** (which relate to the qualifying criteria) is entitled to a tax credit (the **family tax credit**) for an entitlement period equal to an amount calculated using the formula in **subsection (2)**. 15

#### *Formula*

(2) The formula is—  

$$(\text{prescribed amount} - \text{total income}) \times \frac{\text{weekly periods}}{52}.$$
 20

#### *Definition of items in formula*

(3) In the formula,—

(a) **prescribed amount** is \$17,680;

(b) **total income** is the net family scheme income, for a relationship period containing the entitlement period, of— 25

(i) the person; or

(ii) their spouse, civil union partner, or de facto partner; or

(iii) the person and their spouse, civil union partner, or de facto partner: 30

(c) **weekly periods** is the number of periods of 1 week in the entitlement period for which the person is a full-time earner.

*Order in Council increasing amount*

- (4) In **subsection (3)(a)**, the amount referred to may be increased as prescribed by the Governor-General by Order in Council under **section MF 7** (Orders in Council).

*Relationship with section 80KW of the Tax Administration Act 1994* 5

- (5) This section is overridden by section 80KW of the Tax Administration Act 1994.

Defined in this Act: amount, civil union partner, Commissioner, de facto partner, entitlement period, family scheme income, family tax credit, full-time earner, relationship period, spouse, tax credit 10

Compare: 2004 No 35 s KD 3(2)–(5)

**ME 2 Meaning of employment for this subpart***Meaning*

- (1) For the purposes of the calculation of a family tax credit, **employment** in the definition of **full-time earner**, means the activity of a person that gives rise, or will give rise, to an entitlement to a PAYE income payment other than— 15
- (a) a payment of any of the kinds referred to in **section RD 6(3) and (6)(b) and (c)** (Salary or wages): 20
  - (b) a schedular payment that is a contract payment for a contract activity or service of a non-resident contractor:
  - (c) a payment made by a close company to a person who is a major shareholder of the close company:
  - (d) a payment made by a person to their spouse, civil union partner, or de facto partner: 25
  - (e) a payment made by a business carried on by 2 or more persons jointly, whether in partnership or otherwise, to a spouse, civil union partner, or de facto partner of 1 of the persons in business. 30

*When subsections (3) and (4) apply*

- (2) **Subsections (3) and (4)** apply when a person—
- (a) receives a PAYE income payment; and
  - (b) on the date of receipt— 35
    - (i) does not undertake any employment; or
    - (ii) performs an activity to an extent less than would give rise to an entitlement to the PAYE income payment.

*Commissioner's determination*

- (3) The Commissioner may treat the person as having undertaken the employment or performed the activity that would have given rise to the PAYE income payment.

*Considerations*

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- (4) The Commissioner must have regard to—
- (a) the date of receipt of the PAYE income payment; and
  - (b) the pay period in which the PAYE income payment occurs; and
  - (c) the circumstances giving rise to the PAYE income payment; and 10
  - (d) any other matters that the Commissioner considers relevant.

Defined in this Act: business, civil union partner, close company, Commissioner, contract activity or service, contract payment, de facto partner, employment, family tax credit, major shareholder, pay, pay period, PAYE income payment, schedular payment, spouse 15

Compare: 2004 No 35 ss KD 3(1) "employment", KD 3A(10)

**Subpart MF—Payment of credits****Contents**

20

MF 1	Application for payment of tax credit by instalment	
MF 2	When person not entitled to payment by instalment	
MF 3	Calculating amount of interim family assistance credit	
MF 4	Requirements for calculating instalment of tax credit	
MF 5	Recovery of overpaid tax credit	25
MF 6	Overpayment of tax credit	
MF 7	Orders in Council	

**MF 1 Application for payment of tax credit by instalment***When this section applies*

- (1) This section applies when— 30
- (a) a person who is a principal caregiver expects to be entitled, throughout a selected period, to a tax credit under **section MD 1** (Family assistance credit) or, as applicable, **sections MD 1 and ME 1** (Family tax credit); and
  - (b) **section MF 2** does not apply to the person; and 35
  - (c) the person wants the tax credit to be paid by instalment before the end of the tax year that contains the selected period.

*Application*

- (2) The person may ask the Commissioner to pay the tax credit by instalment to them.

*Meaning of selected period*

- (3) **Selected period** is a relationship period chosen by the person for the purposes of this section and sections 80KA to 80KG of the Tax Administration Act 1994. 5

Defined in this Act: Commissioner, pay, principal caregiver, selected period, tax credit, tax year

Compare: 2004 No 35 s KD 5(1), (1A) 10

**MF 2 When person not entitled to payment by instalment***When this section applies*

- (1) This section applies when—
- (a) a person—
- (i) expects that in a relationship period they will be entitled to receive an income-tested benefit; or 15
- (ii) applies under section 80KP of the Tax Administration Act 1994 to the chief executive for payment of a tax credit for a period after an income-tested benefit has ended; and 20
- (b) the chief executive—
- (i) is authorised by section 80KN of that Act to pay a family assistance credit to the person; and
- (ii) does not ask the Commissioner under section 80KQ of that Act to accept from the person an application for a notice of entitlement. 25

*No entitlement*

- (2) The person is not entitled to apply under **section MF 1** for the payment of the tax credit by instalment for the relationship period, and section 80KN applies. 30

Defined in this Act: chief executive, Commissioner, family assistance credit, income-tested benefit, notice of entitlement, pay, relationship period, tax credit

Compare: 2004 No 35 s KD 5(8)

**MF 3 Calculating amount of interim family assistance credit***When this section applies*

- (1) This section applies when the Commissioner receives an application under **section MF 1** and is required under section 80KD(2) of the Tax Administration Act 1994 to determine the amount of the tax credit to which the person applying would be entitled. 5

*Method for determining family assistance credit*

- (2) The Commissioner must—
- (a) calculate an amount (the **annual amount**) using the formula in **subsection (3)**; and 10
- (b) ascertain the amount (**amount A**) that, in **schedule 31, column 2** (Annualised equivalent amount for Part M) is the equivalent of the annual amount represented in **schedule 31, column 1**; and 15
- (c) calculate the family assistance credit that the person would be entitled to for the tax year in which the calculation period falls if the family scheme income of the person for the calculation period were equal to amount A. 20

*Formula*

- (3) The formula is—
- $$\text{attributed net income} \times \frac{365}{\text{days}}. \quad 25$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **attributed net income** is equal to such amount of the family scheme income expected to be attributable to the part of the tax year that is the part (the **calculation period**) for which the Commissioner determines that a tax credit is allowable to the person: 30
- (b) **days** is the number of days in the calculation period.

Defined in this Act: amount, Commissioner, family assistance credit, family scheme income, tax credit, tax year 35

Compare: 2004 No 35 s KD 5(6)



**MF 4 Requirements for calculating instalment of tax credit***How to calculate instalment*

- (1) The Commissioner must calculate the amount of an instalment by way of tax credit under **section MD 1** (Family assistance credit) or, as applicable, **sections MD 1 and ME 1** (Family tax credit)— 5
- (a) as if the calculation period referred to in **section MF 3** were a relationship period; and
- (b) using— 10
- (i) a value for family scheme income as directed by **section MF 3(2)(c)**; and
- (ii) the rates of family support, in-work payment, child tax credit, parental tax credit, family credit abatement, and family tax credit set out in **sections MD 3, MD 4, MD 11, MD 12, and ME 1**. 15

*Instalment shown in complete dollars*

- (2) An instalment of a tax credit under **section MD 1** or, as applicable, **sections MD 1 and ME 1**, is to be shown in a notice of entitlement in complete dollars. 20
- Defined in this Act: amount, child tax credit, Commissioner, family credit abatement, family scheme income, family support, family tax credit, in-work payment, notice of entitlement, parental tax credit, relationship period, tax credit
- Compare: 2004 No 35 s KD 5(6A), (7)

**MF 5 Recovery of overpaid tax credit***When this section applies* 25

- (1) This section applies when the Commissioner considers that the amount of a tax credit under **section MD 1** (Family assistance credit) or **ME 1** (Family tax credit) set off or refunded to the person for a tax year is more than the proper amount.

*Recovery of overpayment* 30

- (2) The Commissioner may recover the excess as if it were income tax payable by—
- (a) the person; or

- (b) the person and their spouse, civil union partner, or de facto partner if they are jointly and severally liable for payment of the excess.

Defined in this Act: amount, civil union partner, Commissioner, de facto partner, family support, income tax, pay, spouse, tax credit, tax year

5

Compare: 2004 No 35 s KD 4(4)

## MF 6 Overpayment of tax credit

*When this section applies*

- (1) This section applies when—
- (a) an entitlement to a tax credit arises under **section MD 1** (Family assistance credit) or **ME 1** (Family tax credit) in a tax year; and 10
- (b) the instalment of the estimated tax credit, or the total of those instalments, is more than the tax credit, or the total of all tax credits, to which the person is entitled for the tax year under the family scheme; and 15
- (c) the Commissioner—
- (i) gives a person a notice of entitlement for the tax year because an instalment of the estimated tax credit has been paid to the person during the tax year; or 20
- (ii) finds out, otherwise than by way of a notice of entitlement, that an instalment of the estimated tax credit has been paid to, or for the benefit of, or dealt with in the interest of, the person for the tax year. 25

*Tax payable*

- (2) An amount equal to the excess is—
- (a) added to the tax payable by the person for the tax year; and 30
- (b) recoverable by the Commissioner as if it were tax payable by the person for the tax year.

Defined in this Act: amount, Commissioner, family scheme, notice of entitlement, pay, tax credit, tax year

Compare: 2004 No 35 s KD 4(2), (2A)

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## MF 7 Orders in Council

*What may be done by Order in Council*

- (1) The Governor-General may, by Order in Council,—

- (a) increase the amounts appearing as items in the formulas for family support listed in **section MD 3(3)** (Calculation of family support) and the amount of the threshold set out in **section MD 13(3)** (Calculation of family credit abatement) by amounts that— 5
- (i) correspond to the movement in the quarterly all groups index number of the New Zealand Consumers Price Index:
- (ii) are rounded up to the nearest whole dollar, without affecting the calculation of later increases made under this paragraph: 10
- (b) increase the amounts appearing as items in the formula for the in-work payment set out in **section MD 10(3)** (Calculation of in-work payment): 15
- (c) increase the amount appearing as an item in the formula for the parental tax credit set out in **section MD 12(3)** (Calculation of parental tax credit): 15
- (d) increase the amount appearing as an item in the formula for the family tax credit in **section ME 1(3)** (Family tax credit): 20
- (e) replace **schedule 31** (Annualised equivalent amount for Part M).

*Order in Council under subsection (1)(a): requirements*

- (2) An Order in Council under **subsection (1)(a)**,— 25
- (a) in the case of the first Order in Council made under **subsection (1)(a)**, must be made when the total percentage increase in the movements in the quarterly all groups index number of the New Zealand Consumers Price Index measured from that applying on 1 April 2007 is 5% or more: 30
- (b) in the case of a subsequent Order in Council under **subsection (1)(a)**, must be made when the total percentage increase in the movements in the quarterly all groups index number of the New Zealand Consumers Price Index measured from that applying on the date when the requirement to make the immediately preceding adjustment arose is 5% or more. 35

*Timing of Order in Council*

- (3) An Order in Council made under this section must be made no later than 1 December in each year and must apply from 1 April following that date.

*Review of in-work payment and parental tax credit*

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- (4) The Minister responsible for the Inland Revenue Department, in consultation with the Minister responsible for the department currently responsible for administering the Social Security Act 1964, must cause a review to be undertaken of the amounts of the in-work payment and the parental tax credit allowable under this Part.

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*Timing of review*

- (5) A review undertaken under **subsection (4)** must occur,—
- (a) in the case of the first review, not later than 30 June 2008; and
- (b) in the case of subsequent reviews, not later than 30 June in the third year after each preceding review.

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Defined in this Act: amount, family support, family tax credit, in-work payment, parental tax credit

Compare: 2004 No 35 s KD 5C

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### Subpart MZ—Terminating provisions

#### Contents

- MZ 1 Entitlement to child tax credit
- MZ 2 Calculation of child tax credit

---

#### **MZ 1 Entitlement to child tax credit**

25

*When this section applies*

- (1) This section applies when—
- (a) a person is claiming or receiving a child tax credit for a child for an entitlement period ending on 31 March 2006; and
- (b) the person is not entitled to an in-work payment under **section MD 4** (Entitlement to in-work payment).

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*Entitlement*

- (2) If the person maintains continuously their entitlement after 31 March 2006, they remain entitled to receive the child tax credit for entitlement periods after that date.

*When another person entitled to credit*

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- (3) If 2 persons are entitled to an in-work payment or a child tax credit for a child for an entitlement period, the amount to which each is entitled is not affected by the entitlement of the other person.

Defined in this Act: child, child tax credit, entitlement period, in-work payment

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Compare: 2004 No 35 ss KD 2AA(3A), KD 2AAAB

**MZ 2 Calculation of child tax credit***Entitlement*

- (1) A person who meets the requirements of **section MZ 1** is entitled to a child tax credit calculated using the formula in **subsection (2)**.

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*Formula*

- (2) The formula is—

$$\$780 \times \text{dependent children} \times \frac{\text{days in entitlement period}}{365}$$

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*Definition of items in formula*

- (3) In the formula,—

(a) **dependent children** is the number of dependent children for whom the person is a principal caregiver during the entitlement period:

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(b) **days in entitlement period** is the number of days in the entitlement period for which the person and their spouse, civil union partner, or de facto partner do not receive a social assistance payment and do not have a suspended entitlement to an income-tested benefit.

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Defined in this Act: amount, child tax credit, civil union partner, de facto partner, dependent child, entitlement period, income-tested benefit, principal caregiver, social assistance payment, spouse

Compare: 2004 No 35 s KD 2(4)

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## Part O Memorandum accounts

### Subpart OA—General provisions Contents

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OA 17	When policyholder credit account ends on resident's restricted amalgamation	
	<i>Maximum permitted ratios</i>	
OA 18	Calculation of maximum permitted ratios	

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*Introductory provisions*

**OA 1 What this Part does**

This Part provides some rules of general application for recording amounts as credits and debits to a memorandum account.

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Defined in this Act: memorandum account

**OA 2 Memorandum accounts***Types of account in this Part*

- (1) The following accounts are dealt with in this Part:
- (a) an imputation credit account, *see* **subparts OB and OP:** 10
  - (b) an FDP account, *see* **subparts OC and OP:**
  - (c) a CTR account, *see* **subparts OD and OP:**
  - (d) a branch equivalent tax account, *see* **subparts OE and OP:**
  - (e) an ASC account, *see* **subpart OF:**
  - (f) a policyholder credit account, *see* **subparts OJ and OP:** 15
  - (g) a Maori authority credit account, *see* **subpart OK.**

*Role of accounts*

- (2) A memorandum account is an account listed in **subsection (1)** that provides a record of the credits and debits arising in the account. 20

*Tax year*

- (3) A memorandum account is maintained for a tax year unless a provision in this Part expressly states otherwise.

*Tables*

- (4) The credits and debits that arise in a memorandum account are listed in tables in each of the subparts. The tables— 25
- (a) state the credits and the debits; and
  - (b) provide the credit dates and the debit dates; and
  - (c) refer to the section that fully defines the credits and debits, and their credit dates and debit dates. 30

*Determination*

- (5) The Commissioner may issue a determination under section 104B of the Tax Administration Act 1994 adjusting the amount of a credit or debit, or a credit date or debit date recorded in a memorandum account if the Commissioner considers the amount or date is not correct. The determination may be reviewed in challenge proceedings under Part 8A of that Act. 5

Defined in this Act: ASC account, branch equivalent tax account, Commissioner, CTR account, FDP account, imputation credit account, Maori authority credit account, memorandum account, policyholder credit account, tax year 10

Compare: 2004 No 35 ss ME 1(1), ME 3(1), ME 10(1), (1A)–(1C), ME 15, ME 17(1), ME 20, ME 21(1), ME 22(1), ME 25, ME 26(2), ME 40, MF 1(1), MF 3(1), MF 6, MF 7(1), MF 11(1), MF 12(1), MG 2(1), MG 3, MG 12, MG 13(1), MG 14(1), MG 15(1), MI 2(1), (4), MI 3, MI 14, MI 17(1), MI 18(1), MJ 1(1), MJ 8, MK 1(1), MK 3(1), MK 9 15

**OA 3 General rules for maintaining memorandum accounts***What this section does*

- (1) This section sets out the rules that apply in relation to a memorandum account to a person who— 20
- (a) is required to maintain a memorandum account; or
  - (b) may choose to maintain an account.

*Record*

- (2) A person who maintains a memorandum account must record all credits and all debits that arise in the account as at their credit date or debit date. The credits and debits are listed in provisions in the relevant subpart for each type of memorandum account. 25

*Credit balances*

- (3) The credit balance recorded in a memorandum account during a tax year or income year, as applicable, is the excess of credits over debits. 30



*Debit balances*

- (4) The debit balance recorded in a memorandum account during a tax year or income year, as applicable, is the excess of debits over credits.

Defined in this Act: amount, income year, memorandum account, tax year

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Compare: 2004 No 35 ss ME 2, ME 3(1), ME 16, ME 17(1), ME 22(1), ME 26, MF 2, MF 3(1), MF 8, MF 12(1), MG 1, MG 3(1), MG 14(1), MG 15(1), MI 1, MI 3, MI 17(1), MI 18(1), MJ 2, MJ 3(1), MK 2, MK 3(1)

**OA 4 Certain credits and debits arising only in group accounts**

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Certain credits or debits of a consolidated group may arise only in the memorandum account of the consolidated group and not in the memorandum account of a group company. Memorandum accounts of consolidated groups are dealt with in **subpart OP** (Memorandum accounts of consolidated groups).

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Defined in this Act: company, consolidated group, memorandum account

Compare: 2004 No 35 ss ME 13, ME 28(4), MF 9, MF 11(3), MG 16, MI 19

*Credits and debits***OA 5 Credits***What this section does*

20

- (1) This section defines the credits that arise under this Part in a memorandum account.

*Imputation credits*

- (2) A credit is an **imputation credit** if it is an amount—
- (a) set out in any of **sections OA 7, OB 4 to OB 29, and OP 7 to OP 27**;
  - (b) described in a row of **table O1**: imputation credits or **table O19**: imputation credits of consolidated imputation groups.

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*FDP credits*

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- (3) A credit is an **FDP credit** if it is an amount—
- (a) set out in any of **sections OA 7, OC 6 to OC 12, and OP 56 to OP 63**;
  - (b) described in a row of **table O3**: FDP credits or **table O21**: FDP credits of consolidated FDP groups.

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*CTR credits*

- (4) A credit is a **CTR credit** if it is an amount—
- (a) set out in any of **sections OA 7, OD 5 to OD 9, and OP 81 to OP 86:**
  - (b) described in a row of **table 05:** CTR credits or **table 023:** CTR credits of consolidated groups. 5

*Branch equivalent tax credits*

- (5) A credit is a **branch equivalent tax credit** if it is an amount,—
- (a) for a BETA company,— 10
    - (i) set out in any of **sections OA 7 and OE 6 to OE 11:**
    - (ii) described in a row of **table 07:** branch equivalent tax credits:
  - (b) for a BETA person,— 15
    - (i) set out in **section OA 7 or OE 19:**
    - (ii) described in a row of **table 09:** person's branch equivalent tax credits:
  - (c) for a consolidated BETA group,— 20
    - (i) set out in any of **sections OA 7 and OP 100 to OP 104:**
    - (ii) described in a row of **table 025:** branch equivalent tax credits of consolidated BETA groups.

*ASC credits*

- (6) A credit is an **ASC credit** if it is an amount—
- (a) set out in **section OA 7 or OF 5:**
  - (b) described in a row of **table 011:** ASC credits. 25

*Policyholder credits*

- (7) A credit is a **policyholder credit** if it is an amount,—
- (a) for a PCA company,— 30
    - (i) set out in any of **sections OA 7 and OJ 3 to OJ 7:**
    - (ii) described in a row of **table 013:** policyholder credits:
  - (b) for a PCA person,— 35
    - (i) set out in any of **sections OA 7, OJ 14, and OJ 15:**
    - (ii) described in a row of **table 015:** person's policyholder credits:
  - (c) for a consolidated group with a policyholder credit account,—
    - (i) set out in any of **sections OA 7 and OP 110 to OP 114:**

- (ii) described in a row of **table 027**: policyholder credits of consolidated groups.

*Maori authority credits*

- (8) A credit is a **Maori authority credit** if it is an amount—
- (a) set out in any of **sections OA 7 and OK 2 to OK 9**: 5
- (b) described in a row of **table 017**: Maori authority credits.
- Defined in this Act: amount, ASC credit, BETA company, BETA person, branch equivalent tax credit, CTR credit, consolidated BETA group, consolidated FDP group, consolidated group, consolidated imputation group, FDP credit, imputation credit, Maori authority credit, memorandum account, PCA company, PCA person, policyholder credit 10

**OA 6 Debits**

*What this section does*

- (1) This section defines the debits that arise under this Part in a memorandum account. 15

*Imputation debits*

- (2) A debit is an **imputation debit** if it is an amount—
- (a) set out in any of **sections OA 7, OB 30 to OB 59, OP 28 to OP 50, and OZ 3**: 20
- (b) described in a row of **table 02**: imputation debits or **table 020**: imputation debits of consolidated imputation groups.

*FDP debits*

- (3) A debit is an **FDP debit** if it is an amount—
- (a) set out in any of **sections OA 7, OC 13 to OC 26, and OP 64 to OP 77**: 25
- (b) described in a row of **table 04**: FDP debits or **table 022**: FDP debits of consolidated FDP groups.

*CTR debits*

- (4) A debit is a **CTR debit** if it is an amount— 30
- (a) set out in any of **sections OA 7, OD 10 to OD 19, and OP 87 to OP 94**:
- (b) described in a row of **table 06**: CTR debits or **table 024**: CTR debits of consolidated groups.

*Branch equivalent tax debits*

- (5) A debit is a **branch equivalent tax debit** if it is an amount,— 35

- (a) for a BETA company,—
- (i) set out in any of **sections OA 7 and OE 12 to OE 16:**
  - (ii) described in a row of **table 08:** branch equivalent tax debits:
- (b) for a BETA person,— 5
- (i) set out in any of **sections OA 7 and OE 20 to OE 22:**
  - (ii) described in a row of **table 010:** person's branch equivalent tax debits:
- (c) for a consolidated BETA group,—
- (i) set out in any of **sections OA 7 and OP 105 to OP 108:** 10
  - (ii) described in a row of **table 026:** branch equivalent tax debits of consolidated BETA groups.
- ASC debits*
- (6) A debit is an **ASC debit** if it is an amount—
- (a) set out in **section OA 7 or OF 6:** 15
  - (b) described in a row of **table 012:** ASC debits.
- Policyholder debits*
- (7) A debit is a **policyholder debit** if it is an amount,—
- (a) for a PCA company,—
    - (i) set out in any of **sections OA 7 and OJ 8 to OJ 11:** 20
    - (ii) described in a row of **table 013:** policyholder debits:  - (b) for a PCA person,—
    - (i) set out in any of **sections OA 7 and OJ 16 to OJ 18:**
    - (ii) described in a row of **table 016:** person's policyholder debits: 25  - (c) for a consolidated group with a policyholder credit account,—
    - (i) set out in any of **sections OA 7, OP 115, and OP 116:**
    - (ii) described in a row of **table 028:** policyholder debits of consolidated groups. 30
- Maori authority debits*
- (8) A debit is a **Maori authority debit** if it is an amount—
- (a) set out in any of **sections OA 7 and OK 10 to OK 18:**
  - (b) described in a row of **table 018:** Maori authority debits. 35
- Defined in this Act: amount, ASC debit, BETA company, BETA person, branch equivalent tax debit, CTR debit, consolidated BETA group, consolidated FDP group, consolidated group, consolidated imputation group, FDP debit, imputation debit, Maori authority debit, memorandum account, PCA company, PCA person, policyholder debit 40

### *Opening balances*

#### **OA 7 Opening balances of memorandum accounts**

##### *Balances carried forward*

- (1) The opening balance of a memorandum account at the start of a tax year or income year, as applicable, is the closing balance of the account in the previous tax year or income year, as applicable. 5

##### *Credit date*

- (2) The credit date or debit date for an opening balance is,—
- (a) for an imputation credit account, the first day of the tax year: 10
  - (b) for an FDP account, the first day of the tax year:
  - (c) for CTR account, the first day of the tax year:
  - (d) for branch equivalent tax account—
    - (i) of a BETA company, the first day of the tax year; 15
    - or
    - (ii) of a BETA person, the first day of the income year; or
    - (iii) of a consolidated BETA group, the first day of the tax year: 20
  - (e) for an ASC account, the first day of the tax year:
  - (f) for a policyholder credit account—
    - (i) of a PCA company, the first day of the tax year; or
    - (ii) of a PCA person, the first day of the income year; 25
    - or
    - (iii) of a consolidated group, the first day of the tax year:
  - (g) for a Maori authority credit account, the first day of the tax year. 30

##### *First year*

- (3) If a consolidated group, company, or person starts a memorandum account during a tax year, no credit for an opening balance arises in the account. But this subsection does not apply— 35
- (a) when the companies of 2 or more consolidated imputation groups choose to combine to form, or to join, an

- imputation group, for which *see* **section OP 3(2)** (Changes in consolidated imputation groups):
- (b) when the companies that are part of an imputation group choose to convert their status to that of a consolidated group that is a consolidated imputation group, for which *see* **section OP 3(3)**: 5
- (c) to a resident imputation subgroup associated with a trans-Tasman imputation group, for which *see* **section OP 4** (Resident imputation subgroups). 10
- Defined in this Act: ASC account, BETA company, BETA person, branch equivalent tax account, company, CTR account, consolidated BETA account, consolidated group, consolidated imputation group, FDP account, imputation credit account, imputation group, income year, Maori authority credit account, memorandum account, PCA company, PCA person, policyholder credit account, resident imputation subgroup, tax year, trans-Tasman imputation group 15
- Compare: 2004 No 35 ss ME 3(2), ME 10(1A)–(1C), (2), ME 17(2), ME 22(2), ME 26(1), MF 3(2), MF 8(1), MF 12(2), MG 3(2), MG 13(3), MI 3(2), MI 15, MJ 3(2), MK 3(2)

### *Shareholder continuity requirements*

- OA 8 Shareholder continuity requirements for memorandum accounts** 20
- When this section applies*
- (1) This section applies when a company or a consolidated group maintains a memorandum account.
- Shareholder continuity requirement* 25
- (2) An amount that is a credit in the account may be carried forward from a credit date to a later time only if the company or consolidated group that has the credit maintains a 66% continuity of shareholding under **subsection (7)** from the credit date to the later time. **Subsections (4) and (5)** override this subsection. 30
- Continuity*
- (3) A credit is treated as continuing to exist to the extent to which it is not reduced by an earlier or later debit arising in the account. 35
- Exclusions: ASC accounts and policyholder credit accounts*
- (4) **Subsection (2)** does not apply to an ASC account or a policyholder credit account.

*Modification: CTR accounts*

- (5) The general rule in **subsection (2)** is modified by **section OD 16** (CTRA increase in resident shareholding) for CTR accounts.

*When continuity lost*

- (6) For a memorandum account and for a company or consolidated group that maintains the account when the continuity of shareholding required by **subsection (7)** is lost, a debit arises under the relevant section in each subpart only to the extent to which an unused amount of credit remains in the memorandum account. The relevant sections are—
- (a) **section OB 41** (ICA debit for loss of shareholder continuity):
  - (b) **section OC 24** (FDPA debit for loss of shareholder continuity):
  - (c) **section OE 15** (BETA debit for loss of shareholder continuity):
  - (d) **section OK 15** (MACA debit for loss of shareholder continuity):
  - (e) **section OP 42** (Consolidated ICA debit for loss of shareholder continuity):
  - (f) **section OP 73** (Consolidated FDPA debit for loss of shareholder continuity):
  - (g) **section OP 108** (Consolidated BETA debit for loss of shareholder continuity).

*Shareholder continuity requirement*

- (7) The shareholder continuity requirement is that, while some or all of the credit still exists, a group of persons must continue to hold—
- (a) aggregate minimum voting interests in a company or consolidated group of at least 66%; or
  - (b) if a market value circumstance exists for a company or, in the case of a consolidated group, a group company, aggregate minimum market value interests in the company or group of at least 66%.

*Modifications*

- (8) The following rules apply for the purposes of **subsection (7)**:

- (a) the minimum interest referred to in **subsection (7)(a) or (b)** of a person must be counted if their interests change after the credit arises; and
- (b) a credit retains its separate character and is not treated as part of a credit referred to in **section OA 7** in a later tax year; and 5
- (c) the amount by which a credit is reduced by an earlier or later debit is found by—
  - (i) treating debits as reducing credits in the order in which credits arise; and 10
  - (ii) counting an amount of a debit only once in the reduction of some or all of a credit; and
  - (iii) applying any relevant terminating modifications set out in **section OZ 4** (Terminating modifications to debits for loss of shareholder continuity) for a credit arising before 1 April 1992. 15

Defined in this Act: amount, ASC account, branch equivalent tax account, company, CTR account, consolidated group, FDP account, group of persons, imputation credit account, Maori authority credit account, market value circumstance, market value interest, memorandum account, minimum market value interest, minimum voting interest, policyholder credit account, shareholder, tax year, voting interest 20

Compare: 2004 No 35 ss ME 5(3), ME 12(1)(h), ME 13(2), (4), MF 4(5), MF 8(4), MG 15(1), MI 5(3)–(7), MI 18(1)(e), (3), (4), MK 5(3), (4)

### ***Treatment of credits and debits on resident's restricted amalgamation*** 25

#### *General provision*

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

*When this section applies*

- (1) This section applies— 30
  - (a) on a resident's restricted amalgamation, in relation to an amalgamated company and a memorandum account, if an amalgamating company ends its existence on the amalgamation and, at the time of the amalgamation, the amalgamating company maintains 1 or more memorandum accounts; and 35
  - (b) for the purposes of **section OA 8(7)(b) and (8)** in determining at a time after the amalgamation whether continuity of shareholding exists for a credit or debit in a memorandum account referred to in **section OA 2(1)(a) to (d) and (f)**. 40



*Treatment of pre-amalgamation credits and debits*

- (2) A credit or debit recorded in the memorandum account of the amalgamating company before the date of the amalgamation is treated as if it were recorded in the same type of account of the amalgamated company on the date it was recorded in the amalgamating company's account. 5

*Avoidance provisions*

- (3) For the purposes of determining the credits and debits in the memorandum account of an amalgamating company, **sections GB 34, GB 40, and GB 41** (which relate to arrangements to defeat the application of certain provisions) apply, modified as necessary. 10

Defined in this Act: amalgamated company, amalgamating company, consolidated group, memorandum account, resident's restricted amalgamation

Compare: 2004 No 35 ss ME 29(1)(a), MF 16(1)(a), MG 17(1)(a), MI 13 15

*When companies amalgamate***OA 10 Memorandum accounts on resident's restricted amalgamation***When this section applies*

- (1) This section applies on a resident's restricted amalgamation if, at the time of the amalgamation, an amalgamating company maintains— 20
- (a) an imputation credit account:
  - (b) an FDP account:
  - (c) a CTR account: 25
  - (d) a branch equivalent tax account:
  - (e) a policyholder credit account.

*Credits and debits due*

- (2) A credit or a debit due to the amalgamating company but not recorded in its memorandum account before the date of amalgamation is recorded in the same type of memorandum account of the amalgamated company. **Subsections (3) and (4)** override this subsection. 30

*Exclusion: shareholder continuity rules*

- (3) **Subsection (2)** does not apply to— 35

- (a) a debit for loss of shareholder continuity in an imputation credit account arising under **section OB 41** (ICA debit for loss of shareholder continuity) and described in **table O2: imputation debits, row 14** (debit for loss of shareholder continuity): 5
- (b) a debit for an increase in resident shareholding in a CTR account arising under **section OD 16** (CTRA increase in resident shareholding) and described in **table O6: CTR debits, row 8** (increase in resident shareholding): 10
- (c) a credit or debit in a branch equivalent tax account arising—
- (i) under **section OE 10** (BETA credit for loss of shareholder continuity) and described in **table O7: branch equivalent tax credits, row 5** (credit for loss of shareholder continuity); and 15
- (ii) under **section OE 15** (BETA debit for loss of shareholder continuity) and described in **table O8: branch equivalent tax debits, row 5** (debit for loss of shareholder continuity).
- Recording in imputation credit account* 20
- (4) If the amalgamated company does not maintain a memorandum account referred to in **subsection (1)(b), (c), and (e)**, the credit or debit is recorded in the imputation credit account of the amalgamated company. *See sections OA 11 to OA 13.*
- Defined in this Act: amalgamated company, amalgamating company, branch equivalent tax account, CTR account, FDP account, imputation credit, imputation credit account, imputation debit, memorandum account, policyholder credit account, resident's restricted amalgamation 25
- Compare: 2004 No 35 ss ME 29(1), MF 16(1), MG 17(1), MI 13
- OA 11 FDP account on resident's restricted amalgamation** 30
- When this section applies*
- (1) This section applies on a resident's restricted amalgamation if—
- (a) an amalgamating company ends its existence on amalgamation; and 35
- (b) at the time of amalgamation, the company maintains an FDP account; and
- (c) the amalgamated company does not maintain an FDP account.

*Credits and debits due*

- (2) A credit or a debit due to the amalgamating company for the purposes of the FDP account but not recorded before the date of amalgamation is recorded in the imputation credit account of the amalgamated company, as appropriate,— 5
- (a) under **section OB 24** (ICA credit on resident's restricted amalgamation) as described in **table 01**: imputation credits, row 22 (credit on resident's restricted amalgamation); or
- (b) under **section OB 53** (ICA debit on resident's restricted amalgamation) as described in **table 02**: imputation debits, row 26 (debit on resident's restricted amalgamation). 10
- Defined in this Act: amalgamated company, amalgamating company, FDP account, imputation credit account, resident's restricted amalgamation 15
- Compare: 2004 No 35 s MG 17(1)

**OA 12 CTR account on resident's restricted amalgamation***When this section applies*

- (1) This section applies on a resident's restricted amalgamation if— 20
- (a) an amalgamating company ends its existence on amalgamation; and
- (b) at the time of amalgamation, the company maintains a CTR account; and
- (c) the amalgamated company does not maintain a CTR account. 25

*Credits and debits due*

- (2) A credit or a debit due to the amalgamating company for the purposes of the CTR account but not recorded before the date of amalgamation, is recorded in the imputation credit account of the amalgamated company, as appropriate,— 30
- (a) under **section OB 24** (ICA credit on resident's restricted amalgamation) as described in **table 01**: imputation credits, row 22 (credit on resident's restricted amalgamation); or 35

- (b) under **section OB 53** (ICA debit on resident's restricted amalgamation) as described in **table 02**: imputation debits, row 26 (debit on resident's restricted amalgamation).

Defined in this Act: amalgamated company, amalgamating company, CTR account, imputation credit account, resident's restricted amalgamation

5

Compare: 2004 No 35 s MI 13(6)

### **OA 13 Policyholder credit account on resident's restricted amalgamation**

*When this section applies*

10

- (1) This section applies on a resident's restricted amalgamation if—

- (a) an amalgamating company ends its existence on amalgamation; and  
 (b) at the time of amalgamation, the company maintains a policyholder credit account; and  
 (c) the amalgamated company does not maintain a policyholder credit account.

15

*Credits and debits due*

- (2) A credit or a debit due to the amalgamating company for the purposes of the policyholder credit account but not recorded in the account before the date of amalgamation, is recorded in the imputation credit account of the amalgamated company, as appropriate,—

20

- (a) under **section OB 24** (ICA credit on resident's restricted amalgamation) as described in **table 01**: imputation credits, row 22 (credit on resident's restricted amalgamation); or  
 (b) under **section OB 53** (ICA debit on resident's restricted amalgamation) as described in **table 02**: imputation debits, row 26 (debit on resident's restricted amalgamation).

25

30

Defined in this Act: amalgamated company, amalgamating company, imputation credit account, policyholder credit account, resident's restricted amalgamation

Compare: 2004 No 35 s ME 29(1)

35

*Amalgamation of companies in consolidated groups***OA 14 Continuity of shareholding when group companies amalgamate***What this section does*

- (1) This section and **sections OA 15 to OA 17** apply when all the companies in a consolidated group or consolidated imputation group amalgamate on a resident's restricted amalgamation, and the amalgamation results in—
- (a) the end of the group's existence; and
  - (b) the formation of an amalgamated company.

*Other company*

- (2) The amalgamation may include a company that is not part of the consolidated group or consolidated imputation group.

*Continuity of shareholding: credits and debits*

- (3) **Subsection (4)** applies for the purposes of **section OA 8(7)(b) and (8)** in determining at a time after the resident's restricted amalgamation whether continuity of shareholding exists for a credit or debit in a memorandum account referred to in **section OA 2(1)(a), (b), (d) and (f)**.

*Treatment of pre-amalgamation credits and debits*

- (4) A credit or debit recorded in the memorandum account of the consolidated group before the date of the amalgamation is treated as if it were recorded in the same type of account of the amalgamated company on the date it was recorded in the consolidated group's account. For this purpose, voting interests in the consolidated group from that time are treated as if they were the only voting interests in the amalgamated company.

*Avoidance provisions*

- (5) For the purposes of determining the credits and debits in the memorandum account of a consolidated group, **sections GB 34, GB 40, and GB 41** (which relate to arrangements to defeat the

application of certain provisions) apply, modified as necessary.

Defined in this Act: amalgamated company, company, consolidated group, consolidated imputation group, memorandum account, resident's restricted amalgamation, shareholder, voting interest

5

Compare: 2004 No 35 ss ME 29(2)(a), MF 16(2)(a), MG 17(2)(a)

## OA 15 When credits or debits due but not recorded

### *When this section applies*

- (1) This section applies on a resident's restricted amalgamation referred to in **section OA 14** when, at the time of the amalgamation, a consolidated group maintains— 10
- (a) an imputation credit account:
  - (b) an FDP account:
  - (c) a branch equivalent tax account:
  - (d) a policyholder credit account. 15

### *Credits and debits due*

- (2) A credit or a debit due to the consolidated group but not recorded in its account before the date of amalgamation is recorded in the same type of memorandum account of the amalgamated company. **Subsections (3) and (4)** override this subsection. 20

### *Exclusion: shareholder continuity rules*

- (3) **Subsection (2)** does not apply to—
- (a) a debit for loss of shareholder continuity in an imputation credit account arising under **section OP 42** (Consolidated ICA debit for loss of shareholder continuity) and described in **table 020**: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity): 25
  - (b) a debit for an increase in resident shareholding in a CTR account arising under **section OP 91** (Consolidated CTRA increase in resident shareholding) and described in **table 024**: CTR debits of consolidated groups, row 6 (increase in resident shareholding): 30
  - (c) a credit or debit in a branch equivalent tax account arising— 35
    - (i) under **section OP 104** (Consolidated BETA credit for loss of shareholder continuity) and described

- in **table 025**: branch equivalent tax credits, row 5 (credit for loss of shareholder continuity); and
- (ii) under **section OP 108** (Consolidated BETA debit for loss of shareholder continuity) and described in **table 026**: branch equivalent tax debits, row 5 (debit for loss of shareholder continuity). 5

*Recording in imputation credit account*

- (4) If the amalgamated company does not maintain a memorandum account referred to in **subsection (1)(b) or (d)**, the credit or debit is recorded in the imputation credit account of the amalgamated company. See **sections OA 16 and OA 17**. 10

Defined in this Act: amalgamated company, branch equivalent tax account, CTR account, consolidated group, FDP account, imputation credit account, policyholder credit account, resident's restricted amalgamation, shareholder, voting interest

Compare: 2004 No 35 ss ME 29(2)(b), MF 16(2)(b), MG 17(2)(b) 15

**OA 16 When FDP account ends on resident's restricted amalgamation**

*When this section applies*

- (1) This section applies on a resident's restricted amalgamation referred to in **section OA 14** if— 20
- (a) a consolidated group ends its existence on amalgamation; and
- (b) at the time of amalgamation, the consolidated group maintains an FDP account; and
- (c) the amalgamated company does not maintain an FDP account. 25

*Credits and debits due*

- (2) A credit or a debit due to the group but not recorded before the date of amalgamation is recorded in the imputation credit account of the amalgamated company, as appropriate,— 30
- (a) under **section OB 24** (ICA credit on resident's restricted amalgamation) as described in **table 01**: imputation credits, row 23 (credit on resident's restricted amalgamation); or

- (b) under **section OB 53** (ICA debit on resident's restricted amalgamation) as described in **table 02**: imputation debits, row 26 (debit on resident's restricted amalgamation).

Defined in this Act: amalgamated company, consolidated group, FDP account, imputation credit account, resident's restricted amalgamation, shareholder

5

Compare: 2004 No 35 s MF 17(2)(b)

### **OA 17 When policyholder credit account ends on resident's restricted amalgamation**

*When this section applies*

10

- (1) This section applies on a resident's restricted amalgamation referred to in **section OA 14** if,—

- (a) a consolidated group ends its existence on amalgamation; and  
 (b) at the time of amalgamation, the consolidated group maintains a policyholder credit account; and  
 (c) the amalgamated company does not maintain a policyholder credit account.

15

*No policyholder credit account*

- (2) A credit or a debit due to the group but not recorded before the date of amalgamation is recorded in the imputation credit account of the amalgamated company, as appropriate,—

20

- (a) under **section OB 24** (ICA credit on resident's restricted amalgamation) as described in **table 01**: imputation credits, row 22 (credit on resident's restricted amalgamation); or  
 (b) under **section OB 53** (ICA debit on resident's restricted amalgamation) as described in **table 02**: imputation debits, row 26 (debit on resident's restricted amalgamation).

25

30

Defined in this Act: amalgamated company, amalgamating company, consolidated group, imputation credit account, policyholder credit account, resident's restricted amalgamation

Compare: 2004 No 35 s ME 29(2)



*Maximum permitted ratios*

**OA 18 Calculation of maximum permitted ratios**

*When this section applies*

- |     |  |    |
|-----|--|----|
| (1) | This section applies in relation to an imputation credit, an FDP credit, a CTR credit, and a Maori authority credit, for the purposes of the calculation of— | 5  |
|     | (a) an imputation ratio; and   |    |
|     | (b) an FDP ratio; and  |    |
|     | (c) a combined imputation and FDP ratio; and   |    |
|     | (d) a CTR ratio; and   | 10 |
|     | (e) a combined imputation and CTR ratio; and   |    |
|     | (f) a Maori authority credit ratio.  |    |

*Maximum permitted ratio*

- |     |  |    |
|-----|--|----|
| (2) | A dividend or distribution with a credit attached must not have a ratio for the amount of the credit to the amount of the dividend or distribution that is more than the maximum permitted ratio calculated using the formula— | 15 |
|-----|--|----|

$$\frac{\text{tax rate}}{1 - \text{tax rate}}$$

*Definition of item in formula*

- |     |  |    |
|-----|--|----|
| (3) | In the formula, <b>tax rate</b> is the basic rate of income tax set out in <b>schedule 1, part A, clause 2</b> (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year corresponding to the tax year in which the dividend or distribution is paid. | 20 |
|-----|--|----|

Defined in this Act: amount, basic rate, combined imputation and CTR ratio, combined imputation and FDP ratio, CTR credit, dividend, FDP credit, imputation credit, income tax, income year, Maori authority credit ratio, maximum permitted ratio, tax year

Compare: 2004 No 35 ss ME 8(1), MG 8(1), MG 10(1), MI 8(1), MK 7(1) 30

**Subpart OB—Imputation credit accounts**

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**OB 1 General rules for companies with imputation credit accounts**

*New Zealand resident*

- |     |   |    |
|-----|---|----|
| (1) | A company that is resident in New Zealand (the <b>ICA company</b> ) must establish and maintain an imputation credit account for a tax year. <b>Subsections (2) and (3)</b> override this subsection. | 20 |
|-----|---|----|

*Exclusions*

- |       |  |    |
|-------|--|----|
| (2)   | A company that is resident in New Zealand is excluded from being an ICA company if it is—  | 25 |
| (a)   | a company that—  |    |
| (i)   | is also resident in another country, except for a company referred to in <b>subsection (3)</b> ; or  |    |
| (ii)  | is acting in the capacity of trustee of a group investment fund to which <b>paragraph (c)</b> of the definition of <b>company</b> in <b>section YA 1</b> (Definitions) applies; or | 30 |
| (iii) | has a constitution that prohibits a distribution to a shareholder; or  |    |
| (iv)  | derives only exempt income other than income exempt under <b>sections CW 9 to CW 11</b> (which relate to income from equity); or   | 35 |

- (v) has income not completely subject to tax because of the application of a double tax agreement for whose purposes the company is treated as not being resident in New Zealand; or
- (b) a Maori authority; or 5
- (c) a local authority; or
- (d) a Crown Research Institute; or
- (e) a subsidiary of the Accident Compensation Corporation affected by section 266 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, or section 334(1) of the Accident Insurance Act 1998. 10

*Exception to subsection (2): New Zealand and Australian resident*

- (3) Despite being excluded under **subsection (2)(a)(i)**, a company that is resident in both New Zealand and Australia may choose to be an Australian ICA company if it meets the requirements of **section OB 2**. 15

Defined in this Act: Australian ICA company, company, Crown Research Institute, double tax agreement, exempt income, group investment fund, ICA company, imputation credit account, income, local authority, Maori authority, New Zealand, resident in Australia, resident in New Zealand, shareholder, tax, tax year, trustee 20

Compare: 2004 No 35 s ME 1

## **OB 2 Australian companies with imputation credit accounts**

*When this section applies*

- (1) This section applies when a company that is resident in both New Zealand and Australia chooses under **section OB 1(3)** to be an Australian ICA company. 25

*Ineligibility*

- (2) Despite meeting the residency requirements, a company is not eligible to make an election referred to in **subsection (1)** if— 30
  - (a) the company—
    - (i) is a company referred to in **section OB 1(2)(a)(ii) to (iv), and (c) to (e)**; or
    - (ii) is treated by a double tax agreement as resident in a country other than New Zealand or Australia for a taxation purpose in New Zealand or Australia; or 35
  - (b) an earlier election has been revoked by the Commissioner under **subsection (7)(b)**, and the company has not

shown the Commissioner that it has taken adequate steps to prevent the grounds of revocation occurring again.

*Election, and when status starts*

- (3) The election is made by notifying the Commissioner, and the company must maintain an imputation credit account from the following date, as applicable:
- (a) the first day of the tax year in which the Commissioner is notified:
  - (b) if **section OB 60** applies, 30 days after the date on which Commissioner receives the notice.

*Joint and several liability*

- (4) A company that is part of the same wholly-owned group of companies as an Australian ICA company may have joint and several liability with the Australian ICA company for further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 imposed on the Australian ICA company for a breach by the Australian ICA company of the imputation rules.

*Exclusion*

- (5) Despite **subsection (4)**, no joint and several liability arises if the Australian ICA company is prohibited by an independent regulatory body from being subject to the liability.

*Dividend in Australian currency*

- (6) An Australian ICA company that pays a dividend in Australian currency must make a currency conversion under **section OB 60(7)**.

*How status ends*

- (7) A company ends its status as an Australian ICA company if—
- (a) the company revokes the election by notifying the Commissioner; or
  - (b) the Commissioner gives the company notice revoking the election.

*When status ends*

- (8) For the purposes of **subsection (7)**, the company ends its status as an Australian ICA company—
- (a) from the day on which the relevant circumstance of ineligibility in **subsection (2)** applies; or 5
  - (b) unless **paragraph (c)** applies, from the last day of the tax year in which the company or the Commissioner revokes the election; or
  - (c) for the purposes of **section OB 60**,—
    - (i) when the company notifies the Commissioner, on the date on which the Commissioner receives the notice; or 10
    - (ii) on the date set out in the Commissioner’s notice.

*Outstanding obligations*

- (9) A company that stops being an Australian ICA company for a tax year must nevertheless satisfy all obligations that the company had as an Australian ICA company. 15

Defined in this Act: Australian ICA company, Commissioner, company, dividend, double tax agreement, further income tax, imputation credit account, imputation rules, income, New Zealand, notice, notify, pay, resident in Australia, resident in New Zealand, tax year, wholly-owned group of companies 20

Compare: 2004 No 35 s ME 1A

**OB 3 Imputation credit accounts***General rules*

- (1) The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to an imputation credit account of an ICA company. 25

*Consolidated imputation groups*

- (2) Under **section OP 2** (When credits and debits arise only in group accounts), certain credits and debits do not arise in an ICA company’s memorandum account if the company is part of a consolidated imputation group. 30

Defined in this Act: consolidated imputation group, ICA company, imputation credit account, memorandum account 35

Compare: 2004 No 35 s ME 13(1)

*Imputation credits***OB 4 ICA payment of tax***Credit*

- (1) An ICA company has an imputation credit for an amount of income tax or provisional tax paid. **Subsection (3)** overrides this subsection. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 2 (payment of tax).

*No credit*

- (3) An ICA company does not have an imputation credit for an amount of— 10
- (a) a transfer from a tax pooling account to a tax account with the Commissioner; or
  - (b) income tax paid on income derived when the company is not an ICA company; or 15
  - (c) income tax paid by a life insurer subject to **section EY 48** (Non-resident life insurers with life insurance policies in New Zealand) to satisfy its policyholder base income tax liability; or 20
  - (d) income tax paid under **sections LA 2 and LE 1** (which relate to tax credits for imputation credits and their use) by crediting an imputation credit; or
  - (e) income tax paid under **sections LA 2 and LF 1** (which relate to tax credits for FDP credits and their use) by crediting an FDP credit; or 25
  - (f) income tax paid by a tax credit under **subpart LP** (Tax credits for supplementary dividends); or
  - (g) further income tax applied under **section OB 69** to pay income tax or provisional tax; or 30
  - (h) income tax paid under **section OE 7** (BETA payment of income tax) by crediting a branch equivalent tax credit; or
  - (i) income tax paid as a trustee, unless paid on category A income as described in **paragraph (c)** of the definition of **company** in **section YA 1** (Definitions). 35



*Credit date*

- (4) The credit date is the day the tax is paid.

*Limitation on credits*

- (5) No amount may give rise to more than 1 imputation credit.

Defined in this Act: amount, branch equivalent tax account, category A income, Commissioner, company, tax credit, FDP credit, further income tax, ICA company, imputation credit, imputation credit account, income, income tax, life insurer, pay, policyholder base income tax liability, provisional tax, tax account with the Commissioner, tax pooling account, tax year, trustee

5

Compare: 2004 No 35 s ME 4(1)(a), (1C), (2)(a)

10

**OB 5 ICA deposit in tax pooling account***Credit*

- (1) An ICA company has an imputation credit for an amount provided by it and paid by an intermediary into a tax pooling account.

15

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 3 (deposit in tax pooling account)**.

*Credit date*

- (3) The credit date is the day the amount is deposited.

20

Defined in this Act: amount, ICA company, imputation credit, imputation credit account, intermediary, pay, tax pooling account

Compare: 2004 No 35 s ME 4(1)(ac), (2)(ac)

**OB 6 ICA transfer from tax pooling account***Credit*

25

- (1) An ICA company has an imputation credit for an amount that represents an entitlement to funds held in a tax pooling account and transferred by an intermediary to the company's tax account with the Commissioner or refunded to the company.

30

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 4 (transfer from tax pooling account)**.

*Credit date*

- (3) The credit date is—
- (a) the effective date under **sections RP 19 and RP 20** (which relate to transfers from tax pooling account) if the amount is transferred to the company's tax account with the Commissioner; or 5
- (b) the day the refund is made to the company.

Defined in this Act: amount, Commissioner, ICA company, imputation credit, intermediary, tax account with the Commissioner, tax pooling account

Compare: 2004 No 35 s ME 4(1)(ad), (2)(ad) 10

**OB 7 ICA payment of further income tax***Credit*

- (1) An ICA company has an imputation credit for an amount of further income tax paid under **section OB 65 or OB 66**.

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 5** (payment of further income tax). 15

*Credit date*

- (3) The credit date is the day the further income tax is paid. 20

Defined in this Act: amount, further income tax, ICA company, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(c), (2)(a)

**OB 8 ICA RWT withheld***Credit*

- (1) An ICA company has an imputation credit for RWT that is treated under **section RA 9(b)** (Treatment of amounts withheld as received) as derived by the company. 25

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 6** (amount of tax withheld for resident passive income). 30

*Credit date*

- (3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount, amount of tax, ICA company, imputation credit, resident passive income

Compare: 2004 No 35 s ME 4(1)(i), (2)(g)

5

**OB 9 ICA dividend derived with imputation credit***Credit*

- (1) An ICA company has an imputation credit for the amount of an imputation credit attached to a dividend derived by the company.

10

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 7 (dividend derived with imputation credit).

*Credit date*

15

- (3) The credit date is the day the dividend is paid to the company.

Defined in this Act: amount, dividend, ICA company, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(d), (2)(c)

**OB 10 ICA dividend derived with FDP credit***Credit*

20

- (1) An ICA company has an imputation credit for the amount of an FDP credit attached to a dividend derived by the company when it is not an FDP company.

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 8 (dividend derived with FDP credit).

25

*Credit date*

- (3) The credit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDP company, ICA company, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(e), (2)(c)

30

**OB 11 ICA payment of FDP***Credit*

- (1) An ICA company has an imputation credit for an amount of FDP paid when the company is not an FDPA company. **Subsection (3)** overrides this subsection. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 9 (payment of FDP).

*No credit*

- (3) No credit arises for a liability for FDP that is satisfied under **section RG 6** (Using loss balances) by reducing a tax loss. 10

*Credit date*

- (4) The credit date is the day the FDP is paid.

Defined in this Act: amount, FDP, FDPA company, ICA company, imputation credit, pay, tax loss 15

Compare: 2004 No 35 s ME 4(1)(f), (2)(d)

**OB 12 ICA transfer from FDP account***Credit*

- (1) An ICA company has an imputation credit for an amount equal to the amount of an FDP debit transferred from its FDP account under **section OC 18** (FDPA transfer to imputation credit account). 20

*Table references*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 10 (transfer from FDP account). The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 7 (transfer to imputation credit account). 25

*Credit date*

- (3) The credit date is the day the amount is transferred.

Defined in this Act: amount, FDP account, FDP debit, ICA company, imputation credit 30

Compare: 2004 No 35 s ME 4(1)(g), (2)(e)

## OB 13 ICA transfer of debit balance on leaving wholly-owned group

### *Election*

- (1) If the requirements of **subsections (2) and (4)** are met, an ICA company may choose to transfer a debit balance in its imputation credit account when the company stops being part of a wholly-owned group of companies. 5

### *Eligibility*

- (2) The company may make an election under **subsection (1)** if, at a particular time,— 10
- (a) the company is or has recently been part of a wholly-owned group of companies; and
  - (b) the company is no longer part of the group, or will shortly no longer be part of the group; and
  - (c) the company has a debit balance in its imputation credit account; and 15
  - (d) the group has a loss balance carried forward from previous tax years of more than \$1,000,000 for the income year before the particular time.

### *Credit and debit*

- (3) The company may choose that an amount of no more than the debit balance is— 20
- (a) an imputation credit under **section OB 13** in its imputation credit account; and
  - (b) an imputation debit under **section OB 44**, and referred to in **section OB 46**, in the imputation credit account of another company in the group after the date on which the company stops being part of the wholly-owned group. 25

### *Table references*

- (4) The imputation credit in **subsection (3)(a)** is referred to in **table O1: imputation credits**, row 11 (debit balance on leaving wholly-owned group). The imputation debit in **subsection (3)(b)** is referred to in **table O2: imputation debits**, row 17 (debit balance on leaving wholly-owned group). 30 35

### *Form and timing of election*

- (5) The company must make the election—

- (a) in a form that the Commissioner may require; and
- (b) with a notice of agreement from the group company in whose account the imputation debit arises under **subsection (3)(b)**; and
- (c) before the company stops being part of the wholly-owned group. 5

*Further time*

- (6) For the purposes of **subsection (5)(b)**, the Commissioner may allow further time in which to provide the notice if the company did not have sufficient information at the time it stops being part of the wholly-owned group. 10

*Credit date*

- (7) The credit date is the day the company stops being part of the wholly-owned group.

Defined in this Act: amount, Commissioner, company, ICA company, imputation credit, imputation credit account, imputation debit, income year, notice, tax loss, wholly-owned group of companies 15

Compare: 2004 No 35 ss ME 4(1)(cb), (2)(bb), ME 9B(1), (2)

**OB 14 ICA payment of tax on leaving wholly-owned group***Credit* 20

- (1) An ICA company has an imputation credit for a payment of imputation additional tax that it chooses to pay under **section OB 71**, excluding an excess tax payment applied under **section OB 71(8)**.

*Table reference* 25

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 12 (payment of tax on leaving wholly-owned group)**.

*Credit date*

- (3) The credit date is the day the imputation additional tax is paid to the Commissioner. 30

Defined in this Act: amount, Commissioner, excess tax payment, ICA company, imputation additional tax, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(cc), (2)(bc)

**OB 15 ICA payment of tax on joining wholly-owned group***Credit*

- (1) An ICA company has an imputation credit for a payment of imputation additional tax for which it is liable under **section OB 72**, excluding an excess tax payment applied under **section OB 72(9)**. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 13 (payment of tax on joining wholly-owned group)**. 10

*Credit date*

- (3) The credit date is the day the imputation additional tax is paid to the Commissioner.

Defined in this Act: amount, Commissioner, excess tax payment, ICA company, imputation additional tax, imputation credit, pay 15

Compare: 2004 No 35 s ME 4(1)(cd), (2)(bd)

**OB 16 ICA attribution for personal services***Credit*

- (1) An ICA company that is not an attributing company has an imputation credit for an amount equal to 49.25% of the personal services attribution under **section GB 29** (Attribution rule: calculation). 20

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 14 (attribution for personal services)**. 25

*Credit date*

- (3) The credit date is the last day of the tax year for which the attribution is made.

Defined in this Act: amount, attributing company, ICA company, imputation credit, imputation credit account, tax year 30

Compare: 2004 No 35 s ME 4(1)(ab), (2)(ab)

**OB 17 ICA transfer from policyholder credit account***Credit*

- (1) An ICA company has an imputation credit for an amount equal to the amount of a debit under **section OJ 9** (PCA transfer to imputation credit account) for a transfer of a credit balance from its policyholder credit account. 5

*Table references*

- (2) The imputation credit in **subsection (1)** is referred to in **table O1**: imputation credits, row 15 (transfer from policyholder credit account). The policyholder debit in **subsection (1)** is referred to in **table O14**: policyholder debits, row 3 (transfer to imputation credit account). 10

*Credit date*

- (3) The credit date is the day the amount is transferred. 15  
 Defined in this Act: amount, ICA company, imputation credit, policyholder credit account  
 Compare: 2004 No 35 s ME 4(1)(j), (2)(h)

**OB 18 ICA transfer from ASC account***Credit*

- (1) An ICA company has an imputation credit for the transfer of an amount from its ASC account. The amount is calculated under **section OF 6(3)** (ASCA transfer to imputation credit account). 20

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table O1**: imputation credits, row 16 (transfer from ASC account). 25

*Credit date*

- (3) The credit date is the day the amount is transferred. 30  
 Defined in this Act: amount, ASC account, ICA company, imputation credit, imputation credit account  
 Compare: 2004 No 35 s ME 4(1)(da), (2)(ca)



**OB 19 ICA transfer to master fund***Credit*

- (1) An ICA company has an imputation credit for the transfer of an amount to a master fund. The amount is calculated using the formula— 5
- $$\text{expenditure transferred} \times \text{tax rate.}$$

*Definition of items in formula*

- (2) In the formula,—
- (a) **expenditure transferred** is the amount of expenditure transferred under **sections DV 5 to DV 7** (which relate to the expenditure of investment funds) to the company as a master fund: 10
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 15

*Table reference*

- (3) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 17** (transfer to master fund).

*Credit date*

- (4) The credit date is the day the amount is transferred. 20
- Defined in this Act: amount, basic rate, ICA company, imputation credit, imputation credit account, income tax, master fund
- Compare: 2004 No 35 s ME 4(1)(aab), (2)(aab)

**OB 20 ICA distribution with Maori authority credit***Credit* 25

- (1) An ICA company has an imputation credit for the amount of a Maori authority credit attached to a distribution received by the company.

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 18** (distribution with Maori authority credit). 30

*Credit date*

- (3) The credit date is the day the distribution is paid.

Defined in this Act: amount, ICA company, imputation credit, Maori authority credit, pay

Compare: 2004 No 35 s ME 4(1)(ea), (2)(cb)

5

**OB 21 ICA balance of Maori authority credit account***Credit*

- (1) An ICA company has an imputation credit for an amount equal to the amount of a Maori authority debit under **section OK 18** (MACA final balance) when the Maori authority stops being a Maori authority.

10

*Table references*

- (2) The imputation credit in **subsection (1)** is referred to in **table O1**: imputation credits, row 19 (balance of Maori authority credit account). The Maori authority debit in **subsection (1)** is referred to in **table O18**: Maori authority debits, row 10 (final balance).

15

*Credit date*

- (3) The credit date is the same as the debit date recorded for the debit under **section OK 18**.

Defined in this Act: amount, ICA company, imputation credit, Maori authority, Maori authority debit

Compare: 2004 No 35 s ME 4(1)(k), (2)(k)

20

**OB 22 ICA replacement payment to company under share-lending arrangement***Credit*

- (1) An ICA company has an imputation credit for the amount of an imputation credit attached under **section OB 64**, or treated as attached under **section RE 25** (When amount of tax treated as imputation credit) to a replacement payment paid under a share-lending arrangement to the company.

25

30

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table O1**: imputation credits, row 20 (replacement payment under share-lending arrangement).

*Credit date*

- (3) The credit date is the day the replacement payment is paid.  
 Defined in this Act: amount, ICA company, imputation credit, pay, replacement payment, share-lending arrangement  
 Compare: 2004 No 35 s ME 4(1)(eb), (ec), (2)(cc)

5

**OB 23 ICA credit transfer to company***Credit*

- (1) An ICA company has an imputation credit for the amount of an imputation credit shown in a credit transfer notice given to the company.

10

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 21** (credit in credit transfer notice).

*Credit date*

- (3) The credit date is the day the notice is given.  
 Defined in this Act: amount, credit transfer notice, ICA company, imputation credit  
 Compare: 2004 No 35 s ME 4(1)(ed), (2)(cd)

15

**OB 24 ICA credit on resident's restricted amalgamation***Credit*

- (1) An ICA company has an imputation credit for the amount of a credit that arises on or after a resident's restricted amalgamation in the imputation credit account of the amalgamated company under 1 of the sections listed in **subsection (3)**.

20

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 22** (credit on resident's restricted amalgamation).

25

*Sections*

- (3) The sections are—  
 (a) **section OA 10** (Memorandum accounts on resident's restricted amalgamation) for imputation credits in the imputation credit account of an amalgamating company:

30

- (b) **section OA 11** (FDP account on resident's restricted amalgamation) for an FDP credit in the FDP account of an amalgamating company because the amalgamated company does not maintain an FDP account:
- (c) **section OA 12** (CTR account on resident's restricted amalgamation) for the CTR credits in the CTR account of an amalgamating company because the amalgamated company does not maintain a CTR account: 5
- (d) **section OA 13** (Policyholder credit account on resident's restricted amalgamation) for a policyholder credit in the policyholder credit account of an amalgamating company because the amalgamated company does not maintain a policyholder credit account: 10
- (e) **section OA 14** (Continuity of shareholding when group companies amalgamate) for imputation credits in the imputation credit account of a consolidated imputation group that ends its existence on the amalgamation: 15
- (f) **section OA 16** (When FDP account ends on resident's restricted amalgamation) for an FDP credit in the FDP account of a consolidated FDP group because the amalgamated company does not maintain an FDP account: 20
- (g) **section OA 17** (When policyholder credit account ends on resident's restricted amalgamation) for the policyholder credits in the policyholder credit account of a consolidated group because the company does not maintain a policyholder credit account. 25

Defined in this Act: amalgamated company, amalgamating company, amount, CTR account, CTR credit, consolidated FDP group, consolidated group, consolidated imputation group, FDP account, FDP credit, ICA company, imputation credit, imputation credit account, policyholder credit, policyholder credit account, resident's restricted amalgamation 30

Compare: 2004 No 35 ss ME 29, MG 17, MI 13

## **OB 25 ICA reversal of tax advantage arrangement**

*When this section applies*

- (1) This section applies when it is established that an imputation credit in an ICA company's imputation credit account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage. 35

*Credit*

- (2) The company has an imputation credit for an amount equal to the amount of a debit in the company's imputation credit account under **section OB 54**.

*Table references*

- (3) The imputation credit in **subsection (2)** is referred to in **table 01: imputation credits, row 23** (reversal of tax advantage arrangement). The imputation debit in **subsection (2)** is referred to in **table 02: imputation debits, row 27** (tax advantage arrangement). 5  
10

*Credit date*

- (4) The credit date is the same as the debit date of the debit under **section OB 54**.

Defined in this Act: amount, arrangement, ICA company, imputation credit, imputation credit account, imputation debit, tax advantage 15

Compare: 2004 No 35 s ME 4(1)(h), (2)(f)

**OB 26 ICA elimination of double debit***When this section applies*

- (1) This section applies when an imputation debit in an ICA company's imputation credit account under **section OB 41** has the effect of cancelling an imputation credit under **section OB 5**. 20

*Credit*

- (2) The company has an imputation credit under **section OB 26** for an amount equal to the amount of the debit referred to in **subsection (1)**, and either— 25
- (a) another debit arises under **section OB 34** for a refund of the amount of the deposit on a debit date after the debit date for the debit for loss of shareholder continuity; or
- (b) the deposit is taken into account under **section RP 19** (Transfers from tax pooling account) in determining the balance of the company's tax account with the Commissioner after the debit date for the debit for loss of shareholder continuity. 30

*Table references*

- (3) The table references are as follows: 35

- (a) the imputation debit in **subsection (1)** is referred to in **table 02**: imputation debits, row 14 (debit for loss of shareholder continuity):
- (b) the imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 3 (deposit in tax pooling account): 5
- (c) the imputation credit in **subsection (2)** is referred to in **table 01**: imputation credits, row 24 (elimination of double debit):
- (d) the imputation debit in **subsection (2)(a)** is referred to in **table 02**: imputation debits, row 6 (refund from tax pooling account). 10

*Credit date*

- (4) The credit date is the day—
  - (a) the deposit is refunded; or 15
  - (b) the credit arises in the company's tax account with the Commissioner.

Defined in this Act: amount, Commissioner, ICA company, imputation credit, imputation credit account, imputation debit, shareholder, tax account with the Commissioner 20

Compare: 2004 No 35 s ME 4(1A), (2A)

**OB 27 ICA NRWT withheld***Credit*

- (1) An Australian ICA company has an imputation credit for an amount of tax withheld by the company for non-resident passive income. 25

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 25 (NRWT withheld).

*Credit date*

- (3) The credit date is the day the amount of tax is withheld. 30

Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, non-resident passive income

Compare: 2004 No 35 s ME 4(1B)(a), (2B)(a)

**OB 28 ICA payment of amount of tax for schedular payment***Credit*

- (1) An Australian ICA company has an imputation credit for an amount equal to the amount of tax for a schedular payment paid to the company as a non-resident contractor. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 26** (amount of tax for schedular payment). 10

*Credit date*

- (3) The credit date is the day the amount of tax is withheld. 10

Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, non-resident contractor, pay, schedular payment

Compare: 2004 No 35 s ME 4(1B)(b), (2B)(b)

**OB 29 ICA payment of schedular income tax**

15

*Credit*

- (1) An Australian ICA company has an imputation credit for a payment of income tax relating to the company's schedular income tax liability for income derived under **section CR 3, CV 16, or CV 17** (which relate to non-resident insurers, shippers, and film renters). 20

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits, row 27** (payment of schedular income tax). 25

*Credit date*

- (3) The credit date is the day the schedular income tax is paid. 25

Defined in this Act: Australian ICA company, company, imputation credit, income, pay, schedular income

Compare: 2004 No 35 s ME 4(1B)(c), (2B)(c)

*Imputation debits***OB 30 ICA payment of dividend***Debit*

- (1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend paid by the company. 5

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 2** (payment of dividend).

*Debit date*

- (3) The debit date is the day the dividend is paid. 10

*Arrangement for dividend from another company*

- (4) **Section GB 37** (Arrangements for payment of dividends by other companies) may apply to treat an amount as a debit under this section.

Defined in this Act: amount, dividend, ICA company, imputation credit, imputation debit, pay 15

Compare: 2004 No 35 s ME 5(1)(a), (2)(a)

**OB 31 ICA allocation of provisional tax***Debit*

- (1) An ICA company has an imputation debit for an amount of provisional tax allocated by the company under **section RC 32** (Wholly-owned groups of companies) to an underpaid company. 20

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 3** (allocation of provisional tax). 25

*Debit date*

- (3) The debit date is the day the Commissioner is notified of the allocation.

Defined in this Act: amount, Commissioner, company, ICA company, imputation debit, notify, provisional tax 30

Compare: 2004 No 35 s ME 5(1)(d), (2)(d)



**OB 32 ICA refund of income tax***Debit*

- (1) An ICA company has an imputation debit for the amount of a refund of income tax paid to the company. **Subsection (3)** overrides this subsection. 5

*No debit*

- (2) A debit under **subsection (1)** does not include—
- (a) a refund of income tax paid for a period when the company was not an ICA company; or
  - (b) a refund of income tax paid before a debit arises under **section OB 41**, but only to the extent to which the amount of the refund is less than the amount of the debit; or 10
  - (c) a refund under **subpart LP** (Tax credits for supplementary dividends) because the supplementary dividend generating the refund was paid before a debit arises under **section OB 41**, but only to the extent to which the amount of the refund is less than the amount of the debit. 15

*Table references*

- (3) The table references are as follows:
- (a) the imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 4 (refund of income tax):** 20
  - (b) the imputation debit in **subsection (2)(b)** is referred to in **table 02: imputation debits, row 14 (debit for loss of shareholder continuity):**
  - (c) the imputation debit in **subsection (2)(c)** is referred to in **table 02: imputation debits, row 14 (debit for loss of shareholder continuity).** 25

*Part-year ICA company*

- (4) The amount of the debit that arises if the company is an ICA company for only part of a tax year is an amount calculated using the formula— 30

$$\frac{\text{ICA days}}{365} \times \text{refund.}$$

*Definition of items in formula* 35

- (5) In the formula,—
- (a) **ICA days** is the number of days in which the company is an ICA company:

(b) **refund** is the amount of the refund.

*Debit date*

(6) The debit date is the day the refund is made.

Defined in this Act: amount, company, ICA company, imputation debit, income tax, pay, shareholder, supplementary dividend, tax year

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Compare: 2004 No 35 s ME 5(1)(e), (2)(e)

**OB 33 ICA amount applied to pay other taxes**

*Debit*

(1) An ICA company has an imputation debit for an amount of overpaid income tax applied to pay an amount due under the Inland Revenue Acts. **Subsection (3)** overrides this subsection.

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*Table reference*

(2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 5** (amount applied to pay other taxes).

*No debit*

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(3) A debit under **subsection (1)** does not include an amount of overpaid income tax—

(a) applied to satisfy a liability for income tax or provisional tax; or

(b) relating to income tax paid before an imputation debit arises under **section OB 41 (table 02: imputation debits, row 14 (debit for loss of shareholder continuity))**, but only to the extent to which the amount of overpaid income tax is no more than the amount of the debit for loss of shareholder continuity.

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*Debit date*

(4) The debit date is the day the amount is applied.

Defined in this Act: amount, ICA company, imputation debit, income tax, Inland Revenue Acts, pay, provisional tax, shareholder

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Compare: 2004 No 35 s ME 5(1)(l), (2)(k)

**OB 34 ICA refund from tax pooling account**

*When this section applies*

(1) This section applies when an ICA company pays an intermediary an amount that gives rise to an imputation credit under

the following sections, and the amount is later refunded by the intermediary from the tax pooling account:

- (a) **section OB 5 (table 01:** imputation credits, row 3 (deposit in tax pooling account)); or
- (b) **section OB 6 (table 01:** imputation credits, row 4 (transfer from tax pooling account)).

*Debit*

- (2) The company has an imputation debit for the amount of the refund.

*Table reference*

- (3) The imputation debit in **subsection (2)** is referred to in **table 02:** imputation debits, row 6 (refund from tax pooling account).

*Debit date*

- (4) The debit date is the day the refund is made.

Defined in this Act: amount, ICA company, imputation credit, imputation debit, intermediary, pay

Compare: 2004 No 35 s ME 5(1)(ea), (2)(ea), (eb)

### **OB 35 ICA transfer within tax pooling account**

*When this section applies*

- (1) This section applies when an ICA company pays an intermediary an amount that gives rise to an imputation credit under the following sections, and the entitlement to the amount is later transferred to another person in the tax pooling account:
  - (a) **section OB 5 (table 01:** imputation credits, row 3 (deposit in tax pooling account)); or
  - (b) **section OB 6 (table 01:** imputation credits, row 4 (transfer from tax pooling account)).

*Debit*

- (2) The company has an imputation debit for a tax year for the amount of the transfer of the entitlement to funds in the tax pooling account.

*Table reference*

- (3) The imputation debit in **subsection (2)** is referred to in **table 02:** imputation debits, row 7 (transfer within tax pooling account).

*Debit date for companies other than attributing companies*

- (4) The debit date for a company that is not an attributing company is—
- (a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the account on that date; or 5
  - (b) the day the refund is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of refund; or 10
  - (c) the last day of the previous tax year for the remainder of the debit.

*Debit date for attributing companies*

- (5) The debit date for an attributing company is the day the refund is made. 15

Defined in this Act: amount, attributing company, ICA company, imputation credit, imputation credit account, imputation debit, intermediary, pay, tax pooling account, tax year

Compare: 2004 No 35 s ME 5(1)(eb), (2)(ea), (eb)

**OB 36 ICA refund of FDP** 20*Debit*

- (1) An ICA company has an imputation debit for the amount of a refund of FDP paid to the company when it is not an FDPA company.

*Table reference* 25

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 8 (refund of FDP)**.

*Debit date*

- (3) The debit date is the day the refund is made. 30

Defined in this Act: amount, FDP, FDPA company, ICA company, imputation debit, pay

Compare: 2004 No 35 s ME 5(1)(g), (2)(g)

**OB 37 ICA refund of tax credit***Debit*

- (1) An ICA company has an imputation debit for the amount of a refund under **section LA 6(2)(e)** (Remaining refundable credits: PAYE, RWT, and certain other items) paid to the company when it is not an FDPA company. 5

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 9 (refund of tax credit)**.

*Debit date*

- (3) The debit date is the day the refund is made. 10  
 Defined in this Act: amount, FDPA company, ICA company, imputation debit, pay  
 Compare: 2004 No 35 s ME 5(1)(h), (2)(e)

**OB 38 ICA overpayment of FDP***Debit* 15

- (1) An ICA company has an imputation debit for an amount of overpaid FDP applied to pay an amount due under the Inland Revenue Acts. **Subsection (3)** overrides this subsection.

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 10 (overpayment of FDP)**. 20

*No debit*

- (3) The debit does not include an overpayment of FDP applied to satisfy a liability for income tax or provisional tax, or relating to a foreign dividend. 25

*Debit date*

- (4) The debit date is the day the amount is applied. 30  
 Defined in this Act: amount, FDP, foreign dividend, ICA company, imputation debit, income tax, Inland Revenue Acts, pay, provisional tax  
 Compare: 2004 No 35 s ME 5(1)(m), (2)(k)

**OB 39 ICA transfer for net foreign attributed income***Transfer of amount*

- (1) An ICA company that is also an FDPA company and a CTR company has an imputation debit for an amount relating to net foreign attributed income transferred from its imputation credit account to its FDP account as set out in **subsection (2)**. 5

*Debit and credit*

- (2) The amount transferred is—
- (a) an imputation debit in the company's imputation credit account; and 10
  - (b) an FDP credit in the company's FDP account under **section OC 9** (FDPA transfer for net foreign attributed income).

*Table references*

- (3) The imputation debit in **subsection (2)** is referred to in **table O2: imputation debits, row 12** (transfer for net foreign attributed income). The FDP credit in **subsection (2)** is referred to in **table O3: FDP credits, row 6** (transfer for net foreign attributed income). 15

*Methods for calculating amount*

- (4) The amount transferred must be calculated under method 1 or method 2 as set out in this section. 20

*Two methods*

- (5) The company must apply—
- (a) method 1 set out in **subsection (6)** if it is an FDPA company and a CTR company for all of the tax year; or 25
  - (b) method 2 set out in **subsection (7)** if the company is not also an FDPA company and a CTR company for all of the tax year.

*Method 1*

- (6) Under method 1, the company must apply **sections LQ 1 to LQ 4** (which relate to credits for conduit tax relief) as if—
- (a) the amount transferred were conduit tax relief for the tax year; and 30

- (b) the percentage of resident shareholders were substituted for the item **percentage of shareholders in section LQ 1(2) and LQ 2(2)**; and
- (c) the percentage of resident shareholders were calculated by subtracting the item **percentage of shareholders** from 100%. 5

*Method 2*

- (7) Under method 2, the company must make the calculation under **sections LQ 1 and LQ 2** as if the company were a CTR company and the item **percentage of shareholders** were 100%. 10

*No transfer*

- (8) Despite **subsection (4)**, if neither method can be applied, no transfer arises under this section.

*Debit dates* 15

- (9) The debit date is—
- (a) the last day of the tax year for the amount of the debit that is no more than the amount of provisional tax paid before that date for the income year that corresponds with the tax year; and 20
- (b) the day the company files its return of income for the income year for the balance of the debit.

Defined in this Act: amount, CTR company, FDP account, FDP credit, FDPA company, foreign attributed income, ICA company, imputation credit account, imputation debit, income year, provisional tax, resident, return of income, shareholder, tax year 25

Compare: 2004 No 35 s ME 5(1)(o), (2)(l), (6), (7)

**OB 40 ICA attribution for personal services**

*Debit*

- (1) An ICA company has an imputation debit for an amount of an attribution for personal services equal to the amount of an imputation credit under **section OB 16**. 30

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits**, row 13 (attribution for personal services). 35  
The imputation credit in **subsection (1)** is referred to in **table 01: imputation credits**, row 14 (attribution for personal services).

*Accounts adjusted*

- (3) A debit under **subsection (1)** is recorded in the imputation credit account only if the company has accounted for an attribution of income under **section GB 29** (Attribution rule: calculation).

*Debit date*

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- (4) The debit date is the last day of the tax year that falls in the income year for which the company accounts in its financial statements for the attribution of income referred to in **subsection (3)**.

Defined in this Act: amount, financial statements, ICA company, imputation credit, imputation credit account, imputation debit, income, income year, tax year

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Compare: 2004 No 35 s ME 5(1)(ia), (2)(ha)

**OB 41 ICA debit for loss of shareholder continuity***Debit*

- (1) An ICA company has an imputation debit for the amount equal to the amount of an imputation credit retained in the imputation credit account and unused before the date on which shareholder continuity is lost.

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*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 14** (debit for loss of shareholder continuity).

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*Debit date*

- (3) The debit date is the day of loss of shareholder continuity.

*Avoidance arrangements*

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- (4) **Section GB 34** (ICA arrangements for carrying amounts forward) may exclude a company from the application of this section.

Defined in this Act: amount, ICA company, imputation credit, imputation credit account, imputation debit, shareholder

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Compare: 2004 No 35 s ME 5(1)(i), (2)(h)



**OB 42 ICA on-market cancellation***Debit*

- (1) When an ICA company acquires its shares in an on-market cancellation, it has an imputation debit for an amount calculated using the formula— 5

$$\text{ASC per share excess} \times \frac{\text{RWT rate}}{1 - \text{RWT rate.}}$$

*Definitions of items in formula*

- (2) In the formula,— 10
- (a) **ASC per share excess** is the amount distributed on the on-market cancellation that is more than the amount of the available subscribed capital per share calculated under the ordering rule:
- (b) **RWT rate** is the basic rate set out in **schedule 1, part D** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) applying at the time of the acquisition. 15

*Table reference*

- (3) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 15 (on-market cancellation)**. 20

*Negative result*

- (4) If the formula produces a negative result, the debit is treated as zero.

*Debit date*

- (5) The debit date is the day the shares are acquired by the company in the on-market cancellation. 25

Defined in this Act: amount, available subscribed capital, ICA company, imputation debit, on-market cancellation, ordering rule, RWT, share

Compare: 2004 No 35 s ME 5(1)(c), (2)(c) 30

**OB 43 ICA breach of imputation ratio***Debit*

- (1) An ICA company has an imputation debit for a breach of the benchmark dividend rules in **section OB 61(5)** for an amount calculated using the formula— 35

(net dividends × imputation ratio) – attached credits.

*Definition of items in formula*

- (2) In the formula,—
- (a) **net dividends** is the total amount of all dividends paid by the company during the tax year, excluding the amount of imputation credits and FDP credits attached to the dividends: 5
- (b) **imputation ratio** is the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios) for an imputation credit or, if less, the greatest imputation ratio of dividends paid by the company for the tax year: 10
- (c) **attached credits** is the total amount of all imputation credits attached to dividends paid by the company for the tax year.

*Table reference*

- (3) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 16** (breach of imputation ratio). 15

*Ratio change declaration*

- (4) A debit under **subsection (1)** does not arise if the company provides a ratio change declaration under **section OB 61(6)**. 20

*Debit date*

- (5) The debit date is the last day of the tax year.

Defined in this Act: amount, benchmark dividend, dividend, FDP credit, ICA company, imputation credit, imputation debit, imputation ratio, maximum permitted ratio, tax year

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Compare: 2004 No 35 s ME 5(1)(f), (2)(f)

**OB 44 ICA debit on leaving wholly-owned group***Debit*

- (1) An ICA company (**company A**) has an imputation debit for an amount equal to the amount of an imputation debit that another company (**company B**) chooses under **section OB 13** as a debit to company A's imputation credit account when company B leaves a wholly-owned group of companies. 30

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits**, row 17 (debit balance on leaving wholly-owned group).

*Debit date*

5

- (3) The debit date is the date when the company B stops being part of the wholly-owned group.

Defined in this Act: amount, company, ICA company, imputation credit account, imputation debit, wholly-owned group of companies

Compare: 2004 No 35 ss ME 5(1)(fb), (2)(fb), ME 9B(2)(a)(i)

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**OB 45 ICA redemption debit***Debit*

- (1) An ICA company has an imputation debit for the amount of a redemption debit.

*When redemption debit arises*

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- (2) A redemption debit arises when—

- (a) a company that is not an Australian ICA company is—  
 (i) the manager of a unit trust; or  
 (ii) the trustee or manager of a group investment fund; and

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- (b) the company derives a dividend on the redemption or cancellation of—

- (i) a unit issued by the unit trust; or  
 (ii) an interest of an investor in the group investment fund; and

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- (c) the company has acquired the unit or interest in the ordinary course of its management activities for the unit trust or group investment fund; and

- (d) the unit or interest had been acquired by the company on the same terms as those offered to the investors in the unit trust or group investment fund.

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*Calculating amount*

- (3) The debit is for the greater of the amounts described in **subsections (4) and (6)** calculated for the income year in which the company derived the dividend referred to in **subsection (2)(b)**.

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*First amount*

- (4) The first amount is calculated using the formula—  
credits attached – imputation debits.

*Definition of items in formula*

- (5) In the formula in **subsection (4)**, — 5
- (a) **credits attached** is the total amount of all imputation credits and FDP credits attached to dividends derived in the circumstances set out in **subsection (2)** by the company for the income year:
- (b) **imputation debits** is the total amount of all imputation debits arising for the income year under— 10
- (i) **section OB 41** in the company's imputation credit account; or
- (ii) **section OP 42** (Consolidated ICA debit for loss of shareholder continuity) in the imputation credit account of the consolidated imputation group of which the company is part. 15

*Second amount*

- (6) The second amount is calculated using the formula— 20
- $$\frac{\text{total dividends}}{\text{taxable income}} \times (\text{tax liability} - \text{debits}).$$

*Definition of items in formula*

- (7) In the formula in **subsection (6)**, —
- (a) **total dividends** is the total amount of all dividends derived in the circumstances set out in **subsection (2)**, including imputation credits and FDP credits attached to the dividends: 25
- (b) **taxable income** is the taxable income of the company for the income year in which the dividends are derived: 30
- (c) **tax liability** is the company's income tax liability for the income year:
- (d) **debits** is the imputation credits attached to the dividends that have been cancelled by an imputation debit arising during the income year under — 35
- (i) **section OB 41** in the company's imputation credit account; or

- (ii) **section OP 42** in the imputation credit account of the consolidated imputation group of which the company is part.

*Table references*

- (8) The table references are as follows: 5
- (a) the imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 18 (redemption debit):**
- (b) the imputation debit in **subsection (5)(b)(i)** is referred to in **table 02: imputation debits, row 14 (debit for loss of shareholder continuity):** 10
- (c) the imputation debit in **subsection (5)(b)(ii)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):**
- (d) the imputation debit in **subsection (7)(d)(i)** is referred to in **table 02: imputation debits, row 14 (debit for loss of shareholder continuity):** 15
- (e) the imputation debit in **subsection (7)(d)(ii)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):** 20

*Debit date*

- (9) The debit date is the date on which the company or the group's nominated company files the return of income for the income year in which the dividend is derived. 25

Defined in this Act: amount, Australian ICA company, company, consolidated imputation group, dividend, FDP credit, group investment fund, ICA company, imputation credit, imputation credit account, imputation debit, income, income tax, income tax liability, income year, investor, nominated company, return of income, shareholder, tax, taxable income, trustee, unit trust 30

Compare: 2004 No 35 s ME 41

**OB 46 ICA transfer from member fund**

*Debit*

- (1) An ICA company has an imputation debit for an amount calculated using the formula— 35
- $$\text{expenditure transferred} \times \text{tax rate.}$$

*Definition of items in formula*

- (2) In the formula,—

- (a) **expenditure transferred** is the amount of expenditure transferred under **sections DV 5 to DV 7** (which relate to expenditure related to investment funds) by the company, as a member fund, to a master fund:
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 5

*Table reference*

- (3) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 19** (transfer from member fund). 10

*Debit date*

- (4) The debit date is last day of the tax year in which the transfer occurs.

