Part C – Income

CA – General rules

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CA 1 Amounts that are income

Amounts specifically identified

(1) An amount is income of a person if it is their income under any provision in subparts CB to CV, CY, or CZ.

Ordinary meaning of 'income'

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

Origin:	(1) new.
	(2) CD 5.
Defined terms:	amount, income, person.
Comment:	Draft subsection (2) attempts to reflect some of the Committee of Experts' comments.

CA 2 Amounts that are exempt or excluded income

Exempt income

(1) An amount of income is exempt income of a person if it is their exempt income under any provision in subpart CW (Exempt income).

Excluded income

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

Origin:	(1) new.
	(2) new.
Defined terms:	amount, excluded income, exempt income, income, person.

CB – Income from business or trade-like activities

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Business generally

CB 1 Amounts derived from business

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

Origin:	CD 3.
Defined terms:	amount, business, derived, income, person.

Profit-making schemes

CB 2 Carrying on or carrying out profit-making schemes

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

Origin:	CD 4.
Defined terms:	amount, derived, income, person.
Comment:	Amounts derived from undertakings and schemes entered into for profit are identified as income in current section CD 4 (Personal property). This is misleading, as a scheme may involve a disposal of land or even a

	supply of services. Further, the rule is obscured by being grouped with rules about disposals of personal property by dealers and disposals of personal property acquired for the purpose of disposal. Amounts from undertakings and schemes have therefore been identified in this separate section.

Personal property

CB 3 Personal property acquired for purpose of disposal

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

Origin:	CD 4.
Defined terms:	amount, derived, income, person.
Comment:	See comment on draft section CB 2.

CB 4 Business of dealing in personal property

An amount that a person derives from the disposal of personal property is income of the person if their business is to deal in property of that type, whether or not the property was acquired for the purpose of the business.

Origin:	CD 4.
Defined terms:	amount, business, derived, income, person.
Comment:	Amounts derived from disposals of personal property by dealers in such property are identified as income in current section CD 4 (Personal property), but the rule is obscured by being grouped with rules about disposals of personal property acquired for the purpose of disposal and amounts derived from schemes and undertakings. The original policy underlying the provision has also been clarified.

Land

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

Amount derived from disposal of land

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

Exclusions

(2) Subsection (1) is overridden by the exclusions for residential land in section CB 13 and for business premises in section CB 16.

Origin:	(1) CD 1(1), (2)(a). (2) CD 1(3).
Defined terms:	amount, derived, disposal of land, income, land, person.
Comment:	The rule about disposals of land acquired for the purpose or intention of disposal is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable readers to access the rule more easily. A separate subsection tells readers immediately that there are exclusions for residential and business premises and refers them to the detailed rules.

CB 6 Disposal within 10 years: land dealing business

Business of dealing in land

(1) An amount that a person derives from the disposal of land is income of the person if—

(a) they dispose of the land within 10 years of acquiring it; and

(b) at the time they acquired the land, they carried on a business of dealing in land, whether or not the land was acquired for the purpose of the business.

Associated person in business of dealing in land

(2) An amount that a person derives from the disposal of land within 10 years of acquiring it is income of the person if a person associated with them at the time the land was acquired carried on a business of dealing in land, whether or not—

(a) the first person carried on a business of dealing in land; or

(b) the land was acquired for the purpose of the associated person's business.

Exclusions

(3) Subsections (1) and (2) are overridden by the exclusions for residential land in section CB 13 and for business premises in section CB 16.

Origin:	(1) CD 1(2)(b). (2) CD 1(2)(b), (11). (3) CD 1(3).
Defined terms:	amount, associated person, business, derived, disposal of land, income, land, person.

Comment:	The rule about disposals of land acquired by land dealers or their associates is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable readers to access the rule more easily. The rewritten provision clarifies that the test of association between the principal business person and associate is to be applied at the time the land is acquired, not when the land is disposed of. The previous wording did not make this clear. A separate subsection tells readers immediately that there are exclusions for residential and business premises and refers them to the detailed rules.

CB 7 Disposal within 10 years: land development or subdivision business

Business of developing or subdividing land

(1) An amount that a person derives from the disposal of land is income of the person if—

(a) they dispose of the land within 10 years of acquiring it; and

(b) at the time they acquired the land, they carried on a business of developing land or dividing land into lots, whether or not the land was acquired for the purpose of the business.

Associated person in business of developing or subdividing land

(2) An amount that a person derives from the disposal of land within 10 years of acquiring it is income of the person if a person associated with them at the time the land was acquired carried on a business of developing land or dividing land into lots, whether or not—

(a) the first person carried on a business of developing land or dividing land into lots; or

(b) the land was acquired for the purpose of the associated person's business.

Exclusions

(3) Subsections (1) and (2) are overridden by the exclusions for residential land in section CB 13 and for business premises in section CB 16.

Origin:	(1) CD 1(2)(c). (2) CD 1(2)(c), (11). (3) CD 1(3).
Defined terms:	amount, associated person, business, derived, disposal of land, income, land, person.
Comment:	The rule about disposals of land acquired by land developers and dividers or their associates is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable readers to access the rule more easily.

	The rewritten provision clarifies that the test of association between the principal business person and associate is to be applied at the time the land is acquired, not when the land is disposed of. The previous wording did not make this clear.
	A separate subsection tells readers immediately that there are exclusions for residential and business premises and refers them to the detailed rules.

CB 8 Disposal within 10 years of improvement: building business

Business of erecting buildings

(1) An amount that a person derives from the disposal of land is income of the person if—

(a) they dispose of the land within 10 years of completing improvements to it; and

(b) at the time they began the improvements, they carried on a business of erecting buildings, whether or not the land was acquired for the purpose of the business.

Associated person in business of erecting buildings

(2) An amount that a person derives from the disposal of land within 10 years of completing improvements on it is income of the person if a person associated with them at the time the improvements were begun carried on a business of erecting buildings, whether or not—

(a) the first person carried on a business of erecting buildings; or

(b) the land was acquired for the purpose of the associated person's business.

Exclusions

(3) Subsections (1) and (2) are overridden by the exclusions for residential land in section CB 13 and for business premises in section CB 16.

'Improvements' defined

(4) In this section, **improvements** means improvements to the land that—

(a) are not minor; and

(b) are made—

(i) in subsection (1), by the person by erecting a building or otherwise; or

(ii) in subsection (2), by the associated person by erecting a building or otherwise.

Origin:	(1) CD 1(2)(d).
	(2) CD 1(2)(d), (11).

	(3) CD 1(3). (4) CD 1(2)(d).
Defined terms:	amount, associated person, business, derived, disposal of land, improvements, income, land, person.
Comment:	The rule about disposals of land acquired by builders or their associates is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable readers to access the rule more easily. The rewritten provision clarifies that the test of association between the principal business person and associate is to be applied at the time the improvements are begun, not when the land is disposed of. The previous wording did not make this clear. A separate subsection tells readers immediately that there are exclusions for residential and business premises and refers them to the detailed rules.

CB 9 Disposal: development or division begun within 10 years

Amount derived from disposal of land

(1) An amount that a person derives from the disposal of land is income of the person if—

(a) an undertaking or scheme involving the development of the land or the division of the land into lots has been carried on or carried out, whether or not the activity of the undertaking or scheme has a business-like character; and

(b) the undertaking or scheme was begun within 10 years of the date on which the person acquired the land; and

(c) the development or division work is not minor; and

(d) the development or division work has been carried out by the person or on their behalf.

Exclusions

(2) Subsection (1) is overridden by the exclusions for residential land in section CB 14, for business premises in section CB 17, for farmland in section CB 18, and for investment land in section CB 20.

Origin:	(1) CD 1(2)(f)(i), (ii). (2) CD 1(2)(f) proviso, (3), (6), (7).
Defined terms:	amount, derived, disposal of land, income, land, person.
Comment:	The rule about development and division schemes begun within 10 years of land being acquired is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable readers to access the rule more easily. A separate subsection tells readers immediately that there are exclusions for residential premises, business premises, farmland, and investment land, and refers them to the detailed rules.

CB 10 Disposal: major development or division begun after 10 years

Amount derived from disposal of land

(1) An amount that a person derives from the disposal of land is income of the person if—

(a) the amount is derived from the carrying on or carrying out of an undertaking or scheme involving the development of the land or the division of the land into lots of land, whether or not the activity of the undertaking or scheme has a business-like character; and

(b) the amount is not income under sections CB 5 to CB 9 and section CB 11.

Conditions attaching to development or division work

(2) For the purposes of subsection (1), the development or division work—

(a) must have been carried on or carried out by the person, or on their behalf; and

(b) must involve significant expenditure on work, a service, or an amenity customarily undertaken or provided in major projects involving the development of land for industrial, commercial, or residential purposes.

Exclusions

(3) Subsection (1) is overridden by the exclusions for residential land in section CB 14 and for farmland in section CB 18.

Origin:	(1) CD 1(2)(g). (2) CD 1(2)(g). (3) CD 1(6), (7).
Defined terms:	amount, derived, disposal of land, income, land, person.
Comment:	The rule about major land development and division schemes begun 10 or more years after land is acquired is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable affected users to access the rule more easily. The application of the rule to disposals of land from major development and division schemes begun 10 or more years after land is acquired is signalled in the section heading. Previously, this was not signalled directly. Instead, the rule was expressed as *not* applying to amounts under current section CD 1 (2)(f), the rule about schemes begun within 10 years. A separate subsection tells readers immediately that there are exclusions for residential and farmland and refers them to the detailed rules.

CB 11 Disposal of land affected by changes in permitted use

Income from disposal of land

(1) An amount that a person derives from the disposal of land is income of the person if all the following apply:

(a) the amount is not income under sections CB 5 to CB 9; and

(b) the person disposed of the land within 10 years of acquiring it; and

(c) the total amount that they derive from its disposal is more than the cost of the land; and

(d) at least 20% of the excess arises, after the person acquired the land, from one or more of the circumstances listed in subsection (2).

List of circumstances

(2) The circumstances referred to in subsection (1)(d) are, in relation to the land,—

(a) the imposition of the rules of an operative district plan under the Resource Management Act 1991 that relate to that land, or a change to those rules, when the changes were made after the person acquired the land, or the likely imposition of such rules:

(b) the granting of a consent under the Resource Management Act 1991 in relation to that land, when the consent was granted after the person acquired the land, or the likely grant of such a consent:

(c) the making of a decision of the Environment Court, when the decision was made after the person acquired the land, or the likely making of such a decision:

(d) the removal of any condition, obligation, restriction, prohibition, or covenant (including a designation or heritage order) imposed under the Resource Management Act 1991, if the removal occurred after the person acquired the land, or the likely removal of any of these:

(e) other similar circumstances.

Exclusions

(3) Subsection (1) is overridden by the exclusions for residential property in section CB 15 and for farmland in section CB 19.

Origin:	(1) CD 1(2)(e). (2) CD 1(2)(e). (3) CD 1(4).
Defined terms:	amount, derived, disposal of land, income, land, person.

Comment:	The rule about disposals of land the value of which has been enhanced by changes or likely changes in permitted use is grouped with other land disposal rules in current section CD 1 (2) (Land transactions). It is now expressed in this separate section to enable readers to access the rule more easily. A separate subsection tells readers immediately that there are exclusions for residential land and farmland and refers them to the detailed rules.

CB 12 Disposal of land after transfer between associated persons

For the treatment of amounts derived on the disposal of land following a transfer of the land to an associated person, see section GD 9 (Land transferred between associated persons).

Origin:	new.
Defined terms:	amount, associated person, derived, disposal of land, land.

Exclusions for residential land

CB 13 Residential exclusion: land acquired for disposal or when certain businesses carried on

Dwellinghouse occupied as residence

(1) Sections CB 5 to CB 8 do not apply to the extent described in subsection (2) to an amount that a person derives from the disposal of land if—

(a) the person acquired the land with a dwellinghouse on it, or acquired the land and erected a dwellinghouse on it; and

(b) the dwellinghouse was occupied mainly as a residence by the person and any member of their family living with them or, if the person is a trustee, by one or more beneficiaries of the trust.

What the exclusion applies to

(2) The exclusion applies to the land that has the dwellinghouse on it, and the land related to it, if the total area of related land is not more than 4,500 square metres, or a larger area for the reasonable occupation and enjoyment of the dwellinghouse.

When the exclusion does not apply

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

Origin:	(1) CD 1(3)(b). (2) CD 1(3)(b).

	(3) CD 1(3)(b).
Defined terms:	amount, derived, disposal of land, land, person, trustee.
Comment:	An exclusion for disposals of residential land that was acquired for the purpose of disposal, or acquired by dealers, developers, dividers, builders or their associates, is grouped with an exclusion for business premises in current section CD 1 (3) (Land transactions). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion to the substantive rules.

CB 14 Residential exclusion: land development

Dividing residential land

(1) Sections CB 9 and CB 10 do not apply to an amount that a person derives from the disposal of land when the land is a lot resulting from the division by them of a larger area of land into 2 or more lots.

Developing or dividing land for residential use

(2) Section CB 9 does not apply to an amount that a person derives from the disposal of land under an undertaking or scheme for the development or division of land when the work involved in the undertaking or scheme is to create or effect a development, division, or improvement for residential purposes for the person (or any member of their family living with them) who is residing on the land.

'Larger area of land' defined

(3) In this section, **larger area of land** means an area of land to which both the following apply:

(a) it was not more than 4,500 square metres immediately before it was divided; and

(b) the person occupied it mainly as residential land for themselves and member of their family living with them.

Origin:	(1) CD 1(6). (2) CD 1(2)(f) proviso. (3) CD 1(6).
Defined terms:	amount, derived, disposal of land, land, larger area of land, person.
Comment:	An exclusion for disposals of subdivided residential land is contained in current section CD 1 (6) (Land transactions). A further exclusion for disposals of land divided or developed for residential purposes within 10 years of acquisition is grouped with other exclusions in a proviso to the substantive rule about such developments and divisions (current section CD 1 (2)(f)). These two residential exclusions are now brought together in a single separate section with a heading which links them directly to the substantive rules about disposals from developments and subdivisions.

CB 15 Residential exclusion: land affected by changes in permitted use

Land acquired and disposed of for residential purposes

(1) Section CB 11 does not apply to an amount that a person derives from the disposal of land if—

(a) they acquired the land and used it or intended to use it for residential purposes; and

(b) they disposed of the land to another person who acquired it for residential purposes.

How to ascertain purpose of acquisition

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

'Residential purposes' defined

(3) In this section, **residential purposes**—

(a) means a purpose that the person has of using the land or intending to use the land mainly as a residence for themselves and members of their family living with them; and

(b) includes the purpose of erecting a dwellinghouse on the land to be occupied as such a residence.

Origin:	(1) CD 1(4)(a)(ii), (4)(b)(ii). (2) CD 1(4)(b)(ii). (3) CD 1(4)(a)(ii).
Defined terms:	amount, derived, disposal of land, land, person, residential purposes.
Comment:	An exclusion for disposals of residential land whose value has been enhanced by changes or likely changes in permitted use is presently grouped with an exclusion for farmland in current section CD 1 (4) (Land transactions). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion directly to the substantive rule.

Exclusions for business premises

CB 16 Business exclusion: land acquired for disposal or when certain businesses carried on

Premises occupied for business

(1) Sections CB 5 to CB 8 do not apply to an amount that a person derives from the disposal of land if the person acquired and occupied, or erected and occupied, business premises on it, and carried on a substantial business from those premises.

When exclusion does not apply

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

'Land' defined

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

Origin:	(1) CD 1(3)(a). (2) CD 1(3)(a). (3) CD 1(3)(a).
Defined terms:	amount, business, derived, disposal of land, land, person.
Comment:	An exclusion for disposals of business premises acquired for the purpose of disposal, or acquired by dealers, developers, dividers, builders or their associates, is grouped with an exclusion for residential land in current section CD 1 (3) (Land transactions). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion directly to the substantive rules.

CB 17 Business exclusion: land development begun within 10 years

Section CB 9 does not apply to an amount that a person derives from the disposal of land under an undertaking or scheme for the development or division of land when—

(a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and

(b) the work is for the purpose of carrying on a business on the land, not being a business consisting of that undertaking or scheme; and

(c) the person carries on a business on the land, and the business does not consist of that undertaking or scheme.

Origin:	CD 1(2)(f) proviso.
Defined terms:	amount, business, derived, disposal of land, land, person.
Comment:	An exclusion for disposals of land divided or developed for business purposes within 10 years of acquisition is grouped with other exclusions in a proviso to the substantive rule about such developments and divisions (current section CD 1 (2)(f)). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion directly to the substantive rule about disposals from developments or subdivisions within 10 years.

