

Part A – Purpose and application

Part A – Purpose and application

Index

AA 1	Purpose of Act
AA 2	Interpretation
AA 3	Definitions

AA 1 Purpose of Act

The main purposes of this Act are—

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

Origin:	AA 1.
Defined terms:	net income, tax.
Comment:	Current section AA 2 is omitted. The provision implies that it is comprehensive but, in fact, it is far from comprehensive; for example, non-resident trustees of trusts with a New Zealand settlor and withholding obligations of non-residents are not covered.

AA 2 Interpretation

Aids to interpretation

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

Defined terms

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

Origin:	(1) AA 3(2)(a). (2) AA 3(2)(b).
Defined terms:	-

Comment:	Because of the degree of duplication of section 5 (1) of the Interpretation Act 1999, current section AA 3 (1) is omitted, but further consideration is being given to whether there is any need to mandate a more purposive approach to the interpretation of the Income Tax Act 1994.
----------	---

AA 3 Definitions

References to 'this Act'

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

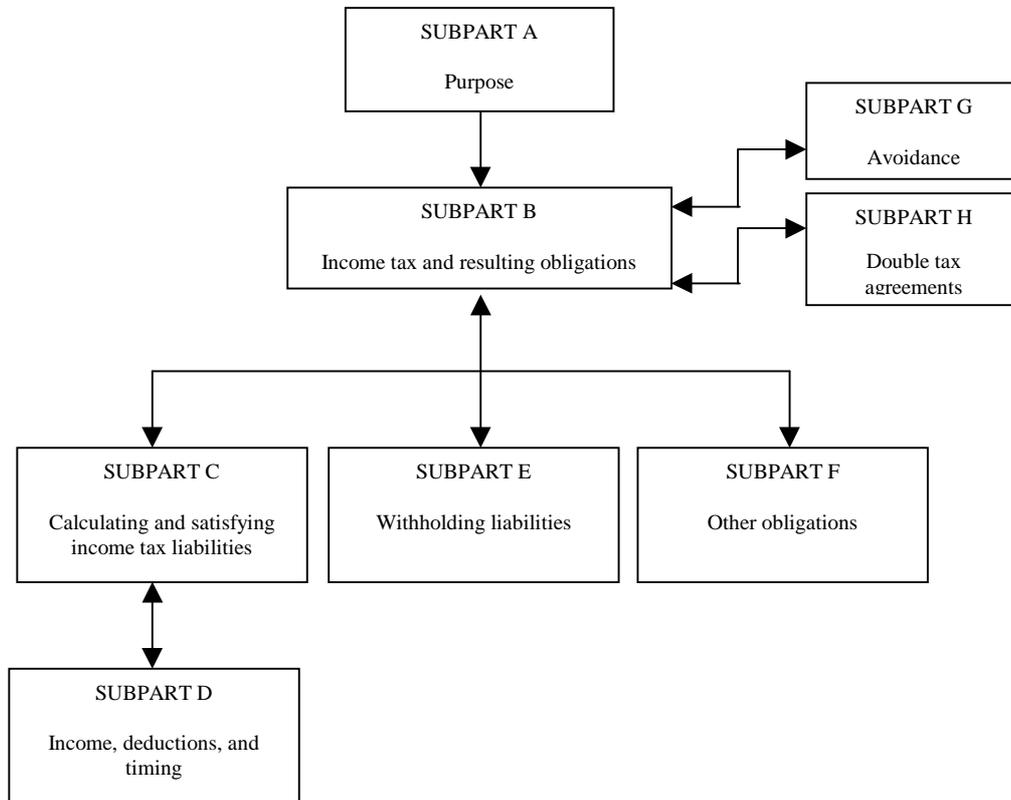
Significance of Part O

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

Origin:	(1) AA 4(1). (2) AA 4(2).
Defined terms:	-
Comment:	Draft subsection (1) is subject to review as it is not in principle a desirable provision because of its breadth and uncertainty.