Defined in this Act: amount, basic rate, ICA company, imputation debit, master fund, tax year 15

Compare: 2004 No 35 s ME 5(1)(ja), (2)(ia)

**OB 47 ICA transfer to policyholder credit account**

*Election*

- (1) An ICA company that is also a PCA company may, for a tax year,— 20
- (a) choose to transfer some or all of a credit balance in the company's imputation credit account to the company's policyholder credit account; or
- (b) be treated as choosing to transfer an imputation credit to the policyholder credit account. 25

*Debit and credit*

- (2) A credit balance or credit transferred under this section is—
- (a) an imputation debit in the company's imputation credit account; and
- (b) a policyholder credit under **section OJ 3** (PCA transfer from imputation credit account) in the company's policyholder credit account. 30

*Table references*

- (3) The imputation debit in **subsection (2)** is referred to in **table 02: imputation debits, row 20** (transfer to policyholder credit account). The policyholder credit in **subsection (2)** is referred to 35

in **table 013**: policyholder credits, row 2 (transfer from imputation credit account).

*Method of election*

- (4) The company makes the election by recording the balance transferred as— 5
- (a) a debit in the company's imputation credit account; and
  - (b) a credit in the company's policyholder credit account.

*Election for some credits*

- (5) The company must make the election no later than the last day of the tax year for an amount of the credit balance that arises in the following circumstances: 10
- (a) the company has adopted a non-standard accounting year; and
  - (b) during the tax year the company derives a dividend that gives rise to a credit in the company's imputation credit account under— 15
    - (i) **section OB 9 (table 01**: imputation credits, row 7 (dividend derived with imputation credit)); or
    - (ii) **section OB 10 (table 01**: imputation credits, row 8 (dividend derived with FDP credit)); and 20
  - (c) the credit is included in the credit balance because it has not been used, and no loss of shareholder continuity as required by **section OA 8** (Shareholder continuity requirements for memorandum accounts) has occurred.

*Mandatory transfer for company with non-standard accounting year* 25

- (6) Despite the absence of an election during the tax year, a company that has adopted a non-standard accounting year is treated as having chosen at the end of the tax year to transfer the credit described in **subsection (7)** from the imputation credit account to the policyholder credit account. 30

*Credit*

- (7) The company is treated as having made an election for a tax year to the extent to which— 35
- (a) during the tax year, or no later than the end of the accounting year corresponding with the tax year, a credit arises under—

- (i) **section OB 4 (table 01:** imputation credits row 2 (payment of tax)) for a payment of provisional tax; or
- (ii) **section OB 11 (table 01:** imputation credits row 9 (payment of FDP)) for a payment of FDP; and 5
- (b) during the tax year, the credit has not been cancelled by a later debit arising under—
  - (i) **section OB 32 (table 02:** imputation debits row 4 (refund of income tax)) for a refund of provisional tax paid during the accounting year: 10
  - (ii) **section OB 36 (table 02:** imputation debits row 8 (refund of FDP)) for a refund of FDP paid during the accounting year; and
- (c) the credit has not been included in a credit balance transferred by an election under **subsection (4)**. 15

*Ordering rule*

- (8) For the purpose of determining under **subsection (7)(b)** whether a debit has cancelled a credit, debits are treated as cancelling credits in the order in which the credits arise.

*Credit and debit dates*

- (9) The credit dates and debit dates for the credit balance and credit transferred are— 20
  - (a) the day of election for the credit balance transferred under **subsection (4)**; and
  - (b) the last day of the tax year for a credit that the company is treated as having chosen under **subsection (5)** to transfer. 25

Defined in this Act: accounting year, amount, dividend, FDP, FDP credit, ICA company, imputation credit, imputation credit account, imputation debit, income tax, non-standard accounting year, pay, PCA company, policyholder credit, policyholder credit account, provisional tax, shareholder, tax year 30

Compare: 2004 No 35 ss ME 5(1)(b), (2)(b), ME 7

**OB 48 ICA credit balance when Maori authority credit account starts**

*Debit*

- (1) An ICA company has an imputation debit for a credit balance in the company's imputation credit account immediately before the company becomes a Maori authority. 35



*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits**, row 21 (credit balance when Maori authority credit account starts).

*Debit date*

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- (3) The debit date is the day before the company becomes a Maori authority.

Defined in this Act: ICA company, imputation credit account, imputation debit, Maori authority

Compare: 2004 No 35 s ME 5(1)(ka), (2)(ja)

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### **OB 49 ICA replacement payment by company under share-lending arrangement**

*Debit*

- (1) An ICA company has an imputation debit for the amount of an imputation credit attached under **section OB 64** to a replacement payment paid by the company under a share-lending arrangement.

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*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits**, row 22 (replacement payment under share-lending arrangement).

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*Debit date*

- (3) The debit date is the day the replacement payment is paid.

Defined in this Act: amount, ICA company, imputation credit, imputation debit, pay, replacement payment, share-lending arrangement

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Compare: 2004 No 35 s ME 5(1)(ab), (2)(ab)

### **OB 50 ICA returning share transfer**

*Debit*

- (1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend paid to the company as a share user, or a person associated with a share user, in a returning share transfer that is not a share-lending arrangement.

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*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 23** (returning share transfer).

*Debit date*

- (3) The debit date is the day the dividend is paid. 5

Defined in this Act: amount, associated person, dividend, ICA company, imputation credit, imputation debit, pay, returning share transfer, share-lending arrangement, share user

Compare: 2004 No 35 s ME 5(1)(ac), (2)(ac)

**OB 51 ICA credit transfer by company** 10

*Debit*

- (1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend that is paid to the company and shown in a credit transfer notice given by the company. 15

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 24** (credit transfer notice).

*Debit date*

- (3) The debit date is the day the dividend is paid. 20

Defined in this Act: amount, credit transfer notice, dividend, ICA company, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 5(1)(ad), (2)(ac)

**OB 52 ICA imputation credit of consolidated imputation group** 25

*When this section applies*

- (1) This section applies when—
- (a) an ICA company that is part of a consolidated imputation group has a credit in its imputation credit account; and 30
  - (b) a debit arises in the imputation credit account of the consolidated imputation group that is not cancelled by a credit in the imputation credit account arising before or on the same date as the company's credit.

	<i>Debit</i>	
(2)	The ICA company has an imputation debit for the amount of the imputation credit that is transferred to the imputation credit account of the consolidated imputation group.	
	<i>Table reference</i>	5
(3)	The imputation debit in <b>subsection (2)</b> is referred to in <b>table 02: imputation debits, row 25</b> (credit of consolidated imputation group).	
	<i>Debit date</i>	
(4)	The debit date is the day on which the imputation credit is recorded in the imputation credit account of the consolidated imputation group.	10
	Defined in this Act: amount, consolidated imputation group, ICA company, imputation credit, imputation credit account, imputation debit	
	Compare: 2004 No 35 s ME 13(3)	15
<b>OB 53 ICA debit on resident's restricted amalgamation</b>		
	<i>Debit</i>	
(1)	An ICA company has an imputation debit for the amount of a debit described in <b>subsection (3)</b> that arises on or after a resident's restricted amalgamation in the account of the amalgamated company under 1 of the sections listed in <b>subsection (3)</b> .	20
	<i>Table reference</i>	
(2)	The imputation debit in <b>subsection (1)</b> is referred to in <b>table 02: imputation debits, row 26</b> (debit on resident's restricted amalgamation).	25
	<i>Sections</i>	
(3)	The sections are—	
	(a) <b>section 0A 10</b> (Memorandum accounts on resident's restricted amalgamation) for imputation debits in the imputation credit account of an amalgamating company:	30
	(b) <b>section 0A 11</b> (FDP account on resident's restricted amalgamation) for FDP debits in the FDP account of an amalgamating company because the amalgamated company does not maintain an FDP account:	35

- (c) **section OA 12** (CTR account on resident's restricted amalgamation) for the CTR debits in the CTR account of an amalgamating company because the amalgamated company does not maintain a CTR account:
- (d) **section OA 13** (Policyholder credit account on resident's restricted amalgamation) for the policyholder debits in the policyholder credit account of an amalgamating company because the amalgamated company does not maintain a policyholder credit account: 5
- (e) **section OA 14** (Continuity of shareholding when group companies amalgamate) for imputation debits in the imputation credit account of a consolidated imputation group that ends its existence on the amalgamation: 10
- (f) **section OA 16** (When FDP account ends on resident's restricted amalgamation) for FDP debits in the FDP account of a consolidated group because the amalgamated company does not maintain an FDP account: 15
- (g) **section OA 17** (When policyholder credit account ends on resident's restricted amalgamation) for the policyholder debits on the policyholder credit account of a consolidated group because the amalgamated company does not maintain a policyholder credit account. 20

Defined in this Act: amalgamated company, amalgamating company, amount, consolidated group, consolidated imputation group, CTR account, CTR debit, FDP account, FDP debit, ICA company, imputation credit account, imputation debit, policyholder credit account, policyholder debit, resident's restricted amalgamation

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Compare: 2004 No 35 ss ME 29, MG 17, MI 13

## OB 54 ICA tax advantage arrangement

### *Debit*

- (1) An ICA company has an imputation debit for the amount of a debit for a tax advantage arrangement determined under **section GB 36** (Reconstruction of imputation arrangements to obtain tax advantage). 30

### *Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 27** (tax advantage arrangement). 35

*Debit date*

- (3) The debit date is the last day of the tax year in which the debit for the tax advantage arrangement is determined.

Defined in this Act: amount, arrangement, ICA company, imputation debit, tax advantage, tax year

5

Compare: 2004 No 35 s ME 5(1)(j), (2)(i)

**OB 55 ICA retrospective imputation credit***Debit*

- (1) An ICA company has an imputation debit for an imputation credit that is retrospectively attached to a non-cash dividend under **section OB 62**.

10

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 28 (retrospective imputation credit)**.

*Debit date*

15

- (3) The debit date is the day the dividend is paid.

Defined in this Act: ICA company, imputation credit, imputation debit, non-cash dividend, pay

Compare: 2004 No 35 s ME 6(4)(a)

**OB 56 ICA final balance**

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*Debit*

- (1) An ICA company has an imputation debit for a credit balance in the imputation credit account when the company stops being an ICA company.

*Table reference*

25

- (2) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 29 (final balance)**.

*Debit date*

- (3) The debit date is the day the company stops being an ICA company.

30

Defined in this Act: ICA company, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 5(1)(k), (2)(j)

**OB 57 ICA refund of NRWT***Debit*

- (1) An Australian ICA company has an imputation debit for an amount of a refund of NRWT that gave rise to an imputation credit under **section OB 27**. 5

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02**: imputation debits, row 30 (refund of NRWT). The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 25 (NRWT withheld). 10

*Debit date*

- (3) The debit date is the day the refund is made.  
 Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, imputation debit, NRWT  
 Compare: 2004 No 35 s ME 5(1A)(a), (2A) 15

**OB 58 ICA refund of amount of tax for schedular payment***Debit*

- (1) An Australian ICA company has an imputation debit for the amount of a refund of an amount of tax for a schedular payment that gave rise to an imputation credit under **section OB 28**. 20

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02**: imputation debits, row 31 (refund of amount of tax for schedular payment). The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 26 (amount of tax for schedular payment). 25

*Debit date*

- (3) The debit date is the day the refund is made.  
 Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, imputation debit, pay, schedular payment 30  
 Compare: 2004 No 35 s ME 5(1A)(b), (2A)

**OB 59 ICA refund of schedular income tax***Debit*

- (1) An Australian ICA company has an imputation debit for the amount of a refund of schedular income tax that gave rise to an imputation credit under **section OB 29**. 5

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 02**: imputation debits, row 32 (refund of schedular income tax). The imputation credit in **subsection (1)** is referred to in **table 01**: imputation credits, row 27 (payment of schedular income tax). 10

*Debit date*

- (3) The debit date is the day the refund is made.  
 Defined in this Act: amount, Australian ICA company, imputation credit, imputation debit, pay  
 Compare: 2004 No 35 s ME 5(1A)(c), (2A) 15

***Imputation credits attached to dividends*****OB 60 Imputation credits attached to dividends***Attaching imputation credits*

- (1) When an ICA company pays a dividend, it may attach an imputation credit to the dividend. **Section OB 63** overrides this section. 20

*Retrospective attachment*

- (2) The ICA company may determine that an imputation credit is retrospectively attached to a dividend in the circumstances described in **section OB 62**. 25

*Imputation ratio for dividend*

- (3) A dividend with an imputation credit attached has an imputation ratio calculated using the formula—  

$$\frac{\text{credit attached}}{\text{net dividend paid}}$$
 30

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—

- (a) **credit attached** is the amount of the imputation credit attached to the dividend:
- (b) **net dividend paid** is the amount of the dividend paid, excluding the amount of the imputation credit and FDP credit attached. 5
- Maximum permitted ratio*
- (5) A dividend with an imputation credit attached must not have an imputation ratio that is more than the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios). 10
- Conversion of AUD dividend*
- (6) A dividend paid in Australian currency by an Australian ICA company must be converted into New Zealand currency, calculated using the formula—  

$$\text{Australian dollar value} \times \text{exchange rate.}$$
 15
- Definition of items in formula*
- (7) In the formula in **subsection (6)**,—
- (a) **Australian dollar value** is the amount of the dividend in Australian dollars:
- (b) **exchange rate** is the close of trading spot exchange rate for the Australian dollar on— 20
- (i) the day the dividend is declared if that day is no more than 3 months before the dividend is paid;  
or
- (ii) the day the dividend is paid if that day is more than 3 months after the dividend is declared. 25
- Defined in this Act: amount, Australian ICA company, close of trading spot exchange rate, dividend, FDP credit, ICA company, imputation credit, imputation ratio, income year, maximum permitted ratio, pay, tax year
- Compare: 2004 No 35 ss ME 1B, ME 6, ME 8(1), (2) 30

## OB 61 ICA benchmark dividend rules

### *When this section applies*

- (1) This section applies when an ICA company pays a dividend on more than 1 occasion during a tax year. **Subsection (2)** overrides this subsection. 35



*Exclusions*

- (2) This section does not apply to the following dividends:
- (a) a dividend that is the subject of an election by a statutory producer board under **sections OB 73 to OB 75:**
  - (b) a dividend that is the subject of an election by a cooperative company under **sections OB 78 to OB 80:** 5
  - (c) a dividend paid when the company is not an ICA company.

*Benchmark dividend*

- (3) The first dividend of the tax year is the benchmark dividend. 10

*Same imputation ratio*

- (4) The imputation ratio of a dividend paid after the benchmark dividend must be the same as the imputation ratio of the benchmark dividend.

*Breach of imputation ratio*

- (5) A breach of **subsection (4)** gives rise to an amount of an imputation debit under **section OB 43 (table O2: imputation debits, row 16 (breach of imputation ratio))** calculated using the formula in **section OB 43(1)**. 15

*Ratio change declaration*

- (6) To prevent the consequences of a breach of **subsection (4)**, an ICA company may notify the Commissioner that the dividend is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the dividend is not part of an arrangement to which **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain tax advantage) apply. The company must provide the declaration before the dividend is paid, or by a later date if the Commissioner allows. For the purposes of this subsection, the dividend must not be part of an arrangement to obtain a tax advantage. 20  
25  
30

*Consolidated imputation group*

- (7) This section applies, modified as necessary, to a consolidated imputation group as if it were a single company.

*Group debit*

- (8) Under **section OP 2(2)** (When credits and debits arise only in group accounts), a breach of an imputation ratio alternatively gives rise to an imputation debit under **section OP 43** (Consolidated ICA breach of imputation ratio) (**table 020**: imputation debits of consolidated imputation groups, row 17 (breach of imputation ratio)) if the company is part of a consolidated imputation group. 5

*Treatment of group dividends*

- (9) In the application of this section to a consolidated imputation group, a dividend paid between group companies is disregarded. 10

Defined in this Act: arrangement, benchmark dividend, Commissioner, company, consolidated imputation group, co-operative company, dividend, ICA company, imputation debit, imputation ratio, notify, pay, statutory producer board, tax advantage, tax year 15

Compare: 2004 No 35 ss ME 8(2), (3), ME 14(2)

**OB 62 Retrospective attachment of imputation credits***When this section applies*

- (1) This section applies in relation to a dividend arising from a transfer pricing arrangement or under **subpart FL** (Emigration of resident companies) when— 20
- (a) an ICA company pays a non-cash dividend whose amount is later adjusted under **section GC 7 or GC 8** (which relate to transfer pricing arrangements): 25
- (b) an emigrating company that was an ICA company immediately before the time of emigration and is treated under **section FL 2** (Treatment of emigrating companies and their shareholders) as paying a distribution to shareholders. 30

*Imputation credits attached retrospectively*

- (2) The company may attach retrospectively an imputation credit to the dividend or distribution, as applicable.

*Limit for ICA company*

- (3) The amount of all imputation credits attached retrospectively by a company referred to in **subsection (1)(a)** during a tax year must not be more than the lesser of— 35

- (a) the credit balance of the company's imputation credit account at the end of the tax year in which the dividend is paid; or
- (b) the credit balance of the company's imputation credit account at the end of each of the tax years in the period that runs from the tax year of payment of the dividend to the tax year in which the credit is attached retrospectively under **subsection (1)**. 5
- Limit for emigrating company*
- (4) The amount of all imputation credits attached retrospectively by a company referred to in **subsection (1)(b)** must be no more than the credit balance of the company's imputation credit account immediately before the time of emigration. 10
- When subsection (6) applies*
- (5) **Subsection (6)** applies if— 15
- (a) a company provides a company dividend statement and issues a shareholder dividend statement for a non-cash dividend at the time it retrospectively attaches an imputation credit; and
- (b) the adjustment under **section GC 7 or GC 8** results in a payment of income tax; and 20
- (c) the attachment of the imputation credit would otherwise result in a liability for imputation penalty tax.
- New credit date*
- (6) The credit date for the imputation credit arising for the payment of the income tax referred to in **subsection (5)(b)** is the day on which the non-cash dividend is paid, and the company is excused a breach of section 69 of the Tax Administration Act 1994 for not filing a correct annual ICA return through the retrospective attachment of an imputation credit. 25 30
- Statements still required*
- (7) A company that does not meet the requirement of **subsection (5)(a)** remains liable to—
- (a) provide a company dividend statement; and
- (b) issue a shareholder dividend statement for the non-cash dividend and the retrospective attachment of an imputation credit. 35

*When subsection (9) applies*

- (8) **Subsection (9)** applies when an amount of tax paid by an emigrating company is attributable to income derived before the time of emigration or to the application of **subpart FL**.

*Amount of tax paid by emigrating company*

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- (9) The amount of tax referred to in **subsection (8)** is treated for the purposes of this subpart as paid immediately before the time of emigration if—

- (a) the company determines to attach an imputation credit to a dividend; and
- (b) the imputation credit is not less than the amount of tax; and
- (c) the company notifies the Commissioner when providing the company dividend statement.

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Defined in this Act: amount, amount of tax, annual ICA return, arrangement, Commissioner, company dividend statement, dividend, emigrating company, ICA company, imputation credit, imputation credit account, imputation penalty tax, income, income tax, non-cash dividend, notify, pay, shareholder, shareholder dividend statement, tax year, time of emigration

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Compare: 2004 No 35 s ME 6

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**OB 63 Australian dividends***No credits attached*

- (1) Despite **section OB 60(1)**, an ICA company must not attach an imputation credit to a dividend if—

- (a) the Income Tax Assessment Act 1997 (Aust) applies to the payment of the dividend by the company; and
- (b) the dividend is paid in relation to a share that is, or forms part of, a debt interest under that Act; and
- (c) the payment of the dividend is included in the company's return of income to the Australian Federal Commissioner of Taxation.

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*Exclusion: groups of companies*

- (2) **Subsection (1)** does not apply in relation to a share issued before 21 July 2005 if, when the dividend is paid, the shareholder and the ICA company—

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- (a) are not part of the same group of companies;
- (b) are part of the same wholly-owned group of companies and not resident in New Zealand.

*Exclusion: reasons for acquisition of shares*

- (3) **Subsection (1)** does not apply in relation to a share issued before 21 July 2005 if—
- (a) the shareholder and the ICA company are part of the same group of companies; and 5
  - (b) the shareholder acquired the share—
    - (i) as part of a sharebroking business:
    - (ii) as an investment held by the shareholder as part of an insurance business:
    - (iii) as security for a loan given as part of a business of lending money: 10
    - (iv) as a trustee for a beneficiary who is not a company that is part of the same group of companies as the shareholder:
    - (v) for a reason that does not include the fact that the shareholder and the ICA company were part of the same group of companies. 15

Defined in this Act: business, company, dividend, group of companies, ICA company, imputation credit, pay, resident in New Zealand, share, shareholder, trustee, wholly-owned group of companies 20

Compare: 2004 No 35 s ME 6(1B)–(1D)

**OB 64 Replacement payments***Attaching credits*

- (1) On making a replacement payment, a share user under a share-lending arrangement may attach an imputation credit to the payment. 25

*Amount of credit*

- (2) The amount of the imputation credit must be equal to or less than the amount of any imputation credit attached to a dividend relating to the replacement payment that is received by the share user before the replacement payment is made. 30

Defined in this Act: amount, dividend, imputation credit, pay, replacement payment, share-lending arrangement, share user

Compare: 2004 No 35 s ME 6B

*Further income tax***OB 65 Further income tax for ICA closing debit balance***Liability*

- (1) An ICA company is liable to pay further income tax for a debit balance in the company's imputation credit account at the end of a tax year. 5

*Exclusion*

- (2) An imputation debit arising under **section OB 46 (table 02: imputation debits, row 19 (transfer from member fund))** is disregarded when determining under **subsection (1)** if the company has a debit balance at the end of a tax year. 10

*Due date*

- (3) The company must pay the further income tax to the Commissioner no later than 20 June following the end of the tax year. 15
- Defined in this Act: Commissioner, company, further income tax, ICA company, imputation credit account, imputation debit, pay, tax year

Compare: 2004 No 35 s ME 9(1), (1A), (2)

**OB 66 Further income tax when company stops being ICA company***Liability* 20

- (1) An ICA company is liable to pay further income tax for a debit balance in the company's imputation credit account when the company stops being an ICA company.

*Due date*

- (2) The company must pay the further income tax to the Commissioner on the day the company stops being an ICA company. 25

*Paramount section*

- (3) A company that stops being an ICA company on the last day of a tax year is liable to pay further income tax under this section and not under **section OB 65**. 30

Defined in this Act: Commissioner, company, further income tax, ICA company, imputation credit account, pay, tax year

Compare: 2004 No 35 s ME 9(3)

**OB 67 Reduction of further income tax***Debit at previous year-end*

- (1) An ICA company's liability for further income tax under **sections OB 65 and OB 66** may be reduced under **subsection (2)** if— 5
- (a) a debit balance existed in the company's imputation credit account at the end of a tax year; and
  - (b) the credit that arises in the account in the following tax year totals less than the debit balance; and
  - (c) the company notifies the Commissioner.

*Amount of reduction*

- (2) The liability is reduced by the amount that is the debit balance for the tax year less the total amount of credits for the following tax year. 10

*Attributing companies*

- (3) The liability of an ICA company that is an attributing company for further income tax under **sections OB 65 and OB 66** may be reduced under **subsection (4)** if an imputation debit arises under **section OB 32 (table O2: imputation debits, row 4 (refund of income tax))** in the company's imputation credit account before the end of the tax year for which the liability arises. 15 20

*Amount of reduction*

- (4) The liability of the attributing company for further income tax at the end of the tax year referred to in **subsection (3)** is reduced by an amount calculated using the formula— 25
- $$\text{refunds} - \text{credits.}$$

*Definition of items in formula*

- (5) In the formula,— 30
- (a) **refunds** is the total amount of all refunds of income tax paid to the company before the debit balance creating the liability for further income tax referred to in **subsection (3)** arises:
  - (b) **credits** is the total amount of all credits to the company's imputation credit account for the period that

runs from the tax year in which the first refund was received to the time the calculation is made.

Defined in this Act: amount, attributing company, Commissioner, further income tax, ICA company, imputation credit account, imputation debit, imputation rules, income tax, notify, pay, tax year

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Compare: 2004 No 35 s ME 9(7)–(9)

### **OB 68 Income tax paid satisfying liability for further income tax**

#### *Election*

- (1) On meeting the requirements of **subsection (2)**, an ICA company that is liable for further income tax may choose to satisfy the liability through a payment of income tax. 10

#### *Requirements*

- (2) The company must pay the income tax— 15
- (a) after the end of the tax year in which the relevant debit balance arises; and
  - (b) for an income year corresponding to the tax year in which the company is an ICA company.

#### *Payment credited*

- (3) The payment of income tax satisfies the company's liability to pay further income tax. 20

#### *When treated as paid*

- (4) The further income tax is treated as paid on the date on which the Commissioner receives the payment of income tax.

Defined in this Act: Commissioner, further income tax, ICA company, income tax, income year, pay, tax year

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Compare: 2004 No 35 s ME 9(5A), (8), (9)

### **OB 69 Further income tax paid satisfying liability for income tax**

#### *Election*

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- (1) An ICA company that pays further income tax may choose to treat the payment as satisfying a liability of the company to pay income tax or provisional tax.



- ICA company status*
- (2) The liability for income tax or provisional tax referred to in **subsection (1)** must be for an income year corresponding to a tax year in which the company is an ICA company.
- Alternative for consolidated imputation group* 5
- (3) A company that is part of a consolidated imputation group may choose that the payment under **subsection (1)** satisfies a group liability for income tax or provisional tax that arises at or after the time of payment.
- When treated as paid* 10
- (4) The liability for income tax or provisional tax is treated as paid on the day on which the further income tax is paid.
- Australian ICA company*
- (5) An Australian ICA company may choose to convert a payment of further income tax into a tax loss of an amount calculated under **subsection (7)**. **Subsection (6)** overrides this subsection. 15
- Requirement*
- (6) The election under **subsection (5)** may be made only if no possibility exists that the further income tax can be credited against a future income tax liability of the company. 20
- Tax loss*
- (7) For the purposes of **subsection (5)**, the amount of the tax loss for the payment of further income tax is calculated using the formula— 25
- $$\frac{\text{further income tax paid}}{\text{tax rate.}}$$
- Definition of items in formula*
- (8) In the formula,— 30
- (a) **further income tax paid** is the amount of further income tax paid that is not credited against an income tax liability:
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax,

ESCT, RWT, and attributed fringe benefits) at the time the further income tax is paid.

*Benefit of the loss*

- (9) For the purposes of **subsection (5)**, the company may choose that the tax loss is attributed to itself or to another company that is part of the same wholly-owned group of companies. 5

*When loss is attributed*

- (10) The tax loss referred to in **subsection (5)** is a loss for the income year corresponding to the tax year in which the company paid the further income tax. 10

Defined in this Act: amount, Australian ICA company, basic rate, consolidated imputation group, further income tax, ICA company, income tax, income tax liability, income year, pay, provisional tax, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 ss ME 9(5), (5B), ME 13(6) 15

**OB 70 Application of other provisions**

When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—

- (a) apply to further income tax as if they addressed further income tax and not income tax; and 20
- (b) apply, modified as necessary, to ensure their application to further income tax rather than income tax; and
- (c) do not override the imputation rules or section 101 of the Tax Administration Act 1994. 25

Defined in this Act: further income tax, imputation rules, income tax

Compare: 2004 No 35 s ME 9(6)

*Imputation additional tax*

**OB 71 Imputation additional tax on leaving wholly-owned group** 30

*When this section applies*

- (1) This section applies in a tax year when—
- (a) a company (**company A**) stops being part of a wholly-owned group of companies because of a change in the ultimate owner of the company; and 35

- (b) the company has a debit balance in its imputation credit account; and
- (c) the loss balance carried forward from the previous tax year for companies in the group is more than \$1,000,000.

5

*Election to pay imputation additional tax*

- (2) At the time company A stops being part of the wholly-owned group, it may choose to reduce or eliminate the debit balance by paying imputation additional tax of an amount no greater than the debit balance but, in dealing with the liability, it may transfer some or all of the debit balance under **subsection (3)** or choose to use its excess entitlement under **subsection (4)**, or a combination of both.

10

*Debit balance*

- (3) Company A may choose to transfer under **section OB 44** some or all of a debit balance in the company's imputation credit account to another company (**company B**) in the same wholly-owned group. An imputation additional tax liability remains for the amount of the debit balance that is not transferred.

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*Payment of tax*

- (4) Company A may choose to use the amount of the excess entitlement described in **subsection (5)** as follows:
- (a) company A may choose to treat company B as having paid provisional tax or income tax but only to the extent to which the amount is no more than the excess entitlement:
  - (b) company A may choose to use the amount of the excess entitlement under **subsection (2)** against the liability for imputation additional tax but only to the extent to which the amount is no more than the amount referred to in **paragraph (a)**.

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*Amount of excess entitlement*

- (5) Company A's excess entitlement at the time it stops being part of the wholly-owned group is 1 of the following amounts:
- (a) zero, if the credit balance of its imputation credit account at the time is equal to or more than—

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- (i) the amount in the tax pooling account provided by or for the benefit of company A that is more than its liability to pay income tax or provisional tax at the time; or
- (ii) the entitlement company A would have to a refund under **sections RM 2, and RM 4 to RM 6** (which relate to refunds of excess tax) as if **sections RM 13 to RM 17** (which relate to limits on refunds) did not apply; or
- (b) the total of the amounts referred to in **paragraph (a)(i) and (ii)** if no credit balance exists at the time; or
- (c) the excess of the credit balance over the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if **paragraph (b)** does not apply.
- Due date*
- (6) If company A chooses to pay imputation additional tax under **subsection (2)**, it must pay the amount to the Commissioner no later than the 20th day of the month following the month in which company A stops being part of the group.
- Joint liability*
- (7) Company A and all companies in the group are jointly liable for a payment of imputation additional tax under **subsection (6)**. A payment of imputation additional tax does not satisfy any other liability of company A or the group.
- Payment by excess tax*
- (8) Company A, or another company in the wholly-owned group, may choose to apply an excess tax payment to satisfy company A's liability.
- Form of election*
- (9) An election under this section must follow the form of an election under **section OB 13(5)**.
- Defined in this Act: amount, Commissioner, company, excess tax payment, imputation additional tax, imputation credit account, income tax, income tax liability, pay, provisional tax, tax loss, tax pooling account, tax year, ultimate owner, wholly-owned group of companies
- Compare: 2004 No 35 s ME 9B

## OB 72 Imputation additional tax on joining wholly-owned group

### *Liability*

- (1) An ICA company to which **subsection (2)** applies may be liable for imputation additional tax under— 5
- (a) **subsection (3)** as the company's first liability under this section; or
  - (b) **subsection (5)** as the company's second liability under this section.

### *Liable company*

- (2) The company is 1 to which all of the following apply: 10
- (a) the company is or was recently part of a wholly-owned group of companies (the **former group**); and
  - (b) the company has or will soon join a different wholly-owned group of companies (the **new group**); and 15
  - (c) the former group has a loss balance carried forward from an earlier tax year of more than \$1,000,000 for the tax year before the income year corresponding to the tax year in which the company changes groups.

### *First liability*

- (3) The company is liable for imputation additional tax if, at a particular time,— 20
- (a) a debit balance exists in the company's imputation credit account; and
  - (b) an imputation debit arose when the company was part of the former group; and 25
  - (c) the imputation additional tax liability of the company has not been paid under **section OB 71** by the company or another company in the former group.

### *Amount of liability*

- (4) The amount of the imputation additional tax liability under **subsection (3)** is equal to the amount of the imputation debit at the time the company becomes part of the new group. 30

### *Second liability*

- (5) The company is liable for an amount of imputation additional tax equal to the excess entitlement determined under **subsection (6)**. 35

*Excess entitlement*

- (6) The company's excess entitlement at a particular time is 1 of the following amounts:
- (a) zero, if the credit balance of the company's imputation credit account at the time is equal to or more than— 5
    - (i) the amount in the tax pooling account provided by or for the benefit of the company that is more than the company's liability to pay income tax or provisional tax at the time; or
    - (ii) the company's entitlement to a refund under **sections RM 2, and RM 4 to RM 6** (which relate to refunds of excess tax); or 10
  - (b) the total of the amounts referred to in **paragraph (a)(i) and (ii)** if no credit balance exists at the time; or
  - (c) the excess of the credit balance over the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if **paragraph (b)** does not apply. 15

*Due date*

- (7) The imputation additional tax must be paid to the Commissioner no later than the 20th day of the month following the month in which the company stops being part of the former group. 20

*Joint liability*

- (8) The company and all companies in the new group are jointly liable for the imputation additional tax. A payment of imputation additional tax does not satisfy any other liability of the company or the new group. 25

*Payment by excess tax*

- (9) For a liability under **subsections (3) and (5)**, the company or another company in the new group may choose to satisfy the liability by applying an excess tax payment in discharging it. 30

Defined in this Act: amount, Commissioner, company, excess tax payment, ICA company, imputation additional tax, imputation credit account, imputation debit, income tax liability, income year, pay, provisional tax, tax loss, tax pooling account, tax year, wholly-owned group of companies 35

Compare: 2004 No 35 s ME 9C

***Distributions of statutory producer boards and co-operative companies***

**OB 73 Statutory producer boards attaching imputation credits to cash distributions**

*Election*

5

- (1) On meeting the requirements of **subsection (2)**, a statutory producer board that is an ICA company may choose, for an income year, to attach an imputation credit to a cash distribution paid to a member of the producer board.

*Requirements*

10

- (2) The producer board may make an election under **subsection (1)** if—
- (a) the distribution is made to all persons who were members of the board at a time in the income year; and
  - (b) the board proposes to pay the distribution based on 1 of the factors set out in **subsection (3)**; and
  - (c) the board would, in the absence of this section, have a deduction for some or all of the distribution, whether as an association rebate under **subpart HE** (Mutual associations) or under some other provision of this Act.

20

*Methods*

- (3) The amount of the distribution must be based on 1 of the following methods of determination, as applicable, for an income year:
- (a) all payments for a member's produce transactions during the income year as a proportion of total payments for all members' produce transactions during the income year; or
  - (b) all levies payable by a member for the income year as a proportion of total levies payable by members for the income year; or
  - (c) another method of determination approved by the Commissioner.

25

30

*Total credits attached*

- (4) The total amount of imputation credit attached to the distribution is calculated using the formula—

35

$$\text{total net dividend} \times \frac{\text{tax rate}}{1 - \text{tax rate.}}$$

*Definition of items in formula*

- (5) In the formula in **subsection (4)**,— 5
- (a) **total net dividend** is the total amount of the distribution excluding the amount of imputation credit:
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year. 10

*Member's credits*

- (6) The amount of a member's share of an imputation credit attached under **subsection (4)** is calculated using the formula— 15
- $$\frac{\text{member's distribution}}{\text{total distribution}} \times \text{total imputation credit attached.}$$

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,— 20
- (a) **member's distribution** is the amount of the member's share of the distribution excluding the amount of imputation credit:
- (b) **total distribution** is the amount of the total distribution paid excluding the amount of imputation credit:
- (c) **total imputation credit attached** is total amount of imputation credit attached to the distribution calculated under **subsection (4)**. 25

*When producer board chooses not to have deduction*

- (8) If a producer board chooses to treat a distribution as a dividend, it is denied a deduction for the amount of the distribution under **section DV 18** (Statutory producer boards and cooperative companies). 30

Defined in this Act: amount, association rebate, basic rate, Commissioner, deduction, dividend, ICA company, imputation credit, income tax, income year, levy, member, pay, produce transactions, statutory producer board 35

Compare: 2004 No 35 ss ME 30, ME 31



## OB 74 Statutory producer boards attaching imputation credits to notional distributions

### *Election*

- (1) A statutory producer board that is an ICA company may choose, for an income year, to attach an imputation credit to a notional distribution, as a result of which a member derives a dividend of an amount calculated under **section OB 75(2)**. **Subsections (2) and (8)** override this subsection. 5

### *All members*

- (2) A statutory producer board may make an election under **subsection (1)** only if the distribution is made to all persons who were members of the producer board at a time in the income year. 10

### *Methods*

- (3) The producer board may determine that the amount of an imputation credit attached to a notional distribution is based on— 15
- (a) produce transactions, and calculated under **subsection (5)** for each member; or
  - (b) members' levies, and calculated under **subsection (7)** for each member; or 20
  - (c) a combination of **paragraphs (a) and (b)**; or
  - (d) some other method of determination approved by the Commissioner.

### *Produce transactions*

- (4) The amount of an imputation credit attached to a member's distribution that is based on produce transactions is calculated using the formula— 25
- $$\frac{\text{member's payment}}{\text{total payments}} \times \text{credit attached.} \quad 30$$

### *Definition of items in formula*

- (5) In the formula in **subsection (4)**,— 35
- (a) **member's payments** is the total amount of all payments to or by a member for the member's produce transactions during the income year:
  - (b) **total payments** is all payments to or by all members for produce transactions during the income year:

- (c) **credit attached** is the amount of imputation credit attached to the distribution.

*Members' levies*

- (6) An imputation credit attached to a member's distribution that is based on members' levies is calculated using the formula— 5

$$\frac{\text{member's levies}}{\text{total levies}} \times \text{credit attached.}$$

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,— 10
- (a) **member's levies** is the total amount of all levies payable by a member to the producer board for the income year:
- (b) **total levies** is total amount of all levies payable by all members to the producer board for the income year: 15
- (c) **credit attached** is the amount of imputation credit attached to the distribution.

*Commissioner's determination*

- (8) The Commissioner may apply **subsections (4) to (7)** to determine the amount of the imputation credit to be treated as attached to a member's distribution if the Commissioner considers that the producer board's application of **subsections (3) to (7)** does not result in a fair and reasonable allocation of an amount of imputation credit to a member having regard to— 20
- (a) the produce transactions of the producer board; and 25
- (b) the levies payable to the producer board; and
- (c) any other relevant factor.

Defined in this Act: amount, Commissioner, dividend, ICA company, imputation credit, income year, levy, member, pay, produce transactions, statutory producer board 30

Compare: 2004 No 35 s ME 32

**OB 75 Statutory producer boards' notional distributions that are dividends**

*Dividend derived*

- (1) A notional distribution to which **section OB 74** applies that has an imputation credit attached is a dividend under **section CD 13** (Notional distributions of producer boards and co-operative companies) derived by a member. 35

*Calculation of amount*

- (2) The amount of the dividend is calculated using the formula—  

$$\frac{\text{credit attached}}{\text{tax rate}} - \text{credit attached.}$$
 5

*Definitions of items in formula*

- (3) In the formula,—  
 (a) **credit attached** is the amount of imputation credit attached to the member's distribution:  
 (b) **tax rate** is the basic rate of income tax for companies set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year. 10

*When derived*

- (4) The member derives the dividend on the date the statutory producer board chooses under **section OB 74** to make a notional distribution. 15

*Returns and information*

- (5) For the purposes of this section, the producer board must—  
 (a) include the details of the dividend with the return of income filed for the tax year corresponding to the income year in relation to which the distribution was made; and 20  
 (b) retain relevant information to enable the Commissioner to determine whether a later distribution is not a dividend under **section CD 26(3) or CD 33(1)** (which relate to capital distributions on liquidation or emigration and payments that correspond to notional distributions). 25

Defined in this Act: amount, basic rate, Commissioner, company, dividend, imputation credit, income tax, income year, member, pay, return of income, statutory producer board, tax year 30

Compare: 2004 No 35 s ME 33

**OB 76 Statutory producer boards attaching FDP credits***FDP credits attached*

- (1) A statutory producer board that is an FDPA company may choose, for an income year, to attach an FDP credit to a cash distribution or a notional distribution. An FDP credit may be attached in conjunction with an imputation credit. 35

*Application of provisions*

- (2) **Sections OB 73 to OB 75 and OB 77** apply, modified as necessary, to the producer board, the distribution, and the FDP credit.

*Both credits at once*

- (3) A producer board may choose to attach both an imputation credit and an FDP credit as part of 1 distribution. 5

Defined in this Act: FDP credit, FDPA company, imputation credit, income year, statutory producer board

Compare: 2004 No 35 s ME 34

**OB 77 When and how statutory producer board makes election** 10

*Timing of election*

- (1) A statutory producer board may make an election under **section OB 73, OB 74, or OB 76** in relation to a distribution either— 15
- (a) after the income year in relation to which the distribution is made; but
- (b) no later than 6 months after the end of the income year in relation to which the distribution is made.

*Notice*

- (2) A producer board must notify the Commissioner of an election referred to in **subsection (1)** no later than the time allowed for the statutory producer board to file a return of income for the tax year corresponding to the income year in relation to which the distribution is made. 20 25

Defined in this Act: Commissioner, dividend, income year, return of income, statutory producer board, tax year

Compare: 2004 No 35 s ME 30(3), (4)

**OB 78 Co-operative companies attaching imputation credits to cash distributions** 30

*Election*

- (1) On meeting the requirements of **subsection (2)**, a co-operative company that is an ICA company may choose, for an income year, to attach an imputation credit to a cash distribution paid to the company's shareholders. 35

*Requirements*

- (2) A co-operative company may make an election under **subsection (1)** if—
- (a) the distribution is made to all persons who were shareholders of the company at a time during the income year; and 5
  - (b) the distribution is based on the proportion for the income year in which the payments to or by a shareholder for their produce transactions are of total payments to or by all shareholders for all produce transactions; and 10
  - (c) the company would, in the absence of this section, have a deduction for some or all of the distribution, whether as an association rebate under **subpart HE** (Mutual associations) or some other provision of this Act; and 15
  - (d) no other election for a cash distribution is made for the income year.

*Total credit attached*

- (3) The total amount of imputation credit attached to the distribution is calculated using the formula— 20

$$\text{total net dividend} \times \frac{\text{tax rate}}{1 - \text{tax rate}}.$$

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,— 25
- (a) **total net dividend** is the total amount of the distribution excluding the amount of imputation credit:
  - (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year. 30

*Shareholder's credit*

- (5) The amount of a shareholder's share of the imputation credit attached as described in **subsection (3)** is calculated using the formula— 35

$$\frac{\text{shareholder's distribution}}{\text{total distribution}} \times \text{total imputation credit attached}.$$

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,—
- (a) **shareholder's distribution** is the amount that is the shareholder's share of the distribution, excluding the amount of imputation credit: 5
  - (b) **total distribution** is the amount of the total distribution paid, excluding the amount of imputation credit:
  - (c) **total imputation credit attached** is the total amount of imputation credit attached to the distribution calculated under **subsection (3)**. 10

*When co-operative company chooses not to have deduction*

- (7) If a co-operative company chooses to treat a distribution as a dividend, it is denied a deduction under **section DV 18** (Statutory producer boards and co-operative companies). The company must notify the Commissioner of an election under this subsection under **section OB 82(3)** for the election to be effective. 15

Defined in this Act: amount, association rebate, basic rate, Commissioner, co-operative company, deduction, dividend, ICA company, imputation credit, income tax, income year, Maori authority, notify, pay, produce transactions, shareholder

Compare: 2004 No 35 ss ME 35, ME 36 20

### **OB 79 Co-operative companies attaching imputation credits to notional distributions**

*Election*

- (1) On meeting the requirements of **subsection (2)**, a co-operative company that is an ICA company may choose, for an income year, to attach an imputation credit to a notional distribution, as a result of which a member derives a dividend of an amount calculated under **section OB 80**. 25

*Requirements*

- (2) A co-operative company may make an election under **subsection (1)** if— 30
- (a) the distribution is made to all persons who were shareholders of the company at a time during the income year; and
  - (b) no other election to pay a notional distribution is made for the income year. 35

*Shareholder's credits*

- (3) The amount of a shareholder's share of an imputation credit attached to a notional distribution is calculated using the formula—

$$\frac{\text{produce payments}}{\text{total payments}} \times \text{credit attached.} \quad 5$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **produce payments** is the amount of all payments to or by the shareholder for the shareholder's produce transactions during the income year: 10
- (b) **total payments** is the amount of all payments to or by shareholders for produce transactions during the income year: 15
- (c) **credit attached** is the amount of imputation credit attached to the distribution.

Defined in this Act: amount, co-operative company, dividend, ICA company, imputation credit, income year, member, pay, produce transactions, shareholder

Compare: 2004 No 35 s ME 37 20

### **OB 80 Co-operative companies' notional distributions that are dividends**

*Dividends*

- (1) A notional distribution referred to in **section OB 79** that has an imputation credit attached is a dividend under **section CD 13** (Notional distributions of producer boards and co-operative companies) derived by a shareholder of the co-operative company. 25

*Amount*

- (2) The amount of a shareholder's dividend is calculated using the formula— 30

$$\frac{\text{credit attached}}{\text{tax rate}} - \text{tax rate.}$$

*Definition of items in formula* 35

- (3) In the formula,—
- (a) **credit attached** is the amount of imputation credit attached to the shareholder's distribution:

- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year.

*When derived*

5

- (4) The shareholder derives the dividend on the date the co-operative company chooses under **section OB 79** to make a notional distribution.

Defined in this Act: amount, basic rate, co-operative company, dividend, imputation credit, income tax, income year, shareholder

10

Compare: 2004 No 35 s ME 38

### **OB 81 Co-operative companies attaching FDP credits**

*Election*

- (1) A co-operative company that is an FDPA company may choose, for an income year, to attach an FDP credit to a cash distribution. The FDP credit may be attached in conjunction with an imputation credit.

15

*Application of provisions*

- (2) **Sections OB 78 to OB 80** and section 64 of the Tax Administration Act 1994 apply, modified as necessary, to the co-operative company, the distribution, and the FDP credit.

20

*Both credits at once*

- (3) A co-operative company may choose to attach both an imputation credit and an FDP credit as part of 1 distribution.

Defined in this Act: co-operative company, FDP credit, FDPA company, imputation credit, income year

25

Compare: 2004 No 35 s ME 39

### **OB 82 When and how co-operative company makes election**

*One a year*

- (1) A co-operative company may make an election under **section OB 78, OB 79, or OB 81** in relation to a distribution for—
- (a) only 1 cash distribution during the income year:
  - (b) only 1 notional distribution during the income year.

30



*Timing*

- (2) A co-operative company may make an election referred to in **subsection (1)**—
- (a) after the income year in relation to which the distribution is made; but 5
  - (b) no later than 6 months after the end of the income year in relation to which the distribution is made.

*Notice*

- (3) A co-operative company must notify the Commissioner of an election referred to in **subsection (1)(a)** no later than the time allowed for the company to file a return of income for the tax year corresponding to the income year in relation to which the distribution is made. 10

Defined in this Act: Commissioner, co-operative company, income year, notify, return of income, tax year 15

Compare: 2004 No 35 s ME 35

## Subpart OC—FDP accounts

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### ***Introductory provisions***

#### **OC 1 General rules for companies with FDP accounts**

##### *FDPA company*

- (1) A company resident in New Zealand may choose to become an FDPA company. 30

##### *FDP accounts*

- (2) An FDPA company must maintain an FDP account for a tax year. The account is a record of FDP credits and FDP debits that arise in the account during the tax year.

*Main credit*

- (3) An FDPA company has an FDP credit for an amount of FDP paid under **subpart RG** (Payments for foreign dividends) when the company derives a dividend from a non-resident company.

*Main debit*

5

- (4) An FDPA company has an FDP debit for the amount of an FDP credit attached to a dividend paid to the company's shareholders.

*Treatment of FDP credit by shareholder*

- (5) The amount of an FDP credit attached to a dividend derived by a shareholder is included in the amount of the dividend under **section CD 15** (Tax credits linked to dividends). 10

*Refunds*

- (6) When a dividend with an FDP credit attached is derived by a non-resident or by a person who is resident and the dividend is exempt income of the person, they are entitled to a refund under **section LF 8** (Credits for persons who are non-resident or who receive exempt income). 15

*Shareholder continuity requirements*

- (7) The carrying forward of a credit in a company's FDP account is subject to the shareholder continuity requirements of **section OA 8** (Shareholder continuity requirements for memorandum accounts). 20

*Imputation credits*

- (8) If a company does not choose to become an FDPA company, a payment of FDP on a dividend derived from a non-resident company is accounted for under the imputation rules under **section OB 11** (ICA payment of FDP). 25

Defined in this Act: amount, assessable income, company, dividend, exempt income, FDP account, FDP credit, FDP debit, FDPA company, imputation rules, income, non-resident company, pay, resident in New Zealand, shareholder, tax year 30

Compare: 2004 No 35 ss CD 9, LD 9, ME 4(1)(e), (f), MG 2(1), (3), MG 4(1)(a), (b), MG 5(3)

**OC 2 FDP accounts***General rules apply*

- (1) The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to the FDP account of an FDPA company. 5

*Consolidated groups*

- (2) Under **section OP 54** (When credits and debits arise only in consolidated FDP group accounts), certain credits and debits do not arise in the account if the company is part of a consolidated group. 10

Defined in this Act: consolidated group, FDP account, FDPA company, memorandum account

Compare: 2004 No 35 s MG 16(1), (4)

**OC 3 Choosing to become FDPA company***Election* 15

- (1) A company that chooses to become an FDPA company must notify the Commissioner of the election no later than 21 days after the date of the election or by a later date if the Commissioner allows.

*Effect of election* 20

- (2) An FDPA company must maintain the FDP account referred to in **section OC 1(2)** from the date of election.

Defined in this Act: Commissioner, company, FDP account, FDPA company, notify

Compare: 2004 No 35 s MG 2(2), (3)

**OC 4 When company chooses to stop being FDPA company** 25*Election*

- (1) An FDPA company may choose to stop being an FDPA company.

*When election made*

- (2) An FDPA company may make an election under **subsection (1)** only in a tax year that is later than the tax year in which the company chooses under **section OC 3** to become an FDPA company. 30

*When company's status ends*

- (3) The company ends its status as an FDPA company from the first day of the tax year after the tax year in which the election referred to in **subsection (2)** is made but only if the company—
- (a) files an annual FDPA return for the year of election in the time allowed by section 71 of the Tax Administration Act 1994; and 5
  - (b) pays further FDP under **section OC 30 or OC 31** for the year of election.

Defined in this Act: amount, annual FDPA return, FDP, FDPA company, further FDP, pay, tax year 10

Compare: 2004 No 35 s MG 2(4), (5)

**OC 5 When company emigrates***Status ends*

- (1) If an emigrating company is an FDPA company immediately before the time of emigration, its status as an FDPA company ends at the time of emigration. 15

*Further payments and returns*

- (2) The company referred to in **subsection (1)** must—
- (a) file an annual FDPA return for the tax year in which the company becomes non-resident; and 20
  - (b) pay any further FDP payable under **sections OC 30 to OC 34** for the tax year.

Defined in this Act: annual FDPA return, emigrating company, FDPA company, further FDP, non-resident, pay, tax year, time of emigration 25

Compare: 2004 No 35 s MG 2(6), (7)

***FDP credits*****OC 6 FDPA payment of FDP***Credit*

- (1) An FDPA company has an FDP credit for an amount of FDP paid, including an amount of further FDP paid under **section OC 34. Subsection (3)** overrides this subsection. 30

*Table references*

- (2) The FDP credits in **subsection (1)** are referred to in **table 03**: FDP credits, rows 2 (payment of FDP) and 3 (payment of further FDP).

*No credit*

5

- (3) The company does not have a credit for FDP paid—
- (a) under **section RG 6** (Using loss balances) by reducing a tax loss; and
  - (b) for a CTR debit referred to in **section OD 23(2)(d) to (f)** (FDP payable for CTR debits).

10

*Credit date*

- (4) The credit date is the day the FDP is paid.

Defined in this Act: amount, CTR debit, FDP, FDP account, FDPA company, FDP credit, further FDP, pay, tax loss

Compare: 2004 No 35 ss MG 4(1)(a), (c), (2)(a), (3), MI 10(2)

15

**OC 7 FDPA dividend derived with FDP credit***Credit*

- (1) An FDPA company has an FDP credit for the amount of an FDP credit attached to a dividend derived by the company.

*Table reference*

20

- (2) The FDP credit in **subsection (1)** is referred to in **table 03**: FDP credits, row 4 (dividend derived with FDP credit).

*Credit date*

- (3) The credit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDPA company, pay

Compare: 2004 No 35 s MG 4(1)(b), (2)(b)

25

**OC 8 FDPA payment of FDP for transfer from CTR account***Credit*

- (1) An FDPA company has an FDP credit for the amount of a payment of FDP under **section OD 23(2)(a)** (FDP payable for CTR debits).

30

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 03**: FDP credits, row 5 (payment of FDP for transfer from conduit account).

*Credit date*

5

- (3) The credit date is the last day of the tax year.

Defined in this Act: amount, FDP, FDP credit, FDPA company, pay, tax year

Compare: 2004 No 35 s MG 4(1)(bb), (2)(bb)

**OC 9 FDPA transfer for net foreign attributed income***Credit*

10

- (1) An FDPA company has an FDP credit for an amount equal to the amount of the imputation debit under **section 0B 39** (ICA transfer for net foreign attributed income).

*Table references*

- (2) The FDP credit in **subsection (1)** is referred to in **table 03**: FDP credits, row 6 (transfer for net foreign attributed income). The imputation debit in **subsection (1)** is referred to in **table 02**: imputation debits, row 12 (transfer for net foreign attributed income).

15

*Credit date*

20

- (3) The credit date is the same as the debit date recorded for the debit in the imputation credit account.

Defined in this Act: amount, FDP credit, FDPA company, imputation credit account, imputation debit

Compare: 2004 No 35 s MG 4(1)(ba), (2)(ba)

25

**OC 10 FDPA payment of FDP for conduit debit balance***Credit*

- (1) An FDPA company has an FDP credit for the amount of a payment of FDP under **section 0D 23(2)(b), (c), or (g)** (FDP payable for CTR debits).

30

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 03**: FDP credits, row 7 (payment of FDP for conduit debit balance).

*Credit date*

- (3) The credit date is the day the FDP is paid.

Defined in this Act: amount, FDP, FDP account, FDP credit, FDPA company, pay  
Compare: 2004 No 35 s MG 4(1)(bc), (2)(bc)

**OC 11 FDPA credit transfer to company**

5

*Credit*

- (1) An FDPA company has an FDP credit for the amount of a credit shown in a credit transfer notice given to the company.

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 03: FDP credits**, row 8 (credit transfer). 10

*Credit date*

- (3) The credit date is the day the notice is given.

Defined in this Act: amount, credit transfer notice, FDP credit, FDPA company  
Compare: 2004 No 35 s MG 4(1)(bd), (2)(bd)

15

**OC 12 FDPA reversal of tax advantage arrangement***When this section applies*

- (1) This section applies when it is established that an FDP credit in an FDPA company's FDP account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage. 20

*Credit*

- (2) The company has an FDP credit for an amount equal to the amount of a debit in the company's FDP account under **section OC 25**. 25

*Table references*

- (3) The FDP credit in **subsection (2)** is referred to in **table 03: FDP credits**, row 9 (reversal of tax advantage arrangement). The FDP debit in **subsection (2)** is referred to in **table 04: FDP debits**, row 14 (tax advantage arrangement). 30



*Credit date*

- (4) The credit date is the same as the debit date recorded for the debit.

Defined in this Act: amount, FDP account, FDP credit, FDPA company, tax advantage

5

Compare: 2004 No 35 s MG 4(1)(d), (2)(d)

*FDP debits***OC 13 FDPA payment of dividend***Debit*

- (1) An FDPA company has an FDP debit for the amount of an FDP credit attached to a dividend paid by the company. 10

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 2 (payment of dividend).

*Debit date*

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- (3) The debit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDP debit, FDPA company, pay

Compare: 2004 No 35 s MG 5(1)(a), (2)(a)

**OC 14 FDPA refund of FDP***Debit*

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- (1) An FDPA company has an FDP debit for the amount of a refund of FDP paid to the company. **Subsection (3)** overrides this subsection.

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 3 (refund of FDP). 25

*No debit*

- (3) The company does not have a debit for the amount of—  
 (a) a refund to the extent to which it refunds FDP paid before a debit arises under **section OC 24 (table 04**: FDP debits, row 13 (debit for loss of shareholder continuity)); or 30

- (b) a refund of FDP paid under **section 0D 25** (Refunds on transfers to CTR account).

*Debit date*

- (4) The debit date is the day the refund is made.

Defined in this Act: amount, FDP, FDP account, FDP debit, FDPA company, pay  
Compare: 2004 No 35 s MG 5(1)(d), (2)(d)

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**OC 15 FDPA overpayment of FDP**

*Debit*

- (1) An FDPA company has an FDP debit for the amount of an overpayment of FDP that is applied to pay an amount due under the Inland Revenue Acts. **Subsection (3)** overrides this subsection.

10

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04: FDP debits, row 4** (overpayment of FDP).

15

*No debit*

- (3) The company does not have a debit for the amount of an overpayment of FDP—

(a) that is applied to satisfy a liability for FDP; or

(b) that—

20

- (i) relates to a payment of FDP before an FDP debit arises under **section 0C 24** (**table 04: FDP debits, row 13** (debit for loss of shareholder continuity)); and

- (ii) is no more than the debit for loss of shareholder continuity.

25

*Debit date*

- (4) The debit date is the day the amount is applied.

Defined in this Act: amount, FDP, FDP debit, FDPA company, Inland Revenue Acts, pay, shareholder

30

Compare: 2004 No 35 s MG 5(1)(k), (2)(i)

**OC 16 FDPA refund of tax credit***Debit*

- (1) An FDPA company has an FDP debit for the amount of refund under **section LA 6(2)(e)** (Remaining refundable credits: PAYE, RWT, and certain other items) to the company. 5

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 5 (refund of tax credit).

*Debit date*

- (3) The debit date is the day the refund is made. 10

Defined in this Act: amount, FDP debit, FDPA company

Compare: 2004 No 35 s MG 5(1)(e), (2)(d)

**OC 17 FDPA credit transfer by company***Debit*

- (1) An FDPA company has an FDP debit for the amount of an FDP credit attached to a dividend paid by the company and shown in a credit transfer notice given by the company. 15

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 6 (credit transfer). 20

*Debit date*

- (3) The debit date is the day the dividend is paid.

Defined in this Act: amount, credit transfer notice, dividend, FDP credit, FDP debit, FDPA company, pay

Compare: 2004 No 35 s MG 5(1)(ab), (2)(ab)

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**OC 18 FDPA transfer to imputation credit account***Election*

- (1) An FDPA company may choose for a tax year to transfer some or all of a closing credit balance in the company's FDP account to the imputation credit account of— 30
- (a) the company; or
  - (b) an imputation group of which the company is part.

*Debit and credit*

- (2) The amount transferred is—
- (a) an FDP debit in the company's FDP account; and
  - (b) an imputation credit under, as applicable,—
    - (i) **section OB 12** (ICA transfer from FDP account) in the company's imputation credit account; or 5
    - (ii) **section OP 18** (Consolidated ICA transfer from group company's FDP account) in the imputation credit account of the consolidated imputation group. 10

*Table references*

- (3) The table references are as follows:
- (a) the FDP debit in **subsection (2)(a)** is referred to in **table 04: FDP debits, row 7** (transfer to imputation credit account): 15
  - (b) the imputation credit in **subsection (2)(b)(i)** is referred to in **table 01: imputation credits, row 10** (transfer from FDP account):
  - (c) the imputation credit in **subsection (2)(b)(ii)** is referred to in **table 019: imputation credits of consolidated imputation groups, row 13** (transfer from group company's FDP account). 20

*Method of election*

- (4) The company makes the election by recording the credit balance transferred as— 25
- (a) a debit in the company's FDP account; and
  - (b) a credit in the imputation credit account of—
    - (i) the company; or
    - (ii) the imputation group.

*CTR companies*

- (5) Despite **subsection (1)**, an FDPA company that is also a CTR company may not choose to make the transfer. 30

*Debit date*

- (6) The debit date is the last day of the tax year. 35
- Defined in this Act: amount, CTR company, consolidated imputation group, FDP, FDP account, FDP debit, FDPA company, imputation credit, imputation credit account, imputation group, tax year

Compare: 2004 No 35 ss MG 5(1)(c), (2)(c), MG 11

**OC 19 FDPA transfer to CTR account***Debit*

- (1) An FDPA company has an FDP debit for an amount transferred when a credit balance in the company's FDP account is treated under **subsections (2) and (3)** as transferred to the company's CTR account. The amount of the debit is the smaller of the credit balance and debit balance in **subsection (2)**. 5

*When debit arises*

- (2) The debit for the transfer arises when— 10
- (a) a credit balance exists in the company's FDP account immediately before the end of the tax year; and
  - (b) a debit balance exists in the company's CTR account immediately before the end of the tax year.

*Determining balances*

- (3) For the purposes of **subsection (2)**, — 15
- (a) the credit balance in the FDP account is found by including an FDP credit under **section OC 9**; and
  - (b) the debit balance in the CTR account is found by including a CTR credit under **section OD 5** (CTRA tax credit for conduit tax relief); and 20
  - (c) the debit balance and the credit balance are determined immediately before a transfer under this section is made.

*Amount of debit and credit*

- (4) The smaller of the debit balance or the credit balance referred to in **subsection (2)** becomes— 25
- (a) the FDP debit transferred; and
  - (b) the CTR credit under **section OD 6** (CTRA transfer from FDP account).

*Table references* 30

- (5) The table references are as follows:
- (a) the FDP debit in **subsection (1)** is referred to in **table 04: FDP debits, row 8** (transfer to CTR account);
  - (b) the FDP credit in **subsection (3)(a)** is referred to in **table 03: FDP credits, row 6** (transfer for net foreign attributed income): 35

- (c) the CTR credit in **subsection (3)(b)** is referred to in **table 05: CTR credits, row 2 (tax credit for conduit tax relief):**
- (d) the FDP credit in **subsection (4)(a)** is referred to in **table 04: FDP debits, row 8 (transfer to CTR account):**
- (e) the CTR credit in **subsection (4)(b)** is referred to in **table 05: CTR credits, row 3 (transfer from FDP account).** 5

*Debit date*

- (6) The debit date is the last day of the tax year. 10  
 Defined in this Act: amount, CTR account, CTR credit, FDP account, FDP credit, FDP debit, FDPA company, foreign attributed income, income tax, tax year  
 Compare: 2004 No 35 ss MG 5(1)(ca), (2)(ca), MI 6(1)

**OC 20 FDPA transfer to policyholder credit account***Election*

- (1) An FDPA company that is also a PCA company may, for a tax year,— 15
  - (a) choose to transfer some or all of a credit balance in the company's FDP account to its policyholder credit account; or
  - (b) be treated as choosing to transfer a credit in the FDP account to the policyholder credit account. 20

*Debit and credit*

- (2) The credit balance or the amount of the credit transferred is— 25
  - (a) an FDP debit; and
  - (b) a policyholder credit under **section OJ 4** (PCA transfer from FDP account).

*Method of election*

- (3) The FDPA company makes the election by recording the amount transferred as— 30
  - (a) a debit in the FDP account; and
  - (b) a credit in the policyholder credit account.

*Scope of election*

- (4) If the credit balance in **subsection (1)(a)** includes an FDP credit under **section OC 7**, the company must make the election under **subsection (1)** no later than the end of the tax year in which the debit date for the transfer of the FDP credit occurs. 35

*Mandatory transfer*

- (5) In the absence of an election under **subsection (1)(a)**, an FDPA company is treated as having chosen to transfer a credit balance that includes an FDP credit under **section OC 6** during the tax year when the FDP credit has not been cancelled by a later FDP debit under **section OC 14** before the end of the company's accounting year corresponding to the tax year. 5

*Cancellation order*

- (6) For the purposes of **subsection (5)**, debits are treated as reducing credits in the order in which the credits arise. 10

*Table references*

- (7) The table references are as follows:
- (a) the FDP debit in **subsection (2)(a)** is referred to in **table 04: FDP debits, row 9** (transfer to policyholder credit account): 15
  - (b) the policyholder credit in **subsection (2)(b)** is referred to in **table 013: policyholder credits, row 3** (transfer from FDP account):
  - (c) the FDP credit in **subsection (4)** is referred to in **table 03: FDP credits, row 4** (dividend derived with FDP credit): 20
  - (d) the FDP credit in **subsection (5)** is referred to in **table 03: FDP credits, row 2** (payment of FDP):
  - (e) the FDP debit in **subsection (5)** is referred to in **table 04: FDP debits, row 3** (refund of FDP).

*CTR companies* 25

- (8) Despite **subsection (1)**, an FDPA company that is also a CTR company may not choose to make the transfer.

*Credit and debit dates*

- (9) The credit dates and the debit dates for the credit balance and the credits transferred are— 30
- (a) the day of election for the credit balance transferred at the company's election under **subsection (1)**; and

- (b) the last day of the tax year for a credit that the company is treated under **subsection (5)** as having chosen to transfer.

Defined in this Act: accounting year, amount, CTR company, dividend, FDP, FDP account, FDP credit, FDP debit, FDPA company, pay, PCA company, policyholder credit, policyholder credit account, tax year

5

Compare: 2004 No 35 ss MG 5(1)(b), (2)(b), MG 7

## OC 21 FDPA transfer to group account

### *Debit*

- (1) An FDPA company has an FDP debit for an amount equal to the amount of an FDP credit under **section OP 58** (Consolidated FDPA dividend derived with FDP credit) for the transfer of a credit to the FDP account of the consolidated group of which the company is part.

10

### *Table references*

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- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 10 (transfer to group account). The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 5 (group company's credit).

### *Debit date*

20

- (3) The debit date is the same as the credit date recorded in the consolidated group's FDP account.

Defined in this Act: amount, consolidated group, FDP account, FDP credit, FDP debit, FDPA company

Compare: 2004 No 35 s MG 16(3)

25

## OC 22 FDPA breach of FDP ratio

### *Debit*

- (1) An FDPA company has an FDP debit for a breach of the benchmark dividend rules in **section OC 28(4)** for an amount calculated using the formula—
- $$\text{net dividends} \times \text{FDP ratio} - \text{credits attached.}$$

30

### *Definition of items in formula*

- (2) In the formula,—
- (a) **net dividends** is the total amount of all dividends paid by the company during the tax year, excluding imputation credits and FDP credits attached to the dividends:

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- (b) **FDP ratio** is the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios) or, if it is less, the greatest FDP ratio of dividends paid by the company during the tax year:
- (c) **credits attached** is the total amount of all FDP credits attached to dividends paid by the company during the tax year. 5

*Table reference*

- (3) The FDP debit in **subsection (1)** is referred to in **table 04: FDP debits**, row 11 (breach of FDP ratio). 10

*Ratio change declaration*

- (4) A debit under **subsection (1)** does not arise if the FDPA company provides a ratio change declaration under **section OC 28(6)**.

*Debit date*

- (5) The debit date is the last day of the tax year. 15

Defined in this Act: amount, benchmark dividend, dividend, FDP account, FDP credit, FDP debit, FDP ratio, FDPA company, imputation credit, pay, tax year

Compare: 2004 No 35 s MG 5(1)(f), (2)(e)

## **OC 23 FDPA breach of FDP ratio by PCA company**

*Debit* 20

- (1) An FDPA company has an FDP debit for a tax year for an amount described in **subsection (2)** when—
  - (a) the company is also a PCA company; and
  - (b) the company is not also a CTR company; and
  - (c) during the tax year the company pays a dividend with an FDP credit attached; and 25
  - (d) the dividend does not result from an election by—
    - (i) a statutory producer board under **sections OB 73 to OB 75** (which relate to producer boards' notional distributions); or 30
    - (ii) a co-operative company under **sections OB 78 to OB 80** (which relate to co-operative companies' notional distributions); and
  - (e) a positive amount exists for the total amount of the company's policyholder income and policyholder net loss for the tax year under the policyholder base calculation for each tax year of the FDP reference period; and 35

- (f) the shareholder FDP ratio for the FDP reference period is more than the policyholder FDP ratio.

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 12 (breach of FDP ratio by PCA company). 5

*Amount of debit*

- (3) The amount of the debit is—
- (a) the maximum deficit debit if the credit balance in the FDP account at the end of the tax year, but before the debit arises, is more than the maximum deficit debit; or 10
- (b) the reduced deficit debit if **paragraph (a)** does not apply.

*Consolidated group*

- (4) This section applies, modified as necessary, to a consolidated group with a policyholder credit account as if the group were a single company. In the application of this section to the group,— 15
- (a) the definition of the item **total credits** in the definition of **policyholder FDP ratio** in **section OC 37(3)** is read as referring to a transfer under **section FM 30(3) and (4)** (Application of certain provisions to consolidated groups) to the group's policyholder credit account; and 20
- (b) a dividend paid between group companies is disregarded.

*Debit date*

- (5) The debit date is the last day of the tax year. 25

Defined in this Act: amount, company, CTR company, consolidated group, co-operative company, dividend, FDP, FDP account, FDP credit, FDP debit, FDP ratio, FDP reference period, FDPA company, income tax, maximum deficit debit, PCA company, policyholder base, policyholder credit account, policyholder FDP ratio, policyholder income, policyholder net loss, reduced deficit debit, shareholder, shareholder FDP ratio, statutory producer board, tax year 30

Compare: 2004 No 35 ss MG 5(1)(g), (2)(e), MG 8B, MG 16A(1B)

**OC 24 FDPA debit for loss of shareholder continuity**

*Debit*

- (1) An FDPA company has an FDP debit for the amount equal to the amount of an FDP credit retained in the FDP account and unused before the date on which shareholder continuity is lost. 35

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 13 (debit for loss of shareholder continuity).

*Debit date*

- (3) The debit date is the day of loss of shareholder continuity. 5

*Avoidance arrangements*

- (4) **Section GB 41** (FDPA arrangements for carrying amounts forward) may apply to treat a company as not meeting the requirements of this section.

Defined in this Act: amount, FDP account, FDP credit, FDP debit, FDPA company, shareholder 10

Compare: 2004 No 35 s MG 5(1)(i), (2)(g), (3), (4)

**OC 25 FDPA tax advantage arrangement***Debit*

- (1) An FDPA company has an FDP debit for the amount of a debit for a tax advantage arrangement determined under **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain tax advantage). 15

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 14 (tax advantage arrangement). 20

*Debit date*

- (3) The debit date is the last day of the tax year in which the tax advantage arrangement began.

Defined in this Act: amount, arrangement, FDP debit, FDPA company, tax advantage, tax year 25

Compare: 2004 No 35 s MG 5(1)(h), (2)(f)

**OC 26 FDPA final balance***Debit*

- (1) An FDPA company has an FDP debit for a credit balance in the FDP account when the company stops being an FDPA company. 30

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 15 (final balance).

*Debit date*

- (3) The debit date is the day the company stops being an FDPA company. 5

Defined in this Act: FDP account, FDP debit, FDPA company

Compare: 2004 No 35 s MG 5(1)(j), (2)(i)

***FDP credits attached to dividends*****OC 27 FDP credits attached to dividends** 10*Attaching FDP credits*

- (1) When an FDPA company pays a dividend, it may attach an FDP credit to the dividend. **Subsection (2)** overrides this subsection.

*Exclusion*

- (2) **Subsection (1)** does not apply to an FDPA company that is also a CTR company. 15

*FDP ratio for dividend*

- (3) A dividend with an FDP credit attached has an FDP ratio calculated using the formula— 20

$$\frac{\text{credit attached}}{\text{net dividends.}}$$

*Definition of items in formula*

- (4) In the formula,— 25
- (a) **credit attached** is the amount of FDP credit attached to the dividend:
- (b) **net dividends** is the amount of dividends paid, excluding imputation credits and FDP credits.

*Maximum permitted ratio*

- (5) A dividend with an FDP credit attached must not have an FDP ratio that is more than the maximum permitted ratio calculated 30

under **section OA 18(2)** (Calculation of maximum permitted ratios).

Defined in this Act: amount, company, CTR company, dividend, FDP, FDP account, FDP credit, FDP ratio, FDPA company, imputation credit, maximum permitted ratio, pay

5

Compare: 2004 No 35 ss MG 6, MG 8(1), (2)

## OC 28 FDPA benchmark dividend rules

### *When this section applies*

- (1) This section applies when an FDPA company pays a dividend on more than 1 occasion during a tax year. **Subsection (2)** overrides this subsection. 10

### *Exclusions*

- (2) This section does not apply to a dividend that is the subject of an election by—
- (a) a statutory producer board under **sections OB 73 to OB 75** (which relate to statutory boards' notional distributions); and 15
  - (b) a co-operative company under **sections OB 78 to OB 80** (which relate to co-operative companies' notional distributions). 20

### *Benchmark dividend*

- (3) The first dividend of the tax year is the benchmark dividend.

### *Same FDP ratio*

- (4) The FDP ratio of a dividend paid after the benchmark dividend must be the same as the FDP ratio of the benchmark dividend. 25

### *Breach of FDP ratio*

- (5) A breach of **subsection (4)** gives rise to an FDP debit under **section OC 22 (table O4: FDP debits, row 10 (breach of FDP ratio))** for an amount calculated using the formula in **section OC 22(1)**. 30

### *Ratio change declaration*

- (6) To prevent the consequences of a breach of **subsection (4)**, an FDPA company may notify the Commissioner that the dividend is not part of an arrangement to obtain a tax advantage by 35

- providing a ratio change declaration stating that the dividend is not part of an arrangement to which **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain tax advantage) apply. The company must provide the declaration before the dividend is paid, or by a later date if the Commissioner allows. For the purposes of this subsection, the dividend must not be part of an arrangement to obtain a tax advantage. 5
- Consolidated group*
- (7) This section applies, modified as necessary, to a consolidated group as if it were a single company. 10
- Group debit*
- (8) Under **section OP 54** (When credits and debits arise only in consolidated FDP group accounts), a breach of an FDP ratio alternatively gives rise to an FDP debit under **section OP 72** (Consolidated FDPA breach of FDP ratio) (**table 022**: FDP debits of consolidated group, row 10 (breach of FDP ratio)) if the company is part of a consolidated group. 15
- Treatment of group dividends*
- (9) In the application of this section to a consolidated group, a dividend paid between group companies is disregarded. 20
- Defined in this Act: amount, arrangement, benchmark dividend, Commissioner, company, consolidated group, co-operative company, dividend, FDP, FDP debit, FDP ratio, FDPA company, pay, statutory producer board, tax advantage, tax year
- Compare: 2004 No 35 ss MG 8(2), (3), MG 16A(1)
- OC 29 FDP credits and imputation credits attached to dividends** 25
- Attaching combined credits*
- (1) When an FDPA company pays a dividend, it may attach both an FDP credit and an imputation credit to the dividend.
- Combined ratio* 30
- (2) A dividend with combined credits attached has a combined imputation and FDP ratio calculated using the formula—
- $$\frac{\text{combined credits attached}}{\text{net dividends.}}$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **combined credits attached** is the total amount of FDP credits and the imputation credits attached to the dividend: 5
- (b) **net dividends** is the amount of dividends paid, excluding the amount of FDP credits and the imputation credits.

*Maximum permitted ratio*

- (4) A dividend with combined credits attached must not have a combined imputation and FDP ratio that is more than the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios). 10

*Breach of combined ratio breach*

- (5) A breach of the maximum ratio referred to in **subsection (4)** gives rise to an excess credit amount that is calculated using the formula— 15
- $\text{net dividends} \times (\text{combined ratio} - \text{maximum ratio}).$

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,— 20
- (a) **net dividends** is the amount of dividends paid, excluding FDP credits and the imputation credits:
- (b) **combined ratio** is the combined imputation and FDP ratio of the dividend:
- (c) **maximum ratio** is the maximum combined imputation and FDP ratio permitted under **subsection (4)**. 25

Defined in this Act: amount, basic rate, combined imputation and FDP ratio, company, dividend, excess credit amount, FDP credit, FDP ratio, FDPA company, imputation credit, income tax, income year, maximum permitted ratio, pay, tax year

Compare: 2004 No 35 s MG 10 30

***Further FDP*****OC 30 Payment of further FDP for closing debit balance***Liability*

- (1) An FDPA company or consolidated FDP group is liable to pay further FDP for a closing debit balance in the FDP account of the company or the group. 35

*Due date*

- (2) The company must pay the further FDP to the Commissioner no later than the 20 June following the end of the tax year.

*Application of other provisions*

- (3) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994— 5
- (a) apply to further FDP as if they addressed further FDP and not income tax; and
- (b) apply, modified as necessary, to ensure their application to further FDP rather than income tax; and 10
- (c) do not override the FDP rules or section 103 of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, company, consolidated FDP group, FDP account, FDP rules, FDPA company, further FDP, income tax, pay, tax year 15

Compare: 2004 No 35 s MG 9(1), (2), (6)

### **OC 31 Payment of further FDP when company no longer New Zealand resident**

*Liability*

- (1) An FDPA company is liable to pay further FDP for a debit balance in the company's FDP account when the company stops being resident in New Zealand. 20

*Due date*

- (2) The company must pay the further FDP to the Commissioner on the day the company stops being resident in New Zealand. 25

*Paramount section*

- (3) A company to which this section applies that stops being an FDPA company on the last day of a tax year is liable for further FDP under this section and not under **section OC 30**.

*Application of other provisions*

- (4) **Section OC 27(3)** applies to the treatment of further FDP under this section. 30

Defined in this Act: Commissioner, FDP account, FDP rules, FDPA company, further FDP, pay, resident in New Zealand, tax year

Compare: 2004 No 35 s MG 9(3) 35



**OC 32 Reduction of further FDP***Debit at previous year-end*

- (1) An FDPA company's liability for further FDP under **section OC 30 or OC 31** may be reduced under **subsection (2)** if—
- (a) a debit balance existed in the company's FDP account at the end of a tax year; and 5
  - (b) a credit that arises in the account in the following tax year is less than the debit balance; and
  - (c) the company notifies the Commissioner.

*Amount of reduction*

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- (2) The liability is reduced by the amount that is the debit balance for the tax year less the total amount of credits for the following tax year.

Defined in this Act: amount, Commissioner, FDP account, FDP credit, FDPA company, further FDP, notify, tax year

15

Compare: 2004 No 35 s MG 9(7), (8)

**OC 33 FDP paid satisfying liability for further FDP***Election*

- (1) On meeting the requirements of **subsection (2)**, an FDPA company that is liable for further FDP may choose to satisfy the liability through a payment of FDP. 20

*Requirements*

- (2) The company must pay the FDP—
- (a) after the end of the tax year in which the relevant debit balance arises; and 25
  - (b) for an income year corresponding to a tax year in which the company is an FDPA company.

*Payment credited*

- (3) The payment of FDP satisfies the company's liability to pay further FDP. 30

*When treated as paid*

- (4) The further FDP is treated as paid on the date the Commissioner receives the payment of FDP.

Defined in this Act: Commissioner, company, FDP, FDPA company, further FDP, income year, pay, tax year

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Compare: 2004 No 35 s MG 9(4), (5A)

**OC 34 Further FDP paid satisfying liability for FDP***Election*

- (1) A company that pays further FDP may choose to treat the payment as satisfying a liability of the company to pay FDP.

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*FDPA company status*

- (2) The liability referred to in **subsection (1)** must be for an income year that corresponds with a tax year in which the company is an FDPA company.

*Alternative for consolidated group*

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- (3) A company that is part of a consolidated FDP group may choose that the payment under **subsection (1)** satisfies a group liability for FDP owed by another group company when or after the payment is made.

Defined in this Act: company, consolidated FDP group, FDP, FDPA company, further FDP, income year, pay, tax year

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Compare: 2004 No 35 ss MG 9(5), MG 16(6)

*Some definitions***OC 35 Meaning of FDP reference period***When this section applies*

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- (1) This section applies for the purposes of **sections OC 23 and OC 36 to OC 39**.

*Meaning*

- (2) **FDP reference period**, for an FDPA company, means the period comprising the tax year and the longest period of consecutive tax years in which the FDPA company did not pay a dividend with an FDP credit attached that—
- (a) starts on or after the debit date for the debit; and

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- (b) ends on the last day of the tax year that falls before the tax year in which the dividend referred to in **section OC 23(1)(c)** is paid.

Defined in this Act: dividend, FDP credit, FDPA company, pay, tax year

Compare: 2004 No 35 ss MG 8B(4), OB 1 “DWP reference period”

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### OC 36 Meaning of maximum deficit debit

*When this section applies*

- (1) This section applies for the purposes of **section OC 23**.

*Meaning*

- (2) **Maximum deficit debit** means the amount calculated using the formula— 10

(shareholder ratio – policyholder ratio)  
× net result × (1 – tax rate).

*Definition of items in formula*

- (3) In the formula,— 15

- (a) **shareholder ratio** is an FDPA company’s shareholder FDP ratio for the FDP reference period:
- (b) **policyholder ratio** is the company’s policyholder FDP ratio for the FDP reference period:
- (c) **net result** is the amount of the company’s policyholder income less its policyholder net losses for the FDP reference period under the policyholder base calculation for each tax year: 20
- (d) **tax rate** is the basic rate of income tax set out in—
- (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or 25
- (ii) **schedule 1, part A, clause 6** if the company is a Maori authority.

Defined in this Act: amount, basic rate, FDP reference period, income tax, Maori authority, policyholder base, policyholder FDP ratio, policyholder income, policyholder net loss, shareholder FDP ratio, tax year 30

Compare: 2004 No 35 ss MG 8B(4), OB 1 “maximum deficit debit”

### OC 37 Meaning of policyholder FDP ratio

*When this section applies*

- (1) This section applies for the purposes of **sections OC 23 and OC 36**. 35

*Meaning*

- (2) **Policyholder FDP ratio** means the ratio of credits to the underlying amount that is calculated using the formula—

$$\frac{\text{total credits}}{\text{net result} \times (1 - \text{tax rate})}. \quad 5$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **total credits** is the total policyholder credits under **section OJ 4** (PCA transfer from FDP account) (**table O13**: policyholder credits, row 3 (transfer from FDP account)) in an FDPA company's policyholder credit account during the FDP reference period: 10
- (b) **net result** is the amount of the company's policyholder income less the amount of policyholder net losses for the FDP reference period under the policyholder base calculation for each tax year: 15
- (c) **tax rate** is the basic rate of income tax set out in—
- (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or 20
- (ii) **schedule 1, part A, clause 6** if the company is a Maori authority.

Defined in this Act: amount, basic rate, FDP reference period, FDPA company, income tax, Maori authority, policyholder base, policyholder credit, policyholder credit account, policyholder income, policyholder net loss, tax year 25

Compare: 2004 No 35 ss MG 8B(4), OB 1 "policyholder DWP ratio"

**OC 38 Meaning of reduced deficit debit***When this section applies*

- (1) This section applies for the purposes of **section OC 23**.

*Meaning* 30

- (2) **Reduced deficit debit** means the amount calculated for a tax year using the formula—

$$\text{balance} + \text{FDPC} - \frac{\text{dividends} \times (\text{FDPC} + \text{PCAC} + \text{balance})}{\text{dividends} + (\text{net result} \times (1 - \text{tax rate}))}. \quad 35$$

*Definition of items in formula*

- (3) In the formula,—

- (a) **balance** is the credit balance in an FDPA company’s FDP account at the end of the previous tax year:
- (b) **FDPC** is the total amount of all FDP credits attached to dividends paid by the company during the FDP reference period: 5
- (c) **dividends** is the total amount of all dividends paid by the company during the FDP reference period:
- (d) **PCAC** is the total amount of policyholder credits under **section OJ 4** (PCA transfer from FDP account) (**table O13**: policyholder credits, row 3 (transfer from FDP account)) in the company’s policyholder credit account during the FDP reference period: 10
- (e) **net result** is the amount of the company’s policyholder income less the amount of policyholder net losses for the FDP reference period under the policyholder base calculation for each tax year: 15
- (f) **tax rate** is the basic rate of income tax set out in—
- (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or 20
- (ii) **schedule 1, part A, clause 6** if the company is a Maori authority.

Defined in this Act: amount, basic rate, dividend, FDP account, FDP credit, FDP reference period, FDPA company, income tax, Maori authority, pay, policyholder base, policyholder credit, policyholder credit account, policyholder income, policyholder net loss, tax year 25

Compare: 2004 No 35 ss MG 8B(4), OB 1 “reduced deficit debit”

### OC 39 Meaning of shareholder FDP ratio

*When this section applies*

- (1) This section applies for the purposes of **sections OC 23 and OC 36**. 30

*Meaning*

- (2) **Shareholder FDP ratio** means the ratio of the credits to the underlying amount that is calculated using the formula—
- $$\frac{\text{credits attached}}{\text{total dividends.}}$$
- 35

*Definition of items in formula*

- (3) In the formula,—

- (a) **credits attached** is the total amount of all FDP credits attached to dividends paid by an FDPA company during the FDP reference period:
- (b) **total dividends** is the total amount of all dividends paid by the company during the FDP reference period. 5

Defined in this Act: amount, dividend, FDP credit, FDP reference period, pay

Compare: 2004 No 35 ss MG 8B(4), OB 1 “shareholder DWP ratio”

## Subpart OD—CTR accounts

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*Introductory provisions*

**OD 1 General rules for companies with CTR accounts**

*CTR company*

- (1) An FDPA company may choose to become a CTR company.

*CTR account*

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- (2) A CTR company must maintain a CTR account for a tax year. The account is a record of CTR credits and CTR debits that arise in the account during the tax year.

*Credits*

- (3) Credits to the account include the amount of a tax credit calculated under **section LQ 1 or LQ 2** (which relate to tax credits for conduit tax relief) in relation to the income tax imposed on foreign attributed income and the proportion that non-resident shareholders have to total shareholders. **Section RG 7** (Reduction of payments for conduit tax relief) applies to reduce the amount of FDP payable for a foreign dividend.

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*Debits*

- (4) Debits to the account include the amount of a CTR credit attached to a dividend paid to the company's non-resident shareholders.

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*Group accounts*

- (5) A consolidated group must maintain a group CTR account if a group company is a CTR company.

*Resident shareholder continuity requirements*

- (6) The carrying forward of a credit in the company's CTR account is subject to the resident shareholder continuity requirements of **section OD 16**.