Exclusions for farmland

CB 18 Farmland exclusion: land division

Division of land used for farming or agricultural business

(1) Sections CB 9 and CB 10 do not apply to an amount that a person derives from the disposal of land if—

(a) the land is a lot resulting from the division of a larger area of land into 2 or more lots; and

(b) immediately before the land was divided, the larger area of land was occupied or used by the person, their spouse, or by both of them, mainly for the purposes of a farming or agricultural business carried on by either or both of them; and

(c) the area and nature of the land disposed of mean that it is then capable of being worked as an economic unit as a farming or agricultural business; and

(d) the land was disposed of mainly for the purpose of using it in a farming or agricultural business.

List of circumstances

(2) The circumstances of the disposal of the land are relevant to the decision on whether the land was disposed of mainly for the purpose of using it in a farming or agricultural business. The circumstances include—

(a) the consideration for the disposal of the land:

(b) current prices paid for land in that area:

(c) the terms of the disposal:

(d) a zoning or other classification relating to the land:

(e) the proximity of the land to any other land being used or developed for uses other than farming or agricultural uses.

Origin:	(1) CD 1(7). (2) CD 1(7).
Defined terms:	amount, business, derived, disposal of land, land, person.
Comment:	An exclusion for disposals of subdivided farmland is contained in current section CD 1 (7) (Land transactions). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion directly to the substantive rules about disposals from subdivisions.

CB 19 Farmland exclusion: land affected by changes in permitted use

Land acquired and disposed of for farming or agricultural purposes

(1) Section CB 11 does not apply to an amount that a person derives from the disposal of land if—

(a) they acquired the land, and they (or their spouse, or both of them) used or intended to use the land mainly for the purposes of a farming or agricultural business carried on by them (or their spouse, or both of them); and

(b) they disposed of the land to another person mainly for the purposes of the continuing use of the land in a farming or agricultural business.

Ascertaining purpose of acquisition

(2) For the purposes of subsection (1)(b), the purpose of the acquisition by the other person is ascertained from the circumstances of the disposal (other than the circumstances listed in section CB 11) that arose after the land was acquired by the person referred to in paragraph (a), and other relevant matters.

Origin:	(1) CD 1(4)(a)(i), (4)(b)(i), (4)(c). (2) CD 1(4)(a)(i), (4)(b)(i), (4)(c).
Defined terms:	amount, business, derived, disposal of land, land, person.
Comment:	An exclusion for disposals of farm land whose value has been enhanced by changes or likely changes in permitted use is grouped with an exclusion for residential land in current section CD 1 (4) (Land transactions). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion directly to the substantive rule.

Exclusion for investment land

CB 20 Investment exclusion: land development begun within 10 years

Section CB 9 does not apply to an amount that a person derives from the disposal of land under an undertaking or scheme for the development of land if—

(a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and

(b) the work is for investment purposes; and

(c) the person derives, in relation to the land, income of the kind described in section CC 1 (Revenue from land).

Origin:	CD 1(2)(f) proviso.
Defined terms:	amount, derived, disposal of land, income, land, person.

Comment:	An exclusion for disposals of land divided or developed for use as an investment property within 10 years of acquisition is grouped with other exclusions in a proviso to the substantive rule about such developments and divisions (current section CD 1 (2)(f)). It is now expressed in this separate section to enable readers to access the terms of the exclusion more easily. The heading links the exclusion directly to the substantive rule about disposals from developments or subdivisions within 10 years.

Definitions

CB 21 Definitions for sections CB 5 to CB 21

In this section, and in sections CB 5 to CB 20,—

disposal of land includes–

(a) compulsory acquisition under any Act by the Crown, or by a local authority or public authority:

(b) a disposal of land by or on behalf of any other person when—

  (i) the other person is a mortgagee under a mortgage secured on the land; and

  (ii) the disposal by or on behalf of the other person is made as a result of the person defaulting under the mortgage

land—

(a) means some or all of any land to which those sections apply or some or all of that land together with any other land; and

(b) includes an estate or interest in land, whether legal or equitable, corporeal or incorporeal, freehold or chattel (including an option to acquire land or an estate or interest in land); and

(c) does not include a mortgage.

Origin:	CD 1(10), (12), (13); OB 1 ‘land’.
Defined terms:	disposal of land, estate, interest, land, local authority, mortgage, person, public authority.

Timber

CB 22 Disposal of timber or right to take timber

Income from disposal of timber

(1) An amount is income of a person if they derive it from—

(a) the disposal of timber; or

(b) the disposal of a right to take timber.

Whether or not person owns land

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

Origin:	(1) CJ 1(1). (2) CJ 1(1).
Defined terms:	amount, derived, disposal, income, owner, person, right to take timber, timber.
Comment:	The reference to flax in current section CJ 1 (1) has not been rewritten. Its removal was proposed in issues paper 2, page 19. Amounts derived from a disposal of flax will continue to be identified as income, when appropriate, by general income provisions – draft sections CB 1 (Amounts derived from business), CB 2 (Carrying on or carrying out profit-making schemes), and CB 3 (Personal property acquired for purpose of disposal) – and expenditure incurred in deriving such income will continue to be deductible under general deduction rules.

CB 23 Disposal of land with standing timber

When this section applies and does not apply

(1) This section applies when a person disposes of land with standing timber on it, but does not apply when the standing timber is of one of the following kinds:

(a) trees that are ornamental or incidental (see section CB 25); or

(b) trees in a crop subject to a forestry right (as defined in section 2 of the Forestry Rights Registration Act 1983) registered under the Land Transfer Act 1952; or

(c) trees subject to a right to take a benefit (in the form of a profit à prendre) granted before 1 January 1984.

Income from disposal of standing timber

(2) The amount that the person derives from the disposal of the standing timber is income of the person. The amount is worked out by following the steps in subsection (3).

Steps to get amount

(3) The steps are,—

(a) first, add the market value of the standing timber on the date of the disposal (A) to the market value of the land (as if it did not have standing timber on it) on the date of the disposal to give their combined market value (B):

(b) second, calculate what proportion of B is constituted by A:

(c) third, apply the proportion to the consideration for the disposal to get the amount the person derives.

Origin:	(1) CJ 1(2)(a), (b), (c). (2) CJ 1(2)(e)(i). (3) CJ 1(2)(d).
Defined terms:	amount, derived, disposal, income, person, standing timber.

CB 24 Insurance or other compensation for forestry-related loss or destruction

When this section applies

(1) This section applies when—

(a) a person carries on a forestry business on land in New Zealand; and

(b) the person receives an amount as insurance or other compensation to the business for the loss or destruction of standing timber.

Income

(2) The amount is income of the person.

Origin:	(1) DL 1(12). (2) DL 1(12).
Defined terms:	amount, business, income, New Zealand, person, standing timber.

CB 25 Certificates as to nature of trees

Trees that are ornamental or incidental

(1) The question whether trees are ornamental or incidental arises under—

(a) section CB 23:

(b) section FB 4 (Income derived from disposal of trading stock together with other assets of a business):

(c) section FF 7 (Disposal of timber under matrimonial agreement):

(d) section GD 1 (Sale of trading stock for inadequate consideration):

(e) section GD 2 (Distribution of trading stock to shareholders of company).

Certificate: ornamental or incidental

(2) A certificate as to the nature of the trees provides conclusive evidence on the question if it is given by—

(a) a properly authorised officer of the Ministry of Forestry; or

(b) any other person who is suitably qualified to give a certificate.

Origin:	(1) CJ 1(3). (2) CJ 1(3).
Defined terms:	person.
Comment:	Current section FF 7 (Standing timber) appears in a rewritten form in the consequential amendments in volume 3.

Farming, forestry, or fishing

CB 26 Refunds under income equalisation scheme

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

(a) section EN 11 (Income when refund given at end of 5 years):

(b) section EN 14 (1) (Income when refund given on request):

(c) section EN 16 (1) (Income when refund given for development or recovery):

(d) section EN 18 (1) (Income when refund given on retirement, and election to allocate amount to earlier year):

(e) section EN 20 (1) (Income when refund given on death):

(f) section EN 24 (Income when refund given on bankruptcy):

(g) section EN 26 (Income when refund given on liquidation):

(h) section EN 47 (Income when refund given on request):

(i) section EN 49 (1) (Income when refund given on retirement, and election to allocate amount to earlier year):

(j) section EN 51 (1) (Income when refund given on death):

(k) section EN 55 (Income when refund given on bankruptcy):

(l) section EN 57 (Income when refund given on liquidation):

(m) section EN 74 (1) (Income when refund given on request):

(n) section EN 76 (1) (Income when refund given for development or recovery):

(o) section EN 78 (Income when refund given on liquidation).

Origin:	new.
Defined terms:	derived, income, person.

Minerals

CB 27 Disposal of minerals

Income from disposal of minerals

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

Whether or not person owns land

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

Origin:	(1) CJ 1(1).
	(2) CJ 1(1).
Defined terms:	amount, derived, disposal, income, minerals, owner, person.

Intellectual property

CB 28 Disposal of patent rights

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

Origin:	EN 2(1), (4).
Defined terms:	amount, derived, income, patent rights, person.

Stolen property

CB 29 Obtaining property by theft

When property obtained without colour of right

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

Allocation

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

Constructive trust

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

Origin:	(1) CD 6(1).
	(2) EN 5(1), (2).

	(3) CD 6(2).
Defined terms:	amount, income, income year, person, possession, property, trustee.
Comment:	The value of property obtained without colour of right is identified as income in current section CD 6 (Gross income derived from certain property). A separate timing section, current section EN 5 (Gross income obtained from certain property), directs that the value is to be recognised as income in the income year in which the property is obtained.

Trading stock, livestock, and excepted financial arrangements

CB 30 Disposal: cross references to relevant sections in Part F and Part G

This section lists the relevant sections that are related to the disposal of trading stock, livestock, and excepted financial arrangements but appear in other Parts of the Act. For the treatment of—

(a) the consideration for the disposal of stock when the assets of a business are disposed of, see section FB 3 (Disposal of trading stock) and section FB 4 (Income derived from disposal of trading stock together with other assets of a business):

(b) a transfer of stock within a consolidated group of companies, see section FD 10 (5) (Special provisions relating to dispositions of property):

(c) a transfer of stock to an amalgamated company, see section FE 6 (2) (Acquisition of property by amalgamated company on qualifying amalgamation):

(d) a transfer of stock under a matrimonial agreement, see section FF 13 (Trading stock):

(e) a disposal of stock when the consideration is inadequate, see section GD 1 (Sale of trading stock for inadequate consideration):

(f) a distribution of stock to the shareholders of a company, see section GD 2 (Distribution of trading stock to shareholders of company).

Origin:	new.
Defined terms:	amalgamated company, business, company, consolidated group, excepted financial arrangement, livestock, matrimonial agreement, shareholder, trading stock.
Comment:	This list alerts readers to other provisions in the legislation that may be of relevance to trading stock. There is currently no such cross reference. These other provisions are part of wider aspects – for example, the tax implications of amalgamation – and are therefore located in other Parts of the Act.

CB 31 Receipts from insurance or other compensation

When this section applies

(1) This section applies when a person receives an amount of insurance or other compensation relating to the loss or destruction of, or damage to,—

- (a) trading stock or an asset that is ancillary to a business involved in manufacturing or producing trading stock:
- (b) livestock:
- (c) timber or a right to take timber:
- (d) other property, when the person deals in that property:
- (e) other property, when the person acquired it for the purpose of disposing of it:
- (f) any land to which sections CB 5 to CB 11 apply.

Income

(2) If the person is allowed a deduction in an income year for the cost of an asset referred to in any of subsection (1)(a) to (f), the amount is income. This subsection does not apply to an amount of depreciation loss.

Allocation

(3) The income is allocated to the income year in which the amount is received.

Apportionment

(4) If the Commissioner decides that only a portion of the insurance or other compensation is attributable to an asset referred to in any of subsection (1)(a) to (f), only that part is income.

Origin:	(1) EE 19(1), (2); OB 1 ‘trading stock’. (2) EE 19(2). (3) EE 19(2). (4) EE 19(3).
Defined terms:	amount, Commissioner, depreciation loss, income, income year, livestock, person, right to take timber, timber, trading stock.
Comment:	This section applies to all categories of trading stock covered by the current relevant definition of ‘trading stock’ in section OB 1 (Definitions) and now explicitly lists those categories.

CC – Income from holding property (excluding equity)

Index

Land use

CC 1 Revenue from land

Income from land

(1) Revenue from land is income of the owner of the land if they derive it from—

(a) a lease, licence, or easement affecting the land; or

(b) the grant of a right to take the profits of the land.

'Revenue from land' defined

(2) In this section, **revenue from land** includes—

(a) rent:

(b) a fine:

(c) a premium:

(d) a payment for the goodwill of a business:

(e) the benefit of a statutory licence:

(f) the benefit of a statutory privilege.

Origin:	(1) CE 1(1)(e). (2) CE 1(1)(e).
Defined terms:	business, derived, income, lease, owner, revenue from land.

CC 2 Payments for non-compliance with covenant for repair

Payment derived for non-compliance

(1) A payment that a person derives for non-compliance by another person with an obligation under a lease of land to maintain the land, or to make repairs to improvements on the land, is income of the person. 'Repairs' includes painting and general maintenance.

Allocation

(2) The income is allocated to the income year in which the person receives the payment.

Timing rules

(3) Subsection (2) is overridden by section EJ 2 (Payment to lessor for non-compliance with covenant for repair) and section EJ 3 (Payment for non-compliance: when lessor ceases to own land).

Origin:	(1) EN 1(1), (2). (2) EN 1(2). (3) EN 1(2) proviso.
Defined terms:	derived, income, income year, lease, person.
Comment:	Payments for non-performance of covenants to maintain or repair under leases of land are identified as income in current section EN 1 (2) (Payments received for non-compliance with covenant to repair). Current section EN 1 also directs that such amounts are recognised as income in the income year of receipt, but allows recipients to spread the income over the subsequent 5 income years. Payments for non-performance with maintenance and repair covenants are now identified as income in this separate section in Part C (Income). This is consistent with the core provisions. The timing rule which allows recipients to allocate the income to subsequent income years is set out in separate timing rules in draft Part E (Timing and quantifying rules). They are draft sections EJ 2 (Payment to lessor for non-compliance with covenant for repair) and EJ 3 (Payment for non-compliance: when lessor ceases to own land).

Financial instruments

CC 3 Financial arrangements

Party to financial arrangement

(1) Income derived by a person as a party to a financial arrangement is income of the person. The income is quantified under subpart EH (Financial arrangements rules).

Trustee

(2) Income derived by a trustee in the circumstances described in section EH 56 (3) (Income when debt forgiven to trustee) is income of the trustee.

Person associated with debtor

(3) Income derived by a person associated with a debtor in the circumstances described in section EH 57 (6)(a) (Income and deduction when debt sold at discount to associate of debtor) is income of the person.

Origin:	(1) CE 1(1)(c). (2) new. (3) new.
Defined terms:	associated person, derived, financial arrangement, income, person, trustee.

CC 4 Payments of interest

Interest

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

Apportionment

(2) If interest is due but unpaid on the date on which a person disposes of a security, the Commissioner may apportion the interest between the person disposing of the security and the person acquiring it.

Origin:	(1) CE 1(1)(a). (2) CE 1(1)(a).
Defined terms:	Commissioner, derived, income, interest, pay, person.

CC 5 Investment society dividends

Investment society dividend

(1) An investment society dividend derived by a person is income of the person.

Apportionment

(2) If an investment society dividend is due but unpaid on the date on which a person disposes of an investment society share, the Commissioner may apportion the dividend between the person disposing of the share and the person acquiring it.

Origin:	(1) CE 1(1)(a). (2) CE 1(1)(a).
Defined terms:	Commissioner, derived, income, investment society dividend, person.

CC 6 Annuities

Annuity

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

Apportionment

(2) If income under an annuity is due but unpaid on the date on which a person disposes of the annuity, the Commissioner may apportion the income between the person disposing of the annuity and the person acquiring it.

Origin:	(1) CE 1(1)(a).
	(2) CE 1(1)(a).
Defined terms:	Commissioner, derived, income, person.

CC 7 Commercial bills

Income on redemption

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

Income on disposal

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

Death of owner

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

Application

(4) The application of this section is dealt with in section CZ 4 (Income from certain money lent or redemption payments).

Origin:	(1) CE 3(1).
	(2) CE 3(1).
	(3) CE 3(2).
	(4) CE 3(1).
Defined terms:	amount, commercial bill, income, matrimonial agreement, person.

CC 8 Prizes received under Building Societies Act 1965

Prizes

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

Allocation

(2) Income under this section is allocated as follows:

(a) a cash prize is allocated to the day on which the bonus ballot giving rise to the prize is held:

(b) an advance is allocated to the day on which the advance is made or, if the advance is made in a series of advances, to the first day on which an advance is made.

Origin:	(1) CE 1(2)(d). (2) CE 1(2)(d).
Defined terms:	income, person.