Part B – Core provisions

Part B – Core provisions



BA – Purpose

BA 1 Purpose

The purpose of this Part is—

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

Origin:	BA 1.
Defined terms:	income tax, provisional tax, tax.

BB – Income tax and resulting obligations

Index

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

BB 1 Imposition of tax

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

Origin:	BB 1.
Defined terms:	income tax, tax, taxable income.
Comment:	Use of the term 'annual taxing Act', defined in section OB 1 (Definitions), might be appropriate.

BB 2 Principal obligations

Income tax liability

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

Non-filing taxpayer

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

Provisional tax

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

Withholding liabilities

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

Other obligations

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

Origin:	(1) BB 2(1). (2) BB 2(1A).
---------	-------------------------------

	(3) BB 2(2).
	(4) BB 2(3).
	(5) BB 2(4).
Defined terms:	income tax liability, non-filing taxpayer, person, provisional tax rules, provisional tax, provisional taxpayer, return of income, tax year.
Comment:	A specific reference to non-filing taxpayers has been inserted in this section.

BB 3 Overriding effect of certain matters

Tax avoidance arrangements: subpart BG

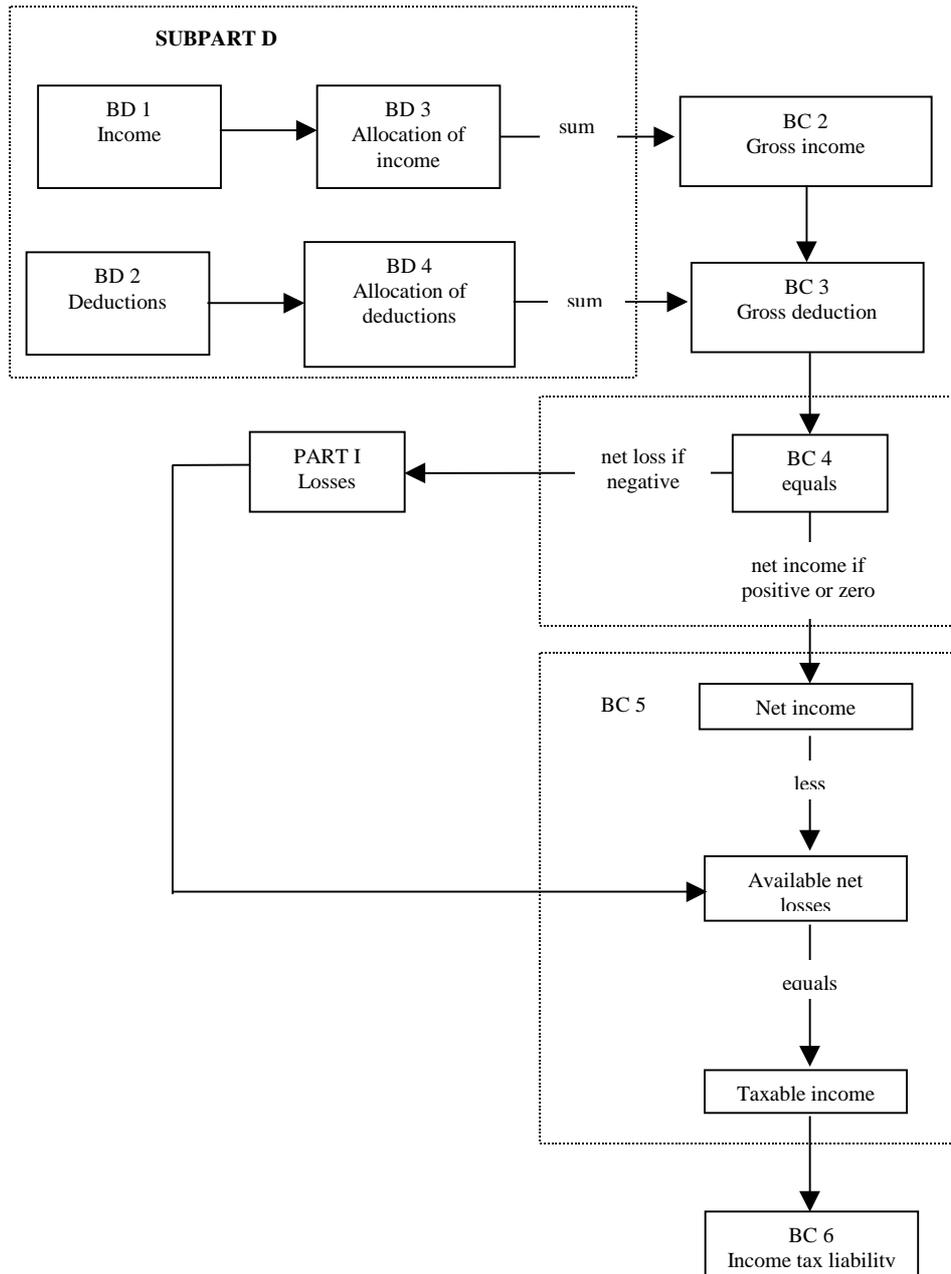
- (1) Under Part G (Avoidance and non-market transactions), the Commissioner may counteract a tax advantage from a tax avoidance arrangement.