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Defined in this Act: amount, amount of tax, CTR account, CTR company, CTR credit, CTR debit, consolidated group, dividend, FDP, FDPA company, foreign attributed income, income tax, non-resident, non-resident passive income, pay, shareholder, tax credit, tax year

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Compare: 2004 No 35 ss MI 2(1), (4), MI 4(1)(a), MI 5(1)(a), MI 14(1), NG 9(1)(a)

**OD 2 CTR accounts***General rules*

- (1) The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to the CTR account of a CTR company. 5

*Credits and debits of consolidated groups*

- (2) Under **section OP 79** (When credits and debits arise only in CTR group accounts), certain credits and debits do not arise in the account if the company is part of a consolidated group. 10
- Defined in this Act: CTR account, CTR company, consolidated group, memorandum account
- Compare: 2004 No 35 ss MI 2(4), MI 19(1), (5)

**OD 3 Choosing to become CTR company***Notifying Commissioner*

- (1) An FDPA company that chooses to become a CTR company must notify the Commissioner of its election no later than the day on which the company is required to file a return of income for the income year that corresponds to the tax year in which the election is made. 15

*Effect of election* 20

- (2) A CTR company must maintain the CTR account referred to in **section OD 1(2)** from—
- (a) the first day of the tax year in which the company makes the election; or
- (b) the day the Commissioner is notified for the purposes of **sections LQ 5, OC 27, OD 20, and RG 7** (which relate to credits attached to dividends). 25

Defined in this Act: Commissioner, company, CTR account, CTR company, FDPA company, income year, notify, return of income, tax year

Compare: 2004 No 35 s MI 2(1)–(3) 30

**OD 4 When company stops being CTR company***Election*

- (1) A company stops being a CTR company—
- (a) by election under **subsection (2)**; or



- (b) when the company stops being an FDPA company under **section OC 4** (When company chooses to stop being FDPA company).

*When election made*

- (2) A CTR company may make an election under **subsection (1)(a)** only in a tax year that is later than the tax year in which the company chooses under **section OD 3** to become a CTR company. 5

*When company's status ends*

- (3) The company ends its status as a CTR company from the first day of the tax year after the tax year in which the election referred to in **subsection (1)(a)** is made but only if the company— 10
- (a) files an annual ICA return for the year of election in the time allowed by **section 69** of the Tax Administration Act 1994; and 15
- (b) pays further FDP under **section OD 23 or OD 24** for the year of election.

*Continuation of account*

- (4) The company must continue to maintain its CTR account to the end of the year of election. 20

Defined in this Act: annual ICA return, company, CTR account, CTR company, FDPA company, further FDP, tax year

Compare: 2004 No 35 s MI 2(5)–(7)

**CTR credits** 25

**OD 5 CTRA tax credit for conduit tax relief**

*Credit*

- (1) A CTR company has a CTR credit for a tax year for the amount of a tax credit allowed to the company under **section LQ 1 or LQ 2** (which relate to conduit tax relief) for an income year corresponding to the tax year. The amount of the credit is calculated under **subsection (3)**. 30

*Calculating amount of credit*

- (2) Having determined the amount of its tax credit for a tax year, a CTR company must apportion that amount to calculate the amount of the credit using the formula—

$$\frac{\text{FDP last day credit}}{\text{total FDP credit}} \times \text{amount of tax credit.} \quad 5$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **FDP last day credit** is the part of the amount of the FDP credit arising in the company's FDP account on the last day of the tax year under **section OB 39(1)** (ICA transfer for net foreign attributed income) for which the credit date is set out in **subsection (8)(a)** of that section: 10
- (b) **total FDP credit** is the total amount under **section OC 9** (FDPA transfer for net foreign attributed income): 15
- (c) **amount of tax credit** is the amount of the tax credit under **section LQ 1 or LQ 2**.

*Table references*

- (4) The CTR credit in **subsection (1)** is referred to in **table 05: CTR credits, row 2** (tax credit for conduit tax relief). The FDP credit in **subsection (3)(b)** is referred to in **table 03: FDP credits, row 6** (transfer for net foreign attributed income). 20

*Credit dates*

- (5) The credit date is— 25
- (a) the last day of the tax year corresponding with the income year for which the tax credit is allowed for the amount of the credit calculated under **subsection (3)**; and
- (b) the day the company files its return of income for the income year for the balance of the credit. 30

Defined in this Act: amount, CTR company, CTR credit, FDP account, FDP credit, foreign attributed income, income tax, income year, return of income, tax credit, tax year

Compare: 2004 No 35 s MI 4(1)(a), (2)(a)

**OD 6 CTRA transfer from FDP account***Credit*

- (1) A CTR company has a CTR credit for an amount equal to the amount of an FDP debit under **section OC 19** (FDPA transfer to CTR account) for a transfer to the CTR account. 5

*Table references*

- (2) The CTR credit in **subsection (1)** is referred to in **table 05: CTR credits, row 3** (transfer from FDP account). The FDP debit in **subsection (1)** is referred to in **table 04: FDP debits, row 8** (transfer to CTR account). 10

*Credit date*

- (3) The credit date is the last day of the tax year.  
 Defined in this Act: amount, CTR account, CTR company, CTR credit, FDP account, FDP debit, tax year  
 Compare: 2004 No 35 ss MI 4(1)(e), (2)(e), MI 6(1) 15

**OD 7 CTRA dividend derived with CTR credit***Credit*

- (1) A CTR company has a CTR credit for the amount of a CTR credit attached to a dividend derived by the company.

*Table reference* 20

- (2) The CTR credit in **subsection (1)** is referred to in **table 05: CTR credits, row 4** (dividend derived with CTR credit).

*Credit date*

- (3) The credit date is the day the dividend is paid.  
 Defined in this Act: amount, CTR company, CTR credit, dividend, pay 25  
 Compare: 2004 No 35 s MI 4(1)(c), (2)(c)

**OD 8 CTRA reduction of FDP***Credit*

- (1) A CTR company has a CTR credit for the amount of a reduction of FDP allowed to the company under **section RG 7** (Reduction of payments for conduit tax relief) for a dividend derived during the tax year. 30

*Table reference*

- (2) The CTR credit in **subsection (1)** is referred to in **table 05: CTR credits**, row 5 (reduction of FDP).

*Credit date*

- (3) The credit date is the due date for payment of FDP under **section RG 7**. 5

Defined in this Act: amount, CTR company, CTR credit, dividend, FDP, pay, tax year

Compare: 2004 No 35 s MI 4(1)(b), (2)(b)

**OD 9 CTRA reversal of tax advantage arrangement** 10*When this section applies*

- (1) This section applies when it is established that a CTR credit in a CTR company's CTR account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

*Credit*

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- (2) The company has a CTR credit for an amount that equals the amount of the debit in the company's CTR account under **section OD 18**.

*Table references*

- (3) The CTR credit in **subsection (2)** is referred to in **table 05: CTR credits**, row 6 (reversal of tax advantage arrangement). The CTR debit in **subsection (2)** is referred to in **table 06: CTR debits**, row 10 (tax advantage arrangement). 20

*Credit date*

- (4) The credit date is the same as the debit date for the debit. 25

Defined in this Act: amount, arrangement, CTR account, CTR company, CTR credit, CTR debit, tax advantage

Compare: 2004 No 35 s MI 4(1)(d), (2)(d)

***CTR debits*****OD 10 CTRA payment of dividend** 30*Debit*

- (1) A CTR company has a CTR debit for the amount of a CTR credit attached to a dividend paid by the company.

*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 06**: CTR debits, row 2 (payment of dividend).

*Debit date*

- (3) The debit date is the day of payment. 5

Defined in this Act: amount, CTR company, CTR credit, CTR debit, dividend, pay  
Compare: 2004 No 35 s MI 5(1)(a), (2)(a)

**OD 11 CTRA transfer to FDP account***Debit*

- (1) A CTR company has a CTR debit for an amount transferred 10  
when a credit balance in the company's CTR account is  
treated under **subsections (2) and (3)** as transferred to the com-  
pany's FDP account. The amount of the debit is the smaller of  
the credit balance and debit balance as set out in **subsection (2)**.

*When debit arises*

- (2) The debit for the transfer referred to in **subsection (1)** arises 15  
when—
- (a) a credit balance exists in the company's CTR account  
immediately before the end of the tax year; and
- (b) a debit balance exists in the company's FDP account 20  
immediately before the end of the tax year.

*Finding balances*

- (3) For the purposes of **subsection (2)**,—
- (a) the credit balance in the CTR account is found by 25  
including a CTR credit under **section OD 5** when the  
credit date for the credit is the last day of the tax year;  
and
- (b) the debit balance in the FDP account is found by includ-  
ing an FDP credit under **section OC 9** (FDPA transfer for  
net foreign attributed income) for the tax year; and 30
- (c) the credit balance and the debit balance are determined  
immediately before the transfer under **subsection (1)** is  
made.

*Amount of debit and credit*

- (4) The smaller of the credit balance and the debit balance becomes—
- (a) a CTR debit:
  - (b) an FDP credit under **section OC 8** (FDPA payment for FDP for transfer from CTR account). 5

*Table references*

- (5) The table references are as follows:
- (a) the CTR debit in **subsection (1)** is referred to in **table 06: CTR debits, row 3 (transfer to FDP account):** 10
  - (b) the CTR credit in **subsection (3)(a)** is referred to in **table 05: CTR credits, row 2 (tax credit for conduit tax relief):**
  - (c) the FDP credit in **subsection (3)(b)** is referred to in **table 03: FDP credits, row 6 (transfer for net foreign attributed income):** 15
  - (d) the CTR debit in **subsection (4)(a)** is referred to in **table 06: CTR debits, row 3 (transfer to FDP account):**
  - (e) the FDP credit in **subsection (4)(b)** is referred to in **table 03: FDP credits, row 5 (payment of FDP for transfer from CTR account):** 20

*Debit date*

- (6) The debit date is the last day of the tax year.
- Defined in this Act: amount, CTR account, CTR company, CTR credit, CTR debit, FDP account, FDP credit, tax year
- Compare: 2004 No 35 ss MI 5(1)(i), (2)(h), MI 6(2) 25

**OD 12 CTRA transfer to group account***Debit*

- (1) A CTR company has a CTR debit for an amount equal to the amount of a CTR credit under **section OP 84** (Consolidated CTRA group company's credit) for a transfer of a credit to the CTR account of the consolidated group of which the company is part. 30

*Table references*

- (2) The CTR debit in **subsection (1)** is referred to in **table 06: CTR debits, row 4 (transfer to group account)**. The CTR credit in **subsection (1)** is referred to in **table 023: CTR credits of consolidated groups, row 5 (group company's credit)**. 35

*Debit date*

- (3) The debit date is the day of transfer.

Defined in this Act: amount, CTR account, CTR company, CTR credit, CTR debit, consolidated group

Compare: 2004 No 35 s MI 5(1)(j), (2)(i)

5

**OD 13 CTRA adjustment for conduit tax relief***Debit*

- (1) A CTR company has a CTR debit for the amount of an adjustment under **section FF 7(8)** (Surplus to foreign dividends).

*Table reference*

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- (2) The CTR debit in **subsection (1)** is referred to in **table 06: CTR debits**, row 5 (adjustment for conduit tax relief).

*Debit date*

- (3) The debit date is the day the company files a return of income for the tax year corresponding to the income year in which the adjustment occurred.

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Defined in this Act: amount, CTR account, CTR company, CTR debit, income year, return of income, tax year

Compare: 2004 No 35 s MI 5(1)(b), (2)(b)

**OD 14 CTRA break in shareholding chain for group company**

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*Debit*

- (1) A CTR company that is part of a consolidated group has a CTR debit for an amount arising in the circumstances set out in **subsections (2) and (3)**.

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*When debit arises*

- (2) A debit under **subsection (1)** arises when—
- (a) a credit has arisen in the company's CTR account under—
    - (i) **section OD 5:**
    - (ii) **section OD 8;** and
  - (b) the credit has not been cancelled by a later debit; and
  - (c) **sections YD 9 to YD 11** (which relate to the residence of CTR companies and their shareholders) have enabled

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- the credit to arise by treating a CTR group member as a non-resident; and
- (d) the CTR group member is no longer a CTR group company because the requirements of **section YD 11(4)** are no longer met. 5
- Table references*
- (3) The table references are as follows:
- (a) the CTR debit in **subsection (1)** is referred to in **table 06: CTR debits, row 6** (chain break for group company):
- (b) the CTR credit in **subsection (2)(a)(i)** is referred to in **table 05: CTR credits, row 2** (tax credit for conduit tax relief): 10
- (c) the FDP credit in **subsection (2)(a)(ii)** is referred to in **table 05: CTR credits, row 5** (reduction of FDP).
- Cancellation*
- (4) To determine whether the credit has been cancelled by a later debit as described in **subsection (2)(b)**,— 15
- (a) credits retain their separate character and are not treated as part of a credit for an opening credit balance under **section OA 7** (Opening balances of memorandum accounts); and 20
- (b) a debit is counted only once in the cancellation of a credit; and
- (c) debits cancel credits in the order in which the credits arise.
- Amount of debit* 25
- (5) The amount of the debit is the residual amount after taking into account the amount of any cancellation.
- Residence*
- (6) The residence of companies for the purposes of this section is determined under **sections YD 9 to YD 11**. 30
- Debit date*
- (7) The debit date is the day the shareholding chain is broken.
- Defined in this Act: amount, company, CTR account, CTR company, CTR credit, CTR debit, CTR group member, consolidated group, FDP, non-resident, shareholder 35
- Compare: 2004 No 35 s MI 5(1)(f), (2)(f), (5), (7)



**OD 15 CTRA break in shareholding chain for company***Debit*

- (1) A CTR company that is part of a consolidated group has a CTR debit for an amount arising in the circumstances set out in **subsections (2) and (3)**. 5

*When debit arises*

- (2) The debit arises when—
- (a) the company derives a dividend from another company in the same consolidated group and the dividend gives rise to a credit under **section OD 7** in the company's CTR account; and 10
  - (b) the other company is in the same consolidated group when the dividend is derived; and
  - (c) the credit has not been cancelled by a later debit; and
  - (d) the company is no longer part of the consolidated group because the requirements of **section YD 11(4)** (Meaning of CTR group member) are no longer met. 15

*Table references*

- (3) The CTR debit in **subsection (1)** is referred to in **table 06: CTR debits, row 7** (chain break when group membership stops). 20  
The CTR credit in **subsection (2)(a)** is referred to in **table 05: CTR credits, row 4** (dividend derived with CTR credit).

*Cancellation*

- (4) To determine whether a credits has been cancelled by a later debit under **subsection (2)(c)**,— 25
- (a) credits retain their separate character and are not treated as part of a credit for an opening credit balance under **section OA 7** (Opening balances of memorandum accounts); and
  - (b) a debit is counted only once in the cancellation of a credit; and 30
  - (c) debits cancel credits in the order in which the credits arise.

*Amount of debit*

- (5) The amount of the debit is the residual amount after taking into account the amount of any cancellation. 35

*Debit date*

- (6) The debit date is the day before the company stops being part of the consolidated group.

Defined in this Act: amount, company, CTR account, CTR company, CTR credit, CTR debit, consolidated group, dividend, pay

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Compare: 2004 No 35 s MI 5(1)(g), (2)(f), (5)

**OD 16 CTRA increase in resident shareholding***Debit*

- (1) A CTR company has a CTR debit for an amount of a CTR credit in the company's CTR account if the resident shareholding requirements of **subsection (2)** and **section OA 8** (Shareholder continuity requirements for memorandum accounts) are not met.

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*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table O6: CTR debits**, row 8 (increase in resident shareholding).

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*Resident shareholding requirements*

- (3) For the purposes of **subsection (1)**, the resident shareholding requirements are that—
- (a) the credit continues to exist to the extent to which it is not reduced by a later CTR debit; and
- (b) since the credit date for the credit, the percentage of the company's shareholders who are resident in New Zealand does not increase by 34% or more; and
- (c) an amount that is the CTR debit under **subsection (1)** arises for an amount of the credit that still exists when the requirement of **paragraph (b)** is not met.

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*Supporting rules*

- (4) The following rules apply for the purposes of **subsection (3)**:
- (a) the percentage of shareholders resident in New Zealand at any time is found by taking the highest of the following percentages:
- (i) the percentage of direct voting interests held in the company by residents; and
- (ii) the percentage of direct market value interests held in the company, if a direct market value circumstance exists, by residents; and

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- (iii) if not all shares in the company are shares of the same class, the percentage of total dividends that would be derived by residents if the company were liquidated; and
- (b) a credit retains its separate character and is not treated as part of a credit referred to in **section OA 7** (Opening balances of memorandum accounts) in a later tax year; and 5
- (c) the amount by which a credit is reduced by an earlier or later debit is found by— 10
  - (i) treating debits as reducing credits in the order in which the credits arise; and
  - (ii) counting a debit, whether some or all, only once in the reduction of a credit; and
- (d) the requirement of **subsection (3)(b)** is met if the increase in shareholders resident in New Zealand is solely because the requirements of **section YD 10(4)** (Meaning of CTR holding company) are not met; and 15
- (e) a debit still arises despite an arrangement affecting the company's shares that has a purpose or effect of defeating the intent and application of the resident shareholding requirements. 20

*Debit date*

- (5) The debit date is the day on which the shareholding threshold is first reached or passed. 25

Defined in this Act: amount, arrangement, company, CTR account, CTR company, CTR credit, CTR debit, direct market value circumstance, direct market value interest, direct voting interest, dividend, liquidation, resident in New Zealand, share, shareholder, shares of the same class, tax year

Compare: 2004 No 35 s MI 5(1)(e), (2)(e), (3)–(6) 30

**OD 17 CTRA breach of CTR ratio**

*Debit*

- (1) A CTR company has a CTR debit for a tax year for a breach of the benchmark dividend rules in **section OD 21** for an amount calculated using the formula— 35
  - (net dividends × CTR ratio) – credits attached.

*Definition of items in formula*

- (2) In the formula,—

- (a) **net dividends** is the total amount of all dividends paid by the company during the tax year, excluding imputation credits and CTR credits attached to the dividends:
- (b) **CTR ratio** is the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios) or, if less, the greatest CTR ratio of a dividend paid by the company during the tax year: 5
- (c) **credits attached** is the total amount of all CTR credits attached to dividends paid by the company during the tax year. 10

*Table reference*

- (3) The CTR debit in **subsection (1)** is referred to in **table 06**: CTR debits, row 9 (breach of CTR ratio).

*No FDP debit*

- (4) If a CTR company has a debit under this section, no debit arises for the amount in the company's FDP account. 15

*Ratio change declaration*

- (5) A debit under **subsection (1)** does not arise if the CTR company provides a ratio change declaration under **section OD 21(6)**.

*Debit date*

- (6) The debit date is the last day of the tax year in which the breach occurred. 20

Defined in this Act: amount, benchmark dividend, company, CTR account, CTR company, CTR credit, CTR debit, CTR ratio, dividend, FDP account, imputation credit, tax year 25

Compare: 2004 No 35 ss MG 8(4), MI 5(1)(c), (2)(c)

## OD 18 CTRA tax advantage arrangement

*Debit*

- (1) A CTR company has a CTR debit for the amount of a debit for a tax advantage arrangement determined under **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage). 30

*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 06**: CTR debits, row 10 (tax advantage arrangement). 35

*Debit date*

- (3) The debit date is the last day of the tax year in which the tax advantage arrangement began.

Defined in this Act: amount, arrangement, CTR company, CTR debit, tax advantage, tax year

5

Compare: 2004 No 35 ss MI 5(1)(d), (2)(d), MI 9

**OD 19 CTRA final balance***Debit*

- (1) A CTR company has a CTR debit for a credit balance in the account when the company stops being a CTR company.

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*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 06**: CTR debits, row 11 (final balance).

*Debit date*

- (3) The debit date is the day before the company stops being a CTR company.

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Defined in this Act: CTR company, CTR debit

Compare: 2004 No 35 s MI 5(1)(h), (2)(g)

***CTR credits attached to dividends*****OD 20 CTR credits attached to dividends**

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*Attaching CTR credits*

- (1) When a CTR company pays a dividend to a non-resident shareholder, it may attach a CTR credit to the dividend. **Subsection (2)** overrides this subsection.

*Dividends of producer boards and co-operative companies*

25

- (2) **Subsection (1)** does not apply to a dividend with a CTR credit attached that is subject to an election by—

(a) a statutory producer board under **sections OB 73 to OB 75** (which relate to producer boards' notional distributions); and

30

(b) a co-operative company under **sections OB 78 to OB 80** (which relate to co-operative companies' notional distributions).

*CTR ratio for dividend*

- (3) A dividend with a CTR credit attached has a CTR ratio calculated using the formula—

$$\frac{\text{credit attached}}{\text{net dividends.}}$$

5

*Definition of items in formula*

- (4) In the formula,—
- (a) **credit attached** is the amount of CTR credit attached to the dividend:
- (b) **net dividends** is the amount of the dividend paid, excluding the amount of imputation credit and CTR credit. 10

*Maximum permitted ratio*

- (5) A CTR credit attached to a dividend must not be more than the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios). 15

*Residence*

- (6) Residence for the purposes of this section is ascertained under **sections YD 9 to YD 11** (which relate to the residence of CTR companies). 20

Defined in this Act: amount, CTR company, CTR credit, CTR ratio, co-operative company, dividend, imputation credit, maximum permitted ratio, non-resident, pay, shareholder, statutory producer board

Compare: 2004 No 35 ss MG 8(1), (8), MI 7(2), MI 8(1)

**OD 21 CTRA benchmark dividend rules** 25*When this section applies*

- (1) This section applies when a CTR company pays a dividend on more than 1 occasion during a tax year. **Subsection (2)** overrides this subsection.

*Exclusions* 30

- (2) This section does not apply to a dividend with a CTR credit attached that is subject to an election by—
- (a) a statutory producer board under **sections OB 73 to OB 75** (which relate to producer boards' notional distributions); and 35

- (b) a co-operative company under **sections OB 78 to OB 80** (which relate to co-operative companies' notional distributions).

*Benchmark dividend*

- (3) The first dividend of the tax year is the benchmark dividend. 5

*Same CTR ratio*

- (4) The CTR ratio of a dividend paid after the benchmark dividend must be the same as the CTR ratio of the benchmark dividend.

*Debit for breach of CTR ratio*

- (5) A breach of **subsection (4)** gives rise to a CTR debit under **section OD 17 (table 06: CTR debits, row 9 (breach of CTR ratio))** for an amount calculated using the formula in **section OD 17(1)**. 10

*Ratio change declaration*

- (6) To prevent the consequences of a breach of **subsection (4)**, a CTR company may notify the Commissioner that the dividend is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the dividend is not part of an arrangement to which **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage) applies. The company must provide the declaration before the dividend is paid, or by a later date if the Commissioner allows. For the purposes of this subsection, the dividend must not be part of an arrangement to obtain a tax advantage. 15  
20  
25

*Consolidated group*

- (7) This section applies, modified as necessary, to a consolidated group as if it were a single company.

*Group debit*

- (8) If the company is part of a consolidated group, a breach of a CTR ratio alternatively gives rise to a CTR debit under **section OP 92 (Consolidated CTRA breach of CTR ratio) (table 024: CTR debits of consolidated groups, row 7 (breach of CTR ratio))**. 30  
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*Treatment of group dividends*

- (9) In the application of this section to a consolidated group, a dividend paid between group companies is disregarded.

Defined in this Act: amount, arrangement, benchmark dividend, Commissioner, company, CTR company, CTR credit, CTR debit, CTR ratio, consolidated group, co-operative company, dividend, notify, pay, statutory producer board, tax advantage, tax year

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Compare: 2004 No 35 ss MG 8(2), (3), (8), MI 8, MI 22(1)–(3)

**OD 22 CTR credits and imputation credits attached to dividends**

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*Attaching combined credits*

- (1) When a CTR company pays a dividend, it may attach both a CTR credit and an imputation credit to the dividend.

*Combined ratio*

- (2) A dividend with combined credits attached has a combined imputation and CTR ratio calculated using the formula—

15

$$\frac{\text{combined credits}}{\text{net dividends.}}$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **combined credits** is the total amount of CTR credit and imputation credit attached to the dividend:
- (b) **net dividends** is the amount of the dividend paid, excluding the amount of CTR credit and imputation credit.

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*Maximum permitted ratio*

- (4) A dividend with combined credits attached must not have a combined imputation and CTR ratio that is more than the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios).

30

*Combined ratio breach*

- (5) A breach of the maximum ratio set out in **subsection (4)** gives rise to an excess credit amount that is calculated using the formula—

$$\text{net dividends} \times (\text{combined ratio} - \text{maximum ratio}).$$

35



*Definition of items in formula*

- (6) In the formula in **subsection (5)**,—
- (a) **net dividends** is the amount of the dividend paid, excluding the amount of CTR credit and imputation credit: 5
  - (b) **combined ratio** is the combined imputation and CTR ratio of the dividend:
  - (c) **maximum ratio** is the maximum combined imputation and CTR ratio permitted under **subsection (4)**. 10
- Defined in this Act: amount, combined imputation and CTR ratio, company, CTR company, CTR credit, dividend, excess credit amount, imputation credit, maximum permitted ratio, pay 10
- Compare: 2004 No 35 ss MG 10, MI 8(1), MI 7(1)

*Payment of FDP and refunds***OD 23 FDP payable for CTR debits** 15*Liability*

- (1) A CTR company is liable to pay FDP for the amount of a CTR debit described in **subsection (2)** that arises in the company's CTR account during a tax year.

*Debits* 20

- (2) A debit referred to in **subsection (1)** is a debit under 1 of the following sections referred to, and rows described in **table 06**: CTR debits:
- (a) **section OD 11**, row 3 (transfer to FDP account):
  - (b) **section OD 14**, row 6 (chain break for group company): 25
  - (c) **section OD 15**, row 7 (chain break when group membership stops):
  - (d) **section OD 16**, row 8 (increase in resident shareholding):
  - (e) **section OD 17**, row 9 (breach of CTR ratio):
  - (f) **section OD 18**, row 10 (tax advantage arrangement): 30
  - (g) **section OD 19**, row 11 (final balance).

*No FDP credit*

- (3) No credit to the company's FDP account arises for the debits set out in **subsection (2)(d) to (f)**.

*Payment date*

- (4) The company must pay the FDP to the Commissioner no later than—
- (a) the 20th day of the month following the end of the quarter in which the debits arise when the FDP is payable for the debits set out in **subsection (2)(b) to (g)**; or 5
  - (b) 20 June following the end of the tax year when the FDP is payable for the debit set out in **subsection (2)(a)**.

*Application of other provisions*

- (5) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—
- (a) apply as if they addressed FDP and not income tax; and
  - (b) apply, modified as necessary, to ensure their application to FDP rather than income tax; and 15
  - (c) do not override the FDP rules or section 103A of the Tax Administration Act 1994.

Defined in this Act: amount, arrangement, Commissioner, company, CTR account, CTR company, CTR debit, CTR ratio, FDP, FDP account, FDP credit, FDP rules, further FDP, income tax, pay, quarter, resident, tax year

20

Compare: 2004 No 35 s MI 10

**OD 24 FDP payable on resident's restricted amalgamation***Liability*

- (1) An amalgamated company that is not a CTR company is liable to pay FDP for the amount of an imputation credit that arises in the company's imputation credit account under **section OA 12** (CTR account on resident's restricted amalgamation). 25

*Due date*

- (2) The due date for payment of the FDP to the Commissioner is the 20th day of the month following the end of the quarter in which the resident's restricted amalgamation occurred. 30

*No credit*

- (3) The payment of the FDP does not give rise to a credit in the company's imputation credit account or FDP account.

Defined in this Act: amalgamated company, amount, Commissioner, CTR company, FDP, FDP account, imputation credit, imputation credit account, pay, quarter, resident's restricted amalgamation

35

Compare: 2004 No 35 s MI 13(7)

**OD 25 Refunds on transfers to CTR account***Refund*

- (1) A CTR company has a refund for the amount of a CTR credit under **section OD 6 (table O5: CTR credits, row 3 (transfer from FDP account))** in the company's CTR account. 5

*Application of refund*

- (2) The Commissioner may apply the refund to pay an amount due under the Inland Revenue Acts. This subsection overrides **subpart RM (Refunds)**. 10
- Defined in this Act: amount, Commissioner, CTR account, CTR company, CTR credit, Inland Revenue Acts
- Compare: 2004 No 35 s MI 11

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5

*Branch equivalent tax debits*

- OE 20 BETA person's payment of income tax  
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10

***Introductory provision*****OE 1 General rules for companies and other persons with  
 branch equivalent tax accounts***BETA company*

15

- (1) A company resident in New Zealand may choose to be a  
 BETA company with a branch equivalent tax account.

*BETA person*

- (2) A person resident in New Zealand who is not a company may  
 choose to be a BETA person with a branch equivalent tax  
 account.

20

*General rules: BETA company*

- (3) The general rules on memorandum accounts set out in **sections  
 OA 2 and OA 3** (which relate to the treatment of memorandum  
 accounts) apply to the branch equivalent tax account of a  
 BETA company.

25

*General rules: BETA person*

- (4) **Sections OA 2 and OA 3** apply to a BETA person and their branch  
 equivalent tax account as if references in those sections to a  
 tax year were references to an income year.

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Defined in this Act: BETA company, BETA person, branch equivalent tax account,  
 company, income year, memorandum account, resident in New Zealand, tax year

Compare: 2004 No 35 ss MF 1(1), MF 11(1)

## *Companies with branch equivalent tax accounts*

### *Introductory provisions*

#### **OE 2 Branch equivalent tax accounts of companies**

##### *Accounts*

- (1) A BETA company must maintain a branch equivalent tax account for a tax year. The account is a record of branch equivalent tax credits and branch equivalent tax debits that arise in the account during the tax year. 5

##### *Credits*

- (2) Credits to the account may include a credit for an amount of income tax attributable to foreign attributed income. 10

##### *Debits*

- (3) Debits to the account may include a debit for an amount of FDP paid on a dividend derived from a CFC.

##### *Consolidated groups*

- (4) A consolidated group has a branch equivalent tax account if a group company is a BETA company, or if the group chooses to have the account. 15

##### *Group credits and debits*

- (5) Certain credits and debits arise in the branch equivalent tax account of a consolidated group and not in the account of a group company. 20

##### *Shareholder continuity requirement*

- (6) The carrying forward of a credit or a debit in the company's branch equivalent tax account is subject to the shareholder continuity requirement of **section OA 8** (Shareholder continuity requirements for memorandum accounts). 25

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, CFC, consolidated group, dividend, FDP, foreign attributed income, income tax, pay, shareholder, tax year 30

Compare: 2004 No 35 ss MF 1(3), MF 4(1)(a), (3)(a), (5), MF 7(1)(a), MF 9

**OE 3 Choosing to become BETA company***Election*

- (1) A company may choose to become a BETA company for a tax year—
- (a) at any time during the tax year; or 5
  - (b) no later than the day on which the company is required to file a return of income for the tax year; or
  - (c) by a later date if the Commissioner allows.

*Notifying Commissioner*

- (2) The company must notify the Commissioner of an election under **subsection (1)**— 10
- (a) no later than 21 days after the date of the election; or
  - (b) by a later date if the Commissioner allows.

*Effect of election*

- (3) A BETA company must maintain a branch equivalent tax account referred to in **section OE 2(1)** from the first day of the tax year in which the company makes the election. 15

Defined in this Act: BETA company, branch equivalent tax account, Commissioner, company, income year, notify, return of income, tax year

Compare: 2004 No 35 s MF 1(1), (2) 20

**OE 4 When company stops being BETA company***Election*

- (1) A BETA company may choose to stop being a BETA company only in a tax year that is later than the tax year in which the company chooses under **section OE 3** to become a BETA company. 25

*When company's status ends*

- (2) The company ends its status as a BETA company from the first day of the tax year after the tax year in which it makes the election but only if it files an annual ICA return for the year of election in the time allowed by section 69 of the Tax Administration Act 1994. 30

Defined in this Act: annual ICA return, BETA company, tax year

Compare: 2004 No 35 s MF 1(4), (5)

### OE 5 Treatment of attributed CFC income and FIF income in this subpart

This subpart applies to a person with an attributing interest in a FIF by treating—

- (a) FIF income derived from the person's interest as attributed CFC income, if the FIF income is calculated— 5
  - (i) under the accounting profits method or the branch equivalent method; or
  - (ii) under a method to which **section EX 43(6) or EX 46** (which relate to the calculation of FIF income) applies; and 10
- (b) the fund as a CFC; and
- (c) the interest as an income interest.

Defined in this Act: accounting profits method, attributed CFC income, attributing interest, branch equivalent method, CFC, FIF, FIF income, income interest 15

Compare: 2004 No 35 s MF 15

#### *Branch equivalent tax credits*

### OE 6 BETA payment of income tax on foreign income

#### *Credit*

- (1) A BETA company has a branch equivalent tax credit for an amount calculated using the formula— 20
  - ((CFC income for year – deductions for year) × tax rate) – foreign tax credits – debit balances.

#### *Definition of items in formula*

- (2) In the formula,— 25
  - (a) **CFC income for year** is the amount of attributed CFC income derived during the income year corresponding to the tax year referred to in **subsection (3)**: 25
  - (b) **deductions for year** is the total amount in the income year corresponding to the tax year referred to in **subsection (3)** of— 30
    - (i) attributed CFC loss; and
    - (ii) attributed CFC net loss; and
    - (iii) FIF loss; and
    - (iv) FIF net loss: 35
  - (c) **tax rate** is the basic rate of income tax set out in—
    - (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or

- (ii) **schedule 1, part A, clause 6** if the company is a Maori authority:
- (d) **foreign tax credits** is the amount of foreign tax credits allowed for the income year corresponding to the tax year referred to in **subsection (3)** under **sections LK 1 to LK 7** (which relate to foreign tax credits of CFCs), as applicable: 5
- (e) **debit balances** is the total amount of all debit balances in a branch equivalent tax account applied to satisfy the company's income tax liability for the income year corresponding to the tax year referred to in **subsection (3)**. 10

*Table reference*

- (3) The branch equivalent tax credit in **subsection (1)** is referred to in **table O7: branch equivalent tax credits, row 2** (income tax on foreign income). 15

*Credit date*

- (4) The credit date is the day the company files the return of income for the tax year.

Defined in this Act: amount, attributed CFC income, attributed CFC loss, attributed CFC net loss, basic rate, BETA company, branch equivalent tax account, branch equivalent tax credit, FIF loss, FIF net loss, foreign tax, income tax, income tax liability, income year, Maori authority, tax year 20

Compare: 2004 No 35 s MF 4(1)(a), (2)(a)

## **OE 7 BETA payment of income tax**

*When this section applies* 25

- (1) This section applies when—
  - (a) a BETA company has a debit balance in its branch equivalent tax account; and
  - (b) the income of the company includes an amount of attributed CFC income; and 30
  - (c) an amount of FDP that gives rise to a debit included in the debit balance has been paid—
    - (i) directly; or
    - (ii) by reducing a tax loss; or
    - (iii) to reduce an FDP liability under **section RG 7** (Reduction of payments for conduit tax relief). 35



*Group companies*

- (2) This section also applies in relation to a BETA company if another company (**company B**) that is part of the same consolidated group has a debit balance in its branch equivalent tax account that arises in the circumstances set out in **subsection (1)**. 5

*Election*

- (3) The company or company B may choose to apply some or all of the debit balance under **section BC 8** (Satisfaction of income tax liability) to satisfy an income tax liability in relation to the attributed CFC income. The election is made by recording a credit in the branch equivalent tax account with the debit balance. 10

*Credit*

- (4) The amount that is applied to satisfy the income tax liability is a branch equivalent tax credit in the company's branch equivalent tax account. 15

*Table reference*

- (5) The branch equivalent tax credit in **subsection (4)** is referred to in **table 07: branch equivalent tax credits, row 3** (payment of income tax). 20

*Unused portion treated as tax loss component*

- (6) If the amount that is applied to satisfy the income tax liability is more than the income tax liability, the unused portion is treated as a tax loss component of the company of an amount calculated using the formula— 25

$$\frac{\text{unused portion}}{\text{tax rate.}}$$

*Definition of item in formula*

- (7) In the formula, **tax rate** is the basic rate of income tax set out in— 30
- (a) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or
- (b) **schedule 1, part A, clause 6**, if the company is a Maori authority. 35

*Income tax paid*

- (8) For the purposes of this section, the income tax liability —
- (a) is calculated by applying the formula in **section OE 6(1)** on the basis that the item **debit balances** is zero:
  - (b) is satisfied to the extent to which the liability is no more than the income tax payable in relation to the amount of the attributed CFC income. 5

*Credit date*

- (9) The credit date is the day of election. 10
- Defined in this Act: amount, attributed CFC income, basic rate, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, company, consolidated group, dividend, FDP, income, income interest, income tax, income tax liability, income year, Maori authority, pay, tax loss component, tax year
- Compare: 2004 No 35 ss MF 4(1)(c), (2)(b), MF 5(4)–(7) 15

**OE 8 BETA unused amount of debit balance***When this section applies*

- (1) This section applies for the purposes of **section OE 7** when an income tax liability of a BETA company is satisfied by applying a debit balance in the company's branch equivalent tax account, or in the account of another company in the same consolidated group, and an unused portion of the debit balance remains after the income tax liability is satisfied. 20

*Conversion to tax loss*

- (2) The unused amount is converted into a tax loss component for the purposes of **sections IA 2 to IA 10** (which relate to the treatment of tax losses). The amount of the tax loss component is calculated using the formula— 25

$$\frac{\text{unused amount}}{\text{tax rate.}} \quad 30$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **unused amount** is the amount of the debit balance remaining in the branch equivalent tax account:
  - (b) **tax rate** is the basic rate of income tax set out in— 35
    - (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or

- (ii) **schedule 1, part A, clause 6** if the company is a Maori authority.

*Company's tax loss*

- (4) The company that has the tax loss is the company whose income tax liability is satisfied as set out in **section OE 7(3)**. 5

Defined in this Act: amount, attributed CFC income, basic rate, BETA company, branch equivalent tax account, consolidated group, income tax, income tax liability, Maori authority, pay, tax loss component

Compare: 2004 No 35 ss MF 4(1)(c), MF 5(4)–(7)

**OE 9 BETA refund of FDP** 10

*Credit*

- (1) A BETA company has a branch equivalent tax credit for the amount of a refund of FDP paid to the company. **Subsections (2) and (3)** override this subsection.

*Refund giving rise to debit* 15

- (2) A refund under **subsection (1)** must be a refund of a payment of FDP that gave rise to a debit under **section OE 12**.

*Reduction*

- (3) The amount of the credit under **subsection (1)** is reduced to the extent to which— 20
- (a) the payment of FDP is made before a branch equivalent tax credit arises under **section OE 10** in the company's branch equivalent tax account; and
- (b) the amount of the refund is no more than the amount of the credit for loss of shareholder continuity. 25

*Table references*

- (4) The table references are as follows:
- (a) the branch equivalent tax credit in **subsection (1)** is referred to in **table 07: branch equivalent tax credits, row 4 (refund of FDP)**: 30
- (b) the branch equivalent tax debit in **subsection (2)** is referred to in **table 08: branch equivalent tax debits, row 2 (payment of FDP)**:
- (c) the branch equivalent tax credit in **subsection (3)(a)** is referred to in **table 07: branch equivalent tax credits, row 5 (credit for loss of shareholder continuity)**. 35

*Credit date*

- (5) The credit date is the day the refund is made.

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, FDP, pay, shareholder

Compare: 2004 No 35 s MF 4(1)(d), (2)(c)

5

**OE 10 BETA credit for loss of shareholder continuity***Credit*

- (1) A BETA company has a branch equivalent tax credit for the amount of a branch equivalent tax debit retained in the branch equivalent tax account and unused before the date on which shareholder continuity is lost.

10

*Table reference*

- (2) The branch equivalent tax credit in **subsection (1)** is referred to in **table 07: branch equivalent tax credits, row 5 (credit for loss of shareholder continuity)**.

15

*Credit date*

- (3) The credit date is the day of loss of shareholder continuity.

*Avoidance arrangements*

- (4) **Section GB 40** (BETA arrangements for carrying amounts forward) may exclude a company from the application of this section.

20

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, shareholder

Compare: 2004 No 35 s MF 4(1)(e), (2)(d), (5), (6)

**OE 11 BETA final balance**

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*Credit*

- (1) A BETA company has a branch equivalent tax credit for a debit balance in the branch equivalent tax account when the company stops being resident in New Zealand.

*Table reference*

30

- (2) The branch equivalent tax credit in **subsection (1)** is referred to in **table 07: branch equivalent tax credits, row 6 (final balance)**.

*Credit date*

- (3) The credit date is the day the company stops being a BETA company.

Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax credit, resident in New Zealand

5

Compare: 2004 No 35 s MF 4(1)(f), (2)(e)

*Branch equivalent tax debits***OE 12 BETA payment of FDP***Debit*

- (1) A BETA company has a branch equivalent tax debit for the amount of a payment of FDP that—
- (a) is calculated before a reduction of liability under **section RG 7** (Reduction of payments for conduit tax relief); and
  - (b) must have been payable in relation to a dividend derived from an income interest in a CFC; and
  - (c) may have been paid to reduce a tax loss.

10

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*Table reference*

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 08**: branch equivalent tax debits, row 2 (payment of FDP).

20

*Debit date*

- (3) The debit date is the day of payment.

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax debit, CFC, dividend, FDP, income interest, pay, tax loss

25

Compare: 2004 No 35 s MF 4(3)(a), (4)(a)

**OE 13 BETA reduction in FDP***Election*

- (1) A BETA company may choose to use some or all of a credit balance in the company's branch equivalent tax account to reduce an FDP liability of—
- (a) the company; or
  - (b) another company that is part of the same group of companies when the dividend giving rise to the liability is derived.

30

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*Debit*

- (2) The amount of the reduction is a debit arising in the company's branch equivalent tax account.

*Table reference*

- (3) The branch equivalent tax debit in **subsection (2)** is referred to in **table 08**: branch equivalent tax debits, row 3 (reduction of FDP). 5

*Manner of election*

- (4) The company makes the election by recording the amount of the credit balance that is used as a debit in the account. 10

*Debit date*

- (5) The debit date is the due date for the payment of FDP.

Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax debit, company, dividend, FDP, group of companies, pay

Compare: 2004 No 35 ss MF 4(3)(b), (4)(b), MF 5(1)–(3) 15

**OE 14 BETA refund of income tax***Debit*

- (1) A BETA company has a branch equivalent tax debit for the amount of a refund of income tax that is attributable to income tax paid for an income year on attributed CFC income derived during the income year. **Subsection (2)** overrides this subsection. 20

*Reduction*

- (2) The amount of the debit is reduced to the extent to which—  
 (a) a debit arises in the company's branch equivalent tax account under **section OE 15**; and 25  
 (b) the income tax was paid before the debit date for the debit for loss of shareholder continuity.

*Table references*

- (3) The branch equivalent tax debit in **subsection (1)** is referred to in **table 08**: branch equivalent tax debits, row 4 (refund of income tax). The branch equivalent tax debit in **subsection (2)(a)** is referred to in **table 08**: branch equivalent tax debits, row 5 (debit for loss of shareholder continuity). 30

*Debit date*

- (4) The debit date is the day the refund is made.

Defined in this Act: amount, attributed CFC income, BETA company, branch equivalent tax account, branch equivalent tax debit, income tax, income year, pay, shareholder

5

Compare: 2004 No 35 s MF 4(3)(c), (4)(c)

**OE 15 BETA debit for loss of shareholder continuity***Debit*

- (1) A BETA company has a branch equivalent tax debit for the amount of a branch equivalent tax credit retained in the branch equivalent tax account and unused before the date on which shareholder continuity is lost.

10

*Table reference*

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 08**: branch equivalent tax debits, row 5 (debit for loss of shareholder continuity).

15

*Debit date*

- (3) The debit date is the day of loss of shareholder continuity.

*Avoidance arrangements*

- (4) **Section GB 40** (BETA arrangements for carrying amounts forward) may exclude a company from the application of this section.

20

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, shareholder

Compare: 2004 No 35 s MF 4(3)(d), (4)(d), (5), (6)

25

**OE 16 BETA final balance***Debit*

- (1) A BETA company has a branch equivalent tax debit for a credit balance in the branch equivalent tax account when the company stops being resident in New Zealand.

30

*Table reference*

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 08**: branch equivalent tax debits, row 6 (final balance).

*Debit date*

- (3) The debit date is day the company stops being resident in New Zealand.

Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax debit, resident in New Zealand

5

Compare: 2004 No 35 s MF 4(3)(e), (4)(e)

*Persons with branch equivalent tax accounts**Introductory provisions***OE 17 Person choosing to become BETA person***Election*

10

- (1) A person who is eligible under **section OE 1(2)** and who chooses to become a BETA person may make the election for an income year—
- (a) at any time during the income year; or
  - (b) no later than the day on which the person is required to file a return of income for the income year; or
  - (c) by a later date if the Commissioner allows.

15

*Notice*

- (2) The person must notify the Commissioner of the election under **subsection (1)**—
- (a) no later than 21 days after the election; or
  - (b) by a later date if the Commissioner allows.

20

*Effect of election*

- (3) A BETA person must maintain a branch equivalent tax account from the first day of the income year in which they make the election.

25

Defined in this Act: BETA person, branch equivalent tax account, Commissioner, income year, notify, return of income

Compare: 2004 No 35 s MF 11(1), (2)

**OE 18 When person stops being BETA person**

30

*Election*

- (1) A BETA person may choose to stop the branch equivalent tax account.



*When election made*

- (2) A person may make an election under **subsection (1)** only in an income year that is later than the income year in which the person chose under **section OE 1(2)** to become a BETA person.

*When person's status ends*

- (3) The person ends their status as a BETA person from the first day of the income year after the income year in which the election referred to in **subsection (1)** is made but only if they file an annual branch equivalent tax account return for the year of election in the time allowed by section 78(3) of the Tax Administration Act 1994. 10

Defined in this Act: annual branch equivalent tax account return, BETA person, branch equivalent tax account, income year

Compare: 2004 No 35 s MF 11(4), (5)

*Branch equivalent tax credits* 15**OE 19 BETA person's payment of income tax on foreign income***Credit*

- (1) A BETA person has a branch equivalent tax credit for an income year for an amount calculated using the formula— 20

$$\text{tax liability} \times \frac{(\text{CFC or taxable income})}{(\text{taxable income})} - \text{foreign tax credits.}$$

*Definition of items in formula*

- (2) In the formula,— 25
- (a) **tax liability** is the person's income tax liability for the income year:
- (b) **CFC or taxable income** is the lesser of the person's— 30
- (i) attributed CFC income derived during the income year; or
- (ii) taxable income for the income year:
- (c) **taxable income** is the person's taxable income for the income year:
- (d) **foreign tax credits** is the foreign tax credits allowed for the income year under **section LK 1 to LK 7** (which relate to tax credits relating to attributed CFC income). 35

*Table reference*

- (3) The branch equivalent tax credit in **subsection (1)** is referred to in **table 09**: person's branch equivalent tax credits, row 2 (payment of income tax on foreign income).

*Credit date*

5

- (4) The credit date is the day the person files the return of income for the tax year corresponding to the income year.

Defined in this Act: amount, attributed CFC income, BETA person, branch equivalent tax account, branch equivalent tax credit, foreign tax, income tax, income tax liability income year, return of income, tax year, taxable income

10

Compare: 2004 No 35 ss MF 13(1), (2), MF 14

*Branch equivalent tax debits***OE 20 BETA person's payment of income tax***Election*

- (1) On meeting the requirements of **subsection (4)**, a BETA person may choose to use some or all of a credit balance in their branch equivalent tax account to satisfy an income tax liability of the person for an income year. 15

*Debit*

- (2) The amount used to satisfy the income tax liability is a branch equivalent tax debit in the person's branch equivalent tax account. 20

*Table reference*

- (3) The branch equivalent tax debit in **subsection (2)** is referred to in **table 010**: person's branch equivalent tax debits, row 2 (payment of income tax). 25

*Requirements*

- (4) The person may make an election under **subsection (1)** if— 30
- (a) they derive a dividend from an income interest in a CFC during the income year; and
  - (b) a credit balance exists in their branch equivalent tax account; and
  - (c) they have paid the income tax giving rise to a credit included in the credit balance.

*Manner of election*

- (5) The person makes the election by recording the amount as a debit in the branch equivalent tax account.

*Income tax paid*

- (6) Once the election is made, the income tax liability is satisfied to the extent to which the liability is no more than the income tax payable on the amount of the dividend derived. 5

*Debit date*

- (7) The debit date is the day of election. 10

Defined in this Act: amount, BETA person, branch equivalent tax account, branch equivalent tax debit, CFC, dividend, income interest, income tax, income tax liability, income year, pay

Compare: 2004 No 35 ss MF 13(3)(a), MF 14

**OE 21 BETA person's refund of income tax***Debit* 15

- (1) A BETA person has a branch equivalent tax debit for an income year for the amount of a refund of income tax attributable to income tax paid for the income year on attributed CFC income derived during the income year.

*Table reference* 20

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 010**: person's branch equivalent tax debits, row 3 (refund of income tax).

*Debit date*

- (3) The debit date is the day the refund is made. 25

Defined in this Act: amount, attributed CFC income, BETA person, branch equivalent tax debit, income tax, income year, pay

Compare: 2004 No 35 s MF 13(3)(b)

**OE 22 BETA person's final balance***Debit* 30

- (1) A BETA person has a branch equivalent tax debit for a credit balance in the branch equivalent tax account when the person stops being resident in New Zealand.

*Table reference*

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 010**: person's branch equivalent tax debits, row 4 (final balance).

*Debit date*

5

- (3) The debit date is the day the person stops being resident in New Zealand.

Defined in this Act: BETA person, branch equivalent tax account, branch equivalent tax debit, resident in New Zealand

Compare: 2004 No 35 s MF 13(3)(c)

10

## Subpart OF—Available subscribed capital accounts

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*ASC debits*

- |      |  |  |
|------|--|--|
| OF 6 | ASCA transfer to imputation credit account |  |
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*Introductory provisions***OF 1 General rules for companies with ASC accounts**

*ASC account company* 25

- (1) A public unit trust or a group investment fund that derives category A income may choose to become an ASC account company.

*ASC account*

- (2) An ASC account company must maintain an ASC account for a tax year. The account is a record of ASC credits and ASC debits that arise in the account during the tax year. 30

*Credits*

- (3) Credits to the account include redemption proceeds that are less than the ASC company's available subscribed capital calculated under the slice rule.

*Debits*

- (4) Debits to the account include a transfer of a credit balance to the company's imputation credit account.

Defined in this Act: ASC account, ASC account company, ASC credit, ASC debit, available subscribed capital, category A income, group investment fund, imputation credit account, public unit trust, slice rule, tax year

Compare: 2004 No 35 ss MJ 1(1), MJ 5(1), MJ 6(1)

**OF 2 ASC accounts**

The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to the ASC account of an ASC account company.

Defined in this Act: ASC account, ASC account company, memorandum account

Compare: 2004 No 35 s MJ 3(1)

**OF 3 Choosing to become ASC account company***Election*

- (1) A company may choose to become an ASC account company if—

- (a) it is a public unit trust or a group investment fund that derives category A income; and
- (b) it has issued shares on terms that their redemption will be subject to **section CD 22(4)** (Returns of capital: off-market share cancellations).

*Notifying Commissioner*

- (2) A company that makes an election under **subsection (1)** must notify the Commissioner of the election no later than the day on which the company is required to file a return of income for the tax year that corresponds to the income year in which the election is made.

*Effect of election*

- (3) An ASC account company must maintain the ASC account referred to in **section OF 1(2)** from the day the company chooses to become an ASC account company.

Defined in this Act: ASC account company, category A income, Commissioner, company, group investment fund, income year, notify, public unit trust, return of income, share, tax year

5

Compare: 2004 No 35 s MJ 1(1)

**OF 4 When public unit trust or group investment fund is liquidated**

10

*When this section applies*

- (1) This section applies when a public unit trust or group investment fund is liquidated without having become an ASC account company.

*Becoming ASC account company with opening credit balance*

15

- (2) The trust or fund may become an ASC account company and calculate an opening credit balance under **section OA 7** (Opening balances of memorandum accounts).

*Opening credit balance treated as closing credit balance*

20

- (3) The opening credit balance in **subsection (2)** is treated as the closing credit balance of the ASC account.

Defined in this Act: ASC account company, group investment fund, liquidation, public unit trust

Compare: 2004 No 35 s MJ 7

25

*ASC credits***OF 5 ASCA redemption credit***Credit*

- (1) An ASC account company has an ASC credit when the company redeems a share in the company for an amount calculated using the formula—

30

ASC amount – redemption proceeds.

*Definition of items in formula*

- (2) In the formula,—

- (a) **ASC amount** is the amount of the available subscribed capital for the redemption calculated under **section CD 22(4)** (Returns of capital: off-market share cancellations):
- (b) **redemption proceeds** is the amount of the proceeds from the redemption calculated under **sections CD 4 to CD 6** (which relate to the nature of a dividend). 5
- Positive result*
- (3) If the result of the formula in **subsection (1)** is negative, the amount is treated as zero. 10
- Table reference*
- (4) The ASC credit in **subsection (1)** is referred to in **table 011: ASC credits, row 2** (redemption credit).
- Credit date*
- (5) The credit date is the day the company redeems the share. 15
- Defined in this Act: amount, ASC account, ASC account company, ASC credit, available subscribed capital, share
- Compare: 2004 No 35 s MJ 5
- ASC debits**
- OF 6 ASCA transfer to imputation credit account** 20
- Election*
- (1) An ASC account company may choose that some or all of the credit balance in the company's ASC account is transferred to the company's imputation credit account.
- Debit and credit* 25
- (2) The amount of the credit balance transferred is—
- (a) an ASC debit for the full amount of the credit balance transferred; and
- (b) an imputation credit under **section OB 18** (ICA transfer from ASC account) for the amount calculated under **subsection (4)**. 30

- Table references*
- (3) The ASC debit in **subsection (2)(a)** is referred to in **table 012**: ASC debits, row 2 (transfer to imputation credit account). The imputation credit in **subsection (2)(b)** is referred to in **table 01**: imputation credits, row 16 (transfer from ASC account). 5
- Amount*
- (4) The amount of the credit to the imputation credit account is calculated using the formula—  

$$\text{credit balance} \times \text{maximum imputation ratio.}$$
- Definition of items in formula* 10
- (5) In the formula,—
- (a) **credit balance** is the credit balance in the company's ASC account at the time of the transfer:
- (b) **maximum imputation ratio** is the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios). 15
- Timing of election*
- (6) An election under **subsection (1)** may be made at any time when the company is an ICA company.
- Manner of election* 20
- (7) A company makes an election under **subsection (1)** by recording the credit balance transferred as—
- (a) a debit in the company's ASC account; and
- (b) a credit in the company's imputation credit account.
- Debit date* 25
- (8) The debit date is—
- (a) the day of election; or
- (b) the day before the company stops being an ICA company if the election is made on the occasion of cessation. 30
- Defined in this Act: amount, ASC account, ASC account company, ASC debit, ICA company, imputation credit, imputation credit account, imputation ratio
- Compare: 2004 No 35 ss ME 4(1)(da), MJ 6

### Subpart OJ—Policyholder credit accounts



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*Introductory provision*

**OJ 1 General rules for companies and other persons with policyholder credit accounts**

*PCA company*

- (1) A company resident in New Zealand and carrying on a life insurance business is a PCA company. 5

*PCA person*

- (2) A person other than a PCA company who carries on a life insurance business and has policyholder income to which **section CR 1(4)** (Income of life insurer) applies, may choose to have a policyholder credit account. 10

*General rules: PCA company*

- (3) The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to a PCA company's policyholder credit account. 15

*General rules: PCA person*

- (4) **Sections OA 2 and OA 3** apply to a PCA person and their policyholder credit account as if references in those sections to a tax year were references to an income year. 20

Defined in this Act: business, company, income year, life insurance, memorandum account, PCA company, PCA person, policyholder credit account, policyholder income, resident in New Zealand, tax year

Compare: 2004 No 35 ss ME 15, ME 22(1)

***Companies with policyholder credit accounts*** 25

*Introductory provision*

**OJ 2 Policyholder credit accounts of companies**

*Accounts*

- (1) A PCA company must maintain a policyholder credit account for a tax year. The account is a record of policyholder credits and policyholder debits that arise in the account during the tax year. 30

*Credits*

- (2) Credits to the account may include a transfer of an amount from the PCA company's imputation credit account or FDP account.

*Debits*

5

- (3) Debits to the account may include a credit balance applied to satisfy a PCA company's policyholder base income tax liability.

*Consolidated groups*

- (4) A consolidated group has a policyholder credit account if a group company is a PCA company. 10

*Credit and debits arising in group accounts*

- (5) Certain credits and debits arise in the policyholder credit account of the group and not in the account of a group company. 15

Defined in this Act: amount, consolidated group, FDP account, imputation credit account, PCA company, policyholder base income tax liability, policyholder credit, policyholder credit account, policyholder debit, tax year

Compare: 2004 No 35 ss ME 15, ME 17(1), ME 27(1), (3)

*Policyholder credits of PCA company*

20

**OJ 3 PCA transfer from imputation credit account***Credit*

- (1) A PCA company has a policyholder credit for an amount equal to the amount of an imputation debit, as applicable,—
- (a) under **section OB 47** (ICA transfer to policyholder credit account) if the company is not part of a consolidated group; or 25
- (b) under **section OP 44** (Consolidated ICA transfer to policyholder credit account) if the company is part of a consolidated imputation group. 30

*Table references*

- (2) The table references are as follows:
- (a) the policyholder credit in **subsection (1)** is referred to in **table O13**: policyholder credits, row 2 (transfer from imputation credit account): 35

- (b) the imputation debit in **subsection (1)(a)** is referred to in **table 02**: imputation debits, row 20 (transfer to policyholder credit account):
- (c) the imputation debit in **subsection (1)(b)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 18 (transfer to policyholder credit account. 5

*Credit date*

- (3) The credit date is the same as the debit date recorded for the transfer in the imputation credit account. 10
- Defined in this Act: amount, consolidated group, imputation credit account, imputation debit, PCA company, policyholder credit
- Compare: 2004 No 35 ss ME 14(1), ME 18(1)(a), (2)(a)

**OJ 4 PCA transfer from FDP account**

*Credit*

- (1) A PCA company has a policyholder credit for an amount equal to the amount of an FDP debit under **section 0C 20** (FDPA transfer to policyholder credit account) for the transfer of a credit balance or the amount of a credit from the company's FDP account. 15

*Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table 013**: policyholder credits, row 3 (transfer from FDP account). The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 9 (transfer to policyholder credit account). 20

*Credit date*

- (3) The credit date is the same as the debit date recorded for the transfer in the FDP account. 25
- Defined in this Act: amount, FDP account, FDP debit, PCA company, policyholder credit
- Compare: 2004 No 35 s ME 18(1)(b), (2)(b) 30

**OJ 5 PCA transfer of life insurance business**

*When this section applies*

- (1) This section applies when a PCA company or a PCA person transfers a life insurance business to another PCA company.

*Credit*

- (2) The PCA company that is the transferee has a policyholder credit for an amount equal to an amount of a policyholder debit under **section OJ 11**.

*Table reference*

5

- (3) The policyholder credit in **subsection (2)** is referred to in **table O13**: policyholder credits, row 4 (transfer of life insurance business).

*Credit date*

- (4) The credit date is the day the life insurance business is transferred. 10

Defined in this Act: amount, business, life insurance, PCA company, PCA person, policyholder credit, policyholder credit account, policyholder debit

Compare: 2004 No 35 s ME 18(1)(c), (2)(c)

**OJ 6 PCA credit for maximum deficit in FDP account** 15*Credit*

- (1) A PCA company has a policyholder credit for a tax year for an amount equal to the amount of an FDP debit—
- (a) that arises in the company's FDP account under **section OC 23** (FDPA breach of FDP ratio by PCA company); 20  
and
- (b) whose amount is calculated under **sections OC 23 and OC 36** (Meaning of maximum deficit debit).

*Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table O13**: policyholder credits, row 5 (credit for maximum deficit in FDP account). The FDP debit in **subsection (1)(a)** is referred to in **table O4**: FDP debits, row 12 (breach of FDP ratio by PCA company). 25

*Credit date*

30

- (3) The credit date is the last day of the tax year.

Defined in this Act: amount, FDP account, FDP debit, FDP ratio, PCA company, policyholder credit, tax year

Compare: 2004 No 35 s ME 18(1)(bb), (2)(bb)

**OJ 7 PCA credit for reduced deficit in FDP account***Credit*

- (1) A PCA company has a policyholder credit for a tax year for an amount equal to the amount of an FDP debit—
- (a) that arises in the company's FDP account under **section OC 23** (FDPA breach of FDP ratio by PCA company); and 5
  - (b) whose amount is calculated under **sections OC 23 and OC 38** (Meaning of reduced deficit debit).

*Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table O13**: policyholder credits, row 6 (credit for reduced deficit in FDP account). The FDP debit in **subsection (1)(a)** is referred to in **table O4**: FDP debits, row 12 (breach of FDP ratio by PCA company). 10  
15

*Credit date*

- (3) The credit date is the last day of the tax year.
- Defined in this Act: amount, FDP account, FDP debit, FDP ratio, PCA company, policyholder credit, tax year
- Compare: 2004 No 35 s ME 18(1)(bc), (2)(bb) 20

*Policyholder debits of PCA company***OJ 8 PCA payment of tax relating to policyholder base***Election*

- (1) A PCA company may choose that some or all of a credit balance in the company's policyholder credit account is treated as applied to satisfy— 25
- (a) a policyholder base income tax liability of the company; or
  - (b) a provisional tax liability of the company for its policyholder base. 30

*Manner of election*

- (2) A company makes an election under **subsection (1)** by recording as a debit the balance applied to satisfy the policyholder base income tax liability or policyholder base provisional tax.

*Effect of election*

- (3) As a result of an election under this section,—
- (a) a policyholder debit arises in the company's policyholder credit account; and
  - (b) the company's liability for the income tax or provisional tax is satisfied. 5

*Table reference*

- (4) The policyholder debit in **subsection (3)** is referred to in **table 014**: policyholder debits, row 2 (payment of tax relating to policyholder base). 10

*Debit date*

- (5) The debit date is the last day of the company's income year corresponding to the tax year for which the policyholder base income tax liability or policyholder base provisional tax arises. 15

Defined in this Act: amount, income tax, income year, pay, PCA company, policyholder base, policyholder base income tax liability, policyholder credit account, policyholder debit, provisional tax, tax year

Compare: 2004 No 35 ss ME 18(3)(a), (4)(a), ME 19(1), (2)

**OJ 9 PCA transfer to imputation credit account** 20*Election*

- (1) A PCA company may choose to treat some or all of a credit balance in the company's policyholder credit account as transferred to an imputation credit account. **Subsection (2)** overrides this subsection. 25

*Exclusion*

- (2) An election under **subsection (1)** excludes an amount that arises when—
- (a) the company has adopted a non-standard accounting year; and 30
  - (b) during the accounting year, the company has made an election that means the credit balance includes a credit under **section OJ 3** or **OJ 4**; and
  - (c) the election would result in a debit to the policyholder credit account during the tax year that corresponds to the accounting year. 35

*Debit and credit*

- (3) The amount of the credit balance transferred is—
- (a) a debit in the company's policyholder credit account; and
  - (b) a credit under, as applicable,—
    - (i) **section OB 17** (ICA transfer from policyholder credit account) in the company's imputation credit account; or
    - (ii) **section OP 20** (Consolidated ICA transfer from group company's policyholder credit account) in the consolidated imputation group's imputation credit account.

*Table references*

- (4) The table references are as follows:
- (a) the policyholder debit in **subsection (3)(a)** is referred to in **table 014**: policyholder debits, row 3 (transfer to imputation credit account): 15
  - (b) the imputation credit in **subsection (3)(b)(i)** is referred to in **table 01**: imputation credits, row 15 (transfer from policyholder credit account): 20
  - (c) the imputation credit in **subsection (3)(b)(ii)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 15 (transfer from company's policyholder credit account).

*Credit balance reduced*

- (5) Despite **subsection (2)(b)**, the credit balance includes a credit that is cancelled by a later debit to the account. Whether a debit cancels a credit is determined by treating a debit as offsetting a credit in the order in which credits arise in the account. 25  
30

*Other accounts*

- (6) The company may treat the amount of a credit balance that can be transferred as transferred to—
- (a) the company's imputation credit account; or
  - (b) the imputation credit account of an imputation group, if the company is part of the group. 35



*Manner of election*

- (7) The company makes the election by recording the amount of the credit balance transferred as—
- (a) a debit in the company's policyholder credit account; and
  - (b) a credit in the imputation credit account of, as applicable,—
    - (i) the company; or
    - (ii) the imputation group.

5

*Debit date*

- (8) The debit date is the day of election.

10

Defined in this Act: accounting year, amount, consolidated imputation group, FDP account, imputation credit, imputation credit account, imputation group, non-standard accounting year, PCA company, policyholder credit, policyholder credit account, tax year

15

Compare: 2004 No 35 ss ME 18(3)(b), (4)(b), ME 19(3)–(6)

**OJ 10 PCA transfer to group account***Debit*

- (1) A PCA company has a policyholder debit in a tax year for an amount equal to the amount of a policyholder credit under **section OP 112** (Consolidated PCA group company's credit) for a credit transferred to the policyholder credit account of the consolidated group of which the company is part.

20

*Table references*

- (2) The policyholder debit in **subsection (1)** is referred to in **table 014**: policyholder debits, row 4 (transfer to group account). The policyholder credit in **subsection (1)** is referred to in **table 027**: policyholder credits of consolidated groups, row 4 (group company's credit).

25

*Debit date*

- (3) The debit date is the credit date recorded in the group account for the transfer.

30

Defined in this Act: amount, consolidated group, PCA company, policyholder credit, policyholder credit account, policyholder debit, tax year

Compare: 2004 No 35 s ME 27(2)

35

**OJ 11 PCA company's transfer of life insurance business***Election*

- (1) A PCA company may choose to transfer a credit balance in the company's policyholder credit account to another person on the transfer of the company's life insurance business to— 5
- (a) another PCA company; or
  - (b) a PCA person.

*Requirements*

- (2) A PCA company may make an election under **subsection (1)** if— 10
- (a) the transfer meets the requirements of **section EY 45(1)** (Policyholder income formula: when life insurance business transferred); and
  - (b) after the transfer, the company is no longer required to maintain a policyholder credit account. 15

*Debit*

- (3) As a result of the election, the PCA company that is the transferor has a debit for the amount of the credit balance transferred under **subsection (1)**.

*Table reference*

- (4) The policyholder debit in **subsection (3)** is referred to in **table 014: policyholder debits, row 5** (transfer of life insurance business). 20

*Manner of election*

- (5) The company makes the election by recording the amount of the credit balance transferred as a debit in the company's policyholder credit account. 25

*Debit date*

- (6) The debit date is the day the life insurance business is transferred. 30

Defined in this Act: amount, business, life insurance, PCA company, PCA person, policyholder credit, policyholder credit account, policyholder debit

Compare: 2004 No 35 ss ME 18(3)(c), (4)(c), ME 19A

***Persons with policyholder credit accounts***

*Introductory provisions*

**OJ 12 Choosing to become PCA person**

*Notifying Commissioner*

- (1) A person who is eligible under **section OJ 1(2)** and who chooses to be a PCA person must notify the Commissioner of their election— 5
- (a) no later than 21 days after the election; or
- (b) by a later date if the Commissioner allows.

*Effect of election*

- (2) A PCA person must maintain the policyholder credit account referred to in **section OJ 1(2)** from the start of the income year in which the PCA person makes the election. 10

Defined in this Act: Commissioner, income year, notify, PCA person, policyholder credit account

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Compare: 2004 No 35 s ME 21(1), (2)

**OJ 13 Choosing to stop being PCA person**

*Election*

- (1) A PCA person may choose to stop being a PCA person.

*When election made*

- (2) An election under **subsection (1)** may be made only in an income year that is later than the income year in which the person chooses to become a PCA person. 20

*When person's status as PCA person ends*

- (3) The person ends their status as a PCA person from the start of the income year following the year of election but only if they file an annual PCA return for the year of election in the time allowed by section 66(3) of the Tax Administration Act 1994. 25

Defined in this Act: annual PCA return, Commissioner, income year, PCA person

Compare: 2004 No 35 s ME 21(3), (4)

30

*Policyholder credits of PCA person***OJ 14 PCA person's equivalent credit***Credit*

- (1) A PCA person has a policyholder credit for an equivalent credit, described in a row of **table 01**: imputation credits, that would arise in the imputation credit account of an ICA company if that company were carrying on the person's life insurance business. 5

*Determining credits arising*

- (2) The following paragraphs apply to determine what are the equivalent credits: 10
- (a) a credit under the following sections and described in the following rows of **table 01**: imputation credits, is excluded:
- (i) **section 0B 9** (ICA dividend derived with imputation credit) row 7 (dividend derived with imputation credit): 15
- (ii) **section 0B 10** (ICA dividend derived with FDP credit) row 8 (dividend derived with FDP credit):
- (iii) **section 0B 17** (ICA transfer from policyholder credit account) row 15 (transfer from policyholder credit account): 20
- (b) a credit under **section 0B 4** (ICA payment of tax) must not be more than the income tax liability that would arise if— 25
- (i) the person's only activity related to life insurance policies offered or entered into in New Zealand; and
- (ii) **section RF 2(4)** (Non-resident passive income) is disregarded. 30

*Table references*

- (3) The policyholder credit in **subsection (1)** is referred to in **table 015**: person's policyholder credits, row 2 (treatment of imputation credit account). The imputation credit in **subsection (2)(b)** is referred to in **table 01**: imputation credits, row 2 (payment of tax). 35

*Credit date*

- (4) The credit date is—

- (a) the same as the credit date for the equivalent credit; and  
 (b) the day the relevant dividend is paid if the equivalent credit is for income tax treated as paid by the person under **section LE 1, LF 1, or OE 19** (which relate to imputation credits, FDP credits, and foreign tax paid on branch equivalent income). 5

Defined in this Act: business, dividend, FDP credit, ICA company, imputation credit account, income tax, income tax liability, life insurance, life insurance policy, offered or entered into in New Zealand, pay, PCA person, policyholder credit

Compare: 2004 No 35 s ME 23(1)(a), (2)(a), (3), (6)(a) 10

### **OJ 15 PCA person's credit for transfer of life insurance business**

*When this section applies*

- (1) This section applies when a PCA company or a PCA person transfers a life insurance business to another PCA person. 15

*Credit*

- (2) The PCA person who is the transferee has a policyholder credit for an amount equal to an amount of a policyholder debit under **section OJ 18**.

*Table reference*

- (3) The policyholder credit in **subsection (2)** is referred to in **table O15: person's policyholder credits, row 3** (transfer of life insurance business). 20

*Credit date*

- (4) The credit date is the day the life insurance business is transferred. 25

Defined in this Act: amount, business, life insurance, PCA company, PCA person, policyholder credit, policyholder debit

Compare: 2004 No 35 s ME 23(1)(b), (2)(b)

*Policyholder debits of PCA person***OJ 16 PCA person's payment of tax relating to policyholder base***Election*

- (1) A PCA person may choose that some or all of the credit balance in the person's policyholder credit account is applied to satisfy— 5
- (a) a policyholder base income tax liability of the person; or
  - (b) a provisional tax liability of the person for the person's policyholder base. 10

*Manner of election*

- (2) The person makes an election under **subsection (1)** by recording as a debit the balance applied to satisfy the policyholder base income tax liability or policyholder base provisional tax liability. 15

*Effect of election*

- (3) As a result of the election,— 20
- (a) a policyholder debit arises in the person's policyholder credit account; and
  - (b) the person's liability for the income tax or provisional tax is satisfied.

*Table reference*

- (4) The policyholder credit in **subsection (3)(a)** is referred to in **table O16: person's policyholder debits, row 2 (payment of tax relating to policyholder base)**. 25

*Debit date*

- (5) The debit date is the last day of the person's income year corresponding to the tax year for which the liability for policyholder base income tax or provisional tax in relation to the person's policyholder base arises. 30

Defined in this Act: income tax, income year, pay, PCA person, policyholder base, policyholder base income tax liability, policyholder credit account, policyholder debit, provisional tax, tax year

Compare: 2004 No 35 ss ME 23(4)(a), (5)(a), ME 24 35

**OJ 17 PCA person's equivalent debit***Debit*

- (1) A PCA person has a policyholder debit for an equivalent debit, described in a row of **table 02**: imputation debits, that would arise in the imputation credit account of an ICA company if that company were carrying on the person's life insurance business. 5

*Determining debits arising*

- (2) The following paragraphs apply to determine what are the equivalent debits: 10
- (a) a debit under the following sections and described in the following rows of **table 02**: imputation debits, is excluded—
- (i) **section 0B 41** (ICA debit for loss of shareholder continuity), row 14 (debit for loss of shareholder continuity): 15
- (ii) **section 0B 42** (ICA on-market cancellation), row 15 (on-market cancellation):
- (iii) **section 0B 47** (ICA transfer to policyholder credit account), row 20 (transfer to policyholder credit account): 20
- (b) the amount of a refund of a payment of income tax that gave rise to a credit under **section 0J 14** is treated as a debit in the person's policyholder credit account.

*Table references* 25

- (3) The policyholder debit in **subsection (1)** is referred to in **table 016**: person's policyholder debits, row 3 (treatment of imputation credit account). The policyholder credit in **subsection (2)(b)** is referred to in **table 015**: person's policyholder credits, row 2 (equivalent credit). 30

*Debit date*

- (4) The debit date is—
- (a) the same as the debit date for the equivalent debit; or
- (b) the date the credit would have arisen in the imputation credit account of the PCA person if— 35
- (i) they were an ICA company in relation to the business of providing life insurance; and

- (ii) their policyholder credit account were an imputation credit account.

Defined in this Act: amount, business, ICA company, imputation credit account, imputation debit, income tax, life insurance, pay, PCA person, policyholder credit account, policyholder debit

5

Compare: 2004 No 35 s ME 23(4)(b), (5)(b)

## **OJ 18 PCA person's debit for transfer of life insurance business**

### *Election*

- (1) A PCA person may choose to transfer a credit balance in their policyholder credit account to another person on the transfer of the person's life insurance business to— 10
- (a) a PCA company; or
- (b) another PCA person.

### *Requirements*

15

- (2) A PCA person may make an election under **subsection (1)** if—
- (a) the transfer meets the requirements of **section EY 45(1)** (Policyholder income formula: when life insurance business transferred); and
- (b) after the transfer, the person is no longer required to maintain a policyholder credit account. 20

### *Debit*

- (3) As a result of the election, the transferor has a debit described in **table 016**: person's policyholder debits, row 4 (transfer of life insurance business) for the amount of the credit balance transferred under **subsection (1)**. 25

### *Manner of election*

- (4) The person makes the election by recording as a debit the amount of the credit balance transferred in the person's policyholder credit account. 30

### *Debit date*

- (5) The debit date is the day the life insurance business is transferred.

Defined in this Act: amount, business, life insurance, PCA company, PCA person, policyholder credit account, policyholder debit

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Compare: 2004 No 35 s ME 23(4)(c), (5)(c)



## Subpart OK—Maori authority credit accounts

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*Introductory provision***OK 1 General rules for Maori authorities with Maori authority credit accounts***Accounts*

- (1) A Maori authority must maintain a Maori authority credit account for a tax year. The account is a record of Maori authority credits and Maori authority debits that arise in the account during the tax year. **Subsection (2)** overrides this subsection. 5

*Exclusion*

- (2) **Subsection (1)** does not apply for a period in which— 10
- (a) the constitution or rules of the Maori authority prohibit a distribution of any kind to a member; or
  - (b) the Maori authority derives only exempt income, disregarding exempt income under **section CW 10** (Dividend within New Zealand wholly-owned group). 15

*Credits*

- (3) Credits include an amount of income tax paid during a tax year, an imputation credit attached to a dividend derived by the Maori authority and, if the Maori authority is not also an FDPA company, an FDP credit attached to a dividend derived. 20

*Debits*

- (4) Debits may include a refund of income tax and a Maori authority credit attached to a taxable Maori authority distribution paid by the Maori authority. 25

*General rules*

- (5) The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to Maori authority credit accounts. 30

Defined in this Act: amount, dividend, exempt income, FDP credit, FDPA company, imputation credit, income tax, Maori authority, Maori authority credit, Maori authority credit account, Maori authority debit, member, memorandum account, pay, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss MK 1, MK 3

*Maori authority credits***OK 2 MACA payment of tax***Credit*

- (1) A Maori authority has a Maori authority credit for a payment of income tax or provisional tax. **Subsection (3)** overrides this subsection. 5

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table O17: Maori authority credits, row 2** (payment of tax).

*No credit*

- (3) No credit under **subsection (1)** arises for— 10
- (a) income tax paid for a tax year before the 2004–05 tax year; or
  - (b) income tax paid for income derived when the Maori authority was not a Maori authority; or 15
  - (c) income tax paid by a credit under **section LE 1** (Tax credits for imputation credits); or
  - (d) further income tax applied under **section OK 23** to pay income tax or provisional tax.

*Credit date*

- (4) The credit date is the day the tax is paid. 20

Defined in this Act: further income tax, income, income tax, Maori authority, Maori authority credit, pay, provisional tax, tax year

Compare: 2004 No 35 s MK 4(1)(a), (2)(a)

**OK 3 MACA payment of tax to other Maori authorities** 25*Credit*

- (1) A Maori authority has a Maori authority credit for a payment of tax to another Maori authority that is treated as a payment transferred from company A to company B under **section RC 32** (Wholly-owned groups of companies). 30

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table O17: Maori authority credits, row 3** (payment of tax to another Maori authority).

*Credit date*

- (3) The credit date is the day the tax is paid.

Defined in this Act: Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(b), (2)(a)

**OK 4 MACA payment of further income tax**

5

*Credit*

- (1) A Maori authority has a Maori authority credit for a payment of further income tax under **section OK 21 or OK 22**.

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table 017: Maori authority credits, row 4 (payment of further income tax)**. 10

*Credit date*

- (3) The credit date is the day the further income tax is paid.

Defined in this Act: further income tax, Maori authority, Maori authority credit, pay

15

Compare: 2004 No 35 s MK 4(1)(c), (2)(a)

**OK 5 MACA distribution with Maori authority credit***Credit*

- (1) A Maori authority has a Maori authority credit for the amount of a Maori authority credit attached to a distribution derived by the Maori authority. 20

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table 017: Maori authority credits, row 5 (distribution with Maori authority credit)**. 25

*Credit date*

- (3) The credit date is the day the distribution is made.

Defined in this Act: amount, distribution, Maori authority, Maori authority credit

Compare: 2004 No 35 s MK 4(1)(d), (2)(b)

**OK 6 MACA dividend derived with imputation credit***Credit*

- (1) A Maori authority has a Maori authority credit for the amount of an imputation credit attached to a dividend derived by the Maori authority. 5

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table 017: Maori authority credits, row 6** (dividend derived with imputation credit).

*Credit date*

- (3) The credit date is the day the dividend is paid. 10

Defined in this Act: amount, dividend, imputation credit, Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(e), (2)(c)

**OK 7 MACA dividend derived with FDP credit**

15

*Credit*

- (1) A Maori authority has a Maori authority credit for the amount of an FDP credit attached to a dividend derived by the Maori authority when it is not an FDPA company.

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table 017: Maori authority credits, row 7** (dividend derived with FDP credit). 20

*Credit date*

- (3) The credit date is the day the dividend is paid. 25

Defined in this Act: amount, dividend, FDP credit, FDPA company, Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(f), (2)(c)

**OK 8 MACA RWT withheld***Credit*

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- (1) A Maori authority has a Maori authority credit for the amount of tax for resident passive income treated under **section RA 9(b)** (Treatment of amounts withheld as received) as derived by the Maori authority.

*Table reference*

- (2) The Maori authority credit in **subsection (1)** is referred to in **table 017: Maori authority credits, row 8 (RWT)**.

*Credit date*

- (3) The credit date is the day the amount of tax is withheld. 5

Defined in this Act: amount of tax, Maori authority, Maori authority credit, resident passive income, RWT

Compare: 2004 No 35 s MK 4(1)(h), (2)(e)

**OK 9 MACA reversal of tax advantage arrangement***When this section applies* 10

- (1) This section applies when it is established that a Maori authority credit in an Maori authority's credit account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

*Credit* 15

- (2) The Maori authority has a Maori authority credit for an amount that equals the amount of a debit in the Maori authority credit account under **section OK 17**.

*Table references*

- (3) The Maori authority credit in **subsection (2)** is referred to in **table 017: Maori authority credits, row 9 (reversal of tax advantage arrangement)**. The Maori authority debit in **subsection (2)** is referred to in **table 018: Maori authority debits, row 9 (tax advantage arrangement)**. 20

*Credit date* 25

- (4) The credit date is the same as the debit date for the debit under **section OK 17**.

Defined in this Act: amount, Maori authority, Maori authority credit, Maori authority credit account, Maori authority debit, tax advantage

Compare: 2004 No 35 s MK 4(1)(g), (2)(a) 30

*Maori authority debits***OK 10 MACA distribution***Debit*

- (1) A Maori authority has a Maori authority debit for the amount of a Maori authority credit attached to a distribution made by the Maori authority. 5

*Table reference*

- (2) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 2 (distribution)**.

*Debit date*

- (3) The debit date is the day the distribution is made. 10

Defined in this Act: amount, distribution, Maori authority, Maori authority credit, Maori authority debit

Compare: 2004 No 35 s MK 5(1)(a), (2)(a)

**OK 11 MACA allocation of provisional tax** 15*Debit*

- (1) A Maori authority has a Maori authority debit for an amount of provisional tax treated under **section RC 32** (Wholly-owned groups of companies) as allocated by the Maori authority to another Maori authority as an underpaid company. 20

*Table reference*

- (2) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 3 (allocation of provisional tax)**.

*Debit date*

- (3) The debit date is the day the Commissioner is notified of the allocation. 25

Defined in this Act: amount, Commissioner, company, Maori authority, Maori authority debit, notify, provisional tax

Compare: 2004 No 35 s MK 5(1)(b), (2)(b) 30

**OK 12 MACA refund of income tax***Debit*

- (1) A Maori authority has a Maori authority debit for the amount of a refund of income tax paid to the Maori authority. **Subsections (2) and (4)** override this subsection. 5

*No debit*

- (2) The amount of a debit under **subsection (1)** does not include—
- (a) a refund of income tax paid for a tax year before the 2004–05 tax year; or
  - (b) a refund of income tax paid to the Maori authority that is no more than the debit under **section OK 15**; or 10
  - (c) a refund of income tax paid for a period when the Maori authority credit account was not maintained.

*Table references*

- (3) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 4 (refund of income tax)**. The Maori authority debit in **subsection (2)(b)** is referred to in **table 018: Maori authority debits, row 7 (debit for loss of shareholder continuity)**. 15

*Part-year Maori authorities*

- (4) If a Maori authority maintains a Maori authority credit account for only part of a tax year, the amount of the debit is calculated using the formula— 20
- $$\frac{\text{account days}}{365} \times \text{refund.} \quad 25$$

*Definition of items in formula*

- (5) In the formula,—
- (a) **account days** is the number of days in the tax year for which the Maori authority maintains the Maori authority credit account: 30
  - (b) **refund** is the amount of the refund.

*Debit date*

- (6) The debit date is the day the refund is made. 35
- Defined in this Act: amount, income tax, Maori authority, Maori authority credit account, Maori authority debit, pay, tax year

Compare: 2004 No 35 s MK 5(1)(c), (g), (2)(c)



**OK 13 MACA payment of other taxes***Debit*

- (1) A Maori authority has a Maori authority debit for an amount of overpaid income tax applied to pay an amount due under the Inland Revenue Acts. **Subsection (2)** overrides this subsection. 5

*No debit*

- (2) The amount of a debit under **subsection (1)** does not include an amount of overpaid income tax—
- (a) applied to satisfy a liability for income tax or provisional tax; or 10
  - (b) paid for a tax year before the 2004–05 tax year; or
  - (c) that relates to income tax paid before a Maori authority debit arises under **section OK 15** when the amount is no more than the amount of the debit for loss of shareholder continuity. 15

*Table references*

- (3) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 5 (payment of other taxes)**. The Maori authority debit in **subsection (2)(c)** is referred to in **table 018: Maori authority debits, row 7 (debit for loss of shareholder continuity)**. 20

*Debit date*

- (4) The debit date is the day the amount is applied. 25
- Defined in this Act: amount, income tax, income tax liability, income year, Inland Revenue Acts, Maori authority, Maori authority debit, pay, provisional tax, shareholder, tax year
- Compare: 2004 No 35 s MK 5(1)(j), (2)(i)

**OK 14 MACA refund of FDP***Debit* 30

- (1) A Maori authority has a Maori authority debit for the amount of a refund of FDP paid to the Maori authority when it is not an FDPA company.

*Table reference*

- (2) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 6 (refund of FDP)**. 35

*Debit date*

- (3) The debit date is the day the refund is made.

Defined in this Act: amount, FDP, FDPA company, Maori authority, Maori authority debit, pay

Compare: 2004 No 35 s MK 5(1)(e), (2)(c)

5

**OK 15 MACA debit for loss of shareholder continuity***Debit*

- (1) A Maori authority has a Maori authority debit for the amount of a Maori authority credit retained in the Maori authority credit account and unused before the date on which shareholder continuity is lost.

10

*Table reference*

- (2) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 7 (debit for loss of shareholder continuity)**.

15

*Debit date*

- (3) The debit date is the day of loss of shareholder continuity.

Defined in this Act: amount, company, Maori authority, Maori authority credit, Maori authority credit account, Maori authority debit, shareholder

Compare: 2004 No 35 s MK 5(1)(f), (2)(f)

20

**OK 16 MACA breach of Maori authority credit ratio***Debit*

- (1) A Maori authority has a Maori authority debit for a breach in a tax year of the Maori authority credit ratio under **section OK 20(3)** for an amount calculated using the formula—

25

(net distributions × Maori authority credit ratio)  
– credits attached.