CC 9 Consideration other than in money

When this section applies

(1) This section applies when—

(a) a lender provides money to a borrower for use in a business that the borrower carries on in New Zealand; and

(b) the borrower provides to the lender, as some or all of the consideration, a tangible or intangible benefit that—

(i) is not interest; and

(ii) may or may not be relief from an obligation; and

(iii) may or may not be convertible into money; and

(c) the borrowing is a commercial transaction under which the borrower would have been liable to pay interest at the current commercial rate, given the nature and term of the loan, if the borrower had not provided the benefit (whether or not the contract between the borrower and the lender provides for the payment of interest if the benefit is not provided).

Lender's income

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

Amount

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

Origin:	(1) CE 1(1)(b), (2)(a), (b), (c). (2) CE 1(1)(b). (3) CE 1(2)(c).

Defined terms:	amount, business, income, interest, New Zealand, pay, payment.

CC 10 Use of money interest payable by Commissioner

Interest payable by Commissioner

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

Repayment of overpaid interest

(2) If the Commissioner amends the assessment of a person's tax liability and, as a result, interest already paid by them is repayable to them, the interest is income of the person.

Amended assessment in later income year

(3) If the Commissioner amends the assessment of a person's tax liability, an amount that was income under subsection (1) in an income year earlier than that in which the Commissioner issues the notice of amended assessment continues to be treated as income, as if that amount were at all times the correct amount of interest.

Assessment in same income year

(4) For the purposes of subsections (2) and (3), if the Commissioner amends the assessment of a person's tax liability more than once in an income year, only the last occasion is taken into account.

When interest and interest repayments are income

(5) Interest and interest repayments to which this section applies are income allocated to the relevant income year specified in section EL 4 (Use of money interest payable by Commissioner).

Relationship with financial arrangements rules

(6) Interest and interest repayments that are income under this section are to be disregarded for the purposes of the financial arrangements rules.

Origin:	(1) ED 5; ED 7(1)(b). (2) ED 7(1)(c). (3) ED 7(1)(e). (4) ED 7(2). (5) ED 6(2); ED 7(1)(b), (c). (6) ED 5.
Defined terms:	amount, Commissioner, financial arrangements rules, income, income year, interest, notice, person, tax liability.

Royalties

CC 11 Royalties

Income

(1) A royalty that a person derives is income of the person.

'Royalty' defined

(2) **Royalty** includes a payment of any kind derived as consideration for—

(a) the use of, or right to use, a copyright, patent, trademark, design or model, plan, secret formula or process, or other similar property or right:

(b) the use of, or right to use, a mine or quarry:

(c) the extraction, removal, or other exploitation of standing timber or a natural resource:

(d) the right to extract, remove, or otherwise exploit standing timber or a natural resource:

(e) the use of, or right to use, a motion picture film, or a film or videotape in connection with television, or a tape in connection with radio broadcasting:

(f) the supply of scientific, technical, industrial, or commercial knowledge or information:

(g) the supply of assistance that enables the application or use of anything in any of paragraphs (a) to (f):

(h) the total or partial forbearance of the use of, or the grant of a right to use, property or a right referred to in any of paragraphs (a) to (e):

(i) the total or partial forbearance of the supply of information or assistance referred to in paragraph (f) or paragraph (g).

Relevance of description of payment

(3) For the purposes of subsection (2), it is not relevant how the payment is described or computed, nor whether the payment is periodical or otherwise, nor whether the payment is an instalment of the purchase price of real or personal property.

Origin:	(1) CD 2. (2) OB 1 'royalty'. (3) OB 1 'royalty'.
Defined terms:	derived, film, income, person, royalty, standing timber.
Comment:	Amounts that are royalties, and therefore income, are currently identified in a definition of 'royalty' in section OB 1 (Definitions). This obscures the information. Amounts that are royalties have therefore been identified in this substantive provision.

CC 12 Films

Amounts derived from films

(1) The following amounts derived by a person who has a right in a film are income of the person:

(a) an amount derived from the use of, right to use, or disposal of the film or the right in the film:

(b) an amount that is dependent on, or calculated by reference to, income under paragraph (a):

(c) an amount derived from the use of, right to use, or disposal of a right to income under paragraph (a) or paragraph (b).

Non-residents

(2) This section does not apply to a non-resident in relation to amounts to which section FC 21 (Amounts derived by non-residents from renting films) applies.

'Right in a film' defined

(3) In this section, **right in a film** means a right or interest of any kind (including a future or contingent right or interest) in or to—

(a) the film; or

(b) any tangible or intangible property in, or relating to, the film or other assets relating to the film.

Origin:	(1) CJ 2(1), (2). (2) new. (3) OB 1 'right'.
Defined terms:	amount, derived, film, income, non-resident, person, right in a film.
Comment:	Draft section FC 21 (Amounts derived by non-residents from renting films) appears in the consequential amendments in volume 3.

CD – Income from equity

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Index continued

Income

CD 1 Income

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

Origin:	CF 1.
Defined terms:	derived, dividend, income, person.

What is a dividend?

CD 2 What is a dividend?

Sections CD 3 to CD 11 define the amounts that are dividends.

Origin:	new.
Defined terms:	amount, dividend.

CD 3 Transfers of value generally

Transfer of value

(1) A transfer of value from a company to a person is a dividend if—

(a) the cause of the transfer is a shareholding in the company, under the rules in section CD 5; and

(b) none of the exclusions in sections CD 12 to CD 24 apply to the transfer.

Calculation rules

(2) The rules in sections CD 25 to CD 29 apply for the purposes of calculating the amount of the dividend.

Origin:	(1) CF 2(1)(a), (b), (c), (d), (e), (g), (h), (i), (j), (k), (l), (1A), (3), (10). (2) new.
Defined terms:	company, dividend, person, transfer of value.
Comment:	This broad conceptual approach reflects the wording in the discussion document *Rewriting the Income Tax Act: Parts C, D and E*. It operates in conjunction with the rules to define a transfer of value, in draft section CD 4, and to define when a transfer is caused by a shareholding relationship, in draft section CD 5. Also, see the expanded definitions of 'company', 'share', and 'shareholder' in section OB 1 (Definitions) dealing with such matters as unit trusts and group investment funds. There is scope for debate about whether the shareholding should be 'a' cause or 'the' cause.

CD 4 What is a transfer of value?

General test

(1) A transfer of value from a company to a person occurs when—

(a) the company provides money or money's worth to the person; and

(b) if the person provides any money or money's worth to the company under the same arrangement, the market value of what the company provides is more than the market value of what the person provides.

Release of debt

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

Origin:	(1) CF 2(1)(a), (b), (c), (d), (e), (g), (h), (i), (j), (k), (l), (1A), (3), (10). (2) CF 2(1)(b).
Defined terms:	company, person, transfer of value.
Comment:	This broad conceptual approach sets aside a lot of the historical complexity of the Act's current wording. Particular points to note are— (a) The reference to credits and so on in current section CF 2 (1)(a) is intended to be covered by the term 'provides' in draft subsection (1).

(b)	The making available by a shareholder of property to a company at an over-value is covered, whereas arguably it was not under current section CF 2 (1) (unless covered by current section CF 2 (1)(a) or (d)).
(c)	The inclusion of the provision of services under the new concept of transfer of value is also arguably a law change but any other approach would be illogical in policy terms. (Provision by a person of services to the company at an over-value may be covered by current section CF 2 (1)(a), in any event.).

CD 5 When is a transfer caused by a shareholding relationship?

General test

(1) A transfer of value from a company to a person (the recipient) is caused by a shareholding in the company if—

- (a) the recipient—
  - (i) holds shares in the company; or
  - (ii) is associated with a shareholder; or
  - (iii) is the trustee of a trust, and a beneficiary of the trust is either a shareholder or the spouse of a shareholder; and
- (b) the company makes the transfer because those shares are held by the relevant shareholder.

One indication that test met

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

Past or future shareholding

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

Deductible distributions of producer boards

(4) Despite subsection (1), a transfer of value by a statutory producer board to a member is not caused by a shareholding if—

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

Deductible distributions of cooperative companies

(5) Despite subsection (1), a transfer of value by a cooperative company to a shareholder is not caused by a shareholding if—

(a) the transfer is a cash distribution; and

(b) the distribution is a deduction under section HF 1 (Profits of mutual associations in respect of transactions with members) or another provision of this Act; and

(c) the company does not choose to treat the distribution as a dividend under section ME 35 (Cooperative company may make annual determination to attach imputation credit to certain distributions).

Origin:	(1) CF 2(1)(k); new. (2) CF 2(2). (3) CF 2(1)(g). (4) CF 2(1)(l). (5) CF 2(1)(l).
Defined terms:	associated person, company, person, share, shareholder, statutory producer board, transfer of value, trustee.
Comment:	Draft subsection (1) incorporates the associated person tests in the current section CF 2 (1)(k). Draft subsections (4) and (5) appear to be necessary clarifications, given that both producer boards and cooperative companies are companies for all purposes of the Act, and it is currently only by implication that the section HF 1 (Profits of mutual associations in respect of transactions with members) deduction overrides current section CF 2.

CD 6 Bonus issues in lieu of dividend

Bonus issue in lieu

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

Amount of dividend

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

Origin:	(1) CF 2(1)(f). (2) CF 2(6)(a).
Defined terms:	amount, bonus issue in lieu, dividend, pay, resident withholding tax.

CD 7 Elections to make bonus issue a dividend

Bonus issue dividend if election made

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

Form of election

(2) A company chooses to treat a bonus issue as a dividend by—

(a) resolving, when it makes the bonus issue, that it is a dividend; and

(b) resolving, when it makes the bonus issue, the amount to be treated as a dividend, which must be more than zero; and

(c) giving notice to the Commissioner under section 63 of the Tax Administration Act 1994 of the election and the amount.

Amount of dividend

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

Origin:	(1) CF 2(1)(f). (2) CF 8. (3) CF 2(6)(b).
Defined terms:	amount, bonus issue, Commissioner, company, dividend, notice.
Comment:	Section 63 of the Tax Administration Act 1994 may need to be reviewed, as it seems unlikely that it applies in practice to all non-taxable bonus issues.

CD 8 Notional distributions of producer boards and cooperative companies

Notional distribution of producer board

(1) A notional distribution of a statutory producer board is a dividend if the board determines to attach an imputation credit to the notional distribution under section ME 30 (Statutory producer board may determine to attach imputation credit to certain distributions).

Amount of dividend

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

Notional distribution of cooperative company

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

Amount of dividend

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

Origin:	(1) CF 2(1)(l). (2) CF 2(1)(l). (3) CF 2(1)(l). (4) CF 2(1)(l).
Defined terms:	amount, dividend, imputation credit, statutory producer board.

CD 9 Tax credits linked to dividends

Imputation and dividend withholding payment credits

(1) The amount of a dividend is increased by—

(a) an imputation credit attached to the dividend; or

(b) a dividend withholding payment credit attached to the dividend.

Limit to application of subsection (1)

(2) Subsection (1) does not apply in—

(a) Part L (Credits), except for subpart LE (Non-resident investors); or

(b) Part M (Tax payments); or

(c) Part N (Withholding taxes, and taxes on income of others).

Foreign tax credits

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

Notional foreign tax credits

(4) If a person derives a dividend and the company fails to deduct from it the tax that must be deducted under the law of a foreign country, the dividend is increased by a notional foreign tax credit amount under section LC 7 (Dividend paid without deduction in full of foreign tax).

Foreign tax refunds

(5) When a person who has derived a dividend from outside New Zealand also derives a refund of income tax of a foreign country, the dividend is increased by the amount of the refund if—

(a) the company paying the dividend was entitled to deduct the tax from the dividend; and

(b) the person was not personally liable to pay the tax.

Origin:	(1) CF 6(1). (2) CF 6(1). (3) CF 6(2), (3). (4) new. (5) CF 6(4); CF 7.

Defined terms:	amount, company, dividend, dividend withholding payment credit, double tax agreement, foreign tax, imputation credit, income tax, New Zealand, person, tax.
Comment:	Generally, current sections CF 6, CF 7, and parts of subpart LC seem to involve repetition, overlap, and anachronistic language. There is a need to revisit a significant part of the existing language. Draft subsection (2) attempts to clarify the places in the Act where the 'dividend' does not include the credit. It needs, ideally, to be made more specific. Draft subsection (3) aims to cover current section CF 6 (2) and (3). The reference specifically to the United Kingdom in current section CF 6 (2)(a) is omitted as the United Kingdom double tax agreement now covers the situation. Current section CF 6 (3) is omitted as it duplicates, but in a narrower form, current section CF 6 (2)(b). It is suggested that section LC 6 should also be reviewed for consistency with this section and the general tax credit rules in the Act. There is a query as to whether draft subsection (3) should apply only to credits that are not standard withholding tax credits. The latter would seem already to be included in the taxable dividend under general principles as income dealt with on a person's behalf. Arguably, in any event, draft subsection (3) should apply only to amounts that are in fact either withholdings or refunds actually received from the foreign country. Draft subsection (4) is an acknowledgment that section LC 7 can apply to increase a dividend amount. However, it is suggested that section LC 7 be repealed as being obsolete and not applied in practice. Does draft subsection (5) overlap with draft subsection (3)? Current section CF 6 (5) is shifted to the Tax Administration Act 1994 (see the consequential amendments in volume 3).

CD 10 Non-cash benefits of shareholder-employees or directors

Election under section CX 22: residual category fringe benefits

(1) A non-cash benefit provided by a company to an employee is a dividend if—

(a) the benefit is an unclassified benefit under section CX 23 (Unclassified benefits); and

(b) the employee is a shareholder in the company; and

(c) the company chooses to treat the benefit as a dividend under section CX 22 (2) (Benefits provided to employees who are shareholders or investors).

Non-executive directors' specific fringe benefits

(2) A non-cash benefit provided by a company to a non-executive director of the company is a dividend if—

(a) the benefit is not an unclassified benefit under section CX 23 (Unclassified benefits) but instead is one of the specified fringe benefits under sections CX 8 to CX 20; and

(b) the director is a shareholder in the company; and

(c) the benefit is provided solely because the director is a non-executive director of the company.

Other shareholder-employee benefits not dividends

(3) In any other case of a non-cash benefit provided by a company to a person who is both an employee and a shareholder, the benefit is not a dividend if—

(a) the application of section CX 22 (1) (Benefits provided to employees who are shareholders or investors) means it is a fringe benefit; and

(b) section CD 20 accordingly excludes it from being a dividend.

'Non-executive director' defined

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

Origin:	(1) CI 2A(2). (2) CF 2(1A); CI 2A(1). (3) new. (4) OB 1 'non-executive director shareholder'.
Defined terms:	company, director, dividend, non-executive director, person, shareholder, unclassified benefit.
Comment:	This section tries to clarify the way in which current sections CF 2 (1A), CF 3 (1)(g), CI 2 (1) to (3), and CI 2A interact to 'tie-break' the potential circularity between fringe benefit treatment and dividend treatment. There may need to be a similar 'tie-break' for cash benefits. The proposed definition of 'employee' (see the amendments to section OB 1 (Definitions) in volume 3) may need amending to specify that draft paragraph (d) applies for this purpose.

CD 11 Attributed repatriations from controlled foreign companies

Attributed repatriation is a dividend

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

Amount of dividend

(2) The amount of the dividend is calculated under sections CD 32 to CD 39.

Allocation of dividend

(3) The dividend is treated as having been paid by the CFC to the person, and as having been derived by the person,—

(a) six months after the end of the relevant accounting period of the CFC if the person is a company for which the dividend is exempt income under section CW 9 (Dividend derived by company from offshore); and

(b) at the end of the accounting period in any other case.

Dividend treated as derived while person New Zealand resident

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

Origin:	(1) CF 2(16)(a). (2) new. (3) CF 2(16)(b). (4) CG 8(13).
Defined terms:	accounting period, amount, attributed repatriation, CFC, company, dividend, exempt income, income interest, New Zealand resident, person.

What is not a dividend?

CD 12 Returns of capital: off-market share cancellations

When this section applies

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

Ordering rule if bright line test met

(2) The amount is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the ordering rule, if—

(a) one of the bright line tests in subsection (3) is met; and

(b) the company is not an unlisted trust that has chosen the slice rule for the share under subsection (4); and

(c) the anti-avoidance rule in subsection (6) does not apply.

Bright line tests

(3) The bright line tests referred to in subsection (2)(a) are as follows:

(a) the cancellation is part of a pro rata cancellation that results in a fifteen percent capital reduction for the company:

(b) the cancellation is part of a pro rata cancellation that involves a ten percent capital reduction and the Commissioner has given a clearance notice under subsection (8):

(c) the cancellation is not part of a pro rata cancellation and results in the shareholder suffering a fifteen percent interest reduction:

(d) the company is an unlisted trust and the cancellation is not part of a pro rata cancellation:

(e) the share is a non-participating redeemable share.