Double tax agreements: subpart BH

- (2) If a rule in a double tax agreement overrides a rule in this Act or any other Act, the rule in the double tax agreement prevails.

Origin:	(1) BB 3(1).
	(2) BB 3(2).
Defined terms:	Commissioner, double tax agreement, tax avoidance arrangement.

BC – Calculating and satisfying income tax liabilities



BC – Calculating and satisfying income tax liabilities

Index

BC 1	Non-filing and filing taxpayers
BC 2	Gross income
BC 3	Gross deduction
BC 4	Net income and net loss
BC 5	Taxable income
BC 6	Income tax liability of filing taxpayer
BC 7	Income tax liability of person with schedular income
BC 8	Surplus rebates
BC 9	Satisfaction of income tax liability
BC 10	Surplus credits

BC 1 Non-filing and filing taxpayers

Non-filing taxpayer

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

Filing taxpayer

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

Filing taxpayer with schedular income

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

Origin:	(1) BC 1(1)(a); BC 2. (2) BC 1(1)(b), (c). (3) BC 1(1)(b).
Defined terms:	amount, filing taxpayer, gross income, income, income tax liability, non-filing taxpayer, schedular income, tax year.

BC 2 Gross income

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

Origin:	BC 4.
Defined terms:	corresponding income year, counted income, gross income, person, tax year.
Comment:	Note the replacement of the term 'annual gross income' with 'gross income' and the introduction of the term 'counted income' to cross refer to the rules in draft section BD 1. The use of the term 'gross', together with the use of the term 'gross deduction', the use in the operative income-defining provisions of appropriate references to 'gross amounts' (if necessary), and the scheme of the core provisions should be sufficient to eliminate any arguments that the global/gross model is being reversed. Note also the proposed use of 'person', rather than 'taxpayer', as a general rule, to eliminate the apparently random use of each term and because, sometimes, the relevant 'person' is not literally a 'taxpayer'. However, in conjunction with any review of, or adoption of comprehensive rules to deal with, joint ownership situations, it will be necessary to consider the detailed content of the current definitions of 'person' and 'taxpayer' and to clarify the extent to which the Act applies to unincorporated bodies.

BC 3 Gross deduction

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

Origin:	BC 5.
Defined terms:	corresponding income year, deduction, gross deduction, person, tax year.
Comment:	'Gross deduction' replaces 'annual allowable deductions' for the purposes of symmetry.