*Definition of items in formula*

- (2) In the formula,—

- (a) **net distributions** is the total amount of all taxable Maori authority distributions made by the Maori authority during the tax year, excluding the amount of Maori authority credits attached to the distributions: 30
- (b) **Maori authority credit ratio** is the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of 35

maximum permitted ratios) or, if less, the greatest Maori authority credit ratio of all taxable Maori authority distributions made by the Maori authority during the tax year:

- (c) **credits attached** is the total amount of all Maori authority credits attached to distributions paid by the Maori authority during the tax year. 5

*Ratio change declaration*

- (3) A debit under **subsection (1)** does not arise if the Maori authority provides a ratio change declaration under **section OK 20(5)**. 10

*Table reference*

- (4) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 8** (breach of Maori authority credit ratio).

*Debit date*

- (5) The debit date is the last day of the tax year. 15

Defined in this Act: amount, distribution, Maori authority, Maori authority credit, Maori authority credit account, Maori authority credit ratio, Maori authority debit, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss MK 5(1)(d), (2)(d), MK 7(5) 20

## OK 17 MACA tax advantage arrangement

*Debit*

- (1) A Maori authority has a Maori authority debit for the amount of a further debit for a tax advantage arrangement referred to in **section GB 43(2) and (3)** (Reconstruction of Maori authority credit arrangements to obtain tax advantage). 25

*Table reference*

- (2) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 9** (tax advantage arrangement). 30

*Debit date*

- (3) The debit date is the last day of the tax year in which the tax advantage arrangement began.

Defined in this Act: amount, arrangement, Maori authority, Maori authority credit account, Maori authority debit, tax advantage, tax year

5

Compare: 2004 No 35 s MK 5(1)(h), (2)(g)

**OK 18 MACA final balance***Debit*

- (1) A Maori authority has a Maori authority debit for a credit balance in the Maori authority credit account when the Maori authority stops being a Maori authority.

10

*Table reference*

- (2) The Maori authority debit in **subsection (1)** is referred to in **table 018: Maori authority debits, row 10 (final balance)**.

*Debit date*

15

- (3) The debit date is day the Maori authority stops being a Maori authority.

Defined in this Act: Maori authority, Maori authority credit account, Maori authority debit

Compare: 2004 No 35 s MK 5(1)(i), (2)(h)

20

***Maori authority credits attached to distributions*****OK 19 Maori authority credits attached to distributions***Attaching Maori authority credits*

- (1) When a Maori authority makes a taxable Maori authority distribution, it may attach a Maori authority credit to the distribution.

25

*Maori authority credit ratio*

- (2) A distribution referred to in **subsection (1)** must have a Maori authority credit ratio calculated using the formula—

$$\frac{\text{credit attached}}{\text{net distribution.}}$$

30

*Definition of items in formula*

- (3) In the formula,—

- (a) **credit attached** is the amount of Maori authority credit attached to the distribution:
- (b) **net distribution** is the amount of distribution made, excluding the amount of Maori authority credit.
- Maximum permitted ratio* 5
- (4) A Maori authority credit attached to a distribution must not be more than the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios).
- Co-operative companies*
- (5) A Maori authority that is also a co-operative company may attach a Maori authority credit to a notional distribution. The provisions of **section OB 79** (Co-operative companies attaching imputation credits to notional distributions) apply to the notional distribution as if references in that section to—
- (a) an imputation credit were a reference to a Maori authority credit; and 15
- (b) an imputation credit account were a reference to a Maori authority credit account.
- Retrospective attachment*
- (6) A Maori authority may retrospectively attach a Maori authority credit to a taxable Maori authority distribution. 20
- Application of other provisions*
- (7) The provisions of **section OB 62** (Retrospective attachment of imputation credits) apply to a distribution under this section as if a reference in that section to— 25
- (a) an imputation credit were a reference to a Maori authority credit; and
- (b) an imputation credit account were a reference to a Maori authority credit account.
- Defined in this Act: amount, co-operative company, imputation credit, imputation credit account, Maori authority, Maori authority credit, Maori authority credit account, Maori authority credit ratio, maximum permitted ratio, taxable Maori authority distribution 30
- Compare: 2004 No 35 ss MK 6, MK 7(1)

**OK 20 MACA benchmark distribution rules***When this section applies*

- (1) This section applies when a Maori authority pays a taxable Maori authority distribution on more than 1 occasion during a tax year. 5

*Benchmark distribution*

- (2) The first distribution of the tax year is the benchmark distribution.

*Same Maori authority credit ratio*

- (3) The Maori authority credit ratio of a distribution made after the benchmark distribution must be the same as the Maori authority credit ratio of the benchmark distribution. 10

*Debit for breach of Maori authority credit ratio*

- (4) A breach of **subsection (3)** gives rise to a Maori authority debit under **section OK 16 (table O18: Maori authority debits, row 8 (breach of Maori authority credit ratio))** for an amount calculated using the formula in **section OK 16(1)**. 15

*Ratio change declaration*

- (5) To prevent the consequences of a breach of **subsection (4)**, a Maori authority may notify the Commissioner that the distribution is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the distribution is not part of an arrangement to which **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage) apply. The Maori authority must provide the declaration before the distribution is made, or by a later date if the Commissioner allows. For the purposes of this subsection, the distribution must not be part of an arrangement to obtain a tax advantage. 20  
25

Defined in this Act: amount, arrangement, benchmark distribution, Commissioner, Maori authority, Maori authority credit ratio, Maori authority debit, notify, pay, tax advantage, tax year, taxable Maori authority distribution 30

Compare: 2004 No 35 s MK 7(2), (3), (4)

### *Further income tax*

#### **OK 21 Further income tax for closing debit balance**

##### *Liability*

- (1) A Maori authority is liable to pay further income tax for the amount of a debit balance in its Maori authority credit account at the end of a tax year. 5

##### *Due date*

- (2) The Maori authority must pay the further income tax to the Commissioner no later than the 20 June following the end of the tax year. 10

##### *Application of other provisions*

- (3) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—
- (a) apply to further income tax as if they addressed further income tax and not income tax; and 15
- (b) apply, modified as necessary, to ensure their application to the further income tax rather than income tax; and
- (c) do not override the imputation rules and section 101 of the Tax Administration Act 1994. 20

Defined in this Act: amount, Commissioner, further income tax, imputation rules, income tax, Maori authority, Maori authority credit account, pay, tax year

Compare: 2004 No 35 s MK 8(1), (2), (6)

#### **OK 22 Further income tax paid when Maori authority no longer Maori authority** 25

##### *Liability*

- (1) A Maori authority is liable to pay further income tax for a debit balance in its Maori authority credit account immediately before the Maori authority stops being a Maori authority.

##### *Due date*

- (2) The Maori authority must pay the further income tax to the Commissioner by the day on which the Maori authority stops being a Maori authority. 30

*Paramount section*

- (3) A Maori authority that stops being a Maori authority on the last day of a tax year is liable for further income tax under this section and not under **section OK 21**.

*Application of other provisions*

5

- (4) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—

- (a) apply to further income tax as if they addressed further income tax and not income tax; and  
 (b) apply, modified as necessary, to ensure their application to the further income tax rather than income tax; and  
 (c) do not override the imputation rules and section 101 of the Tax Administration Act 1994.

10

Defined in this Act: Commissioner, further income tax, imputation rules, income tax, Maori authority, Maori authority credit account, pay, tax year

15

Compare: 2004 No 35 s MK 8(3), (4), (6)

**OK 23 Further income tax paid satisfying liability for income tax***Election*

20

- (1) A Maori authority that is liable for income tax or provisional tax may choose to satisfy the liability through a payment of further income tax.

*Requirements*

- (2) The liability referred to in **subsection (1)** must be for an income year corresponding to a tax year in which the Maori authority maintains a Maori authority credit account.

25

*When treated as paid*

- (3) The income tax or provisional tax is treated as paid on the day the further income tax is paid to the Commissioner.

30

Defined in this Act: Commissioner, further income tax, income tax, income year, Maori authority, Maori authority credit account, pay, provisional tax, tax year

Compare: 2004 No 35 s MK 8(5)



## OK 24 Income tax paid satisfying liability for further income tax

### *Election*

- (1) A Maori authority that is liable for further income tax may choose to satisfy the liability through a payment of income tax. 5

### *Requirements*

- (2) The liability referred to in **subsection (1)** must be for an income year corresponding to a tax year in which the Maori authority maintains a Maori authority credit account. 10

### *When treated as paid*

- (3) The further income tax is treated as paid on the day the income tax is paid to the Commissioner.

Defined in this Act: Commissioner, further income tax, income tax, income year, Maori authority, Maori authority credit account, pay, tax year 15

Compare: 2004 No 35 s MK 8(5B)

## Subpart OP—Memorandum accounts of consolidated groups

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***Introductory provisions***

**OP 1 Memorandum accounts of consolidated groups**

*Single company*

- (1) For the purposes of this Part, a consolidated group is treated as if it were a single company, and **subpart FM** (Consolidated groups of companies) applies to the consolidated group. 30

*Consolidated group accounts*

- (2) A consolidated group may be—
- (a) required to maintain a memorandum account for a tax year; or 35
- (b) entitled to maintain a memorandum account for a tax year.

*Separate accounts*

- (3) A consolidated group's memorandum account is separate from the memorandum account of each company in the consolidated group.

*General rules*

5

- (4) The general rules on memorandum accounts set out in **sections OA 2 and OA 3** (which relate to the treatment of memorandum accounts) apply to a memorandum account of a consolidated group.

*Tables*

10

- (5) The credits and debits that arise in a memorandum account are listed in tables set out at the end of this subpart. The tables—
- (a) state the credits and the debits; and
  - (b) state the credit dates and debit dates when the credits and debits arise; and
  - (c) refer to the section that fully defines them, and provides the credit dates and debit dates for each credit and debit.

15

Defined in this Act: company, consolidated group, memorandum account, tax year  
Compare: 2004 No 35 ss ME 10, ME 25, MG 13, MI 14, MF 7(2)

**OP 2 When credits and debits arise only in group accounts**

20

*Credits only in group account*

- (1) A credit may arise only in the memorandum account of a consolidated group and not in the memorandum account of a group company, unless another provision expressly states otherwise.

25

*Debits only in group account*

- (2) A debit may arise only in the memorandum account of a consolidated group and not in the memorandum account of a group company, unless another provision expressly states otherwise.

30

*Particular credits and debits*

- (3) The credit referred to in **subsection (1)** and the debit referred to in **subsection (2)** are listed in provisions in this subpart.

*Company's obligation overridden*

- (4) This section applies despite—
- (a) the obligation that a group company may have under this Part to record a credit or debit; and
  - (b) the fact that the credit and debit referred to in this section may otherwise be eligible to give rise to a credit or debit in the group company's account. 5

Defined in this Act: company, consolidated group, memorandum account

Compare: 2004 No 35 ss ME 13, ME 27, MG 16, MI 19, MF 9

***Consolidated groups and imputation credit accounts*** 10*Introductory provisions***OP 3 Changes in consolidated imputation groups***New group company*

- (1) A consolidated group that is a consolidated imputation group continues to have the same imputation credit account if the group starts an imputation group with a company that is not part of another consolidated group. 15

*Combining consolidated imputation groups*

- (2) The companies that are part of 2 or more consolidated imputation groups that choose to combine to form 1 imputation group must record in the imputation credit account of the new group—
- (a) all credits and debits in the imputation credit accounts of the 2 groups immediately before the election takes effect; and 20
  - (b) all credits and debits that arise for a group company that is part of the new group on and after the election takes effect. 25

*Imputation group becoming consolidated group*

- (3) An imputation group continues to use its imputation credit account if the companies that are part of the imputation group choose to convert their status to that of a consolidated group that is a consolidated imputation group. 30

*Opening balances*

- (4) The opening balances for the imputation credit account of the consolidated imputation group referred to in **subsection (3)** are set out in **section OA 7** (Opening balances of memorandum accounts). 5

Defined in this Act: company, consolidated group, consolidated imputation group, imputation credit account, imputation group

Compare: 2004 No 35 s ME 10(1A), (1B), (1D)

**OP 4 Resident imputation subgroups***Subgroup of trans-Tasman imputation group* 10

- (1) The resident imputation subgroup of a trans-Tasman imputation group must record in its imputation credit account the credits and debits described in **subsection (2)**.

*Eligible credits and debits*

- (2) The credits and debits referred to in **subsection (1)** are those that arise in the imputation credit account of the subgroup's trans-Tasman imputation group in relation to a company that— 15
- (a) will be part of the subgroup if the credit or debit arises before the subgroup is formed; or
  - (b) is part of the subgroup if the credit or debit arises when or after the subgroup is formed. 20

Defined in this Act: company, imputation credit account, imputation group, resident imputation subgroup, trans-Tasman imputation group

Compare: 2004 No 35 s ME 10(1C)

**OP 5 When credits and debits arise only in consolidated imputation group accounts** 25*Credits only in group account*

- (1) A credit listed in **subsection (2)** arises only in the imputation credit account of a consolidated imputation group and not in the imputation credit account of a group company. 30

*Particular credits*

- (2) The credit referred to in **subsection (1)** is a credit under the following sections and described in the following rows of **table O19**: imputation credits of consolidated imputation groups: 35
- (a) **section OP 7**, row 2 (payment of tax):
  - (b) **section OP 8**, row 3 (deposit in tax pooling account):



- (c) **section OP 12**, row 7 (dividend derived with imputation credit):
- (d) **section OP 13**, row 8 (dividend derived with FDP credit):
- (e) **section OP 14**, row 9 (payment of FDP).

*Debits only in the group account*

5

- (3) A debit listed in **subsection (4)** arises only in the imputation credit account of a consolidated imputation group and not in the imputation credit account of a group company.

*Particular debits*

- (4) The debit referred to in **subsection (3)** is a debit under the following sections and described in the following rows of **table O20**: imputation debits of consolidated imputation groups:
- (a) **section OP 28**, row 2 (payment of dividend):
  - (b) **section OP 30**, row 4 (refund of income tax):
  - (c) **section OP 32**, row 6 (refund from tax pooling account): 15
  - (d) **section OP 33**, row 7 (transfer to tax pooling account):
  - (e) **section OP 34**, row 8 (refund of FDP):
  - (f) **section OP 35**, row 9 (refund of tax credit):
  - (g) **section OP 37**, row 11 (group company's debit):
  - (h) **section OP 39**, row 13 (replacement payment under share-lending arrangement): 20
  - (i) **section OP 40**, row 14 (returning share transfer):
  - (j) **section OP 41**, row 15 (credit transfer):
  - (k) **section OP 43**, row 17 (breach of imputation ratio).

Defined in this Act: company, consolidated imputation group, imputation credit, imputation credit account, imputation debit 25

Compare: 2004 No 35 s ME 12(1)

**OP 6 Provisions applying to consolidated imputation groups***Single company, tax liabilities*

- (1) The provisions listed in **subsection (2)** apply, modified as necessary, to a consolidated imputation group and to the imputation credit account of the group as if—
- (a) the group were a single company; and
  - (b) a reference to a company's liability for further income tax, late payment penalty, or imputation penalty tax were a reference to a joint and several liability owed by group companies when the tax or penalty becomes payable. 35

*Other provisions*

- (2) The provisions are—
- (a) **sections OB 65 and OB 66** (which relate to further income tax); and
  - (b) sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994. 5

*Consolidation provisions*

- (3) **Sections FM 4 and FM 5** (which relate to the liabilities of group companies) override **subsection (1)(b)**. 10

Defined in this Act: company, consolidated imputation group, further income tax, imputation credit account, imputation penalty tax, pay

Compare: 2004 No 35 s ME 14(3)

*Imputation credits of consolidated imputation groups***OP 7 Consolidated ICA payment of tax***Credit* 15

- (1) A consolidated imputation group has an imputation credit for a payment of income tax. **Subsection (3)** overrides this subsection.

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019: imputation credits of consolidated imputation groups, row 2** (payment of tax). 20

*No credit*

- (3) A consolidated imputation group does not have an imputation credit for an amount of— 25
- (a) income tax paid as a trustee, unless paid on category A income; or
  - (b) a transfer from a tax pooling account to a tax account with the Commissioner; or
  - (c) income tax paid on income derived by a company that is not an ICA company; or 30
  - (d) income tax paid by a life insurer subject to **section EY 48** (Non-resident life insurers with life insurance policies in New Zealand) to satisfy the tax year's policyholder base income tax liability; or 35

- (e) income tax paid under **section LE 1** (Tax credits for imputation credits) by crediting an imputation credit; or
- (f) income tax paid under **section LF 1** (Tax credits for FDP credits) by crediting an FDP credit; or
- (g) income tax paid by crediting an amount under **subpart LP** (Tax credits for supplementary dividends); or 5
- (h) further income tax applied under **section OB 65 or OB 66** (which relate to further income tax) to pay income tax or provisional tax; or
- (i) income tax paid by crediting further income tax under **section OB 69(3)** (Further income tax paid satisfying liability for income tax). 10

*Credit date*

- (4) The credit date is the day the tax is paid. 15
- Defined in this Act: amount, category A income, Commissioner, company, consolidated imputation group, FDP credit, further income tax, ICA company, imputation credit, imputation credit account, income, income tax, life insurer, pay, policyholder base income tax liability, provisional tax, tax account with the Commissioner, tax pooling account, tax year, trustee 15
- Compare: 2004 No 35 s ME 11(1)(a), (2)(a) 20

**OP 8 Consolidated ICA deposit in tax pooling account***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount provided by it and paid by an intermediary into a tax pooling account. 25

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019: imputation credits of consolidated imputation groups, row 3** (deposit in tax pooling account).

*Credit date*

- (3) The credit date is the day the amount is deposited. 30
- Defined in this Act: amount, consolidated imputation group, imputation credit, intermediary, pay, tax pooling account
- Compare: 2004 No 35 s ME 11(1)(aa), (2)(aa)

**OP 9 Consolidated ICA transfer from tax pooling account***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount that represents an entitlement to funds held in a tax pooling account and transferred by an intermediary. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 4 (transfer from tax pooling account).

*Credit date*

- (3) The credit date is— 10
- (a) the effective date under **section RP 19** (Transfers from tax pooling accounts) if the amount is transferred to the group's tax account with the Commissioner; or
- (b) the day the refund is made. 15

Defined in this Act: amount, Commissioner, consolidated imputation group, imputation credit, intermediary, tax account with the Commissioner, tax pooling account

Compare: 2004 No 35 s ME 11(1)(ab), (2)(ab)

**OP 10 Consolidated ICA allocation from company with overpaid provisional tax** 20*Credit*

- (1) A consolidated imputation group has an imputation credit for an amount allocated under **section RC 32** (Wholly-owned groups of companies) by a company that has overpaid its provisional tax. 25

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 5 (allocation from excess company).

*Credit date*

- (3) The credit date is the day the Commissioner is notified of the allocation. 30

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, notify

Compare: 2004 No 35 s ME 11(1)(b), (2)(b) 35

**OP 11 Consolidated ICA payment of further income tax***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount of further income tax paid under **section OB 65 or OB 66** (which relate to further income tax). 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 6 (payment of further income tax).

*Credit date*

- (3) The credit date is the day the further income tax is paid. 10  
 Defined in this Act: amount, consolidated imputation group, further income tax, imputation credit, pay  
 Compare: 2004 No 35 s ME 11(1)(c), (2)(a)

**OP 12 Consolidated ICA dividend derived with imputation credit** 15*Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of an imputation credit attached to a dividend derived by a group company. 20

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 7 (dividend derived with imputation credit).

*Credit date*

- (3) The credit date is the day the dividend is paid. 25  
 Defined in this Act: amount, company, consolidated imputation group, dividend, imputation credit, pay  
 Compare: 2004 No 35 s ME 11(1)(d), (2)(c)

**OP 13 Consolidated ICA dividend derived with FDP credit** 30*Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of an FDP credit attached to a dividend derived by a group company that—

- (a) is part of a consolidated group without an FDP account;  
or
- (b) does not have an FDP account and is not part of a consolidated group.

*Table reference*

5

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 8 (dividend derived with FDP credit).

*Credit date*

- (3) The credit date is the day the dividend is paid. 10

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP account, FDP credit, imputation credit, pay

Compare: 2004 No 35 s ME 11(1)(e), (2)(c)

**OP 14 Consolidated ICA payment of FDP***Credit*

15

- (1) A consolidated imputation group has an imputation credit for the amount of FDP that is paid by a group company that—
- (a) is part of a consolidated group without an FDP account;  
or
  - (b) does not have an FDP account and is not part of a consolidated group. 20

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 9 (payment of FDP). 25

*No credit*

- (3) Despite **subsection (1)**, no credit arises for FDP paid under **section RG 3** (Obligation to pay FDP) by reducing a tax loss.

*Credit date*

- (4) The credit date is the day the FDP is paid. 30

Defined in this Act: amount, company, consolidated group, consolidated imputation group, FDP, FDP account, imputation credit, imputation credit account, pay, tax loss

Compare: 2004 No 35 s ME 11(1)(f), (2)(a)

### OP 15 Consolidated ICA replacement payment to company under share-lending arrangement

#### *Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of an imputation credit attached under **section OB 64** (Replacement payments) or treated as attached under **section RE 25** (When amount of tax treated as imputation credit) to a replacement payment paid under a share-lending arrangement to a company that is part of the consolidated imputation group at the date of payment. 5  
10

#### *Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 10 (replacement payment under share-lending arrangement).

#### *Credit date*

- (3) The credit date is the day the replacement payment is paid. 15  
Defined in this Act: amount, company, consolidated imputation group, imputation credit, pay, replacement payment, share-lending arrangement  
Compare: 2004 No 35 s ME 11(1)(eb), (ec), (2)(cb)

### OP 16 Consolidated ICA credit transfer to company 20

#### *Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of an imputation credit shown in a credit transfer notice given to a company that is part of the consolidated imputation group when the notice is given. 25

#### *Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 11 (credit transfer).

#### *Credit date*

- (3) The credit date is the day the notice is given. 30  
Defined in this Act: amount, company, consolidated imputation group, credit transfer notice, imputation credit  
Compare: 2004 No 35 s ME 11(1)(ed), (2)(cc)

**OP 17 Consolidated ICA RWT withheld***Credit*

- (1) A consolidated imputation group has an imputation credit for RWT that is treated under **section RA 9(b)** (Treatment of amounts withheld as received) as derived by a group company. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 12 (RWT withheld). 10

*Credit date*

- (3) The credit date is the day the interest or dividend relating to the resident passive income is paid.

Defined in this Act: company, consolidated imputation group, dividend, imputation credit, interest, pay, resident passive income, RWT 15

Compare: 2004 No 35 s ME 11(1)(j), (2)(c)

**OP 18 Consolidated ICA transfer from group company's FDP account***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount equal to the amount of an FDP debit under **section 0C 18** (FDPA transfer to imputation credit account) transferred from the FDP account of a group company. 20

*Table references*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 13 (transfer from group company's FDP account). The FDP debit in **subsection (1)** is referred to in **table 04**: FDP debits, row 7 (transfer to imputation credit account). 25

*Credit date*

- (3) The credit date is the same as the debit date for the transfer. 30

Defined in this Act: amount, company, consolidated imputation group, FDP account, FDP debit, imputation credit

Compare: 2004 No 35 s ME 11(1)(fb), (2)(fb)



**OP 19 Consolidated ICA transfer from group's FDP account***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount equal to the amount transferred under **section FM 30(3) and (4)** (Application of certain provisions to consolidated groups) from the FDP account of a consolidated group. 5

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 14 (transfer from consolidated group's FDP account). 10

*Credit date*

- (3) The credit date is the same as the debit date for the transfer.  
Defined in this Act: amount, consolidated group, consolidated imputation group, FDP account, imputation credit  
Compare: 2004 No 35 s ME 11(1)(g), (2)(d) 15

**OP 20 Consolidated ICA transfer from group company's policyholder credit account***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount equal to the amount of a debit under **section OJ 9** (PCA transfer to imputation credit account) for the transfer of a credit balance from a group company's policyholder credit account. 20

*Table references*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 15 (transfer from company's policyholder credit account). The policyholder debit in **subsection (1)** is referred to in **table 014**: policyholder debits, row 3 (transfer to imputation credit account). 30

*Credit date*

- (3) The credit date is the same as the debit date for the transfer.  
Defined in this Act: amount, company, consolidated imputation group, imputation credit, policyholder credit account  
Compare: 2004 No 35 s ME 11(1)(jb), (2)(eb) 35

**OP 21 Consolidated ICA transfer from group's policyholder credit account***Credit*

- (1) A consolidated imputation group has an imputation credit for an amount equal to the amount of a debit under **section OP 116** for a transfer from the policyholder credit account of a consolidated group. 5

*Table references*

- (2) The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 16 (transfer from group's policyholder credit account). The policyholder debit in **subsection (1)** is referred to in **table 028**: policyholder debits of consolidated groups, row 3 (transfer to imputation credit account). 10

*Credit date*

- (3) The credit date is the same as the debit date for the transfer. 15  
Defined in this Act: amount, consolidated group, consolidated imputation group, imputation credit, policyholder credit account

Compare: 2004 No 35 s ME 11(1)(k), (2)(d)

**OP 22 Consolidated ICA group company's credit** 20*Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of a credit that arises when—
- (a) an imputation credit described in a row of **table 01**: imputation credits, arises in the imputation credit account of a group company; and 25
  - (b) an imputation debit described in a row of **table 020**: imputation debits of consolidated imputation groups, arises in the imputation credit account of the group; and
  - (c) the debit is not offset by a credit arising in the group account before or after the credit arose in the group company's account. 30

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to **table 019**: imputation credits of consolidated imputation groups, row 17 (group company's credit). 35

*Offsetting debits*

- (3) For the purposes of **subsection (1)(c)**, to determine whether a debit has been offset by a credit in the group account,—
- (a) credits are treated as reducing debits in the order in which the credits arise; and 5
  - (b) a credit, whether some or all, is counted only once in determining whether a debit has been offset; and
  - (c) credits in the accounts of more than 1 group company become a credit to the group account— 10
    - (i) in the order of their credit date; and
    - (ii) as chosen by the group, if credits arise on the same credit date; and
    - (iii) on a pro rata basis, if no election is made under **subparagraph (ii)**.

*Credit date*

- (4) The credit date is same as the debit date for the debit to the group account. 15

Defined in this Act: amount, company, consolidated imputation group, imputation credit, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 13(2), (3) 20

**OP 23 Consolidated ICA elimination of double debit***When this section applies*

- (1) This section applies when an imputation debit in a consolidated imputation group's imputation credit account under **section OP 42** has the effect of cancelling an imputation credit under **section OP 8**. 25

*Credit*

- (2) The consolidated imputation group has an imputation credit for an amount that equals the amount of the debit referred to in **subsection (1)**, and either— 30
- (a) another debit arises under **section OP 32** for a refund or transfer of the deposit on a debit date that is after the debit date for the debit for loss of shareholder continuity; or
  - (b) the deposit is taken into account under **sections RP 19 and RP 20** (which relate to transfers from tax pooling accounts) in determining the balance of the company's 35

tax account with the Commissioner after the debit date for the debit for loss of shareholder continuity.

*Table references*

- (3) The table references are as follows:
- (a) the imputation debit in **subsection (1)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):** 5
  - (b) the imputation credit in **subsection (1)** is referred to in **table 019: imputation credits of consolidated imputation groups, row 3 (deposit in tax pooling account):** 10
  - (c) the imputation credit in **subsection (2)** is referred to in **table 019: imputation credits of consolidated imputation groups, row 16 (elimination of double debit):**
  - (d) the imputation debit in **subsection (2)(a)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 6 (refund from tax pooling account):** 15

*Credit date*

- (4) The credit date is the day—
- (a) the deposit is refunded; or 20
  - (b) a credit arises in the company's tax account with the Commissioner.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, deposit, imputation credit, imputation credit account, imputation debit, shareholder, tax account with the Commissioner 25

Compare: 2004 No 35 s ME 11(1A), (2A)

**OP 24 Consolidated ICA reversal of tax advantage arrangement**

*When this section applies*

- (1) This section applies when it is established that an imputation credit in a consolidated imputation group's imputation credit account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage. 30

*Credit*

- (2) The consolidated imputation group has an imputation credit for an amount equal to the amount of a debit in the group's account under **section OP 46.** 35

*Table references*

- (3) The imputation credit in **subsection (2)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 19 (reversal of tax advantage arrangement). The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 17 (tax advantage arrangement). 5

*Credit date*

- (4) The credit date is the same as the debit date for the debit. 10  
 Defined in this Act: amount, consolidated imputation group, imputation credit, imputation debit, tax advantage  
 Compare: 2004 No 35 s ME 11(1)(i), (2)(e)

**OP 25 Consolidated ICA NRWT withheld***Credit*

- (1) A consolidated imputation group that includes an Australian ICA company has an imputation credit for an amount of NRWT derived by the company. 15

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to **table 019**: imputation credits of consolidated imputation groups, row 20 (NRWT paid). 20

*Credit date*

- (3) The credit date is the day the amount of tax is withheld. 25  
 Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, NRWT, pay  
 Compare: 2004 No 35 s ME 11(1B)(a), (2B)(a)

**OP 26 Consolidated ICA payment of amount of tax for schedular payment***Credit*

- (1) A consolidated imputation group that includes an Australian ICA company has an imputation credit for the amount of tax for a schedular payment paid to the company as a non-resident contractor. 30

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to **table 019**: imputation credits of consolidated imputation groups, row 21 (amount of tax for schedular payment).

*Credit date*

5

- (3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount of tax, Australian ICA company, consolidated imputation group, imputation credit, non-resident contractor, schedular payment

Compare: 2004 No 35 s ME 11(1B)(b), (2B)(b)

**OP 27 Consolidated ICA payment of schedular income tax** 10*Credit*

- (1) A consolidated imputation group that includes an Australian ICA company has an imputation credit for the amount of a payment by the company of schedular income tax for income derived under **section CR 3, CV 16, or CV 17** (which relate to non-resident insurers, shippers, and film renters). 15

*Table reference*

- (2) The imputation credit in **subsection (1)** is referred to **table 019**: imputation credits of consolidated imputation groups, row 22 (payment of schedular income tax). 20

*Credit date*

- (3) The credit date is the day the schedular income tax is paid.

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, imputation credit account, income, pay, schedular income tax

25

Compare: 2004 No 35 s ME 11(1B)(c), (2B)(c)

*Imputation debits of consolidated imputation groups***OP 28 Consolidated ICA payment of dividend***Debit*

- (1) A consolidated imputation group has an imputation debit for an amount that equals the amount of an imputation credit attached to a dividend paid by a group company. 30

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to **table 020**: imputation debits of consolidated imputation groups, row 2 (payment of dividend).

*Debit date*

5

- (3) The debit date is the day the dividend is paid.

*Arrangement for dividend from another country*

- (4) **Section GB 38** (When sections GB 35 to GB 37 apply to consolidated groups) may apply to treat an amount as a debit under this section.

10

Defined in this Act: amount, company, consolidated imputation group, dividend, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 12(1)(a), (2)(a)

**OP 29 Consolidated ICA allocation of provisional tax***Debit*

15

- (1) A consolidated imputation group has an imputation debit for an amount of provisional tax allocated by the group under **section RC 32** (Wholly-owned groups of companies) to an underpaid company.

*Table reference*

20

- (2) The imputation debit in **subsection (1)** is referred to **table 020**: imputation debits of consolidated imputation groups, row 3 (allocation of provisional tax).

*Debit date*

- (3) The debit date is the day the Commissioner is notified of the allocation.

25

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation debit, notify, provisional tax

Compare: 2004 No 35 s ME 12(1)(c), (2)(c)

**OP 30 Consolidated ICA refund of income tax**

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*Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of a refund of income tax or provisional tax paid to the group. **Subsection (2)** overrides this subsection.

*No debit*

- (2) The debit does not include a refund of income tax paid before a debit arises under **section OP 42** to the extent to which the amount of the refund is less than the amount of the debit.

*Table references*

- (3) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 4 (refund of income tax). The imputation debit in **subsection (2)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity). 5  
10

*Debit date*

- (4) The debit date is the day the refund is made.

Defined in this Act: amount, consolidated imputation group, imputation debit, income tax, pay, provisional tax 15

Compare: 2004 No 35 s ME 12(1)(d), (2)(d)

**OP 31 Consolidated ICA amount applied to pay other taxes***Debit*

- (1) A consolidated imputation group has an imputation debit for an amount of overpaid income tax that is applied to pay an amount due under the Inland Revenue Acts. **Subsection (2)** overrides this subsection. 20

*No debit*

- (2) The debit referred to in **subsection (1)** does not include overpaid income tax to the extent to which it is— 25
- (a) applied to satisfy an income tax liability; or
  - (b) for an amount paid before an imputation debit arises under **section OP 42**, no more than the debit for loss of shareholder continuity.

*Table references*

- (3) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 5 (amount applied to pay other taxes). The imputation debit in **subsection (2)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity). 30  
35



*Debit date*

- (4) The debit date is the day the amount is applied.

Defined in this Act: amount, company, consolidated imputation group, imputation debit, income tax, income tax liability, Inland Revenue Acts, pay, shareholder

Compare: 2004 No 35 s ME 12(1)(l), (2)(k)

5

**OP 32 Consolidated ICA refund from tax pooling account***When this section applies*

- (1) This section applies in a tax year when a consolidated imputation group pays an intermediary an amount that gives rise to an imputation credit under **sections OP 8 and OP 9**, and the amount is later refunded by the intermediary from the tax pooling account. 10

*Debit*

- (2) The consolidated imputation group has an imputation debit for the tax year for the amount of the refund. 15

*Table references*

- (3) The imputation credit in **subsection (1)** is referred to in **table 019: imputation credits of consolidated imputation groups**, row 3 (deposit in tax pooling account) or row 4 (transfer from tax pooling account). The imputation debit in **subsection (2)** is referred to in **table 020: imputation debits of consolidated imputation groups**, row 6 (refund from tax pooling account). 20

*Debit date*

- (4) The debit date for the debit is—
- (a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the imputation credit account on that date: 25
  - (b) the day the refund is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of refund: 30
  - (c) the last day of the previous tax year for the remainder of the imputation debit.

Defined in this Act: amount, consolidated imputation group, deposit, imputation credit, imputation credit account, imputation debit, intermediary, pay, tax pooling account, tax year 35

Compare: 2004 No 35 s ME 12(1)(da), (2)(da)

**OP 33 Consolidated ICA transfer to tax pooling account***When this section applies*

- (1) This section applies in a tax year when a consolidated imputation group transfers to another person an entitlement to funds in a tax pooling account that gives rise to an imputation credit under the following sections as described in the following rows of **table 019**: imputation credits of consolidated imputation groups: 5
- (a) **section OP 8**, row 3 (deposit in tax pooling account):
- (b) **section OP 9**, row 4 (transfer from tax pooling account). 10

*Debit*

- (2) The consolidated imputation group has an imputation debit for the amount of the a transfer.

*Table reference*

- (3) The imputation debit in **subsection (2)** is referred to **table 020**: imputation debits of consolidated imputation groups, row 7 (transfer to tax pooling account). 15

*Debit date*

- (4) The debit date for the debit is— 20
- (a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the imputation credit account on that date: 20
- (b) the day the refund is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of refund: 25
- (c) the last day of the previous tax year for the remainder of the imputation debit.

Defined in this Act: amount, consolidated imputation group, imputation credit, imputation credit account, imputation debit, tax pooling account, tax year 30

Compare: 2004 No 35 s ME 12(1)(db), (2)(da)

**OP 34 Consolidated ICA refund of FDP***Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of a refund of FDP that relates to a dividend derived by a group company at a time when— 35

- (a) the group company is part of a consolidated group without an FDP account; or
- (b) the group company does not have an FDP account and is not part of a consolidated group.

*Table reference*

5

- (2) The imputation debit in **subsection (1)** is referred to **table 020**: imputation debits of consolidated imputation groups, row 8 (refund of FDP).

*Debit date*

- (3) The debit date is the day the refund is made. 10

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP, FDP account, imputation debit

Compare: 2004 No 35 s ME 12(1)(f), (2)(d)

**OP 35 Consolidated ICA refund of tax credit***Debit*

15

- (1) A consolidated imputation group has an imputation debit for the amount of a refund under **section LA 6(2)(e)** (Remaining refundable credits: PAYE, RWT, and certain other items) that relates to a dividend derived by a group company at a time when—

20

- (a) the group company is part of a consolidated group without an FDP account; or
- (b) the group company does not have an FDP account and is not part of a consolidated group.

*Table reference*

25

- (2) The imputation debit in **subsection (1)** is referred to **table 020**: imputation debits of consolidated imputation groups, row 9 (refund of tax credit).

*Debit date*

- (3) The debit date is the day the refund is made. 30

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP account, imputation debit

Compare: 2004 No 35 s ME 12(1)(f), (2)(d)

**OP 36 Consolidated ICA overpayment of FDP***Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of an overpayment of FDP relating to a dividend derived by a group company in the following circumstances: 5
- (a) the dividend is derived by the company at a time when—
- (i) the company is part of a consolidated group without an FDP account; or
- (ii) the company does not have an FDP account and is not part of a consolidated group; and 10
- (b) the overpayment is applied to pay an amount due under the Inland Revenue Acts other than a liability for income tax or FDP; and
- (c) the group does not have an FDP account when the amount is applied. 15

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to **table 020: imputation debits of consolidated imputation groups, row 10 (overpayment of FDP)**. 20

*Debit date*

- (3) The debit date is the day the amount is applied.

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP, FDP account, imputation debit, income tax, Inland Revenue Acts, pay 25

Compare: 2004 No 35 s ME 12(1)(m), (2)(k)

**OP 37 Consolidated ICA group company's debit***Debit*

- (1) A consolidated imputation group has an imputation debit for an amount to the extent to which the amount would, in the absence of **subsection (3)**, give rise to— 30
- (a) an imputation debit described in a row of **table 02: imputation debits**, in the imputation credit account of a group company; and
- (b) an imputation debit that would create or increase a debit balance in the group company's imputation credit account. 35

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 11 (group company's debit).

*No debit for group company*

5

- (3) The amount referred to in **subsection (1)** does not give rise to an imputation debit in the group company's account although otherwise eligible to be one.

*Debit date*

- (4) The debit date is the day that the amount would have been debited to the imputation credit account of the group company in the absence of **subsection (3)**. 10

Defined in this Act: amount, company, consolidated imputation group, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 12(1)(k), (2)(j)

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### **OP 38 Consolidated ICA transfer for net foreign attributed income**

*Transfer of amount*

- (1) A consolidated imputation group has an imputation debit as set out in **subsection (2)** for an amount relating to net foreign attributed income transferred from the group's imputation credit account to the FDP account of— 20
- (a) a group company that is not also part of a consolidated group; or
- (b) a consolidated group with the same membership as the consolidated imputation group. 25

*Debit and credit*

- (2) The amount transferred is— 30
- (a) an imputation debit in the group's imputation credit account; and
- (b) an FDP credit under **section OP 62** in the FDP account of the group company or consolidated group, as appropriate.

*Table references*

- (3) The imputation debit in **subsection (2)(a)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 35

12 (transfer for net foreign attributed income). The FDP credit in **subsection (2)(b)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 8 (transfer for net foreign attributed income).

*Two methods* 5

- (4) The amount transferred must be calculated for an income year under method 1 or method 2 as set out in this section.

*When methods apply*

- (5) The consolidated imputation group must apply—
- (a) method 1 set out in **subsection (6)** if the group or a company that is not the group company referred to in **subsection (1)(a)** maintains an FDP account and a CTR account for all of the tax year; or 10
  - (b) method 2 set out in **subsection (7)** if the group or a company that is not the group company referred to in **subsection (1)(a)** maintains only an FDP account for all of the tax year. 15

*Method 1*

- (6) Under method 1, the consolidated imputation group or the company must apply **sections LQ 1 to LQ 4** (which relate to credits for conduit tax relief) as if— 20
- (a) the amount transferred were conduit tax relief for the tax year corresponding to the income year; and
  - (b) the percentage of resident shareholders were substituted for the item **percentage of shareholders** in **section LQ 1(2) and LQ 2(2)**; and 25
  - (c) the percentage of resident shareholders were calculated by subtracting the item **percentage of shareholders** from 100%.

*Method 2* 30

- (7) Under method 2, the consolidated imputation group or company must make the calculation under **section LQ 2(2)** as if the group or company were a CTR company and the item **percentage of shareholders** were 100%.

*No transfer*

- (8) Despite **subsection (4)**, if neither method can be applied, no transfer arises under this section.

*Debit date*

- (9) The debit date for the debit is— 5
- (a) the last day of the tax year corresponding to the income year referred to in **subsection (4)** for so much of the amount transferred that is no more than the amount of provisional tax paid before that date for the income year; or 10
- (b) the day on which the company files the return of income for the tax year corresponding to the income year referred to in **subsection (4)** for the balance of the transfer. 15

Defined in this Act: amount, company, CTR account, CTR company, consolidated group, consolidated imputation group, FDP account, FDP credit, foreign attributed income, imputation credit account, imputation debit, income year, provisional tax, resident, return of income, shareholder, tax year

Compare: 2004 No 35 s ME 12(1)(n), (2)(l), (3), (4)

**OP 39 Consolidated ICA replacement payment by company under share-lending arrangement** 20

*Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached under **section OB 64** (Replacement payments) to a replacement payment paid under a share-lending arrangement by a company that is part of the consolidated imputation group at the time of payment. 25

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 13 (replacement payment under share-lending arrangement). 30

*Debit date*

- (3) The debit date is the day the replacement payment is paid.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, imputation debit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s ME 12(1)(ab), (2)(ab)

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**OP 40 Consolidated ICA returning share transfer***Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend paid to a company if— 5
- (a) at the time of payment, the company is part of the consolidated imputation group; and
  - (b) the dividend is paid to the company as a share user, or a person associated with a share user, in a returning share transfer that is not a share-lending arrangement. 10

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 14 (returning share transfer).

*Debit date*

- (3) The debit date is the day the dividend is paid. 15
- Defined in this Act: amount, associated person, company, consolidated imputation group, dividend, imputation credit, imputation debit, pay, returning share transfer, share-lending arrangement, share user
- Compare: 2004 No 35 s ME 12(1)(ac), (2)(ac) 20

**OP 41 Consolidated ICA credit transfer by company***Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend paid to a company if— 25
- (a) at the time of payment, the company is a part of the consolidated imputation group; and
  - (b) the amount is shown in a credit transfer notice given by the company.

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 15 (credit transfer). 30



*Debit date*

- (3) The debit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated imputation group, credit transfer notice, dividend, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 12(1)(ad), (2)(ac)

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### **OP 42 Consolidated ICA debit for loss of shareholder continuity**

*Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of an imputation credit retained in the group's imputation credit account and unused before the date on which shareholder continuity is lost. 10

*Table reference*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity)**. 15

*Debit date*

- (3) The debit date is the day of loss of shareholder continuity.

Defined in this Act: amount, consolidated imputation group, imputation credit, imputation credit account, imputation debit, shareholder

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Compare: 2004 No 35 ss ME 12(1)(h), (2)(g), ME 13(2)

### **OP 43 Consolidated ICA breach of imputation ratio**

*Debit*

- (1) A consolidated imputation group has an imputation debit for a tax year for the amount of a debit under **section 0B 43** (ICA breach of imputation ratio) that would arise in the imputation credit account of a group company in the absence of **section OP 5(3)**. 25

*Table references*

- (2) The group's imputation debit in **subsection (1)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 17 (breach of imputation ratio)**. The group company's imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 16 (breach of imputation ratio)**. 30

*Debit date*

- (3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, consolidated imputation group, imputation credit account, imputation debit, tax year

Compare: 2004 No 35 s ME 12(1)(e), (2)(e)

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#### **OP 44 Consolidated ICA transfer to policyholder credit account**

*Election*

- (1) The nominated company of a consolidated imputation group may choose to transfer some or all of a credit balance in the group's imputation credit account to the policyholder credit account of a group company. **Subsection (2)** overrides this subsection. 10

*Restriction*

- (2) **Subsection (1)** does not apply to a consolidation imputation group that is also a resident imputation subgroup. 15

*Method and result of election*

- (3) The company makes the election by recording the credit balance transferred as— 20
- (a) a debit in the group's imputation credit account; and
  - (b) a credit in the group's policyholder credit account under **section OP 110**.

*Table references*

- (4) The imputation debit in **subsection (3)(a)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 18 (transfer to policyholder credit account). The policyholder credit in **subsection (3)(b)** is referred to in **table 027**: policyholder credits of consolidated groups, row 2 (transfer from imputation credit account). 25

*Debit date*

- (5) The debit date is the day the election is made. 30

Defined in this Act: company, consolidated imputation group, imputation credit account, imputation debit, nominated company, policyholder credit account, resident imputation subgroup

Compare: 2004 No 35 ss ME 12(1)(b), (2)(b), ME 14(1)

35

**OP 45 Consolidated ICA redemption debit***Debit*

- (1) A consolidated imputation group has an imputation debit for the amount of a redemption debit.

*When redemption debit arises*

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- (2) A redemption debit arises when—
- (a) a group company that is not an Australian ICA company is—
    - (i) the manager of a unit trust; or
    - (ii) the trustee or manager of a group investment fund; and
  - (b) the group company derives a dividend from the redemption or cancellation of—
    - (i) a unit issued by the unit trust; or
    - (ii) an interest of an investor in the group investment fund; and
  - (c) the company has acquired the unit or interest in the ordinary course of its management activities for the unit trust or group investment fund; and
  - (d) the unit or interest had been acquired by the company on the same terms as those offered to the investors in the unit trust or group investment fund.

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*Calculating amount*

- (3) The debit is for the greater of the amounts described in **subsections (4) and (6)** calculated for the income year referred to in **subsection (8)** in which the group company derives the dividend referred to in **subsection (2)(b)**.

25

*First amount*

- (4) The first amount is calculated using the formula—  
credits attached – imputation debits.

30

*Definition of items in formula*

- (5) In the formula in **subsection (4)**,—
- (a) **credits attached** is the total amount of all imputation credits and FDP credits attached to dividends derived by the group company in the income year in the circumstances set out in **subsection (2)**:

35

- (b) **imputation debits** is the amount of imputation debits in the income year under **section OP 42** in the group's imputation credit account.

*Second amount*

- (6) The second amount is calculated using the formula— 5

$$\frac{\text{total dividends}}{\text{taxable income}} \times (\text{tax liability} - \text{continuity debits}).$$

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,— 10
- (a) **total dividends** is the total amount of all dividends derived in the circumstances set out in **subsection (2)**, including imputation credits and FDP credits attached to the dividends:
- (b) **taxable income** is the taxable income of the group company for the tax year corresponding to the income year in which the dividends are derived: 15
- (c) **tax liability** is the group company's income tax liability for the tax year corresponding to the income year in which the dividends are derived: 20
- (d) **continuity debits** is the amount of imputation credits attached to the dividends that have been cancelled by an imputation debit under **section OP 42**.

*Table references*

- (8) The table references are as follows: 25
- (a) the imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 19 (redemption debit):
- (b) the imputation debit in **subsection (5)(b)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 13 (debit for loss of shareholder continuity): 30
- (c) the imputation debit in **subsection (7)(d)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity). 35

*Debit date*

- (9) The debit date is the day the company or the group's nominated company files the return of income for the tax year

corresponding to the income year in which the dividend is derived.

Defined in this Act: amount, Australian ICA company, company, consolidated imputation group, dividend, FDP credit, group investment fund, imputation credit, imputation credit account, imputation debit, income tax liability, income year, investor, nominated company, return of income, tax year, taxable income, trustee, unit trust

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Compare: 2004 No 35 s ME 41

#### **OP 46 Consolidated ICA tax advantage arrangement**

##### *Debit*

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- (1) A consolidated imputation group has an imputation debit for the amount of a debit for a tax advantage arrangement determined under **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage).

##### *Table reference*

15

- (2) The imputation debit in **subsection (1)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 20** (tax advantage arrangement).

##### *Debit date*

- (3) The debit date is the last day of the tax year in which the arrangement began.

Defined in this Act: amount, arrangement, consolidated imputation group, imputation debit, tax advantage, tax year

Compare: 2004 No 35 s ME 12(1)(i), (2)(h)

#### **OP 47 Consolidated ICA final balance**

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##### *Debit*

- (1) A consolidated imputation group has an imputation debit for a credit balance in the imputation credit account when the group stops being a consolidated imputation group.

##### *Table reference*

30

- (2) The imputation debit in **subsection (1)** is referred to in **table 020: imputation debits of consolidated imputation groups, row 21** (final balance).

*Debit date*

- (3) The debit date is the day before the group stops being a consolidated imputation group.

Defined in this Act: consolidated imputation group, imputation credit account, imputation debit

5

Compare: 2004 No 35 s ME 12(1)(j), (2)(h)

**OP 48 Consolidated ICA refund of NRWT***Debit*

- (1) A consolidated imputation group that includes an Australian ICA company has an imputation debit for the amount of a refund of NRWT that gave rise to an imputation credit under **section OP 25**. 10

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 22 (refund of NRWT). The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 20 (NRWT withheld). 15

*Debit date*

- (3) The debit date is the day the refund is made. 20

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, imputation debit, NRWT

Compare: 2004 No 35 s ME 12(1A)(a), (2A)

**OP 49 Consolidated ICA refund of amount of tax for schedular payment** 25*Debit*

- (1) A consolidated imputation group that includes an Australian ICA company has an imputation debit for the amount of a refund of an amount of tax for a schedular payment that gave rise to an imputation credit under **section OP 26**. 30

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 23 (refund of amount of tax for schedular payment). The imputation credit in **subsection (1)** is referred to in **table 019**: imputation 35

credits of consolidated imputation groups, row 21 (amount of tax for schedular payment).

*Debit date*

- (3) The debit date is the day the refund is made.

Defined in this Act: amount, amount of tax, Australian ICA company, consolidated imputation group, imputation credit, imputation debit, schedular payment

5

Compare: 2004 No 35 s ME 12(1A)(b), (2A)

**OP 50 Consolidated ICA refund of schedular income tax**

*Debit*

- (1) A consolidated imputation group that includes an Australian ICA company has an imputation debit for the amount of a refund of a payment of schedular income tax that gave rise to an imputation credit under **section OP 27**. 10

*Table references*

- (2) The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 24 (refund of schedular income tax). The imputation credit in **subsection (1)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 22 (payment of schedular income tax). 15  
20

*Debit date*

- (3) The debit date is the day the refund is made.

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, imputation debit, income tax, pay, schedular income tax

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Compare: 2004 No 35 s ME 12(1A)(c), (2A)

***Consolidated groups and FDP accounts***

*Introductory provisions*

**OP 51 FDP accounts of consolidated FDP groups**

*Consolidated group account*

- (1) A consolidated group is a consolidated FDP group for a tax year if— 30
- (a) a group company is an FDPA company at a time during the tax year; or
  - (b) the group chooses to maintain an FDP account.

*Effect of election*

- (2) If a consolidated FDP group makes an election under **subsection (1)(b)**, it must maintain the FDP account referred to in **section OC 2** (FDP accounts) from the date of election.

*Notifying Commissioner*

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- (3) The nominated company of a consolidated FDP group must notify the Commissioner of an election under **subsection (1)(b)**—
- (a) no later than 21 days after the day of election; or
- (b) by a later date if the Commissioner allows.

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Defined in this Act: Commissioner, company, consolidated FDP group, consolidated group, FDP account, FDPA company, nominated company, notify, tax year

Compare: 2004 No 35 s MG 13(1)

**OP 52 Choosing to stop being consolidated FDP group***Election*

15

- (1) The nominated company of a consolidated FDP group may choose that the group's status as a consolidated FDP group is to end.

*When election made*

- (2) The election referred to in **subsection (1)** may be made during a tax year that is later than the tax year in which the group chooses under **section OP 51** to become a consolidated FDP group.

20

*When company's status ends*

- (3) The election referred to in **subsection (1)** takes effect from the first day of the tax year after the tax year in which the election referred to in **subsection (2)** is made, but only if,—
- (a) the group—
- (i) files an annual FDPA return for the year of election in the time allowed by section 71 of the Tax Administration Act 1994; and
- (ii) pays further FDP under **section OC 30** (Payment of further FDP for closing debit balance) for the year of election; and

25

30



- (b) no group company is an FDPA company in the tax year after the year of election.

Defined in this Act: annual FDPA return, company, consolidated FDP group, FDPA company, further FDP, nominated company, pay, tax year

Compare: 2004 No 35 s MG 2(4), (5)

5

### OP 53 When group company emigrates

*When this section applies*

- (1) This section applies when an FDPA company in a consolidated FDP group is an emigrating company.

*Status ends*

10

- (2) The group's status as a consolidated FDP group ends at the time of emigration of the company.

*Further payments and returns*

- (3) The consolidated FDP group must—

- (a) provide the annual FDPA return required for the group for the tax year in which the company becomes non-resident; and 15
- (b) for a debit balance in the consolidated FDP group's account at the time of emigration, pay further FDP payable for the tax year of an amount equal to the debit balance. 20

Defined in this Act: amount, annual FDPA return, consolidated FDP group, emigrating company, FDPA company, further FDP, non-resident, pay, tax year, time of emigration

Compare: 2004 No 35 s MG 13(6), (7)

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### OP 54 When credits and debits arise only in consolidated FDP group accounts

*Credits to group accounts*

- (1) A credit listed in **subsection (2)** arises only in the FDP account of a consolidated FDP group and not in the FDP account of a group company. 30

*Particular credits*

- (2) The credit referred to in **subsection (1)** is a credit under the following sections and described in the following rows of **table 021: FDP credits of consolidated FDP groups:** 35
- (a) **section OP 56**, row 2 (payment of FDP):

- (b) **section OP 58**, row 4 (dividend derived with FDP credit).

*Debits only in group accounts*

- (3) A debit listed in **subsection (4)** arises only in the FDP account of a consolidated FDP group and not in the FDP account of a group company. 5

*Particular debits*

- (4) The debit referred to in **subsection (3)** is a debit under the following sections and described in the following rows of **table 022: FDP debits of consolidated FDP groups:**

- (a) **section OP 64**, row 2 (payment of dividend): 10  
 (b) **section OP 66**, row 4 (refund of FDP):  
 (c) **section OP 68**, row 6 (refund of tax credit):  
 (d) **section OP 72**, row 10 (breach of FDP ratio).

Defined in this Act: company, consolidated FDP group, FDP account

Compare: 2004 No 35 s MG 16(1) 15

## **OP 55 Provisions applying to consolidated FDP groups**

*Single company, tax liabilities*

- (1) The provisions set out in **subsection (2)** apply, modified as necessary, to a consolidated FDP group and to the FDP account of the group as if— 20
- (a) the group were a single company; and  
 (b) a reference to a section of this Act were to an equivalent provision applicable to a consolidated group; and  
 (c) a reference to a company's liability for further FDP, late payment penalty, or FDP penalty tax were a reference 25  
 to a joint and several liability owed by group companies when the tax or penalty becomes payable.

*Other provisions*

- (2) The provisions are— 30
- (a) **sections OC 30 and OC 31** (which relate to further FDP); and  
 (b) sections 103, 104, 139B, 140C, 140D, and 181 of the Tax Administration Act 1994.

*Consolidation provisions*

- (3) **Sections FM 3 and FM 4** (which relate to the liabilities of consolidated groups and group companies) overrides **subsection (1)(c)**.

Defined in this Act: company, consolidated FDP group, consolidated group, FDP account, FDP penalty tax, further FDP, pay

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Compare: 2004 No 35 s MG 16A(2)

*FDP credits of consolidated FDP groups***OP 56 Consolidated FDPA payment of FDP***Credit*

- (1) A consolidated FDP group has an FDP credit for a payment of FDP by a group company. **Subsection (3)** overrides this subsection. 10

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021: FDP credits of consolidated FDP groups, row 2 (payment of FDP)**. 15

*No credit*

- (3) A consolidated FDP group does not have an FDP credit for an amount of FDP paid—
- (a) by crediting an amount of further FDP under **sections OC 34 (Further FDP paid satisfying liability for FDP) and OP 55**; or 20
  - (b) by reducing a tax loss under **section FM 26 (Using tax losses to pay FDP)**.

*Credit date*

- (4) The credit date is the day the FDP is paid. 25

Defined in this Act: amount, company, consolidated FDP group, FDP, FDP credit, further FDP, pay, tax loss

Compare: 2004 No 35 s MG 14(1)(a), (2)(a)

**OP 57 Consolidated FDPA payment of further FDP***Credit*

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- (1) A consolidated FDP group has an FDP credit for a payment of further FDP under **section OC 30 or OC 31** (which relate to further FDP).

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 3 (payment of further FDP).

*Credit date*

5

- (3) The credit date is the day the further FDP is paid.

Defined in this Act: consolidated FDP group, FDP credit, further FDP, pay

Compare: 2004 No 35 s MG 14(1)(c), (2)(a)

**OP 58 Consolidated FDP dividend derived with FDP credit***Credit*

10

- (1) A consolidated FDP group has an FDP credit for the amount of an FDP credit attached to a dividend derived by a group company.

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 4 (dividend derived with FDP credit).

15

*Credit date*

- (3) The credit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated FDP group, dividend, FDP credit, pay

20

Compare: 2004 No 35 s MG 14(1)(b), (2)(a)

**OP 59 Consolidated FDP group company's credit***Credit*

- (1) A consolidated FDP group has an FDP credit for the amount of a credit arising as follows:

25

- (a) an FDP credit described in a row of **table 03**: FDP credits, arises in the FDP account of a group company; and

- (b) an FDP debit described in a row of **table 022**: FDP debits of consolidated FDP groups, arises in the group FDP account; and

30

- (c) the debit is not offset by a credit arising in the group account before the credit arose in the group company's account.

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*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 5 (group company's credits).

*Offsetting debits*

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- (3) For the purposes of **subsection (1)(c)**, to determine whether the debit has been offset by a credit in the group account,—
- (a) credits are treated as reducing debits in the order in which the credits arise; and
  - (b) a credit, whether some or all, is counted only once in determining whether a debit has been offset; and 10
  - (c) credits in the accounts of more than 1 group company become a credit to the group account—
    - (i) in the order of their credit date; and
    - (ii) as chosen by the group, if credits arise on the same credit date; and 15
    - (iii) on a pro rata basis, if no election is made under **subparagraph (ii)**.

*Credit date*

- (4) The credit date is immediately before the debit date for the debit to the group account. 20

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP credit, FDP debit

Compare: 2004 No 35 ss MG 14(1)(e), (2)(c), MG 16(2), (4)

**OP 60 Consolidated FDP credit transfer to company** 25

*Credit*

- (1) A consolidated FDP group has an FDP credit for the amount of an FDP credit shown in a credit transfer notice given to a company that is part of the consolidated FDP group when the notice is given. 30

*Table reference*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated imputation groups, row 6 (credit transfer).

*Credit date*

- (3) The credit date is the day the notice is given.

Defined in this Act: amount, company, consolidated FDP group, credit transfer notice, FDP credit

Compare: 2004 No 35 s MG 14(1)(bb), (2)(ab)

5

**OP 61 Consolidated FDP transfer from group's CTR account**

*Credit*

- (1) A consolidated FDP group has an FDP credit for a tax year for an amount equal to the amount of a CTR debit under **section OP 88** for the transfer of a closing credit balance to the FDP account.

10

*Table references*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 7 (transfers from group's CTR account). The CTR debit in **subsection (1)** is referred to in **table 024**: CTR debits of consolidated groups, row 3 (transfer to group's FDP account).

15

*Credit date*

- (3) The credit date is the last day of the tax year.

20

Defined in this Act: amount, CTR debit, consolidated FDP group, FDP account, FDP credit, tax year

Compare: 2004 No 35 s MI 20(2)

**OP 62 Consolidated FDP transfer for net foreign attributed income**

25

*Credit*

- (1) A consolidated FDP group has an FDP credit for an amount equal to the amount of an imputation debit under **section OP 38** for a transfer to the FDP account on account of net foreign attributed income.

30

*Table references*

- (2) The FDP credit in **subsection (1)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 8 (transfer for net foreign attributed income). The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated

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imputation groups, row 12 (transfer for net foreign attributed income).

*Credit date*

- (3) The credit date is the same as the debit date in the imputation credit account. 5

Defined in this Act: amount, consolidated FDP group, consolidated imputation group, FDP account, FDP credit, foreign attributed income, imputation credit account, imputation debit

Compare: 2004 No 35 s MG 14(1)(f), (2)(d)

**OP 63 Consolidated FDPA reversal of tax advantage arrangement** 10

*When this section applies*

- (1) This section applies when it is established that an FDP credit in a consolidated FDP group's FDP account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage. 15

*Credit*

- (2) The consolidated FDP group has an FDP credit for an amount equal to a debit in the group's FDP account under **section OP 76**.

*Table references*

- (3) The FDP credit in **subsection (2)** is referred to in **table 021: FDP credits of consolidated FDP groups, row 9 (reversal of tax advantage arrangement)**. The FDP debit in **subsection (2)** is referred to in **table 022: FDP debits of consolidated FDP groups, row 14 (tax advantage arrangement)**. 20  
25

*Credit date*

- (4) The credit date is the same as the debit date of the debit.

Defined in this Act: amount, consolidated FDP group, FDP account, FDP credit, tax advantage

Compare: 2004 No 35 s MG 14(1)(d), (2)(b)

30

*FDP debits of consolidated FDP groups***OP 64 Consolidated FDPA payment of dividend***Debit*

- (1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend paid by a group company that is part of the group when the dividend is paid. 5

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022: FDP debits of consolidated FDP groups, row 2 (payment of dividend)**. 10

*Debit date*

- (3) The debit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated FDP group, dividend, FDP account, FDP credit, FDP debit, pay

Compare: 2004 No 35 s MG 15(1)(a), (2)(a) 15

**OP 65 Consolidated FDPA credit transfer by company***Debit*

- (1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend paid to a company if— 20
- (a) at the time of payment, the company is a part of the consolidated FDP group; and
  - (b) the amount is shown in a credit transfer notice given by the company.

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022: FDP debits of consolidated FDP groups, row 3 (credit transfer notice)**. 25

*Debit date*

- (3) The debit date is the day the dividend is paid.

Defined in this Act: amount, consolidated FDP group, credit transfer notice, dividend, FDP credit, FDP debit, pay 30

Compare: 2004 No 35 s MG 15(1)(ab), (2)(ab)



**OP 66 Consolidated FDPA refund of FDP***Debit*

- (1) A consolidated FDP group has an FDP debit for a refund of FDP paid to a group company that is part of the group when it derived the dividend giving rise to the payment of FDP and the refund. **Subsection (2)** overrides this subsection. 5

*No debit*

- (2) A debit under **subsection (1)** does not arise if—
- (a) the payment of FDP giving rise to the refund was made before an FDP debit arises under **section OP 73**; and 10
  - (b) the debit for the refund is no more than the debit for loss of shareholder continuity.

*Table references*

- (3) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 4 (refund of FDP). 15  
The FDP debit in **subsection (2)(a)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 10 (debit for loss of shareholder continuity).

*Debit date*

- (4) The debit date is the day the refund is made. 20

Defined in this Act: company, consolidated FDP group, dividend, FDP, FDP debit, pay, shareholder

Compare: 2004 No 35 s MG 15(1)(d), (2)(d)

**OP 67 Consolidated FDPA overpayment of FDP***Debit* 25

- (1) A consolidated FDP group has an FDP debit for an overpayment of FDP that is—
- (a) paid by a group company that is part of the group at the time it derived the dividend giving rise to the overpayment of FDP; and 30
  - (b) applied to pay an amount due under the Inland Revenue Acts.

*No debit*

- (2) Despite **subsection (1)**, the debit does not include an overpayment of FDP to the extent to which it is— 35

- (a) applied to satisfy a liability for FDP; or
- (b) for a payment of FDP before an FDP debit arises under **section OP 73**, no more than the debit for loss of shareholder continuity.

*Table references*

- (3) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 5 (overpayment of FDP). The FDP debit in **subsection (2)(b)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 10 (debit for loss of shareholder continuity). 5  
10

*Debit date*

- (4) The debit date is the day the amount is applied.

Defined in this Act: amount, company, consolidated FDP group, dividend, FDP, FDP debit, Inland Revenue Acts, pay, shareholder

Compare: 2004 No 35 s MG 15(1)(1), (2)(j)

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**OP 68 Consolidated FDP refund of tax credit***Debit*

- (1) A consolidated FDP group has an FDP debit for a refund of a tax credit under **section LA 6** (Remaining refundable credits: PAYE, RWT, and certain other items) relating to a dividend derived by a group company that is part of the group at the time it derived the dividend. 20

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 6 (refund of tax credit). 25

*Debit date*

- (3) The debit date is the day the refund is made.

Defined in this Act: company, consolidated FDP group, tax credit, dividend, FDP debit

Compare: 2004 No 35 s MG 1(1)(e), (2)(d)

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### OP 69 Consolidated FDPA transfer to imputation credit account

#### *Debit*

- (1) A consolidated FDP group has an FDP debit for a tax year for an amount equal to a closing credit balance transferred under **section FM 29** (Treatment of credit balance in consolidated group's FDP account) to the group's imputation credit account. 5

#### *Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 7 (transfer to imputation credit account). 10

#### *Debit date*

- (3) The debit date is the last day of the tax year. 15  
 Defined in this Act: amount, consolidated FDP group, FDP debit, imputation credit account, tax year  
 Compare: 2004 No 35 s MG 15(1)(c), (2)(c)

### OP 70 Consolidated FDPA transfer to group's CTR account

#### *Debit*

- (1) A consolidated FDP group has an FDP debit for a tax year for an amount equal to a CTR credit under **section OP 85** for the transfer of a credit balance to the group's CTR account. 20

#### *Table references*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 8 (transfer to group's CTR account). The CTR credit in **subsection (1)** is referred to in **table 023**: CTR credits of consolidated groups, row 6 (transfer from group's FDP account). 25

#### *Debit date*

- (3) The debit date is the last day of the tax year. 30  
 Defined in this Act: amount, CTR account, CTR credit, consolidated FDP group, FDP debit, tax year  
 Compare: 2004 No 35 s MI 20(1)

**OP 71 Consolidated FDPA group company's debit***Debit*

- (1) A consolidated FDP group has an FDP debit for an amount to the extent to which it would, in the absence of **subsection (2)**, give rise to— 5
- (a) an FDP debit described in a row of **table 04: FDP debits**, in the FDP account of a group company; and
  - (b) an FDP debit that would create or increase a debit balance in the group company's FDP account.

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022: FDP debits of consolidated FDP groups**, row 9 (group company's debit). 10

*No debit for group company*

- (3) The amount referred to in **subsection (1)** does not give rise to an FDP debit in the group company's account although otherwise eligible to be one. 15

*Debit date*

- (4) The debit date is the day that would be the debit date for the amount in the absence of **subsection (3)**. 20

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP debit

Compare: 2004 No 35 ss MG 15(1)(k), (2)(i), MG 16(5)

**OP 72 Consolidated FDPA breach of FDP ratio***Debit*

- (1) A consolidated FDP group has an FDP debit for a tax year for the amount of a debit that would arise under **section OC 22** (FDPA breach of FDP ratio) in the FDP account of a group company in the absence of **section OP 54(3)**. 25

*Table references*

- (2) The group's FDP debit in **subsection (1)** is referred to in **table 022: FDP debits of consolidated FDP groups**, row 10 (breach of FDP ratio). The group company's FDP debit in **subsection (1)** is referred to in **table 04: FDP debits**, row 11 (breach of FDP ratio). 30  
35

*Debit date*

- (3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP debit, tax year

Compare: 2004 No 35 s MG 15(1)(f), (2)(e)

5

**OP 73 Consolidated FDP debit for loss of shareholder continuity**

*Debit*

- (1) A consolidated FDP group has an FDP debit for the amount of an FDP credit retained in the group's FDP account and unused before the date on which shareholder continuity is lost.

10

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 11 (debit for loss of shareholder continuity).

15

*Debit date*

- (3) The debit date is the day of loss of shareholder continuity.

Defined in this Act: amount, consolidated FDP group, FDP account, FDP credit, FDP debit, shareholder

Compare: 2004 No 35 s MG 15(1)(i), (2)(g)

20

**OP 74 Consolidated FDP transfer to policyholder credit account**

*Debit*

- (1) A consolidated FDP group has an FDP debit for the amount equal to a credit balance transferred under **section FM 30(3) and (4)** (Application of certain provisions to consolidated groups) to the group's policyholder credit account.

25

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 12 (transfer to policyholder credit account).

30

*Debit date*

- (3) The debit date is the day of election under **section FM 30(3)**.

Defined in this Act: amount, consolidated FDP group, FDP account, FDP debit, policyholder credit account

Compare: 2004 No 35 s MG 15(1)(b), (2)(b)

5

**OP 75 Consolidated FDP A breach of FDP ratio by PCA company**

*Debit*

- (1) A consolidated FDP group has an FDP debit for a tax year for the amount of a debit that would arise under **section OC 23** (FDP A breach of FDP ratio by PCA company) in the FDP account of a group company in the absence of **section OP 54(4)(d)**. 10

*Table references*

- (2) The group's FDP debit in **subsection (1)** is referred to in **table 022: FDP debits of consolidated FDP groups, row 13** (breach of FDP ratio by PCA company). The group company's FDP debit in **subsection (1)** is referred to in **table 04: FDP debits, row 12** (breach of FDP ratio by PCA company). 15

*Debit date*

- (3) The debit date is the last day of the tax year. 20

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP debit, tax year

Compare: 2004 No 35 s MG 15(1)(g), (2)(e)

**OP 76 Consolidated FDP A tax advantage arrangement** 25

*Debit*

- (1) A consolidated FDP group has an FDP debit for the amount of a debit for a tax advantage arrangement determined under **section GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage). 30

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022: FDP debits of consolidated FDP groups, row 14** (tax advantage arrangement).

*Debit date*

- (3) The debit date is the last day of the tax year in which the arrangement began.

Defined in this Act: amount, arrangement, consolidated FDP group, FDP account, FDP debit, tax advantage, tax year

5

Compare: 2004 No 35 s MG 15(1)(h), (2)(f)

**OP 77 Consolidated FDP final balance***Debit*

- (1) A consolidated FDP group has an FDP debit for a credit balance in the FDP account when the group stops being a consolidated FDP group. 10

*Table reference*

- (2) The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 15 (final balance).

*Debit date*

15

- (3) The debit date is the day the group stops being a consolidated FDP group.

Defined in this Act: consolidated FDP group, FDP account, FDP debit

Compare: 2004 No 35 s MG 15(1)(j), (2)(h)

***Consolidated groups and CTR credits*** 20*Introductory provisions***OP 78 CTR accounts of consolidated groups***Consolidated group accounts*

- (1) A consolidated group has a group CTR account for a tax year if a group company is a CTR company at a time during the tax year. 25

*Group company's status*

- (2) Every company that is part of a consolidated group with a CTR account is a CTR company, despite the absence of an

election under **section OD 1(1)** (General rules for companies with CTR accounts) by a group company.

Defined in this Act: company, CTR account, CTR company, consolidated group, tax year

Compare: 2004 No 35 ss MI 14, MI 16

5

## **OP 79 When credits and debits arise only in CTR group accounts**

### *Credits only in the group accounts*

- (1) A credit listed in **subsection (2)** arises only in the CTR account of a consolidated group and not in the CTR account of a group company. 10

### *Particular credits*

- (2) The credit referred to in **subsection (1)** is a credit under the following sections and described in the following rows of **table 05: CTR credits**: 15
- (a) **section OD 5** (CTRA tax credit for conduit tax relief), row 2 (tax credit for conduit tax relief):
  - (b) **section OD 7** (CTRA dividend derived with CTR credit), row 4 (dividend derived with CTR credit):
  - (c) **section OD 8** (CTRA reduction of FDP), row 5 (reduction of FDP). 20

### *Debits only in the group accounts*

- (3) A debit listed in **subsection (4)** arises only in the CTR account of a consolidated group and not in the CTR account of a group company. 25

### *Particular debits*

- (4) The debit referred to in **subsection (3)** is a debit under the following sections and described in the following rows of **table 06: CTR debits**: 30
- (a) **section OD 10** (CTRA payment of dividend), row 2 (payment of dividend):
  - (b) **section OD 13** (CTRA adjustment for conduit tax relief), row 5 (adjustment for conduit tax relief):



- (c) **section OD 17** (CTRA breach of CTR ratio), row 9  
(breach of CTR ratio).

Defined in this Act: company, CTR account, CTR credit, CTR debit, CTR ratio, consolidated group

Compare: 2004 No 35 s MI 19(1), (2)

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## **OP 80 Provisions applying to consolidated groups with CTR accounts**

### *Single company, tax liabilities*

- (1) The provisions set out in **subsection (2)** apply, modified as necessary, to a consolidated group and to the CTR account of the group as if— 10
- (a) the group were a single company; and
  - (b) a reference to a section of this Act were to an equivalent provision applicable to a consolidated group; and
  - (c) a reference to a company's liability for further FDP, late payment penalty, or FDP penalty tax were a reference to a joint and several liability owed by group companies when the tax or penalty becomes payable. 15

### *Other provisions*

- (2) The provisions are— 20
- (a) **sections OD 22 and OD 23** (which relate to credits attached to dividends and FDP payable); and
  - (b) sections 103, 104, 139B, 140C, 140D, and 181 of the Tax Administration Act 1994.

### *Consolidation provisions*

- (3) **Sections FM 4 and FM 5** (which relate to the liability of consolidated groups) override **subsection (1)(c)**. 25

Defined in this Act: company, CTR account, consolidated group, FDP penalty tax, further FDP

Compare: 2004 No 35 s MI 22(1)

30

### *CTR credits of consolidated groups*

## **OP 81 Consolidated CTRA tax credit for conduit tax relief**

### *Credit*

- (1) A consolidated group has a CTR credit for a tax year for the amount of a tax credit allowed to the group under **sections LQ 1 and LQ 2** (which relate to conduit tax relief) for an income year 35

corresponding to the tax year. The amount of the credit is calculated under **subsection (2)**.

*Calculating amount of credit*

- (2) Having determined the amount of its tax credit for a tax year, a consolidated group must apportion the amount to calculate the amount of the credit using the formula— 5

$$\frac{\text{FDP last day credit}}{\text{total FDP credit}} \times \text{amount of tax credit.}$$

*Definition of items in formula*

- (3) In the formula,— 10
- (a) **FDP last day credit** is the part of the amount of the FDP credit arising in the group's FDP account on the last day of the tax year under **section OP 38(1)** for which the credit date is set out in **subsection (8)(a)** of that section: 15
- (b) **total FDP credit** is the total amount transferred from the imputation credit account to the FDP account under **section OP 62**: 20
- (c) **amount of tax credit** is the amount of the tax credit allowed under **sections LQ1 and LQ 2**. 20

*Amount included in component of formula*

- (4) The formula in **subsection (2)** takes into account an FDP credit under **section OP 55** in the group's FDP account.

*Table references*

- (5) The table references are as follows: 25
- (a) the CTR credit in **subsection (1)** is referred to in **table 023**: CTR credits of consolidated groups, row 2 (tax credit for conduit tax relief):
- (b) the FDP credit in **subsection (3)(b)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 8 (transfer for net foreign attributed income): 30
- (c) the FDP credit in **subsection (4)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 8 (transfer for net foreign attributed income).

*Credit date*

- (6) The credit date is— 35

- (a) the last day of the tax year corresponding with the income year for which the tax credit is allowed for the amount of the credit calculated under **subsection (2)**; and
- (b) the day the company files its return of income for the tax year for the balance of the credit. 5

Defined in this Act: amount, CTR credit, consolidated group, tax credit, FDP account, FDP credit, imputation credit account, income tax, income year, return of income, tax year

Compare: 2004 No 35 s MI 17(1)(a), (2)(a)

## **OP 82 Consolidated CTRA reduction of FDP** 10

### *Credit*

- (1) A consolidated group has a CTR credit for the amount of a reduction of FDP that is allowed to a group company under **section RG 7** (Reduction of payments for conduit tax relief) for a dividend derived when the company is part of the group at the time the reduction occurred. 15

### *Table reference*

- (2) The CTR credit in **subsection (1)** is referred to in **table 023**: CTR credits of consolidated groups, row 3 (reduction of FDP).

### *Credit date*

- (3) The credit date is the due date for payment of FDP under **section RG 7**. 20

Defined in this Act: amount, company, CTR credit, consolidated group, dividend, FDP

Compare: 2004 No 35 s MI 17(1)(b), (2)(b) 25

## **OP 83 Consolidated CTRA dividend derived with CTR credit**

### *Credit*

- (1) A consolidated group has a CTR credit for the amount of a CTR credit attached to a dividend derived by a group company that is part of the group when the dividend is derived. 30

### *Table reference*

- (2) The CTR credit in **subsection (1)** is referred to in **table 023**: CTR credits of consolidated groups, row 4 (dividend derived with CTR credit).

*Credit date*

- (3) The credit date is the day the dividend is paid.

Defined in this Act: amount, company, CTR credit, consolidated group, dividend, pay

Compare: 2004 No 35 s MI 17(1)(c), (2)(c)

5

**OP 84 Consolidated CTRA group company's credit***Credit*

- (1) A consolidated group has a CTR credit for the amount of a credit that arises when—
- (a) a CTR credit described in a row of **table 05: CTR credits**, arises in the CTR account of a group company; and 10
  - (b) a CTR debit described in a row of **table 024: CTR debits of consolidated groups**, arises in the CTR account of the group; and
  - (c) the debit is not offset by a credit arising in the group account before the credit arose in the group company's account; and 15
  - (d) the amount of the credit is no more than the amount of the debit.

*Table reference*

20

- (2) The CTR credit in **subsection (1)** is referred to in **table 023: CTR credits of consolidated groups**, row 5 (group company's credit).

*Offsetting debits*

- (3) For the purposes of **subsection (1)(c)**, to determine whether a debit has been offset by a credit in the group account,— 25
- (a) a credit retains its separate character and is not treated as part of a credit under **section OA 7** (Opening balances of memorandum accounts); and
  - (b) credits are treated as reducing debits in the order in which the credits arise; and 30
  - (c) a credit, whether some or all, is counted only once in determining whether the debit has been offset; and
  - (d) credits in the accounts of more than 1 group company become a credit to the group account— 35
    - (i) in the order of their credit date; and
    - (ii) as chosen by the group, if the credits arise on the same credit date; and

- (iii) on a pro rata basis, if no election is made under **subparagraph (ii)**.

*Credit date*

- (4) The credit date is the day the credit is recorded as transferred to the group account. 5

Defined in this Act: amount, company, CTR account, CTR credit, CTR debit, consolidated group

Compare: 2004 No 35 ss MI 17(1)(e), (2)(e), MI 19(3), (4)

**OP 85 Consolidated CTRA transfer from group's FDP account** 10

*Credit*

- (1) A consolidated group has a CTR credit for a tax year for an amount of a credit balance in the group's FDP account that is treated as transferred to the group's CTR account when— 15
- (a) a credit balance exists in the group's FDP account immediately before the end of the tax year; and
- (b) a debit balance exists in the group's CTR account immediately before the end of the tax year.

*Finding balances*

- (2) For the purposes of **subsection (1)**,— 20
- (a) the debit balance in the CTR account is determined after a CTR credit arises at the end of the tax year under the following sections and described in the following rows of **table 023**: CTR credits of consolidated groups—
- (i) **section OP 81**, row 2 (tax credit for conduit tax relief); and 25
- (ii) **section OP 84**, row 5 (group company's credit); and
- (b) the credit balance in the FDP account is determined after an FDP credit arises under **section OP 62** before the end of the tax year. 30

*Amount of credit and debit*

- (3) The amount of the credit is equal to the smaller of the 2 balances referred to in **subsection (1)**, and becomes— 35
- (a) the CTR credit; and
- (b) the FDP debit under **section OP 70**.

*Table references*

- (4) The table references are as follows:
- (a) the CTR credit in **subsection (1)** is referred to in **table 023**: CTR credits of consolidated groups, row 6 (transfer from group's FDP account): 5
  - (b) the FDP credit in **subsection (2)(b)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 8 (transfer for net foreign attributed income):
  - (c) the CTR credit in **subsection (3)(a)** is referred to in **table 023**: CTR credits of consolidated groups, row 6 (transfer from group's FDP account): 10
  - (d) the FDP debit in **subsection (3)(b)** is referred to in **table 022**: FDP debits of consolidated groups, row 8 (transfer to groups CTR account).

*Credit date*

15

- (5) The credit date is the last day of the tax year.

Defined in this Act: amount, company, CTR account, CTR credit, consolidated group, FDP account, FDP credit, FDP debit, tax year

Compare: 2004 No 35 ss MI 17(1)(f), (2)(f), MI 20(1)

**OP 86 Consolidated CTRA reversal of tax advantage arrangement** 20

*When this section applies*

- (1) This section applies when it is established that a CTR credit in a consolidated group's CTR account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage. 25

*Credit*

- (2) The consolidated group has a CTR credit for an amount equal to a debit in the group's CTR account under **section OP 93**.

*Table references*

30

- (3) The CTR credit in **subsection (2)** is referred to in **table 023**: CTR credits of consolidated groups, row 7 (reversal of tax advantage arrangement). The CTR debit in **subsection (2)** is referred to in **table 024**: CTR debits of consolidated groups, row 8 (tax advantage arrangement). 35

*Credit date*

- (4) The credit date is the same as the debit date for the debit.  
 Defined in this Act: amount, CTR account, CTR credit, consolidated group, tax advantage  
 Compare: 2004 No 35 s MI 17(1)(d), (2)(d)

5

*CTR debits of consolidated groups***OP 87 Consolidated CTRA payment of dividend***Debit*

- (1) A consolidated group has a CTR debit for the amount of a CTR credit attached to a dividend paid by a group company that is part of the group when the dividend is paid.

10

*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 024: CTR debits of consolidated groups, row 2 (payment of dividend)**.

*Debit date*

- (3) The debit date is the day the dividend is paid.  
 Defined in this Act: amount, company, CTR credit, CTR debit, consolidated group, dividend, pay  
 Compare: 2004 No 35 s MI 18(1)(a), (2)(a)

15

**OP 88 Consolidated CTRA transfer to group's FDP account** 20*Debit*

- (1) A consolidated group has a CTR debit for a tax year for the amount of a credit balance in the CTR account that is treated as transferred to the group's FDP account when—
- (a) a credit balance exists in the group's CTR account immediately before the end of the tax year; and
- (b) a debit balance exists in the group's FDP account immediately before the end of the tax year.

25

*Finding balances*

- (2) For the purposes of **subsection (1)**,—
- (a) the credit balance and the debit balance are determined before the transfer is made under this section; and
- (b) the credit balance in the CTR account is found after a CTR credit arises at the end of the tax year under the

30

following sections and described in the following rows of **table 023**: CTR credits of consolidated groups—

- (i) **section OP 81**, row 2 (tax credit for conduit tax relief):
- (ii) **section OP 85**, row 6 (transfer from group's FDP account). 5

*Amount of credit and debit*

- (3) The amount of the credit is equal to the smaller of the 2 balances referred to in **subsection (1)**, and becomes—
  - (a) the CTR debit; and 10
  - (b) the FDP credit under **section OP 61**.

*Table references*

- (4) The table references are as follows:
  - (a) the CTR debit in **subsection (1)** is referred to in **table 024**: CTR debits of consolidated groups, row 3 (transfer to the group's FDP account): 15
  - (b) the CTR debit in **subsection (3)(a)** is referred to in **table 024**: CTR debits of consolidated groups, row 3 (transfer to group's FDP account):
  - (c) the FDP credit in **subsection (3)(b)** is referred to in **table 021**: FDP credits of consolidated FDP groups, row 7 (transfer from group's CTR account). 20

*Debit date*

- (5) The debit date is the last day of the tax year. 25
 

Defined in this Act: amount, CTR account, CTR debit, consolidated group, dividend, FDP account, FDP credit, tax year

Compare: 2004 No 35 ss MI 18(1)(g), (2)(g), MI 20(2)

**OP 89 Consolidated CTRA adjustment for conduit tax relief**

*Debit*

- (1) A consolidated group has a CTR debit for a tax year for the amount of an adjustment allowed under **section FF 7(8)** (Surplus to foreign dividends) to a group company that is part of the group on the last day of the income year corresponding to the tax year for which the adjustment is allowed. 30



*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 024**: CTR debits of consolidated groups, row 4 (adjustment for conduit tax relief).

*Debit date*

5

- (3) The debit date is the day the company files a return of income for the tax year corresponding to the income year for which the adjustment is made.

Defined in this Act: amount, company, CTR debit, consolidated group, income year, return of income, tax year

10

Compare: 2004 No 35 s MI 18(1)(b), (2)(b)

**OP 90 Consolidated CTRA group company's debit***Debit*

- (1) A consolidated group has a CTR debit for an amount to the extent to which the amount would, in the absence of **section OP 54(3)**, give rise to— 15
- (a) a CTR debit described in a row of **table 06**: CTR debits, in the CTR account of a group company; and
- (b) a CTR debit that would create or increase a debit balance in the group company's CTR account. 20

*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 024**: CTR debits of consolidated groups, row 5 (group company's debit).

*Debit date*

- (3) The debit date is the day that would be the debit date if the debit had arisen in the company's account. 25

Defined in this Act: amount, company, CTR account, CTR debit, consolidated group

Compare: 2004 No 35 s MI 19(5)

**OP 91 Consolidated CTRA increase in resident shareholding***Debit*

- (1) A consolidated group has a CTR debit for the amount of a CTR credit in the group's CTR account if the resident shareholding requirements of **subsection (2)** and **section OA 8** (Shareholder continuity requirements for memorandum accounts) are not met. 5

*Resident shareholding requirements*

- (2) For the purposes of **subsection (1)**, the resident shareholding requirements are that— 10
- (a) the credit continues to exist to the extent to which it is not reduced by a later CTR debit; and
- (b) since the credit date for the credit, the percentage of the group's shareholders who are resident in New Zealand does not increase by 34% or more; and 15
- (c) an amount that is the CTR debit under **subsection (1)** arises for the amount of the credit that still exists when the requirement of **paragraph (b)** is not met.