Unlisted trust choosing slice rule

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

Calculation concession for foreign unlisted widely-held trusts

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

Overriding anti-avoidance rule

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

Factors relevant in applying anti-avoidance rule

(7) For the purposes of applying subsection (6), the following factors must be considered:

(a) the nature and amount of dividends paid by the company before or after the cancellation; and

(b) the issue of shares in the company after the cancellation; and

(c) the expressed purpose or purposes of the cancellation; and

(d) any other relevant factor.

Commissioner notifying view

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

Definitions for this section

(9) In this section,—

counted associate means**—**

(a) a person associated with the shareholder other than merely by virtue of being a relative; or

(b) a person associated with the shareholder merely by virtue of being a spouse or minor child of the shareholder, or a trustee for a spouse or minor child of the shareholder

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

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

(a) the total direct voting interests in the company of the shareholder and any counted associates is not more than 85% of their total direct voting interests in the company immediately before the cancellation; and

(b) if at the time of the cancellation a market value circumstance exists, the total direct market value interests in the company of the shareholder and any counted associates is not more than 85% of their total direct market value interests immediately before the cancellation

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

(a) the share is issued, under the company's constitution or establishing legislation, on terms that involve the share being required or allowed to be redeemed or repaid before the company is liquidated; and

(b) the share is—
  (i) a redeemable share under section 66 of the Companies Act 1955, section 68 of the Companies Act 1993, or an equivalent provision of foreign law; or
  (ii) issued under Part 1A of the Dairy Board Act 1961 or one of New Zealand's Acts relating to cooperative companies; or
  (iii) subject to section FC 1 (Floating rate of interest on debentures) or section FC 2 (Interest on debentures issued in substitution for shares); or
  (iv) a unit in a unit trust that is not a widely-held trust; and
(c) the share is either a fixed rate share or a share for which the amount payable on cancellation is not more than the available subscribed capital per share calculated under the slice rule; and
(d) the shareholder does not have shareholder decision-making rights in relation to the share except—
  (i) a protective right; or
  (ii) if the company is the New Zealand Dairy Board or is subject to one of New Zealand's Acts relating to cooperative companies

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

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

ten percent capital reduction means the circumstance in which the total amount paid by the company on account of the cancellation (or paid on account of any other pro rata cancellation of participating shares in the company occurring at the same time) is at least 10% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

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

Origin:	(1) CF 3(1)(b)(ii). (2) CF 3(1)(b)(i), (iii), (iv)(B). (3) CF 3(1)(b)(i). (4) CF 3(1)(b)(i)(D), (iv)(A). (5) CF 3(2)(c). (6) CF 3(1)(b)(ii). (7) CF 3(1)(b)(ii). (8) CF 3(1)(b)(i)(B). (9) CF 3(14).
Defined terms:	amount, associated person, available subscribed capital, cancellation, Commissioner, company, counted associate, direct market value interest, direct voting interest, dividend, fifteen percent capital reduction, fifteen percent interest reduction, fixed rate share, group investment fund, liquidation, market value circumstance, New Zealand, non-participating redeemable share, notice, off-market cancellation, ordering rule, participating share, person, pro rata cancellation, protective right, recognised exchange, relative, resident in New Zealand, share, shareholder, shareholder decision-making rights, slice rule, ten percent capital reduction, trustee, unit trust, unlisted trust, unlisted widely-held trust, widely-held trust.
Comment:	Including non-participating redeemable shares as one of the bright line tests in draft subsection (3) is done to simplify the drafting. It seems debatable whether the additional requirements in draft subsection (3)(a) to (c) for there to be or not be a pro rata cancellation are necessary.

CD 13 Ordering rule and slice rule

Ordering rule

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

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

Definition of items in formula

(2) In the ordering rule formula,—

(a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:

(b) **shares being cancelled of class** is the number of shares of the same class as the share (including the share) being cancelled at the time.

Slice rule

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

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

Definition of items in formula

(4) In the slice rule formula,—

(a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:

(b) **shares of class** is the number of shares of the same class as the share (including the share) on issue at the time.

Ordering rule amount zero if foreign company information inadequate

(5) Despite subsections (2) to (4), the available subscribed capital per share calculated under the ordering rule is zero if—

(a) the company is not resident in New Zealand; and

(b) the relevant shareholder cannot obtain sufficient information to calculate the actual available subscribed capital per share using the relevant rule.

Origin:	(1) OB 1 'available subscribed capital per share cancelled'. (2) OB 1 'available subscribed capital per share cancelled'. (3) OB 1 'available subscribed capital per share'. (4) OB 1 'available subscribed capital per share'. (5) CF 3(2)(b).
Defined terms:	available subscribed capital, cancellation, foreign company, ordering rule, resident in New Zealand, share, shareholder, shares of the same class, slice rule.
Comment:	Arguably, draft subsection (5) should also apply for the purposes of the slice rule (but subject to draft section CD 12 (5)).

CD 14 Returns of capital: on-market share cancellations

Amount not dividend

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

When excess amount relevant

(2) Despite subsection (1), any excess of the amount paid over the available subscribed capital per share under the ordering rule—

(a) is treated as a dividend and not a return of capital when applying—

(i) section CD 30 (2)(c) (Reduction in available subscribed capital for returns of capital):

(ii) section CD 27 (Adjustments if dividend recovered by company):

(iii) section GB 1 (3) (Tax avoidance through dividend stripping); and

(b) gives rise to an imputation credit account debit under section ME 5 (1)(c) and (2)(c) (Debits arising to imputation credit account).

Origin:	(1) CF 3(1)(e), (f). (2) CF 3(1)(f); OB 1 ‘available subscribed capital’ c(iii).
Defined terms:	amount, available subscribed capital, company, dividend, imputation credit account, on-market cancellation, ordering rule, share.

CD 15 Treasury stock acquisitions

Treasury stock generally

(1) An amount paid by a company in acquiring one of its shares is not a dividend if—

(a) the acquisition is treated as not resulting in the cancellation of the share, under section 67A (1) of the Companies Act 1993, section 24 of the Co-operative Companies Act 1996, or section 15N of the Dairy Board Act 1961 (each of which relate to treasury stock); and

(b) the acquisition is not part of a pro rata cancellation or something that is in substance a pro rata cancellation.

Cooperative company share surrenders

(2) An amount paid by a company to acquire one of its shares is not a dividend if—

(a) the share is surrendered and not reissued under section 14 of the Cooperative Dairy Companies Act 1949, section 6 of the Cooperative Companies Act 1956, section 6 of the Cooperative Freezing Companies Act 1960, or section 13 of the Cooperative Forestry Companies Act 1978; and

(b) the acquisition is not part of a pro rata cancellation or something which is in substance a pro rata cancellation; and

(c) at the time the share is surrendered, either the total of the shares surrendered and not reissued is less than or equal to 25% of the maximum percentage stated in the relevant provision or any excess over 25% were shares surrendered only on grounds related to—
  (i) the capacity of the shareholder to enter into transactions with the company; or
  (ii) the level of transactions between the company and the shareholder; or
  (iii) the terms of any contract relating to transactions between the company and the shareholder.

Reversion to on-market cancellation treatment

(3) Subsections (5) to (7) of this section apply in the case of an acquisition of a share to which subsection (1) or subsection (2) has applied if—

(a) before the first anniversary of the acquisition, the company cancels the share; or
(b) at the first anniversary, the company has failed to transfer a share of the same class in an arm's length transfer, except if the company is established under New Zealand cooperative company legislation or is the New Zealand Dairy Board; or
(c) after the first anniversary, the company cancels the share, and the company is established under New Zealand cooperative company legislation or is the New Zealand Dairy Board.

Requirement for arm's length transfers

(4) When subsection (3)(b) is applied,—

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

Reduction of available subscribed capital

(5) If subsection (3) applies, then, with effect from the cancellation or the first anniversary (depending on which first causes subsection (3) to apply), the available subscribed capital of the class of the share is

reduced by the available subscribed capital per share calculated under the ordering rule as at the date of the cancellation or first anniversary.

Imputation credit account debit

(6) If subsection (3) applies, then, with effect from the date of the acquisition by the company, section ME 5 (1)(c) and (2)(c) (Debits arising to imputation credit account) apply as if the original acquisition were an on-market cancellation but item a of the formula in section ME 5 (1)(c) were equal to only the excess of the amount received by the shareholder over the reduction described in subsection (5).

Relief from imputation penalty tax

(7) No imputation penalty tax is imposed under section 140B of the Tax Administration Act 1994 (nor any late payment penalty imposed under that Act in relation to the imputation penalty tax) if it would not have arisen had subsection (6) applied only with effect from the date of cancellation or first anniversary (depending on which first causes subsection (3) to apply).

Origin:	(1) CF 3(1)(d). (2) CF 3(1)(da). (3) CF 3(3)(a), (b), (c), (3A). (4) CF 3(3)(c). (5) CF 3(3)(d). (6) CF 3(3)(e). (7) CF 3(3)(e).
Defined terms:	amount, associated person, available subscribed capital, cancellation, company, imputation credit account, imputation penalty tax, New Zealand, on-market cancellation, ordering rule, person, pro rata cancellation, recognised exchange, share, shareholder.

CD 16 Capital distributions on liquidation

When this section applies

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

Return of subscribed capital or capital gains not dividend

(2) The amount paid is a dividend only to the extent to which it is more than—

- (a) the available subscribed capital per share calculated under the ordering rule; and
- (b) the available capital distribution amount per share calculated under section CD 31.

Statutory producer board capital levies

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

Amount is non-deductible capital

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

Origin:	(1) CF 3(1)(c). (2) CF 3(1)(c). (3) CF 3(1)(i). (4) CF 3(4).
Defined terms:	amount, available capital distribution amount, available subscribed capital, capital limitation, company, dividend, levy, liquidation, ordering rule, share, shareholder, statutory producer board.

CD 17 Property made available intra-group

When this section applies

(1) This section applies if—

(a) a transfer of value is made by a company (the first company) to another company (the associated company); and

(b) if this section did not exist, the transfer would be a dividend under section CD 5 (1)(a)(ii) (because the associated company is associated with a shareholder in the first company) or under section CD 5 (1)(a)(iii) (because the associated company is the trustee of a trust of which a shareholder in the first company, or a shareholder's spouse, is a beneficiary).

Intra-group property arrangements worth $10,000 or less per year

(2) The transfer of value is not a dividend if—

(a) the transfer consists of making property available for less than market value; and

(b) the transfer is not a loan; and

(c) in the income year of the first company in which the transfer occurs, the total amount of transfers of value by the first company to the associated company that would be dividends for the year if this section did not exist is not more than $10,000.

Downward transfers of value

(3) The transfer of value is also not a dividend if—

(a) either—

(i) the first company has a voting interest in the associated company; or

(ii) the first company is associated with a company (the parent) that has a voting interest in the associated company and that could have received the transfer of value without it being counted income, non-resident withholding income, or a gain subject to dividend withholding payment for the parent; and

(b) the associated company does not have a voting interest in the first company; and

(c) no person (other than the parent) has both—

(i) a voting interest or a market value interest in the first company; and

(ii) a voting interest or a market value interest in the associated company of more than 10%.

Section FC 3 amounts: recovery of purchase price

(4) Subsection (3) does not apply to a transfer of value that is subject to section FC 3 (Rule for dividends that represent recovery of share's purchase price).

Rules for identifying voting interests

(5) For the purposes of subsection (3)(a) and (b),—

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

(b) a zero voting interest is not a voting interest.

Rules for identifying voting and market value interests

(6) For the purposes of subsection (3)(c),—

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

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

(c) a zero voting interest is not a voting interest and a zero market value interest is not a market value interest.

Origin:	(1) CF 2(13), (14). (2) CF 2(14). (3) CF 2(13). (4) CF 2(13A). (5) CF 2(13)(b), (c). (6) CF 2(13)(e).
Defined terms:	amount, associated person, company, counted income, dividend, dividend withholding payment, income year, market value interest, non-resident withholding income, person, shareholder, transfer of value, trustee, voting interest.
Comment:	As noted in the general commentary, this provision will need to be extended to a dividend involving the provision of services.

CD 18 Non-taxable bonus issues

A non-taxable bonus issue is not a dividend.

Origin:	CF 3(1)(a).
Defined terms:	dividend, non-taxable bonus issue.
Comment:	See also the amended definition of 'taxable bonus issue'.

CD 19 Flat-owning companies

Occupation rights not a dividend

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

'Flat-owning company' defined

(2) In this section, **flat-owning company** means a company—

(a) whose constitution provides that every registered shareholder is entitled to the use of a specific residential property in New Zealand owned by the company; and

(b) whose only significant assets are residential properties available for use by specific shareholders and funds reserved for meeting the company's ancillary costs.

Origin:	(1) CF 2(1)(e). (2) CF 2(21).
Defined terms:	company, dividend, flat-owning company, New Zealand, person, shareholder.

CD 20 Employee benefits

Fringe benefit tax rules

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

Accommodation benefits

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

Origin:	(1) CF 3(1)(g). (2) CF 3(1)(h).
Defined terms:	amount, dividend, employment income, fringe benefit tax, fringe benefit tax rules.
Comment:	See also draft section CD 10 (Non-cash benefits of shareholder-employees or directors).

CD 21 Payments corresponding to notional distributions of producer boards and cooperative companies

Statutory producer board payments

(1) An amount paid by a statutory producer board to a person in relation to an income year is not a dividend if—

(a) the person was a member of the board at some time during the year; and

(b) unless the Commissioner allows otherwise, the amount is calculated on the basis of the member's share of—

(i) the total produce transactions of members with the board during the year; or

(ii) the total levies payable by members to the board for the year; and

(c) the amount corresponds to a notional distribution amount treated as a dividend under section CD 8 (1).

Cooperative company payments

(2) An amount paid by a cooperative company to a person in relation to an income year is not a dividend if—

(a) the person was a shareholder of the company at some time during the year; and

(b) unless the Commissioner allows otherwise, the amount is calculated on the basis of the shareholder's share of the total produce transactions of shareholders with the company during the year; and

(c) the amount corresponds to a notional distribution amount treated as a dividend under section CD 8 (3).

Non-deductible capital

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

Origin:	(1) CF 3(1)(ia). (2) CF 3(1)(j). (3) CF 3(4).
Defined terms:	amount, capital limitation, Commissioner, cooperative company, dividend, income year, member, person, produce transactions, producer board, shareholder, statutory producer board.

CD 22 Qualifying amalgamations

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

(a) the amalgamated company acquiring property of the amalgamating company; or

(b) the amalgamated company being relieved of an obligation owed to the amalgamating company.

Origin:	CF 5(a).
Defined terms:	amalgamated company, amalgamating company, amalgamation, amount, derived, dividend, qualifying amalgamation.

CD 23 Foreign investment fund (FIF) income amounts

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

(a) at the time the person derives the amount, the person's interest in the company is an attributing interest in a foreign investment fund (FIF) (or would have been if the company had not been liquidated); and

(b) the person calculates their FIF income or loss in relation to the interest and the period in which the amount is paid under the comparative value method or the deemed rate of return method.

Origin:	CF 3(1)(k).
Defined terms:	amount, attributing interest, company, comparative value method, deemed rate of return method, derived, dividend, FIF, foreign investment fund, loss, liquidation, person.
Comment:	The reference to current section CG 22 is omitted. If amounts are taxed as FIF income under current section CG 22, there seems to be no reason also to treat them as dividends.

CD 24 Group investment fund management fees

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

(a) it is applied in paying a management fee to the trustee; and

(b) the trustee is allowed a deduction for the fee under section DV 5 (Group investment funds).

Origin:	CF 3(1)(ga).
Defined terms:	amount, deduction, dividend, group investment fund, management fees, trustee.
Comment:	It seems appropriate to limit this to cases where current section DI 3A is relied on.

Calculation rules

CD 25 General calculation rule for transfers of value

Difference in value

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

$$\text{value from company} \quad - \quad \text{value from person.}$$

Definition of items in formula

(2) In the formula,—

(a) **value from company** is the market value of the money or money's worth that the company provides to the person:

(b) **value from person** is the market value of the money or money's worth (if any) that the person provides to the company as consideration for the transfer.

Value from person excludes shareholding

(3) The item **value from person** excludes any amount that is merely attributable to the holding or giving up of rights as a shareholder in the company.

Overriding provisions

(4) This section is overridden by sections CD 26 to CD 29.

Origin:	(1) CF 2(1)(c), (d), (e). (2) CF 2(1)(c), (d), (e). (3) new. (4) CF 2(1)(c), (d), (e).
Defined terms:	amount, company, dividend, person, shareholder, transfer of value.