BC 4 Net income and net loss

Income more than deductions

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

Income equals deductions

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

Deductions more than income

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

Treatment of net loss

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

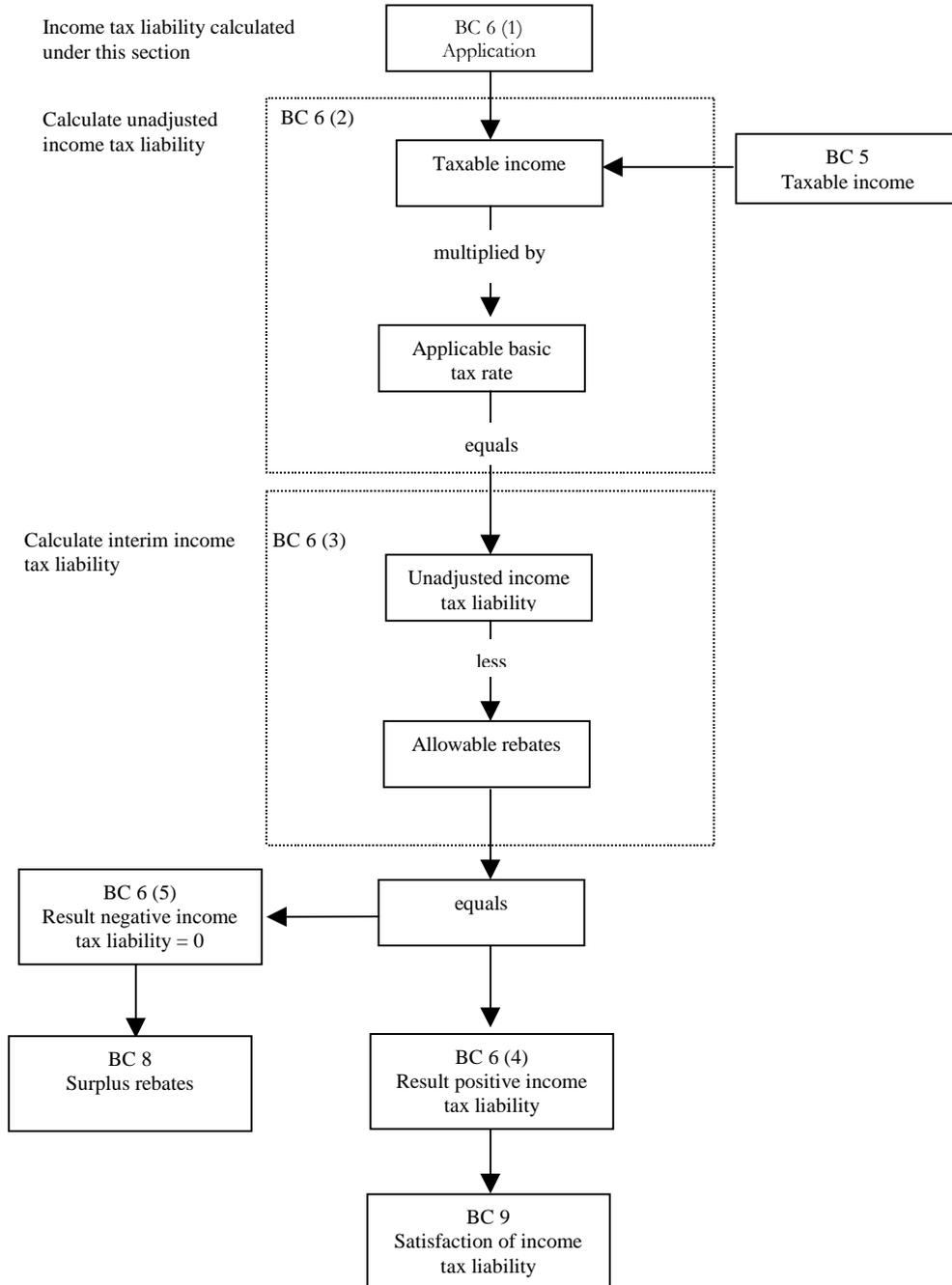
Origin:	(1) BC 6(1). (2) BC 6(2). (3) BC 6(3). (4) BC 6(4).
Defined terms:	gross deduction, gross income, net income, net loss, person, tax year.

BC 5 Taxable income

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

Origin:	BC 7.
Defined terms:	available net loss, net income, person, taxable income, tax year.