*Supporting rules*

- (3) The following rules apply for the purposes of **subsection (2)**: 20
- (a) the percentage of shareholders resident in New Zealand at any time is found by taking the highest of the following percentages:
- (i) the percentage of direct voting interests held in the group by residents; and 25
- (ii) the percentage of direct market value interests held in the group, if a direct market value circumstance exists, by residents; and
- (iii) if not all shares held by the group's shareholders are shares of the same class, the percentage of total dividends that would be derived by residents if the group were liquidated: 30
- (b) a credit retains its separate character and is not treated as part of a credit referred to in **section OA 7** (Opening balances of memorandum accounts) in a later tax year; 35  
and
- (c) the amount by which a credit is reduced by an earlier or later debit is found by—

- (i) treating debits as reducing credits in the order in which the credits arise; and
- (ii) counting a debit, whether some or all, only once in the reduction of a credit; and
- (d) the credit date for a credit arising under **section OP 84** is the credit date when the credit arose in the CTR account of the group company; and 5
- (e) the debit still arises despite an arrangement affecting the company's shares that has a purpose or effect of defeating the intent and application of the resident shareholding requirements. 10

*Table references*

- (4) The CTR debit in **subsection (1)** is referred to in **table 024**: CTR debits of consolidated groups, row 6 (increase in resident shareholding). The CTR credit in **subsection (3)(d)** is referred to in **table 023**: CTR credits of consolidated groups, row 5 (group company's credits). 15

*Debit date*

- (5) The debit date is the day on which the shareholding threshold is first reached or passed. 20

Defined in this Act: amount, arrangement, company, CTR account, CTR credit, CTR debit, consolidated group, direct market value circumstance, direct market value interest, direct voting interest, dividend, liquidation, resident, resident in New Zealand, share, shareholder, shares of the same class, tax year

Compare: 2004 No 35 s MI 18(1)(e), (2)(e), (3), (4) 25

## **OP 92 Consolidated CTRA breach of CTR ratio**

*Debit*

- (1) A consolidated group has a CTR debit for a tax year for the amount of a debit under **section OD 17** (CTRA breach of CTR ratio) that would arise in the CTR account of a group company in the absence of **section OP 79**. 30

*Table references*

- (2) The group's CTR debit in **subsection (1)** is referred to in **table 024**: CTR debits of consolidated groups, row 7 (breach of CTR ratio). The group company's CTR credit in **subsection (1)** is referred to in **table 06**: CTR debits, row 9 (breach of CTR ratio). 35

*Debit date*

- (3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, CTR account, CTR debit, consolidated group, tax year

Compare: 2004 No 35 s MI 18(1)(c), (2)(c)

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**OP 93 Consolidated CTRA tax advantage arrangement***Debit*

- (1) A consolidated group has a CTR debit for the amount of a debit for a tax advantage arrangement determined under **sections GB 35 and GB 36** (which relate to imputation arrangements to obtain a tax advantage).

10

*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 024: CTR debits of consolidated groups, row 8 (tax advantage arrangement)**.

15

*Debit date*

- (3) The debit date is the last day of the tax year in which the arrangement began.

Defined in this Act: amount, arrangement, CTR debit, consolidated group, tax advantage, tax year

20

Compare: 2004 No 35 s MI 18(1)(d), (2)(d)

**OP 94 Consolidated CTRA final balance***Debit*

- (1) A consolidated group has a CTR debit for a credit balance in the CTR account when the group is no longer required to maintain the account.

25

*Table reference*

- (2) The CTR debit in **subsection (1)** is referred to in **table 024: CTR debits of consolidated groups, row 9 (final balance)**.

*Debit date*

30

- (3) The debit date is the day before the group is no longer required to maintain a CTR account.

Defined in this Act: CTR account, CTR debit, consolidated group

Compare: 2004 No 35 s MI 18(1)(f), (2)(f)

*Consolidated groups' FDP payments and refunds***OP 95 FDP payable for credits and debits in group's CTR account***Liability for FDP*

- (1) A consolidated FDP group is liable to pay FDP for a tax year for the amount of— 5
- (a) a CTR credit under **section OP 85 (table 023: CTR credits of consolidated groups, row 6 (transfer from group's FDP account))** at the end of the tax year; and
  - (b) a CTR debit set out in **subsection (2)** arising in the group's CTR account during the tax year. 10

*Particular debits*

- (2) The debit referred to in **subsection (1)(b)** is a debit under the following sections as described in the following rows of **table 024: CTR debits of consolidated groups:** 15
- (a) **section OP 91, row 6 (increase in resident shareholding):**
  - (b) **section OP 92, row 7 (breach of CTR ratio):**
  - (c) **section OP 93, row 8 (tax advantage arrangement):**
  - (d) **section OP 94, row 9 (final balance).**

*No FDP credit*

- (3) No FDP credit arises for an amount of FDP paid for a debit referred to in **subsection (2)(a) to (c)**. 20

*Payment dates*

- (4) The due date for payment to the Commissioner of the FDP is— 25
- (a) 20 June following the end of the tax year for an FDP liability arising under **subsection (1)(a)**; or
  - (b) the 20th day of the month following the end of the quarter in which the debit arises for an FDP liability arising under **subsection (1)(b)**. 30

*Application of other provisions*

- (5) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—
- (a) apply as if they addressed further FDP and not income tax; and 35

- (b) apply, modified as necessary, to ensure their application to FDP rather than income tax; and
- (c) do not override the FDP rules and section 103A of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, CTR account, CTR credit, CTR debit, consolidated FDP group, FDP, FDP account, FDP credit, FDP rules, further FDP, income tax, pay, quarter, tax year

5

Compare: 2004 No 35 s MI 21

### **OP 96 Refund on transfer from group's FDP account**

#### *Refund*

10

- (1) A consolidated FDP group is entitled to a refund for the amount referred to in **section OP 85** for a transfer from the group's CTR account.

#### *Table reference*

- (2) The amount in **subsection (1)** is referred to in **table 023**: CTR credits of consolidated groups, row 6 (transfer from group's FDP account).

15

#### *Application of refund*

- (3) The Commissioner may apply the amount of the refund to pay an amount due under the Inland Revenue Acts.

20

Defined in this Act: amount, Commissioner, CTR account, consolidated FDP group

Compare: 2004 No 35 s MI 22(4)

### ***Consolidated groups and branch equivalent tax accounts***

#### *Introductory provisions*

### **OP 97 Branch equivalent tax accounts of consolidated BETA groups**

25

#### *Consolidated group accounts*

- (1) A consolidated group is a consolidated BETA group for a tax year if—
  - (a) a group company is a BETA company at a time during the tax year; or
  - (b) the group chooses to maintain a branch equivalent tax account.

30

*Notifying Commissioner*

- (2) The nominated company of a consolidated BETA group must notify the Commissioner of an election under **subsection (1)(b)**—
- (a) no later than 21 days after the day of election; or 5
- (b) by a later date if the Commissioner allows.
- Defined in this Act: BETA company, branch equivalent tax account, Commissioner, consolidated BETA group, consolidated group, nominated company, notify, tax year
- Compare: 2004 No 35 s MF 7(1), (2) 10

**OP 98 Choosing to stop being consolidated BETA group***Election*

- (1) The nominated company of a consolidated BETA group may choose that the group's status as a consolidated BETA group is to end. 15

*No election*

- (2) An election under **subsection (1)** may be made during a tax year that is later than the tax year in which the group chooses under **section OP 97** to become a consolidated BETA group.

*When group ends status*

- (3) The election takes effect from the first day of the tax year after the tax year in which the election referred to in **subsection (2)** is made, but only if— 20
- (a) the group files an annual ICA return for the year of election in the time allowed by section 69 of the Tax Administration Act 1994; and 25
- (b) no group company is a BETA company in the tax year after the year of the election.

Defined in this Act: annual ICA return, BETA company, company, consolidated BETA group, nominated company, tax year 30

Compare: 2004 No 35 s MF 7(3), (4)

**OP 99 When credits and debits arise only in branch equivalent tax group accounts***Credits only in group accounts*

- (1) A credit listed in **subsection (2)** arises only in the branch equivalent tax account of a consolidated BETA group and not in the branch equivalent tax account of a group company. 35

*Particular credits*

- (2) The credit referred to in **subsection (1)** is a credit under the following sections and described in the following rows of **table 025**: branch equivalent tax credits of consolidated BETA groups: 5
- (a) **section OP 100**, row 2 (payment of income tax on foreign income); and
- (b) **section OP 103**, row 4 (refund of FDP).

*Debits only in group accounts*

- (3) A debit listed in **subsection (4)** arises only in the branch equivalent tax account of a consolidated BETA group and not in the branch equivalent tax account of a group company. 10

*Particular debits*

- (4) The debit referred to in **subsection (3)** is a debit under the following sections and described in the following rows of **table 026**: branch equivalent tax debits of consolidated BETA groups: 15
- (a) **section OP 105**, row 2 (payment of FDP); and
- (b) **section OP 107**, row 4 (refund of income tax).

Defined in this Act: branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, company, consolidated BETA group 20

Compare: 2004 No 35 s MF 9

*Branch equivalent tax credits of consolidated BETA groups*  
**OP 100 Consolidated BETA payment of income tax on foreign income** 25

*Credit*

- (1) A consolidated BETA group has a branch equivalent tax credit for an income year for an amount calculated using the formula— 30
- $$((\text{group CFC income} - \text{group deductions}) \times \text{tax rate}) - \text{foreign tax} - \text{debit balances.}$$

*Definition of items in formula*

- (2) In the formula,— 35
- (a) **group CFC income** is the amount of attributed foreign income derived by the consolidated BETA group during the income year:



- (b) **group deductions** is the total amount for the group for the income year of—
- (i) attributed CFC loss; and
  - (ii) attributed CFC net loss; and
  - (iii) FIF loss; and
  - (iv) FIF net loss: 5
- (c) **tax rate** is the basic rate of income tax set out in—
- (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or 10
  - (ii) **schedule 1, part A, clause 6** if the company is a Maori authority:
- (d) **foreign tax** is the amount of foreign tax credits allowed under **sections LK 1 to LK 7** (which relate to tax credits relating to attributed CFC income), as applicable, relating to the group's income tax liability for the income year: 15
- (e) **debit balances** is the amount of all debit balances in a branch equivalent tax account applied to satisfy the group's income tax liability for the income year. 20

*Table reference*

- (3) The branch equivalent tax credit in **subsection (1)** is referred to in **table 025**: branch equivalent tax credits of consolidated BETA groups, row 2 (payment of income tax on foreign income). 25

*Credit date*

- (4) The credit date is the day the nominated company files the return of income for the tax year corresponding to the income year for which the calculation is made. 30

Defined in this Act: amount, attributed CFC loss, attributed CFC net loss, attributed foreign income, basic rate, branch equivalent tax account, branch equivalent tax credit, consolidated BETA group, FDP, FIF loss, FIF net loss, foreign tax, income tax, income tax liability, income year, Maori authority, nominated company, return of income, tax year

Compare: 2004 No 35 s MF 8(2)(a), (3)(a) 35

## OP 101 Consolidated BETA payment of income tax

*When this section applies*

- (1) This section applies when a consolidated BETA group has a debit balance in its branch equivalent tax account or in the

branch equivalent tax account of a group company arising as follows:

- (a) the income of the group for an income year includes attributed CFC income that is derived by—
  - (i) the group; or 5
  - (ii) a company (**group company B**) that would be part of the same group of companies as the group if the group were a single company; and
- (b) an amount of FDP that gives rise to a debit included in the debit balance has been paid— 10
  - (i) directly; or
  - (ii) by reducing a tax loss; or
  - (iii) to reduce an FDP liability under **section RG 7** (Reduction of payments for conduit tax relief).

*Election* 15

- (2) The nominated company of the consolidated BETA group may choose to apply some or all of the debit balance to satisfy an income tax liability of the group or of group company B for a tax year that corresponds to the income year referred to in **subsection (1)**. 20

*Credit*

- (3) The amount that is applied to satisfy the income tax liability referred to in **subsection (2)** is a branch equivalent tax credit in the group's branch equivalent tax account.

*Table reference* 25

- (4) The branch equivalent tax credit in **subsection (3)** is referred to in **table O25**: branch equivalent tax credits of consolidated BETA groups, row 3 (payment of income tax).

*Income tax paid*

- (5) For the purposes of this section, the income tax liability— 30
  - (a) is calculated by applying the formula in **section OP 100** on the basis that the item **debit balances** is zero; and
  - (b) is satisfied to the extent to which the liability is no more than the income tax payable in relation to the amount of attributed CFC income. 35

*Who makes the election*

- (6) The consolidated BETA group makes the election referred to in **subsection (2)** as follows:
- (a) if the group's income tax liability is to be satisfied, the election may be made by—
- (i) the nominated company; or
  - (ii) another group company; or
  - (iii) a company that would be part of the same group of companies as the group if the group were a single company; and
- (b) if group company B's income tax liability is to be satisfied, the election must be made by the nominated company.

*How election made*

- (7) An election is made under **subsection (6)** by recording the credit in the branch equivalent tax account of the group or group company B, as applicable.

*Credit date*

- (8) The credit date is the day of election.
- Defined in this Act: amount, attributed CFC income, branch equivalent tax account, branch equivalent tax credit, company, consolidated BETA group, dividend, FDP, group of companies, income, income tax, income tax liability, income year, Maori authority, nominated company, pay, tax loss, tax year
- Compare: 2004 No 35 ss MF 8(2)(c), (3)(b), MF 10(4), (5), (6)

**OP 102 Consolidated BETA remaining debit balances** 25*When this section applies*

- (1) This section applies for the purposes of **section OP 101** when an income tax liability of a consolidated BETA group or group company is satisfied by applying some of a debit balance in the group's branch equivalent tax account, or in the account of another company in the same consolidated BETA group, and an unused portion of the debit balance remains after the income tax liability is satisfied.

*Conversion to tax loss*

- (2) The unused amount is converted into a tax loss component for the purposes of **sections IA 2 to IA 10** (which relate to the treatment of tax losses). The amount of the tax loss component is calculated using the formula— 5

$$\frac{\text{balance}}{\text{tax rate.}}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **balance** is the amount of the debit balance remaining in the branch equivalent tax account: 10
- (b) **tax rate** is the basic rate of income tax set out in—
- (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or 15
- (ii) **schedule 1, part A, clause 6** if the company is a Maori authority.

*Group's tax loss*

- (4) The tax loss belongs to the consolidated group. 20
- Defined in this Act: amount, attributed CFC income, basic rate, branch equivalent tax account, branch equivalent tax credit, company, consolidated BETA group, dividend, income tax, income tax liability, Maori authority, tax loss component
- Compare: 2004 No 35 ss MF 8(2)(c), (3)(b), MF 10(4), (5), (6)

**OP 103 Consolidated BETA refund of FDP***Credit* 25

- (1) A consolidated BETA group has a branch equivalent tax credit for a tax year for the amount of a refund of FDP. **Subsections (2) and (3)** override this subsection.

*Refund giving rise to debit*

- (2) A refund under **subsection (1)** must be a refund of a payment of FDP that gave rise to a debit under **section OP 105**. 30

*Reduction*

- (3) The amount of the credit under **subsection (1)** is reduced to the extent to which—

- (a) the payment of FDP is made before a branch equivalent tax credit arises under **section OP 104** in the group's branch equivalent tax account; and
- (b) the amount of the refund is no more than the amount of the credit for the loss of shareholder continuity. 5

*Table references*

- (4) The table references are as follows:
  - (a) the branch equivalent tax credit in **subsection (1)** is referred to in **table 025**: branch equivalent tax credits of consolidated BETA groups, row 4 (refund of FDP): 10
  - (b) the branch equivalent tax debit in **subsection (2)** is referred to in **table 026**: branch equivalent tax debits of consolidated BETA groups, row 2 (payment of FDP):
  - (c) the branch equivalent tax credit in **subsection (3)(a)** is referred to in **table 025**: branch equivalent tax credits of consolidated BETA groups, row 5 (credit for loss of shareholder continuity). 15

*Credit date*

- (5) The credit date is the day the refund is made. 20
- Defined in this Act: amount, branch equivalent tax account, branch equivalent tax credit, consolidated BETA group, consolidated group, FDP, pay, shareholder, tax year

Compare: 2004 No 35 s MF 8(1)(d), (3)(c)

**OP 104 Consolidated BETA credit for loss of shareholder continuity** 25

*Credit*

- (1) A consolidated BETA group has a branch equivalent tax credit for the amount of a branch equivalent tax debit retained in the branch equivalent tax account and unused before the date on which shareholder continuity is lost. 30

*Table reference*

- (2) The branch equivalent tax credit in **subsection (1)** is referred to in **table 025**: branch equivalent tax credits of consolidated BETA groups, row 5 (credit for loss of shareholder continuity). 35

*Credit date*

- (3) The credit date is the day of loss of shareholder continuity.

Defined in this Act: amount, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, consolidated BETA group, shareholder

Compare: 2004 No 35 s MF 8(2)(e), (3)(d)

5

*Branch equivalent tax debits of consolidated BETA groups***OP 105 Consolidated BETA payment of FDP***Debit*

- (1) A consolidated BETA group has a branch equivalent tax debit for a payment of FDP that— 10
- (a) is calculated before a reduction in liability under **section RG 7** (Reduction of payments for conduit tax relief); and
  - (b) must have been payable in relation to a dividend derived by a group company from an income interest in a CFC; and 15
  - (c) may have been paid to reduce a tax loss.

*Table reference*

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 026**: branch equivalent tax debits of consolidated BETA groups, row 2 (payment of FDP). 20

*Debit date*

- (3) The debit date is the day the FDP is paid.

Defined in this Act: branch equivalent tax account, branch equivalent tax debit, CFC, company, consolidated BETA group, dividend, FDP, income interest, pay, tax loss

25

Compare: 2004 No 35 s MF 8(4)(a), (5)(a)

**OP 106 Consolidated BETA reduction of FDP***Election*

- (1) The nominated company of a consolidated BETA group may choose to use some or all of a credit balance in the group's branch equivalent tax account to reduce an FDP liability of— 30
- (a) a group company; or
  - (b) a company that would be part of the same group of companies as the group if the group were a single company. 35

*Debit*

- (2) The amount of the reduction is a debit arising in the group's branch equivalent tax account.

*Table reference*

- (3) The branch equivalent tax debit in **subsection (2)** is referred to in **table 026**: branch equivalent tax debits of consolidated BETA groups, row 3 (reduction of FDP). 5

*Manner of election*

- (4) The nominated company makes the election by recording the amount of the credit balance used as a debit in the group's branch equivalent tax account. 10

*Debit date*

- (5) The debit date is the due date for the payment of FDP.

Defined in this Act: amount, branch equivalent tax account, branch equivalent tax debit, company, consolidated BETA group, dividend, FDP, group of companies, nominated company, pay 15

Compare: 2004 No 35 ss MF 8(4)(b), (5)(b), MF 10(1)

**OP 107 Consolidated BETA refund of income tax***Debit*

- (1) A consolidated BETA group has a branch equivalent tax debit for the amount of a refund of income tax attributable to income tax paid for a tax year on attributed CFC income as if it were the only income derived by the group. 20

*Reduction*

- (2) The amount of the debit is reduced to the extent to which— 25
- (a) a debit arises in the group's branch equivalent tax account under **section OP 108**; and
  - (b) the income tax was paid before the debit date for the debit for loss of shareholder continuity.

*Table references*

- (3) The branch equivalent tax debit in **subsection (1)** is referred to in **table 026**: branch equivalent tax debits of consolidated BETA groups, row 4 (refund of income tax). The branch equivalent tax debit in **subsection (2)(a)** is referred to in **table 026**: branch 30

equivalent tax debits of consolidated BETA groups, row 5 (debit for loss of shareholder continuity).

*Debit date*

- (4) The debit date is the day the refund is made.

Defined in this Act: amount, attributed CFC income, branch equivalent tax account, branch equivalent tax debit, consolidated BETA group, income, income tax, pay, shareholder, tax year

5

Compare: 2004 No 35 s MF 8(4)(c), (5)(c)

**OP 108 Consolidated BETA debit for loss of shareholder continuity**

10

*Debit*

- (1) A consolidated BETA group has a branch equivalent tax debit for the amount of a branch equivalent tax credit retained in the branch equivalent tax account and unused before the date on which shareholder continuity is lost.

15

*Table reference*

- (2) The branch equivalent tax debit in **subsection (1)** is referred to in **table 026**: branch equivalent tax debits of consolidated BETA groups, row 5 (debit for loss of shareholder continuity).

*Debit date*

20

- (3) The debit date is the day of loss of shareholder continuity.

Defined in this Act: amount, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, consolidated BETA group, shareholder

Compare: 2004 No 35 s MF 8(4)(d), (5)(d)

***Consolidated groups and policyholder credit accounts***

25

*Introductory provision*

**OP 109 Policyholder credit accounts of consolidated groups**

A consolidated group has a policyholder credit account if a group company is a PCA company.

Defined in this Act: company, consolidated group, PCA company, policyholder credit account

30

Compare: 2004 No 35 s ME 25



*Policyholder credits of consolidated groups***OP 110 Consolidated PCA transfer from imputation credit account***Credit*

- (1) A consolidated group has a policyholder credit for an amount equal to an imputation debit under **section OP 44**. 5

*Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table 027**: policyholder credits of consolidated groups, row 2 (transfer from imputation credit account). The imputation debit in **subsection (1)** is referred to in **table 020**: imputation debits of consolidated imputation groups, row 18 (transfer to policyholder credit account). 10

*Credit date*

- (3) The credit date is the same as the debit date recorded for the transfer in the imputation credit account. 15

Defined in this Act: amount, consolidated group, imputation credit account, imputation debit, policyholder credit

Compare: 2004 No 35 s ME 26(2)(a), (3)(a)

**OP 111 Consolidated PCA transfer from FDP account** 20*Credit*

- (1) A consolidated group has a policyholder credit for an amount equal to the amount of an FDP debit under **section OP 74**.

*Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table 027**: policyholder credits of consolidated groups, row 3 (transfer from FDP account). The FDP debit in **subsection (1)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 12 (transfer to policyholder credit account). 25

*Credit date*

- (3) The credit date is the day of election referred to in **section OP 74**. 30

Defined in this Act: amount, consolidated group, FDP debit, policyholder credit

Compare: 2004 No 35 s ME 26(2)(b), (3)(b)

**OP 112 Consolidated PCA group company's credit***Credit*

- (1) A consolidated group has a policyholder credit for the amount of a credit arising as follows:
- (a) a policyholder credit described in a row of **table 013:** policyholder credits, arises in the policyholder credit account of a group company; and 5
  - (b) a policyholder debit described in a row of **table 028:** policyholder debits of consolidated groups, arises in the policyholder credit account of the group; and 10
  - (c) the debit is not offset by a credit arising in the group account before the credit arose in the group company's account.

*Table reference*

- (2) The policyholder credit in **subsection (1)** is referred to in **table 027:** policyholder credits of consolidated groups, row 4 (group company's credit). 15

*Offsetting debits*

- (3) For the purposes of **subsection (1)(c)**, to determine whether a debit has been offset by a credit in the group account— 20
- (a) credits are treated as reducing debits in the order in which the credits arise; and
  - (b) a credit, whether some or all, is counted only once in determining whether the debit has been offset; and
  - (c) credits in the accounts of more than 1 group company become a credit to the group account— 25
    - (i) in the order of their credit date; and
    - (ii) as chosen by the group, if the credits arise on the same credit date; and
    - (iii) on a pro rata basis, if no election is made under **subparagraph (ii)**. 30

*Credit date*

- (4) The credit date is the day the debit is recorded as transferred to the group account. 35
- Defined in this Act: amount, company, consolidated group, policyholder credit, policyholder credit account, policyholder debit

Compare: 2004 No 35 ss ME 26(2)(c), (3)(c), ME 27(1), (3)

### OP 113 Consolidated PCA maximum deficit debit in FDP account

#### *Credit*

- (1) A consolidated group has a policyholder credit for a tax year for an amount equal to the amount of the FDP debit— 5
- (a) that arises during the tax year in the group's FDP account under **section OP 75**; and
  - (b) whose amount is calculated under **sections OC 23 and OC 36** (Meaning of maximum deficit debit).

#### *Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table 027**: policyholder credits of consolidated groups, row 5 (credit for FDP account maximum deficit). The FDP debit in **subsection (1)(a)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 13 (breach of FDP ratio by PCA company). 15

#### *Credit date*

- (3) The credit date is the last day of the tax year. 20
- Defined in this Act: amount, consolidated group, FDP account, FDP debit, policyholder credit, tax year
- Compare: 2004 No 35 s ME 26(2)(d), (3)(d)

### OP 114 Consolidated PCA reduced deficit debit in FDP account

#### *Credit*

- (1) A consolidated group has a policyholder credit for a tax year for an amount equal to the amount of the FDP debit— 25
- (a) that arises during the tax year in the group's FDP account under **section OP 75**; and
  - (b) whose amount is calculated under **sections OC 23 and OC 38** (Meaning of reduced deficit debit). 30

#### *Table references*

- (2) The policyholder credit in **subsection (1)** is referred to in **table 027**: policyholder credits of consolidated groups, row 6 (credit for FDP account reduced deficit). The FDP debit in **subsection (1)(a)** is referred to in **table 022**: FDP debits of consolidated FDP groups, row 13 (breach of FDP ratio by PCA company). 35

*Credit date*

- (3) The credit date is the last day of the tax year.

Defined in this Act: amount, consolidated group, FDP account, FDP debit, policyholder credit, tax year

Compare: 2004 No 35 s ME 26(2)(e), (3)(d)

5

*Policyholder debits of consolidated groups***OP 115 Consolidated PCA payment of tax relating to policyholder base***Election*

- (1) The nominated company of a consolidated group may choose for a tax year to apply some or all of a credit balance in the group's policyholder credit account to satisfy—
- (a) a policyholder base income tax liability of the group; or
  - (b) a provisional tax liability of the group for its policyholder base.

10

15

*Manner of election*

- (2) The company makes an election under **subsection (1)** by recording as a debit in the group account the amount of the credit balance applied to satisfy the policyholder base income tax liability.

20

*Effect of election*

- (3) As a result of the election—
- (a) a policyholder debit arises in the policyholder credit account; and
  - (b) the group's liability for the income tax or provisional tax is satisfied.

25

*Table reference*

- (4) The policyholder debit in **subsection (3)(a)** is referred to in **table 028: policyholder debits of consolidated groups, row 2 (payment of tax relating to policyholder base)**.

30

*Debit date*

- (5) The debit date is the last day of the income year corresponding to the tax year.

Defined in this Act: amount, consolidated group, income tax, income year, nominated company, policyholder base, policyholder base income tax liability, policyholder credit account, policyholder debit, provisional tax, tax year

5

Compare: 2004 No 35 ss ME 26(4)(a), (5)(a), ME 28(1), (2)

**OP 116 Consolidated PCA transfer to imputation credit account**

*Election*

10

- (1) The nominated company of a consolidated group may choose for a tax year to transfer some or all of a credit balance in the group's policyholder credit account to the imputation credit account of—

- (a) the consolidated imputation group that the company is part of; or  
 (b) the imputation group that includes the companies in the consolidated group.

15

*Exclusion*

- (2) Despite **subsection (1)**, the election must exclude an amount of the credit balance that arises in the following circumstances:

20

- (a) the group has adopted a non-standard accounting year; and  
 (b) during the accounting year that includes the last day of the tax year, an election has been made that means the credit balance includes a credit under the following sections and described in the following rows of **table 027**: policyholder credits of consolidated groups:

25

- (i) **section OP 110**, row 2 (transfer from imputation credit account);  
 (ii) **section OP 111**, row 3 (transfer from FDP account); and  
 (c) an election under this section would result in a debit to the policyholder credit account during the tax year.

30

*Debit and credit*

35

- (3) The amount of the credit balance transferred under **subsection (1)** is—

- (a) a debit under **section OP 116** in the group's policyholder credit account; and
- (b) a credit under **section OP 21** in the imputation credit account of the relevant group.

*Table references*

- (4) The policyholder debit in **subsection (3)(a)** is referred to in **table 028**: policyholder debits of consolidated groups, row 3 (transfer to imputation credit account). The imputation credit in **subsection (3)(b)** is referred to in **table 019**: imputation credits of consolidated imputation groups, row 16 (transfer from group's policyholder credit account). 5 10

*Credit balance reduced*

- (5) Despite **subsection (2)(b)**, the credit balance includes a credit that is cancelled by a later debit to the account.

*Cancellation*

- (6) Whether a debit cancels a credit for the purposes of **subsection (3)** is found by treating debits as offsetting credits in the order in which the credits arise in the account. 15

*Manner of election*

- (7) The company makes the election by recording the amount of the credit balance transferred as— 20
  - (a) a debit in the group's policyholder credit account; and
  - (b) a credit in the imputation credit account of—
    - (i) the consolidated imputation group; or
    - (ii) the imputation group. 25

*Debit date*

- (8) The debit date is the day of election.

Defined in this Act: accounting year, amount, company, consolidated group, consolidated imputation group, imputation credit account, imputation group, nominated company, non-standard accounting year, PCA company, policyholder credit, policyholder credit account, policyholder debit, tax year 30

Compare: 2004 No 35 ss ME 26(4)(b), (5)(b), ME 28(3), (4)

## Subpart OZ—Terminating provisions

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	No imputation credit arises in the imputation credit account of an ICA company for a payment of income tax imposed for a pre-imputation income year.	10
	Defined in this Act: ICA company, imputation credit, imputation credit account, income tax, pay, pre-imputation income year	
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	Defined in this Act: ICA company, imputation credit account, imputation debit, income tax, pre-imputation income year	20
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<b>OZ 3</b>	<b>Overpaid income tax or FDP for pre-imputation income year</b>	
	<i>Debit</i>	
(1)	An ICA company has an imputation debit for an amount of overpaid income tax and FDP that is applied, when the company is not an FDP company, to satisfy the company's income tax liability under <b>section BB 1</b> (Imposition of income tax) for a pre-imputation income year. <b>Subsection (2)</b> overrides this subsection.	25 30
	<i>No debit</i>	
(2)	The debit does not include an amount of overpaid income tax and FDP that is—	
	(a) paid before an imputation debit under <b>section OB 41</b> (ICA debit for loss of shareholder continuity); and	35
	(b) no more than the debit for loss of shareholder continuity.	

*Table references*

- (3) The imputation debit in **subsection (1)** is referred to in **table 02: imputation debits, row 11** (overpayment of income tax or FDP). The imputation debit in **subsection (2)(a)** is referred to in **table 02: imputation debits, row 14** (debit for loss of shareholder continuity). 5

*Debit date*

- (4) The debit date is the day the amount is applied. 10
- Defined in this Act: amount, company, FDP, FDPA company, ICA company, imputation credit account, imputation debit, income tax, income tax liability, pay, pre-imputation income year, shareholder
- Compare: 2004 No 35 s ME 5(1)(n)

**OZ 4 Terminating modifications to debits for loss of shareholder continuity**

The terminating modifications that apply under **section 0A 8(8)** (Shareholder continuity requirements for memorandum accounts) are— 15

- (a) the shareholder continuity requirement does not apply to a credit that arises on or before 16 December 1988; and 20
- (b) credits arising after 16 December 1988 and before 1 April 1992 are treated as 1 credit arising on 1 April 1992 and, until such time as the credit can be treated as cancelled by later debits,—
- (i) the shareholder continuity requirement applying to the credit is the earlier version of the requirement incorporated in section 394E(2)(g) of the Income Tax Act 1976 (despite its repeal and replacement by section 51 of the Income Tax Act Amendment Act (No 2) 1992); and 25 30
- (ii) the earlier version of the requirement of section 394E(2)(g) applies by reading the figure “66” instead of the figure “75”. 35

Defined in this Act: shareholder

Compare: 2004 No 35 ss ME 5(4), MG 5(4)



**OZ 5 ASCA lost excess available subscribed capital***When this section applies*

- (1) This section applies when a public unit trust or a group investment fund that derives category A income—
- (a) is in existence between 17 October 2002 and 30 September 2003 (both dates inclusive); and 5
  - (b) has redeemed a unit in the trust or fund; and
  - (c) the slice rule was used to determine the tax treatment of the proceeds from the redemption; and
  - (d) the amount paid on subscription for a unit is less than 10  
the amount paid on redemption.

*Calculating opening balance*

- (2) The trust or fund may choose for the period to calculate an opening credit balance using 1 of the methods set out in **subsections (3) and (4)**. 15

*Method 1*

- (3) Method 1 requires the trust or fund to calculate the actual amount of available subscribed capital lost, that is the difference, in total, between the amount paid on subscription for a unit and the amount paid on redemption of the unit. 20

*Method 2*

- (4) Method 2 requires the trust or fund to make a calculation for the notional winding up of the trust or fund by taking the following steps:
- (a) step 1: determine the total amount of income tax that 25  
would be payable on liquidation, treating the value of assets and liabilities as determined at their market value at the date of the notional liquidation according to provisions applying at that date:
  - (b) step 2: determine the amount of notional credits that are 30  
available after notional tax is paid in relation to them:
  - (c) step 3: determine the amount of notional credits 35  
required to fully impute, for each unit holder, the payment of a redemption dividend, and aggregate the amounts, applying the maximum imputation ratio to the total amount:

- (d) step 4: establish the imputation credit shortfall between the notional credits under step 2 and the credits required under step 3.

*Opening balance*

- (5) The amount of the opening balance is— 5
- (a) the amount of the difference for method 1; and
- (b) the shortfall referred to in **subsection (4)(d)** for method 2.

*Certain causes of shortfalls*

- (6) For the purposes of **subsection (4)**, the structural features of the taxation and imputation systems that would allow a company that does not issue shares on terms subject to **section CD 22(4)** (Returns of capital: off-market share cancellations) to fully impute a distribution made on the liquidation of the company, include the tax effects of— 10
- (a) non-taxable gains and losses, including exempt income but excluding a dividend subject to **sections RG 2 and RG 3** (which relate to foreign dividends and liability for FDP); and 15
- (b) imputation credits lost because shareholder continuity is lost; and 20
- (c) foreign tax credits; and
- (d) retained earnings generated before the trust or fund established an imputation credit account.

*Date of notional liquidation, orderly calculations*

- (7) For the purposes of this section,— 25
- (a) the date of notional liquidation is the date chosen by the trust or fund falling in the period referred to in **subsection (1)(a)**;
- (b) a calculation under this section must be undertaken in a manner consistent with the preparation of financial statements and unit pricing calculations, based on an orderly realisation of assets in the ordinary course of business and demonstrable market valuations. 30

Defined in this Act: amount, available subscribed capital, business, category A income, company, dividend, exempt income, financial statements, foreign tax, group investment fund, imputation credit, imputation credit account, imputation ratio, liquidation, pay, public unit trust, share, shareholder, slice rule 35

Compare: 2004 No 35 s MJ 4

**OZ 6 ASCA redemption of unused investments***When this section applies*

- (1) The section applies when a public unit trust or a group investment fund that derives category A income—
- (a) redeems a share within the meaning in **paragraphs (c) and (d)** of the definition of **share** in **section YA 1** (Definitions); and 5
  - (b) has never established an ASC account.

*Election*

- (2) The company may choose to establish an ASC account, and the only ASC credit arising in the account is an ASC credit for an opening balance calculated under **section OZ 5(5)**. 10

*Closing balance*

- (3) An opening balance under **subsection (2)** is treated as the closing balance of the account. 15

Defined in this Act: ASC account, ASC credit, category A income, complying trust, group investment fund, public unit trust, share

Compare: 2004 No 35 s MJ 7

## Tables of credits and debits in memorandum accounts

**How to use these tables**

Each row of a table describes—

- (a) the credits or debits that may arise in a memorandum account during a tax year; and
- (b) the credit date or debit date when the credit or debit arises.

A more detailed description of the credits or debits is contained in the section noted in the last column.

Table O1: imputation credits

Row	Imputation credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Provisional tax and income tax paid	day of payment	section OB 4
3	Deposit into tax pooling account	day of payment	section OB 5
4	Transfer from tax pooling account	day of credit	section OB 6
5	Payment of further income tax	day of payment	section OB 7
6	Amount of tax withheld for resident passive income	day on which amount is withheld	section OB 8
7	Imputation credit attached to dividend derived	day on which dividend is paid	section OB 9
8	FDP credit attached to dividend derived when not FDPA company	day on which dividend is paid	section OB 10
9	Payment of FDP when not FDPA company	day of payment	section OB 11
10	Transfer from FDP account	day of transfer	section OB 12
11	Transfer of debit balance when company leaves wholly-owned group	day on which company leaves group	section OB 13
12	Additional income tax payable when company leaves wholly-owned group	day of payment	section OB 14
13	Additional income tax when company joins wholly-owned group	day of payment	section OB 15
14	Attribution for personal services if company is not attributing company	31 March	section OB 16

Table O1: imputation credits - *continued*

Row	Imputation credit	Credit date	Further defined
15	Transfer from policyholder credit account	day of transfer	section OB 17
16	Transfer from ASC account	day of transfer	section OB 18
17	Transfer to master fund by company	day of transfer	section OB 19
18	Maori authority credit attached to distribution	day of distribution	section OB 20
19	Transfer of balance of Maori authority credit account	day of transfer	section OB 21
20	Replacement payment paid under share-lending arrangement	day of payment	section OB 22
21	Imputation credit shown in credit transfer notice	day on which notice is given	section OB 23
22	Imputation credit, FDP credit, or policyholder credit on resident's restricted amalgamation	credit date in account of amalgamating company	section OB 24
23	Reversal of debit for tax advantage arrangement	debit date of debit	section OB 25
24	Eliminating debit for loss of shareholder continuity cancelling tax pooling account deposit that is refunded or credited	day of refund or credit	section OB 26
25	Amount of tax withheld by Australian ICA company for non-resident passive income	day on which amount is withheld	section OB 27
26	Amount of tax withheld from schedular payment to Australian ICA company	day on which amount is withheld	section OB 28
27	Schedular income tax paid by Australian ICA company	day of payment	section OB 29

Table O2: imputation debits

Row	Imputation debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Imputation credit attached to dividend paid	day of payment	section OB 30
3	Allocation of provisional tax	day of notice of allocation	section OB 31
4	Refund of income tax	day of refund	section OB 32
5	Overpaid income tax applied to meet another tax liability	day of application	section OB 33
6	Refund from tax pooling account	day of refund	section OB 34
7	Transfer of entitlement to another person in tax pooling account	set out in section OB 35	section OB 35
8	Refund of FDP when not FDPA company	day of refund	section OB 36
9	Refund of tax credit	day of refund	section OB 37
10	Overpaid FDP applied to satisfy liability when not FDPA company	day of application	section OB 38
11	Overpaid income tax or FDP applied to satisfy pre-imputation income tax when not FDPA company	day of application	section OZ 3
12	Transfer to FDP account on account of net foreign attributed income for income year	31 March or when tax return filed	section OB 39
13	Attribution for personal services	31 March	section OB 40
14	Debit for loss of shareholder continuity	day of loss of continuity	section OB 41
15	Debit for on-market cancellation	day of acquisition	section OB 42
16	Debit for breach of imputation ratio	31 March	section OB 43
17	Transfer for debit balance when company leaves wholly-owned group	day on which company leaves group	section OB 44
18	Redemption debit for unit trust or group investment fund for income year	day on which return of income for income year is filed	section OB 45
19	Transfer from member fund to master fund	31 March	section OB 46

Table O2: imputation debits - *continued*

Row	Imputation debit	Debit date	Further defined
20	Transfer to company's policyholder credit account	set out in section OB 47	section OB 47
21	Credit balance when Maori authority credit account starts	day of becoming Maori authority	section OB 48
22	Credit attached to replacement payment paid by company under share-lending arrangement	day of payment	section OB 49
23	Credit attached to dividend paid to company shown in returning share transfer	day of payment	section OB 50
24	Credit attached to dividend paid to company shown in credit transfer notice	day of payment	section OB 51
25	Credit that is also credit to imputation credit account of consolidated imputation group	credit date for imputation credit	section OB 52
26	Imputation debit, FDP debit, or policyholder debit in account of amalgamating company	debit date in account of amalgamating company	section OB 53
27	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OB 54
28	Retrospective attachment of imputation credit to non-cash dividend	day of payment of dividend	section OB 55
29	Final balance when ICA company status ends	day of cessation	section OB 56
30	Refund of amount of tax for non-resident passive income to Australian ICA company	day of refund	section OB 57
31	Refund of amount of tax for schedular payment to Australian ICA company	day of refund	section OB 58
32	Refund of schedular income tax to Australian ICA company	day of refund	section OB 59

Table O3: FDP credits

Row	FDP credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	FDP paid	day of payment	section OC 6
3	Further FDP paid	day of payment	section OC 6
4	FDP credit attached to dividend derived	day on which dividend is paid	section OC 7
5	FDP paid on transfer from conduit tax relief account	31 March	section OC 8
6	Transfer from imputation credit account on account of net foreign attributed income for income year	debit date in imputation credit account	section OC 9
7	FDP paid for debit balance in company's conduit tax relief account	day of payment	section OC 10
8	FDP credit attached to dividend and shown in credit transfer notice	day on which notice is given	section OC 11
9	Reversal of debit for tax advantage arrangement	debit date of debit	section OC 12



Table O4: FDP debits

Row	FDP debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	FDP credit attached to dividend paid	day of payment	section OC 13
3	Refund of FDP	day of refund	section OC 14
4	Overpaid FDP applied to satisfy tax liability	day of application	section OC 15
5	Refund of tax credit	day of refund	section OC 16
6	FDP credit attached to dividend and shown in credit transfer notice	day of payment	section OC 17
7	Transfer of closing credit balance to company's imputation credit account	31 March	section OC 18
8	Transfer of credit balance to company's conduit tax relief account	31 March	section OC 19
9	Transfer of credit balance to company's policyholder credit account	set out in section OC 20	section OC 20
10	Transfer of credit to group FDP account	credit date under in group account	section OC 21
11	Debit for breach of FDP ratio	31 March	section OC 22
12	Breach of FDP ratio by FDPA company that is also PCA company	31 March	section OC 23
13	Debit for loss of shareholder continuity	day of loss of continuity	section OC 24
14	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OC 25
15	Final balance when FDPA company status ends	day of cessation	section OC 26

Table O5: conduit tax relief credits

Row	Conduit tax relief credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Income tax rebate for conduit tax relief	set out in section OD 5	section OD 5
3	Transfer from FDP account	31 March	section OD 6
4	CTR credit attached to dividend derived	day on which dividend is paid	section OD 7
5	Reduction of FDP relating to proportion of non-resident shareholders	due date for payment of FDP	section OD 8
6	Reversal of debit for tax advantage arrangement	debit date of debit	section OD 9

Table O6: conduit tax relief debits

Row	Conduit tax relief debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	FDP credit attached to dividend paid	day of payment	section OD 10
3	Transfer to company's FDP account for closing debit balance in FDP account	31 March	section OD 11
4	Transfer of credit to group conduit tax relief account	day of transfer	section OD 12
5	Adjustment for conduit tax relief	day on which return of income with adjustment is filed	section OD 13
6	Shareholding chain broken when non-resident shareholder disposes of shares	when shareholding ends	section OD 14
7	Chain break when company stops being part of consolidated group	when group relationship stops	section OD 15
8	Increase in resident shareholding by 34% or more	day of shareholding change	section OD 16
9	Debit for breach of CTR ratio	31 March	section OD 17
10	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OD 18
11	Final balance when CTR company status ends	day of cessation	section OD 19

Table O7: branch equivalent tax credits

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Income tax on foreign income derived in income year	day on which return of income is filed	section OE 6
3	Debit balance applied to satisfy income tax liability	day of election	section OE 7
4	Refund of FDP	day of refund	section OE 9
5	Credit for loss of shareholder continuity	day of loss of continuity	section OE 10
6	Debit balance when company stops being resident in New Zealand	day of cessation	section OE 11

Table O8: branch equivalent tax debits

Row	Branch equivalent tax debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	FDP paid on dividend derived from CFC	day of payment	section OE 12
3	Credit balance applied to satisfy FDP liability	due date for payment of FDP	section OE 13
4	Refund of income tax for attributed CFC income	day of refund	section OE 14
5	Debit for loss of shareholder continuity	day of loss of continuity	section OE 15
6	Credit balance when New Zealand residence ends	day of cessation	section OE 16

Table O9: person's branch equivalent tax credits

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Income tax paid on foreign income derived in income year	day on which return of income for income year is filed	section OE 19

Table O10: person's branch equivalent tax debits

Row	Branch equivalent tax debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Credit balance applied to satisfy income tax liability	day of election	section OE 20
3	Refund of income tax for attributed CFC income	day of refund	section OE 21
4	Credit balance when New Zealand residence ends	day of cessation	section OE 22

Table O11: ASC account credits

Row	ASC account credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Amount by which ASC is more than proceeds on redemption of shares	day on which shares are redeemed	section OF 5

Table O12: ASC account debits

Row	ASC account debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Transfer of credit balance to imputation credit account	set out in section OF 6	section OF 6

Table O13: policyholder credits

Row	Policyholder credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Transfer of credit balance from imputation credit account	debit date in imputation credit account for transfer	section OJ 3
3	Transfer of credit balance from FDP account	debit date in FDP account for transfer	section OJ 4
4	Credit balance transferred from another policyholder credit account on acquisition of life insurance business	day of transfer of life insurance business	section OJ 5
5	Credit for maximum deficit in FDP account arising during tax year	31 March	section OJ 6
6	Transfer of credit balance from FDP account for debit for reduced deficit that arises during tax year	31 March	section OJ 7

Table O14: policyholder debits

Row	Policyholder debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Credit balance applied to satisfy policyholder base income tax or provisional tax liability for income year	last day of income year	section OJ 8
3	Credit balance transferred to imputation credit account of company or group	day of election	section OJ 9
4	Transfer of credit to group account	credit date in group account for credit transferred	section OJ 10
5	Credit balance transferred to another policyholder credit account on transfer of life insurance business	day of transfer of life insurance business	section OJ 11

Table O15: person's policyholder credits

Row	Policyholder credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Equivalent credit that would arise for ICA company from life insurance business	set out in section OJ 14	section OJ 14
3	Credit balance transferred from another policyholder credit account on acquisition of life insurance business	day of transfer of life insurance business	section OJ 15

Table O16: person's policyholder debits

Row	Policyholder debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Credit balance applied to satisfy policyholder base income tax or provisional tax liability for income year	day of election	section OJ 16
3	Equivalent debit that would arise for imputation credit account company from life insurance business	debit date of equivalent debit	section OJ 17
4	Credit balance transferred to another policyholder credit account on transfer of life insurance business	day of transfer of life insurance business	section OJ 18

Table O17: Maori authority credits

Row	Maori authority credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Provisional tax and income tax paid	day of payment	section OK 2
3	Tax paid to another Maori authority	day of payment	section OK 3
4	Further income tax paid	day of payment	section OK 4
5	Maori authority credit attached to distribution derived	day on which distribution is paid	section OK 5
6	Imputation credit attached to dividend derived	day on which dividend is paid	section OK 6
7	FDP credit attached to dividend derived when not FDP company	day on which dividend is paid	section OK 7
8	RWT withheld	day on which amount withheld	section OK 8
9	Reversal of debit for tax advantage arrangement	debit date for debit	section OK 9

Table O18: Maori authority debits

Row	Maori authority debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Maori authority credit attached to distribution paid	day of distribution	section OK 10
3	Allocation of provisional tax	day of notice of allocation	section OK 11
4	Refund of income tax	day of refund	section OK 12
5	Overpaid income tax applied to satisfy another taxation liability	day of application	section OK 13
6	Refund of FDP when not FDPA company	day of refund	section OK 14
7	Debit for loss of shareholder continuity for Maori authority that is company	day of loss of continuity	section OK 15
8	Debit for breach of Maori authority credit ratio	31 March	section OK 16
9	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OK 17
10	Credit balance when Maori authority credit account stops	day of cessation	section OK 18

Table O19: imputation credits of consolidated imputation groups

Row	Imputation credit	Credit date	Further defined
1	Opening credit balance	1 April or when group starts	section OA 7
2	Income tax paid for group tax liability	day of payment	section OP 7
3	Group funds paid into tax pooling account	day of payment	section OP 8
4	Transfer from tax pooling account	day of credit or refund	section OP 9
5	Allocation from excess company	day of notice of allocation	section OP 10



Table O19: imputation credits of consolidated imputation groups  
- *continued*

Row	Imputation credit	Credit date	Further defined
6	Further income tax paid	day of payment	section OP 11
7	Imputation credit attached to dividend derived	day on which dividend is paid	section OP 12
8	FDP credit attached to dividend derived	day on which dividend is paid	section OP 13
9	FDP paid by group company	day of payment	section OP 14
10	Replacement payment paid under share-lending arrangement	day of payment	section OP 15
11	Imputation credit attached to dividend and shown in credit transfer notice	day on which notice is given	section OP 16
12	RWT withheld	day on which interest is paid	section OP 17
13	Transfer from group company's FDP account	debit date for transfer	section OP 18
14	Transfer from consolidated group's FDP account	debit date for transfer	section OP 19
15	Transfer from company's policyholder credit account	debit date for transfer	section OP 20
16	Transfer from consolidated group's policyholder credit account	debit date for transfer	section OP 21
17	Group company's credit	set out in section OP 22	section OP 22
18	Debit for loss of shareholder continuity that cancels credit for tax pooling account deposit that is refunded	day of refund	section OP 23
19	Reversal of debit for tax advantage arrangement	debit date for debit	section OP 24
20	NRWT on non-resident withholding income derived by group company that is Australian ICA company	day on which amount is withheld	section OP 25
21	Amount of tax for schedular payment to group company that is also Australian ICA company	day on which amount is withheld	section OP 26
22	Schedular income tax paid by group company that is Australian ICA company	day of payment	section OP 27

Table O20: imputation debits of consolidated imputation groups

Row	Imputation debit	Debit date	Further defined
1	Opening debit balance	1 April or when group starts	section OA 7
2	Imputation credit attached to dividend paid by group company	day of payment	section OP 28
3	Provisional tax allocated by group to underpaid company	day of notice of allocation	section OP 29
4	Refund of income tax or provisional tax to group	day of refund	section OP 30
5	Income tax overpaid that is applied to satisfy amount of tax, other than income tax, due by group company	day of application	section OP 31
6	Refund from tax pooling account	set out in section OP 32	section OP 32
7	Transfer to another taxpayer of funds in tax pooling account	set out in section OP 33	section OP 33
8	Refund of FDP when no FDP account	day of refund	section OP 34
9	Refund of tax credit	day of refund	section OP 35
10	Overpaid FDP applied, when group does not have FDP account, to satisfy amount due that is not income tax or FDP	day of application	section OP 36
11	Debit that would increase debit balance for group company	set out in section OP 37	section OP 37
12	Transfer to FDP account on account of net foreign attributed income for income year	set out in section OP 38	section OP 38
13	Credit attached to replacement payment under share-lending arrangement	day of payment	section OP 39
14	Credit attached to dividend shown in returning share transfer	day of payment	section OP 40
15	Credit attached to dividend and shown in credit transfer notice	day of payment	section OP 41
16	Debit for loss of shareholder continuity	day of loss of continuity	section OP 42

Table O20: imputation debits of consolidated imputation groups  
- *continued*

Row	Imputation debit	Debit date	Further defined
17	Debit for breach of imputation ratio	31 March	section OP 43
18	Transfer to policyholder credit account of group or group company	day of election	section OP 44
19	Redemption debit for unit trust or group investment fund for income year	day on which return of income for income year is filed	section OP 45
20	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OP 46
21	Credit balance of group's imputation credit account when group stops being consolidated imputation group	day of cessation	section OP 47
22	Refund of NRWT to group company that is Australian ICA company	day of refund	section OP 48
23	Refund of amount of tax for schedular payment to group company that is Australian ICA company	day of refund	section OP 49
24	Refund of schedular income tax to group company that is Australian ICA company	day of refund	section OP 50

Table O21: FDP credits of consolidated FDP groups

Row	FDP credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	FDP paid by group company	day of payment	section OP 56
3	Further FDP paid	day of payment	section OP 57
4	FDP credit attached to dividend derived	day on which dividend is paid	section OP 58
5	Credit of group company	set out in section OP 59	section OP 59
6	FDP credit attached to dividend and shown in credit transfer notice	day on which notice is given	section OP 60
7	Transfer of closing credit balance from group's conduit tax relief account	31 March	section OP 61
8	Transfer from group's imputation credit account for net foreign attributed income	debit date in imputation credit account	section OP 62
9	Reversal of debit for tax advantage arrangement	debit date for debit	section OP 63

Table O22: FDP debits of consolidated FDP groups

Row	FDP debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	FDP credit attached to dividend paid by group company	day on which dividend is paid	section OP 64
3	FDP credit attached to dividend and shown in credit transfer notice	day on which dividend is paid	section OP 65
4	Refund of FDP	day of refund	section OP 66
5	Overpaid FDP applied to satisfy amount other than FDP due under Inland Revenue Acts	day of application	section OP 67
6	Refund of tax credit	day of refund	section OP 68
7	Transfer of year-end credit balance to imputation credit account	31 March	section OP 69
8	Transfer of year-end credit balance to group's conduit tax relief account	31 March	section OP 70
9	Debit that would increase debit balance for group company	set out in section OP 71	section OP 71
10	Debit for breach of FDP ratio	31 March	section OP 72
11	Debit for loss of shareholder continuity	day of loss of continuity	section OP 73
12	Transfer of credit balance to group's policyholder credit account	day of election	section OP 74
13	Breach of FDP ratio by group company that is PCA company	31 March	section OP 75
14	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OP 76
15	Credit balance when group stops being consolidated FDP group	day on which group stops being consolidated FDP group	section OP 77

Table O23: conduit tax relief credits of consolidated groups

Row	Conduit tax relief credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Tax credit of tax for conduit tax relief	set out in section OP 81	section OP 81
3	Reduction of FDP for dividend derived	due date for payment of FDP	section OP 82
4	CTR credit attached to dividend derived	day on which dividend is paid	section OP 83
5	Credit from group company's CTR account	set out in section OP 84	section OP 84
6	Transfer from group's FDP account	31 March	section OP 85
7	Reversal of debit for tax advantage arrangement	debit date for debit	section OP 86

Table O24: conduit tax relief debits of consolidated groups

Row	Conduit tax relief debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	CTR credit attached to dividend paid by group company	day on which dividend is paid	section OP 87
3	Transfer of closing credit balance to group's FDP account	31 March	section OP 88
4	Adjustment for conduit tax relief	day on which return of income with adjustment is filed	section OP 89
5	Debit that would increase debit balance for group company	company's debit date	section OP 90
6	Increase in resident shareholding by more than 34%	day of shareholding change	section OP 91
7	Debit for breach of CTR ratio	31 March	section OP 92
8	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OP 93
9	Credit balance when group is no longer required to maintain CTR account	day on which account stops	section OP 94

Table O25: branch equivalent tax credits of consolidated BETA groups

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Income tax paid on foreign income derived in income year	day on which return of income for income year is filed	section OP 100
3	Debit balance applied to satisfy income tax liability	day of election	section OP 101
4	Refund of FDP	day of refund	section OP 103
5	Credit for loss of shareholder continuity	day of loss of continuity	section OP 104

Table O26: branch equivalent tax debits of consolidated BETA groups

Row	Branch equivalent debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	FDP paid on dividend derived from CFC	day of payment	section OP 105
3	Credit balance applied to satisfy FDP liability	due date for payment of FDP	section OP 106
4	Refund of income tax for attributed CFC income	day of refund	section OP 107
5	Debit for loss of shareholder continuity	day of loss of continuity	section OP 108

Table O27: policyholder credits of consolidated groups

Row	Policyholder credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Transfer of credit balance from imputation credit account	debit date in imputation credit account for transfer	section OP 110
3	Transfer of credit balance from FDP account	day of election under section OP 66(?)	section OP 111
4	Credit transferred from group company's policyholder credit account	debit date in group company's account for transfer	section OP 112
5	Debit for FDP account maximum deficit that arises during tax year	31 March	section OP 113
6	Transfer of credit balance from FDP account for reduced deficit debit that arises during tax year	31 March	section OP 114

Table O28: policyholder debits of consolidated groups

Row	Policyholder debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Credit balance applied to satisfy policyholder base income tax or provisional tax liability for income year	last day of income year	section OP 115
3	Credit balance transferred to imputation credit account	day of election	section OP 116



## Part R General collection rules

### Subpart RA—General withholding and payment obligations

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### *Introductory provisions*

#### **RA 1 What this Part does**

This Part provides the rules to require a person to pay to the Commissioner interim and terminal payments of tax and other amounts payable under the Inland Revenue Acts. The Part provides for— 5

- (a) a person's general withholding and payment obligations; and
- (b) the payment of terminal tax, *see* **subpart RB**; and
- (c) the payment of provisional tax, *see* **subpart RC**; and 10
- (d) the payment of the following employment-related taxes, *see* **subpart RD**:
  - (i) PAYE;
  - (ii) FBT;
  - (iii) ESCT; and 15
- (e) the payment of RWT, *see* **subpart RE**; and
- (f) the payment of NRWT, *see* **subpart RF**; and
- (g) the payment of FDP, *see* **subpart RG**; and
- (h) the treatment of refunds by the Commissioner, *see* **subpart RM**; and 20
- (i) the use of intermediaries in the tax system, *see* **subpart RP**.

Defined in this Act: amount, Commissioner, ESCT, FBT, FDP, Inland Revenue Acts, intermediary, NRWT, PAYE, provisional tax, RWT, terminal tax

#### **RA 2 Amounts treated as income tax** 25

The provisions of this Act and the Tax Administration Act 1994 apply in relation to an amount that a person is liable to pay under this Part as if the amount were income tax imposed under **section BB 1** (Imposition of income tax).

Defined in this Act: amount, income tax 30

Compare: 2004 No 35 ss MB 12, NC 2(1), ND 1W(2), NE 7(2), NF 13, NG 17(2), NH 3(7)

### *Payment and withholding obligations*

#### **RA 3 Terminal tax obligations**

A person liable under **section BC 8** (Satisfaction of income tax liability) to pay an amount of terminal tax for a tax year must 35

pay the amount to the Commissioner under **subpart RB** (Terminal tax) by the due date.

Defined in this Act: amount, Commissioner, tax year, terminal tax

Compare: 2004 No 35 ss BC 9, MC 1

#### **RA 4 Provisional tax obligations** 5

A person liable to pay provisional tax must pay instalments on account of their income tax liability for a tax year to the Commissioner under **subpart RC** (Provisional tax) by the due dates.

Defined in this Act: Commissioner, income tax liability, provisional tax, tax year 10

Compare: 2004 No 35 ss BB 2(3), MB 4

#### **RA 5 Tax obligations for employment-related taxes**

A person who makes a payment or provides a benefit of 1 of the following kinds must either withhold and pay, or pay, the amount of tax for the payment or benefit to the Commissioner under **subpart RD** (Employment-related taxes) by the due dates: 15

- (a) a PAYE income payment:
- (b) a fringe benefit:
- (c) an employer's superannuation contribution.

Defined in this Act: amount of tax, Commissioner, employer's superannuation contribution, fringe benefit, PAYE income payment 20

Compare: 2004 No 35 ss BE 1(1)–(3), NB 1, NC 15, NE 3

#### **RA 6 Withholding and payment obligations for passive income**

*Resident passive income* 25

- (1) A person who makes a payment of resident passive income must withhold and pay RWT for the payment to the Commissioner under **subpart RE** (Tax on resident passive income) by the due dates.

*Non-resident passive income* 30

- (2) A person who makes a payment of non-resident passive income must withhold and pay NRWT for the payment to the Commissioner under **subpart RF** (Tax on non-resident passive income) by the due dates.

*Foreign dividends*

- (3) A company that receives a foreign dividend must pay FDP for the dividend to the Commissioner under **subpart RG** (Payments for foreign dividends) by the due date.

Defined in this Act: amount of tax, Commissioner, company, FDP, foreign dividend, non-resident passive income, NRWT, resident passive income, RWT

5

Compare: 2004 No 35 ss BE 1(4)–(6), NF 4, NG 11, NH 3

**RA 7 Payment of tax by public authorities**

A public authority that pays an amount under this Act acts within its capacity, whether further appropriation is made or not.

10

Defined in this Act: amount, public authority

Compare: 2004 No 35 s MH 1

**RA 8 Liability of persons receiving payments or benefits**

Despite **sections RA 5 and RA 6**, a person receiving or deriving a payment or benefit in relation to which an amount of tax must be withheld or paid may be liable under this Part for payment of the tax.

15

Defined in this Act: amount of tax

Compare: 2004 No 35 ss NC 16, NE 2A, NF 3, NG 12

20

**RA 9 Treatment of amounts withheld as received**

An amount withheld from a payment under this Part, unless a provision in this Part states otherwise,—

- (a) is treated as received—
- (i) by the person to whom the payment is made; and
- (ii) at the time the payment is made; and
- (b) is treated for the purposes of this Act as derived by the person at the same time and in the same way as they derive the payment from which the amount is withheld; and
- (c) includes a combined tax and earner-related payment.

25

30

Defined in this Act: amount, combined tax and earner-related payment, pay

Compare: 2004 No 35 ss NC 19, NE 6, NF 12, NG 15

**RA 10 When obligations not met**

*When this section applies*

35

- (1) This section applies when—

- (a) a person liable to withhold an amount of tax for a PAYE income payment, an employer's superannuation contribution, a payment of resident passive income, or a payment of non-resident passive income, does not withhold and pay the amount to the Commissioner; or 5
- (b) a person liable to pay an amount of tax to the Commissioner for a fringe benefit does not pay the amount; or
- (c) a person liable to pay FDP does not pay the amount to the Commissioner.
- Debt payable to Commissioner* 10
- (2) The amount is a debt payable to the Commissioner.
- When payable*
- (3) The amount is due to be paid to the Commissioner on the relevant due date after the end date for the original liability set out in **section RA 15**. 15
- Premiums and levies*
- (4) The amount includes a combined tax and earner-related payment.
- Defined in this Act: amount, amount of tax, combined tax and earner-related payment, Commissioner, employer's superannuation contribution, FDP, foreign dividend, fringe benefit, non-resident passive income, pay, PAYE income payment, resident passive income 20
- Compare: 2004 No 35 ss NC 5(2), NC 16, NC 20(1), ND 1, ND 1W(2), NE 5, NF 3, NF 4, NF 13, NG 12, NG 13
- RA 11 Adjustment to correct errors: certain underpayments** 25
- When this section applies*
- (1) This section applies when—
- (a) a person (the **payer**) is required to withhold and pay to the Commissioner—
- (i) RWT in relation to a payment to another person (the **payee**) of resident passive income that is interest or a dividend treated as interest; or 30
- (ii) NRWT in relation to a payment to the payee of non-resident passive income; and
- (b) the payer, through an error, does not withhold some or all of the amount. 35

*Amount withheld from later payment or recovered*

- (2) The payer may—
- (a) subtract from a later payment to the payee an amount to correct the deficiency; or
  - (b) recover from the payee an amount to correct the deficiency. 5

*Requirements when withholding from later payment*

- (3) For the purposes of **subsection (2)(a)**,—
- (a) the later payment must be a payment of interest, a dividend treated as interest, or a payment of non-resident passive income, as applicable; and 10
  - (b) the payment must be made in the same tax year in which the first payment is made.

Defined in this Act: amount, amount of tax, Commissioner, dividend treated as interest, interest, non-resident passive income, NRWT, pay, resident passive income, RWT, tax year 15

Compare: 2004 No 35 ss NF 6(1), NG 16A(1)

**RA 12 Adjustment to correct errors: certain excess amounts***When this section applies*

- (1) This section applies when— 20
- (a) a person (the **payer**) is required to withhold and pay to the Commissioner an amount of RWT or NRWT for a payment to another person (the **payee**); and
  - (b) the payer, through an error, withholds an amount (the **excess amount**) that is more than the amount required under this Part. 25

*Refunding excess amount of resident passive income*

- (2) For a payment of resident passive income, the payer may pay the excess amount to the payee at any time before the end of the tax year in which the amount of tax is withheld if,— 30
- (a) for a payment of interest or a dividend treated as interest, an RWT withholding certificate relating to the amount has either not been sent out or has been returned and cancelled:
  - (b) for a payment of a dividend other than a dividend treated as interest, a shareholder dividend statement relating to the amount has either not been sent out for 35

- the purposes of section 29 of the Tax Administration Act 1994 or has been returned and cancelled:
- (c) for a taxable Maori authority distribution, a notice relating to the amount has either not been given to a member of the Maori authority under section 31 of that Act or has been returned and cancelled. 5
- Treatment of amount*
- (3) For the purposes of this section, when the payer pays the excess amount under **subsection (2)**, the amount is no longer treated as RWT. 10
- Amendments to notices*
- (4) If the RWT withholding certificate, shareholder dividend statement, or notice referred to in **subsection (2)(c)** has been returned or cancelled, the payer must provide the payee with an amended certificate, statement, or notice, as applicable. 15
- Commissioner refunding overpayment*
- (5) If the excess amount has been paid to the Commissioner, the Commissioner must refund the amount of the overpayment to—
- (a) the payee; or 20
- (b) the payer, if they have not subtracted the amount under **subsection (6)(a)** from a later payment made in relation to the payee.
- Payer's options*
- (6) For the purposes of **subsection (5)**, if the excess amount has been refunded to the payee, the payer may— 25
- (a) subtract the amount from an amount paid later to the Commissioner under **section RE 21 or RF 13** (which relate to resident passive income and non-resident passive income), noting the action in the statement required under section 50 of the Tax Administration Act 1994; or 30
- (b) apply for a refund of the amount under **section RM 8** (Overpaid RWT or NRWT).
- Overpayment through payee's act or omission*
- (7) Despite **subsections (2) and (5)**, if the excess amount arises from an act or omission by the payee, the payer must pay the full 35

amount withheld to the Commissioner and is not liable to repay the excess amount to the payee or another person.

Defined in this Act: amount, amount of tax, Commissioner, dividend treated as interest, interest, non-resident passive income, notice, NRWT, pay, resident passive income, RWT, RWT withholding certificate, shareholder dividend statement, tax year, taxable Maori authority distribution

5

Compare: 2004 No 35 ss NF 6(2)–(4), NF 7(1), (2), NG 16A(2), (3)

### *Payment dates*

#### **RA 13 Payment dates for terminal tax**

*When payment due* 10

- (1) A person must pay their terminal tax for a tax year by—
- (a) the 7th day of the month in **schedule 3, part A, column G or H** (Payment of provisional tax and terminal tax) for the person's corresponding income year, unless **paragraph (b)** applies; and 15
  - (b) the 15th day of January, if December is the month in **schedule 3, part A, column G or H**, for the person's corresponding income year.

*Columns G and H*

- (2) For the purposes of **subsection (1)**, the month in **schedule 3, part A, column G or H**, for the person's corresponding income year is— 20
- (a) the month in **column H**, if—
    - (i) the person's return of income for the income year was linked to a tax agent as described in **subsection (3)**; or 25
    - (ii) the person has asked for an income statement under section 80C of the Tax Administration Act 1994 or has been sent an income statement under section 80D of that Act, and the Commissioner has been notified that a tax agent will respond to the income statement sent to the person; or 30
  - (b) the month in **column G** in any other case.

*Linked to tax agent*

- (3) For the purposes of **subsection (2)(a)(i)**, a return of income is linked to a tax agent if the Commissioner has been notified that the return is to be filed by the tax agent who has an 35



extension of time under section 37(4) of the Tax Administration Act 1994.

Defined in this Act: Commissioner, corresponding income year, income statement, notify, pay, provisional tax, return of income, tax agent, tax year, terminal tax

Compare: 2004 No 35 s MC 1

5

#### **RA 14 Payment dates for provisional tax**

A person must pay their provisional tax for a tax year under **section RC 9** (Provisional tax payable in instalments) according to the relevant cycle of instalments set out in **schedule 3, part A, columns A to F** (Payment of provisional tax and terminal tax).

10

Defined in this Act: pay, provisional tax, tax year

Compare: 2004 No 35 s MB 8(1), (2)

#### **RA 15 Payment dates for interim and other tax payments**

*When this section applies*

- (1) This section applies when a person is required— 15
- (a) to withhold under **section RA 5** an amount of tax for a payment and pay it to the Commissioner; or
  - (b) to withhold and pay, or pay, under **section RA 6** an amount to the Commissioner for a payment received or benefit provided by them. 20

*When payment due*

- (2) The person must pay the amount to the Commissioner by the following dates:
- (a) when the period for which the payment is made is shorter than a month, by the 5th day after the relevant end date: 25
  - (b) when the period for which the payment is made is a month or a period that is longer than a month, by the 20th day after the relevant end date:
  - (c) when the period for which the payment is made is a tax year or income year or both, or the last quarter of a year, by 31 May: 30
  - (d) for a close company that pays FBT on a tax year basis, by terminal tax date.

*Relevant end dates*

35

- (3) In this section, an **end date** means 1 of the following, as applicable:

- (a) for PAYE and ESCT payable for 2 payment periods in a month under **section RD 4(1)(b) or RD 66(3)** (which set out the basis for payment of PAYE and ESCT),—
  - (i) for the first payment period, the 15th day of the month; and 5
  - (ii) for the second payment period, the last day of the month:
- (b) for PAYE, RWT, and NRWT payable monthly under **sections RD 4(1)(a), RE 21(2) and (7), or RF 13(3)** (which set out the basis for payment of PAYE, RWT, and NRWT), as applicable, the last day of a month: 10
- (c) for FBT and FDP payable quarterly under **sections RD 59 to RD 60 and RD 63, or RG 3** (which set out the basis for payment of FBT and FDP), as applicable, the last day of a quarter: 15
- (d) for RWT and NRWT payable by instalment under **section RE 21(3) or RF 13(2)** (which set out the basis for payment of RWT and NRWT)—
  - (i) for the first instalment, the last day of September; and 20
  - (ii) for the second instalment, the last day of March.

*When payment due in December*

- (4) Despite **subsection (2)**, for the purposes of this section and the payment of PAYE and ESCT to the Commissioner, if the month referred to in **subsection (3)** is December, the payment is due by 15 January. 25

*Discrepancies*

- (5) **Subsection (6)**—
  - (a) applies when a discrepancy arises in the information that a person is required to provide under,— 30
    - (i) for resident passive income, section 51(1), (4), or (5) of the Tax Administration Act 1994:
    - (ii) for non-resident passive income, section 49(1) or (2) of that Act:
  - (b) does not apply to an unpaid amount that the Commissioner assesses for a particular return period. 35

*Payment dates*

- (6) If an amount of RWT or NRWT remains unpaid, the person required to withhold the amount must pay it to the Commissioner no later than—
- (a) 20 April after the end of the tax year in relation to information provided under section 49(1) or 51(1) of the Tax Administration Act 1994: 5
  - (b) the last date for providing the information, in relation to information provided under section 49(2) or 51(4) or (5) of that Act. 10

*Non-resident passive income*

- (7) The Commissioner may extend the time for payment of NRWT. 15
- Defined in this Act: amount of tax, assessment, close company, Commissioner, end date, ESCT, FBT, FDP, first payment period, income year, non-resident passive income, NRWT, pay, PAYE, quarter, resident passive income, RWT, second payment period, tax year, terminal tax

Compare: 2004 No 35 ss NC 15, ND 9(2), (3), ND 10, ND 13, ND 14, NE 4, NF 4, NG 11, NH 3

**RA 16 Payment date when taxable activity ends** 20*When this section applies*

- (1) This section applies for a month when a registered person is required under **section RA 6** to withhold and pay RWT or NRWT, and the person—
- (a) stops carrying on a taxable activity; or 25
  - (b) no longer carries on a taxable activity in New Zealand.

*Payment to Commissioner*

- (2) The person must pay to the Commissioner by the 20th day of the next month the total amount of tax for all payments relating to the taxable activity to the extent to which an amount of tax remains unpaid. 30

*Exemption continuing*

- (3) This section does not apply for resident passive income if the person continues to hold an RWT exemption certificate. 35
- Defined in this Act: amount of tax, Commissioner, NRWT, pay, registered person, resident passive income, RWT, RWT exemption certificate, taxable activity

Compare: 2004 No 35 ss NF 4(5), NG 11(4)

**RA 17 Payment date when RWT exemption certificate expires***When this section applies*

- (1) This section applies in relation to a month of a tax year when an RWT exemption certificate of a person expires.

*Payment to Commissioner*

5

- (2) The person must pay to the Commissioner by the 20th day of the month following that in which the certificate expires the total amount of tax withheld by them to the extent to which the amount remains unpaid.

*Exclusion*

10

- (3) This section does not apply if the person continues to be required to withhold RWT through the carrying on of a taxable activity.

Defined in this Act: amount of tax, Commissioner, pay, RWT, RWT exemption certificate, tax withheld, tax year, taxable activity

15

Compare: 2004 No 35 s NF 4(6)

**RA 18 Payment date for emigrating companies***When this section applies*

- (1) This section applies to an emigrating company that is treated under **section FL 2** (Treatment of emigrating companies and their shareholders) as paying a distribution to a shareholder.

20

*Payment*

- (2) On or before the date that is 3 months after the time of emigration, the company must pay to the Commissioner all amounts of tax for resident passive income or non-resident passive income withheld in relation to the distribution.

25

Defined in this Act: amount of tax, Commissioner, distribution, emigrating company, non-resident passive income, pay, resident passive income, shareholder, time of emigration

Compare: 2004 No 35 ss NF 4(6B), NG 11(4B)

30

## *Refunds*

### **RA 19 Refunds of excess amounts or when amounts mistakenly paid**

*When this section applies*

- |     |   |    |
|-----|---|----|
| (1) | This section applies for a person (the <b>payer</b> ) and the withholding of an amount of tax that is more than the amount required to be withheld and paid under this Part (the <b>excess amount</b> ) or an amount mistakenly paid, when— | 5  |
| (a) | the payer withholds and pays to the Commissioner an excess amount of RWT or NRWT:   | 10 |
| (b) | the payer pays FDP of an excess amount:   |    |
| (c) | a PAYE intermediary pays an amount of tax for an employer through an error, or when the payment is not funded by the employer, as described in <b>section RM 7</b> (Refunds to PAYE intermediaries):  | 15 |
| (d) | the result of a calculation for FBT made by an employer under <b>sections RD 51 to RD 54</b> (which relate to attributed benefits and non-attributed benefits) is negative.   |    |

*Refunds*

- |     |  |    |
|-----|--|----|
| (2) | The Commissioner must refund the excess amount to the payer. | 20 |
|-----|--|----|

Defined in this Act: amount, amount of tax, Commissioner, employer, FBT, FDP, NRWT, pay, PAYE intermediary, RWT

Compare: 2004 No 35 ss NBA 7, ND 10(4)(a), NF 7, NG 16, NH 4

## *Amalgamations* 25

### **RA 20 Amalgamation of companies**

If an amalgamating company ends its existence on a resident's restricted amalgamation, an unsatisfied obligation that the amalgamating company has at the time of the amalgamation to withhold and pay an amount of tax to the Commissioner under this Part is treated as an obligation of the amalgamated company.	30
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Defined in this Act: amalgamated company, amalgamating company, amount of tax, Commissioner, pay, resident's restricted amalgamation

Compare: 2004 No 35 ss NC 15(7), ND 13(8), ND 14(8), NH 4(8)	35
--	----

## *Regulations*

### **RA 21 Regulations**

#### *When this section applies*

- (1) This section applies for the purposes of the PAYE rules and the FBT rules. 5

#### *PAYE income payments*

- (2) The Governor-General may make regulations by Order in Council to—
- (a) declare a particular payment, or particular class of payments, to be included in, or excluded from, the definition of— 10
- (i) salary or wages; or
- (ii) extra pay; or
- (iii) schedular payment:
- (b) provide further rules in relation to schedular payments as set out in **subsection (3)**: 15
- (c) provide that the regulations do not apply to a particular person, or class or persons, on notification from the Commissioner.

#### *Schedular payments*

- (3) For the purposes of **subsection (1)(b)**, regulations may be made under this Act or the Tax Administration Act 1994 in relation to schedular payments for the following purposes: 20
- (a) to set the amount of tax for a particular schedular payment or particular class of schedular payment: 25
- (b) to provide that the Commissioner may, if a person asks, set the rate of tax for a schedular payment to the person:
- (c) to provide that the amount of tax for a particular schedular payment, class of schedular payment, or schedular payments under a particular threshold is the person's income tax liability in relation to the relevant kind of income: 30
- (d) to provide that an amount of tax must be withheld and paid despite any assignment or charge.

*Employment-related loans*

- (4) The Governor-General may make regulations by Order in Council to declare the rate of interest applying to employment-related loans.

*Application to quarters*

5

- (5) When regulations referred to in **subsection (4)** are made, they apply to quarters starting from a date at least 1 month following the date the regulations were made. Regulations that reduce the rate of interest from the prescribed rate of interest at the time, if made at least 1 month before the quarter ends, may apply for that quarter.

10

Defined in this Act: amount of tax, employment-related loan, extra pay, FBT rules, income, income tax liability, interest, notify, pay, PAYE rules, prescribed rate of interest, quarter, salary or wages, schedular payment

Compare: 2004 No 35 ss NC 21, ND 1F

15

*Application of other provisions***RA 22 Limits on application of other provisions for purposes of PAYE rules***When section RA 2 does not apply*

- (1) **Section RA 2** does not apply—
- (a) to an amount of earner premium payable under section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998: 20
- (b) to an amount of earner's levy payable under section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001: 25
- (c) for the purposes of sections 120KB to 120KE of the Tax Administration Act 1994.

*Combined tax and earner-related payments*

30

- (2) Sections 156 to 165 and 211 of the Tax Administration Act 1994 apply in relation to a combined tax and earner-related payment as if the payment were income tax.

*Amounts not separated*

- (3) For an amount of tax not withheld and paid to the Commissioner, the provisions listed in **subsection (4)** do not require— 35

- (a) the separate identification of the amounts of a combined tax and earner-related payment that are attributable to—
  - (i) an amount of tax for a PAYE income payment that an employer or PAYE intermediary is required to make under the PAYE rules: 5
  - (ii) an amount that an employer must subtract under the sections referred to in **subsection (1)(a) and (b)**:
- (b) the bringing of separate proceedings or separate treatment for the collection, recovery, or imposition of penalties in relation to an amount of a combined tax and earner-related payment. 10

*Provisions*

- (4) The sections referred to in **subsection (3)** are—
  - (a) sections 143, 143A, and 156 to 165 of the Tax Administration Act 1994: 15
  - (b) section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992:
  - (c) section 285 of the Accident Insurance Act 1998:
  - (d) section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001. 20

Defined in this Act: amount, amount of tax, combined tax and earner-related payment, Commissioner, employer, income tax, pay, PAYE intermediary, PAYE income payment, PAYE rules

Compare: 2004 No 35 s NC 20

**RA 23 Application of other provisions for purposes of ESCT rules and NRWT rules** 25

*References*

- (1) For the purposes of the ESCT rules and the NRWT rules, sections 167 and 169 of the Tax Administration Act 1994 apply, modified as necessary, as if— 30
  - (a) a reference to an amount of tax withheld were a reference to ESCT or NRWT, as applicable:
  - (b) a reference to an employer were a reference to a person required to withhold and pay ESCT or NRWT, as applicable: 35
  - (c) a reference to the PAYE rules were a reference to the ESCT rules or the NRWT rules.



*Exclusion*

- (2) Sections 121 and 122 of the Tax Administration Act 1994 do not apply to an amount of tax for an employer's superannuation contribution.

Defined in this Act: amount of tax, employer, employer's superannuation contribution, ESCT rules, non-resident passive income, NRWT rules, pay, PAYE rules, tax withheld

5

Compare: 2004 No 35 ss NE 7, NG 17(1)

## Subpart RB—Terminal tax

## Contents

10

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

15

**RB 1 Payment of terminal tax**

A person must pay their terminal tax for a tax year on the due date set out in **section RA 3** (Terminal tax obligations).

Defined in this Act: pay, tax year, terminal tax

20

Compare: 2004 No 35 s MC 1

**RB 2 Income tax liability for non-filing taxpayers for non-resident passive income**

For the purposes of calculating a person's terminal tax under **section BC 8** (Satisfaction of income tax liability), the income tax liability of a non-filing taxpayer who derives non-resident passive income is determined under **section BC 1** (Non-filing and filing taxpayers).

25

Defined in this Act: income tax liability, non-filing taxpayer, non-resident passive income, terminal tax

30

Compare: 2004 No 35 s BC 1

### **RB 3** Schedular income tax liability for filing taxpayers for non-resident passive income

*When this section applies*

- (1) This section applies for the purposes of calculating a filing taxpayer's terminal tax under **section BC 8** (Satisfaction of income tax liability). 5

*Calculating amount of liability*

- (2) The schedular income tax liability of the filing taxpayer under **section BC 7** (Income tax liability of person with schedular income) for each class of non-resident passive income that is schedular income under **paragraph (h)** of the definition of **schedular income** is equal to an amount calculated using the formula— 10

amount of income × tax rate.

*Definition of item in formula*

- (3) In the formula, **tax rate** is the rate set out in **sections RF 7 to RF 10, and RF 12** (which relate to the calculation of NRWT) that applies to the class of non-resident passive income. 15

*No imputation credits*

- (4) If the non-filing taxpayer derives a dividend to which **sub-section (2)** applies, they do not have a credit under **section LE 1** (Tax credits for imputation credits) for an imputation credit attached to the dividend. 20

Defined in this Act: amount, dividend, filing taxpayer, imputation credit, non-filing taxpayer, non-resident passive income, schedular income, terminal tax 25

Compare: 2004 No 35 ss BC 7, NG 3

### **RB 4** Using refunds to satisfy tax liabilities

If a person is entitled to a refund of an amount of tax from the Commissioner, the amount may be applied under **section RM 10** (Using refund to satisfy tax liability) to satisfy a liability that the person has under the Inland Revenue Acts. 30

Defined in this Act: amount of tax, Commissioner, Inland Revenue Acts

Compare: 2004 No 35 s MD 1(3), (3A)

## Subpart RC—Provisional tax

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### ***Introductory provisions***

#### **RC 1 What this subpart does**

##### *When this subpart applies*

- |     |   |    |
|-----|---|----|
| (1) | <b>Sections RC 3 to RC 39</b> apply, for the purposes of the provisional tax rules, to provide—                               | 25 |
|     | (a) the circumstances in which a person has a provisional tax obligation:   |    |
|     | (b) a person's provisional tax liability for a tax year, and the methods for calculating the amount payable for the tax year: | 30 |
|     | (c) the number of instalments of provisional tax and the instalment dates for a corresponding income year:                    |    |
|     | (d) how the amount of an instalment of provisional tax is determined:   |    |
|     | (e) the payment of provisional tax in a transitional year:  | 35 |
|     | (f) the application of the rules relating to use of money interest in Part 7 of the Tax Administration Act 1994,              |    |

and late payment penalties and shortfall penalties in Part 9 of that Act.

*Instalment dates*

- (2) In this subpart, a reference to an instalment classified by the letters A to F is a reference to a date in the table in **schedule 3, part A** (Payment of provisional tax and terminal tax) on which an instalment of provisional tax is payable for an income year corresponding to a tax year. 5

Defined in this Act: amount, corresponding income year, income year, instalment date, pay, provisional tax, provisional tax rules, shortfall penalty, tax year, terminal tax, transitional year 10

Compare: 2004 No 35 s MB 1

**RC 2 Provisional tax rules and their application**

*Meaning*

- (1) The **provisional tax rules** means— 15
- (a) this subpart; and
  - (b) **section LB 2** (Tax credits for provisional tax payments); and
  - (c) sections 15N to 15S, 119, 120KB to 120N, 120OE, 139B and 139C, 173P to 173R of the Tax Administration Act 1994. 20

*Application*

- (2) The provisional tax rules apply to a person who is required or who chooses to pay provisional tax. 25
- Defined in this Act: provisional tax, provisional tax rules
- Compare: 2004 No 35 s OB 1 “provisional tax rules”

**RC 3 Who is required to pay provisional tax?**

*Threshold or election*

- (1) A person who is liable to pay provisional tax for a tax year is— 30
- (a) a person whose residual income tax for the tax year is more than \$2,500; or
  - (b) a person who chooses under **section RC 4** to pay provisional tax.

*Exclusions*

- (2) Despite **subsection (1)**, the following persons do not pay provisional tax:
- (a) a company that does not have a fixed establishment in New Zealand and is not treated as resident in New Zealand: 5
  - (b) a person referred to in section 33A(1) of the Tax Administration Act 1994:
  - (c) a non-resident contractor who has not been given an exemption certificate by the Commissioner for the tax year. 10

*No obligation*

- (3) A person has no obligation to pay provisional tax for a tax year if their residual income tax for the preceding tax year is \$2,500 or less. 15

Defined in this Act: company, exemption certificate, fixed establishment, New Zealand, non-resident, non-resident contractor, pay, provisional tax, resident in New Zealand, residual income tax, tax year

Compare: 2004 No 35 ss MB 2, OB 1 “provisional taxpayer”

**RC 4 Choosing to pay provisional tax** 20*Election*

- (1) A person, when first providing a return of income for a tax year, may choose to pay provisional tax for the tax year if—
- (a) they have paid provisional tax of more than \$2,500 on or before— 25
    - (i) the date of instalment F for the corresponding income year; or
    - (ii) the final instalment date in a transitional year; and
  - (b) they have, on the day on which the first payment of provisional tax is made for the tax year, a reasonable expectation that they are liable to pay provisional tax for the tax year, other than by this election. 30

*Exclusion*

- (2) This section does not apply to a person described in **section RC 3(2)**. 35

Defined in this Act: corresponding income year, final instalment, instalment date, pay, provisional tax, return of income, tax year, transitional year

Compare: 2004 No 35 s MB 3

### *Calculating provisional tax liability*

#### **RC 5 Methods for calculating provisional tax liability**

##### *Choice of method*

- (1) A person liable to pay provisional tax must calculate the amount payable for a tax year using 1 of the methods described in **subsections (2) to (7)**. 5

##### *Standard method: 5% uplift*

- (2) Under the standard method, the amount of provisional tax payable for the tax year is 105% of the person's residual income tax for the preceding tax year, determined under **section RC 6. Subsection (3)** overrides this subsection. 10

##### *Standard method: 10% uplift*

- (3) Despite **subsection (2)**, the amount of provisional tax payable for the tax year is 110% of the person's residual income tax for the tax year before the preceding tax year if— 15
- (a) they are required to provide a return of income for the preceding tax year; and
  - (b) the return is not due on or before the date on which the first payment of provisional tax for the tax year is required through the application of section 37 of the Tax Administration Act 1994, or an extension granted under that section; and 20
  - (c) they have not provided the return on or before that date; and
  - (d) the date is not the date of instalment F for the corresponding income year. 25

##### *Other methods: relationship with standard method*

- (4) **Subsections (5) to (7)** override **subsections (2) and (3)**.