CD 26 Calculation of dividend amount of property made available

How section applies

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

Amount calculated quarterly

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

Date when amount is treated as paid

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

Using FBT rules

(4) Unless the property made available is a loan, the amount of the dividend for each quarter is the value of the fringe benefit for that quarter calculated under the FBT rules as if—

(a) making the property available were the provision of a fringe benefit by the company to an employee in relation to employment, despite anything in sections CX 8 to CX 34; and

(b) the company were not to choose to pay fringe benefit tax on an income year basis under section ND 14 (Payment of fringe benefit tax on income year basis for shareholder-employees).

Using difference from benchmark rate

(5) If the property made available is a loan, the amount of the dividend for each quarter is the excess (if any) of interest, calculated for the quarter on the basis of the daily balance of the loan and the benchmark rate specified in subsections (6) to (8), over the actual amount of interest accruing on the loan in the quarter. However, the company may choose instead to calculate the dividend as the excess of the benchmark interest rate amount over the amount of income accruing to the company in the quarter calculated under the yield to maturity method.

Benchmark rate: FBT rate for certain loans

(6) For the purposes of subsection (5), the benchmark rate of interest is the prescribed rate of interest (the rate generally applicable under the FBT rules) if—

(a) all amounts payable to the company for the loan are expressed in New Zealand dollars; and

(b) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter.

Setting benchmark rate

(7) For the purposes of subsection (5), the benchmark rate is the rate set by the Commissioner if—

(a) all amounts payable to the company in relation to the loan are payable in a single currency other than New Zealand dollars; and

(b) the Commissioner has set a benchmark rate for that currency; and

(c) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter.

Default benchmark rate

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

Daily loan balance: certain repayments backdated

(9) For the purposes of subsection (5), in determining the daily balance of a loan during an income year, an amount repaid during the year is treated as having been applied in repayment of the loan at the start of the company's income year or, if later, the day the loan was made, if—

(a) the amount is repaid by applying any salary, wages, extra pay, dividends, or interest payable by the company to the borrower; and

(b) the amount payable by the company is income of the borrower for the income year or a previous year; and

(c) the amount payable by the company is payable without any tax deduction under the PAYE rules, the RWT rules, or the NRWT rules.

Daily loan balance: company nominating amount

(10) Subject to subsection (9), for the purposes of subsection (5), the daily balance of the loan for an income year is treated as being equal to the notional balance chosen under subsection (11) by the company making the loan if—

(a) the borrower is a company; and

(b) the loan is a variable principal debt instrument; and

(c) the company making the loan notifies the Commissioner that this subsection applies for the loan and the income year; and

(d) the amount of the dividend calculated as a result for the loan, the borrower, and the income year is not more than 30% greater or less than the amount that would be calculated if this section did not apply.

Notional balance options

(11) The notional balance referred to in subsection (10) is whichever of the following is chosen by the company making the loan and notified to the Commissioner:

(a) the average of the outstanding balances of the loan at the end of each month in the company's income year:

(b) the average of—

(i) the outstanding balance of the loan at the start of the income year or the first time during the year at which the loan exists, whichever is later; and

(ii) the outstanding balance of the loan at the end of the income year or the last time during the income year at which the loan exists, whichever is earlier.

Notice generally made by tax return

(12) Reference in this section to a company notifying the Commissioner is a reference to either—

(a) a notice given to the Commissioner with the company's return of income for the relevant income year; or

(b) if no return is filed, a notice given by the date on which a return would be required to be filed for the income year if a return had been required.

No double counting of attributed repatriation dividends

(13) No amount of dividend arises under section CD 3 as a result of any difference between the interest (if any) payable by a person to a controlled foreign company (CFC) in an accounting period of the CFC under a loan and the benchmark rate of interest specified in subsections (6) to (8) if—

(a) the outstanding balance of the loan at the end of the account period is taken into account under sections CD 33 to CD 39 in calculating the New Zealand repatriation amount of the CFC for the accounting period; and

(b) as a result, the person derives a dividend under section CD 11.

Subsection (13) does not apply if loan disregarded

(14) Subsection (13) does not apply to the extent to which the loan is a loan to which:

(a) section CD 37 (11) applies, meaning that the loan is disregarded for the accounting period; or

(b) section CZ 10 (4) (Transitional relief for calculation of attributed repatriation dividends) applies, meaning that the loan is effectively disregarded for the accounting period.

Origin:	(1) CF 2(11). (2) CF 2(11)(a). (3) CF 2(11)(a). (4) CF 2(11)(b). (5) CF 2(11)(c). (6) CF 2(12)(a)(i). (7) CF 2(12)(a)(ii). (8) CF 2(12)(a)(iii). (9) CF 2(12)(b). (10) CF 2(12)(c)(i), (ii), (iii), (iv), (v). (11) CF 2(12)(c)(vi), (vii). (12) CF 2(12)(a)(i)(B), (a)(ii)(B), (c)(iv). (13) CF 2(19). (14) CF 2(19).

Defined terms:	accounting period, amount, attributed repatriation, Commissioner, company, dividend, employee, extra pay, FBT rules, financial arrangement, fringe benefit tax, income, income year, interest, loan, New Zealand, New Zealand repatriation amount, notice, NRWT rules, pay, PAYE rules, person, prescribed rate of interest, quarter, return of income, RWT rules, shareholder, tax deduction, variable principal debt instrument.
Comment:	As noted in the general commentary, this provision will need to be extended to a dividend involving the provision of services.

CD 27 Adjustment if dividend recovered by company

Dividend recovered

(1) If a company recovers a dividend from a shareholder under section 56 of the Companies Act 1993 or an equivalent provision of foreign law, this section applies to the extent necessary to ensure that—

(a) the recovered dividend and any attached imputation credit or dividend withholding payment credit are disregarded for the purposes of this Act; and

(b) the resulting refunds are made.

Assessments amended under Tax Administration Act

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

Refunds

(3) If the Commissioner is given notice of the recovery, the Commissioner will refund any relevant—

(a) income tax, dividend withholding payment, or dividend withholding payment penalty tax of the shareholder; and

(b) non-resident withholding tax or resident withholding tax of the company.

Refund despite sections MD 1 and NH 4

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

Adjustments to accounts

(5) A credit or debit (as applicable) arises as at the date of recovery, and must be recorded in—

(a) the imputation credit account of the company:

(b) if the shareholder is an imputation credit account company or dividend withholding payment account company, the imputation credit account or dividend withholding payment account of the shareholder.

Origin:	(1) CF 2(8). (2) CF 2(8)(a)(i). (3) CF 2(8)(a)(ii). (4) CF 2(8)(a)(ii). (5) CF 2(8)(b).
Defined terms:	Commissioner, company, dividend, dividend withholding payment, dividend withholding payment account, dividend withholding payment account company, dividend withholding payment credit, dividend withholding payment penalty tax, imputation credit, imputation credit account, imputation credit account company, income tax, non-resident withholding tax, notice, resident withholding tax, shareholder.
Comment:	Draft section 113A of the Tax Administration Act 1994 appears in the consequential amendments in volume 3.

CD 28 Adjustment if amount repaid later

Released debt repaid

(1) If the release by a company of a shareholder's obligation to pay money to the company has been treated as a dividend and the released amount is later repaid to the company, this section applies to the extent necessary to ensure that—

(a) the dividend is disregarded for the purposes of this Act; and

(b) the resulting refunds are made.

Close company expenditure repaid

(2) If any expenditure of a close company that shareholders in the company believed on reasonable grounds was only for the benefit of the company is nevertheless a dividend and the expenditure is later repaid to the company, this section applies to the extent necessary to ensure that—

(a) the dividend is disregarded for the purposes of this Act; and

(b) the resulting refunds are made.

Assessments amended under Tax Administration Act

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

Refunds

(4) If the Commissioner is given notice of the repayment, the Commissioner will refund any relevant tax of the shareholder. The refund will be made despite section MD 1 (Refund of excess tax), but subject to the other provisions of this Act.

Repayment of pre-1992 loans

(5) Subsection (1) applies to the repayment of an amount treated as a dividend under section 4 (1)(b) of the Income Tax Act 1976 (as it applied before 1 April 1992 to give the Commissioner a discretion to

treat loans as dividends), as if the amount repaid were a released amount that is repaid.

Origin:	(1) CF 2(9). (2) CF 2(10). (3) CF 2(9), (10). (4) CF 2(9), (10). (5) CF 2(9).
Defined terms:	amount, close company, Commissioner, company, dividend, notice, shareholder, tax.
Comment:	It may be preferable to split this section into 2 sections.

CD 29 Adjustment if additional consideration paid

When difference from market value

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

Company considered consideration was market value

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

Recipient paying difference to company

(3) The recipient of the dividend must have later paid to the company—

(a) sufficient additional consideration to reflect the actual market value of the property at the time; or

(b) a refund of any excess consideration paid by the company.

Accounts adjusted

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

Origin:	(1) CF 2(9A). (2) CF 2(9A). (3) CF 2(9A). (4) CF 2(9A).
Defined terms:	amount, company, dividend.
Comment:	The Commissioner’s discretion has been removed because the conditions for its application are detailed and objective. As noted in the general commentary, this provision will need to be extended to a dividend involving the provision of services.

CD 30 Available subscribed capital amount

Formula for calculating amount of available subscribed capital

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

$$\text{1 July 1994 balance} + \text{subscriptions} - \text{returns.}$$

Definition of items in formula

(2) In the formula,—

(a) **1 July 1994 balance** is,—

(i) if the company existed before 1 July 1994, the amount calculated under subsection (3); and

(ii) in any other case, zero:

(b) **subscriptions**, subject to subsections (6) to (19), is the total amount of consideration that the company received, after 30 June 1994 and before the calculation time, for the issue of shares of the same class (the class) as the share:

(c) **returns**, subject to subsections (20) to (23), is the total amount of consideration that the company paid, after 30 June 1994 and before the calculation time, on the cancelling of shares in the relevant class and that was not a dividend because of section CD 12 or section CD 14 (which relate to off-market cancellations and on-market cancellations respectively) or a corresponding repealed provision.

1 July 1994 balance

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

$$\frac{\text{paid-up capital} + \text{premiums}}{\text{all shares issued}} \quad x \quad \text{30 June 1994 shares.}$$

Definition of items in formula

(4) In the 1 July 1994 balance formula,—

(a) **paid-up capital**, subject to subsection (5) relating to bonus issues, is the total amount of capital paid up before 1 July 1994 for shares in the class:

(b) **premiums** is the total amount of qualifying share premium paid to the company before 1 July 1994 for shares in the class, but not including amounts applied before 1 July 1994 in paying up capital:

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

(d) **30 June 1994 shares** is the number of shares in the class on issue at the end of 30 June 1994.

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

(5) The capital amount included in calculating the 1 July 1994 amount does not include an amount paid up by way of a bonus issue made after 30 September 1988, unless—

(a) the bonus issue was a taxable bonus issue; or

(b) the amount was paid up by application of an amount of qualifying share premium.

Subscriptions amount: taxable bonus issues and debt capitalisations

(6) The subscriptions amount includes,—

(a) in the case of a bonus issue in lieu, the amount offered as an alternative to the bonus issue; and

(b) in the case of a taxable bonus issue that is not a bonus issue in lieu, the amount of the dividend arising from the taxable bonus issue; and

(c) in the case of shares issued on conversion of, or as consideration for the release of, a debt claim against the company, the amount of debt converted or released.

Subscriptions amount: non-taxable and exempt bonus issues

(7) The subscriptions amount does not include—

(a) an amount for a bonus issue if neither paragraph (a) nor paragraph (b) of subsection (6) applies; or

(b) an amount for a taxable bonus issue made to a shareholder to whom the bonus issue was exempt income under section CW 9 (Dividend derived by company from offshore) or section CW 10 (Dividend within New Zealand wholly-owned group) (or under a corresponding repealed provision) except to the extent to which the taxable bonus issue is fully credited.

Subscriptions amount: reinvested exempt dividends

(8) The subscriptions amount does not include—

(a) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend to a shareholder,—

(i) if the dividend was exempt income of the shareholder under section CW 9 (Dividend derived by company from offshore) or section CW 10 (Dividend within New

Zealand wholly-owned group) (or a corresponding repealed provision); and

(ii) if the shareholder was not required to deduct an amount of dividend withholding payment from the dividend by section NH 1 (Liability to make deduction in respect of foreign withholding payment dividend); and

(iii) to the extent to which the dividend is not fully credited; or

(b) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend at a time when the company is a controlled foreign company to another controlled foreign company (regardless of whether either company is resident in a grey list country).

Subscriptions amount: share for share exchanges

(9) Subsection (10) applies if—

(a) the company receives an amount, directly or indirectly, for the issue of shares in the class that is in the form of shares in another company; and

(b) immediately after the issue there are one or more persons whose common voting interests (or common market value interests), as defined in section IG 1 (5) (Companies included in group of companies), in the company and the other company total 10% or greater; and

(c) the receipt is not on an amalgamation.

Subscriptions amount: no uplift for share for share exchanges

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

Subscriptions amount: company share capital reorganisation

(11) Subsection (12) applies if a company receives an amount for the issue of shares in the class in the form of—

(a) a shareholder giving up rights of membership in the company; or

(b) a shareholder giving up rights of membership in a company associated with the company or that is in substance the same company.

Subscriptions amount: no uplift for share capital reorganisation

(12) If subsection (11) applies, the subscriptions amount does not include the amount received to the extent to which it is more than the total available subscribed capital per share of the rights given up at the date they are given up, calculated—

(a) using the slice rule; and

(b) after deducting any ineligible capital amount described in subsections (13) and (14); and

(c) as if the rights given up were shares, if they are not shares.

Subscriptions amount: when ineligible capital arises

(13) For the purposes of subsections (10) and (12), an ineligible capital amount arises if—

(a) a company (the acquiring company) issues shares in consideration for acquiring, directly or indirectly, shares in another company (the acquired company); and

(b) the acquired company has issued shares in anticipation of the shares being acquired by the acquiring company; and

(c) those shares issued in anticipation are not a fully credited taxable bonus issue; and

(d) the acquiring company pays an amount in consideration for acquiring the shares in the acquired company in addition to issuing shares in the acquiring company.

Subscriptions amount: amount of ineligible capital

(14) The ineligible capital amount is the lesser of—

(a) the total of the available subscribed capital per share calculated using the slice rule of the shares in the acquired company that is attributable to the shares issued in anticipation (except to the extent to which the shares issued in anticipation are a fully credited taxable bonus issue); and

(b) the total additional amount paid by the acquiring company referred to in subsection (13)(d).

Subscriptions amount: amalgamated company

(15) If the company is an amalgamated company that results from an amalgamation under section 222 (2) of the Companies Act 1993 or section 209D (2) of the Companies Act 1955, the subscriptions amount—

(a) includes an amount equal to the available subscribed capital at the time of the amalgamation of all shares in the amalgamating companies of an equivalent class to the class (not being shares held directly or indirectly by an amalgamating company and not being shares in the amalgamated company), as if the amount were consideration received at the time of the amalgamation for the issue of the amalgamated company's shares; and

(b) does not include any other amount for the agreement of shareholders of an amalgamating company to the amalgamation and the resulting property acquisitions by the amalgamated company.

Subscriptions amount: no double counting 1 July 1994 balance

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

Subscriptions amount: treasury stock sales excluded

(17) The subscriptions amount does not include the amount of consideration received by a company for disposing of a share if the disposal is taken into account under section CD 15 to determine that the amount paid by the company on a previous share acquisition is not subject to section CD 15 (5) to (7) (which treat certain treasury stock acquisitions as if they were an on-market cancellation dividend).

Subscriptions amount: superannuation fund's interest in GIF on 31 March 1999

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

1 July 1994 and subscriptions amounts: foreign currency conversions

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

Returns amount: on-market cancellations by associate

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

Returns amount: recovered amounts

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

Returns amount: shares cancelled on amalgamation

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

$$\text{cancelled shares} \quad x \quad \text{asc per share.}$$

Definition of items in formula

(23) In the formula,—

(a) **cancelled shares** is the number of cancelled shares:

(b) **asc per share** is the available subscribed capital per share calculated under the slice rule of each cancelled share immediately before the amalgamation.

Subscriptions amount: 'fully credited' defined

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

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

Definition of items in formula

(25) In the formula,—

(a) **dividend excluding credits** is the dividend excluding any attached imputation credit or dividend withholding payment credit:

(b) **actual ratio** is the total of the imputation ratio and dividend withholding payment ratio of the dividend:

(c) **maximum ratio** is the maximum imputation ratio specified in section ME 8 (1) (Allocation rules for imputation credits).

1 July 1994 amount: 'qualifying share premium' defined

(26) In this section, **qualifying share premium** means an amount of premium paid to a company for the issue of a share by the company if—

(a) the amount was credited to a share premium account in the company's books; and

(b) the issue of shares was not in consideration for the acquisition, directly or indirectly, of shares in another company.