BC 6 INCOME TAX LIABILITY OF FILING TAXPAYER



BC 6 Income tax liability of filing taxpayer

Calculation rules

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

Unadjusted income tax liability

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

Adjusted income tax liability

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

Result positive

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

Result negative

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

Origin:	(1) BC 8(1). (2) BC 8(2). (3) BC 8(3). (4) BC 8(4). (5) BC 8(5).
Defined terms:	allowable rebates, amount, applicable basic rate tax, filing taxpayer, income tax liability, income year, tax year, taxable income, unadjusted income tax liability.

BC 7 Income tax liability of person with schedular income

Modified income tax liability calculation

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

Schedular income tax liability

- (2) If a person has one type of schedular income for a tax year, their schedular income tax liability for the year is the amount that would be the income tax liability for the year if their only income for the year were that schedular income.

Multiple schedular income

- (3) If a person has more than one type of schedular income for a tax year, their schedular income tax liability for the year is the total of the amounts calculated for each type of schedular income. The amount for each type is the amount that would be the person's income tax liability for the tax year if that type were their only income for the year.

Origin:	(1) BC 3(1). (2) BC 3(2). (3) BC 3(3).
Defined terms:	amount, income, income tax liability, person, schedular income, schedular income tax liability, tax year.

BC 8 Surplus rebates

Surplus rebate amount

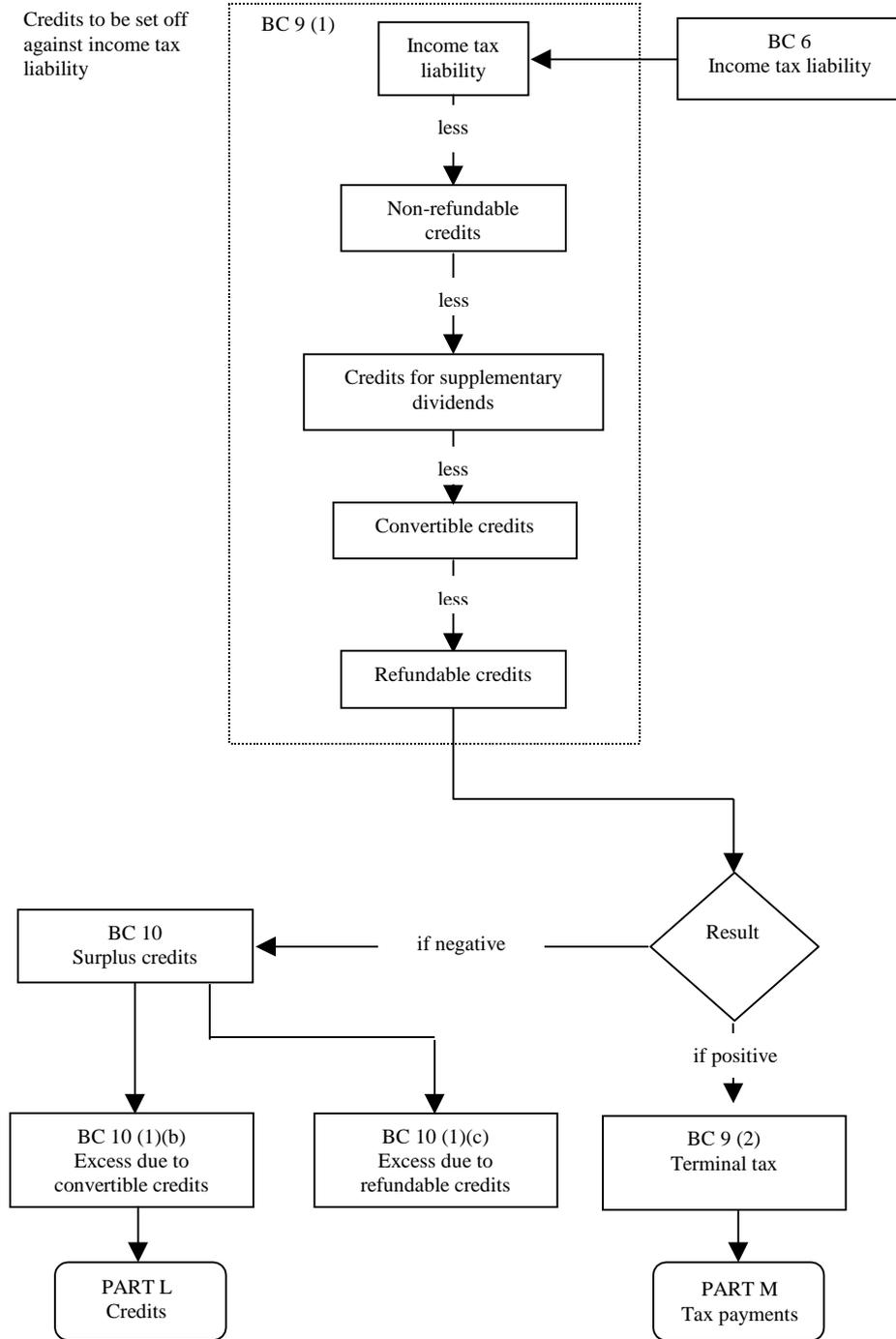
- (1) If the adjusted income tax liability of a person is negative for a tax year, the person's surplus rebates amount is the lesser of—
- (a) the total of the refundable rebates to which the person is entitled for the year; and
 - (b) the difference between zero and the adjusted income tax liability.