##### *Estimation method*

- (5) The person may estimate their provisional tax liability for the tax year under **section RC 7**. 30

##### *GST ratio method*

- (6) A person who is eligible under **section RC 16** and not excluded by **section RC 17** may choose to use a GST ratio under **section RC 8** to determine their provisional tax liability for the tax year. 35

*Commissioner's determination*

- (7) If the Commissioner determines a person's provisional tax liability under section 119 of the Tax Administration Act 1994, the amount or liability is that last determined by the Commissioner and notified to the person at least 30 days before the instalment date. The 30-day requirement does not apply in a case to which section 119(1)(d) of that Act applies (which relates to an estimate of residual income tax that is not fair and reasonable). 5

*Life insurance business*

- (8) A person who carries on a business of providing life insurance and who is liable for income tax under the life insurance rules, must at the time they determine their provisional tax liability provide the Commissioner with details of the calculation of that liability. In particular, they must detail the extent to which the amount of provisional tax relates to the policyholder base. 10  
15

Defined in this Act: amount, business, Commissioner, corresponding income year, GST ratio, income tax, instalment date, life insurance, life insurance rules, notify, pay, policyholder base, provisional tax, qualifying event, residual income tax, return of income, tax year

20

Compare: 2004 No 35 s MB 4

**RC 6 Standard method***When this section applies*

- (1) This section applies to a person liable to pay provisional tax for the purposes of **section RC 5(2) and (3)** and the calculation of the amount of provisional tax payable for a tax year under the standard method. 25

*Assessment for preceding tax year*

- (2) The person's residual income tax for a tax year is based on their assessment for the preceding tax year unless the Commissioner has sent out a notice of assessment for the tax year at least 30 days before the relevant instalment date, in which case the amount of residual income tax is based on the Commissioner's assessment for the preceding tax year. 30



*Commissioner's assessment for preceding tax year*

- (3) The person's residual income tax is based on the Commissioner's assessment for the preceding tax year, whenever the assessment is made, if—
- (a) they are required under sections 33 and 37 of the Tax Administration Act 1994 to provide a return of income for the preceding tax year but have failed to do so by the relevant instalment date; or 5
  - (b) they are not required under sections 33 and 37 of that Act to provide a return by the relevant instalment date, and **subsections (2) and (4)** do not apply. 10

*Residual income tax for preceding tax year*

- (4) The amount of provisional tax payable for a tax year is the amount of the person's residual income tax for the preceding tax year if— 15
- (a) they are not required to provide a return of income for the preceding tax year; or
  - (b) their residual income tax for the tax year before the preceding tax year was \$2,500 or less, and they were not required to provide, and have not provided, a return of income for the tax year by the date of instalment F for the corresponding income year. 20

*Later increased assessment*

- (5) If the Commissioner's assessment of a person's income tax liability occurs after the payment date for an instalment of provisional tax and would result in an increase in the person's residual income tax for the preceding tax year, the residual income tax is treated for the purposes of the provisional tax rules as if it had not been increased. 25

*Transitional years and consolidated groups*

- (6) A person's residual income tax in a transitional year is calculated under **section RC 20**. For consolidated groups, the calculation is made under **section RC 29**. 30

Defined in this Act: amount, assessment, Commissioner, consolidated group, corresponding income year, income tax liability, instalment date, notice, pay, provisional tax, residual income tax, return of income, tax year, transitional year 35

Compare: 2004 No 35 s MB 5

**RC 7 Estimation method***When this section applies*

- (1) This section applies to a person who is liable to pay provisional tax under **section RC 5(5)** and to the calculation of the amount of their provisional tax payable for a tax year under the estimation method. 5

*Fair and reasonable estimate*

- (2) On or before an instalment date, the person may make a fair and reasonable estimate of their residual income tax for the tax year by informing the Commissioner of the estimate. The amount of provisional tax payable for a tax year is the amount of the estimated residual income tax. 10

*Revising estimates*

- (3) The person may choose to revise an estimate made under **subsection (2)** before an instalment date. The amount last estimated is the amount taken into account under **section RC 5(5)**. 15

*Reasonable care in making and maintaining assessment*

- (4) A person who makes an estimate under **subsection (2)** must take reasonable care in making it, and must revise the estimate for the tax year if, at some time in the tax year, the amount estimated is no longer fair and reasonable. 20

*Estimation higher than provisional tax payable*

- (5) If a person's estimate is more than the provisional tax that is payable for the tax year, they are treated as having taken reasonable care in making the estimate. 25

*Changing calculation method from GST ratio*

- (6) If, under **section RC 18(5)**, a person changes they way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for the corresponding income year, and must pay provisional tax on whichever of instalment dates B, D, and F for their income year occur after 30 days from their last ratio instalment date. 30

*Disaster relief*

- (7) A person who is significantly affected by a self-assessed adverse event or qualifying event may make an estimate of 35

their provisional tax under **section RC 36**, and that section overrides this section.

Defined in this Act: amount, Commissioner, corresponding income year, GST ratio, instalment date, pay, provisional tax, qualifying event, ratio instalment date, residual income tax, self-assessed adverse event, tax year

5

Compare: 2004 No 35 s MB 6

## RC 8 GST ratio method

### *Using GST ratio*

- (1) A person liable to pay provisional tax who meets the requirements of **section RC 16** and is not excluded by **section RC 17** may choose to use a GST ratio to determine the amount of provisional tax payable for a tax year. 10

### *Meaning of GST ratio*

- (2) The person's **GST ratio** is the percentage figure that is obtained by dividing their residual income tax for the preceding tax year by their total taxable supplies for the corresponding income year. The amount of residual income tax and the amount of total taxable supplies are called **base amounts** for the purposes of this section. 15

### *When amounts based on tax year before preceding tax year* 20

- (3) If a base amount for the preceding tax year or corresponding income year is not known, the GST ratio is the percentage based on the assessment for the tax year and corresponding income year that are just before the preceding tax year and corresponding income year. 25

### *Commissioner's calculation*

- (4) The Commissioner must calculate a person's GST ratio, informing them by— 30
- (a) including the percentage figure on the person's pre-printed GST return form; or
  - (b) advising them in writing or by telephone; or
  - (c) some other means.

### *Adjustment to GST ratio*

- (5) The Commissioner must adjust a person's GST ratio if a base amount is revised through, among other reasons,— 35

- (a) an assessment or an amended assessment of the person's income tax return for the preceding tax year; or
- (b) a change in the value of the total taxable supplies for the corresponding income year; or
- (c) the disposal of an asset to which **section RC 19** applies. 5

*New GST ratio*

- (6) When **subsection (5)** applies, the Commissioner must inform the person of the new GST ratio. The new ratio applies in relation to the relevant instalment dates that occur 30 days after the date on which the person is informed. 10

*Transitional years*

- (7) If a person has paid instalments of provisional tax in a transitional year, for the tax year that follows the transitional year, for the purposes of this section and **section RC 11**, they must— 15
  - (a) ignore the transitional year when determining their residual income tax or total taxable supplies; and
  - (b) base their determination of residual income tax and total taxable supplies on the tax year preceding the transitional year.

*Total taxable supplies* 20

- (8) In **subsections (2), (5), and (7)**, and in **sections RC 11, RC 19, and RC 31**, **total taxable supplies**, for a person and a period, means the amount that is the total value of taxable supplies by the person for the period. The amount includes the GST charged on the supplies. 25

Defined in this Act: amount, assessment, base amount, Commissioner, corresponding income year, GST, GST ratio, instalment date, pay, provisional tax, residual income tax, tax year, taxable supply, total taxable supplies, transitional year

Compare: 2004 No 35 s MB 7

***Instalments of provisional tax*** 30

**RC 9 Provisional tax payable in instalments**

*Who this section applies to*

- (1) This section applies to a person who is liable to pay provisional tax.

*General principle*

- (2) For a person liable to pay provisional tax using the standard and estimation methods, the amount of the provisional tax liability must be spread evenly over the applicable number of instalments, so that equal amounts are paid on each instalment date. If the full amount is not divisible into exactly equal instalments, the final instalment carries the difference. 5

*Provisional tax payable in 3 instalments*

- (3) A person pays provisional tax in 3 instalments on the interest instalment dates for the tax year in the months set out in **schedule 3, part A, columns B, D, and F** (Payment of provisional tax and terminal tax) for the person's corresponding income year. The amount of each instalment is calculated under **section RC 10. Subsection (4)** overrides this subsection. 10

*Exclusions*

- (4) **Subsection (3)** does not apply— 15
- (a) to a person liable to pay provisional tax who—
    - (i) pays GST on a 6-monthly basis; or
    - (ii) uses a GST ratio to determine the amount of provisional tax payable, or who changes their calculation method under **section RC 18(5)**; or 20
    - (iii) changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985:
  - (b) to a person with an initial provisional tax liability who— 25
    - (i) pays GST on a 6-monthly basis; or
    - (ii) pays GST on a monthly or 2-monthly basis, and starts a taxable activity within 30 days before the date of instalment B in their corresponding income year: 30
  - (c) to a person liable to pay provisional tax who has not provided a return of income for the preceding tax year, and whose residual income tax for the tax year before the preceding tax year was \$2,500 or less: 35
  - (d) in a transitional year.

- Provisional tax when GST paid on 6-monthly basis*
- (5) A person liable to pay provisional tax who pays GST on a 6-monthly basis must pay provisional tax on the 2 instalment dates for the tax year in the months set out in **schedule 3, part A, columns C and F** for their corresponding income year. This subsection applies to a person with an initial provisional tax liability other than 1 who pays GST on a 6-monthly basis and starts a taxable activity within 30 days before the date of instalment C. 5
- Provisional tax determined using GST ratio* 10
- (6) A person liable to pay provisional tax who uses a GST ratio to determine the amount of provisional tax payable for a tax year, must pay provisional tax on the 6 ratio instalment dates in the months set out in **schedule 3, part A, columns A to F** for their corresponding income year. The amount of each instalment is calculated under **section RC 11**. 15
- Changing calculation method*
- (7) A person who is unable or who decides not to use a GST ratio, changing their calculation method under **section RC 18**, must pay the provisional tax payable for the tax year on the relevant instalment dates under the replacement method. The amount of each instalment is calculated under **section RC 7 or RC 10**, as applicable. 20
- Changing cycle of taxable periods*
- (8) A person who changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985 must pay provisional tax for the tax year on the instalment dates set out in **section RC 27** after the change in taxable period takes effect. The amount of each instalment is calculated under **section RC 10**. 25 30
- Persons with initial provisional tax liability*
- (9) A person with an initial provisional tax liability who starts a taxable activity in a tax year in relation to which they pay GST must pay provisional tax for the tax year— 35
- (a) in 3 instalments under **subsection (3)** if they start a taxable activity at some time in the period that starts at the

- beginning of the corresponding income year and ends 30 days before the date of instalment B:
- (b) in 2 instalments—
    - (i) in a case to which **section RC 13** applies; or
    - (ii) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C: 5
  - (c) in 1 instalment in a case to which **section RC 14** applies.
- Extension of time for return* 10
- (10) A person who has not provided a return of income for a preceding tax year and whose residual income tax for the tax year before the preceding tax year was \$2,500 or less must pay provisional tax for the tax year on the instalment dates set out in **section RC 13 or RC 14**, as applicable. 15
- Transitional years*
- (11) In a transitional year, provisional tax is payable as set out in **section RC 21** and **schedule 3, part B**. The amount of each instalment is calculated under **sections RC 22 to RC 24**.
- Voluntary payments* 20
- (12) A person liable to pay provisional tax may pay an instalment under **section RC 12** at any time.
- Defined in this Act: amount, corresponding income year, GST, GST ratio, income year, initial provisional tax liability, instalment date, interest instalment date, pay, provisional tax, ratio instalment date, residual income tax, return of income, tax year, taxable activity, taxable period, transitional year 25
- Compare: 2004 No 35 s MB 8

Table R1  
Summary of instalment dates and  
calculation methods for provisional tax

Categories:	Variables	Method	Instalments	Instalment dates	Calculation	Interest, penalties
ordinary						
Standard RC 5(2), (3)		RC 6	3 — RC 9(3)	B, D, F	RC 10	120KE(1), (2)
Estimation RC 5(5)		RC 7	3 — RC 9(3)	B, D, F	RC 10	120KB
GST ratio RC 5(6)	1 month	RC 8	6 — RC 9(6)	A to F	RC 11	120KE(3), 139C
	2 month	RC 8	6 — RC 9(6)	A to F	RC 11(3)	120KE(3), 139C
GST 6- month RC 9(4)	standard	RC 6	2 — RC 9(5)	C and F	RC 11	120KE(1)
	estimation	RC 7	2 — RC 9(5)	C and F	RC 11	120KB
Categories: exceptional						
Persons with initial provisional tax liability		RC 6 or RC 7	RC 9(9), RC 13(3), RC 14(2)	D and F, or F as required	RC 10 (RC 13(4)), RC 10 (RC 14(3))	120KC
Transitional years		RC 20	RC 22 (RC 9(11))	B, D, F, or C, F as required	RC 22 - RC 24	120KC
Changing taxable period, or starting and stopping GST registration		RC 27, 15C, 15E (GST Act)	RC 27 (RC 9(8))	B, D, F, or C, F as required	RC 26, RC 27	120KD
Changing calculation method		RC 18	RC 7(6), RC 9(7)	B, D, F, or C, F as required	RC 18	120KE (5) - (7)
Voluntary payments		RC 12				120E

Note: references in the last column are to sections of the Tax Administration Act 1994.



## RC 10 Calculating amount of instalment under standard and estimation methods

### *When this section applies*

- (1) This section applies for the purposes of—
- (a) **section RC 5(2), (3), and (5)** (which relates to the calculation of a provisional tax liability); and 5
  - (b) **section RC 9(3) and (7)** (which relates to payment of instalments); and
  - (c) **sections RC 13 and RC 14** (which relate to persons with an initial provisional tax liability and those with an extension of time for providing a return); and 10
  - (d) **sections RC 26 and RC 27** (which relate to changes in taxable periods).

### *Calculation*

- (2) The amount of an instalment of provisional tax is calculated using the formula— 15

$$\frac{\text{residual income tax} \times \text{instalment number}}{\text{total instalments}} \quad - \text{provisional tax.}$$

### *Definition of items in formula*

- (3) In the formula,— 20
- (a) **residual income tax** is a person's residual income tax, as applicable—
    - (i) for the preceding tax year, uplifted by 5%; or
    - (ii) for the tax year before the preceding tax year, uplifted by 10%; or 25
    - (iii) the amount estimated by them:
  - (b) **instalment number** is the number of the instalment for the tax year, whether first, second, or third:
  - (c) **total instalments** is the total number of instalments for the tax year: 30
  - (d) **provisional tax** is the amount of a person's provisional tax liabilities for the tax year to date.

### *Instalment amounts after change in balance date or taxable period*

- (4) If a change occurs to the balance date or cycle of a person's taxable periods, the calculation of the amount of an instalment 35

is made under this section, applying the updated figures to the items in the formula.

Defined in this Act: amount, balance date, initial provisional tax liability, provisional tax, residual income tax, return of income, tax year, taxable period

Compare: 2004 No 35 s MB 9

5

## RC 11 Calculating amount of instalment using GST ratio

### *Calculation*

- (1) For a person who uses a GST ratio, the amount of provisional tax payable on an instalment date for a tax year is calculated using the formula— 10
- $\text{GST ratio for tax year} \times \text{total taxable supplies.}$

### *Definition of item in formula*

- (2) In the formula, **total taxable supplies** is the amount of the person's total taxable supplies in the taxable period that matches the instalment period. 15

### *Taxable supplies when person pays on monthly basis*

- (3) For the purposes of **subsection (1)**, a person who pays GST on a 1-month cycle under section 15 of the Goods and Services Tax Act 1985 must apply the GST ratio to the sum of their taxable supplies in the current taxable period and the preceding taxable period, that is, the taxable supplies in the 2-month period matching the instalment period. 20

Defined in this Act: amount, GST, GST ratio, instalment date, pay, provisional tax, tax year, taxable period, taxable supply

Compare: 2004 No 35 s MB 10

25

## RC 12 Voluntary payments

A person who is liable to pay provisional tax may at any time make a voluntary payment of an amount of provisional tax that—

- (a) relates to their income tax liability for a tax year in which they are not liable for provisional tax; or 30
- (b) is more than the provisional tax payable by them for the tax year; or

- (c) is more than the income tax payable by them for the tax year.

Defined in this Act: amount, income tax, income tax liability, pay, provisional tax, tax year

Compare: 2004 No 35 s MB 12

5

### RC 13 Paying 2 instalments for tax year

#### *Who this section applies to*

- (1) This section applies for a tax year to—
- (a) a person with an initial provisional tax liability whose first business day occurs in the period that starts 30 days before the date of instalment B and ends 30 days before the date of instalment D; or 10
  - (b) a person liable to pay provisional tax whose return of income for the preceding tax year is provided in the period that starts on the date of instalment B and ends on the date of instalment D if— 15
    - (i) they were required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, are not required to provide the return by the date of instalment B; and 20
    - (ii) their residual income tax for the tax year before the preceding tax year was \$2,500 or less.

#### *Exclusion*

- (2) Despite **subsection (1)**, this section does not apply to a person liable to pay provisional tax who pays GST on a 6-monthly basis. 25

#### *When instalments are payable*

- (3) For the purposes of **section RC 9(9)(b)**, the instalments are payable on the date of instalments D and F for the person's corresponding income year. 30

#### *Formula for amount of instalment*

- (4) The amount of each instalment is calculated under **section RC 10**.

Defined in this Act: amount, corresponding income year, first business day, GST, initial provisional tax liability, pay, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 13

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**RC 14 Paying 1 instalment for tax year***Who this section applies to*

- (1) This section applies for a tax year to—
- (a) a person with an initial provisional tax liability whose first business day occurs in the period that starts 30 days before the date of instalment D and ends at the end of the corresponding income year: 5
  - (b) a person liable to pay provisional tax whose return of income for the preceding tax year is not provided on or before the date of instalment D if— 10
    - (i) they were required to provide a return for the preceding tax year but, under **section 37** of the Tax Administration Act 1994 or an extension under that section, are not required to provide the return by the date of instalment D; and 15
    - (ii) their residual income tax for the tax year before the preceding tax year was \$2,500 or less:
  - (c) a person who pays GST on a 6-monthly basis if— 20
    - (i) their first business day occurs in the period that starts 30 days before the date of instalment C and ends at the end of the corresponding income year; or
    - (ii) they meet the requirements of **paragraph (b)(i) and (ii)** as if the reference to instalment D in **paragraph (b)(i)** were a reference to instalment C. 25

*When instalment payable*

- (2) For the purposes of **section RC 9(9)(c)**, the instalment is payable on the date of instalment F for the person's corresponding income year.

*Amount of instalment*

- (3) The amount of the instalment is calculated under **section RC 10**.

Defined in this Act: amount, corresponding income year, first business day, GST, initial provisional tax liability, pay, provisional tax, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 14

### *Requirements for using GST ratio*

#### **RC 15 Choosing to use GST ratio**

A person who meets the requirements of **section RC 16(2) and (3)** for a tax year may choose to use a GST ratio for the corresponding income year if they inform the Commissioner of their election before the start of the income year.

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Defined in this Act: Commissioner, corresponding income year, GST ratio, tax year  
Compare: 2004 No 35 s MB 16

#### **RC 16 Who may use GST ratio?**

##### *General eligibility*

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- (1) A person liable to pay provisional tax may choose to use a GST ratio to determine under **section RC 5(6)** the amount of provisional tax payable for a tax year only if they meet all the requirements of **subsections (2) and (3)** in relation to the same entity.

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##### *Requirements for preceding tax year*

- (2) For the purposes of determining their eligibility for a tax year, the person must meet the following requirements in the preceding tax year:

- (a) their residual income tax, as calculated, was more than \$2,500 but no more than \$150,000; and
- (b) they were a registered person for the whole tax year, and provided a return under the Goods and Services Tax Act 1985 for an entity whose taxable activity did not begin operations in that tax year; and
- (c) the ratio of their residual income tax to total taxable supplies, as calculated under **section RC 11** and expressed as a percentage, is between zero and 100%.

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##### *Requirement for current year*

- (3) For the tax year in which the person uses a GST ratio, they must be liable to file a return under the Goods and Services Tax Act 1985 for a 2-month or a 1-month period under section 15(1)(b) and (c) of that Act.

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##### *When election applies*

- (4) A person's election under **section RC 15** to use a GST ratio applies for the tax year for which the election is made and in

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later tax years, unless the person changes their calculation method under **section RC 18**.

*References to preceding tax year*

- (5) In this section, a reference to a preceding tax year includes a reference to the tax year before the preceding tax year if that earlier tax year is used for the purposes of calculating a GST ratio. 5

Defined in this Act: amount, assessment, business, corresponding income year, GST ratio, pay, provisional tax, registered person, residual income tax, tax year, taxable activity, taxable period, total taxable supplies 10

Compare: 2004 No 35 s MB 15(1)–(4), (11)

**RC 17 When GST ratio must not be used**

*Requirement to discontinue use of GST ratio*

- (1) Despite **section RC 16**, a person must stop using a GST ratio for a tax year and must apply **section RC 18(4) or (5)** if— 15
- (a) their GST registration ends under section 52 of the Goods and Services Tax Act 1985 in the tax year; or
  - (b) they no longer qualify under **section RC 16(2)** as a result of an amended assessment of their income tax liability or their GST liability for the preceding tax year; or 20
  - (c) they no longer qualify under **section RC 16(3)** as a result of a change in their taxable period.

*No GST return*

- (2) A person must not use, or must stop using, a GST ratio for a tax year if they— 25
- (a) are liable to provide a return under the Goods and Services Tax Act 1985 for a period in their corresponding income year; and
  - (b) do not file the return within 60 days after the due date for filing the return. 30

*Instalments following default*

- (3) A person who is required by **subsection (2)** to stop using a GST ratio must pay the provisional tax instalments required under **section RC 18** for an instalment period beginning on or after the due date for filing the return referred to in **subsection (2)** that is not the subject of notification under **subsection (4)**. 35

*Further use of GST ratio*

- (4) Despite **subsections (2) and (3)**, a person may use a GST ratio for an instalment period referred to in **subsection (3)** if—
- (a) they apply to the Commissioner; and
  - (b) the Commissioner considers—
    - (i) the failure to file the return is caused by an event or circumstance beyond the person's control; and
    - (ii) the event or circumstance provides reasonable justification or excuse for the failure; and
    - (iii) the person remedied the failure as soon as practicable; and
  - (c) the Commissioner notifies the person that they may use the GST ratio for the instalment period.

*Standard required*

- (5) For the purposes of **subsection (4)(b)**, the Commissioner must use the same approach that would be used to justify the remission of a penalty under section 183A of the Tax Administration Act 1994.

*Later default*

- (6) Notification under **subsection (4)** does not apply to an instalment period if—
- (a) the person fails to file a return due after the date of the notice unless the failure is anticipated and referred to in the notice; and
  - (b) the instalment period begins on or after the due date of the return described in **paragraph (a)**.

Defined in this Act: assessment, Commissioner, corresponding income year, GST ratio, income tax liability, instalment period, notify, provisional tax, tax year, taxable period

Compare: 2004 No 35 s MB 15(5)–(10)

**RC 18 Changing calculation method***When this section applies*

- (1) This section applies if, after having chosen to use a GST ratio for a tax year, a person liable to pay provisional tax either—
- (a) chooses another way to calculate the amount of provisional tax payable for the tax year; or
  - (b) is required under **section RC 17(1) or (2)** to stop using a GST ratio for the corresponding income year.

- Informing Commissioner of decision to change*
- (2) The person must inform the Commissioner of their decision under **subsection (1)(a)**, and may do this either in writing or by telephone. **Subsection (3) or (4)** then applies for the remaining instalments of provisional tax for the tax year. 5
- Date on which use of GST ratio stopped*
- (3) For the purposes of **subsection (1)(b)**, the date on which the person stops using a GST ratio is, as applicable,—
- (a) the date their GST registration ends; or
  - (b) the date of the amended assessment of their income tax liability or GST liability for the preceding tax year; or 10
  - (c) the effective date of a change in taxable period; or
  - (d) the last day of the period in which a return is liable to be provided under the Goods and Services Tax Act 1985.
- Changing method before date of instalment A* 15
- (4) If the person is unable or decides not to use a GST ratio before the date of instalment A, they may choose to determine the amount of provisional tax payable under **section RC 5(2), (3) or (5)**, as if the election to use the GST ratio had not been made.
- Changing method after instalment date* 20
- (5) If the person is unable or decides not to use the GST ratio after an instalment date, they must determine the amount of provisional tax payable on instalment for the remainder of the income year under **section RC 5(5)** using the estimation method. For this purpose, the person may provide the estimate in writing or by telephone. 25
- Date of application when method changed*
- (6) If the person changes their calculation method under **subsection (4) or (5)**, the date on which the change applies may be a future date agreed between the person and the Commissioner. 30
- Other consequences of changing method*
- (7) For the purposes of this section,—
- (a) the number of instalments and the instalment dates remaining for an income year depend on—
    - (i) the requirements of the method chosen by the person when they stop using the GST ratio; and 35



- (ii) the cycle of taxable periods chosen by the person, being either a monthly or 2-monthly basis:
- (b) a person may change from using a GST ratio to a 6-monthly cycle of taxable periods only if—
  - (i) the requirements of section 15C of the Goods and Services Tax Act 1985 are met; and 5
  - (ii) their 6-month taxable period is aligned with their balance date under section 15B of the Goods and Services Tax Act 1985:
- (c) section 120KE(5) to (7) of the Tax Administration Act 1994 applies in deciding whether use of money interest is payable in relation to instalments under the new method. 10

Defined in this Act: amount, assessment, balance date, Commissioner, corresponding income year, GST ratio, income tax liability, instalment date, pay, provisional tax, residual income tax, tax year, taxable period 15

Compare: 2004 No 35 s MB 17

## RC 19 Disposal of assets

*When this section applies*

- (1) This section applies if, as part of the taxable activity of an entity referred to in **section RC 16(2) and (3)**, a person who is liable to pay provisional tax, disposes of an asset— 20
  - (a) that is not revenue account property; and
  - (b) the value of the supply of which is not less than the greater of— 25
    - (i) an amount equal to 5% of the total taxable supplies of the business for the previous 12 months; or
    - (ii) \$1,000.

*Adjustment to GST ratio for current and next income year* 30

- (2) The person may choose to take the disposal of the asset into account by adjusting their taxable supplies for the relevant taxable period and income year. The adjustment must be made to both—
  - (a) the amount of their total taxable supplies for the purposes of the formula in **section RC 11(1)**, by subtracting an amount that equals the value of the supply of the asset (as determined under **section 10** of the Goods and Services Tax Act 1985) plus the GST on the supply from 35

- the amount of taxable supplies for the relevant income year or taxable period; and
- (b) the base amount of the their total taxable supplies for the next income year, by subtracting the amount that equals the value of the supply of the asset and the GST on the supply referred to in **paragraph (a)** from total taxable supplies in working out the GST ratio under **section RC 8(2)**. 5
- Informing Commissioner*
- (3) For the purposes of **subsection (2)**, the person must inform the Commissioner of both the disposal of the asset and the value of its supply, and may do this either in writing or by telephone. 10
- Rounding percentages*
- (4) In the determination of the value of the supply of the asset under **subsection (1)(b)(i)**, the amount must be rounded to a whole percentage number. 15
- Defined in this Act: amount, base amount, business, Commissioner, GST ratio, income year, instalment date, pay, revenue account property, taxable period, taxable supply, total taxable supplies
- Compare: 2004 No 35 s MB 18 20

### *Transitional years*

#### **RC 20 Calculating residual income tax in transitional years**

##### *Calculation for transitional year*

- (1) This section applies for the purposes of **section RC 5(2) and (3)** and the calculation of a person's residual income tax for a tax year if— 25
- (a) the preceding tax year is a transitional year:
- (b) the tax year before the preceding tax year is a transitional year.

##### *Amount increased or decreased*

- (2) The amount of residual income tax for the transitional year must be increased or decreased by the amount calculated under **subsection (3)** to reflect the amount that would apply in a 12-month period. 30

*Formula*

- (3) The amount of residual income tax is calculated using the formula—

$$\frac{\text{residual income tax} \times \text{days in current tax year}}{\text{days in transitional year.}} \quad 5$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **residual income tax** is a person's residual income tax, as applicable—
- (i) for the preceding tax year, uplifted by 5%; or 10
  - (ii) for the tax year before the preceding tax year, uplifted by 10%; or
  - (iii) the amount estimated by them:
- (b) **days in current tax year** is the number of days in the current tax year: 15
- (c) **days in transitional year** is the number of days in the person's transitional year.

Defined in this Act: amount, first business day, residual income tax, tax year, transitional year

Compare: 2004 No 35 s MB 19 20

**RC 21 Paying provisional tax in transitional years***Total amount payable*

- (1) A person liable to pay provisional tax in a transitional year must pay the sum of all instalments of provisional tax payable for the transitional year, both interim instalments under **subsection (2)** and a final instalment under **subsection (3)**. 25

*When instalments payable*

- (2) The person must pay an instalment other than a final instalment on—
- (a) the 28th day of the months set out in **schedule 3, part B** (Payment of provisional tax and terminal tax) unless **paragraph (b)** applies: 30
  - (b) the 15th day of January, when the month set out in **schedule 3, part A** is December.

*When final instalment payable* 35

- (3) The person must pay the final instalment on—

- (a) the 28th day of the month following the final month in the transitional year; or
  - (b) the 15th day of January, when November is the final month.
- Modifications to instalment dates* 5
- (4) For the purposes of **subsection (2)**, provisional tax is not payable on—
- (a) the date of instalment B, if **section RC 13** would have applied if the year were not a transitional year; or
  - (b) the dates of instalments B and D, if **section RC 14(1)(a) and (b)** would have applied if the year were not a transitional year; or 10
  - (c) the dates of instalments B, D, and F, if the person liable to pay provisional tax is a person with an initial provisional tax liability whose first business day occurs within 30 days of the date of instalment F; or 15
  - (d) the date of instalment C, if **section RC 14(1)(c)** would have applied if the year were not a transitional year; or
  - (e) the dates of instalments C and F, if the person liable to pay provisional tax is a person with an initial provisional tax liability who pays GST on a 6-monthly basis whose first business day occurs after the day that is 30 days before the date of instalment F. 20
- Counting months in transitional years*
- (5) In this section, and in **sections RC 22 to RC 25**, and in **schedule 3, part B**, the number of months in a transitional year is determined as follows: 25
- (a) the first month in a person's transitional year is the first whole month in the transitional year:
  - (b) the final month in a person's transitional year is the month in which their new balance date under section 39 of the Tax Administration Act 1994 occurs: 30
  - (c) each month falling between the first and final months must be included in determining the length of the transitional year. 35

Defined in this Act: amount, final instalment, first business day, initial provisional tax liability, pay, provisional tax, tax year, transitional year

Compare: 2004 No 35 s MB 20

**RC 22 Calculating instalments in transitional years: standard method***When this section applies*

- (1) This section applies to a person liable to pay provisional tax using the standard method in relation to instalments of provisional tax payable in a transitional year under **section RC 21**. 5

*Instalment other than final instalment*

- (2) For an instalment date other than the date of the final instalment, the person must pay an amount calculated using the formula— 10

$$\frac{\text{person's provisional tax} \times \text{instalments payable}}{\text{total instalments}} - \text{tax previously payable.}$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,— 15
- (a) **person's provisional tax** is the person's provisional tax liability under **section RC 5(2) or (3)**:
- (b) **instalments payable** is the number of instalments that the person has in the transitional year on or before the instalment date: 20
- (c) **total instalments** is whichever of the following applies:
- (i) 3, for a person who pays on instalment dates B, D, and F; or
- (ii) 2, for a person who pays on instalment dates C and F: 25
- (d) **tax previously payable** is the amount for the transitional year of the person's provisional tax payable before the instalment date.

*Final instalment*

- (4) For the final instalment, the person must pay an amount calculated using the formula— 30

$$\frac{\text{person's provisional tax} \times \text{transitional year days}}{\text{preceding year days}} - \text{tax previously payable.}$$

*Definition of items in formula*

- (5) In the formula in **subsection (4)**,— 35

- (a) **person's provisional tax** is the person's provisional tax liability under **section RC 5(2) or (3)**: 5
- (b) **transitional year days** is the number of days in the person's transitional year:
- (c) **preceding year days** is the number of days in the person's preceding tax year: 5
- (d) **tax previously payable** is the amount of provisional tax for a tax year calculated on the basis of the person's transitional year that is payable before the instalment date. 10

Defined in this Act: amount, instalment date, final instalment, pay, provisional tax, tax year, transitional year

Compare: 2004 No 35 s MB 21

**RC 23 Calculating instalments in transitional years: estimation method** 15

*When this section applies*

- (1) This section applies to a person liable to pay provisional tax using the estimation method in relation to instalments of provisional tax payable in a transitional year under **section RC 21**.

*Instalment other than final instalment* 20

- (2) For an instalment date other than the date of the final instalment, the person must pay an amount calculated using the formula—

$$\frac{\text{tax estimate} \times \text{instalments payable}}{\text{transitional months}} - \text{tax previously payable.} \quad 25$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **tax estimate** is the person's provisional tax liability last estimated by the person under **section RC 5(5)**: 30
- (b) **instalments payable** is either—
- (i) 4 multiplied by the number of instalments in the person's transitional year payable on or before the instalment date, for a person who pays on the equivalent of instalment dates B, D, and F; or 35
- (ii) 6 multiplied by the number of instalments in the person's transitional year payable on or before

the instalment date, for a person who pays on the equivalent of instalment dates C and F:

- (c) **transitional months** is the number of months in the person's transitional year:
- (d) **tax previously payable** is the amount of provisional tax for a tax year calculated on the basis of the person's transitional year that is payable before the instalment date. 5

*Final instalment*

- (4) For the final instalment, the person must pay the amount calculated under **section RC 5(5)** less the amount of any instalment previously payable. 10

Defined in this Act: amount, final instalment, instalment date, pay, provisional tax, transitional year

Compare: 2004 No 35 s MB 22 15

**RC 24 Calculating instalments in transitional years: GST ratio method**

*What this section applies to*

- (1) This section applies to a person liable to pay provisional tax using a GST ratio in relation to instalments of provisional tax payable in a transitional year. 20

*Adjustment if required*

- (2) For a period or part period before the start of the new income year, the person must apply the GST ratio under **section RC 11** on whichever dates of instalments A to F for their corresponding income year occur in the transitional year. 25

Defined in this Act: GST ratio, income year, pay, provisional tax, transitional year

Compare: 2004 No 35 s MB 23

**RC 25 Consequences of change in balance date**

*Continuing frequency* 30

- (1) This section applies to a person liable to pay provisional tax who changes their balance date.

- Continuing to use instalment dates to new balance date*
- (2) The person must continue to use the instalment dates that applied before the change in balance date was approved until the new balance date is reached.
- How amounts determined* 5
- (3) **Sections RC 20 to RC 24** and **schedule 3, part B** (Payment of provisional tax and terminal tax) apply for the person's transitional year to determine the amount and payment date of the instalments.
- Estimation method* 10
- (4) In a transitional year, if the person uses the estimation method, they must,—
- (a) before the date on which the Commissioner notifies a change in balance date, estimate the residual income tax as if no change in balance date is or will be approved; 15  
and
- (b) after the date on which the Commissioner notifies a change in balance date, re-estimate the residual income tax.
- GST ratio method* 20
- (5) **Subsection (6)** applies if the person uses a GST ratio to determine the provisional tax payable for a tax year, and in changing their balance date, moves from—
- (a) a set of instalment dates in even-numbered months to a set of instalment dates in odd-numbered months; or 25
- (b) a set of instalment dates in odd-numbered months to a set of instalment dates in even-numbered months.
- Adjustment to liability*
- (6) The person must adjust their provisional tax liability for the income year for the part-period of 1 month before the start of the new income year. The part-period is their final taxable period, and the instalment of provisional tax is payable 28 days after the end of that period. 30
- Aligning taxable periods*
- (7) For a registered person, if a change in balance date means that their taxable period is not aligned with the balance date, an 35



adjustment must be made to their taxable period under section 15B(3) or 15C of the Goods and Services Tax Act 1985.

Defined in this Act: amount, balance date, Commissioner, GST ratio, income year, instalment date, notify, pay, provisional tax, registered person, residual income tax, tax year, taxable period

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Compare: 2004 No 35 s MB 24

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

#### **RC 26 Registering for GST or cancelling registration**

*When this section applies*

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(1) This section applies if a person who uses the standard or estimation method to determine the amount of provisional tax payable for a tax year—

(a) applies to the Commissioner to become a registered person under section 51 of the Goods and Services Tax Act 1985; or

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(b) is treated as registered under section 51B of that Act; or  
(c) asks the Commissioner to cancel their GST registration, or has their GST registration cancelled under section 52 of that Act.

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*Starting or ending GST registration: monthly or 2-monthly basis*

(2) For a person liable to pay provisional tax who becomes registered for GST paying on a monthly or 2-monthly basis, or who cancels or has their GST registration cancelled having paid on that basis, the instalments of provisional tax payable by them for the tax year are unaffected.

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*Starting GST registration: 6-monthly basis*

(3) A person liable to pay provisional tax who becomes registered for GST paying on a 6-monthly basis must pay their instalments of provisional tax on whichever dates of instalments C and F for their corresponding income year coincide with the cycle of their taxable periods after they become a registered person.

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*Ending GST registration: 6-monthly basis*

- (4) A person liable to pay provisional tax who pays GST on a 6-monthly basis and cancels their GST registration or has their registration cancelled, must pay their instalments of provisional tax on whichever dates of instalments B, D, and F for their corresponding income year occur after 30 days from the date of cancellation. 5

*Date of cancellation*

- (5) For the purposes of **subsection (4)** and the provisional tax rules, the date of cancellation is the date on which the cancellation of GST registration is notified. 10

*Formula for amount of instalment*

- (6) The amount of each instalment is calculated under **section RC 10**. 15
- Defined in this Act: amount, corresponding income year, GST, pay, provisional tax, registered person, tax year, taxable period

Compare: 2004 No 35 s MB 25

## **RC 27 Payment of provisional tax instalments when GST cycle changed**

*When subsection (2) applies* 20

- (1) **Subsection (2)** applies in a tax year to a person liable to pay provisional tax who—
- (a) uses the standard or estimation method to determine the amount of provisional tax payable; and
  - (b) has been paying GST on a monthly or 2-monthly basis; and 25
  - (c) changes to a 6-monthly basis under section 15C(1) of the Goods and Services Tax Act 1985.

*Changing to 6-monthly basis*

- (2) The person must pay their instalments of provisional tax on whichever dates of instalments C and F for their corresponding income year occur after the change in taxable period takes effect. 30

*When subsection (4) applies*

- (3) **Subsection (4)** applies in a tax year to a person liable to pay provisional tax who— 35

- (a) uses the standard or estimation method to determine the amount of provisional tax payable; and
- (b) has been paying GST on a 6-monthly basis; and
- (c) changes to a monthly or 2-monthly basis under section 15C(2) or (3) of the Goods and Services Tax Act 1985. 5
- Changing to monthly or 2-monthly basis*
- (4) The person must pay their instalments of provisional tax on whichever dates of instalments B, D, and F for the person's corresponding income year occur after the change in taxable period takes effect. 10
- Interest instalment dates in new cycle*
- (5) If an instalment of provisional tax that falls on an instalment date in the new cycle is payable in relation to a period in the person's original cycle that was, under that original cycle, an interest instalment date, it remains an interest instalment date in the new cycle. However, if the instalment falls on an instalment date other than an interest instalment date, the change does not affect the nature of the instalment. 15
- Formula for amount of instalment*
- (6) The amount of each instalment is calculated under **section RC 10**. 20
- Defined in this Act: amount, corresponding income year, GST, pay, provisional tax, tax year, taxable period
- Compare: 2004 No 35 s MB 27
- Treatment of groups of companies and amalgamated companies*** 25
- RC 28 Provisional tax rules and consolidated groups**
- Single company*
- (1) The provisional tax rules apply, modified as necessary, to a consolidated group of companies as if it were a single company. 30
- Joint and several liability*
- (2) Each company in a consolidated group in a tax year is jointly and severally liable for the amount of provisional tax payable by the consolidated group to be credited against the income 35

tax liability of the group for the tax year. The liability of a group company for income tax for the tax year is substituted by that joint and several liability to the extent to which the liability arises while the company is part of the consolidated group.

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*Relationship with section FM 4*

- (3) **Section FM 4(3) to (5)** (Limiting joint and several liability of group companies) overrides this section.

Defined in this Act: amount, company, consolidated group, income tax, income tax liability, provisional tax, provisional tax rules, tax year

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Compare: 2004 No 35 s MB 29

## **RC 29 Residual income tax of consolidated groups**

*When this section applies*

- (1) This section applies for the purposes of the provisional tax rules if a company is part of a consolidated group of companies in a tax year but was not part of the group for some or all of the preceding tax year.

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*Increased residual income tax*

- (2) The residual income tax of the consolidated group for the preceding tax year is treated as increased by an amount equal to the residual income tax of the company for the preceding tax year. If the company is part of the group for part of the current tax year, the amount of residual income tax is increased as a proportion on the basis of the part of the tax year during which the company is part of the group.

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*Instalments after company joins group*

- (3) If the company is part of a group for part of the tax year, this section applies only to instalments of provisional tax payable after the date on which the company becomes part of the group.

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Defined in this Act: amount, company, consolidated group, pay, provisional tax, provisional tax rules, residual income tax, tax year

Compare: 2004 No 35 s MB 30

**RC 30 Consolidated groups using estimation method***When subsection (2) applies*

- (1) **Subsection (2)** applies for the purposes of the provisional tax rules if a company is part of a consolidated group of companies for some or all of a tax year but is not part of the group for some or all of the following tax year. 5

*Estimation before final instalment date*

- (2) The company must estimate its residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the company is treated as a person to which **section RC 7** applies for the purposes of its estimate. 10

*When company part of another consolidated group*

- (3) The consolidated group, in the case of a company that is part of another consolidated group, must make an estimate of residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the consolidated group is treated as a person to which **section RC 7** applies for the purposes of its estimate. 15

*When company no longer part of group*

- (4) If a company stops being part of the consolidated group in the following tax year, the company's estimate applies only to instalments of provisional tax payable after the date on which it stopped being part of the group. 20

Defined in this Act: company, consolidated group, corresponding income year, pay, provisional tax rules, residual income tax, tax year 25

Compare: 2004 No 35 s MB 31

**RC 31 Consolidated groups using GST ratio method**

**Sections RC 8, RC 9(6), RC 11, and RC 15 to RC 19** apply to a consolidated group of companies with the following modifications: 30

- (a) if a consolidated group that is eligible to use, or is using, a GST ratio for a tax year is joined by a company, the following subparagraphs apply: 35
- (i) if the company joins at the start of the tax year and, as a result, the threshold in **section RC 16(2)(a)**

- is exceeded, the group is no longer eligible to use a GST ratio:
- (ii) if the company joins at the start of the tax year, and the group, allowing for the inclusion of the company, is eligible under **section RC 16(1)**, the group may use a GST ratio, subject to the recalculation of the ratio under **paragraph (c)**: 5
  - (iii) if the company joins at some time in the tax year, the group may continue to use a GST ratio for the tax year, as recalculated under **paragraph (c)**, provided the requirements for eligibility other than the threshold in **section RC 16(2)(a)** are met: 10
  - (b) if a consolidated group that does not determine provisional tax payable for a tax year using a GST ratio, is joined by a company that is using a GST ratio for the tax year, the group may not start using a GST ratio for this purpose for the tax year: 15
  - (c) for the purposes of **paragraph (a)**,—
    - (i) the group must recalculate the GST ratio applying for a tax year to include the residual income tax of the company for the preceding tax year and the total taxable supplies of the company for the corresponding income year, applying **section RC 8(3)** if required; and 20
    - (ii) the recalculated GST ratio applies to provisional tax payments made for the corresponding income year on or after the date on which the company joins the group: 25
  - (d) **sections RC 17(3) and RC 18(4) or (5)**, as applicable, apply to a company that leaves a consolidated group at some time in a tax year. 30

Defined in this Act: consolidated group, corresponding income year, GST ratio, pay, provisional tax, residual income tax, tax year, total taxable supplies

Compare: 2004 No 35 s MB 32

## **RC 32 Wholly-owned groups of companies** 35

*When this section applies*

- (1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in relation to a company (**company A**) that is in a tax year part of a

wholly-owned group of companies that includes another company (**company B**). **Sections RM 13 to RM 17** (which relate to refunds) override this section.

*Company A transferring overpayment to company B*

- (2) If, for a tax year, company A has paid an amount that is more than the provisional tax payable for the tax year, the company may transfer some or all of the overpayment to company B to the extent to which the amount of provisional tax paid by company B is less than their residual income tax for the tax year. Company A must notify the Commissioner under **subsection (4)**. 5 10

*When transfer made*

- (3) Company A may transfer an amount under **subsection (2)** on or after the later of— 15
- (a) the day on which company A overpays the provisional tax; or
  - (b) the day on which the first instalment of provisional tax for the tax year becomes payable by company B.

*Notice*

- (4) A notice under **subsection (2)** must— 20
- (a) name company B, and the amount to be transferred; and
  - (b) state the date on which the overpayment is treated as transferred to company B; and
  - (c) be given to the Commissioner within— 25
    - (i) the time for providing a return of income for the tax year for company B; or
    - (ii) an extension of time allowed by the Commissioner.

*When transfer made, and how transfer treated*

- (5) For the purposes of this section,— 30
- (a) a transfer under **subsection (2)** is treated as made on the date stated in the notice; and

- (b) provisional tax transferred by company A to company B is treated as provisional tax paid by company B and not by company A.

Defined in this Act: amount, Commissioner, company, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year, wholly-owned group of companies

5

Compare: 2004 No 35 s MB 33

### **RC 33 Amalgamated companies: calculating residual income tax**

*When this section applies*

10

- (1) This section applies for a tax year when an amalgamating company ends its existence on an amalgamation.

*Residual income tax for preceding tax year*

- (2) The residual income tax of the amalgamated company for the preceding tax year is the amount that would have been the residual income tax of the amalgamated company for the preceding tax year if the amalgamating company and the amalgamated company had been 1 company.

15

*Exclusion*

- (3) **Subsection (2)** does not apply for the purposes of the provisional tax rules in relation to instalments of provisional tax payable before the amalgamation.

20

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, pay, provisional tax, provisional tax rules, residual income tax, tax year

25

Compare: 2004 No 35 s MB 34

### *Attribution rule for income from personal services*

### **RC 34 Attribution rule for income from personal services**

*When this section applies*

- (1) This section applies for the purposes of the provisional tax rules and **Part 7** of the Tax Administration Act 1994 for provisional tax paid for income from personal services to which **section GB 27** (Attribution rule for income from personal services) may apply.

30



*Person B transferring amount to person C*

- (2) If, in a tax year, person B pays an amount that is more than the provisional tax payable for the tax year, person B may transfer some or all of the overpayment to person C to the extent to which the amount of provisional tax paid by person C is less than their residual income tax for the tax year. 5

*Person C transferring amount to person B*

- (3) If, in a tax year, person C pays an amount of tax that is more than the provisional tax payable for the tax year, person C may transfer some or all of the overpayment to person B to the extent to which the amount of provisional tax paid by person B is less than their residual income tax for the tax year. 10

*When transfer made*

- (4) Persons B and C may transfer an amount under **subsection (2) or (3)** on or after the later of— 15
- (a) the day on which the overpayment of provisional tax is paid by person B or person C, as applicable; or
  - (b) the day on which the first instalment of provisional tax payable for the tax year becomes payable by— 20
    - (i) person C, if person B is making the transfer; or
    - (ii) person B, if person C is making the transfer.

*Notice*

- (5) The Commissioner must be notified of a transfer under **subsection (2) or (3)** in a notice that— 25
- (a) names the person to whom a transfer is made, and the amount to be transferred; and
  - (b) states the date on which the overpayment is treated as transferred to person B or person C, as applicable; and
  - (c) is provided within the time for providing a return of income for the tax year for the person to whom the transfer is made, or an extended time allowed by the Commissioner. 30

*When transfer made and how transfer treated*

- (6) For the purposes of this section,— 35
- (a) a transfer under **subsection (2) or (3)** is treated as made on the day stated in the notice; and

- (b) provisional tax transferred by person B to person C for a tax year is treated as provisional tax paid by person C and not by person B; and
- (c) provisional tax transferred by person C to person B is treated as provisional tax paid by person B and not by person C. 5

Defined in this Act: amount, Commissioner, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 35

### *Credits* 10

#### **RC 35 Further income tax credited to provisional tax liability**

*When this section applies*

- (1) This section applies for the purposes of **sections RC 9 to RC 11** if, under **sections OB 65 to OB 69** (which relate to further income tax for ICA companies), a company applies an amount of further income tax to pay an instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax. 15

*Amount treated as provisional tax*

- (2) The instalment is satisfied to the extent of the amount of further income tax. The amount is treated as provisional tax paid on the date on which the instalment was payable. 20

*Order*

- (3) The Commissioner must credit the amount of the further income tax in payment successively of— 25
  - (a) the instalment of provisional tax that is first payable after the date of payment of the further income tax; and
  - (b) to the extent of the amount of further income tax, to later instalments in the order in which they are payable.

Defined in this Act: amount, Commissioner, company, further income tax, pay, provisional tax 30

Compare: 2004 No 35 s MB 37

*Disaster relief***RC 36 Persons affected by adverse events***Who this section applies to*

- (1) This section applies to a person liable to pay provisional tax who has a business and is significantly affected by a self-assessed adverse event or qualifying event. This section overrides **section RC 7**. 5

*Person's request*

- (2) The person may ask the Commissioner to accept an estimate or a revised estimate of the residual income tax payable by them for a tax year. 10

*Acceptance of estimate*

- (3) The Commissioner may accept an estimate or revised estimate described in **subsection (2)** if all the following requirements are met: 15
- (a) the business is significantly affected by the self-assessed adverse event or qualifying event; and
  - (b) it is not reasonable to require the person to provide under **section RC 7** an estimate or revised estimate of residual income tax payable by them for the tax year; 20  
and
  - (c) the basis on which the person has chosen to pay provisional tax is now inappropriate; and
  - (d) the person asks to revise their estimate as soon as practicable. 25

*Treatment of revised estimate*

- (4) If a revised estimate is accepted under **subsection (3)**, it is treated as the estimate applying on the date of instalment F. 30
- Defined in this Act: business, Commissioner, pay, provisional tax, qualifying event, self-assessed adverse event

Compare: 2004 No 35 s MB 38

### *Early-payment discounts*

#### **RC 37 Availability of early-payment discounts**

**Sections RC 38 and RC 39** apply for an income year to a small-business person who is not liable to pay provisional tax for the income year and, for earlier income years,— 5

- (a) has never been liable to pay provisional tax and either—
  - (i) has never received an early-payment discount; or
  - (ii) has not derived assessable income from a business in a period of 4 income years starting after the latest income year for which they received an early-payment discount; or 10
- (b) has not derived assessable income from a business in a period of 4 income years starting after the latest income year for which they were liable to pay provisional tax. 15

Defined in this Act: assessable income, business, early-payment discount, income year, pay, provisional tax, small-business person 15

Compare: 2004 No 35 s MBB 2(1)(a), (d)

#### **RC 38 Crediting income tax with early-payment discount**

*When this section applies*

- (1) This section applies when a small-business person— 20
  - (a) pays income tax on or before their balance date for the income year; and
  - (b) during the period from the balance date for the income year to their terminal tax date for the income year, has a credit in their tax account with the Commissioner that is greater than or equal to the lesser of— 25
    - (i) the total amount paid under **paragraph (a)**;
    - (ii) the amount that would be their terminal tax for the income year in the absence of this section; and 30
  - (c) files a return of income for the tax year corresponding to the income year; and
  - (d) applies for an early-payment discount on or before the last date for filing a return of income under section 37(5) of the Tax Administration Act 1994. 35

*Crediting early-payment discount*

- (2) The Commissioner must credit the tax account of the small-business person with an early-payment discount calculated under **subsection (3)**.

*Amount of early-payment discount*

5

- (3) The amount of the early-payment discount is found by multiplying the discount rate under **subsection (4)** by the lesser of—
- (a) the total amount paid under **subsection (1)(a)**;
  - (b) 105% of the small-business person's residual income tax for the income year.

10

*Discount rate*

- (4) The discount rate is—
- (a) 6.7%, if no rate is set under **paragraph (b)**;
  - (b) the rate set by the Governor-General by Order in Council.

15

Defined in this Act: amount, balance date, early-payment discount, income, income tax, income year, pay, residual income tax, return of income, small-business person, tax account with the Commissioner, tax year, terminal tax

Compare: 2004 No 35 s MBB 2(1)(b), (c), (2)–(4)

**RC 39 Credit treated as payment of income tax**

20

A credit of an early-payment discount under **section RC 38** is treated as a payment made by a small-business person on the day after the last day of the income year referred to in **section RC 38** as income tax for the income year.

Defined in this Act: early-payment discount, income tax, income year, pay, small-business person

25

Compare: 2004 No 35 s MBB 3

**RC 40 Some definitions**

In this subpart,—

**early-payment discount** means a discount of income tax under **sections RC 38 and RC 39**

30

**small-business person** means a person who—

- (a) conducts a business on their own account, acting alone or as a partner in a partnership; and
- (b) does not use a company or a trust in the conduct of the business; and

35

- (c) derives income that is mainly from the business, and does not consist of interest, dividends, royalties, rent, or beneficiary income.

Defined in this Act: beneficiary income, business, company, dividend, income, income tax, interest, royalty

5

Compare: 2004 No 35 s MBB 4

## Subpart RD—Employment-related taxes

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<b>RD 1 What this subpart does</b>			
This subpart establishes and measures an employer's liability under—			
(a) the PAYE rules by—			
(i) listing the types of payments to which the rules apply:			35



- (ii) calculating the amounts of tax that must be withheld and paid to the Commissioner under the rules:
- (iii) providing for certain adjustments to the amounts:
- (iv) providing some rules related to the payment of the amounts: 5
- (b) the FBT rules by—
  - (i) calculating the value of the benefit provided:
  - (ii) attributing certain fringe benefits to employees:
  - (iii) setting out the taxable value of certain fringe benefits: 10
  - (iv) providing options for the payment of FBT to the Commissioner:
- (c) the ESCT rules by setting out the payments to which the rules apply and calculating the amounts of tax that must be withheld and paid to the Commissioner under the rules. 15

Defined in this Act: amount of tax, Commissioner, ESCT rules, FBT, FBT rules, fringe benefit, pay, PAYE rules

### *PAYE rules and PAYE income payments* 20

#### *Introductory provisions*

#### **RD 2 PAYE rules and their application**

##### *Meaning*

- (1) The **PAYE rules** means—
  - (a) **section BC 1** (Non-filing and filing taxpayers); and 25
  - (b) **sections LA 6** (Remaining refundable credits: PAYE, RWT, and certain other items) and **LB 1** (Tax credits for PAYE income payments); and
  - (c) **sections RD 3 to RD 25**; and
  - (d) **sections RP 2 to RP 16** (which relate to PAYE intermediaries); and 30
  - (e) sections 15C to 15M, 24, 24B to 24P, 48, and 133, Part 9, and sections 167 to 169 of the Tax Administration Act 1994.

##### *Application*

- (2) The PAYE rules apply to a person who makes or is required to make a PAYE income payment and, in certain circumstances, to the person to whom the PAYE income payment is made. 35

*Deceased employers*

- (3) The executor or administrator of a deceased employer must complete any uncompleted PAYE obligations of the employer.

Defined in this Act: employer, PAYE income payment, PAYE rules

5

Compare: 2004 No 35 ss NC 15(4), OB 1 “PAYE rules”

**RD 3 PAYE income payments***Meaning generally*

- (1) The PAYE rules apply to a **PAYE income payment** which—
- (a) means— 10
- (i) a payment of salary or wages, *see* **section RD 6**; or
- (ii) extra pay, *see* **section RD 8**; or
- (iii) a schedular payment, *see* **section RD 9**;
- (b) does not include—
- (i) an amount attributed under **section GB 29** (Attribution rule: calculation): 15
- (ii) an amount paid to a shareholder-employee in the circumstances set out in **subsection (2)**.

*When subsections (3) and (4) apply: close companies*

- (2) **Subsections (3) and (4)** apply for an income year when a person is a shareholder-employee of a close company, and— 20
- (a) they do not derive as an employee salary or wages of a regular amount for regular pay periods—
- (i) of 1 month or less throughout the income year; or
- (ii) that total 66% or more of the annual gross income of the person in the corresponding tax year as an employee; or 25
- (b) an amount is paid or credited to them, or applied on their behalf, as income that may later be allocated to them as an employee for the income year. 30

*Income in current tax year*

- (3) The person may choose that an amount paid to them in the income year in their capacity as employee of the close company is not a PAYE income payment.

*Income in later tax years*

- (4) The person may choose that an amount that they derive in a later income year in their capacity as an employee of the close company is treated as income derived otherwise than from a PAYE income payment.

5

*If questions arise*

- (5) If a question arises whether the PAYE rules apply to all or part of a PAYE income payment, other than an amount referred to in **subsections (2) to (4)**, the Commissioner must determine the matter.

10

Defined in this Act: amount, annual gross income, close company, Commissioner, employee, extra pay, income, income year, pay, pay period, PAYE income payment, PAYE rules, salary or wages, schedular payment, shareholder-employee, tax year

Compare: 2004 No 35 ss NC 1(2), OB 2

15

**RD 4 Payment of amounts of tax to Commissioner***Payments monthly or fortnightly*

- (1) An employer or PAYE intermediary who withholds an amount of tax for a PAYE income payment must pay the amount to the Commissioner as follows:
- (a) on a monthly basis, if they are an employer to whom **section RD 23(3) or (4)** applies:
  - (b) for 2 payment periods in a month, if **paragraph (a)** does not apply.

20

*Liability when amount not withheld*

25

- (2) If some or all of the amount of tax for a PAYE income payment is not withheld and paid under **subsection (1)**, the employee in relation to whom the payment is made must—
- (a) pay an amount equal to the amount of tax to the Commissioner by the 20th day of the month following that in which the PAYE income payment was made; and
  - (b) provide an employer monthly schedule to the Commissioner by the date described in **paragraph (a)**.

30

*When taxable activity ends*

- (3) **Section RA 17** (Payment date when RWT exemption certificate expires) overrides **subsection (1)**.

Defined in this Act: amount of tax, Commissioner, employer, employer monthly schedule, pay, PAYE intermediary

5

Compare: 2004 No 35 ss NC 15(1), NC 16

**RD 5 When payment credited or applied**

A PAYE income payment that is credited to or applied for an employee is treated as paid when it is credited or applied.

Defined in this Act: employee, pay, PAYE income payment

10

Compare: 2004 No 35 s NC 3

*Types of PAYE income payments***RD 6 Salary or wages***Meaning*

- (1) **Salary or wages**— 15
- (a) means a payment of salary, wages, or allowances made to a person in connection with their employment; and
- (b) includes— 20
- (i) a bonus, commission, gratuity, overtime pay, or other pay of any kind; and
- (ii) a payment described in **subsections (2) to (7)**; and
- (iii) an accident compensation earnings-related payment; and
- (c) does not include— 25
- (i) an amount of exempt income:
- (ii) an extra pay:
- (iii) a schedular payment:
- (iv) an amount of income described in **section RD 3(3) and (4)**:
- (v) an employer's superannuation contribution: 30
- (vi) a payment excluded by regulations made under this Act.

*Employees' expenditure on account*

- (2) A payment of expenditure on account of an employee is included in their salary or wages. 35

*Payments to working partners*

- (3) A payment to a working partner under **section DC 4** (Payments to working partners) is included in their salary or wages.

*Payments to past employees*

- (4) A periodic payment of a pension, allowance, or annuity made to a person or their spouse, civil union partner, de facto partner, child, or dependant in connection with the past employment of the person is included in their salary or wages. 5

*Payments to members of Parliament and judicial officers*

- (5) The following payments made under a determination of the Remuneration Authority are included in salary or wages: 10
- (a) salary or allowances made to a member of Parliament:
  - (b) salary and principal allowances made to a judicial officer.

*Certain benefits and grants*

- (6) A payment of the following benefits or grants is included in salary or wages: 15
- (a) an amount of income under **section CF 1** (Benefits, pensions, compensation, and government grants):
  - (b) a payment of— 20
    - (i) an income-tested benefit; or
    - (ii) a veteran's pension; or
    - (iii) New Zealand superannuation; or
    - (iv) a living alone payment:
  - (c) a basic grant and independent circumstances grant made under regulations made under section 193 of the Education Act 1964 or section 303 of the Education Act 1989. 25

*Parental leave payments*

- (7) A parental leave payment made under Part 7A of the Parental Leave and Employment Protection Act 1987 is included in salary or wages. 30

Defined in this Act: accident compensation earnings-related payment, amount, employer's superannuation contribution, employment, exempt income, expenditure on account of an employee, extra pay, income, income-tested benefit, living alone payment, New Zealand superannuation, pay, salary or wages, schedular payment, spouse, veteran's pension 35

Compare: 2004 No 35 s OB 1 "salary or wages"

**RD 7 Certain benefits and payments***When this section applies*

- (1) This section applies when an employee receives—
- (a) a benefit under **section CE 1(c)** (Amounts derived in connection with employment) made in connection with their employment; or 5
  - (b) a benefit in kind that is included in their salary or wages; or
  - (c) 1 or more of the following payments: 10
    - (i) a superannuation payment: 10
    - (ii) a pension:
    - (iii) a retiring or other allowance:
    - (iv) an annuity.

*Value or amount included in salary or wages*

- (2) The value of the benefit or amount of the payment is treated as— 15
- (a) accruing from day to day; and
  - (b) included in the employee's salary or wages for the pay period or, as applicable, as part of their salary or wages for the pay period. 20

*When non-cash benefit treated as paid*

- (3) If the employee receives the benefit otherwise than in cash, the value is treated as paid—
- (a) for a benefit that constitutes the only salary or wages of the employee, on the last day of the pay period; or 25
  - (b) for all other benefits, when the last amount of salary or wages for the pay period is paid.

Defined in this Act: employee, employment, pay, pay period, salary or wages

Compare: 2004 No 35 s NC 4

**RD 8 Extra pay** 30*Meaning*

- (1) An **extra pay**—
- (a) means a payment that—
    - (i) is made to a person in connection with their employment; and 35
    - (ii) is not a payment regularly included in salary or wages payable to the person for a pay period; and

- (iii) is not overtime pay; and
  - (iv) is made in 1 lump sum or in 2 or more instalments; and
  - (b) includes a payment of the kind described in paragraph (a) made— 5
    - (i) as a bonus, gratuity, or share of profits; or
    - (ii) as a redundancy payment; or
    - (iii) when the person retires from employment; or
    - (iv) as a result of a retrospective increase in salary or wages, but only to the extent described in **subsection (2)**; and 10
  - (c) includes an amount of income that a person derives under **section CE 9** (Restrictive covenants) or **CE 10** (Exit inducements) if the income is derived in connection with an employment relationship between the person and the person who paid the amount; and 15
  - (d) does not include a payment of exempt income.
- Limit on retrospective increase in salary or wages*
- (2) A payment described in **subsection (1)(b)(iv)** is included in extra pay only to the extent to which,— 20
    - (a) it accrues from the start of the increase until the start of the first pay period in which the increase is included in salary or wages; and
    - (b) when a week ends with a Saturday, the total of the increase for the week, and of the salary or wages for the week excluding the increase, and of any other salary or wages that the person earns for the week, is more than \$4. 25
- Defined in this Act: amount, employment, exempt income, income, pay, pay period, salary or wages 30
- Compare: 2004 No 35 s OB 1 “extra pay”

## RD 9 Schedular payments

### *Meaning*

- (1) A **schedular payment**— 35
  - (a) means—
    - (i) a payment of a class set out in **schedule 4** (Rates of tax for schedular payments); and

- |       |   |    |
|-------|---|----|
| (ii)  | in relation to a sale, the net amount paid after subtracting from the purchase price all commission, insurance, freight, classing charges and other expenses incurred by the seller in connection with the sale; and                        | 5  |
| (b)   | does not include—   |    |
| (i)   | salary or wages; or   |    |
| (ii)  | an extra pay; or  |    |
| (iii) | a payment for services provided by a public authority, a local authority, a Maori authority, or a company, other than a non-resident contractor, a non-resident entertainer, or an agricultural, horticultural, or viticultural company; or | 10 |
| (iv)  | a payment covered by an exemption certificate provided under section 24M of the Tax Administration Act 1994; or   | 15 |
| (v)   | a payment for services provided by a non-resident contractor who does not have full relief from tax under a double tax agreement, and is present in New Zealand for 92 or fewer days in a 12-month period; or                               | 20 |
| (vi)  | a contract payment for a contract activity or service of a non-resident contractor when the total amount paid for those activities to the contractor or another person on their behalf is \$15,000 or less in a 12-month period.            | 25 |

*Protected payments*

- |     |  |    |
|-----|--|----|
| (2) | The fact that a schedular payment may be protected against assignment or charge does not override a person's obligation to withhold the amount of tax for the payment. | 30 |
|-----|--|----|

*Determination of expenditure incurred*

- |     |  |    |
|-----|--|----|
| (3) | The Commissioner may determine from time to time the amount or proportion of expenditure that a person incurs in deriving a particular schedular payment or class of schedular payments. | 35 |
|-----|--|----|

Defined in this Act: agricultural, horticultural, or viticultural company, amount, amount of tax, Commissioner, company, contract activity or service, contract payment, double tax agreement, exemption certificate, extra pay, local authority, Maori



authority, non-resident contractor, non-resident entertainer, pay, public authority, salary or wages, schedular payment

Compare: 2004 No 35 s NC 21(f)–(h), Income Tax (Withholding Payments) Regulations 1979, regs 2, 4, 6–8

### *Calculating amounts of tax*

5

#### **RD 10 Maximum amount**

When a person calculates an amount of tax for a PAYE income payment, they must use the maximum rate under **schedule 2** (Basic tax rates for PAYE income payments) at the time for the payment and the person receiving the payment, unless this Act states otherwise.

10

Defined in this Act: amount of tax, PAYE income payment

Compare: 2004 No 35 s NC 6(1A), (3)

#### **RD 11 Amounts of tax for PAYE income payments**

##### *PAYE income payments other than schedular payments*

15

- (1) The amount of tax for a PAYE income payment that a person must withhold and pay to the Commissioner under **section RA 5** (Tax obligations for employment-related taxes) is the relevant amount under **schedule 2** (Basic tax rates for PAYE income payments). **Subsections (2) and (3)** and **sections RD 13 to RD 21** override this subsection.

20

##### *Choosing rate for extra pay*

- (2) An employee who notifies their employer of their tax code may choose to have the amount of tax for an extra pay fixed as follows:

25

- (a) for an employee whose taxable income for the income year is expected to be no more than \$60,000, the rate set out in **schedule 2, part B, table 1, row 2**; or
- (b) for other employees, the rate set out in **schedule 2, part B, table 1, row 3**.

30

##### *Schedular payments*

- (3) The amount of tax for a schedular payment is determined—
- (a) at the relevant rate set out in **schedule 4** (Rates of tax for schedular payments); and
- (b) on the basis of the gross amount of the payment, whether—
- (i) some or all of the payment is income; and

35

- (ii) the full income tax liability lies with the person receiving the payment, or lies partly with an employee or subcontractor of the person.

*Tax tables*

- (4) The Commissioner may provide tables for the calculation of an amount of tax for a PAYE income payment that may incorporate other relevant information. 5

Defined in this Act: amount of tax, Commissioner, employee, employer, extra pay, income, income tax liability, income year, notify, pay, PAYE income payment, tax code, taxable income 10

Compare: 2004 No 35 ss NC 6, NC 8(1A), Income Tax (Withholding Payments) Regulations 1979, reg 3

**RD 12 Reduction in certain circumstances**

*Special circumstances*

- (1) Despite **sections RD 2 to RD 11**, the Commissioner may, in special circumstances, reduce the amount of tax for a PAYE income payment to an employee or a class of employees. The PAYE rules then apply as if amended. 15

*When schedule or regulations inapplicable*

- (2) If the amount of tax for a PAYE income payment cannot be determined under **schedule 2** (Basic tax rates for PAYE income payments) or under regulations made under this Act because of the size of the PAYE income payment, or the number of the employee's dependants, or for any other reason, the amount of tax for the payment must be determined by the Commissioner, taking into account the factors considered in fixing the amount of tax for other similar payments. 20  
25

*Income-tested benefits and education allowances*

- (3) The amount of tax for a PAYE income payment that is an income-tested benefit or an allowance paid under regulations made under section 303 of the Education Act 1989 must be determined by the Commissioner in consultation with the chief executive of the administering department or the Secretary of Education. 30

Defined in this Act: amount of tax, chief executive of the administering department, Commissioner, employee, income-tested benefit, PAYE income payment 35

Compare: 2004 No 35 ss NC 6(1C), (1D), NC 13

*Adjustments for certain PAYE income payments***RD 13 Multiple payments of salary or wages***When this section applies*

- (1) This section applies when an employee receives more than 1 payment of salary or wages in a week or part of a week that ends on a Saturday. The employment may relate to 1 or more employment situations. 5

*When this section does not apply*

- (2) This section does not apply— 10
- (a) when an employee leaves regular full-time employment before engaging in another regular full-time employment; or
  - (b) to salary or wages from employment as casual agricultural employee or an election-day worker.

*Treatment as 1 payment* 15

- (3) The total amount of tax for all payments of salary or wages is the amount that would be required to be withheld if all the payments were treated as 1 payment made by 1 employer for the week.

Defined in this Act: amount of tax, casual agricultural employee, election-day worker, employee, employer, employment, pay, salary or wages 20

Compare: 2004 No 35 s NC 10

**RD 14 Advance payments of salary or wages***When this section applies: increase in amount of tax*

- (1) This section applies when— 25
- (a) an employee receives a payment of salary or wages from an employer; and
  - (b) the amount of tax under **schedule 2** (Basic tax rates for PAYE income payments) for all or part of the payment is increased; and 30
  - (c) the payment is made before the date of the increase.

*When this section applies: becoming subject to PAYE rules*

- (2) This section also applies when all or part a payment of salary or wages becomes subject to the PAYE rules, but the payment is made before the date on which it becomes subject to the rules. 35

*Addition to amount of tax for next payment*

- (3) The amount of the difference caused by the increase referred to in **subsection (1)(b)** is added to the amount of tax for the next payment of salary or wages made by the employer to the employee.

5

Defined in this Act: amount of tax, employee, employer, pay, PAYE rules, salary or wages

Compare: 2004 No 35 s NC 11

**RD 15 Changes to tax rates for salary or wages***When subsection (2) applies*

10

- (1) **Subsection (2)** applies when a change occurs to the amounts of tax for PAYE income payments set out in **schedule 2** (Basic tax rates for PAYE income payments).

*Determining amount of tax*

- (2) The amount of tax for a payment of salary or wages for the pay period in which the change occurs is determined as follows:

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(a) for a pay period of 1 month or less, the amount of tax for the full payment for the pay period is the altered amount:

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(b) for a pay period of more than 1 month, the amount of tax is determined on the basis set out in **schedule 2, clause 2**, by—

(i) determining the proportionate parts of the payment before and after the change; and

25

(ii) calculating each part of the relevant amount of tax; and

(iii) adding together the relevant amounts of tax.

*When subsection (4) applies*

- (3) **Subsection (4)** applies for a week when—
- (a) a change occurs to the amounts of tax for PAYE income payments set out in **schedule 2**; and
- (b) an employee receives more than 1 payment of salary or wages for the week as described in **section RD 13**.

30

*Determining amount of tax*

- (4) The total amount of tax for all payments of salary or wages for the week in which the change occurs is the amount determined under **section RD 13**.

*Later payment for earlier services*

5

- (5) The amount of tax for a payment of salary or wages made after the date of the change for a pay period ending before the date in relation to services provided before the date must be calculated using the basic amounts of tax for PAYE income payments applicable in the pay period or week.

10

Defined in this Act: amount of tax, pay, pay period, PAYE income payment, salary or wages

Compare: 2004 No 35 s NC 12

**RD 16 Payments of salary or wages in pay periods***Payment for part of period*

15

- (1) If an employee who is in regular full-time employment is paid salary or wages for part of a pay period, the payment is treated as a payment for a full pay period.

*Payment on production basis*

- (2) If an employee who is paid on a production basis for work performed as a piece worker or out-worker is paid salary or wages, the payment is treated as payment for the period that runs from the date the work starts to the date of its completion.

20

*Payments in several sums*

- (3) If a PAYE income payment for a pay period is paid in 2 or more separate sums, those sums must be added together to determine the amount of tax for the payment.

25

*When impractical to make payments at same time*

- (4) Despite **subsection (3)**, if it is impractical for an employer to pay an employee overtime pay and other salary or wages for a pay period at the same time, the employer may add the amount of the overtime pay of the employee to their salary or wages for a later pay period, but not their overtime pay if, for both pay periods,—

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- (a) the amounts of the employee's salary or wages are more or less the same; and

35

- (b) the amounts of tax withheld from the employee's salary or wages are the same; and
- (c) the employee has the same tax code.

*Periods not coinciding*

- (5) For the purposes of **subsection (4)**, if overtime pay is paid for a particular period that is the same length as a pay period but does not coincide with a pay period, it may be treated as overtime pay for the pay period in which the particular period ends. 5

Defined in this Act: amount of tax, employee, employment, pay, pay period, PAYE income payment, salary or wages, tax code, tax withheld 10

Compare: 2004 No 35 s NC 2(2)–(4)

### **RD 17 Payments to private domestic workers**

*When this section applies*

- (1) This section applies to a person who is employed as a private domestic worker by another person and— 15
- (a) the employer is the occupier, or 1 of the occupiers, of a house or premises used exclusively for residential purposes; and
  - (b) the employment— 20
    - (i) is for the performance of work in or about the house or premises, or a garden or grounds belonging to the house or premises; and
    - (ii) is not for a business carried on by the employer, or an occupation or calling of the employer; and 25
    - (iii) is not regular full-time employment.

*No amount of tax withheld*

- (2) No amount of tax is required to be withheld for a PAYE income payment relating to the person's employment as a private domestic worker when **sections RA 8** (Liability of persons receiving payments or benefits) and **RD 4(2)** apply. 30

Defined in this Act: amount of tax, business, employer, employment, PAYE income payment, private domestic worker

Compare: 2004 No 35 s NC 2(1)

## RD 18 Payment of extra pay with other PAYE income payments

*When this section applies*

- (1) This section applies when a person pays an amount of extra pay to an employee who also receives a PAYE income payment from the person. The amount of tax for the extra pay is based on the sum of the extra pay and the annualised value of all PAYE income payments made to the employee in the period that starts 4 weeks before the date of the payment of the extra pay and ends on the date of that payment. 5  
10

*Between \$38,000 and \$60,000*

- (2) If the sum of the amounts referred to in **subsection (1)** is more than \$38,000 but no more than \$60,000, the amount of tax for the extra pay that must be withheld is the amount determined using the basic amounts of tax for PAYE income payments set out in **schedule 2, part B, table 1, row 2** (Basic tax rates for PAYE income payments). 15

*Over \$60,000*

- (3) If the sum of the amounts referred to in **subsection (1)** is more than \$60,000, the amount of tax for the extra pay that must be withheld is the amount determined using the basic amounts of tax for PAYE income payments set out in **schedule 2, part B, table 1, row 3**. 20

Defined in this Act: amount, employee, extra pay, pay, PAYE income payment

Compare: 2004 No 35 s NC 2(5) 25

## RD 19 Schedular payments without notification

*When this section applies*

- (1) This section applies when a person makes a schedular payment but the notification required under section 24L of the Tax Administration Act 1994 has not been provided to them. 30

*When this section does not apply*

- (2) This section does not apply when a person other than a company incorporates a company to obtain a reduction in an amount of tax for a schedular payment.

*Amount of tax*

- (3) The person must withhold the amount of tax for the schedular payment of an amount determined as follows:
- (a) 5% of the amount of the schedular payment in addition to an amount calculated under **section RD 11(3)** if—
    - (i) the person receiving the payment is a company that is a non-resident contractor; and
    - (ii) the non-resident contractor receives the payment other than as a result of a choice that is made for purposes that include a purpose of defeating the intent and application of **paragraph (c)**; and
    - (iii) **paragraph (b)** does not apply:
  - (b) zero, if the schedular payment made to a non-resident entertainer:
  - (c) 15% of the amount of the schedular payment if **paragraphs (a) and (b)** do not apply.

Defined in this Act: amount of tax, company, non-resident contractor, non-resident entertainer, notify, pay, schedular payment

Compare: 2004 No 35 s NC 7(2)

**RD 20 Schedular payments to non-resident entertainers** 20*When this section applies*

- (1) This section applies when a non-resident entertainer derives income from an activity or performance connected with any of the activities or performances described in the definition of **non-resident entertainer**. 25

*Amounts withheld*

- (2) If the only amount of income derived by the entertainer in a tax year is from a schedular payment from which the amount of tax has been withheld, their income tax liability is treated as equal to the total amount withheld. 30

*Amounts not withheld*

- (3) If the entertainer has received a schedular payment from which no amount of tax has been withheld, the entertainer must pay the amount of tax to the Commissioner by the 20th day of the month following that in which the payment was 35



made, or by the date of their departure from New Zealand if that is earlier.

Defined in this Act: amount, amount of tax, Commissioner, income, income tax liability, New Zealand, non-resident entertainer, pay, schedular payment, tax year

Compare: Income Tax (Withholding Payments) Regulations 1979, regs 10, 11

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## RD 21 Schedular payments to subcontractors

*When this section applies*

- (1) This section applies when a contractor is paid a schedular payment for services provided under a contract, and a subcontractor has provided services under the contract.

10

*Obligation to retain amount*

- (2) The PAYE rules apply to the contractor in relation to a payment made to the subcontractor in relation to the work carried out under the contract.

Defined in this Act: pay, PAYE rules, schedular payment

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Compare: Income Tax (Withholding Payments) Regulations 1979, reg 12

*Paying amounts of tax*

## RD 22 When amounts of tax not withheld or payment insufficient

*Employees' obligations*

20

- (1) If, for any reason, some or all of the amount of tax for a PAYE income payment is not withheld at the time it is paid to an employee, the employee must—
- (a) provide an employer monthly schedule with the relevant details; and
- (b) pay the amount of the deficiency.

25

*When person exempt or not liable to pay*

- (2) **Subsection (1)(b)** does not apply if the employee is exempt from paying the amount or is not liable for the amount of tax.

*When payment less than amount of tax*

30

- (3) If the amount of a PAYE income payment is less than the amount of tax for the payment, the employee must pay the

amount of the deficiency to their employer or PAYE intermediary. If the employee does not pay the amount of the deficiency to their employer or PAYE intermediary, they must pay the amount to the Commissioner under **section RD 4(2)**.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer monthly schedule, pay, PAYE intermediary, PAYE income payment

5

Compare: 2004 No 35 s NC 5

### **RD 23 PAYE income payment forms for amounts of tax paid to Commissioner**

#### *Paying amount withheld with payment form*

10

- (1) An employer or a PAYE intermediary who withholds an amount of tax from a PAYE income payment must pay the amount to the Commissioner under **section RD 4** and provide a PAYE income payment form in relation to the amount.

#### *General rule*

15

- (2) The employer or PAYE intermediary must provide the PAYE income payment form referred to in **subsection (1)** by—

(a) the 20th day of the month in which they withhold an amount of tax for a PAYE income payment in a first payment period described in **section RA 15(3)** (Payment dates for interim and other tax payments):

20

(b) the 5th day of the month following that in which they withhold an amount of tax for a PAYE income payment in a second payment period described in **section RA 15(3)**, or if the month is December, by the 15th of January.

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#### *When gross amounts of tax less than \$100,000*

- (3) Despite **subsection (2)**, an employer who is not a new employer whose gross amounts of tax for PAYE income payments and employer's superannuation contributions payable for the preceding tax year are less than \$100,000, must provide the PAYE income payment form by the 20th of the month following that in which an amount of tax is withheld.

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#### *New employers*

- (4) Despite **subsection (2)**, an employer who is a new employer, must provide the PAYE income payment form by the 20th of

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the month following that in which an amount of tax is withheld until their gross amounts of tax for PAYE income payments and employer's superannuation contributions payable for the tax year are more than \$100,000.

*Thresholds*

- (5) For the purposes of determining whether the threshold referred to in **subsections (3) and (4)** is reached, if the employer ends their business and starts a new business, or operates 2 or more businesses at the same time, all amounts of tax withheld must be aggregated. 5  
10

*When business ended*

- (6) Despite **subsections (2) to (4)**, if the employer stops carrying on a business in relation to which an amount of tax for a PAYE income payment has been withheld, they must notify the Commissioner and provide a PAYE income payment form by the 15th day of the second month following the month in which the business is ended. 15  
20

*Single employer*

- (7) For the purposes of **subsections (3) and (4)**, the following are treated as 1 employer: 20  
25
- (a) 2 or more companies if they were a group of companies at a time in the relevant tax year:
  - (b) all partners in a partnership:
  - (c) all persons in whom property has become vested, or to whom the control of property has passed in the case of— 25
    - (i) an estate of a deceased person; or
    - (ii) a trust; or
    - (iii) a company in liquidation; or
    - (iv) an assigned estate; or 30
    - (v) another fiduciary relationship. 30

Defined in this Act: amount of tax, business, Commissioner, company, employer, employer's superannuation contribution, first payment period, group of companies, liquidation, PAYE intermediary, PAYE income payment, PAYE income payment form, second payment period, tax withheld, tax year 35

Compare: 2004 No 35 s NC 15(1), (5), (6)

## RD 24 Bonds given by employers of certain non-resident employees

### *When this section applies*

- (1) This section applies if it cannot reasonably be determined at the time an employer or PAYE intermediary is required to withhold the amount of tax for a PAYE income payment whether the payment will be exempt income of an employee under either **section CW 19** (Amounts derived during short term visits) or a double tax agreement. 5

### *Providing bond*

- (2) The employer or PAYE intermediary may apply to the Commissioner to be released from their obligation to withhold the amount by providing a bond or other security for the amount that would be required to be withheld but for this section. 10

### *Consequences of acceptance of bond*

- (3) If the Commissioner accepts the bond or security referred to in **subsection (2)**,— 15
- (a) the employer or PAYE intermediary must not withhold the amount of tax for a PAYE income payment to the employee; and 20
- (b) information concerning the employee must not be included in an employer monthly schedule; and
- (c) the **no notification** rate referred to in section 24B(3)(h) of the Tax Administration Act 1994 must not be used in relation to the PAYE income payment. 25

### *When subsection (3) no longer applies*

- (4) If the employee later becomes liable to pay income tax because of an event provided for in an arrangement made under **section BH 1** (Double tax agreements) or **section CW 19**, the application of **subsection (3)** ends, and the employer or PAYE intermediary must withhold the amount of tax for a PAYE income payment made to the employee. 30

### *Employee's liability*

- (5) If the Commissioner considers that the employee is liable for income tax in relation to a PAYE income payment from which no amount of tax is withheld because of the application of **subsection (3)**, the Commissioner must notify the employer or 35

PAYE intermediary, as applicable. The employer or intermediary must then account for and pay the total amount of tax for all PAYE income payments that would have been due, or a lesser amount as the Commissioner determines.

*Treatment of amount paid under subsection (5)*

5

- (6) An amount paid to the Commissioner under **subsection (5)** is treated as the amount of tax for a PAYE income payment made on the date of the Commissioner's notice. Section 120U of the Tax Administration Act 1994 overrides this subsection.

Defined in this Act: amount of tax, Commissioner, double tax agreement, employee, employer, employer monthly schedule, exempt income, income tax, notify, pay, PAYE intermediary, PAYE income payment

10

Compare: 2004 No 35 s NC 18

**RD 25 Exemption certificates for non-resident contractors**

*When this section applies*

15

- (1) This section applies when—

(a) a non-resident contractor derives an amount from a contract activity or service that is not income, whether because of a double tax agreement or for another reason; or

20

(b) the contractor provides a bond or other security for the payment of any income tax payable on an amount derived by them from a contract activity or service; or

(c) the contractor has in the period of 24 months before the date of the application referred to in **subsection (2)** paid all income tax payable by them and complied with their obligations under the Inland Revenue Acts, and the Commissioner is satisfied that the contractor will continue to do this.

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*Exemption certificate*

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- (2) The non-resident contractor may apply to the Commissioner to provide them with an exemption certificate under section 24M of the Tax Administration Act 1994 for a contract payment made to them or another person acting on their behalf in

relation to a contract activity or service set out in the certificate for which no amount of tax is to be withheld.