Origin:	(1) OB 1 ‘available subscribed capital’. (2) OB 1 ‘available subscribed capital’. (3) OB 1 ‘transitional capital amount’. (4) OB 1 ‘transitional capital amount’. (5) OB 1 ‘transitional capital amount’ j(i), (ii). (6) OB 1 ‘available subscribed capital’ b(i), (ii), (iii). (7) OB 1 ‘available subscribed capital’ b(v), (vi). (8) OB 1 ‘available subscribed capital’ b(vii), (viii). (9) OB 1 ‘available subscribed capital’ b(ix). (10) OB 1 ‘available subscribed capital’ b(ix). (11) OB 1 ‘available subscribed capital’ b(ixa). (12) OB 1 ‘available subscribed capital’ b(ixa). (13) CF 3(14) ‘ineligible capital amount’. (14) CF 3(14) ‘ineligible capital amount’ (a), (b). (15) OB 1 ‘available subscribed capital’ b(iv), (x). (16) OB 1 ‘available subscribed capital’ b(xi). (17) OB 1 ‘available subscribed capital’ b(xii). (18) OB 1 ‘transitional capital amount’ (b). (19) CF 3(2)(a). (20) OB 1 ‘available subscribed capital’ c(iii). (21) OB 1 ‘available subscribed capital’ c(iv). (22) CF 4. (23) CF 4. (24) CF 3(14) ‘fully credited’. (25) CF 3(14) ‘fully credited’. (26) OB 1 ‘qualifying share premium’.
Defined terms:	amalgamated company, amalgamating company, amalgamation, amount, associated person, available subscribed capital, bonus issue, bonus issue in lieu, cancellation, common market value interest, common voting interest, company, controlled foreign company, dividend, dividend withholding payment, dividend withholding payment credit, dividend withholding payment ratio, exempt income, fully credited, grey list, group investment fund, imputation credit, imputation ratio, New Zealand, non-taxable bonus issue, off-market cancellation, on-market cancellation, person, qualifying share premium, share, shareholder, shares of the same class, slice rule, superannuation fund, taxable bonus issue.
Comment:	Various related definitions from current sections OB 1 and CF 3 (14) are reunited. These provisions include several corrections. In draft subsection (13)(d), the words ‘in addition to issuing shares in the acquiring company’ replace the current section CF 3(14) reference to ‘which is not in the form of shares in the acquired company’. The latter words seem not to make any logical sense and appear to have been an error made in 1994. To rectify another error made in 1994, draft subsection (24) now applies for the purposes of defining available subscribed capital, whereas it does not in current section CF 3 (14). In draft subsection (26), the current reference to crediting the amount in the books of another company has been omitted as it seems unnecessary.

CD 31 Available capital distribution amount

Rules for calculating available capital distribution amount

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

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

Definition of items in formula

(2) In the formula,—

(a) **receipt** is the amount received by the shareholder on the liquidation for the share:

(b) **asc per share** is the available subscribed capital per share calculated under the ordering rule for the share at the time of the liquidation:

(c) **capital gains** is the total of the capital gain available for distribution to shareholders in the company on the liquidation, but excluding any gain occurring when the company distributes property to a shareholder on the liquidation:

(d) **capital property distributed** is the total market value of capital property of the company distributed to shareholders on the liquidation:

(e) **cost** is the total cost to the company of the capital property included in the item capital property distributed:

(f) **capital losses** is the total of capital loss amounts of the company arising in the 1992-93 or a later tax year, but excluding any loss occurring when the company distributes property to shareholders on the liquidation:

(g) **total receipts** is the total of all amounts received by shareholders on the liquidation:

(h) **total asc per share** is the total of the available subscribed capital per share calculated under the ordering rule of all shares in the company at the time of the liquidation.

Amount cannot be negative

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

Amount zero if foreign company information inadequate

(4) Despite subsection (1), the available capital distribution amount is zero if—

(a) the company is not resident in New Zealand; and

(b) the shareholder cannot obtain sufficient information to calculate the actual available capital distribution amount.

Capital gains amount: capital gain before 1992-93

(5) A capital gain amount derived before the 1992-93 income year is not available for distribution to the extent to which a capital loss amount has arisen for the company—

(a) in the income year in which the capital gain amount was derived; or

(b) in a later income year before the 1992-93 income year.

Capital loss amounts are offset against capital gain amounts in the chronological order in which each arose and, to the extent offset, are then disregarded for the purposes of this subsection.

Capital gains amount: bonus issued capital gain

(6) Subject to subsection (5), a capital gain amount is treated as still being available for distribution to the extent to which—

(a) it has been applied to pay up a bonus issue made after 30 September 1988; and

(b) the bonus issue is a non-taxable bonus issue; and

(c) the bonus issued share is still on issue at the time of the company's liquidation.

Capital gains amount: when a capital gain amount arises

(7) For the purposes of this section, a company derives a capital gain amount if,—

(a) after 31 March 1988, it disposes of capital property for an amount of consideration that is more than the cost of the property to the company; the capital gain amount is the excess; or

(b) after 31 March 1988, it receives a gift and no part is the income of the company; the capital gain amount is the amount of the gift; or

(c) before 1 April 1988, a net profit or gain is derived by the company to which section 4 (5) of the Income Tax Act 1976, and not section 4 (5A) of the Income Tax Act 1976, applied immediately before those provisions were repealed by section 31 (1) of the Income Tax Amendment Act (No 5) 1988; or

(d) an amount is derived by the company from another company on liquidation of the other company that is excluded from being a dividend as a result of section CD 16 (2)(b) and this section; or

(e) an amount is derived by the company that is attributable to—

(i) a deduction allowed in the 1985-86 or 1986-87 income year for livestock under section 86E of the Income Tax Act 1976; or

(ii) a revaluation of livestock in any of the 1986-87 to 1991-92 income years under section 86A of the Income Tax Act 1976; or

(iii) a revaluation of livestock in the 1992-93 or a later income year under section 86D of the Income Tax Act 1976 or section ED 11 (Valuation under herd scheme) or section ED 15 (Herd livestock disposed of before values set); or

(iv) a deduction allowed in the 1988-89 income year for the revaluation of trading stock of wine, brandy, and whisky under section 87A of the Income Tax Act 1976 or the section EZ 2 that was in this Act immediately before the section was repealed by the Income Tax Amendment Act 2002.

Capital gains amount: amalgamated company inheriting gain of amalgamating company

(8) An amalgamated company is treated as deriving a capital gain amount at the time of the amalgamation equal to a capital gain amount of an amalgamating company to the extent to which—

(a) the amalgamating company ceases to exist on the amalgamation; and

(b) the amalgamating company's capital gain amount was available for distribution at the time and was not distributed to anyone other than the amalgamated company.

Capital losses amount: when a capital loss arises

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

No gains or losses in related party transactions

(10) Subject to subsection (11), no capital gain amount is derived or capital loss amount is incurred by a company after 31 March 1988 on disposing of property under an arrangement with a related person.

Close companies liquidations not subject to subsection (10)

(11) Subsection (10) does not apply if—

(a) the company is a close company; and

(b) the related person is not a company; and

(c) the disposal is on liquidation of the company.

Reinvested exempt dividends

(12) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of any shares subscribed for by the company in another company does not include any consideration for the subscribed shares that is excluded from the available subscribed capital of the other company under section CD 30 (7)(b) or (8) (which relate to reinvestment of tax exempt dividends).

Amounts written up

(13) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of the relevant capital property is increased to the extent to which—

(a) the value of the property is written up in the company's books; and

(b) because it was attributed to the write-up—

(i) an amount paid before 11 June 1965 has been excluded by section 4 (3) of the Land and Income Tax Act 1954 from treatment as a dividend; or

(ii) an issue of a share before 1 April 1988 has been excluded by section 3 (3) of the Income Tax Act 1976 from treatment as a bonus issue.

'Related person' defined

(14) For the purposes of subsections (10) and (11), a person is a **related person** of a company (the first company) if—

(a) the person owns, can control (directly or indirectly), or has the right to acquire 20% or more of the first company's ordinary shares; or

(b) the person owns, can control (directly or indirectly), or has the right to acquire 20% or more of the voting rights of shareholders in the first company; or

(c) the person is a company and the first company owns, can control (directly or indirectly), or has the right to acquire 20% or more of the ordinary shares in the person; or

(d) the person is a company and the first company owns, can control (directly or indirectly), or has the right to acquire 20% or more of the voting rights of shareholders in the company; or

(e) the person is a company and 20% or more of the shares or voting rights in the person are owned or controlled by persons that also own, control, or have the right to acquire 20% or more of the shares or voting rights in the first company; or

(f) the person is a partner or co-venturer of the first company; or

(g) the person is the trustee of a trust and the first company, or a person who is a related person of the first company under this subsection, benefits or can benefit under the trust (directly or indirectly); or

(h) the person is a partnership and one or more persons, that are related persons of the first company under this subsection, are entitled to 50% or more of the partnership's assets or profits or are able to control the partnership.

Look-through relatives and nominees

(15) For the purposes of subsection (14), a person will be deemed to hold anything held by—

(a) their spouse; or

(b) their child; or

(c) a child of their spouse; or

(d) a spouse of their child; or

(e) a nominee.

Look-through interposed companies

(16) For the purposes of subsection (14)(e), if shares or voting rights in a company are owned or controlled by another company, a look-through approach must be applied, meaning that—

(a) the shares or voting rights are treated as if owned or controlled by the shareholders in the other company; and

(b) if a shareholder in the other company is a company, that shareholder's portion of the shares or voting rights are treated as if owned or controlled by the shareholders in the shareholder company.

The look-through approach must be applied in the same way to any chain of companies, whatever the length of the chain.

'Capital property' defined

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

Origin:	(1) CF 3(14) 'excess return amount'. (2) CF 3(14) 'excess return amount'. (3) new. (4) CF 3(2)(b). (5) CF 3(10). (6) CF 3(11). (7) CF 3(7); OB 1 'capital gain amount'. (8) CF 5(b). (9) new. (10) CF 3(8), (10), (14) 'excess return amount' e(ii). (11) CF 3(9). (12) CF 3(11A). (13) CF 3(6). (14) CF 3(12)(a). (15) CF 3(12)(b). (16) CF 3(12)(c). (17) new.
Defined terms:	amalgamated company, amalgamating company, amalgamation, amount, available capital distribution amount, available subscribed capital, bonus issue, capital property, close company, company, deduction, dividend, income, income year, liquidation, livestock, non-taxable bonus issue, ordering rule, person, related person, relative, resident in New Zealand, revenue account property, share, shareholder, tax year, trading stock, trustee.
Comment:	With regard to draft subsection (2)(c), as recognised at the time of the 1994 company law reforms, the concept of 'available for distribution' is vague and places reliance on a company's accounting procedures (if any) for distinguishing capital gain amounts and identifying when they may previously have been distributed. However, the only obvious alternative is to have a detailed set of ordering rules. The formula in the current definition of excess return amount has been made much longer and uses more variables. However, this simply reflects the fact that the current definition includes some necessary calculation steps in the narrative. Draft subsection (3) is intended to prevent a negative amount arising if the available subscribed capital exceeds the amount received. Currently, this is achieved by the opening words of the definition which refer only to the 'excess'. However, note that it would be possible for (capital asset – cost) to be negative, whereas currently item e of the formula cannot be as it is only the excess of capital asset over cost and losses. Arguably, a negative result is not inappropriate, that is, if there are unrealised undistributed capital losses, these should offset realised capital gains. With regard to draft subsection (5), it would be preferable to have one simple set of rules for offset of capital loss amounts which could fit into the formula, rather than two separate rules in this subsection and in item 'capital losses' of the formula. The only reason for separate specialised rules is that both current section CF 3 (10) and item (e)(ii) of the definition of 'excess return amount' apply only to certain specified preceding income years.

	Draft subsection (7) replicates old section 3 (7) and the definition of 'capital gain amount' in section OB 1. It links into the 'capital property' definition – see draft subsection (17). Arguably, these provisions need to be rewritten fully anyway, ideally adopting a 'gross-gross' format. It would be preferable to omit the reference to 31 March 1988 and make draft subsection (7)(a) and (b) generally applicable. The reference in draft subsection (7) to the Income Tax Amendment Act 2002 is a reference to the Act that will implement the rewrite of Parts A to E.
	Ideally, draft subsection (14), and the following two related subsections, should be repealed. Instead of draft subsection (10) referring to a 'related person' of the company, there should just be a reference to 'associated person', probably just using the standard definition of associated person in the Act. The current concept of 'related person' was introduced in 1982 as an anti-avoidance measure.

CFC attributed repatriation calculation rules

CD 32 When does a person have attributed repatriation from a CFC?

General rule

(1) A person has an amount of attributed repatriation from a controlled foreign company (CFC) if—

(a) the person has an income interest in the CFC in one of the CFC's accounting periods; and

(b) the person's income interest is 10% or more for the accounting period, under the rules in sections EI 14 to EI 16; and

(c) the CFC has a New Zealand repatriation amount for the accounting period, under the rules in sections CD 33 to CD 39.

Calculation of amount

(2) The amount of the person's attributed repatriation for the accounting period is calculated using the formula—

person's income interest *x* New Zealand repatriation amount.

Origin:	(1) CG 8(1). (2) CG 8(1).
Defined terms:	accounting period, attributed repatriation, CFC, income interest, person, New Zealand repatriation.
Comment:	This section, and the following sections CD 33 to 39, cover the provisions that calculate the amount of an attributed repatriation (currently located in section CG 8).

CD 33 New Zealand repatriation amount

Calculation formula

(1) Subject to subsections (3) and (4), the New Zealand repatriation amount of a CFC for an accounting period is calculated using the formula—

$$\text{closing New Zealand property} - \text{opening New Zealand property.}$$

Definition of items in formula

(2) In the formula,—

(a) **closing New Zealand property** is the amount of New Zealand property of the CFC at the end of the accounting period calculated under the rules in sections CD 34 to CD 38:

(b) **opening New Zealand property** is the amount of New Zealand property of the CFC at the start of the accounting period, calculated under the rules in sections CD 34 to CD 38.

Amount cannot be negative

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

Amount cannot exceed CFC's unrepatriated income balance

(4) The New Zealand repatriation amount can never exceed the unrepatriated income balance of the CFC for the accounting period, calculated under section CD 39.

Origin:	(1) CG 8(2). (2) CG 8(2). (3) CG 8(2). (4) CG 8(2).
Defined terms:	accounting period, amount, attributed repatriation, CFC, New Zealand repatriation.

CD 34 Amount of New Zealand property

Calculation formula

(1) The amount of New Zealand property of a CFC at any time is calculated using the formula—

$$\text{tangible property} + \text{associated party equity} + \text{associated party debt.}$$

Definition of items in formula

(2) In the formula,—

(a) **tangible property** is the total amount of tangible property (including real property), measured at cost, held by the CFC and situated in New Zealand:

(b) **associated party equity** is the total amount of shares or options over shares, measured at cost, held by the CFC in companies which are at the time both—

(i) resident in New Zealand; and

(ii) associated with the CFC:

(c) **associated party debt** is the total amount of balances outstanding, measured under section CD 37, but never totalling less than zero, of all financial arrangements, to which both—

(i) the CFC is a party; and

(ii) a New Zealand resident associated with the CFC at the time is a party.

Acquisitions from associates for below market value

(3) If the CFC acquires any property from a person who is associated (at the time of acquisition) with the CFC for a cost that is less than the market value of the property at the time, the cost to the CFC of acquiring the property is treated as being equal to the market value at the time (except to the extent to which one of the specific rules in sections CD 35 to CD 38 states otherwise).

Origin:	(1) CG 8(3). (2) CG 8(3), (14) 'tangible property'. (3) CG 8(5).
Defined terms:	amount, associated, CFC, company, financial arrangement, New Zealand resident, resident in New Zealand.

CD 35 Cost of tangible property

Cost includes capital expenditure

(1) The cost of any item of tangible property (other than trading stock) includes each of the following expenditures if no deduction would have been allowed under this Act for it (except for depreciation loss) had the CFC been a New Zealand resident:

(a) the original purchase price of the property:

(b) other expenditure incurred on purchasing the property:

(c) expenditure incurred before the relevant time in improving the property:

(d) expenditure incurred before the relevant time in establishing or improving the CFC's legal right to the property.

Cost reduced by outstanding third party funding

(2) The cost of any item of tangible property is reduced (but not to less than zero) by the balance outstanding at the time of a loan to the extent to which—

(a) the loan is secured over the property; and

(b) the lender is not associated at the time with the CFC; and

(c) the balance is attributable to expenditure on the property included in the cost under subsection (3) (including any refinancing of an amount which is attributable to such expenditure).