Refunds from Commissioner

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

Origin:	(1) BC 8(6)(a). (2) BC 8(6)(b); BC 10(1).
Defined terms:	amount, Commissioner, income tax liability, person, refundable rebate, surplus rebates, tax year.

BC 9 SATISFACTION OF INCOME TAX LIABILITY



BC 9 Satisfaction of income tax liability

Use of tax credits

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

Terminal tax

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

Origin:	(1) BC 1(2). (2) BC 9(1).
Defined terms:	income tax liability, person, tax year, terminal tax.

BC 10 Surplus credits

Application of surplus credits

- (1) If, for a tax year, the total of a person's credits for tax paid or tax withheld exceeds their income tax liability, then—
- (a) first, the surplus credits are offset against other income tax obligations of the person in accordance with Part L (Credits) and Part M (Tax payments); and
 - (b) second, remaining surplus credits are dealt with in accordance with Part L (Credits) and Part M (Tax payments); and
 - (c) third, the Commissioner must refund any surplus refundable credits, in accordance with Part M (Tax payments) and Part N (Withholding taxes and taxes on income of others).

Composition of surplus credits: order of credit application

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

Origin:	(1) BC 9(2); BC 10(2). (2) BC 9(3).
---------	--

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

BD – Income, deductions, and timing

Index

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

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

Income amounts

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

Exempt income

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

Excluded income

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

Counted income

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

Origin:	(1) BD 1(1). (2) BD 1(2)(a), (c). (3) BD 1(2)(b). (4) new.
Defined terms:	amount, counted income, excluded income, exempt income, foreign-sourced amount, gross income, income, non-resident, person.
Comment:	As noted in the general commentary, further consideration is being given to the introduction of a provision to clarify that the excluded income category consists of items that are not taxable but that do not have an adverse impact on the availability of deductions. Comment is sought on this suggestion. As also noted in the general commentary, comment is sought on the appropriateness of explicitly treating the offshore income of non-residents as exempt, rather than merely not taxable.

BD 2 Deductions

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

Origin:	BD 2.
Defined terms:	deduction, person.
Comment:	The deduction rules are shifted to Part D (Deductions) to allow comprehensive treatment of the rules and their interrelationship in one place.

BD 3 Allocation of income to particular income years

Application

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

General rule

- (2) An amount of income is allocated to the income year in which the amount is derived, unless a provision in any of Parts C or E to I expressly states otherwise.

'Derived' defined

- (3) An amount of income is derived by a person—
 - (a) when the income-earning process is complete, if the income is from business activity but not from business activity in a cash basis profession:
 - (b) at the earlier of the following times, in any other case:
 - (i) when it is received by the person:
 - (ii) when it is credited in the person's account or, in some other way, dealt with in their interest or on their behalf.