Defined in this Act: amount, amount of tax, Commissioner, contract activity or service, contract payment, double tax agreement, exemption certificate, income, income tax, Inland Revenue Acts, non-resident contractor, pay

5

Compare: 2004 No 35 s NC 18, Income Tax (Withholding Payments) Regulations 1979, reg 5(3)

### *FBT rules and fringe benefits*

#### *Introductory provisions*

#### **RD 26 FBT rules and their application** 10

##### *Meaning*

- (1) The **FBT rules** means—
- (a) **sections CX 2 to CX 38** (which relate to fringe benefits); and
  - (b) **sections GA 2, GB 31, and GB 32** (which relate to FBT); and 15
  - (c) **sections RD 27 to RD 64**; and
  - (d) **schedules 1, part C** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) and **5** (Fringe benefit values for motor vehicles); and
  - (e) sections 46B to 46E, 93, Part 7, and section 139B of the 20  
Tax Administration Act 1994.

##### *Application*

- (2) The FBT rules apply to an employer who provides a fringe benefit to their employee in connection with their employment. 25

Defined in this Act: employee, employer, employment, FBT rules, fringe benefit

Compare: 2004 No 35 s OB 1 “FBT rules”

#### **RD 27 Liability for FBT**

##### *Liability*

- (1) An employer who provides a fringe benefit to an employee is liable to pay FBT under **sections RD 28 to RD 58**, choosing a method of payment described in **subsection (2)**. 30

##### *Payment options*

- (2) An employer must choose 1 of the following options for the payment of FBT: 35

- (a) the single rate option, *see* **section RD 59**; or
- (b) the alternate rate option, *see* **section RD 60**; or
- (c) if eligible, the close company option, *see* **section RD 61**;  
or
- (d) if eligible, the small business option, *see* **section RD 62**. 5

*Election*

- (3) An employer may make an election under **subsection (2)(a) or (b)** by providing a return setting out the rate chosen. 10
- Defined in this Act: business, close company, employee, employer, FBT, fringe benefit, pay
- Compare: 2004 No 35 s ND 1(1)–(3)

*Value of fringe benefits*

**RD 28 Determining fringe benefit values**

*What sections RD 29 to RD 54 do*

- (1) **Sections RD 29 to RD 54** set out the rules for determining the value of a fringe benefit provided by an employer to an employee in connection with their employment. The taxable value of a fringe benefit when an employee pays an amount for receiving the benefit is dealt with in **sections RD 55 to RD 58**. 15

*When value cannot be ascertained* 20

- (2) If, under **sections RD 29, RD 30, and RD 34 to RD 42**, the value of a fringe benefit cannot be ascertained, the value is the market value or otherwise as the Commissioner determines.

*Meaning of market value*

- (3) In **subsection (2)**, **market value** means the price, at the time at which the goods or services were provided to the employee, for which the goods or services would normally be sold in a sale— 25
  - (a) in the open market in New Zealand; and
  - (b) freely offered; and 30
  - (c) made on ordinary trade terms; and
  - (d) to a member of the public at arm's length.

Defined in this Act: amount, Commissioner, employee, employer, employment, fringe benefit, goods, market value, New Zealand, services

Compare: 2004 No 35 ss ND 1A(1), ND 1L 35

**RD 29 Private use of motor vehicle: calculation methods***What this section does*

- (1) This section limits the way an employer may use a method for calculating the value of the benefit that they provide to an employee by making a motor vehicle available for the employee's private use. 5

*Choosing method in first return*

- (2) When a person first files a return relating to a vehicle for the purposes of this section, they may calculate the value of the benefit using either of the valuation methods set out in **schedule 5** (Fringe benefit values for motor vehicles). 10

*Using method in first return*

- (3) The person must use the method chosen in the first return referred to in **subsection (2)** in calculating the value of the benefit for the length of time— 15
- (a) starting after the end of the period of the first return; and
  - (b) continuing to the earliest of the following dates:
    - (i) the date of the disposal of the vehicle;
    - (ii) the date on which the vehicle ceases to be leased;
    - (iii) the date that is 5 years after start of the period of the first return. 20

*Returns after 5 years*

- (4) In a return relating to the vehicle for a period beginning 5 years or more after the start of the period of the first return, the person may calculate the value of the benefit using either of the valuation methods set out in **schedule 5**. 25

Defined in this Act: employee, employer, motor vehicle, private use

Compare: 2004 No 35 s ND 1A(1)–(1D)

**RD 30 Private use of motor vehicle: formulas***What this section does*

- (1) This section sets out the formulas for calculating the value of the benefit that an employer provides to an employee by making a motor vehicle available for their private use. 30



- Quarterly payment*
- (2) If FBT is paid quarterly, the value of the benefit is calculated using the formula—
- $$\frac{\text{days} \times \text{schedule 5 amount}}{90.}$$
- 5
- Annual payment*
- (3) If FBT is paid on an annual basis, the value of the benefit is the total of the amounts calculated under **subsection (2)** for the 4 quarters in the applicable tax year.
- 10
- Payment by income year*
- (4) If FBT is paid on an income year basis, the value of the benefit is calculated using the formula—
- $$\frac{\text{days} \times \text{schedule 5 amount}}{365.}$$
- 15
- Definition of items in formulas*
- (5) In the formula,—
- (a) in **subsection (2)**, **days** refers to the number of days in the quarter on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle, or 90, whichever is less: 20
- (b) in **subsection (4)**, **days** refers to the number of days in the income year on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle: 25
- (c) in **subsections (2) and (4)**, **schedule 5 amount** refers to the amount calculated under **schedule 5** (Fringe benefit values for motor vehicles) as the value of the benefit that would have been received for unlimited private use of the vehicle in that quarter or income year, as applicable. 30
- Test period*
- (6) To calculate the value of the benefit, an employer may choose to use a test period under **section RD 32** to establish private use. 35
- Defined in this Act: amount, employee, employer, FBT, income year, motor vehicle, private use, quarter, work-related vehicle
- Compare: 2004 No 35 s ND 1A(2)–(6)

**RD 31 Private use of motor vehicle: 24-hour period***When this section applies*

- (1) This section applies for the purposes of a calculation of the value of a benefit under **section RD 30**.

*Meaning of day*

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- (2) In **section RD 30(5)(a) and (b)**, in relation to a motor vehicle and the item **days** in the formulas, a **day** is—

- (a) a 24-hour period starting from a time in a day that a person who owns or leases the vehicle chooses; or  
 (b) a 24-hour period starting at midnight if **paragraph (a)** does not apply. 10

*Choosing starting point and notifying Commissioner*

- (3) For the purposes of **subsection (2)(a)**, the person must—  
 (a) choose a starting point for the day that is a whole number of an hour after midnight; and 15  
 (b) notify the Commissioner of their election when filing the next return relating to the vehicle.

*Elections*

- (4) An election under **subsection (2)(a)**—  
 (a) is effective from the start of the quarter, income year, or tax year to which a return relates; and 20  
 (b) applies to all vehicles in relation to which the person files a return.

*Hour applying for 2 income years*

- (5) If the person chooses under **subsection (3)(a)** a particular hour in the 24-hour period as the starting point of the day, that hour continues to apply to the use of the vehicle from the start of the relevant quarter, income year, or tax year, as applicable, for a minimum period of 2 income years. 25

*When circumstances change*

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- (6) An employer may ask the Commissioner to amend the starting point of the 24-hour period, or to treat the election as revoked, if the employer's circumstances have changed in a way that—  
 (a) is more than minor; and

- (b) makes the starting point no longer relevant to the employer's business.

Defined in this Act: business, Commissioner, day, employer, income year, motor vehicle, notify, quarter, tax year

Compare: 2004 No 35 s ND 1AB

5

## RD 32 Motor vehicle test period

### *Recording details for test period*

- (1) To establish the value of the benefit provided through a motor vehicle being made available to an employee for their private use, an employer may choose to record the details of the use of the vehicle by the employee for a test period. 10

### *Number used in calculations*

- (2) The number of days on which a vehicle is available for an employee's private use that is ascertained in the test period is the number used in the calculation in **section RD 30(2)**. For the calculation in **section RD 30(4)**, the relevant number is the number of days ascertained in the test period multiplied by 4. 15

### *Quarter or 3 months for test period*

- (3) If FBT is paid quarterly or annually, the test period is a quarter. If FBT is paid on an income year basis, the test period is 3 consecutive months of an income year. 20

### *Period showing pattern of use*

- (4) The employer must—
- (a) choose a test period that shows, or is likely to show, a pattern of use of the motor vehicle by the employee that fairly represents the use of the vehicle by the employee over the whole of the applicable term; and 25
- (b) keep a record of the test period, including accurate details of the days in the period on which the vehicle is available for the employee's private use. 30

### *Work-related vehicles*

- (5) In **subsection (4)**, a day on which the vehicle is a work-related vehicle is treated as a day on which the vehicle is not available for private use.

*Term of 3 years*

- (6) The number of days of availability for private use ascertained in the test period applies for a term of 3 years. The term starts, as applicable, as follows:
- (a) if FBT is paid quarterly, on the first day of the test period: 5
  - (b) if FBT is paid on an annual basis, on the first day of the tax year in which the test period occurs:
  - (c) if FBT is paid on an income year basis, on the first day of the income year in which the test period occurs. 10

*Reduction of term*

- (7) The term referred to in **subsection (6)** is reduced if the number of days of actual private use of the motor vehicle is 20%, or more than 20%, higher than the number ascertained in the test period. In this case, the term ends on the last day of the applicable quarter, year, or income year. If the employer chooses to start another test period, the existing term ends just before the start of the new term. 15

*When test period no longer representative*

- (8) If the Commissioner considers that the result ascertained in the test period does not, or does no longer, fairly represent the actual private use of the motor vehicle by the employee, the Commissioner may notify the employer that the term will end on a particular date. Following notification, the employer must not use that result again. 20  
25

Defined in this Act: Commissioner, employee, employer, FBT, income year, motor vehicle, notify, private use, quarter, work-related vehicle

Compare: 2004 No 35 s ND 1B(1)–(6)

**RD 33 Replacement motor vehicles**

For the purposes of **section RD 32**, a replacement motor vehicle is treated in the same way as the vehicle it replaces if the result ascertained in the test period is likely to be fairly representative of the average availability for the private use of the vehicle during the term. 30

Defined in this Act: motor vehicle, private use 35

Compare: 2004 No 35 s ND 1B(7)

**RD 34 Subsidised transport***Percentage of highest public fare*

- (1) The value of a benefit that an employer provides to their employee in subsidised transport is 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion. This subsection is over-ridden by **subsection (2)**. 5

*When benefit provided under arrangement*

- (2) Despite **section CX 2(2)** (Meaning of fringe benefit), if the fringe benefit is provided under an arrangement with a third person, the value of the benefit is determined under **subsection (3)**. 10

*Percentage or actual payment*

- (3) If a third person provides the employee with subsidised transport under an arrangement with their employer, the value of the benefit is the greater of— 15
- (a) 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion; and
  - (b) the amount that the employer has paid or is liable to pay the person for the benefit provided. 20

*GST*

- (4) In this section, for a registered person who may claim input tax for subsidised transport, **amount** means the GST-inclusive amount. 25

Defined in this Act: amount, arrangement, employee, employer, fringe benefit, GST, input tax, pay, subsidised transport

Compare: 2004 No 35 s ND 1C

**RD 35 Employment-related loans: value using prescribed interest rates***When this section applies* 30

- (1) This section applies when an employer provides a benefit to their employee in an employment-related loan and the employer does not choose to determine the value of the benefit under **section RD 36**.

- Amount of interest or amount under financial arrangement*
- (2) The value of the benefit in a period is the amount by which the prescribed interest on the loan is more than—
- (a) the amount of interest that accrued on the loan in the period; or 5
  - (b) when the loan is a financial arrangement and it is appropriate for the nature of the loan, the income that would have accrued to the employer's benefit in the period as calculated under the yield to maturity method.
- Meaning of prescribed interest* 10
- (3) For the purposes of this section, **prescribed interest** means,—
- (a) except as provided in **paragraph (b)**, the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of that loan at the prescribed rate of interest: 15
  - (b) for loans made on or before 31 March 1985, the interest on which is not subject to review, the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of the loan at the non-concessionary rate of interest for— 20
    - (i) the tax year in which the agreement to make the loan was signed; or
    - (ii) if the agreement was not in writing, the year in which the loan was agreed to by all parties. 25
- Defined in this Act: amount, employee, employer, employment-related loan, financial arrangement, interest, non-concessionary rate of interest, prescribed interest, quarter, tax year
- Compare: 2004 No 35 ss ND 1D, ND 1G 30

### **RD 36 Employment-related loans: value using market interest rates**

*Choosing to use market interest rate*

- (1) An employer who is in the business of lending money to the public may choose to value a benefit provided to their employee in an employment-related loan using the market interest on the loan. 35

*Value of benefit*

- (2) The value of the benefit referred to in **subsection (1)** in a period is the amount by which the market interest on the loan is more than—
- (a) the amount of interest that accrued on the loan in the period; or 5
  - (b) when the loan is a financial arrangement and it is appropriate having regard to the nature of the loan, the income that would have accrued to the employer's benefit in the period as calculated under the yield to maturity method. 10

*Using method for 2 income years*

- (3) Having made an election under **subsection (1)**, the employer must use the method for the income year to which the election relates and for the next income year. 15

*Notifying Commissioner of change to method*

- (4) An employer may not change the method of calculating the value of the benefit for an income year unless the employer notifies the Commissioner of the proposed change at least 1 year before the start of the income year in which the change is to occur. 20

*Market interest*

- (5) In this section, **market interest** means the amount of interest calculated at the interest rate that would apply to a borrower belonging to a group of persons to whom a loan of the kind provided to the employee is offered when the group meets the following requirements: 25
- (a) the group has a comparable credit risk to the group to which the employee belongs; and
  - (b) membership of the group arises from a factor or factors that do not include a connection between a member and the employer; and 30
  - (c) the group is sufficient in number to ensure a transaction on an arm's-length basis.

*Calculating amount of interest*

- (6) For the purposes of **subsection (5)**, the amount of interest is the amount accrued on the loan during the quarter or tax year 35

calculated on the daily balance of the loan at the rate referred to in the subsection.

Defined in this Act: amount, business, employee, employer, employment-related loan, financial arrangement, income year, interest, market interest, quarter, tax year

Compare: 2004 No 35 s ND 1DB

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## RD 37 Repayment of employment-related loans

### *Repayment at start of tax year*

- (1) For the purposes of **sections RD 35 and RD 36**, an amount of income of an employee applied in an income year to repay an employment-related loan provided to the employee is treated as applied towards repayment on the first day of the income year or, if the date of the advance of the loan falls after that day, the later date. 10

### *Limitation*

- (2) **Subsection (1)** applies only when an employee derives income that— 15
- (a) is salary or wages, an extra pay, a dividend, or interest; and
  - (b) is not resident passive income, non-resident passive income, or an amount subject to a withholding obligation under the PAYE rules; and 20
  - (c) is income of the employee in the tax year in which it is applied to repay the loan, or in an earlier income year.

### *Amounts derived and applied in different tax years*

- (3) **Subsection (4)** applies when an employee derives income that— 25
- (a) is applied to repay an employment-related loan; and
  - (b) relates to an income year after the income year in which it is applied to repay the loan.

### *Treatment of amount*

- (4) The employee may treat the amount as derived in the earlier income year, but must notify the Commissioner of their decision within the time allowed to the employer for providing a return of income for the income year, or a longer time if the Commissioner allows. 30 35

Defined in this Act: amount, Commissioner, dividend, employee, employer, employment-related loan, extra pay, income, interest, non-resident passive income,



notify, pay, PAYE rules, resident passive income, return of income, salary or wages, tax year

Compare: 2004 No 35 s ND 1E

### **RD 38 Contributions to superannuation schemes**

*Amount of contribution* 5

- (1) The value of a benefit that an employer provides in contributing to a superannuation scheme for an employee is the amount of the contribution made by the employer.

*GST*

- (2) In this section, for a registered person who may claim input tax for a contribution to a superannuation scheme, **amount** means the GST-inclusive amount. 10

Defined in this Act: amount, GST, employee, employer, input tax, superannuation scheme

Compare: 2004 No 35 s ND 1H 15

### **RD 39 Contributions to funds, trusts, and insurance premiums**

*Sickness, accident, or death benefit fund*

- (1) The value of the benefit that an employer provides in contributing to a sickness, accident, or death benefit fund for an employee is the amount of the contribution made by the employer. 20

*Funeral trust*

- (2) The value of the benefit that an employer provides in contributing to a funeral trust for an employee is the amount of the contribution made by the employer. 25

*Specified insurance premium*

- (3) The value of the benefit that an employer provides in paying an insurance premium described in **section CX 16** (Contributions to life or health insurance) for an employee is the amount of the premium paid by the employer. 30

*Insurance fund of friendly society*

- (4) The value of the benefit that an employer provides in contributing to an insurance fund of a friendly society for an

employee is the amount of the contribution made by the employer.

Defined in this Act: amount, employee, employer, friendly society, sickness, accident, or death benefit fund, specified insurance premium

Compare: 2004 No 35 s ND II

5

## RD 40 Benefits provided by charitable organisations

### *Value of benefit*

- (1) The value of a benefit under **section CX 25(2)** (Benefits provided by charitable organisations) that a charitable organisation provides in a short-term charge facility is the sum of— 10
- (a) the amount that the organisation pays for or towards buying or hiring the goods and services obtained by the employee under the short-term charge facility;
  - (b) any interest incurred in relation to buying or hiring the goods and services: 15
  - (c) when the short-term charge facility is a credit card or charge card provided for an employee's use solely for purposes unconnected with the organisation or its operations, the associated account or service fee.

### *When subsections (3) and (4) apply*

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- (2) **Subsections (3) and (4)** apply in a tax year to an employer that is a charitable organisation when—
- (a) the employer provides a benefit to their employee in a short-term charge facility that is a fringe benefit under **section CX 25(1)**; and 25
  - (b) the employer is required to pay FBT for the tax year on a quarterly basis; and
  - (c) the value of the benefit in the short-term charge facility in the first quarter of the tax year is no more than 5% of the employee's salary or wages for the tax year. 30

### *Employer's liability*

- (3) The employer's liability to pay FBT on a benefit provided in a quarter of the tax year depends on whether the taxable value of all the benefits (the **accumulated value**) that the employer provides to the employee in the period from the start of the tax year to the end of the quarter is more than 5% of the employee's salary or wages for the tax year (the **threshold value**). 35

*Calculation of liability*

- (4) The employer is liable to pay FBT for a quarter of a tax year on the following amounts:
- (a) zero, if the accumulated value for the quarter is no more than the threshold value: 5
  - (b) the accumulated value if the quarter is the first in the tax year for which the accumulated value is more than the threshold value:
  - (c) the taxable value of all the benefits provided in the quarter, if neither **paragraph (a) or (b)** applies. 10

Defined in this Act: amount, charitable organisation, employee, employer, FBT, goods, interest, quarter, salary or wages, services, short-term charge facility, tax year

Compare: 2004 No 35 ss ND 11B, ND 8B

**RD 41 Goods** 15*Market value or cost*

- (1) The value of a fringe benefit that an employer provides to an employee in goods is determined as follows:
- (a) when the person providing the goods manufactured, produced, or processed them, their market value: 20
  - (b) when the person providing the goods bought them, or paid for them to be bought, dealing at arm's length with the supplier of the goods, the cost of the goods to the person:
  - (c) if the person providing the goods is a company included in a group of companies, then, as the person chooses, the value of the benefit under either **paragraph (a) or (b)**, applying the provisions as if the group of companies were 1 company. 25

*Sale in open market* 30

- (2) Despite **subsection (1)**, if the value of the fringe benefit as determined under that subsection would be more than the amount that would have been paid to the employer for the purchase of the goods in a sale described in **paragraphs (a) to (d)**, then the value is treated as that amount. The sale must be— 35
- (a) at retail in the open market in New Zealand; and
  - (b) freely offered; and
  - (c) made on ordinary trade terms; and

- (d) to a member of the public with whom the employer is at arm's length.

*Some definitions*

- (3) In this section,—

**cost**, for a registered person who may claim input tax for the goods, means the GST-inclusive cost of the goods bought or the amount that the person paid for the goods 5

**market value** means the lowest price, at the time at which the goods were provided to the employee, for which identical goods were sold by the same person to an arm's length buyer, whether wholesaler, retailer, or the public, in the open market in New Zealand in a sale freely offered and made on ordinary trade terms 10

**price**, for a registered person who may claim input tax for goods that they manufacture, produce, or process, means the GST-inclusive price of those goods to that person. 15

Defined in this Act: amount, company, cost, employee, employer, goods, group of companies, GST, identical goods, input tax, market value, New Zealand, pay, price

Compare: 2004 No 35 s ND 1J

**RD 42 Services** 20

*Price, amount paid, or fee*

- (1) The value of a fringe benefit that an employer provides to an employee in services is,—
- (a) when an employer normally provides the services as part of their business, the price charged by the employer— 25
- (i) at the time they provided the services; and
- (ii) for the same or similar services to the public in the open market in New Zealand; and
- (iii) on ordinary trade or professional terms between buyers and sellers independent of each other: 30
- (b) when an employer pays for the services to be provided, dealing at arm's length with the supplier of the services, the amount paid or payable:
- (c) if neither **paragraph (a) nor (b)** applies, the price or fee that the employer or supplier providing the services would at that time have charged the public, had they provided the same or similar services to the public in the open 35

market in New Zealand on ordinary trade or professional terms.

*Exclusions*

- (2) This section does not apply to a service that consists of making available a motor vehicle for private use, providing an employment-related loan, or providing subsidised transport. 5

*Services provided to group of employees*

- (3) For the purposes of this section, a person who provides services to an employee belonging to a group of employees is treated as providing the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms if the person provides the same or similar services to a group of persons that— 10
- (a) negotiates the transaction on an arm's-length basis; and
- (b) is comparable in number to the group of employees. 15

*Some definitions*

- (4) In this section,—
- amount**, for a registered person who may claim input tax for that service, means the GST-inclusive amount
- fee and price**, for a registered person who may claim input tax for that service, means the GST-inclusive fee or price. 20
- Defined in this Act: amount, business, employee, employer, employment-related loan, fee, GST, input tax, motor vehicle, New Zealand, pay, price, private use, services, subsidised transport
- Compare: 2004 No 35 s ND 1K 25

**RD 43 Goods at staff discount**

*Goods discounted for employees*

- (1) This section applies when an employer sells goods in the normal course of their business to an employee when all the following apply: 30
- (a) the retail price of identical goods is \$200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and
- (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from 35

- a staff discount that the employer normally provides to employees; and
- (c) at the time of the sale, the staff discount is no more than 5% of the price of identical goods in the circumstances referred to in **paragraph (a)**. 5

*Cost of goods*

- (2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer. 10
- Defined in this Act: cost, employee, employer, goods, identical goods, New Zealand, price
- Compare: 2004 No 35 s ND 1N

**RD 44 Goods on special with staff discount**

*Sale of identical goods*

- (1) This section applies when an employer sells goods to an employee on a day when the employer is offering identical goods for sale in the normal course of their business at a special price and when all the following apply: 15
- (a) the price of the identical goods is \$200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and 20
- (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer offers to the employee in addition to any other discount; and 25
- (c) just before or after the sale to the employee, a reasonable quantity of the identical goods is available in the open market in New Zealand; and
- (d) the price is at least 95% of the cost of the goods to the employer, or at least 95% of the price on the day of the sale of the identical goods to the public in the open market in New Zealand, whichever is less. 30

*Cost of goods*

- (2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer. 35
- Defined in this Act: business, employee, employer, goods, identical goods, New Zealand, price
- Compare: 2004 No 35 s ND 1O

**RD 45 Goods sold by group companies**

For the purposes of **sections RD 43 and RD 44**, if a company that is included in a group of companies sells goods to an employee of another company in the group, the sale is treated as if it were made directly from employer to employee. 5

Defined in this Act: company, employee, employer, goods, group of companies

Compare: 2004 No 35 s ND 1P(2)

**RD 46 Unclassified benefits***Liability limited*

- (1) An employer is liable to pay FBT on an unclassified benefit only within the limits described in this section. 10

*Quarterly payment*

- (2) When FBT is paid quarterly, an employer is liable for FBT on an unclassified benefit provided to an employee in a quarter only if— 15
- (a) the total taxable value of all unclassified benefits provided in the quarter by the employer to the employee is more than \$200; or
- (b) the total taxable value of all unclassified benefits provided in the last 4 quarters including the current quarter by the employer to all employees of the employer, whether accounted for on a quarterly or an income year basis, is more than \$15,000. 20

*Yearly payment*

- (3) When FBT is paid on either an annual basis or an income year basis, except when **subsection (4)** applies, an employer is liable for FBT on unclassified benefits provided to an employee in the tax year or income year only if— 25
- (a) the total taxable value of all unclassified benefits provided in the tax year or income year by the employer to the employee is more than \$800; or 30
- (b) the total taxable value of all unclassified benefits provided in the tax year or income year by the employer to all employees of the employer is more than \$15,000.

*Period longer or shorter than income year* 35

- (4) When an employer accounts for FBT on an income year basis, and the period for which they have accounted under **section RD**

**61** differs from an income year for the reasons described in **subsection (5)**, an employer is liable for FBT on unclassified benefits provided in the period only if—

- (a) the total taxable value of all unclassified benefits provided in the period by the employer to an employee is more than the figure that is the same fraction or multiple of \$800 as the number of days in the period is a fraction or multiple of 365; or 5
- (b) the total taxable value of all unclassified benefits provided in the period by the employer to all employees of the employer is more than the figure that is the same fraction or multiple of \$15,000 as the number of days in the period is a fraction or multiple of 365. 10

*Reasons for difference*

- (5) In **subsection (4)**, the income year for which the employer has accounted may be longer or shorter than the normal income year because the employer has either— 15
  - (a) started or ceased business during that income year; or
  - (b) chosen, with the agreement of the Commissioner, to file a return under this subpart for the income year ending with the date of the annual balance of their accounts. 20

*Employer and associated persons*

- (6) In this section, **employer** includes a person associated with them at any time in the relevant period. 25
 

Defined in this Act: associated person, balance date, business, Commissioner, employee, employer, FBT, income year, quarter, return of income, unclassified benefit

Compare: 2004 No 35 s ND 1Q

**RD 47 Adjustments for unclassified benefits on amalgamation**

*When employer ceases to exist* 30

- (1) This section applies when a company that is an employer ends its existence on amalgamation or when a new company is established on amalgamation. An adjustment is allowed for unclassified benefits in the period in which the amalgamation occurs. 35



*Quarterly payment*

- (2) If the amalgamating company pays FBT quarterly, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$15,000 referred to in **section RD 46(2)(b)** by an amount calculated using the formula— 5

$$\frac{\$15,000 \times \text{number of days in the quarter after amalgamation}}{\text{days in the quarter.}}$$

*Adjustment in quarter of amalgamation*

- (3) If the amalgamated company pays FBT quarterly, and the amalgamated company is a new company established on amalgamation, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$15,000 referred to in **section RD 46(2)(b)** by an amount calculated using the formula— 10  
15

$$\frac{\$15,000 \times \text{number of days in the quarter before amalgamation}}{\text{days in the quarter.}}$$

*Annual payment*

- (4) If the amalgamating company pays FBT annually, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of \$15,000 referred to in **section RD 46(3)(b)** by an amount calculated using the formula— 20

$$\frac{\$15,000 \times \text{number of days in the year after amalgamation}}{365.} \quad 25$$

*Adjustment in year of amalgamation*

- (5) If the amalgamated company pays FBT annually, and the amalgamated company is a new company established on amalgamation, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of \$15,000 referred to in **section RD 46(3)(b)** by an amount calculated using the formula— 30

$$\frac{\$15,000 \times \text{number of days in the year before amalgamation}}{365.} \quad 35$$

Defined in this Act: amount, amalgamated company, amalgamating company, amalgamation, company, employer, FBT, pay, quarter, unclassified benefit, year

Compare: 2004 No 35 s ND 1R

*Attributing fringe benefits to employees***RD 48 Attribution of certain fringe benefits***What this section applies to*

- (1) This section applies when an employer provides a fringe benefit by— 5
- (a) making available a motor vehicle for an employee's private use under **section CX 6** (Private use of motor vehicle):
  - (b) providing an employment-related loan to an employee under **section CX 10** (Employment-related loans) but not a loan by a life insurer under **section CX 11** (Employment-related loans: loans by life insurers): 10
  - (c) providing to an employee a benefit with a taxable value of \$1,000 or more in a year for each of the following categories: 15
    - (i) subsidised transport under **section CX 9** (Subsidised transport):
    - (ii) a contribution to a superannuation scheme under **section CX 13** (Contributions to superannuation schemes): 20
    - (iii) a contribution to a sickness, accident, or death benefit fund under **section CX 14** (Contributions to sickness, accident or death benefit funds):
    - (iv) a contribution to a funeral trust under **section CX 15** (Contributions to funeral trusts): 25
    - (v) the payment of a specified insurance premium or a contribution to an insurance fund of a friendly society under **section CX 16** (Contributions to life or health insurance):
  - (d) providing unclassified benefits to an employee under **section CX 2(1)(b)(ii)** (Meaning of fringe benefit) with a total taxable value of \$2,000 or more in a year. 30

*Attributing fringe benefit to employee*

- (2) The employer must attribute the fringe benefit to the employee, calculating the FBT liability under **section RD 51**. 35

Defined in this Act: employee, employer, employment-related loan, friendly society, fringe benefit, life insurer, motor vehicle, pay, private use, sickness, accident, or death benefit fund, specified insurance premium, subsidised transport, superannuation scheme, unclassified benefit

Compare: 2004 No 35 s ND 3(1), (1A) 40

### **RD 49 When attributed benefits provided to more than 1 employee**

If an employer provides a fringe benefit to which **section RD 48** applies to more than 1 employee, the employer must attribute the benefit to the employee who mainly uses or receives it in a quarter or income year, as applicable. If the employer cannot determine which employee mainly uses or receives the benefit, they must pool the benefit under **section RD 54**.

5

Defined in this Act: employee, employer, fringe benefit, income year, quarter

Compare: 2004 No 35 s ND 3(2)

10

### **RD 50 Application of thresholds to attributed benefits**

*When this section applies*

- (1) This section applies when the value of a fringe benefit described in **section RD 48** is above or below the threshold referred to in that section.

15

*Below threshold*

- (2) If the taxable value of a benefit under **section RD 48(1)(c) and (d)** is under the relevant threshold, the employer must either—
- (a) attribute all fringe benefits with an annual taxable value under the relevant threshold that fall within the particular category; or
  - (b) pool the value of the benefit under **section RD 54**.

20

*Exception for subsidised transport*

- (3) Despite **section RD 48(1)(c)(i)**, if the employer provides subsidised transport under **section CX 9** (Subsidised transport) with a taxable value over the threshold, they may pool the value of the benefit under **section RD 54** if all their employees have the same or a similar entitlement to the fringe benefit.

25

*Amending thresholds*

- (4) The Governor-General by Order in Council may determine the amount of the thresholds referred to in **section RD 48**, setting out the tax year in which the threshold is to apply.

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Defined in this Act: amount, employee, employer, fringe benefit, subsidised transport, tax year

Compare: 2004 No 35 ss ND 3(4)–(7), ND 4, ND 16

35

**RD 51 Employer's liability for attributed benefits***When this section applies*

- (1) This section applies when an employer is required to attribute the value of a fringe benefit to an employee under **sections RD 48 and RD 50**. 5

*Tax liability*

- (2) The employer's FBT liability in relation to the employee is the amount calculated using the formula—  

$$\text{tax on all-inclusive pay} - \text{tax on cash pay}.$$

*Definition of items in formula* 10

- (3) In the formula,—
- (a) **tax on all-inclusive pay** is the amount determined at the rate set out in **schedule 1, part C, table 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) on the amount of the employee's all-inclusive pay calculated using the formula in **section RD 52(2)**: 15
- (b) **tax on cash pay** is the amount calculated under **section RD 52(3)(b) or (4)(b)**.

*Exception for shareholder-employees and persons with attributed income* 20

- (4) If the employer has an exception for an employee under **section RD 53** in a tax year, and the employer pays FBT at the rate of 49% of the taxable value of the attributed fringe benefits under **section RD 53(3)(a)**, the employer must deduct the FBT payable in the tax year from the result of the formula in **subsection (2)**. 25

*Further option*

- (5) Instead of calculating FBT under **subsections (2) and (4)**, an employer may choose to pay FBT at the rate of 63.93% on the taxable value of the attributed fringe benefits. 30
- Defined in this Act: amount, employee, employer, FBT, fringe benefit, pay, tax year  
 Compare: 2004 No 35 s ND 5(3)–(6)

**RD 52 Calculation of all-inclusive pay***When this section applies*

- (1) This section applies to determine the amount of an employee's all-inclusive pay for the purposes of **section RD 51**. 35

*Calculation*

- (2) The amount of an employee's all-inclusive pay is calculated using the formula—

$$\begin{array}{r} \text{cash pay} - \text{tax on cash pay} \\ + \text{taxable value of all fringe benefits.} \end{array} \quad 5$$

*Definition of items in formula for major shareholder*

- (3) If the employee is a major shareholder, the items in the formula are—

- (a) **cash pay** is the cash pay of the employee for the income year in which the fringe benefit is attributed that is paid to the employee or applied on their account by the employer or a related employer, and includes—
- (i) a dividend and interest derived by the employee from their employer; and
  - (ii) a dividend and interest derived by the employee from a related employer: 15
- (b) **tax on cash pay** is the tax on the cash pay of the employee calculated using the basic tax rate set out in **schedule 1, part A, clause 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits),—
- (i) treating the cash pay as if it were the only taxable income of the employee; and
  - (ii) taking into account a tax credit under **sections LC 1 and LC 2** (which relate to tax credits for persons on low incomes), applying the sections as if the employee were resident in New Zealand for the whole income year: 20
- (c) **taxable value of all fringe benefits** is—
- (i) the taxable value of all fringe benefits attributed to the employee in the tax year; and
  - (ii) the taxable value of all fringe benefits attributed to a person associated with the employee in the income year if the person does not receive the fringe benefits as an employee of the employer. 30

*Definition of items in formula for person who is not major shareholder* 35

- (4) If the employee is not a major shareholder, the items in the formula are—

- (a) **cash pay** is the cash pay of the employee for the tax year in which the fringe benefit is attributed that is paid to the employee or applied on their account by the employer or a related employer:
- (b) **tax on cash pay** is the tax on the cash pay of the employee calculated using the basic rate of income tax set out in **schedule 1, part A, clause 1**,—
- (i) treating the cash pay as if it were the only taxable income of the employee; and
- (ii) taking into account a tax credit under **sections LC 1 and LC 2**, applying the sections as if the employee were resident in New Zealand for the whole tax year:
- (c) **taxable value of all fringe benefits** is the taxable value of all fringe benefits attributed to the employee in the tax year.
- Timing of amounts*
- (5) In this section, the cash pay of a shareholder-employee who derives an amount of pay referred to in **paragraph (b) or (c)** of the definition of **pay** in **subsection (6)** is treated as derived in the income year following the income year in which it was received or attributed.
- Some definitions*
- (6) In this section,—
- pay** means—
- (a) salary or wages; and
- (b) income to which **section RD 3(2) to (4)** applies; and
- (c) an amount attributed under **section GB 29** (Attribution rule: calculation); and
- (d) an extra pay; and
- (e) a schedular payment
- related employer** means a branch or division of an employer, or a person associated with the employer.
- Defined in this Act: amount, basic rate, dividend, employee, employer, extra pay, income year, interest, major shareholder, pay, related employer, resident in New Zealand, salary or wages, schedular payment, shareholder-employee, tax year, taxable income
- Compare: 2004 No 35 ss ND 5(1), (2), ND 7, ND 7A

### **RD 53 Calculation for certain employees when information lacking**

*When this section applies*

- (1) This section applies in relation to the following persons when an employer does not have sufficient information to complete a calculation under **section RD 51 or RD 52**: 5
- (a) a shareholder-employee who derives salary or wages, or income to which **section RD 3(2) to (4)** applies; or
  - (b) an employee receiving attributed income under **section GB 29** (Attribution rule: calculation) from a company or trust that is their employer. 10

*Calculations under sections RD 51 and RD 52 not required*

- (2) **Sections RD 51 and RD 52** do not apply in the tax year or income year, as applicable, in which the employer is required to attribute a fringe benefit to the employee. 15

*Alternative rates*

- (3) The employer must either—
- (a) pay FBT at the rate of 49% of the taxable value of the fringe benefits attributed for the tax year, and apply **sections RD 51 and RD 52** to the benefits in the next tax year; or 20
  - (b) pay FBT at the rate of 63.93% of the taxable value of the fringe benefits attributed for the tax year.

Defined in this Act: company, employee, employer, FBT, fringe benefit, income, income year, salary or wages, shareholder-employee, tax year 25

Compare: 2004 No 35 s ND 5A

### **RD 54 Pooling non-attributed benefits**

*When this section applies*

- (1) This section applies in a tax year when an employer provides a fringe benefit that is— 30
- (a) a benefit provided to a former employee; or
  - (b) an employment-related loan provided by a life insurer under **section CX 11** (Employment-related loans: loans by life insurers); or
  - (c) a benefit to which **section RD 49** applies that cannot be attributed to a particular employee; or 35
  - (d) an attributed benefit to which **section RD 50(2)** applies; or
  - (e) subsidised transport to which **section RD 50(3)** applies.

*Pooling value*

- (2) The employer must pool the value of the benefits.

*Final quarter pooling*

- (3) For the final quarter of the tax year, the employer must create 2 pools, 1 for each of the following groups of persons: 5
- (a) the first pool is for an employee who is a major shareholder, or a person associated with an employee who is a major shareholder (unless that person receives the fringe benefit as an employee of the employer):
- (b) the second pool is for all other employees. 10

*Final quarter calculation*

- (4) The employer must calculate FBT for the final quarter of the tax year on the annual taxable value of the pooled fringe benefits—
- (a) at the rate of 64% for the first pool; and 15
- (b) at the rate of 49% for the second pool.

Defined in this Act: associated person, employee, employer, employment-related loan, FBT, fringe benefit, life insurer, major shareholder, quarter, subsidised transport, tax year

Compare: 2004 No 35 s ND 6 20

*Taxable value of fringe benefits***RD 55 Value of and payments towards fringe benefits***Value of benefit*

- (1) The taxable value of a fringe benefit is the value of the benefit. **Subsection (2)** overrides this subsection. 25

*Reduction for payment by employee*

- (2) If an employee pays an amount for receiving a fringe benefit, the value of the benefit is reduced by the amount paid.

*When associate pays amount*

- (3) If **section GB 32** (Benefits provided to employee's associates) applies, the value of the benefit is reduced when a person associated with the employee pays an amount for the benefit. 30

*Exclusions*

- (4) This section does not apply to—



- (a) an employment-related loan:
- (b) a payment to acquire or improve an asset if receiving or using the asset does not constitute a fringe benefit.

Defined in this Act: amount, associated person, employee, employment-related loan, fringe benefit, pay

5

Compare: 2004 No 35 s ND 1S

### **RD 56 Private use of motor vehicle: taxable value in cases of part ownership**

If a fringe benefit is provided by making available a motor vehicle to an employee for their private use, and the vehicle is owned in part by the employee (or, if **section GB 32** (Benefits provided to employee's associates) applies, a person associated with the employee), the taxable value of the fringe benefit is determined under **section RD 57 or RD 58**.

10

Defined in this Act: employee, fringe benefit, motor vehicle, private use

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Compare: 2004 No 35 s ND 1T

### **RD 57 Private use of motor vehicle: when schedular value not used**

*When this section applies*

- (1) This section applies when the employer has not valued the motor vehicle at cost or market value, excluding GST, under **schedule 5, clause 5** (Fringe benefit values for motor vehicles).

20

*Reduction*

- (2) In the calculation of the taxable value of the fringe benefit, the value of the benefit determined under **sections RD 29 to RD 31** is reduced by an amount that is the applicable percentage of the cost (determined including GST under **schedule 5, clause 4(a)**) of the motor vehicle to the employee or the associated person as follows:
  - (a) if FBT is paid quarterly, 2.5%:
  - (b) if FBT is paid on an annual basis, 2.5% for each quarter in which the vehicle was part-owned by the employee or the associated person:
  - (c) if FBT is paid on an income year basis, 10%.

25

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*When period longer or shorter than income year*

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- (3) In **subsection (2)(c)** and **section RD 58(2)(c) and (3)**, if the period for which the employer accounts for FBT differs from a normal

income year for the reasons described in **subsection (4)**, the amount by which the taxable value of the fringe benefit is reduced is a percentage of the cost (determined including GST under **schedule 5, clause 4(a)**) of the motor vehicle to the employer or the associated person equal to the amount calculated using the formula— 5

$$\frac{10\% \times \text{number of days in period}}{365}.$$

*Reasons for difference*

- (4) The period for which the employer has accounted may be longer or shorter than the normal income year because the employer has either— 10
- (a) started or ceased business during that income year; or
  - (b) chosen, with the agreement of the Commissioner, to provide a fringe benefit return for the income year ending with the date of the annual balance of their accounts. 15

*When vehicle owned less than whole year*

- (5) If an employee has not been part-owner of the motor vehicle for the whole of the income year, or the period referred to in **subsection (4)**, a reduction under this section is reduced by the proportion of the number of days of the income year or period for which the employee was not a part-owner to the total number of days of that income year or period. 20

Defined in this Act: amount, associated person, employee, employer, FBT, fringe benefit, GST, income year, motor vehicle 25

Compare: 2004 No 35 s ND 1U

**RD 58 Private use of motor vehicle: when schedular value used**

*When this section applies* 30

- (1) This section applies when the employer has valued the motor vehicle at cost or market value, excluding GST, under **schedule 5, clause 5** (Fringe benefit values for motor vehicles).

*Reduction*

- (2) In the calculation of the taxable value of the fringe benefit, the value of the benefit determined under **sections RD 29 to RD 31** is reduced by an amount that is the applicable percentage of the 35

cost, determined excluding GST, under **schedule 5, clause 6(a)** in the following way:

- (a) when FBT is paid quarterly, by a percentage calculated using the formula—
- $$2.5 + (2.5 \times \text{schedule 5 rate}): \quad 5$$
- (b) when FBT is paid on an annual basis, by a percentage for each quarter in which the vehicle was part-owned by the employee or associated person calculated using the formula—
- $$2.5 + (2.5 \times \text{schedule 5 rate}): \quad 10$$
- (c) when FBT is paid on an income year basis, by a percentage calculated using the formula—
- $$10 + (10 \times \text{schedule 5 rate}).$$

*Schedule 5 rate*

- (3) In the formulas, **schedule 5 rate** is the rate of GST specified in **schedule 5, clause 6**, for the employer and the relevant quarter and relevant income year, as applicable. 15

Defined in this Act: associated person, employee, employer, FBT, fringe benefit, income year, motor vehicle, pay, quarter

Compare: 2004 No 35 s ND 1V 20

*Options for payment of FBT*

**RD 59 Single rate option**

*Rate for all quarters*

- (1) An employer who chooses to pay their fringe benefit liability under the single rate option must pay FBT at the rate of 64% of the taxable value of a fringe benefit for each of the 4 quarters of a tax year. 25

*Replacing final quarter calculation*

- (2) Despite **subsection (1)**, an employer may ask the Commissioner to replace the FBT liability determined for the final quarter under this section with an amount calculated under **section RD 60(4)**. The employer must provide the information necessary for the calculation. 30

Defined in this Act: amount, Commissioner, employer, fringe benefit, pay, quarter, tax year 35

Compare: 2004 No 35 ss ND 1(2)(b), (4), ND 2(2)

**RD 60 Alternate rate option***Election*

- (1) This section applies when an employer chooses to pay their fringe benefit liability under the alternate rate option.

*First three quarters*

5

- (2) The employer may pay FBT for any or all of the first 3 quarters of a tax year at 49% of the taxable value of a fringe benefit.

*Alternate rate*

- (3) The employer must pay FBT at the rate of 64% of the taxable value of a fringe benefit for any of the first 3 quarters of a tax year for which they do not pay at the rate of 49% under **subsection (2)**. 10

*Final quarter*

- (4) For the final quarter of the tax year, the employer must calculate the total pay of each employee under **sections RD 51 and RD 54** for the tax year and subtract the amount of FBT payable for the previous 3 quarters of the tax year. 15

*Decision irrevocable*

- (5) The decision to use the alternate rate option cannot be changed after the return is filed. 20

Defined in this Act: employer, FBT, fringe benefit, pay, quarter, tax year

Compare: 2004 No 35 ss ND 1(2)(a), ND 2(1)–(4), ND 10(1)

**RD 61 Close company option***When this section applies*

25

- (1) This section applies in an income year when an employer that is a close company provides a fringe benefit to a shareholder-employee if, in the preceding income year,—

- (a) the gross amounts of tax for both PAYE income payments and employer's superannuation contributions for the tax year were no more than \$100,000; or 30
- (b) the employer did not employ any employees.

*Income year basis*

- (2) The employer may choose to pay their FBT liability on an income year basis, informing the Commissioner of their decision in writing or by telephone no later than—
- (a) the last day of the first quarter of the relevant income year; or 5
  - (b) the last day of the quarter in which the employer first starts employing employees, if **subsection (1)(b)** applies.

*Rate or calculation*

- (3) The employer must pay FBT on the taxable value of fringe benefits in the income year in which they make their election and in later income years either—
- (a) at the rate of 64% of the taxable value of a fringe benefit; or 10
  - (b) by calculating for the relevant income year the total pay of each employee under **sections RD 51 and RD 54**. 15

*Replacing rate with calculated liability*

- (4) Despite **subsection (3)**, the employer may ask the Commissioner to replace the FBT liability determined under **subsection (3)(a)** with a calculation under **subsection (3)(b)**. The employer must provide the information necessary for the calculation. 20

*Part-periods*

- (5) If an income year for which an employer chooses to pay FBT on an income year basis does not start on the same day as the first day of a quarter, the employer must treat the period between the first day of the quarter in which the first day of the income year falls and the first day of the income year as if it were a quarter. 25

*More than 1 business*

- (6) If an employer ceases business and starts a new business, or operates 2 or more businesses at the same time, the total of all amounts of tax referred to in **subsection (1)** must be aggregated. 30

Defined in this Act: amount of tax, business, close company, employee, employer, employer's superannuation contribution, FBT, fringe benefit, income year, pay, PAYE income payment, quarter, shareholder-employee, tax year 35

Compare: 2004 No 35 ss ND 1(2)(c), (5), ND 14, ND 15(7), (8)

**RD 62 Small business option***When this section applies*

- (1) This section applies when an employer provides a fringe benefit to an employee who is not a shareholder-employee in a tax year if, for the preceding tax year,— 5
- (a) the gross amounts of tax for both PAYE income payments and employer's superannuation contributions for the tax year were no more than \$100,000; or
  - (b) the employer did not employ any employees.

*Annual basis* 10

- (2) The employer may choose to pay their FBT liability on an annual basis, informing the Commissioner of their decision in writing or by telephone no later than—
- (a) 30 June in the relevant tax year; or
  - (b) the last day of the quarter in which the employer first starts employing employees, if **subsection (1)(b)** applies. 15

*Rate or calculation*

- (3) The employer must pay FBT on the taxable value of fringe benefits in the tax year in which they make their election and in later tax years either— 20
- (a) at the rate of 64% of the taxable value of a fringe benefit; or
  - (b) by calculating for the relevant tax year the total pay of each employee under **sections RD 51 and RD 54**.

*Replacing rate with calculated amount* 25

- (4) Despite **subsection (3)**, the employer may ask the Commissioner to replace the FBT liability determined under **subsection (3)(a)** with a calculation under **subsection (3)(b)**. The employer must provide the information necessary for the calculation.

*Quarters in year* 30

- (5) For the purposes of **subsection (3)**, the tax year is treated as if it were 4 consecutive quarters.

*More than 1 business*

- (6) If an employer ceases business and starts a new business, or operates 2 or more businesses at the same time, the total of all amounts of tax referred to in **subsection (1)** must be aggregated.

Defined in this Act: amount of tax, business, Commissioner, employee, employer, employer's superannuation contribution, FBT, fringe benefit, pay, PAYE income payment, shareholder-employee, tax year

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Compare: 2004 No 35 ss ND 1(2)(c), (4), (5), ND 13

**RD 63 Changes in payment periods***No changes for simple or alternate rate options*

10

- (1) An employer's decision to pay FBT on a quarterly basis under the single rate option or the alternate rate option cannot be changed.

*When requirements for yearly basis no longer met*

- (2) If an employer who has chosen for a tax year to pay FBT on an income year basis or on an annual basis no longer meets the relevant requirements of **section RD 61(1) or RD 62(1)**, the employer must pay their FBT liability for fringe benefits provided to employees on or after the first day of the tax year under the single rate option or the alternate rate option.

15

20

*Choosing to change to quarterly basis*

- (3) An employer who has chosen for a tax year to pay FBT on an income year basis or on an annual basis, may choose at any time to pay FBT on a quarterly basis.

*When change takes effect*

25

- (4) An employer who chooses to change their payment period under **subsection (3)** must pay their FBT liability on a quarterly basis for a fringe benefit provided from—

- (a) the first day of the next tax year, if the employer previously paid on an annual basis; or
- (b) the first day of the next income year of the employer, if the employer previously paid on an income year basis; or
- (c) another date agreed by the employer and the Commissioner.

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*Choosing to change to income year basis*

- (5) If an employer who is eligible to use the close company option has been paying FBT on a quarterly basis, and chooses to change to payment on an income year basis, a calculation must be made under **section RD 60** for the period— 5
- (a) beginning immediately after the end of the last full tax year for which the employer pays FBT on a quarterly basis: 5
- (b) ending immediately before the start of the first income year for which the election applies. 10

*Part-periods*

- (6) If an employer changes their payment period from an income year to a quarter, and the day referred to in **subsection (4)(b)** is not the same day as the first day of a quarter, then for the purposes of the payment of FBT, the employer must treat the period between that day and the first day of the next quarter as if it were a quarter. 15

Defined in this Act: Commissioner, employee, employer, FBT, income year, pay, quarter, tax year

Compare: 2004 No 35 ss ND 2(4), ND 14(2B), ND 15 20

**RD 64 When employer stops employing staff***Who this section applies to*

- (1) This section applies in a tax year to an employer who stops employing staff and does not intend to replace them. But this section does not apply to an employer who continues to provide a fringe benefit to a former employee. 25

*Treated as final quarter*

- (2) The employer must pay FBT under **section RD 60**, treating the quarter of the tax year in which the employment ended as if it were the final quarter. 30

*Single rate option*

- (3) As an alternative to the application of **section RD 51(2) or RD 54(3)**, the employer may choose to pay FBT under the single rate option— 35
- (a) making the calculation in relation to the period from the start of the tax year to the date on which the employer stops employing staff; and



- (b) taking into account any earlier payments of FBT made in relation to an employee.

Defined in this Act: employee, employer, FBT, fringe benefit, pay, quarter, tax year

Compare: 2004 No 35 s ND 8

## ***ESCT rules and employer's superannuation contributions*** 5

### *Introductory provisions*

#### **RD 65 ESCT rules and their application**

##### *Meaning*

- (1) The **ESCT rules** means—
- (a) **section CX 49** (Employer's superannuation contributions); and
  - (b) **sections RD 66 to RD 71**; and
  - (c) sections 15C to 15M, 24J to 24P, 47, 48, and Part 9 of the Tax Administration Act 1994.

##### *Application*

- (2) The ESCT rules apply to an employer who makes an employer's superannuation contribution.

Defined in this Act: employer, employer's superannuation contribution, ESCT rules

Compare: 2004 No 35 ss NE 1, OB 1 "SSCWT rules"

#### **RD 66 Employer's superannuation contributions** 20

##### *Contribution in money for benefit of employees*

- (1) An **employer's superannuation contribution** means a contribution in money made to a superannuation fund by an employer for the benefit of 1 or more of their employees.

##### *Determining amount of contribution*

- (2) The amount of an employer's superannuation contribution is the sum of—
- (a) the amount of the contribution received by the superannuation fund or, for a contribution paid to the Commissioner under the KiwiSaver Act 2006, received by the Commissioner for payment to the superannuation fund; and
  - (b) the amount of tax for the employer's superannuation contribution.

*Payment of amount of tax*

- (3) An employer who makes an employer's superannuation contribution on behalf of an employee must pay to the Commissioner the amount of tax for the contribution. The amount is payable in 2 payment periods in a month as set out in **section RA 15** (Payment dates for interim and other tax payments) unless they are an employer to whom **section RD 23(3)** applies. **Subsection (4)** overrides this subsection. 5

*Contributions to KiwiSaver schemes*

- (4) **Subsection (3)** and, as applicable, **sections RD 67 to RD 69**, do not apply to an employer's superannuation contribution (the **current contribution**) to the extent to which it is— 10
- (a) a contribution to the employee's KiwiSaver scheme; and
- (b) no more than the lesser of— 15
- (i) an amount calculated under **subsection (5)**;
- (ii) an amount calculated under **subsection (6)**.

*Formula: subsection (4)(b)(i)*

- (5) The amount referred to in **subsection (4)(b)(i)** is calculated using the formula— 20
- $$0.04 \times \text{total salary or wages} \\ - \text{previous exempt contributions.}$$

*Formula: subsection (4)(b)(ii)*

- (6) The amount referred to in **subsection (4)(b)(ii)** is calculated using the formula— 25
- $$\text{total KiwiSaver contributions} \\ - \text{previous exempt contributions.}$$

*Definition of items in formulas*

- (7) In the formulas,— 30
- (a) **total salary or wages** means the total amount of salary or wages paid to the employee in the KiwiSaver calculation period, excluding salary or wages for which there are no KiwiSaver contributions: 30
- (b) **previous exempt contributions** means the total amount of employer's superannuation contributions for the employee to the extent to which the contributions, excluding the current contribution,— 35

- (i) are made in the KiwiSaver calculation period; and
- (ii) are contributions to which **subsection (4)** applies:
- (c) **total KiwiSaver contributions** means the total amount of KiwiSaver contributions withheld from the salary or wages paid to the employee in the KiwiSaver calculation period. 5

*When contribution paid*

- (8) The amount of ESCT is treated for tax purposes as paid by the employer and received by the superannuation fund at the time the employer makes the contribution. 10

*Some definitions*

- (9) In this section,—
  - Kiwisaver calculation period**, for a current contribution, means a period— 15
    - (a) beginning with the later of—
      - (i) 1 year before the date on which the employer makes the current contribution:
      - (ii) the date on which the employer is first required to withhold a KiwiSaver contribution from the employee’s salary or wages; and 20
    - (b) ending with the date on which the employer makes the current contribution

**KiwiSaver contribution** means a contribution required to be withheld under Part 3, subpart 1 of the KiwiSaver Act 2006 25

**KiwiSaver scheme** has the meaning given in section 4 of the KiwiSaver Act 2006

**salary or wages** has the meaning given in section 4 of the KiwiSaver Act 2006.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer’s superannuation contribution, ESCT, KiwiSaver calculation period, KiwiSaver contribution, KiwiSaver scheme, pay, salary or wages, superannuation fund 30

Compare: 2004 No 35 ss NE 2(2), NE 3, NE 6, OB 1 “employer’s superannuation contribution”, “specified superannuation contribution” 35

*Calculating amounts of tax***RD 67 Calculating amounts of tax for employer's superannuation contribution**

The amount of tax for an employer's superannuation contribution is the amount determined under 1 of the following paragraphs, as applicable: 5

- (a) if the employee chooses under **section RD 69(1)**, the amount determined under **schedule 1, part D, clause 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); or 10
- (b) if the employer chooses under **section RD 69(3)**, the amount determined under **schedule 1, part D, clause 2**; or
- (c) the amount determined under **schedule 1, part D, clause 3**.

Defined in this Act: amount, amount of tax, employee, employer, employer's superannuation contribution 15

Compare: 2004 No 35 ss NE 2, NE 2AA, NE 2AB

**RD 68 Choosing to have amount treated as salary or wages**

With the agreement of their employer who makes an employer's superannuation contribution on their behalf, an employee may choose to have some or all of an employer's superannuation contribution made on their behalf treated as salary or wages under the PAYE rules. 20

Defined in this Act: employee, employer's superannuation contribution, PAYE rules, salary or wages

Compare: 2004 No 35 s NE 2A(1), (2) 25

**RD 69 Choosing to apply different rates of tax***Agreement for rate to apply*

- (1) With the agreement of an employer who makes an employer's superannuation contribution on their behalf, an employee may choose to have the amount of tax for some or all of the amount of the contribution withheld at the rate set out in **schedule 1, part D, clause 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 30

*When subsection (3) applies*

- (2) **Subsection (3)** applies when an employer makes an employer's superannuation contribution on behalf of an employee who has not made an election under **subsection (1)**. 35

*Employer's election*

- (3) The employer may choose to withhold the amount of tax for the contribution at the rate set out in **schedule 1, part D, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the amount of salary or wages that— 5
- (a) the employee derives in the tax year before the tax year to which the contribution relates, if the employee has been employed by the employer for the whole of that preceding tax year; or
- (b) the employer estimates will be derived by the employee in the tax year to which the contribution relates. 10

*PAYE intermediaries*

- (4) For the purposes of **subsection (3)**, an employer includes a PAYE intermediary. 15
- Defined in this Act: amount of tax, employee, employer, employer's superannuation contribution, PAYE intermediary, salary or wages, tax year
- Compare: 2004 No 35 ss NE 2AA, NE 2AB, NE 2A(1), (2)

**RD 70 Calculating amounts of tax on failure to withhold***When this section applies*

- (1) This section applies if an employer or PAYE intermediary does not withhold an amount of tax for an employer's superannuation contribution under **section RD 66(3)**. 20

*Formula for amount of tax*

- (2) The amount of tax is calculated using the formula— 25
- $$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to fund} - \text{tax already paid.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part D** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) at the time the contribution was made: 30
- (b) **contribution to fund** is the amount of the contribution received by the superannuation fund excluding the amount of tax: 35

- (c) **tax already paid** is any amount of tax for the contribution that has already been paid.

Defined in this Act: amount, amount of tax, basic rate, employer, employer's superannuation contribution, PAYE intermediary, superannuation fund

Compare: 2004 No 35 s NE 5

5

### **RD 71 Amounts of tax treated as paid to and received by superannuation funds**

In determining whether an employer has met their obligation to pay a contribution to a superannuation fund—

- (a) the employer or their PAYE intermediary is treated as having paid to the superannuation fund an amount of tax under the ESCT rules or the PAYE rules, if applicable; and 10
- (b) the fund is treated as having received the amount referred to under **paragraph (a)**; and 15
- (c) the payment and receipt are treated as having occurred when the superannuation fund received the employer's superannuation contribution.

Defined in this Act: amount of tax, employer, employer's superannuation contribution, ESCT rules, pay, PAYE intermediary, PAYE rules, superannuation fund

Compare: 2004 No 35 s NE 6

20

### *Tax on certain withdrawals from superannuation funds*

#### **RD 72 Recovery of tax paid by superannuation funds**

*When this section applies*

- (1) This section applies for the purposes of **section CS 1** (Withdrawals) when a person who is a member of a superannuation fund makes a withdrawal from the fund. 25

*Amount of recovery*

- (2) The trustee of the fund may subtract from the amount of the withdrawal an amount calculated using the formula— 30
- $$\text{tax rate} \times \text{superannuation fund's income.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 3** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 35

- (b) **superannuation fund's income** is the income of the superannuation fund calculated under **section CS 1**.

Defined in this Act: amount, basic rate, income, income tax, superannuation fund, trustee

Compare: 2004 No 35 s NEA 1

5

## Subpart RE—Tax on resident passive income

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*Introductory provisions*

- RE 1 RWT rules and their application** 5
- Meaning*
- (1) The **RWT rules** means—
- (a) this subpart; and
  - (b) **sections LA 4, LA 6, and LB 3** (which relate to tax credits for RWT); and 10
  - (c) sections 15T, 25 to 28, 32E to 32L, 50 to 55, 78D, and 99, Part 9, sections 170 to 172, and 185 of the Tax Administration Act 1994.
- Application*
- (2) The RWT rules apply to a person who pays an amount of resident passive income. 15
- Defined in this Act: amount, pay, resident passive income, RWT rules  
 Compare: 2004 No 35 s OB 1 “RWT rules”
- RE 2 Resident passive income**
- Interest, dividends, and certain distributions* 20
- (1) **Resident passive income** means an amount paid to a person resident in New Zealand to the extent to which it consists of—
- (a) interest;
  - (b) a dividend;
  - (c) a taxable Maori authority distribution; 25
  - (d) a replacement payment paid to a person under a share-lending arrangement.
- Exclusions and inclusions*
- (2) **Subsections (3) to (5)** override **subsection (1)**.
- Exclusions from interest* 30
- (3) The following amounts are excluded from interest under this section:
- (a) exempt interest:



- |                                  |   |    |
|----------------------------------|---|----|
| (b)                              | interest derived by a person who holds an RWT exemption certificate issued under <b>section RE 27</b> :   |    |
| (c)                              | interest that is non-resident passive income paid to a person resident in New Zealand who is acting as the agent or nominee of a non-resident:    | 5  |
| (d)                              | interest derived from outside New Zealand by a non-resident:  |    |
| (e)                              | interest paid by a company and derived by another company when both companies are part of the same group of companies at the time of the payment: | 10 |
| (f)                              | interest paid to an intermediary—   |    |
|                                  | (i) by a client in relation to the operation of a tax pooling account; or   |    |
|                                  | (ii) by the Commissioner under <b>section RP 18</b> (Deposits in tax pooling accounts):   | 15 |
| (g)                              | interest payable under section 120D or Part 7 of the Tax Administration Act 1994.   |    |
| <i>Inclusions in interest</i>    |   |    |
| (4)                              | For the purposes of this section, the following amounts are treated as interest and not as a dividend:  | 20 |
| (a)                              | a dividend that a building society pays to a member in relation to a withdrawable share in the society:   |    |
| (b)                              | a dividend that a friendly society pays to its member in relation to a share in the society.  |    |
| <i>Exclusions from dividends</i> |   |    |
| (5)                              | The following amounts are excluded from a dividend under this section:  | 25 |
| (a)                              | a dividend that is exempt income—   |    |
|                                  | (i) through the application of any of <b>sections CW 9 to CW 11</b> (which relate to income from equity); or                                      | 30 |
|                                  | (ii) under <b>section CW 63</b> (Exemption under other Acts):   |    |
| (b)                              | an amount treated as a dividend under—  |    |
|                                  | (i) <b>section CB 33(5)(a)</b> (Amounts derived by members from mutual associations); or  |    |
|                                  | (ii) <b>sections GB 23 to GB 25</b> (which relate to excessive remuneration):   | 35 |
| (c)                              | an amount of attributed repatriation:   |    |
| (d)                              | a dividend derived by a person who holds an RWT exemption certificate issued under <b>section RE 27</b> :   |    |
| (e)                              | a dividend that is non-resident passive income:   | 40 |

- (f) a dividend derived by a non-resident other than a dividend derived from New Zealand:
- (g) a dividend paid by a company and derived by another company when both are part of the same group of companies at the time of the payment. 5

*Beneficiary income*

- (6) If a person derives an amount described in this section in their capacity as trustee and the amount is beneficiary income, the amount is treated as not derived by the trustee. 10
- Defined in this Act: amount, attributed repatriation, beneficiary income, building society, Commissioner, company, derived from New Zealand, dividend, exempt income, exempt interest, friendly society, group of companies, interest, New Zealand, non-resident, non-resident passive income, pay, replacement payment, resident in New Zealand, resident passive income, RWT exemption certificate, share, share-lending arrangement, tax pooling account, taxable Maori authority distribution, trustee, withdrawable share 15
- Compare: 2004 No 35 s NF 1(2), (4), (5)

***Withholding obligations***

**RE 3 Obligation to withhold RWT**

*Obligation to withhold and pay* 20

- (1) A person to whom **section RE 1(2)** applies is liable to withhold RWT and pay the amount to the Commissioner if they make the payment and—
  - (a) meet 1 of the requirements set out in **section RE 4**:
  - (b) are not excluded under **sections RE 5 and RE 6** from the obligation to withhold: 25
  - (c) they are an RWT proxy in relation to the payment.

*Non-cash dividends*

- (2) For the purposes of **subsection (1)**, if the payment is a non-cash dividend, the person must calculate the amount of tax under **section RE 14** and pay the amount to the Commissioner. 30

Defined in this Act: amount, amount of tax, Commissioner, non-cash dividend, pay, RWT, RWT proxy

Compare: 2004 No 35 s NF 2(1A), (1AB)

**RE 4 Persons who have withholding obligations***Requirements*

- (1) A person referred to in **section RE 3(1)(a)** must meet at least 1 requirement of each of **subsections (2) and (3)** in relation to a payment of resident passive income. 5

*Requirement for person*

- (2) The person must be, at the time the payment is made,—
- (a) resident in New Zealand; or
  - (b) if not resident in New Zealand,—
    - (i) carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand; and 10
    - (ii) not excluded under **subsection (4)**.

*Requirements for person and payment*

- (3) In addition to meeting a requirement of **subsection (2)**, 1 of the following requirements must be met at the time the payment is made: 15
- (a) the person holds an RWT exemption certificate:
  - (b) the payment is made in whole or in part in carrying on a taxable activity, whether or not the person acts as agent or trustee for another person: 20
  - (c) the payment is a dividend:
  - (d) the payment is a taxable Maori authority distribution:
  - (e) the payment is a replacement payment under a share-lending arrangement. 25

*When person not treated as resident or carrying on taxable activity*

- (4) For the purposes of **subsection (2)**, a person who is not resident in New Zealand and is carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand, is treated as not meeting the requirements of the subsection if they establish that, at the time the payment is made,— 30
- (a) either,—
    - (i) for interest or a dividend, the payment is attributable to or effectively connected with a fixed establishment of the person outside New Zealand; or 35

- (ii) for a dividend, the company is not resident in New Zealand; and
- (b) all amounts payable in relation to money lent or shares to which the payment relates are payable in a currency other than New Zealand currency. 5
- Currency conversion*
- (5) A person who is required to withhold RWT in relation to a payment of resident passive income that is in a currency other than New Zealand currency may withhold and pay the amount of the RWT in the foreign currency. 10
- Conversion rates: credit*
- (6) For the purposes of **subsection (5)**, in the calculation of the amount of RWT to be credited against income tax or treated as FDP, the amount must be converted to New Zealand currency at the option of the person deriving the resident passive income either at— 15
- (a) the close of trading spot exchange rate on the day the RWT is paid; or
- (b) an exchange rate specified by the Commissioner for this purpose in relation to the month in which the RWT is paid. 20
- Conversion rates: payment*
- (7) For the purposes of **subsection (5)**, in the calculation of the amount of RWT to be paid to the Commissioner, the amount must be converted to New Zealand currency either at— 25
- (a) the close of trading spot exchange rate on the first working day of the month after the month in which the day the RWT is withheld; or
- (b) a conversion rate applying under **section OB 60(6)** (Imputation credits attached to dividends) if the resident passive income is a dividend and the person required to withhold RWT under **subsection (5)** is an Australian ICA company that chooses to use that rate. 30
- Defined in this Act: amount, dividend, fixed establishment, interest, money lent, New Zealand, pay, replacement payment, resident in New Zealand, resident passive income, RWT exemption certificate, share, share-lending arrangement, taxable activity, taxable Maori authority distribution, trustee 35
- Compare: 2004 No 35 s NF 2(3), (4)

**RE 5 No withholding obligation in certain circumstances***When this section applies*

- (1) This section applies when a person (**person A**)—
- (a) pays an amount to another person (**person B**); or
  - (b) receives a payment while acting as agent or bare trustee for person B. 5

*No obligation if person B exempt*

- (2) For the purposes of determining whether person A is required under **section RE 4** to withhold RWT, the payment is treated as not consisting of resident passive income if person A has established that person B holds an RWT exemption certificate issued under **section RE 27**. 10

Defined in this Act: amount, amount of tax, pay, resident passive income, RWT, RWT exemption certificate, trustee

Compare: 2004 No 35 s NF 2(7) 15

**RE 6 When obligation to withhold unreasonable***When this section applies*

- (1) This section applies when a person (**person A**) who is a person listed in a paragraph in section 32E(2)(a) to (h) of the Tax Administration Act 1994—
- (a) receives an amount from another person (**person B**); or
  - (b) makes a payment at person B's request. 20

*No obligation if unreasonable*

- (2) For the purposes of determining whether person A is required under **section RE 4** to withhold RWT, the payment is treated as not consisting of resident passive income of person B to the extent to which—
- (a) person A could not reasonably be expected to be aware that the payment was resident passive income; or
  - (b) for an amount that is a redemption payment, person A could not reasonably be expected to be aware of the amount that consisted of resident passive income. 25

Defined in this Act: amount, amount of tax, pay, redemption payment, resident passive income, RWT

Compare: 2004 No 35 s NF 2(8) 35

**RE 7 When resident passive income paid to trustees***Who this section applies to*

- (1) This section applies when—
- (a) an amount is paid to a person (**person A**) who is acting as trustee for another person (**person B**) at the time; and 5
  - (b) some or all of the amount is resident passive income other than a replacement payment under a share-lending arrangement; and
  - (c) person A— 10
    - (i) does not hold an RWT exemption certificate at the time of the payment; and
    - (ii) is paid the amount in the conduct of a taxable activity carried on by them.

*Obligation to withhold*

- (2) At the time the payment is made and to the extent to which it has not already been withheld, person A must withhold RWT for the payment and pay it to the Commissioner. 15

*Relationship with section RE 9*

- (3) **Section RE 9** overrides this section. 20
- Defined in this Act: amount, amount of tax, Commissioner, pay, replacement payment, resident passive income, RWT exemption certificate, share-lending arrangement, taxable activity, trustee
- Compare: 2004 No 35 s NF 3(1), (2)

**RE 8 When resident passive income paid to agents***Who this section applies to* 25

- (1) This section applies when—
- (a) an amount is paid to a person (**person A**) who is acting as agent for another person (**person B**) at the time; and
  - (b) some or all of the amount is resident passive income; and 30
  - (c) person A—
    - (i) holds an RWT exemption certificate at the time of the payment; or
    - (ii) is paid the amount in the conduct of a taxable activity carried on by them. 35

*Obligation to withhold*

- (2) At the time the payment is received and to the extent to which it has not already been withheld, person A must withhold RWT for the payment and pay it to the Commissioner.

*Relationship with section RE 9*

5

- (3) **Section RE 9** overrides this section.

Defined in this Act: amount, amount of tax, Commissioner, pay, resident passive income, RWT, RWT exemption certificate, taxable activity

Compare: 2004 No 35 s NF 3(1)

**RE 9 Agents' or trustees' obligations in relation to certain dividends**

10

*When this section applies*

- (1) This section applies when an agent or trustee is required to withhold RWT from certain dividends.

*Dividends other than those having the nature of interest*

15

- (2) To the extent to which the resident passive income consists of a dividend other than a dividend treated as interest, an amount of tax that must be withheld under **section RE 3** is treated as an amount to which the RWT rules apply and not as an amount to which the FDP rules apply.

20

*Non-cash dividends*

- (3) To the extent to which the resident passive income consists of a non-cash dividend, the trustee or agent must pay to the Commissioner an amount equal to the amount of tax for the dividend as if it were the amount of tax required to be withheld and paid under the RWT rules.

25

*Obligation of person paying not overridden*

- (4) This section does not override the obligation of the person who pays the resident passive income to the agent or trustee to withhold RWT for the payment under **section RE 4**.

30

Defined in this Act: amount, amount of tax, dividend, dividend treated as interest, FDP rules, non-cash dividend, pay, resident passive income, RWT, RWT rules, trustee

Compare: 2004 No 35 s NF 3(3)–(5)

**RE 10 Special rule relating to payments of interest***Threshold for amounts of interest*

- (1) This section applies to a person who—
- (a) pays resident passive income consisting of interest; and
  - (b) either does not hold an RWT exemption certificate at the time of the payment, or is described in section 32E(2)(k) or (l) of the Tax Administration Act 1994 or holds a certificate under section 32I of that Act; and 5
  - (c) has paid an amount of resident passive income consisting of interest that totals less than \$5,000 in the tax year before the tax year in which the payment is made; and 10
  - (d) would be liable to withhold RWT for the resident passive income in the absence of this section.

*Minimum amount*

- (2) Despite **section RE 4(3)**, the person is required to withhold the amount of tax for the payment only if the total resident passive income consisting of interest paid by the person in the tax year in which the payment is made is more than \$5,000. 15

Defined in this Act: amount of tax, interest, pay, resident passive income, RWT exemption certificate, tax year 20

Compare: 2004 No 35 s NF 2(5)

**RE 11 Notification by companies***When this section applies*

- (1) This section applies when a company that is not a trustee or a Maori authority is entitled to receive a payment of resident passive income other than a replacement payment under a share-lending arrangement. 25

*Notification required*

- (2) The company must notify the person making the payment that they are a company. 30

*Withholding rate*

- (3) The person making the payment must withhold RWT for the payment at the relevant rate set out in **schedule 1, part D, clause 5** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for a payment made on or after the date of notification. 35



*Consequence of failure to notify*

- (4) If the company does not notify the person making the payment, the person must apply the higher withholding rate set out in **section RE 19(3)**.

Defined in this Act: amount of tax, company, Maori authority, notify, pay, replacement payment, resident passive income, share-lending arrangement, trustee

5

Compare: 2004 No 35 s NF 2B

*Calculating amounts of tax***RE 12 Interest***When this section applies*

10

- (1) This section applies when a person makes a payment of resident passive income that consists of interest.

*Calculation of amount of tax*

- (2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

15

$$\begin{aligned} & (\text{tax rate} \times (\text{interest paid} + \text{foreign withholding tax})) \\ & \quad - \text{foreign withholding tax.} \end{aligned}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 4 or 5** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits):
- (b) **interest paid** is the interest paid before the amount of tax is determined:
- (c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the interest paid.

20

25

Defined in this Act: amount of tax, Commissioner, foreign withholding tax, interest, pay, resident passive income

Compare: 2004 No 35 s NF 2(1)(a)

30

**RE 13 Dividends other than non-cash dividends***When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a dividend other than a non-cash dividend.

35

*Calculation of amount of tax*

- (2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

$$\begin{aligned} & (\text{tax rate} \times (\text{dividend paid} + \text{tax paid or credit attached})) && 5 \\ & \quad - \text{tax paid or credit attached.} \end{aligned}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 6** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 10
  - (b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:
  - (c) **tax paid or credit attached** is the total of the following amounts: 15
    - (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:
    - (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend: 20
    - (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend. 25

Defined in this Act: amount, amount of tax, Commissioner, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, share

Compare: 2004 No 35 s NF 2(1)(b)

**RE 14 Non-cash dividends other than bonus issues in lieu** 30*When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than a bonus issue in lieu.

*Calculation of amount of tax*

- (2) The amount of tax for the payment that the person must pay under **subsection (4)** to the Commissioner is calculated using the formula— 35

$$\frac{(\text{tax rate} \times \text{dividend paid})}{1 - \text{tax rate}} - \text{tax paid or credit attached.}$$

*Definition of items in formula*

- (3) In the formula,— 5
- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 6** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits):
- (b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined: 10
- (c) **tax paid or credit attached** is the total of the following amounts:
- (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend: 15
- (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
- (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend. 20

*Treatment as if amount of tax withheld*

- (4) For the purposes of **subsection (2)**, the person must pay to the Commissioner the amount calculated as if it were the amount of tax required to be withheld and paid under the RWT rules. 25
- Defined in this Act: amount, amount of tax, bonus issue in lieu, Commissioner, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, RWT rules, share
- Compare: 2004 No 35 s NF 2(1)(c), (2) 30

## RE 15 Bonus issues in lieu

*When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is a bonus issue in lieu. 35

*Calculation of amount of tax*

- (2) The amount of tax for the payment is calculated using the formula—

(tax rate × (alternative amount + tax paid or credit attached)) – tax paid or credit attached.

*Definition of items in formula*

- (3) In the formula,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 6** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 5
  - (b) **alternative amount** is the amount of money offered as an alternative to the bonus issue before the amount of tax is determined: 10
  - (c) **tax paid or credit attached** is the total of the following amounts:
    - (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend: 15
    - (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend: 20
    - (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend. 20

Defined in this Act: amount, amount of tax, bonus issue in lieu, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, pay, resident in New Zealand, resident passive income, share 25

Compare: 2004 No 35 s NF 2(1)(d)

## **RE 16 Taxable Maori authority distributions**

*When this section applies*

- (1) This section applies when a Maori authority makes a payment of resident passive income that consists of a taxable Maori authority distribution in the form of a sum of money or an amount of a credit in the balance of an account with the Maori authority. 30

*Calculation of amount of tax*

- (2) The amount of tax for the payment that the Maori authority must withhold and pay to the Commissioner is calculated using the formula— 35

$$\begin{aligned} & (\text{tax rate} \times (\text{distribution amount} + \text{credit attached})) \\ & \quad - \text{credit attached.} \end{aligned}$$

*Non-cash amounts*

- (3) Despite **subsection (2)**, if the resident passive income is not paid in cash, the amount of tax for the payment that the Maori authority must pay to the Commissioner is calculated using the formula— 5
- $$\frac{(\text{tax rate} \times \text{distribution amount})}{1 - \text{tax rate}} - \text{credit attached.} \quad 10$$

*Definition of items in formulas*

- (4) In the formulas in **subsections (2) and (3)**,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 7** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 15
- (b) **distribution amount** is the amount of the distribution before the amount of tax is determined:
- (c) **credit attached** is the amount of the Maori authority credit attached to the distribution. 20

Defined in this Act: amount, amount of tax, bonus issue, Commissioner, Maori authority, Maori authority credit, pay, resident passive income, taxable Maori authority distribution 20

Compare: 2004 No 35 s NF 2(1)(e), (f)

## **RE 17 Replacement payments under share-lending arrangements** 25

*When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a replacement payment under a share-lending arrangement.

*Calculation of amount of tax* 30

- (2) The amount of tax for the payment is calculated using the formula—

$$\frac{\text{tax rate} \times \text{payment}}{1 - \text{tax rate}} - \text{credit attached} - \text{credit transferred} - \text{FDP credit transferred.}$$

*Definition of items in formula* 35

- (3) In the formula,—

- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 6** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits):
- (b) **payment** is the amount of the replacement payment excluding an imputation credit attached under **section OB 64** (Replacement payments): 5
- (c) **credit attached** is the amount of an imputation credit attached to the replacement payment under **section OB 64**:
- (d) **credit transferred** is the amount of an imputation credit shown in a credit transfer notice relating to the replacement payment: 10
- (e) **FDP credit transferred** is the amount of an FDP credit shown in a credit transfer notice relating to the replacement payment.

Defined in this Act: amount of tax, credit transfer notice, FDP credit, imputation credit, pay, replacement payment, resident passive income, share-lending arrangement 15

Compare: 2004 No 35 s NF 2(1)(g)

## RE 18 Payments made by RWT proxies

*Calculation of amount of tax* 20

- (1) A person who is an RWT proxy for a person paying resident passive income that consists of a dividend must withhold an amount of tax for the payment calculated using the formula—
- $$\frac{\text{tax rate} \times \text{amount paid}}{1 - \text{rate.}}$$
- 25

*Definition of items in formula*

- (2) In the formula,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part D, clause 4** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 30
- (b) **amount paid** is the amount of the dividend paid.

Defined in this Act: amount, amount of tax, dividend, pay, resident passive income, RWT proxy

Compare: 2004 No 35 s NF 2(1B)

**RE 19 Choosing higher rates***When this section applies*

- (1) This section applies when a person (**person A**) is entitled to receive resident passive income other than a replacement payment under a share-lending arrangement. 5

*Person choosing rate*

- (2) Person A may notify the person who is required to withhold the amount of tax for the payment to use 1 of the rates set out in **schedule 1, part D, clause 4** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 10

*Company choosing rate*

- (3) Despite **subsection (1)**, if person A is a company, they may notify the person making the payment to withhold the amount of tax for the payment at the rate set out in **schedule 1, part D, clause 5**. 15

*Application of rate*

- (4) The rate chosen under **subsection (2) or (3)** applies to amounts of tax withheld from the date on which notice is given.

Defined in this Act: amount of tax, company, notify, pay, replacement payment, resident passive income, share-lending arrangement, tax withheld 20

Compare: 2004 No 35 ss NF 2A(1), (3), NF 2D(1), (3)

***Paying amounts of tax*****RE 20 Paying RWT**

A person who is required under the RWT rules to withhold RWT must pay the amount of tax to the Commissioner under **sections RA 15 and RA 16** (which relate to payment dates and the basis on which the payment dates are set). 25

Defined in this Act: amount of tax, Commissioner, pay, RWT, RWT rules

Compare: 2004 No 35 s NF 4(1), (2)

**RE 21 Basis for payment of RWT** 30*When this section applies*

- (1) **Subsections (2) to (5)** apply for the purposes of **section RA 6(1)** (Withholding and payment obligations for passive income) to

a person who is required under the RWT rules to withhold RWT for resident passive income consisting of interest.

*Interest of more than \$500 in total*

- (2) If the person estimates for a tax year that they will be required to withhold more than \$500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner on a monthly basis. 5

*Interest of less than \$500 in total*

- (3) If the person estimates for a tax year that they will be required to withhold less than \$500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner in 2 instalments as described in **section RA 15** (Payment dates for interim and other tax payments). 10

*When subsection (5) applies*

- (4) **Subsection (5)** applies when the person has withheld more than \$500 in total amounts of tax for a 2 month-period from the start of 1 month in a tax year to the end of the month following that month. 15

*Total in 2-month period*

- (5) Despite **subsections (2) and (3)**, the person must pay the total amount of tax to the Commissioner for the 2 month-period by the 20th day of the month following the end of the period. 20

*When subsection (7) applies*

- (6) **Subsection (7)** applies for the purposes of **section RA 6(1)** to a person who is required under the RWT rules to withhold RWT for resident passive income consisting of a dividend, a replacement payment, or a taxable Maori authority distribution. 25

*Dividends, replacement payments, and taxable Maori authority distributions*

- (7) The person must pay the amount of tax to the Commissioner on a monthly basis. 30

Defined in this Act: amount of tax, Commissioner, dividend, interest, pay, replacement payment, resident passive income, RWT, RWT rules, tax year, taxable Maori authority distribution 35

Compare: 2004 No 35 s NF 4(1)–(5), (7), (8)



**RE 22 When payment treated as non-resident passive income***When this section applies*

- (1) This section applies when—
- (a) a person (**person A**) is liable to pay resident passive income to a person not resident in New Zealand (**person B**); or 5
  - (b) person A receives resident passive income as agent or trustee for person B.

*No liability*

- (2) If person A concludes on reasonable grounds after making reasonable inquiries that an amount is non-resident passive income derived by person B, and person A has complied with their obligations under this Act and the Tax Administration Act 1994 in relation to paying NRWT to the Commissioner, they have no liability under the RWT rules in relation to the amount. 10  
15

*Payment derived by non-resident*

- (3) For the purposes of determining person A's liability under the RWT rules, the amount is treated as derived by a non-resident. 20
- Defined in this Act: amount, Commissioner, pay, non-resident, non-resident passive income, NRWT, resident in New Zealand, resident passive income, RWT rules, trustee

Compare: 2004 No 35 s NF 5

**RE 23 When amount of tax treated as FDP credit***When this section applies* 25

- (1) This section applies when a company withholds RWT for resident passive income consisting of a dividend other than a dividend treated as interest.

*FDP credit*

- (2) The amount is treated as an FDP credit attached to the dividend by the company which is treated as a FDPA company for the purposes of **sections LE 6, LE 9, LF 1, LF 3, LF 4, and LF 6 to LF 9** (which relate to the amount and treatment of FDP credits), and section 185 of the Tax Administration Act 1994. 30

Defined in this Act: amount of tax, company, dividend, dividend treated as interest, FDP account company, FDP credit, resident passive income, RWT 35

Compare: 2004 No 35 s NF 8(1)

**RE 24 When amount of tax treated as Maori authority credit***When this section applies*

- (1) This section applies when a Maori authority withholds an amount of tax for a taxable Maori authority distribution.

*Maori authority credit*

5

- (2) The amount is treated as a Maori authority credit attached to the distribution by the Maori authority for the purposes of **sections LO 1 to LO 4, OK 16, OK 19, and OK 20** (which relate to the amount and treatment of Maori authority credits).

Defined in this Act: amount of tax, Maori authority, Maori authority credit, taxable Maori authority distribution

10

Compare: 2004 No 35 s NF 8A(1)

**RE 25 When amount of tax treated as imputation credit***When this section applies*

- (1) This section applies when a share user under a share-lending arrangement withholds under the RWT rules an amount of tax for a replacement payment. 15

*Imputation credit*

- (2) The amount of tax withheld—
- (a) is treated for the share supplier as an imputation credit attached to the replacement payment in addition to an imputation credit that the share user attached to the payment under **section OB 64** (Replacement payments); and 20
- (b) does not give rise under **section LB 3** (Tax credits for RWT) to a tax credit or refund for the share supplier. 25

Defined in this Act: amount of tax, imputation credit, replacement payment, RWT rules, share-lending arrangement, share supplier, share user, tax withheld

Compare: 2004 No 35 s NF 8B

**RE 26 Payment by proxy** 30

An RWT proxy who is required to withhold RWT in relation to a payment of resident passive income is treated as having withheld the amount from the payment at the time the payment is made.

Defined in this Act: amount of tax, pay, resident passive income, RWT, RWT proxy

35

Compare: 2004 No 35 s NF 4(9)

*RWT exemption certificates***RE 27 RWT exemption certificates***Application*

- (1) A person may apply to the Commissioner for an RWT exemption certificate if— 5
- (a) they are a person listed in section 32E(2) of the Tax Administration Act 1994; and
  - (b) they meet the requirements of section 32G of that Act.

*When certificate expires*

- (2) An RWT exemption certificate expires if— 10
- (a) the holder loses the basis of their exemption; or
  - (b) the Commissioner cancels the certificate under section 32L of the Tax Administration Act 1994.