Amount excludes temporary New Zealand property

(3) Subject to section CD 38 (3) and (4), the amount of the item tangible property in the formula in section CD 34 (1) excludes the cost of any property that is either—

(a) situated in New Zealand for less than 365 days in total; or

(b) disposed of by the CFC—

(i) by the later of 364 days after its acquisition and 9 months after the end of the CFC's accounting period in which it was acquired; and

(ii) to a person that is either a New Zealand resident or is not associated with the CFC at the time of the cost measurement.

Amount excludes CFC's business operations assets

(4) The amount of the item tangible property in the formula in section CD 34 (1) excludes the cost of any property that is acquired or used by the CFC in the course of carrying on a substantial business that is not either—

(a) of the same nature as a business also carried on in New Zealand at the time of the acquisition by a person that is—

(i) a New Zealand resident; and

(ii) associated at the time with the CFC; and

(iii) not a company in which the CFC holds at the time shares which are excluded from the New Zealand repatriation measurement by section CD 36 (1); or

(b) carried on solely or substantially for the purpose of defeating the application of section CD 11.

Origin:	(1) CG 8(6)(a). (2) CG 8(6)(b).

	(3) CG 8(6)(c)(i), (14) 'qualified transitory property'.
	(4) CG 8(6)(c)(ii).
Defined terms:	accounting period, associated, attributed repatriation, CFC, company, deduction, depreciation loss, New Zealand, New Zealand resident, person, share.

CD 36 Cost of associated party equity

Cost excludes shares in subsidiaries engaged in same business

(1) The cost of associated party equity at any time excludes the cost of shares or options over shares acquired in a company if—

(a) the CFC and the company are a wholly-owned group of companies at the time; and

(b) the company carries on a business of the same nature as a substantial business carried on by the CFC before the acquisition; and

(c) the CFC (or another CFC associated with it at the time) has a significant involvement in managing the company's business; and

(d) neither the company's business nor the CFC's business is of the same nature as a business also carried on in New Zealand at the time of the acquisition by a person that is—

(i) a New Zealand resident; and

(ii) associated at the time with the CFC; and

(iii) not a company in which the CFC holds at the time shares which are excluded from the New Zealand repatriation amount measurement by this subsection; and

(e) neither the company's business nor the CFC's business is carried on solely or substantially for the purpose of defeating the application of section CD 11.

Currency conversions

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

Origin:	(1) CG 8(7)(a).
	(2) CG 8(7)(b).
Defined terms:	associated, attributed repatriation, CFC, company, New Zealand resident, New Zealand repatriation amount, person, share.

CD 37 Outstanding balances of financial arrangements

Rules for attributed repatriation calculation only

(1) The rules in this section apply only for the purposes of calculating the amount of the item associated party debt in the formula in section CD 34 (1).

Balance: amount due

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

Amount due calculated under CFC rules

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

Currency conversion of amount due

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

Net balance calculated for all arrangements with same associate

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

Short-term financial arrangements excluded

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

Aggregation of consecutive or successive arrangements

(7) For the purposes of subsection (6), if the Commissioner considers that 2 or more consecutive or successive financial arrangements should, having regard to the tenor of this section, fairly be regarded as one financial arrangement, those financial arrangements are to be regarded as one financial arrangement.

Accruing amounts treated as separate arrangements

(8) For the purposes of subsections (6) and (10)(c)(i), an amount accrued (including interest and discount on issue) on a financial arrangement is treated as—

(a) a new financial arrangement entered into on the date of accrual; and

(b) having been paid only when previous accruals on the financial arrangement have been paid.

Temporary adjustments when purpose of preventing attributed repatriation

(9) A temporary reduction or increase in the outstanding balance, at the end of an accounting period of the CFC, of any financial arrangement is disregarded if it has a purpose or effect of defeating the application of section CD 11.

When financial arrangement matures within 5 years or is remitted

(10) Subsections (11) and (12) apply if—

(a) a CFC is party to a financial arrangement; and

(b) the outstanding balance of the financial arrangement has been or, but for subsection (11), would be taken into account in calculating the New Zealand repatriation amount of the CFC for an accounting period; and

(c) either—

(i) the financial arrangement matures within 5 years of the date on which it was entered into; or

(ii) an amount owing under the financial arrangement is remitted or released and, as a result, a person derives a dividend; and

(d) section CZ 10 (4) (Transitional relief for calculation of attributed repatriation dividends) does not apply to the financial arrangement.

Retrospective exclusion of financial arrangement amount

(11) If a person with an income interest in the CFC notifies the Commissioner in writing of the maturity or dividend, for the purposes of calculating the dividend amount which a person has derived under section CD 11 from the CFC,—

(a) the financial arrangement is disregarded, if subsection (10)(c)(i) applies; or

(b) the amount remitted or released is disregarded, if subsection (10)(c)(ii) applies.

Amending assessments and making refunds

(12) In order to give effect to subsection (11), the Commissioner must—

(a) amend any relevant assessment under section 113B of the Tax Administration Act 1994; and

(b) refund any income tax, dividend withholding payment, dividend withholding payment penalty tax, or late payment penalty, despite section MD 1 but otherwise subject to this Act.

No maturity within 5 years if mere substitution

(13) For the purposes of subsection (10)(c)(i), a financial arrangement to which a CFC is a party is not treated as maturing within 5 years of the date on which it was entered into if—

(a) on or after the date of maturity, another financial arrangement (the second financial arrangement) is entered into by the CFC or a CFC associated with first CFC at any time during the term of the second financial arrangement; and

(b) the second financial arrangement is a substitute, in whole or part, for the first financial arrangement; and

(c) the second financial arrangement was entered into with a purpose of ensuring that subsections (11) and (12) apply.

Origin:	(1) new. (2) CG 8(8)(a). (3) CG 8(8)(a)(i). (4) CG 8(8)(a)(ii). (5) CG 8(8)(b). (6) CG 8(8)(c). (7) CG 8(8)(c)(i). (8) CG 8(8)(c)(ii); CF 2(18)(b). (9) CG 8(8)(d). (10) CF 2(17)(a), (b), (c). (11) CF 2(17). (12) CF 2(17)(d), (e). (13) CF 2(18)(a).
Defined terms:	accounting period, amount, associated, attributed repatriation, branch equivalent income, CFC, Commissioner, dividend, dividend withholding payment, dividend withholding payment penalty tax, financial arrangement, income interest, income tax, interest, loss, maturity, New Zealand, New Zealand repatriation amount, person.

CD 38 Property transfers between associated persons

Transfers between associated CFCs

(1) Subsection (2) applies if—

(a) a CFC disposes of any property to another CFC; and

(b) the first CFC held the property at the start of the accounting period in which the disposal occurs; and

(c) the two CFCs are associated persons at the time of the disposal.

Calculation as if property held by second CFC for whole period

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

Transfer to non-resident associate with mismatching accounting period

(3) Subsection (4) applies if—

(a) a CFC disposes of property to an associated person who is not a New Zealand resident during an accounting period (the transfer period); and

(b) the CFC did not own the property at the end of the previous accounting period; and

(c) the associated person has an accounting period that ends on a later date than the CFC's transfer period ends; and

(d) the associated person holds the property at the end of the CFC's transfer period; and

(e) the associated person does not hold the property at the end of its own accounting period in which the disposal occurs.

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

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

Origin:	(1) CG 8(4). (2) CG 8(4). (3) CG 8(10). (4) CG 8(10).
Defined terms:	accounting period, associated, attributed repatriation, CFC, New Zealand repatriation amount, New Zealand resident, person, return of income.

CD 39 Unrepatriated income balance

Calculation formula

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

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

Definition of items in formula

(2) In the formula,—

(a) **shareholders' funds** is the total shareholders' funds of the CFC at the end of the accounting period, measured under generally accepted accounting principles of New Zealand:

(b) **available subscribed capital** is the CFC's available subscribed capital at the end of the accounting period, excluding any amount resulting from –

(i) a bonus issue by the CFC derived by a person who is not a resident of New Zealand; or

(ii) direct or indirect reinvestment of a distribution by the CFC after 2 July 1992 to a person not resident in New Zealand:

(c) **previous New Zealand repatriation amounts** is the total of any—

(i) New Zealand repatriation amount of the CFC for a previous accounting period, reduced under any amended assessment under section CD 37 (11); and

(ii) specified repatriation amount of the CFC for previous accounting period ending after 2 July 1992 and before the 2003-04 income year calculated under section CG 8 as it applied before the 2003-04 income year and reduced under any amended assessment under section CF 2 (17) as it similarly applied.

Balance cannot be negative

(3) The unrepatriated income balance cannot be negative.

Origin:	(1) CG 8(11). (2) CG 8(11). (3) CG 8(11).
Defined terms:	accounting period, available subscribed capital, bonus issue, CFC, income year, New Zealand, New Zealand repatriation amount, person, resident of New Zealand.

Prevention of double taxation

CD 40 Prevention of double taxation of share cancellation dividends

When this section applies

(1) This section applies if—

(a) a person derives an amount from the cancellation of a share in a company; and

(b) the amount is income of the person under one of the following provisions (the other rules):

(i) section CB 1 (Amounts derived from business); or

(ii) section CB 2 (Carrying on or carrying out profit-making schemes); or

(iii) section CB 3 (Personal property acquired for purpose of disposal); or

(iv) another provision of this Act (other than this subpart and section CC 5 (Investment society dividends)).

Income amount reduced by dividend

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

Non-taxable dividends

(3) Subsection (2) does not apply to the extent to which—

(a) the dividend is exempt income of the person under sections CW 9 to CW 11; and

(b) section NH 1 (Liability to make deduction in respect of foreign withholding payment dividend) does not require the person to deduct dividend withholding payment from the dividend.

Subsection (3)(b): calculation formula

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

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

Definition of items in formula

(5) In the formula,—

(a) **dividend withholding payment** is any dividend withholding payment that must be deducted from the dividend under section NH 2 (1) (Amount of dividend withholding payment to be deducted):

(b) **tax rate** is the basic rate of income tax for companies, expressed as a decimal, stated in schedule 1, part A, clause 5, that applies for the tax year in which the dividend is paid.

Relationship of dividend exclusions to other provisions

(6) Subject to subsection (2), the amount derived by the person from the company may be income of the person despite the fact that the amount is excluded from being a dividend by any of sections CD 12 to CD 17.

Section FC 3: recovery by share dealers of acquisition price

(7) This section is subject to section FC 3 (Rules for dividends that represent recovery of share's purchase price).

Origin:	(1) CF 2(15). (2) CF 2(15)(a). (3) CF 2(15)(a)(i), (ii). (4) CF 2(15)(a)(ii). (5) CF 2(15)(a)(ii). (6) CF 2(15)(b). (7) CF 2(15).
Defined terms:	amount, basic rate, company, dividend, dividend withholding payment, dividend withholding payment credit, exempt income, imputation credit, income, income tax, person, share, tax year.

CE – Employee or contractor income

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Employment income

CE 1 Amounts derived in connection with employment

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

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

Origin:	CH 3; OB 1 ‘monetary remuneration’.
Defined terms:	amount, derived, expenditure on account of an employee, extra pay, income, person, share purchase agreement.

Comment:	The items in draft subsection (1) are currently identified in a definition of 'monetary remuneration' in section OB 1 (Definitions). This obscures the information. The items have therefore been identified in this substantive provision.

CE 2 'Expenditure on account of an employee' defined

Payments made by employer

(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee that is not—

(a) a payment made to reimburse an employee or expenditure for their benefit under section CW 13 (Reimbursement of employees and expenditure for their benefit):

(b) an allowance for additional transport costs under section CW 14 (Allowance for additional transport costs):

(c) expenses that an employee pays in connection with their employment or service to the extent to which the expenditure is their employer's liability (and the employee undertakes to discharge the liability in consideration of the making of the payment).

Life insurance policies

(2) **Expenditure on account of an employee** includes a premium that an employer pays on a life insurance policy taken out for the benefit of the employee (or their spouse or their child). But this does not include—

(a) a life insurance policy that is, or is part of, a superannuation category 1 scheme, a superannuation category 2 scheme, or a superannuation category 3 scheme:

(b) a life insurance policy held by or on behalf of trustees of a superannuation category 3 scheme:

(c) a life insurance policy when—

(i) the premium cannot be refunded to, or converted to cash by, the employee or an associated person; and

(ii) the only benefits that are payable under the policy are those payable on the death of the employee (or their spouse or their child) or those payable because of accident, disease, or sickness of the employee (or their spouse or their child).

When employer a close company

(3) For the purposes of subsection (2), if the employer is a close company, then, to the extent to which the expenditure is treated as a dividend

under subpart CD (Income from equity), the expenditure is excluded from the definition of **expenditure on account of an employee**.

Exclusions

(4) **Expenditure on account of an employee** does not include—

(a) expenditure on an employment-related loan to which the fringe benefit tax rules apply:

(b) an employer's superannuation contribution.

Origin:	(1) OB 1 'expenditure on account of an employee'. (2) OB 1 'expenditure on account of an employee', 'specified fund'. (3) OB 1 'expenditure on account of an employee'. (4) OB 1 'expenditure on account of an employee'.
Defined terms:	additional transport costs, associated person, close company, dividend, employee, employer's superannuation contribution, employment-related loan, expenditure on account of an employee, fringe benefit tax rules, incurred, superannuation category 1 scheme, superannuation category 2 scheme, superannuation category 3 scheme, trustee.

CE 3 'Share purchase agreement' defined

In section CE 1, and in sections CE 4 to CE 7, **share purchase agreement** means an agreement to sell or issue shares in a company to an employee who receives the benefit in connection with their employment or service, although it is not necessary for an employment relationship to exist when the employee receives the benefit.

Origin:	CH 2(1), (7).
Defined terms:	company, employee, employment, share, share purchase agreement.

CE 4 Value and allocation of benefits under share purchase agreements

When this section applies

(1) This section determines the value of a benefit that an employee receives under a share purchase agreement and the allocation of the benefit to a particular income year. If restrictions apply to the disposal of shares received under a share purchase agreement, section CE 5 applies.

If employee acquires shares

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

If employee disposes of rights to non-associate

(3) If an employee disposes of their rights under a share purchase agreement to a person who is not associated with them, the value of the

benefit is the consideration for the disposal of the rights. The employee receives the benefit in the income year in which they dispose of the rights.

If associate acquires shares

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

If associate disposes of rights to non-associate

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

If shares transferred when employees end employment or die

(6) The value of the benefit is zero if a share purchase agreement provides unconditionally that, when the employee ends their employment or service or dies, the shares must be transferred to the employer or to the person from whom they were acquired, either without consideration or for a consideration not more than that paid by the employee.

Benefit under approved scheme

(7) The value of the benefit is zero if the benefit arises under a share purchase scheme approved by the Commissioner under section DC 4 (Loans to employees under share purchase schemes).

Origin:	(1) new. (2) CH 2(2)(a). (3) CH 2(2)(b). (4) CH 2(2)(c). (5) CH 2(2)(d). (6) CH 2(3) second proviso. (7) CH 2(3) third proviso.
Defined terms:	amount, associated person, Commissioner, employee, employer, income year, person, share, share purchase agreement, share purchase scheme.

CE 5 Restrictions on disposal of shares

Effect of restriction

(1) When the benefit to an employee under a share purchase agreement is being valued, a restriction in the agreement on the disposal of the shares is taken into account only if the restriction ends at least 8 years after the

end of the income year in which the employee receives the benefit, or after the employee dies.

If employee ends employment before restriction ends

(2) If, in the circumstances described in subsection (1), the employee ends their employment or service before the restriction ends, all the shares must be transferred unconditionally to the employer or the person from whom they were acquired either for no consideration, or for a consideration that is not more than that paid by the employee.

If employee transfers shares under matrimonial agreement

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

Origin:	(1) CH 2(3) first proviso (a). (2) CH 2(3) first proviso (b). (3) CH 2(3) fourth proviso.
Defined terms:	employee, employer, income year, matrimonial agreement, person, share, share purchase agreement.

CE 6 Adjustments to value of benefits under share purchase agreements

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

(a) an employee disposes of the shares while restrictions under section CE 5 (2) or (3) were continuing, and the restriction was not taken into account in valuing the benefit; or

(b) further consideration is required for the shares; or

(c) the shares are reacquired either without consideration or for a consideration not more than that paid by an employee.

Origin:	CH 2(4).
Defined terms:	Commissioner, employee, share, share purchase agreement.

CE 7 ‘Share’ defined

In sections CE 3 to CE 6,—

(a) **share** includes a convertible note:

(b) shares are treated as having been acquired on the date on which the right or option to buy them is exercised:

(c) if shares or rights are acquired or transferred under an agreement by a trustee for the benefit of a person to whom section CE 4 applies, that person is treated as having acquired or transferred the shares or rights.

Origin:	CH 2(5), (6), (8).
Defined terms:	convertible note, person, share, trustee.