Role of Part E

- (4) Part E (Timing and quantifying rules) contains a number of provisions that—
- (a) deal with timing by specifically modifying the allocation of income or by having the effect of modifying the allocation of income; or
 - (b) deal with timing by allocating income as part of the process of quantifying it.

Income allocated once

- (5) A particular amount of income may be allocated only once.

Origin:	(1) BD 3(1). (2) BD 3(3). (3) EB 1(1); new. (4) BD 3(3). (5) BD 3(4).
Defined terms:	amount, business, cash basis profession, derived, income, income year, person.
Comment:	Readers' comments are sought particularly on the value and risks of seeking to define the term 'derived'. The alternative is to leave readers of the Act required to be otherwise aware of the importance of case law meanings given to the term. The reference in draft subsection (2) to Parts E to I should be narrowed or removed as these Parts are rewritten, and as any provisions that specifically create income are moved into the list in Part C (Income).

BD 4 Allocation of deductions to particular income years

Application

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

General rule

- (2) A deduction for an amount of expenditure or loss is allocated to the income year in which the expenditure or loss is incurred, unless a provision in any of Parts D to I expressly states otherwise.

'Incurred' defined

- (3) An amount of expenditure is incurred by a person when the person pays the amount, unless—
- (a) the expenditure is incurred in carrying on a business; and
 - (b) the business is not a cash basis profession.

Role of Part E

- (4) Part E (Timing and quantifying rules) contains a number of provisions that—
- (a) deal with timing by specifically modifying the allocation of deductions or by having the effect of modifying the allocation of deductions; or
 - (b) deal with timing by allocating deductions as part of the process of quantifying them.

Expenditure or loss deductible once

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

Origin:	(1) BD 4(1). (2) BD 4(3). (3) new. (4) BD 4(2). (5) BD 4(4).
Defined terms:	amount, business, cash basis profession, deduction, income year, incurred, person.
Comment:	Again, comment is sought on the elaboration of the term 'incurred' in draft subsection (3). Should it be comprehensive, that is, attempt to deal with the accrual test? Should it appear at all? See also the comment on draft section BD 3 in relation to provisions in Parts E to I.

BE – Withholding liabilities

BE 1 Withholding liabilities

Source deduction payments

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

Resident withholding income

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

Non-resident withholding income

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

Fringe benefits

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

Specified superannuation contributions

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

Dividend withholding payments

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

Origin:	(1) BE 1(1). (2) BE 1(2). (3) BE 1(3). (4) BE 1(4). (5) BE 1(5). (6) BE 1(6).
Defined terms:	amount, dividend withholding payment, dividend withholding payment rules, FBT rules, fringe benefit tax, non-resident withholding income, NRWT rules, PAYE rules, person, resident withholding income, RWT rules, source deduction payment, specified superannuation contribution, specified superannuation contribution withholding tax, SSCWT rules, superannuation fund.

BF – Other obligations

BF 1 Other obligations

A person must pay the following under the relevant Part:

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

Origin:	BF 1.
Defined terms:	further dividend withholding payment, further income tax, income tax, non-qualifying trust, person, qualifying company election tax, taxable distribution, withdrawal tax.

BG – Avoidance

BG 1 Tax avoidance

Avoidance arrangement void

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

Reconstruction

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

Origin:	(1) BG 1(1). (2) BG 1(2).
Defined terms:	Commissioner, income tax, person, tax avoidance arrangement.

BH – Double tax agreements

BH 1 Double tax agreements

Meaning

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

Purposes

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

Entry into force

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

Overriding effect

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

Agreement for recovery of tax

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

Reference to profits

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

Origin:	(1) BH 1(1). (2) BH 1(2). (3) BH 1(3). (4) BH 1(3). (5) BH 1(3A). (6) BH 1(4).
Defined terms:	business, double tax agreement, income tax, net income, New Zealand, New Zealand resident, non-resident, person, tax.