*Notifying Commissioner*

- (3) If the holder of an RWT exemption certificate becomes aware they no longer meet the requirements, they must notify the Commissioner under section 32K of the Tax Administration Act 1994. 15

Defined in this Act: , Commissioner, notify, RWT exemption certificate

Compare: 2004 No 35 ss NF 9(1), NF 11(1), (2) 20

**RE 28 When certificates expire***When this section applies*

- (1) This section applies in a month when a person's RWT exemption certification expires. But the section does not apply if the person continues to be required to withhold RWT in the course of carrying out a taxable activity. 25

*Payment of outstanding amounts of tax*

- (2) The person must pay to the Commissioner all amounts of RWT withheld and not paid to the Commissioner by the 20th day of the month following the month in which the certificate expired. 30

Defined in this Act: amount of tax, Commissioner, RWT, RWT exemption certificate, taxable activity

Compare: 2004 No 35 s NF 4(6)

**RE 29 Establishing whether person holds certificate***When this section applies*

- (1) This section applies for the purposes of **section RE 5(2)** to set out the ways available to person A to establish whether person B is a person holding an RWT exemption certificate. 5

*Requirements*

- (2) Person A may establish that—
- (a) they have taken reasonable steps to confirm that person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; or 10
  - (b) except in relation to a person listed in section 32E(2)(k) or (l) or to whom a certificate has been provided under section 32I, they have been given person B's tax file number and have been notified that person B holds an RWT exemption certificate; or 15
  - (c) they have seen person B's certificate and have taken reasonable steps to confirm that person B is the person named in the certificate.

*Additional requirements*

- (3) In addition to the requirements of **subsection (2)**, the following requirements must be met in relation to person B's RWT exemption certificate: 20
- (a) no notice of cancellation has been published in the *Gazette*—
    - (i) for interest, more than 5 working days before the date on which the money was lent: 25
    - (ii) for a dividend or a taxable Maori authority distribution, more than 5 working days before the date on which payment was made:
  - (b) person A has not been advised by the Commissioner or person B of a cancellation of a certificate more than 5 working days before the date on which payment is made: 30
  - (c) person A has no other grounds for believing that person B is not eligible for a certificate. 35

*Later certificate*

- (4) For the purposes of **subsection (3)(a) and (b)**, if a notice of cancellation has been published or if person A has been advised as described, the requirements are still met if—
- (a) a certificate has been provided to person B and notified in the *Gazette* in the period that is after the notice of cancellation and more than 5 working days before the date on which the payment is made; or 5
  - (b) person A has seen a certificate provided to person B after the date of publication of the notice of cancellation. 10

*When person B listed or income of particular type*

- (5) For the purposes of this section, person A has no ground for believing that the payment is income derived by a person other than person B when— 15
- (a) person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; and
  - (b) the payment is not interest, a dividend, or a taxable Maori authority distribution derived by person B as trustee on behalf of a third person. 20

Defined in this Act: Commissioner, dividend, interest, notice, pay, RWT exemption certificate, tax file number, taxable Maori authority distribution, trustee

Compare: 2004 No 35 s NF 2(7)

**RE 30 When unincorporated bodies hold certificates***When this section applies* 25

- (1) This section applies when—
- (a) an unincorporated body that is carrying on a taxable activity holds an RWT exemption certificate; and
  - (b) the exemption relates to the carrying on of the taxable activity. 30

*Treatment of payments made by unincorporated bodies*

- (2) For the purposes of the RWT rules, a payment that the body makes in the course of carrying on the taxable activity is treated as a payment made by the body and not by a member of the body. This subsection overrides **subsection (7)**. 35

*Treatment of payments to members of unincorporated bodies*

- (3) For the purposes of the RWT rules, a payment made to a member of the body in their capacity as a member and in the course of carrying on the taxable activity of the body is treated as a payment made to the body and not to the member. 5

*Joint and several liability for amounts of tax*

- (4) Each member of the body is jointly and severally liable for the RWT that the body is required to pay for as long as the member remains part of the body. 10

*Natural persons, partnerships, joint ventures, trustees*

- (5) For the purposes of **subsection (4)**,—  
 (a) if the member is a natural person, their estate is liable after their death for an amount payable that remains unpaid: 15  
 (b) if the body is a partnership, joint venture, or the trustees of a trust, a member continues as a member until the date the Commissioner is notified of a change of membership.

*Members and committees* 20

- (6) **Subsection (7)** applies to an unincorporated body other than a partnership, joint venture, or the trustees of a trust, when the business of the body is managed by the members or a committee of its members.

*Responsibility of committee officers and members* 25

- (7) If something is required to be done under the RWT rules by or on behalf of the body, each member holding office as president, chair, treasurer, secretary, or a similar office is jointly and severally responsible. In default, each member holding office bears the responsibility. Action taken by 1 officer or committee member is sufficient. 30

*Joint and several liability for actions required*

- (8) If something is required to be done under the RWT rules by or on behalf of the body, each member is jointly and severally liable to do it. However, action taken by 1 member is sufficient. **Subsection (7)** overrides this subsection. 35

*Changes in membership*

- (9) A change in membership of the unincorporated body has no effect for the purposes of the RWT rules. **Subsection (5)(b)** overrides this subsection.

*Some definitions*

- (10) In this section,—

**member** means a partner, joint venturer, a trustee, or a member of a body

**partnership** and **partner** have the meanings given in the Partnership Act 1908.

Defined in this Act: amount of tax, member, partner, partnership, pay, RWT, RWT exemption certificate, RWT rules, taxable activity, trustee

Compare: 2004 No 35 s NF 10

## Subpart RF—Tax on non-resident passive income

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*Introductory provisions*

**RF 1 NRWT rules and their application***Meaning*

- (1) The **NRWT rules** means—
- (a) this subpart; and 5
  - (b) **section LB 5** (Tax credits for NRWT); and
  - (c) **sections LJ 1 to LJ 3, LJ 6, and LJ 7** (which relate to tax credits for foreign income tax); and
  - (d) **sections LK 1 to LK 5, and LK 7** (which relate to tax credits related to attributed CFC income); and 10
  - (e) sections 32M, 49, 100, Part 9, and sections 165B and 185 of the Tax Administration Act 1994.

*Application*

- (2) The NRWT rules apply to a person who makes a payment that consists of non-resident passive income. 15

Defined in this Act: non-resident passive income, NRWT rules, pay

Compare: 2004 No 35 s OB 1 “NRWT rules”

**RF 2 Non-resident passive income***Certain interest and dividends*

- (1) **Non-resident passive income** means income derived from New Zealand by a non-resident consisting of— 20
- (a) a dividend other than an investment society dividend:
  - (b) a royalty:
  - (c) an investment society dividend when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand: 25
  - (d) interest when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand.

*Exclusions*

- (2) The following amounts derived by a non-resident are excluded from non-resident passive income: 30
- (a) an amount of exempt income:



- (b) an amount of income to which **section CV 17** (Non-resident film renters) applies.

*When subsection (4) applies*

- (3) **Subsection (4)** applies in a tax year when a person derives non-resident passive income consisting of— 5
- (a) a dividend other than an investment society dividend:
- (b) a royalty for the use, production, or reproduction of, or for the right to use, produce, or reproduce, a literary, dramatic, musical, or artistic work in which copyright subsists: 10
- (c) interest or a royalty derived by a life insurer from a company resident in New Zealand when the interest or royalty is treated as arising as a result of the life insurer's election under **section EY 49** (Non-resident life insurer becoming resident): 15
- (d) interest or an investment society dividend when the person paying and the person deriving the interest or dividend are not associated persons.

*Final withholding*

- (4) If the person is a filing taxpayer, the income tax liability under **section BC 7** (Income tax liability of person with schedular income) for each class of schedular income is determined by the amount of tax required to be withheld under this Part. 20

*Exception: minimum amount*

- (5) Despite **subsection (4)**, if a person derives non-resident passive income consisting of interest or an investment society dividend other than those described in **subsection (3)(b) and (d)**, the person's income tax liability for a tax year is the greater of— 25
- (a) the sum of the total NRWT for which they are liable and the amount that would be their income tax liability for the tax year if they had not derived non-resident passive income in the tax year: 30
- (b) the amount that would be their income tax liability under this section in the absence of this subsection.

*Company deriving minimum amount*

- (6) For the purposes of **subsection (5)** for a company, if the total amount of non-resident passive income and other income 35

derived by the company in the tax year is not more than \$1,000, the income tax liability of the company for the tax year is the sum referred to in **subsection (5)(a)**.

*Application of financial arrangements rules*

- (7) The financial arrangements rules do not apply to the calculation of an amount of non-resident passive income. 5

*Interest payable by Commissioner*

- (8) For interest payable under Part 7 of the Tax Administration Act 1994, NRWT withheld by the Commissioner is treated as paid on the date it is withheld. Sections 50, 55, 100, and Part 9 of that Act do not apply to the Commissioner and that interest, but the other provisions of the NRWT rules do apply. 10

Defined in this Act: amount, approved issuer, associated person, business, Commissioner, company, derived from New Zealand, dividend, exempt income, filing taxpayer, financial arrangements rules, fixed establishment, income, income tax liability, interest, investment society dividend, life insurer, non-resident, NRWT, NRWT rules, pay, registered security, resident in New Zealand, royalty, schedular income 15

Compare: 2004 No 35 ss NG 1(2)–(4), NG 3, NG 4

***Withholding obligations*** 20

**RF 3 Obligation to withhold amounts of tax for non-resident passive income**

A person who makes a payment of non-resident passive income must withhold the amount of tax for the payment and pay it to the Commissioner. The obligation to withhold arises under **section RA 6(2)** (Withholding and payment obligations for passive income) at the time of payment. 25

Defined in this Act: amount of tax, Commissioner, non-resident passive income, pay

Compare: 2004 No 35 s NG 8(1) 30

**RF 4 Non-resident passive income received by agents and others**

*When this section applies*

- (1) This section applies when— 35
- (a) an agent or other person in New Zealand receives a payment of non-resident passive income on behalf of a person entitled to the payment; and

- (b) some or all of the amount of tax for the payment has not been withheld.

*Obligation to withhold: agent or other person*

- (2) The agent or other person must withhold the amount of tax referred to in **subsection (1)(b)** for the payment and pay it to the Commissioner. The obligation to withhold arises at the time of receipt. 5

*Notifying agent or other person*

- (3) If, in the circumstances described in **subsection (1)(a)**, the person paying the non-resident passive income has withheld the amount of tax for the payment, they must notify the agent or other person of the amount withheld. Notification must be made at the time the payment is made. 10

Defined in this Act: amount of tax, Commissioner, New Zealand, non-resident passive income, notify, pay 15

Compare: 2004 No 35 s NG 8(2), (3)

**RF 5 When amounts of tax already withheld**

A person is not required to withhold NRWT when some or all of the payment consists of resident passive income to the extent to which the amount of tax has already been collected. 20

Defined in this Act: amount of tax, non-resident passive income, pay, resident passive income

Compare: 2004 No 35 s NF 2(6)

**RF 6 When amounts of tax not withheld or partly withheld**

*Person as filing taxpayer* 25

- (1) When a person is required under **section RA 6(2)** (Withholding and payment obligations for passive income) to withhold NRWT and does not withhold the full amount required under this Part, the person deriving the non-resident passive income is treated for this purpose as a filing taxpayer. 30

*Debt payable*

- (2) The amount of tax referred to in **subsection (1)** as not withheld is a debt payable by the person to the Commissioner, and is treated as having become due under **section RA 10** (When obligations not met). 35

*Non-cash dividends*

- (3) **Subsection (2)** applies in relation to a non-cash dividend described in **section RF 10** as if the amount equal to the amount of tax for the dividend were the amount payable.

*Commissioner's powers to recover*

5

- (4) In recovering the amount, the Commissioner may take the steps the Commissioner thinks fit in relation to the person in default or liable to pay, whether or not they are the same person.

Defined in this Act: amount of tax, Commissioner, filing taxpayer, non-cash dividend, non-resident passive income, NRWT, pay

10

Compare: 2004 No 35 s NG 13

*Calculating amounts of tax***RF 7 General rate for NRWT***When this section applies*

15

- (1) This section applies to a payment of non-resident passive income other than a payment to which **sections RF 8 to RF 12** apply.

*Calculation of amount of tax*

- (2) The amount of tax is calculated using the formula—  

$$\text{payment} \times 0.15.$$

20

Defined in this Act: amount of tax, non-resident passive income, NRWT, pay

Compare: 2004 No 35 s NG 2(1)(c)

**RF 8 Certain dividends***When this section applies*

25

- (1) This section applies when a person makes a payment of non-resident passive income that consists of a dividend, except to the extent to which the payment is—
- (a) an investment society dividend; or
  - (b) a supplementary dividend under **subpart LP** (Tax credits for supplementary dividends); or
  - (c) a CTR additional dividend under **subpart LQ** (Tax credits of CTR companies); or
  - (d) a fully imputed dividend; or

30

- (e) an amount of a dividend that is fully credited for FDP;  
or
- (f) an amount of a dividend that is fully credited for conduit tax relief.

*Calculation of amount of tax*

5

- (2) The amount of tax is calculated using the formula—  
dividend payment  $\times$  0.3.

Defined in this Act: amount of tax, CTR additional dividend, dividend, FDP, fully credited for conduit tax relief, investment society dividend, non-resident passive income, pay, supplementary dividend

10

Compare: 2004 No 35 s NG 2(1)(a)

**RF 9 When dividends fully imputed or fully credited**

*When this section applies*

- (1) This section applies for the purposes of **section RF 8(1)(d) to (f)** to determine the extent to which a dividend is fully imputed or fully credited for FDP or conduit tax relief.

15

*Fully imputed*

- (2) The extent to which a dividend is fully imputed is calculated using the formula—

$$\begin{aligned} & (\text{imputation credit amount} & & \frac{1 - \text{tax rate}}{\text{tax rate}} & & 20 \\ & + \text{supplementary dividend amount}) \times & & & & \end{aligned}$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **imputation credit amount** is the amount of an imputation credit attached to the dividend: 25
  - (b) **supplementary dividend amount** is the amount of a supplementary dividend payable under **subpart LP** (Tax credits for supplementary dividends) for the dividend:
  - (c) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2**, (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year in which the dividend is paid. 30

*Fully credited for FDP*

- (4) The extent to which a dividend is fully credited for FDP is calculated using the formula— 35

$$\frac{\text{FDP credit amount}}{\text{tax rate.}}$$

*Definition of items in formula*

- (5) In the formula in **subsection (4)**,—
- (a) **FDP credit amount** is the amount of FDP credit attached to the dividend: 5
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year in which the dividend is paid. 10

*Fully credited for conduit tax relief*

- (6) The extent to which a dividend is fully credited for conduit tax relief is calculated using the formula—
- $$\text{credit for conduit tax relief attached to dividend} \times \frac{(1 - \text{tax rate})}{\text{tax rate.}}$$
- 15

*Definition of item in formula*

- (7) In the formula in **subsection (6)**, **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** for the income year in which the dividend is paid. 20
- Defined in this Act: amount, basic rate, dividend, FDP, FDP credit, fully credited for conduit tax relief, imputation credit, pay, supplementary dividend, tax year
- Compare: 2004 No 35 ss NG 2(3), (4), OB 1 “fully conduit tax relief credited”

## RF 10 Non-cash dividends

*When this section applies*

- (1) This section applies when a person makes a payment of non-resident passive income that consists of a non-cash dividend to the extent to which the amount is not fully imputed. 25

*When amount not taxable bonus issue*

- (2) The amount of tax, when the payment is not a taxable bonus issue, is calculated using the formula— 30
- $$\frac{(\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment}) + (\text{rate B} \times \text{amount paid}).$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,— 35

- (a) **rate A** is—
- (i) for a CTR additional dividend paid under **subpart LQ** (Tax credits of CTR companies) or a dividend to the extent to which the amount of the dividend is fully credited for conduit tax relief as described in **subsection (7)**, the rate set out in **section RF 7**; and
- (ii) in any other case, the rate of tax set out in **section RF 8**:
- (b) **dividend payment** is the amount of the dividend paid to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP, as described in **section RF 9(2) and (4)**, disregarding the amount of tax to be withheld:
- (c) **rate B** is the rate set out in **section RF 7**:
- (d) **amount paid** is the amount of the dividend paid to the extent to which the amount of the dividend is fully credited for FDP, as described in **section RF 9(4)**, disregarding the amount of tax to be withheld.
- When amount taxable bonus issue*
- (4) The amount of tax, when the payment is a taxable bonus issue, is calculated using the formula—
- $$\begin{aligned} &(\text{rate A} \times \text{dividend payment}) \\ &+ (\text{rate B} \times (\text{amount paid} + \text{credit amount})). \end{aligned}$$
- Definition of items in formula*
- (5) In the formula in **subsection (4)**,—
- (a) **rate A** is the rate of tax set out in **section RF 8**:
- (b) **dividend payment** is the amount of the dividend paid calculated under **section CD 7(2) or CD 8(3)** (which relate to bonus issues)—
- (i) other than a dividend referred to in the item **bonus issue**:
- (ii) to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP (as described in **sections RF 9 and RF 14**), before the amount of tax is withheld:
- (c) **rate B** is the rate of tax set out in **section RF 7**:
- (d) **amount paid** is the amount of the dividend calculated under **section CD 7(2) or CD 8(3)** together with the amount of a credit of FDP attached to the dividend to the extent to which the amount of the dividend is fully credited for

FDP, as described in **section RF 9(4)**, before the amount of tax is withheld:

- (e) **credit amount** is the amount of the dividend to the extent to which it is fully credited for conduit tax relief as described in **subsection (7)** together with a CTR additional dividend paid for the taxable bonus issue under **subpart LQ**. 5

*Amount treated as amount withheld and paid under NRWT rules*

- (6) A person who is liable under this section for NRWT must pay the amount to the Commissioner. The amount is treated as if it were an amount withheld and paid under the NRWT rules for the purposes of this Act and the Tax Administration Act 1994. 10

*Amount part of dividend*

- (7) For the purposes of this section and **sections OD 20 to OD 22** (which relate to CTR credits attached to dividends), an amount subtracted from a non-cash dividend to the extent it is fully credited for conduit tax relief is treated as part of the non-cash dividend. 15

Defined in this Act: amount, amount of tax, basic rate, Commissioner, CTR additional dividend, dividend, FDP, fully credited for conduit tax relief, non-cash dividend, non-resident passive income, NRWT, NRWT rules, pay, taxable bonus issue 20

Compare: 2004 No 35 s NG 9

## **RF 11 Dividends paid to companies under control of non-residents** 25

*When this section applies*

- (1) This section applies when—
- (a) a non-resident formerly held a share in a company (**company A**) resident in New Zealand; and 30
- (b) while the non-resident held the share, company A was under the control of the non-resident, or was treated for the purposes of this Act as under the control of persons who include the non-resident; and
- (c) the non-resident has disposed of the share to another company (**company B**) that is resident in New Zealand and under the control of the non-resident, or is treated for the purposes of this Act as under the control of persons who include the non-resident; and 35



- (d) some or all of the price for which company B acquired the share remains after the acquisition unpaid or owing in any way to the non-resident, whether or not the amount is secured.

*Dividend derived* 5

- (2) While an amount of the price remains unpaid or owing, a dividend paid to company B in relation to the share is treated as having been paid to the non-resident and as derived as a dividend by the non-resident at the time the dividend is paid.

Defined in this Act: amount, company, control, dividend, non-resident, pay, resident in New Zealand, share 10

Compare: 2004 No 35 s NG 14

## RF 12 Certain amounts of interest

*When payment derived jointly with resident*

- (1) If a person makes a payment of non-resident passive income that consists of interest derived by 2 or more persons jointly and at least 1 person is a New Zealand resident, the amount of tax for the payment is calculated using the formula— 15

$$\begin{aligned} & (\text{tax rate} \times (\text{interest paid} + \text{foreign withholding tax})) \\ & \quad - \text{foreign withholding tax.} \end{aligned} \quad 20$$

*Definition of items in formula*

- (2) In the formula,—
- (a) **tax rate** is the basic rate set out in **schedule 1, part E, clause 1 or 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits): 25
- (b) **interest paid** is the amount of interest paid before the amount of tax is determined:
- (c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the amount of interest paid. 30

*Exclusion: when payment by approved issuer*

- (3) The RWT is zero if it consists of interest that—
- (a) is paid by an approved issuer for a registered security; and
- (b) is derived by a person not associated with the approved issuer; and 35
- (c) is not a payment to which **subsection (1)** applies.

- Exclusion: when payment by transitional resident*
- (4) The RWT is zero if it consists of interest that—
- (a) is paid by a transitional resident in relation to money borrowed by them while non-resident; and
  - (b) is not paid in relation to a business carried on through a fixed establishment in New Zealand; and
  - (c) is derived by a person not associated with the transitional resident; and
  - (d) is not a payment to which **subsection (1)** applies.
- 5
- Other payments of interest*
- (5) For a payment of non-resident passive income consisting of interest to which **subsection (1)** applies, the NRWT is calculated using the formula—
- interest payment × 0.15.
- 10
- Treatment as filing taxpayer*
- (6) For the purposes of this section, the person referred to in **subsection (1)** who is a New Zealand resident, is treated as a filing taxpayer.
- 15
- Interest paid under registered securities*
- (7) For the purposes of the NRWT rules, an amount of interest is paid by an approved issuer under a registered security only if it is treated as paid under section 86I of the Stamp and Cheque Duties Act 1971.
- 20
- Defined in this Act: amount of tax, approved issuer, associated person, business, filing taxpayer, fixed establishment, foreign withholding tax, interest, New Zealand resident, non-resident, non-resident passive income, NRWT, pay, registered security, resident passive income, RWT, transitional resident
- 25
- Compare: 2004 No 35 s NG 2(1)(ab), (b)(i), (c)

### *Paying amounts of tax*

- RF 13 Basis for payment of amounts of tax for non-resident passive income** 30
- When this section applies*
- (1) This section applies when a person estimates for a tax year that they will not be required by the NRWT rules to withhold total NRWT of \$500 or more. 35

*Two instalments*

- (2) The person may pay to the Commissioner the amount withheld for the tax year in 2 instalments.

*When threshold reached during tax year*

- (3) If the threshold amount of \$500 is reached at a time in a tax year, the person must pay to the Commissioner— 5
- (a) the amount of tax withheld from the start of the tax year to the end of the month in which the threshold is reached; and
- (b) for the remainder of the tax year, the amount of tax on a monthly basis. 10

Defined in this Act: amount of tax, Commissioner, NRWT, NRWT rules, pay, tax withheld, tax year

Compare: 2004 No 35 s NG 11(1)–(3)

**RF 14 Treatment of FDP credits** 15

A person who is required under the NRWT rules to withhold NRWT for non-resident passive income consisting of a dividend is treated as having withheld the amount of tax to the extent of an amount of an FDP credit attached to the dividend.

Defined in this Act: amount of tax, dividend, FDP credit, non-resident passive income, NRWT, NRWT rules 20

Compare: 2004 No 35 s NG 2(2)

**RF 15 Commissioner's power to vary amounts of tax**

*Special circumstances*

- (1) For the purposes of meeting the special circumstances of a case or class of cases, the Commissioner may— 25
- (a) relieve a person from an obligation to withhold NRWT under **section RA 6(2)** (Withholding and payment obligations for passive income), **RF 3, RF 4, or RF 10**; or
- (b) vary the amount of tax that a person must withhold under **section RA 6(2)**. 30

*Exclusion for certain payments of interest*

- (2) This section does not apply to an amount of tax for a payment of interest derived jointly with a person resident in New Zealand as described in **section RF 12(1)**. 35

*NRWT rules apply as if amended*

- (3) On the exercise of a power under **subsection (1)**, the NRWT rules apply in the particular case as if they were amended in the way in which the power is exercised.

Defined in this Act: amount of tax, Commissioner, interest, non-resident passive income, NRWT, NRWT rules, pay, resident in New Zealand

5

Compare: 2004 No 35 s NG 10

## Subpart RG—Payments for foreign dividends

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*Introductory provisions***RG 1 FDP rules and their application***Meaning*

- (1) The **FDP rules** means—
- (a) this subpart; and
  - (b) **section GB 39** (FDP arrangements: general); and
  - (c) **section GB 41** (FDPA arrangements for carrying amounts forward); and
  - (d) **sections LF 1, LF 5, LF 8 to LF 10** (which relate to tax credits for FDP credits); and
  - (e) **subpart LL** (Underlying foreign tax credits); and
  - (f) **subpart OC** (FDP accounts); and
  - (g) **sections OP 51 to OP 77** (which relate to consolidated groups and FDP accounts); and
  - (h) **section YA 2(2)(d) to (f)** (Meaning of income tax): and

- (i) sections 30, 32N, 68, 71, 71B, 72, and 102 to 104, Part 7, and sections 139B, 140C, 140D(1) and (3), 181, and 185 of the Tax Administration Act 1994.

*Application*

- (2) The FDP rules apply to a company that receives a foreign dividend. 5

Defined in this Act: FDP rules

Compare: 2004 No 35 s OB 1 “dividend withholding payment rules”

**RG 2 Foreign dividends**

*Dividends to which rules apply* 10

- (1) **Foreign dividend** means—
- (a) a dividend paid by a foreign company that—
- (i) is derived by a company resident in New Zealand; and
- (ii) is exempt income of the resident company under **section CW 9 or CW 11** (which relate to income from equity); and 15
- (iii) is not exempt income of the resident company under any of **sections CW 35 to CW 39 and CW 41 to CW 46** (which relate to income of particular entities or of a certain type): 20
- (b) a dividend paid by a company resident in New Zealand if, and to the extent to which,—
- (i) the company was not resident in New Zealand previously; and 25
- (ii) the amount of the dividend is less than the amount available to the company for distribution as a dividend just before becoming resident in New Zealand; and
- (iii) the dividend is exempt income under **sections CW 9 to CW 11** when derived by a resident company. 30

*Calculating amount of dividend*

- (2) For the purposes of **subsection (1)(b)(ii)**, the amount is calculated after subtracting from the available amount the amount of any earlier dividend to which **subsection (1)(b)** applies paid by the company. 35

*Avoidance arrangements*

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

Defined in this Act: amount, company, dividend, exempt income, foreign company, foreign dividend, pay, resident in New Zealand

5

Compare: 2004 No 35 s NH 1(2)

*Obligation to make payments***RG 3 Obligation to pay FDP**

A company resident in New Zealand that receives a foreign dividend in a quarter must pay to the Commissioner FDP for the foreign dividend by the date set out in **section RA 15** (Payment dates for interim and other tax payments) after the end of the quarter.

10

Defined in this Act: Commissioner, company, FDP, foreign dividend, pay, resident in New Zealand

15

Compare: 2004 No 35 ss NH 1(1), NH 3(1)

*Calculation of payments***RG 4 Calculating amount of FDP***Calculation of amount to pay*

- (1) An amount of FDP is calculated using the formula— 20
- $$\begin{aligned} & ((\text{dividend amount} + \text{foreign tax} + \text{underlying credit}) \\ & \quad \times \text{tax rate}) - \text{foreign tax} - \text{underlying credit}. \end{aligned}$$

*Definition of items in formula*

- (2) In the formula,—
- (a) **dividend amount** is the amount of the foreign dividend after subtracting any foreign withholding tax paid in relation to the dividend: 25
- (b) **foreign tax** is the amount of any foreign withholding tax paid in relation to the dividend, excluding foreign withholding tax paid in a country listed in **schedule 27** (Countries and types of income with unrecognised tax): 30
- (c) **underlying credit** is the amount of—

- (i) an underlying foreign tax credit calculated in relation to the dividend under **section LL 2** (Underlying foreign tax credits) if it is a positive amount; or
  - (ii) an imputation credit attached to the dividend, if **subparagraph (i)** does not apply: 5
  - (d) **tax rate** is the basic rate of income tax set out in—
    - (i) **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or 10
    - (ii) **schedule 1, part A, clause 6**, if the company is a Maori authority.
- Defined in this Act: amount, basic rate, company, FDP, foreign dividend, foreign withholding tax, imputation credit, Maori authority, pay
- Compare: 2004 No 35 s NH 2(1) 15

### *Adjustments to payments*

#### **RG 5 Credit balance in branch equivalent tax account**

*When this section applies*

- (1) This section applies when a foreign dividend is paid to a company in relation to an income interest in a CFC, and at the time the dividend is paid, the company is— 20
  - (a) a BETA company; or
  - (b) part of a group of companies in which another company is a BETA company.

*Reducing payment* 25

- (2) Despite **section RF 2(5) and (6)** (Non-resident passive income), the FDP for the foreign dividend may be reduced by the amount of a credit balance in the branch equivalent tax account at the time the dividend is paid. The company makes the election to use the credit balance under **section OE 13** (BETA reduction in FDP). 30

*When dividend paid in relation to income interest in CFC*

- (3) For the purposes of this section, a foreign dividend is paid in relation to an income interest in a CFC if the company holds the income interest in the CFC at any time during— 35

- (a) the period that starts at the beginning of the income year of the company in which the dividend is paid and ends with the date the dividend is paid; or
- (b) the income year of the company before the income year in which the dividend is paid. 5

Defined in this Act: amount, BETA company, branch equivalent tax account, CFC, company, FDP, foreign dividend, group of companies, income interest, income year, pay

Compare: 2004 No 35 s NH 2(2), (3)

## RG 6 Using loss balances 10

*When this section applies*

- (1) This section applies when—
  - (a) a company is required to pay FDP for a foreign dividend that is paid to it; and
  - (b) the company, or another company in the same group of companies,— 15
    - (i) has a loss balance that may be used under **sections IA 3 to IA 9** (which relate to the treatment of tax losses), as applicable, to reduce the net income of the company for the income year in which the foreign dividend is paid to it; or 20
    - (ii) has a reasonable expectation that, for the income year in which the foreign dividend is paid, it will have a loss balance that may be used under the sections referred to in **subparagraph (i)** to reduce the net income of the company for the next income year. 25

*Maximum reduction*

- (2) The company may choose to use the loss balance, so far as it extends, to pay some or all of the FDP. The maximum reduction is calculated using the formula— 30

$$\frac{\text{payment}}{\text{tax rate.}}$$

*Definition of items in formula*

- (3) In the formula,— 35
  - (a) **payment** is the amount determined under **section RF 2(5) and (6)** (Non-resident passive income):



- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year in which the dividend is paid.
- Time for making election* 5
- (4) The company must make the election by the relevant due date after the end date set out in **section RA 15(3)(c)** (Payment dates for interim and other tax payments), or by a later date if the Commissioner allows.
- No actual tax loss* 10
- (5) **Subsections (6) and (7)** apply if the company chooses under **subsection (2)** to use a tax loss to satisfy a liability to pay some or all of an amount of FDP, and—
- (a) the company does not have a tax loss; or
- (b) the company has an insufficient tax loss; or 15
- (c) if 2 companies are part of the same group of companies for part of the relevant income year, the tax loss could be used in relation to the net income of the company deriving the dividend only through the application of **sections IP 1, IP 4, IP 6, or IP 7** (which relate to part-year losses). 20
- Commissioner's power to overrule*
- (6) The Commissioner may overrule the election under **subsection (2)** to the extent to which it is appropriate having regard to—
- (a) the amount of the actual tax loss of the electing company; and 25
- (b) the amount or proportion, or likely amount or proportion, of the tax loss of the electing company that could be used under the sections referred to in **subsection (5)(c)**.
- Company's liability* 30
- (7) The company that was initially required to pay the FDP is liable to pay an amount disallowed under **subsection (6)**, and a penalty under section 150 of the Tax Administration Act 1994, as if the deficiency arose at the time of the initial liability. 35

Defined in this Act: amount, basic rate, Commissioner, company, foreign dividend, FDP, group of companies, income year, loss balance, net income, pay, tax loss

Compare: 2004 No 35 s NH 3(2)–(4)

**RG 7 Reduction of payments for conduit tax relief***Reduction*

- (1) A company that is a CTR company at the time it is required to pay FDP to the Commissioner, may reduce the payment by an amount calculated using the formula— 5
- percentage of non-resident shareholders × amount of FDP.

*Definition of items in formula*

- (2) In the formula,—
- (a) **percentage of non-resident shareholders** is the percentage of the company's shareholders not resident in New Zealand as determined under **subsections (3) to (9)**: 10
- (b) **amount of FDP** is the amount of the FDP that would be paid to the Commissioner in the absence of this section, calculated after applying section 32M of the Tax Administration Act 1994. 15

*Determining percentage of non-resident shareholders*

- (3) The percentage of the company's non-resident shareholders referred to in **subsection (2)** is the lowest of the following percentages:
- (a) the percentage of direct voting interests that non-residents hold in the company on the date on which the company pays a dividend to all shareholders under **subsection (4)(a)(ii)**: 20
- (b) if a direct market value circumstance exists, the percentage of direct market value interests that non-residents hold in the company on the date on which the company pays a dividend to all shareholders under **subsection (4)(a)(ii)**: 25
- (c) if the shares in the company are not all shares of the same class, the percentage of total dividends payable by the company that non-residents would derive if the company were liquidated at the relevant time. 30

*Timing of determination of percentage of non-resident shareholders*

- (4) For the purposes of this section, the percentage of the company's non-resident shareholders is calculated at the latest of the following dates: 35

- (a) the last date before the foreign dividend was received on which the company—
  - (i) paid a dividend to all its shareholders; or
  - (ii) paid a dividend to all holders of shares of 1 of the classes if the company has more than 1 class of shares; or
- (b) the last day of the tax year that is 2 years before the tax year in which the foreign dividend is received; or
- (c) for a company that is incorporated after the tax year that is before the tax year in which the foreign dividend is received by the company, the last day of the quarter in which the dividend is received.

*CTR group members*

- (5) If a CTR group member exists for a company (**company A**), this section applies as if the company referred to in **subsection (4)** were the company—
  - (a) in which 1 or more non-residents have a direct voting interest; and
  - (b) that has a 100% voting interest in company A, calculated as if **section YC 4** (Look-through rule for corporate shareholders) did not apply to treat the company's interests to be held by others.

*When subsection (5) does not apply*

- (6) **Subsection (5)** does not apply if the date for measuring the percentage of non-resident shareholders is before the date of incorporation of company A.

*Listed companies*

- (7) Despite **subsection (4)**, a listed company may use—
  - (a) the date an entitlement to a dividend is determined instead of the date the dividend is paid;
  - (b) a date in the tax year on which, for whatever commercial reason, it calculates the percentage of its non-resident shareholders.

*Companies with more than 1 class of shares*

- (8) A company with more than 1 class of shares is treated in relation to each class of shares as having the same shareholders on the relevant date that it had on the last date on which a dividend is paid to all shareholders of the class. 5

*Treasury stock and determination of residence*

- (9) For the purposes of this section,—  
 (a) treasury stock is disregarded;  
 (b) the rules for determining residence in **sections YD 9 to YD 11** (which relate to CTR companies) apply. 10

Defined in this Act: amount, Commissioner, company, CTR company, CTR group member, direct market value circumstance, direct market value interest, direct voting interest, dividend, foreign dividend, FDP, liquidation, listed company, non-resident, pay, resident in New Zealand, share, shareholder, shares of the same class

Compare: 2004 No 35 s NH 7 15

## Subpart RM—Refunds

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### *Introductory provision*

<b>RM 1</b>	<b>What this subpart does</b>	
	This subpart establishes and measures a person's entitlement to a refund for an overpayment under this Part or another Part of this Act, how the amount of the refund may be used, and the limits placed on the amount and use of a refund for—	30
	(a) an ICA company:	
	(b) a company receiving a foreign dividend:	
	(c) a Maori authority:	35
	(d) a PCA person:	
	(e) an attributing company:	

- (f) certain unit trusts and group investment funds.

Defined in this Act: amount, attributing company, company, foreign dividend, group investment fund, ICA company, Maori authority, pay, PCA person, unit trust

### *Refunds for overpaid amounts*

<b>RM 2 Refunds for overpaid tax</b>	5
<i>Amount more than required</i>	
(1) The Commissioner must refund an amount of tax that a person has paid if—	
(a) the amount is more than the tax required to be paid by the person under this Part; and	10
(b) the 4-year period for amendment of an assessment under section 108 of the Tax Administration Act 1994 has not ended.	
<i>Refunds arising from mistakes</i>	
(2) <b>Section RM 6</b> overrides <b>subsection (1)</b> .	15
Defined in this Act: amount of tax, assessment, Commissioner, pay	
Compare: 2004 No 35 s MD 1(1)	
<b>RM 3 Refunds for overpaid FDP</b>	
If a company pays to the Commissioner FDP in relation to a foreign dividend paid to it, and the amount is more than the amount required to be paid under this Part, the Commissioner must refund the overpayment.	20
Defined in this Act: amount, Commissioner, company, foreign dividend, FDP, pay	
Compare: 2004 No 35 s NH 4(1)	
<b>RM 4 Overpayment on amended assessment</b>	25
<i>Assessment increasing tax</i>	
(1) The Commissioner must refund an amount of tax that a person has paid if—	
(a) the person paid the amount as a result of an amendment to an assessment increasing the amount of tax payable by the person; and	30
(b) the amount is more than the amount required to be paid by the person under this Part; and	
(c) the 4-year period under section 108 of the Tax Administration Act 1994 beginning at the end of the income	35

year in which the assessment was amended has not ended.

*Refunds arising from mistakes*

- (2) **Section RM 6** overrides **subsection (1)**.

Defined in this Act: amount of tax, assessment, Commissioner, income year, pay  
Compare: 2004 No 35 s MD 1(2)

5

**RM 5 Overpayment on income statements**

*When this section applies*

- (1) This section applies when an income statement has been provided to a person and the result is that an amount of tax must be refunded to the person. For the purposes of this section, the amount of tax must be more than \$50.

10

*Refund on confirmation of correctness*

- (2) The Commissioner may refund the amount of tax only after the person has confirmed that the income statement is correct.

15

*Threshold amount*

- (3) The Governor-General may make an Order in Council increasing the amount set out in **subsection (1)**.

Defined in this Act: amount of tax, Commissioner, income statement  
Compare: 2004 No 35 s MD 1(1A)

20

**RM 6 Refunds after 4-year period ends**

*When this section applies*

- (1) This section applies when a person has overpaid either an amount of tax or FDP, and the 4-year period referred to in **sections RM 2(1)(b) and RM 4(1)(c)** has ended.

25

*Refund*

- (2) The Commissioner may refund the amount or payment if the refund—  
(a) arises as described in **subsection (3)**; and  
(b) is made in the way described in **subsection (4)**.

30

*Cause of refund*

- (3) The refund must arise from—

- (a) a clear mistake by or simple oversight of the person; or
- (b) the person's entitlement to a tax credit under **Part M** (Tax credits for families).

*When refund made*

- (4) The refund must be made— 5
  - (a) within a period of 4 years that starts at the end of the 4-year period referred to in **sections RM 2(1)(b) and RM 4(1)(c)**; and
  - (b) on an application— 10
    - (i) made by the person or on their behalf:
    - (ii) received by the Commissioner within the further period of 4 years described in **paragraph (a)**.

Defined in this Act: amount of tax, Commissioner, FDP, tax credit, pay

Compare: 2004 No 35 ss MD 1(2B), NH 3(7)

**RM 7 Refunds to PAYE intermediaries** 15

*When this section applies*

- (1) This section applies when a PAYE intermediary pays to the Commissioner an amount of tax for a PAYE income payment for an employer—
  - (a) relying on a payment made to the trust account of the intermediary— 20
    - (i) by the employer and later dishonoured; or
    - (ii) mistakenly by a person and later recovered from the intermediary:
  - (b) mistakenly from funds not provided by the employer 25
    - for a purpose related to the PAYE income payment.

*Refund to intermediary*

- (2) The Commissioner must refund the amount of tax to the intermediary. 30

Defined in this Act: amount of tax, Commissioner, employer, pay, PAYE intermediary, PAYE income payment

Compare: 2004 No 35 s NBA 7

**RM 8 Overpaid RWT or NRWT**

*When this section applies*

- (1) This section applies when a person is required to withhold and pay to the Commissioner an amount of RWT or NRWT, and 35



the amount is more than the amount required to be paid under this Part.

*Refund to person deriving payment or person withholding amount*

- (2) The Commissioner must refund the amount of the overpayment to— 5
- (a) the person who derives the payment from which the amount of tax was withheld; or
  - (b) the person who withheld the amount if they have paid the amount of the overpayment to the person deriving the payment and not subtracted the amount under **section RA 12(5) and (6)** (Adjustment to correct errors: certain excess amounts). 10

Defined in this Act: amount of tax, Commissioner, NRWT, pay, RWT

Compare: 2004 No 35 ss MD 1(4)(b), (c), NF 7(1), (2), (5), NG 16(1), (1A) 15

**RM 9 Calculations for attributed and non-attributed fringe benefits**

*When this section applies*

- (1) This section applies when an employer chooses to pay FBT under **sections RD 48 to RD 54** (which relate to attributed fringe benefits and non-attributed fringe benefits). 20

*Result of calculations*

- (2) If the result of the calculations of FBT on attributed fringe benefits or non-attributed fringe benefits is negative, the Commissioner must refund to the employer an amount equal to the deficiency. 25

Defined in this Act: amount, Commissioner, employer, FBT, pay

Compare: 2004 No 35 s ND 10(4)(a)

*Use of refunds*

**RM 10 Using refund to satisfy tax liability** 30

*When this section applies*

- (1) This section applies when a person is entitled to a refund of an amount of tax under **sections RM 2 and RM 4 to RM 6**.

*Request for particular application*

- (2) The person may ask under section 173T of the Tax Administration Act 1994 for the Commissioner to apply some or all of the amount on a particular date to satisfy a liability under the Inland Revenue Acts.

5

*Commissioner applying refund*

- (3) If no request is made under **subsection (2)**, the Commissioner may apply the amount of the refund to satisfy a liability that the person has under the Inland Revenue Acts.

*Exclusion*

10

- (4) Despite **subsection (3)**, the Commissioner must not apply the amount of a refund to satisfy a liability that the person has under **section LA 7** (Remaining refundable credits: family scheme income) or **RM 8**.

Defined in this Act: amount of tax, Commissioner, Inland Revenue Acts

15

Compare: 2004 No 35 ss MD 1(3), (3A), MD 1(4)

**RM 11 Using GST refund to pay instalment of provisional tax***When this section applies*

- (1) This section applies when a person who is liable to pay provisional tax has a GST refund in a taxable period as a result of the application of section 20(5) of the Goods and Services Tax Act 1985.

20

*Using amount*

- (2) The person may choose to use the amount of the refund to pay some or all of an instalment of provisional tax that is payable on the same instalment date.

25

*Reduction in amount*

- (3) If the Commissioner amends the assessment reducing the amount of the refund, the person's payment of provisional tax arising from the GST refund is the reassessed amount.

30

Defined in this Act: amount, assessment, Commissioner, GST, instalment date, pay, provisional tax, taxable period

Compare: 2004 No 35 s MB 11

**RM 12 Reduction in provisional tax liability***When this section applies*

- (1) This section applies when the amount of provisional tax payable for a tax year is reduced by the person liable to pay the provisional tax, or by the Commissioner under section 119(2) of the Tax Administration Act 1994. 5

*Reduction in amount of provisional tax payable*

- (2) If the person applies in writing for a refund of the amount of provisional tax already paid that is as a result of the reduction more than the amount that would have been payable in relation to earlier instalment dates for the tax year, the Commissioner must— 10
- (a) apply the overpayment as the person asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way that the Commissioner determines in payment of tax or another amount that is payable by them; and 15
- (b) refund any balance of the overpayment.

*Reduction in assessment*

- (3) If the person's residual income tax for the relevant tax year is no more than \$2,500, and they apply in writing for the refund of an amount of provisional tax that has been determined under **section RC 9** (Provisional tax payable in instalments) and already paid, other than on a final instalment, the Commissioner must— 20
- (a) apply the amount as the person asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way the Commissioner determines in payment of tax or another amount that is payable by them; and 25
- (b) refund any balance of the amount. 30

*Treatment of amount refunded or credited*

- (4) When an overpayment or amount of provisional tax for a tax year has been applied or refunded under **subsection (2) or (3)**— 35
- (a) a later instalment payable under **section RC 10 or RC 11** (which relate to the methods used to calculate the amount of an instalment), as applicable, is calculated as

- if the total instalments previously payable were reduced by the amount of the overpayment or amount; and
- (b) the overpayment or amount applied or refunded is, from the date of action taken by the Commissioner, treated as not being provisional tax paid for the tax year. 5

Defined in this Act: amount, Commissioner, instalment date, pay, provisional tax, residual income tax, tax, tax year

Compare: 2004 No 35 s MB 36

### *Limits on refunds and transfers*

#### *ICA companies* 10

#### **RM 13 Limits on refunds for ICA companies**

##### *When this section applies*

- (1) This section applies when an ICA company is entitled to—
- (a) a refund of income tax under **sections RM 2 and RM 4 to RM 6**; or 15
- (b) transfer an amount under **section RC 32** (Wholly-owned groups of companies).

##### *Amount of refund or transfer limited*

- (2) The amount of the refund or transfer must be no more than the credit balance of the ICA company in the imputation credit account at the latest of the following dates: 20
- (a) the last day of the tax year that has just ended;
- (b) the last day of a period for which the company is required to file a return under section 70(1) of the Tax Administration Act 1994: 25
- (c) the last day of a period for which the company filed an ICA return under section 70(3) of that Act.

##### *Time for filing returns*

- (3) **Subsection (2)** does not apply if the ICA company has an extension of time to file its ICA return for a tax year. In that case, the total amount refunded or transferred must be no more than the credit balance of the ICA company in its imputation credit account on the last day of the tax year to which the ICA return relates. 30

Defined in this Act: amount, ICA company, imputation credit account, ICA return, income tax, tax year 35

Compare: 2004 No 35 s MD 2(1), (1A)

## RM 14 Limits on refunds when company stops being ICA company

*When this section applies*

- (1) This section applies when a company stops being an ICA company and is entitled to have a refund or to make a transfer under **section RM 13(1)** for a tax year in which it was an ICA company. 5

*Limit on amount of refund or transfer*

- (2) The total amount refunded or transferred must be no more than the final balance of the imputation credit account arising as a debit under **section OB 56** (ICA final balance) just before the company stopped being an ICA company. 10

Defined in this Act: amount, company, ICA company, imputation credit account, tax year

Compare: 2004 No 35 s MD 2(2) 15

## RM 15 Changes in credit balances

*Credit balance reduced*

- (1) A credit balance is treated as reduced by the amount of a refund or transfer as described in **sections RM 13 and RM 14** that is made earlier in the same tax year. 20

*Credit balance increased*

- (2) A credit balance is treated as increased by an amount equal to a debit to the company's imputation credit account under **section OB 41** (ICA debit for loss of shareholder continuity) arising after the date of payment of instalment B set out in **schedule 3, part A** (Payment of provisional tax and terminal tax) for the company's income year that corresponds to the tax year and before the date on which the credit balance is to be determined under **sections RM 13 and RM 14**. 25

Defined in this Act: amount, corresponding income year, imputation credit account, pay, tax year 30

Compare: 2004 No 35 s MD 2(3), (4)

## RM 16 Treatment of amounts not refunded

*When this section applies*

- (1) This section applies when, through the application of **sections RM 13 and RM 14**, an overpayment of income tax by a company 35

is not refunded to the company or transferred within a wholly-owned group of companies.

*Satisfying liabilities or retained*

- (2) The amount prevented from being a refund or transfer is—
- (a) applied to satisfy an income tax or provisional tax liability of the company for the tax year of the entitlement; and 5
  - (b) retained by the Commissioner to the extent to which **paragraph (a)** does not apply, whether because the company is liquidated or for another reason. 10

*Credit for provisional tax*

- (3) Despite **subsection (2)**, the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act. 15

Defined in this Act: amount, Commissioner, company, income tax, income tax liability, instalment date, liquidation, pay, provisional tax, wholly-owned group of companies

Compare: 2004 No 35 s MD 2(5), (5A)

**RM 17 Treatment of further income tax paid** 20

*When this section applies*

- (1) This section applies for the purposes of **sections RM 2 and RM 4 to RM 6** when a company pays further income tax under **sections OB 65 and OB 66** (which relate to further tax payable by ICA companies). 25

*No refund*

- (2) The company is not entitled to a refund of the amount of further income tax paid which is treated as tax paid to satisfy an obligation yet to arise.

Defined in this Act: amount, company, further income tax, pay 30

Compare: 2004 No 35 s MD 2(6)

*Companies receiving foreign dividends***RM 18 Limits on refunds related to foreign dividends***Maximum refund*

- (1) Despite **section RM 3**, if the overpayment described in that section relates to an earlier tax year, the refund must be no more than the relevant credit balance as follows: 5
- (a) for an FDPA company, the credit balance of the company's FDP account at the end of the tax year that is before the tax year in which the entitlement to the refund arises: 10
- (b) for an ICA company that is not an FDPA company, the credit balance of the company's imputation credit account at the end of the tax year that is before that in which the entitlement to the refund arises: 15
- (c) for a company described in **paragraph (a) or (b)** that ends its residence in New Zealand, the credit balance, just before the company stops being resident, of— 15
- (i) the company's imputation credit account arising as a debit under **section OC 15** (FDPA overpayment of FDP); or 20
- (ii) the company's FDP account arising as a debit under **section OC 26** (FDPA final balance).

*Treatment of amount not refunded*

- (2) If the amount of a company's overpayment is not refunded because it is more than the maximum allowed under **subsection (1)**, the amount may still be used to reduce FDP for a foreign dividend paid to the company. 25

*Reductions in credit balances*

- (3) For the purposes of this section, a credit balance referred to in **subsection (1)** is treated as reduced by an earlier refund under this section paid to the company in the tax year in which the entitlement to the refund arises. The refund of income tax under **sections RM 13 to RM 17** in the same tax year must be no more than the relevant credit balance. 30

Defined in this Act: amount, company, FDP, FDP account, FDPA company, foreign dividend, ICA company, imputation credit account, income tax, pay, tax year 35

Compare: 2004 No 35 s NH 4(2), (3)

**RM 19 Treatment of financial arrangements***When this section applies*

- (1) This section applies when a company is entitled to a refund of FDP under **section CD 50(10) to (13)** (Outstanding balances of financial arrangements). 5

*Credit balance increased*

- (2) The amount of the company's credit balance under **section RM 18(1)** is treated as increased by the amount of a debit in the company's imputation credit account or FDP account arising under **section OB 41 or OC 24** (which relate to imputation debits and FDP debits for loss of shareholder continuity), as applicable, after the date on which the payment was made and before the date on which the credit balance is determined under **section RM 18(1)**. 10

Defined in this Act: amount, company, FDP, FDP account, foreign dividend, imputation credit account, pay 15

Compare: 2004 No 35 s NH 4(4)(a)

**RM 20 Treatment of amounts not refunded***When this section applies*

- (1) This section applies when, through the application of **section RM 18(1)**, an overpayment is not refunded. 20

*Satisfying liabilities or retained*

- (2) The amount prevented from being a refund is— 25
- (a) applied to satisfy an income tax or provisional tax liability of the company for the tax year of an entitlement to a refund or FDP for a foreign dividend that is payable after the date on which the entitlement to the refund arises; and
  - (b) retained by the Commissioner to the extent to which **paragraph (a)** does not apply, whether because the company is liquidated or for another reason. 30

*Credit for provisional tax*

- (3) Despite **subsection (2)**, the amount may be credited on a provisional tax instalment date if residual income tax is treated



under section 120KE(5) to (7) of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, Commissioner, company, foreign dividend, FDP, income tax liability, instalment date, liquidation, pay, provisional tax, residual income tax, tax year

5

Compare: 2004 No 35 s NH 4(4)(b)

## RM 21 Refunds when loss balances used to reduce net income

### *When subsection (2) applies*

- (1) **Subsection (2)** applies when a company that is liable to pay FDP to the Commissioner has a loss balance that may be used under **sections IA 2 to IA 9** (which relate to the treatment of tax losses) to reduce its net income for the income year in which the foreign dividend is paid. 10

### *Refund*

- (2) The company is entitled to a refund of an amount equal to the least of the following, as applicable: 15
- (a) the amount of FDP that the company pays in the income year in which the foreign dividend is paid; or
  - (b) the amount of the loss balance multiplied by the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year in which the foreign dividend is paid; or 20
  - (c) the credit balance of the company's FDP account at the end of the tax year that has just ended. 25

### *Group company's tax loss*

- (3) This section also applies, treating the group of companies as the company, when— 30
- (a) a company (**group company A**) pays FDP to the Commissioner; and
  - (b) another company (**group company B**) that is part of the same group of companies as group company A, has a tax loss for the income year in which the foreign dividend is paid or an earlier income year that may be used under **sections IA 2 to IA 9** to reduce the net income of group company A; and 35

- (c) group company B makes the tax loss available so that group company A is able to get a refund of some or all of the payment.

*Application and return requirements*

- (4) For this section to apply,— 5
- (a) the company must apply to the Commissioner in writing; and
- (b) the company must meet the return requirements of section 71B of the Tax Administration Act 1994 for the income year in which the dividend is paid; and 10
- (c) if group company B's tax loss is used, group company B must make an election to use the tax loss in writing.

*Reduction in tax loss*

- (5) When a refund is paid under this section, the amount of tax loss is reduced by an amount calculated using the formula— 15
- $$\frac{\text{refund}}{\text{tax rate.}}$$

*Definition of items in formula*

- (6) In the formula,—
- (a) **refund** is the amount of the refund paid to group company A under this section: 20
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** for the income year that corresponds to the tax year referred to in **subsection (3)(c)**.

*Late payment penalties*

- (7) Group company A is entitled to a refund of a late payment penalty imposed under section 139B of the Tax Administration Act 1994 in relation to the failure to pay the amount that is refunded. 25

Defined in this Act: amount, basic rate, Commissioner, company, corresponding income year, foreign dividend, FDP, group of companies, income tax, income year, loss balance, net income, pay, tax loss, tax year 30

Compare: 2004 No 35 s NH 4(5), (6)

*Maori authorities***RM 22 Limits on refunds for Maori authorities***When this section applies*

- (1) This section applies when a Maori authority is entitled to a refund of income tax under **sections RM 2 and RM 4 to RM 6**. 5

*Amount of refund limited*

- (2) The amount of the refund must be no more than the credit balance of the Maori authority in the Maori authority credit account at the latest of the following dates: 10
- (a) the last day of the tax year that has just ended: 10
  - (b) the last day of a period for which the Maori authority is required to file a return under section 70B(1) of the Tax Administration Act 1994:
  - (c) the last day of a period for which the Maori authority files a Maori authority credit account return under section 70B(3) of that Act. 15

*Time for filing returns*

- (3) **Subsection (2)** does not apply if the Maori authority has an extension of time to file its Maori authority credit account return for a tax year, and files the return with the extended time. In that case, the total amount refunded must be no more than the credit balance of the Maori authority in its Maori authority credit account on the last day of the tax year to which the return relates. 20

Defined in this Act: amount, income tax, Maori authority, Maori authority credit account, Maori authority credit account return, tax year 25

Compare: 2004 No 35 s MD 2B(1), (1B)

**RM 23 Limits on refunds when Maori authority stops being Maori authority***When this section applies* 30

- (1) This section applies when a Maori authority stops being a Maori authority and is entitled to a refund under **sections RM 2 or RM 4 to RM 6** for a tax year in which it maintained a Maori authority credit account.

*Limit on amount of refund*

- (2) The amount refunded must be no more than the final balance of the Maori authority credit account arising as a debit under **section OK 18** (MACA final balance) just before the Maori authority stopped being a Maori authority. 5

Defined in this Act: amount, Maori authority, Maori authority credit account, tax year

Compare: 2004 No 35 s MD 2B(2)

**RM 24 Increase in credit balances**

A credit balance is treated as increased by an amount equal to a debit to the Maori authority credit account under **section OK 15** (MACA debit for loss of shareholder continuity) arising after the date of payment of instalment B set out in **schedule 3, part A** (Payment of provisional tax and terminal tax) for the authority's income year that corresponds to the tax year and before the date on which the credit balance is to be determined under **sections RM 22 and RM 23**. 10  
15

Defined in this Act: amount, corresponding income year, Maori authority credit account, pay, tax year

Compare: 2004 No 35 s MD 2B(3) 20

**RM 25 Treatment of amounts not refunded***When this section applies*

- (1) This section applies when, through the application of **sections RM 22 and RM 23**, an overpayment of income tax by a Maori authority is not refunded to the authority. 25

*Satisfying liabilities or retained*

- (2) The amount prevented from being a refund is—  
 (a) applied to satisfy an income tax or provisional tax liability of the Maori authority for the tax year of the entitlement; and 30  
 (b) retained by the Commissioner to the extent to which **paragraph (a)** does not apply.

*Credit for provisional tax*

- (3) Despite **subsection (2)**, the amount may be credited on a provisional tax instalment date if residual income tax is treated 35

under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, income tax, income tax liability, instalment date, Maori authority, pay, provisional tax, residual income tax

Compare: 2004 No 35 s MD 2B(4), (4B)

5

## **RM 26 Treatment of further income tax paid**

*When this section applies*

- (1) This section applies for the purposes of **sections RM 2 and RM 4 to RM 6** when a Maori authority pays further income tax under **section OK 21 or OK 22** (which relate to further income tax for closing debit balance or when Maori authority stops being a Maori authority). 10

*No refund*

- (2) The authority is not entitled to a refund of the amount of further income tax paid which is treated as tax paid to satisfy an obligation yet to arise. 15

Defined in this Act: amount, further income tax, Maori authority, pay

Compare: 2004 No 35 s MD 2B(5)

## **RM 27 Application when no credits arise**

**Sections RM 22 to RM 26** do not apply in relation to an amount of tax paid for which no credit arises under **section OK 2** (MACA payment of tax). 20

Defined in this Act: amount, pay

Compare: 2004 No 35 s MD 2B(6)

*Persons with policyholder credit accounts*

25

## **RM 28 Limits on refunds for PCA persons**

*When this section applies*

- (1) This section applies when a PCA person is entitled to a refund of income tax under **sections RM 2 and RM 4 to RM 6**.

*Amount of refund limited*

30

- (2) The amount of the refund must be no more than the credit balance of the PCA person in the policyholder credit account at the latest of the following dates:

(a) the last day of the tax year that has just ended:

- (b) the last day of a period for which the person is required to file a return under section 66(4) of the Tax Administration Act 1994:
- (c) the last day of a period for which the person files an annual PCA return under section 66(5) of that Act. 5

Defined in this Act: amount, annual PCA return, income tax, PCA person, policyholder credit account, tax year

Compare: 2004 No 35 s MD 3(1)

### **RM 29 Limits on refunds when person no longer PCA person**

*When this section applies* 10

- (1) This section applies when a person stops being a PCA person and is entitled to a refund as described in **section RM 28(1)** for a tax year in which they were a PCA person.

*Limit on amount of refund*

- (2) The amount refunded must be no more than the final balance of the policyholder credit account just before the person stopped being a PCA person. 15

Defined in this Act: amount, PCA person, PCA return, policyholder credit account, return, tax year

Compare: 2004 No 35 s MD 3(2) 20

### **RM 30 Changes in credit balances**

A credit balance is treated as reduced by the amount of an earlier refund paid to the person during the same tax year within the limits imposed by **sections RM 28 and RM 29**.

Defined in this Act: amount, tax year 25

Compare: 2004 No 35 s MD 3(3)

### **RM 31 Treatment of amounts not refunded**

*When this section applies*

- (1) This section applies when, through the application of **sections RM 28 and RM 29**, an overpayment of income tax by a PCA person is not refunded to the person. 30

*Satisfying liabilities or retained*

- (2) The amount prevented from being a refund is—

- (a) applied to satisfy an income tax or provisional tax liability of the person for the tax year of the entitlement; and
- (b) retained by the Commissioner to the extent to which **paragraph (a)** does not apply. 5

*Credit for provisional tax*

- (3) Despite **subsection (2)**, the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act. 10

Defined in this Act: amount, Commissioner, income tax, instalment date, pay, PCA person, provisional tax, residual income tax

Compare: 2004 No 35 s MD 3(4)

*Attributing companies*

**RM 32 Application of sections RM 13 to RM 17 to attributing companies** 15

**Sections RM 13 to RM 17** do not apply to an overpayment of tax by an attributing company that may be refunded to or allocated by the company unless—

- (a) the overpayment was made as part of or under an arrangement— 20
  - (i) to obtain a tax advantage of a kind referred to in **section GB 35** (Imputation arrangements to obtain tax advantage); or
  - (ii) to avoid a tax liability of a shareholder under this Act; and 25
- (b) the arrangement, or a part of it, was based on the company's ability to obtain a refund of tax that the company would have under those sections in the absence of this section. 30

Defined in this Act: arrangement, attributing company, shareholder, tax advantage

Compare: 2004 No 35 s MD 2(7)

*Certain unit trusts and group investment funds***RM 33 Limits on refunds for certain unit trusts and group investment funds***When this section applies*

- (1) This section applies when a public unit trust or group investment fund— 5
- (a) is entitled to a refund under **sections RM 2 or RM 4 to RM 6**; and
- (b) has,— 10
- (i) a credit balance in its ASC account on liquidation; and
- (ii) a zero balance in its imputation credit account.

*Calculating amount of refund*

- (2) The refund must be no more than an amount calculated using the formula— 15
- $\text{ASC credit balance} \times \text{maximum imputation ratio.}$

*Definition of items in formula*

- (3) In the formula,—
- (a) **ASC credit balance** is the credit balance in the ASC account of the public unit trust or group investment fund, as applicable: 20
- (b) **maximum imputation ratio** is the maximum permitted ratio calculated under **section OA 18(2)** (Calculation of maximum permitted ratios), read as if the words “in which the divided or distribution is paid” in **subsection (3)** were “in which the liquidation occurs”. 25

Defined in this Act: amount, ASC account, group investment fund, imputation credit account, liquidation, public unit trust

Compare: 2004 No 35 s MD 2A

**Subpart RP—Intermediaries 30****Contents***Introductory provision*

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*PAYE intermediaries**Obligations and treatment of PAYE intermediaries 35*

- RP 2 PAYE intermediaries



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### *Introductory provision*

<b>RP 1</b>	<b>What this subpart does</b>	25
	This subpart establishes the obligations of PAYE intermediaries and tax pooling intermediaries in relation to the collection and payment of tax and the provision of information, and sets out the requirements for the operation of their respective accounts.	
	Defined in this Act: PAYE intermediary	30
	Compare: 2004 No 35 s MBA 1	

## *PAYE intermediaries*

### *Obligations and treatment of PAYE intermediaries*

#### **RP 2 PAYE intermediaries**

##### *Transferring obligations*

- (1) An employer may arrange to transfer their PAYE and ESCT obligations to a person approved under section 15D or 15G of the Tax Administration Act 1994 as a PAYE intermediary or a listed PAYE intermediary. 5

##### *Paying amounts of tax and filing returns*

- (2) A PAYE intermediary or listed PAYE intermediary must, on behalf of an employer who has transferred an obligation to them under **subsection (1)**,— 10
- (a) withhold and pay to the Commissioner the amount of tax for a payment under the PAYE rules and the ESCT rules; and 15
- (b) file a return of income relating to the payment and the amount of tax for the payment.

##### *When person no longer intermediary*

- (3) A person who stops being a PAYE intermediary or a listed PAYE intermediary for an employer has the rights and obligations under the PAYE rules and ESCT rules of a PAYE intermediary or listed PAYE intermediary, as applicable, in relation to funds that— 20
- (a) the employer pays to the person as intermediary; and
- (b) the person holds at the time they stop being an intermediary. 25

Defined in this Act: amount of tax, employer, ESCT, ESCT rules, listed PAYE intermediary, pay, PAYE, PAYE intermediary, PAYE rules, return of income

Compare: 2004 No 35 ss NBA 1, NBA 8, NBB 7(3)

#### **RP 3 Requirements for listed PAYE intermediaries** 30

For a period in which a person remains a listed PAYE intermediary, they must—

- (a) continue to qualify under section 15D of the Tax Administration Act 1994 as a PAYE intermediary; and
- (b) meet all the obligations under this subpart of a PAYE intermediary; and 35

- (c) continue to meet the requirements of section 15F of the Tax Administration Act 1994; and
- (d) operate technology systems to enable them to return by electronic means a subsidy claim form that contains a correct calculation of the amount of a subsidy under **section RP 5** and section 15M of the Tax Administration Act 1994. 5

Defined in this Act: amount, listed PAYE intermediary, PAYE intermediary, subsidy claim form

Compare: 2004 No 35 s NBB 3 10

#### **RP 4 Payment of subsidies to certain PAYE intermediaries**

##### *Requirements for payment of subsidy*

- (1) The Commissioner may pay a subsidy to a listed PAYE intermediary for a payroll service that they provide to an employer to whom **section RD 23(3) or (4)** (PAYE income payment forms for amounts of tax paid to Commissioner) applies if the listed PAYE intermediary— 15
  - (a) has a contract with the employer to provide the services; and
  - (b) has met their obligations under **sections RP 13 to RP 16**; and 20
  - (c) files a correct subsidy claim form under section 15M of the Tax Administration Act 1994.

##### *Notification requirements*

- (2) If a subsidy under **subsection (1)** is paid to a listed PAYE intermediary, the Commissioner must notify the intermediary of the following matters within 14 days of the date of the payment: 25
  - (a) the amount of the subsidy paid in relation to each employer; and 30
  - (b) the period to which the subsidy relates; and
  - (c) other information that may be relevant to the payroll services provided as the Commissioner considers appropriate.

##### *Calculating amount of subsidy* 35

- (3) The listed PAYE intermediary must calculate the amount of the subsidy in the manner provided by regulations made under this section.

*Paying amount of subsidy*

- (4) The Commissioner must pay the amount of the subsidy within 30 days of receiving the last of—
- (a) the employer monthly schedule to which the subsidy claim form relates: 5
  - (b) the payment of the amounts of tax for a PAYE income payment to which the subsidy claim form relates:
  - (c) the subsidy claim form.

*Bank accounts*

- (5) The Commissioner must pay the subsidy to a bank account nominated by the listed PAYE intermediary for the purpose or, if an overpayment has been made to the listed PAYE intermediary, to the listed PAYE intermediary's bank account. 10

*Prescribing amount of subsidy*

- (6) The Governor-General may from time to time by Order in Council prescribe the amount of the subsidy to be paid for an employee of an employer who contracts the services of a listed PAYE intermediary under section 15J of the Tax Administration Act 1994. 15  
20

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer monthly schedule, listed PAYE intermediary, pay, subsidy claim form

Compare: 2004 No 35 ss NBB 1, NBB 6

**RP 5 Subsidy claims***When this section applies* 25

- (1) This section applies when a listed PAYE intermediary files a subsidy claim form under section 15M of the Tax Administration Act 1994 and the Commissioner amends the details to correct an error.

*Overpaid or underpaid amounts* 30

- (2) If an overpayment or underpayment results from the amendment, the intermediary or Commissioner, as applicable, must pay the amount overpaid or underpaid within 30 days of the date of notice under section 15M(3) of that Act.

*Using overpayment to pay subsidy*

- (3) Despite **subsection (2)**, the Commissioner may choose to use the amount of an overpayment resulting from an amendment to pay a subsidy claim made after the end of the 14-day period referred to in section 15M(3) of that Act. 5

Defined in this Act: Commissioner, listed PAYE intermediary, subsidy claim form  
Compare: 2004 No 35 s NBB 5(4), (5)

**RP 6 Operation of PAYE intermediaries' trust accounts***Nature of account*

- (1) A PAYE intermediary's trust account must be named as a trust account and established at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989. 10

*Deposits*

- (2) The deposits to the account consist of—
- (a) a payment of gross salary or wages paid by an employer: 15
  - (b) an amount of employer's superannuation contribution paid by an employer:
  - (c) an amount of tax for a payment of salary or wages required under the PAYE rules and ESCT rules, or made under **section RP 12**: 20
  - (d) an amount of a refund made by the Commissioner under **section RM 7** (Refunds to PAYE intermediaries):
  - (e) interest on the amount of the funds in the trust account.

*Withdrawals*

- (3) The withdrawals from the account consist of—
- (a) a payment of net salary or wages to an employee:
  - (b) an amount of employer's superannuation contribution paid by an employer:
  - (c) an amount of tax for a payment of salary or wages withheld under **section RP 12**: 30
  - (d) a payment that an employer would be required to make but for the arrangement with the PAYE intermediary, in relation to an amount of tax for a payment of salary or wages to an employee or an employer's superannuation contribution made on behalf of an employee: 35
  - (e) interest on the amount of the funds in the trust account.

*Payments held on trust*

- (4) A payment relating to an employee that is credited to the trust account of a PAYE intermediary is held by the PAYE intermediary on trust for the benefit of the employee and the Commissioner according to their respective rights and obligations. 5

*Interest*

- (5) Interest earned in the trust account of a PAYE intermediary by a payment that relates to an employee is held beneficially by the PAYE intermediary. 10

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer's superannuation contribution, ESCT rules, interest, pay, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 6

*Employers' responsibilities* 15**RP 7 General responsibilities of employers***When this section applies*

- (1) This section applies when an employer who meets the requirements of **sections RP 8 to RP 11** arranges to transfer their PAYE obligations in relation to an employee and a pay period to a PAYE intermediary. 20

*PAYE liabilities*

- (2) The employer is not liable under the PAYE rules in relation to the employee and the pay period. However, the employer remains liable for the payment to the employee of the salary or wages for the pay period. 25

*ESCT liabilities*

- (3) If the PAYE intermediary assumes the employer's obligations under the ESCT rules, the employer is not liable under the ESCT rules in relation to the employee and the pay period. However, the employer remains liable for the payment to the employee of the employer's superannuation contribution on the employee's behalf. 30

Defined in this Act: employee, employer, employer's superannuation contribution, ESCT rules, pay period, PAYE, PAYE intermediary, salary or wages 35

Compare: 2004 No 35 s NBA 4(2), (3)

**RP 8 Information required from employers**

An employer must—

- (a) keep a record of—
  - (i) the gross salary or wages of an employee for a pay period; and
  - (ii) the amounts of tax withheld by the employer for the pay period; and
- (b) provide information a PAYE intermediary seeks in the time agreed by the employer and PAYE intermediary.

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Defined in this Act: amount of tax, employee, employer, pay period, PAYE intermediary, salary or wages, tax withheld

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Compare: 2004 No 35 s NBA 4(1B)

**RP 9 Authorised transfers from accounts**

*When this section applies*

- (1) This section applies when an employer has authorised the PAYE intermediary to direct the transfer of an amount from the employer's bank account to meet an obligation that the PAYE intermediary has on the employer's behalf in relation to an employee and a pay period.

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*Sufficient funds*

- (2) The employer must ensure, at a time fixed by the PAYE intermediary, that the bank account has sufficient funds available for the transfer.

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Defined in this Act: amount, employee, employer, pay period, PAYE intermediary

Compare: 2004 No 35 s NBA 4(1)(a)

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**RP 10 When transfers from accounts not authorised**

*Employer to pay amount of tax to trust account*

- (1) If an employer has not authorised a PAYE intermediary to direct the transfer of funds as described in **section RP 9**, and the employer pays salary or wages directly to an employee for a pay period under **section RP 12**, the employer must pay the amount of tax for the payment required under the PAYE rules and ESCT rules into the PAYE intermediary's trust account.

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*Employer to pay salary or wages to trust account*

- (2) If the employer has not authorised the PAYE intermediary to direct the transfer of funds as described in **section RP 9**, and

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**subsection (1)** does not apply, the employer must pay the amount of the employee's gross salary or wages for the pay period into the PAYE intermediary's trust account. However, the employer may retain an amount lawfully owed to them by the employee before making the payment. 5

Defined in this Act: amount of tax, employee, employer, ESCT rules, pay, pay period, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 4(1)(b)(i), (ii)

### **RP 11 Employer's superannuation contributions**

If a PAYE intermediary has assumed the obligations of an employer under the ESCT rules in relation to an employee and a pay period, the employer must pay the amount of the employer's superannuation contribution made in the pay period on behalf of the employee into the PAYE intermediary's trust account. 10  
15

Defined in this Act: amount, employee, employer, employer's superannuation contribution, ESCT rules, pay period, PAYE intermediary

Compare: 2004 No 35 s NBA 4(1)(b)(iii)

### **RP 12 When payments made directly to employees**

Despite **sections RP 9 and RP 10**, an employer may pay an employee's salary or wages directly to the employee in the following circumstances: 20

- (a) the payment is made on a day in a pay period that is not the usual day for a payment of salary or wages for the pay period; and 25
- (b) the payment is—
  - (i) an advance of the employee's salary or wages:
  - (ii) salary or wages owed to the employee for an earlier pay period:
  - (iii) a payment on the termination of the employee's employment; and 30
- (c) the employer withholds for the salary or wages of the employee the amount of tax that would be required under the PAYE rules and the ESCT rules if the employer did not have an arrangement with a PAYE intermediary; and 35



- (d) the employer pays the amount referred to in **paragraph (c)** in the way described in **sections RP 9 to RP 11**.

Defined in this Act: amount of tax, arrangement, employee, employer, employment, ESCT rules, pay, pay period, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 4(4)

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### *PAYE intermediaries' responsibilities*

#### **RP 13 General responsibilities of PAYE intermediaries**

##### *When this section applies*

- (1) This section applies when a PAYE intermediary assumes the PAYE and ESCT obligations in relation to an employee and a pay period that an employer would have under those rules in the absence of **section RP 2(1)**. 10

##### *No liability as employer*

- (2) The PAYE intermediary does not become liable as an employer for the payment to the employee of the salary or wages for the pay period, or for the payment of an employer's superannuation contribution made on behalf of the employee. 15

Defined in this Act: employee, employer, employer's superannuation contribution, ESCT, pay period, PAYE, PAYE intermediary, salary or wages

Compare: 2004 No 35 s NBA 5(1), (2)

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#### **RP 14 Collection, payment, and information requirements**

A PAYE intermediary must—

- (a) calculate and withhold the amount of tax for a payment of salary or wages, and pay the amount to the Commissioner by electronic means and in the format required; and 25
- (b) provide an employer monthly schedule to the Commissioner by electronic means and in the format required; and
- (c) provide a PAYE income payment form to the Commissioner if required; and 30
- (d) keep the records referred to in section 24 of the Tax Administration Act 1994.

Defined in this Act: amount of tax, Commissioner, employer monthly schedule, pay, PAYE intermediary, PAYE income payment form, salary or wages 35

Compare: 2004 No 35 s NBA 5(1)

### **RP 15 When employers have authorised transfers from accounts**

If a PAYE intermediary has been given an authorisation by an employer under **section RP 2(1)**, the intermediary must direct that, at or before the time of the transfer of the payment of salary or wages, an amount equal to the amount of tax for the payment required under the PAYE rules and ESCT rules is transferred to—

- (a) the Commissioner; or
- (b) the trust account established by the PAYE intermediary and identified in the employer's notice under section 15J of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, employer, ESCT rules, pay, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 5(1B)

### **RP 16 Obligations for employer's superannuation contributions**

When **section RP 11** applies, the PAYE intermediary assumes the obligations under the ESCT rules in relation to the employee and the pay period that the employer would have in the absence of **section RP 2(1)**.

Defined in this Act: employee, employer, ESCT rules, pay period, PAYE intermediary

Compare: 2004 No 35 s NBA 5

### ***Tax pooling intermediaries***

#### **RP 17 Tax pooling intermediaries**

A person (**person A**) may ask a person who maintains a tax pooling account to act as a tax pooling intermediary between person A and the Commissioner in using funds in the tax pooling account to meet an obligation of person A to pay provisional tax.

Defined in this Act: Commissioner, intermediary, provisional tax, tax pooling account

Compare: 2004 No 35 s MBA 2

**RP 18 Deposits in tax pooling accounts***When this section applies*

- (1) This section applies when a tax pooling intermediary makes a deposit in a tax pooling account on behalf of a person.

*Deposit held in trust*

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- (2) The intermediary holds the principal amount of the person's deposit in trust for the person until the amount is—
- (a) credited to the person's tax account with the Commissioner:
  - (b) credited to another person's tax account with the Commissioner: 10
  - (c) refunded to the person.

*Notification required*

- (3) The intermediary must—
- (a) notify the person, at or before the time the person pays an amount to the intermediary, that the payment does not satisfy an obligation of the person to make a payment to the Commissioner; and 15
  - (b) notify the Commissioner by electronic means, providing for each person who has contributed an amount as a deposit,— 20
    - (i) the person's name and tax file number; and
    - (ii) the amount of the person's contribution.

*Commissioner's notification*

- (4) On receiving the deposit and details described in **subsection (3)**, the Commissioner must notify the intermediary of— 25
- (a) the account in which the deposit is paid; and
  - (b) the names of all persons who are connected with the deposit; and
  - (c) the amount of each person's deposit. 30

*Refunding deposit*

- (5) If the details described in **subsection (3)** are not provided within 5 working days after a deposit is made, the Commissioner must refund the deposit.

Defined in this Act: amount, Commissioner, intermediary, notify, tax file number, tax pooling account, working day 35

Compare: 2004 No 35 ss MBA 3, MBA 4(3), MBA 5(1)–(4)

**RP 19 Transfers from tax pooling accounts***Transferring amounts*

- (1) A tax pooling intermediary may ask the Commissioner to transfer an amount in their tax pooling account to the tax account of a person who is their client. The amount transferred and credited to the person's account is treated as income tax paid to meet a provisional tax obligation under the provisional tax rules. 5

*Credited on date of deposit or later*

- (2) The intermediary may ask the Commissioner that the amount of a transfer under **subsection (1)** is credited in the person's tax account on the date on which the amount was deposited in the tax pooling account or on some later date. 10

*Credit date*

- (3) The credit date for an amount transferred to a person's tax account is— 15
- (a) the date sought under **subsection (2)**, unless—
- (i) that date falls in a tax year for which the person's terminal tax date is more than 60 days before the date on which the Commissioner receives the request; and 20
- (ii) when the Commissioner receives the request, the person is liable for a penalty relating to their provisional tax obligations for the tax year; or
- (b) if **paragraph (a)** does not apply, the date on which the Commissioner receives the request for the transfer. 25

*Details*

- (4) For the purposes of this section, the intermediary must provide the following details to the Commissioner by electronic means: 30
- (a) the date of the transfer and the credit date, if it is different; and
- (b) the amount of the transfer; and
- (c) the tax file number of the person for whom the amount is transferred. 35

*Statement*

- (5) When an amount is transferred, the Commissioner must provide a statement showing the effect of the transfer to both the intermediary and the person for whom the transfer is made.

Defined in this Act: amount, Commissioner, income tax, intermediary, pay, provisional tax, provisional tax rules, tax file number, tax pooling account, tax year, terminal tax

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Compare: 2004 No 35 s MBA 6(1)–(3)

**RP 20 Refusals to transfer amounts***When this section applies*

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- (1) This section applies when a tax pooling intermediary asks to transfer an amount under **section RP 19**.

*Tax avoidance*

- (2) The Commissioner may refuse to accept the request, or may reverse the transfer, if the request is made for the purpose or effect of tax avoidance.

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*Failure to provide details*

- (3) The Commissioner must refuse the transfer if—
- it relates to a deposit for which the details have not been provided under **section RP 18(3)** and the period of 5-working days has not expired:
  - the details required under **section RP 19(4)** have not been provided.

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Defined in this Act: amount, Commissioner, tax avoidance, working day

Compare: 2004 No 35 s MBA 6(4)–(9)

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**RP 21 Refunds from tax pooling accounts**

A tax pooling intermediary may ask the Commissioner to refund some or all of the balance in their tax pooling account.

Defined in this Act: Commissioner, tax pooling account

Compare: 2004 No 35 s MBA 7

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**Subpart RZ—Terminating provisions****Contents***Provisional tax*

- RZ 1 Certain elections to become person with provisional tax liability

35

RZ 2 Amount of provisional tax based on 1997–98 or earlier tax year

***Refunds***

RZ 3 Limits on refunds: transitional dates

***Withdrawal income***

RZ 4 Withdrawal income

RZ 5 Payment and rate of withdrawal tax

RZ 6 Relief in certain cases

RZ 7 Recovery of amounts payable to Commissioner

5

***Provisional tax***

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**RZ 1 Certain elections to become person with provisional tax liability**

*When this section applies*

- (1) This section applies when a person has a non-standard income year and has, between 10 October 2000 and the date on which the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002 received Royal assent, filed a return of income for the 1998–99 or later income year on the basis that section MB 3(a) of the Income Tax Act 2004 (section MB 2A(1)(a)(i) before the enactment of that Act) applied. 15

*Choosing to have provisional tax liability*

- (2) The person may choose to be a person with a provisional tax liability for the income year for which the return was filed if they have paid provisional tax of more than \$2,500 on or before the date of instalment F for the income year corresponding to the tax year for which the return was filed. 25

Defined in this Act: income year, provisional tax, return of income, tax year

Compare: 2004 No 35 s MZ 8

**RZ 2 Amount of provisional tax based on 1997–98 or earlier tax year**

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For the purposes of sections MB 4 and MB 5 other than section MB 5(3) and (4) of the Income Tax Act 2004 (which relate to the methods for calculating provisional tax), and for a person who is a New Zealand superannuitant for the 1997–98 tax year, the person's residual income tax for the tax year or 35

for an earlier tax year is the amount that would have been their residual income tax if they—

- (a) had not been liable to pay the New Zealand superannuitant surcharge; and
- (b) had not paid any New Zealand superannuitant surcharge by way of surcharge deduction. 5

Defined in this Act: amount, New Zealand superannuitant, residual income tax, tax year

Compare: 2004 No 35 s MZ 9

## *Refunds* 10

### **RZ 3 Limits on refunds: transitional dates**

#### *ICA companies*

- (1) If an ICA company has a refund of income tax, and an amount paid in excess is not refunded to the company or transferred to another company because **sections RM 13 and RM 14** (which relate to limits on refunds for ICA companies) apply, the excess amount must be credited to pay income tax or provisional tax payable by the company for the tax year in which the entitlement to the refund would have arisen, or for a tax year commencing after 31 March 1988, whether that is before or after the year of that entitlement. 15 20

#### *Maori authorities*

- (2) If a Maori authority has a refund of income tax, and an amount paid in excess is not refunded to the Maori authority because **sections RM 22 and RM 23** (which relate to limits on refunds for Maori authorities) apply, the excess amount must be credited to pay income tax or provisional tax payable by the Maori authority for the tax year in which the entitlement to the refund would have arisen, or for the 2004–05 or a later tax year, whether that is before or after the year of entitlement. 25 30

#### *PCA persons*

- (3) If a PCA person has a refund of income tax, and an amount paid in excess is not refunded to the person because **sections RM 28 and RM 29** (which relate to limits on refunds for PCA persons) apply, the excess amount must be credited to pay income tax or provisional tax payable by the person for the tax year in which the entitlement to the refund would have arisen, 35

or for a tax year commencing after 31 March 1990, whether that is before or after the year of entitlement.

Defined in this Act: amount, Commissioner, ICA company, income tax, Maori authority, pay, PCA person, provisional tax, tax pooling account, tax year

Compare: 2004 No 35 ss MD 2(5)(a)(ii), MD 3(4)(a)

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### *Withdrawal income*

#### **RZ 4 Withdrawal income**

*When this section applies*

- (1) This section applies when a special home ownership account is closed in a tax year, and an amount is withdrawn on the closure other than an amount withdrawn under a withdrawal certificate. 10

*Excluded income*

- (2) The amount withdrawn is treated as withdrawal income derived in the tax year by the person who operated the account and is excluded income of the person. 15

*Amounts withdrawn under withdrawal certificates*

- (3) If an amount is withdrawn from a special home ownership account under a withdrawal certificate and the requirements relating to that account have not been met, the amount is treated as withdrawal income derived by the person who operated the account in the tax year in which the Commissioner is notified that the requirements were not met. 20

*Maximum amount*

- (4) For the purposes of **subsections (2) and (3)**, the amount of withdrawal income must be no more than \$10,250 less the total amount withdrawn from the account under a withdrawal certificate. 25

Defined in this Act: amount, Commissioner, excluded income, special home ownership account, tax year, withdrawal certificate, withdrawal income

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Compare: 2004 No 35 s IZ 3



**RZ 5 Payment and rate of withdrawal tax***When this section applies*

- (1) This section applies when a person withdraws an amount from a special home ownership account that they have with an authorised savings institution and derives withdrawal income under **section RZ 4(2)**. 5

*Withholding withdrawal tax*

- (2) The authorised savings institution must withhold the amount of withdrawal tax from the amount payable to the person.

*Rate of withdrawal tax*

- (3) The rate of withdrawal tax on withdrawal income is 45% of the gross amount of the income. 10

*Paying withdrawal tax*

- (4) The authorised savings institution must pay the amount of tax to the Commissioner no later than the 20th day of the month following the month in which it becomes liable to withhold the amount. 15

*Institution's payment but failure to withhold*

- (5) If an authorised savings institution fails to withhold and pay the amount of withdrawal tax under **subsection (2)**, and has paid an amount to the Commissioner under **subsection (3)**, it may recover the amount from the person. 20

*Person paying withdrawal tax*

- (6) A person who derives withdrawal income under **section RZ 4(3)** must pay to the Commissioner within the time allowed the amount of withdrawal tax payable for the income. 25

Defined in this Act: amount, amount of tax, authorised savings institution, Commissioner, gross, pay, special home ownership account, withdrawal income, withdrawal tax

Compare: 2004 No 35 ss IZ 1, IZ 2, IZ 4 30

**RZ 6 Relief in certain cases**

If the Commissioner is satisfied that an amount of withdrawal tax is more than the total tax credit allowed in relation to a person's account under **section LZ 9(2)** (Savings in special home ownership accounts), the Commissioner must reduce the 35

amount of the withdrawal tax as is fair and reasonable in the circumstances.

Defined in this Act: amount, Commissioner, tax credit, withdrawal tax

Compare: 2004 No 35 s IZ 6

**RZ 7 Recovery of amounts payable to Commissioner**

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An amount payable to the Commissioner under **section RZ 5(3) or (5)** is recoverable as if it were income tax imposed under **section BB 1** (Imposition of income tax).

Defined in this Act: amount, Commissioner, income tax, pay

Compare: 2004 No 35 s IZ 5

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