Attributed income

CE 8 Attributed income from personal services

When this section applies

(1) This section applies when a person (person A) buys services from another person (person B) and the services are performed by a third person (person C) who is associated with person B. Person B is required by section GC 14D (Attribution rule – calculation) to attribute an amount to person C. The amount attributed is calculated under that section.

Amount attributed

(2) The amount attributed is income of person C.

Allocation

(3) The amount is allocated to the income year in which it is attributed.

Origin:	(1) GC 14D. (2) CD 7. (3) EN 8.
Defined terms:	amount, associated person, income, income year, person.

Restrictive covenants and exit inducement payments

CE 9 Restrictive covenants

When this section applies

(1) This section applies when—

(a) a person (person A) gives an undertaking that restricts, or is intended to restrict, their ability to perform services as an employee, office holder, or independent contractor, whether or not the undertaking is legally enforceable; and

(b) a person, whether or not person A, derives an amount for the undertaking.

Income

(2) The amount is income of person A. This subsection is overridden by subsection (3).

Exception

(3) Subsection (1) does not apply if the following circumstances exist:

(a) person A derives the amount because person A, or a person associated with person A, sells a business to another person (person B); and

(b) person A, or the person associated with person A, and person B agree in writing that the transaction is the sale of a business; and

(c) person A derives the amount as consideration for an undertaking by person A not to provide goods or services in competition with the goods or services person B provides from the business; and

(d) person A does not provide services to person B after the sale of the business, other than temporary services incidental to the sale.

Sale of part of business

(4) For the purposes of subsection (3), the sale of a business includes the sale of part of a business, if the part may be operated separately.

Sale of all shares in company

(5) For the purposes of subsection (3),—

(a) the sale of a business includes the sale of all the shares in a company, if—

(i) the company is carrying on a business; or

(ii) the company directly or indirectly wholly owns another company that is carrying on a business; and

(b) the company that carries on the business is person B in subsection (3)(c) and (d).

Origin:	(1) CHA 1(2). (2) CHA 1(3)(a). (3) CHA 1(3)(b), (4). (4) CHA 1(1). (5) CHA 1(1).
Defined terms:	amount, business, company, derived, employee, income, person, share.

CE 10 Exit inducements

An amount is income of a person if they derive it for—

(a) the loss of a vocation; or

(b) the loss of a position; or

(c) leaving a position; or

(d) loss of status.

Origin:	CHA 2.
Defined terms:	amount, derived, income, person.

CF – Income from living allowances, compensation, and government grants

Index

CF 1 Benefits, pensions, compensation, and government grants

Income

(1) The following payments are income:

(a) an income-tested benefit:
(b) a payment of New Zealand superannuation:
(c) a pension:
(d) a veteran's pension:
(e) a living alone payment:
(f) an accident compensation payment:
(g) an education grant.

Definitions for this section

(2) In this section,—

accident compensation payment means one or more of the following:

(a) a payment under the Accident Compensation Act 1982 of earnings-related compensation that is not recovered or recoverable, or refunded to the chief executive of the department that is currently responsible for administering the Social Security Act 1964:
(b) a payment under section 80 (4) of the Accident Compensation Act 1982 that is not recovered or recoverable, or refunded to the chief executive of the department that is currently responsible for administering the Social Security Act 1964:
(c) a payment as follows under the Accident Rehabilitation and Compensation Insurance Act 1992, none of which is recovered or recoverable:
  (i) compensation for loss of earnings under sections 38, 39, and 43; or
  (ii) a vocational rehabilitation allowance under section 25; or

(iii) compensation for loss of potential earning capacity under section 45 or section 46; or

(iv) weekly compensation under section 58, 59, or 60; or

(v) continued compensation under section 138:

(d) a payment under the Accident Insurance Act 1998 of weekly compensation that is not recovered or recoverable:

(e) a payment under a policy of personal accident or sickness insurance under section 188 (1)(a) of the Accident Insurance Act 1998 (as it was immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000) of compensation for loss of earnings or loss of potential earning capacity as it relates to work-related personal injury

education grant means a basic grant or an independent circumstances grant made under section 303 of the Education Act 1989

pension includes a gratuitous payment made to a person in return for services that the person (or their parent, child, spouse, former spouse, or dependant) provided to the payer when the payment would not have been made if the services had not been provided; but does not include a payment made to the person because of, and within 12 months after, the death of that parent, child, spouse, former spouse, or dependant.

Origin:	(1) CC 1(1). (2) CC 1(1), (2).
Defined terms:	accident compensation payment, education grant, income, income-tested benefit, living alone payment, New Zealand superannuation, pension, person, veteran's pension.

CF 2 Remission of specified suspensory loans

When this section applies

(1) This section applies when a public authority—

(a) grants a loan to a person in relation to a business that the person carries on; and

(b) designates the loan as a specified suspensory loan.

Treatment on remission

(2) An amount remitted on the specified suspensory loan is income of the person.

Allocation

(3) An amount remitted under subsection (2) is allocated in equal parts to the income year of remission and the following 2 income years. But the person may choose to allocate some or all of the amount in those

following 2 income years to a previous income year (being one of those 3 income years).

If business ceases

(4) If a person ceases to carry on the business in relation to which a specified suspensory loan is granted, an amount remitted that is allocated to a later income year is allocated to the income year in which the person ceased business.

Origin:	(1) DC 2(5). (2) DC 2(1). (3) DC 2(1), 2(1) proviso, (2), (3). (4) DC 2(4).
Defined terms:	amount, business, income, income year, person, public authority.

CG – Recoveries and adjustments

Index

Recoveries

Recoveries

CG 1 Depreciation recovery income

A person's depreciation recovery income is income of the person.

Origin:	new.
Defined terms:	depreciation recovery income, income, person.

CG 2 Remitted amounts

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction for an income year of an amount that the person is liable to pay; and

(b) the person's liability for the amount is later remitted or cancelled, wholly or partly; and

(c) the remission or cancellation is not a dividend described in section CD 4 (What is a transfer of value?) or section CD 5 (When is a transfer caused by a shareholding relationship?); and

(d) the person is not required to calculate a base price adjustment by section EH 35 (When calculation of base price adjustment required).

Income when liability remitted or cancelled

(2) The amount to which the remission or cancellation applies is income of the person.

Allocation

(3) The amount is allocated to the income year in which the remission or cancellation occurs.

When remission or cancellation occurs

(4) For the purposes of this section,—

(a) a liability is remitted to the extent to which the person is discharged from it without fully adequate consideration in money or money's worth:

(b) a liability is cancelled to the extent to which the person is released from it under the Insolvency Act 1967 or the Companies Act 1993 or the laws of a country or territory other than New Zealand:

(c) a liability is cancelled to the extent to which the person is released from it by a deed or agreement of composition with the person's creditors:

(d) a liability is cancelled to the extent to which it is irrecoverable or unenforceable through lapse of time.

Origin:	(1) CE 4(1); IE 1(4)(d).
	(2) CE 4(1).
	(3) CE 4(1).
	(4) CE 4(2).
Defined terms:	amount, deduction, dividend, income, income year, New Zealand, person.

CG 3 Bad debt repayment

Bad debt

(1) An amount received by a person for a bad debt for which the person has been allowed a deduction is income of the person.

Allocation

(2) The amount is allocated to the income year in which the person receives the amount.

Origin:	(1) CE 1(1)(d). (2) CE 1(1)(d).
Defined terms:	amount, deduction, income, income year, person.

CG 4 Recovered expenditure: determining tax liabilities

Amount recovered

(1) If a person is allowed a deduction under section DB 3 (Determining tax liabilities) and later recovers an amount in connection with the expenditure for which they were allowed the deduction (whether through reimbursement, award of the court, recovery, or otherwise), the amount is income of the person.

Allocation

(2) The amount is allocated to the income year in which the person recovers the amount.

Origin:	(1) DJ 5(2). (2) DJ 5(2).
Defined terms:	amount, deduction, income, income year, person.

CG 5 Recovered expenditure: when employees misappropriate property

Amount recovered

(1) If a person is allowed a deduction under section DB 31 (Property misappropriated by employees or service providers) and later recovers an amount in connection with the expenditure for which the deduction was allowed (whether through insurance, indemnity, reimbursement, recovery, or otherwise), the amount is income of the person.

Allocation

(2) The amount is allocated to the income year in which the person recovers the amount.

Origin:	(1) DJ 8(1) proviso. (2) DJ 8(1) proviso.
Defined terms:	amount, deduction, income, income year, person.

CG 6 Recovered expenditure: making good loss when partners misappropriate property

Amount recovered

(1) If a person is allowed a deduction under section DB 32 (Making good loss from misappropriation by partner) and later recovers an amount in connection with the expenditure for which the deduction was allowed (whether through insurance, indemnity, reimbursement, recovery, or otherwise), the amount is income of the person.

Allocation

(2) The amount is allocated to the income year in which the person recovers the amount.

Origin:	(1) DJ 7 proviso. (2) DJ 7 proviso.
Defined terms:	amount, deduction, income, income year, person.

CG 7 Benefits received by employers from superannuation schemes

When this section applies

(1) This section applies when—

(a) an employer makes an employer's superannuation contribution to a superannuation scheme for their employee's benefit; and

(b) the employer is allowed a deduction for the contribution; and

(c) the employer recovers the contribution, or receives a benefit in money or money's worth from the superannuation scheme.

This subsection is overridden by subsection (2).

Exception

(2) This section does not apply to a pension, annuity, or lump sum payment that is paid to the employer on the terms of the scheme in return for previous contributions made by or on behalf of the employer in a personal capacity.

Recovery of benefits

(3) When this section applies, the amount recovered is, to the extent of the deduction, income of the employer.

Allocation

(4) The amount is allocated to the income year in which it is received.

Origin:	(1) DF 3(3). (2) DF 3(4). (3) DF 3(3). (4) new.
Defined terms:	amount, deduction, employee, employer, income, income year, employer's superannuation contribution, superannuation scheme.
Comment:	Currently, a deduction allowed for employers' superannuation contributions is reversed if the employer subsequently receives a benefit from the superannuation scheme (current section DF 3 (3)). That deduction reversal method is now replaced by this income provision, which identifies the amount received as income, to the extent of the deduction previously allowed. This change is consistent with proposals in the discussion document *Rewriting the Income Tax Act: Parts C, D, and E* (September 1997) and was specifically proposed in issues paper 1, page 46.

	The amount is allocated to the income year of receipt. This eliminates the compliance and administrative costs of reopening earlier returns. The current limitation to contributions made in the preceding 12 months has been removed, as proposed in the issues paper.

CG 8 Recovered forestry expenditure

When this section applies

(1) This section applies when—

(a) a person carrying on a forestry business on land in New Zealand is allowed a deduction for expenditure by the business or loss to the business; and

(b) the person, whether or not still carrying on the forestry business, recovers some or all of the expenditure or loss for which the deduction was allowed.

Income from timber

(2) The amount recovered is income of the person.

Allocation

(3) The amount recovered is allocated to the income year in which it is received.

Origin:	(1) DL 1(6). (2) DL 1(6). (3) DL 1(6).
Defined terms:	amount, business, deduction, income, income year, New Zealand, person.

CG 9 Forestry expenditure of holding company

When this section applies

(1) This section applies when—

(a) a company (company A) carries on a forestry business on land in New Zealand; and

(b) company A has not made, in relation to the land, a forestry encouragement agreement under the Forestry Encouragement Act 1962; and

(c) company A has a holding company; and

(d) the holding company is allowed expenditure incurred by company A as a deduction under section 213 of the Income Tax Act 1976; and

(e) company A recovers some or all of the expenditure.

Income from timber

(2) The amount recovered is income of the holding company.

Allocation

(3) The amount recovered is allocated to the income year in which company A recovers the amount.

Origin:	(1) DL 4(1), (2). (2) DL 4(1). (3) DL 4(1).
Defined terms:	amount, business, company, holding company, income, income year, New Zealand.

Adjustments

CG 10 Trading stock, livestock, and excepted financial arrangements

Who this section applies to

(1) This section applies to a person who has a business that has trading stock or livestock, or who holds excepted financial arrangements that are revenue account property.

Income adjustment

(2) When section EB 1 (Stock and excepted financial arrangements) applies, the adjustment calculated under subsection (2) of that section is income.

Origin:	(1) new. (2) EE 2(4).
Defined terms:	business, excepted financial arrangement, income, livestock, person, revenue account property, trading stock.
Comment:	This provision and draft section DB 37 (Trading stock, livestock, and excepted financial arrangements) ensure that the net change in value of a taxpayer's trading stock, livestock and excepted financial arrangements (on revenue account) is brought to account as either income or a deduction.

CG 11 Prepayments for services and some goods and deferred payments

When a person has, under section EB 3 (Prepayments and certain deferred payments), an unexpired amount of expenditure at the end of an income year, the unexpired amount is income of the person for the income year.

Origin:	EF 1(1)(b).
Defined terms:	amount, income, income year, person.

CG 12 Exploratory well expenditure

When this section applies

(1) This section applies when a petroleum miner uses an exploratory well for commercial production of petroleum, whether or not the well has been sealed and abandoned previously.

When expenditure treated as income

(2) An amount equal to the amount of expenditure described in subsection (3) is treated as income of the petroleum miner.

Expenditure

(3) The expenditure is exploratory well expenditure to which all the following apply:

(a) it is incurred directly to drill or acquire a well; and

(b) a petroleum miner or a holder of a previous interest in the well is or has been allowed a deduction for it as petroleum exploration expenditure; and

(c) it is incurred in relation to the permit held currently by the petroleum miner, or a previous permit surrendered in exchange for the permit currently held under section 32 (3) of the Crown Minerals Act 1991.

Allocation

(4) An amount that is income under this section is allocated to the income year in which commercial production from the well starts.

Part interest

(5) If a petroleum miner has a part interest in an exploratory well referred to in subsection (1) when that well is first used for commercial production, the amount of expenditure treated as income under this section must bear the same proportion to the exploratory well expenditure specified in subsection (3) as that part interest bears to all interests in the well.

Origin:	(1) DM 1(9). (2) DM 1(9)(a). (3) DM 1(9)(a). (4) DM 1(9)(b). (5) DM 1(9)(a).
Defined terms:	amount, commercial production, exploratory well, exploratory well expenditure, income, income year, permit, petroleum, petroleum exploration expenditure, petroleum miner.

CG 13 Repayment by mining company of amount written off

When this section applies

(1) This section applies when—

(a) a holding company of a mining company is allowed, under section DU 12 (Amount written off by holding company) or a former Act, a deduction for an amount it has written off a loan it made to the mining company; and

(b) the mining company—

(i) repays, to the holding company or any other person, some or all of the amount written off; or

(ii) is treated, under section CG 14 or section CG 15, as having repaid to the holding company some or all of the amount written off.

Income

(2) The amount repaid is income of the holding company.

Allocation

(3) The income is allocated to the income year to which the deduction is allocated.

Amendment of assessment

(4) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to subsection (3).

Origin:	(1) DN 3(7), (8). (2) DN 3(7). (3) new. (4) DN 3(7).
Defined terms:	amount, Commissioner, deduction, holding company, income, loan, mining company, person, time bar.

CG 14 Amount treated as repayment: excess

When this section applies

(1) This section applies when,—

(a) in an income year, a holding company of a mining company is allowed, under section DU 12 (Amount written off by holding company) or a former Act, a deduction for an amount it has written off a loan it made to the mining company; and

(b) in a later income year, the holding company disposes of shares in the mining company or an interest in shares in the mining company; and

(c) the holding company has an excess amount because the amount it derives from the disposal is more than the amount paid up in cash on the shares.

Repayment amount

(2) For the purposes of section CG 13, the excess amount is treated as repayment by the mining company of the amount written off.

Origin:	(1) DN 3(6). (2) DN 3(6).
Defined terms:	amount, deduction, derived, holding company, income year, loan, mining company, share.

CG 15 Amount treated as repayment: net income

When this section applies

(1) This section applies when—

(a) a holding company of a mining company is allowed, under section DU 12 (Amount written off by holding company) or a former Act, a deduction for an amount it has written off a loan it made to the mining company; and

(b) the deduction is allocated to an income year; and

(c) the mining company would have had net income in a later income year, if the assumptions in subsections (2) and (3) had been facts.

First assumption

(2) The first assumption is that in the later income year no person is allowed a deduction for the mining company's mining exploration expenditure or mining development expenditure.

Second assumption

(3) The second assumption is made if in the later income year the mining company disposes of an asset in circumstances to which section CU 3 (Disposal of assets) or section CZ 6 (1)(b) (Mining company's 1970-71 income year) applies. The assumption is that the amount received or receivable for the asset is the amount determined under subsection (4) or subsection (5).

Amount for which asset disposed of: most cases

(4) If any of section CU 3 (4)(a), (b), or (c) (Disposal of assets) applies to the disposal of the asset, the amount is the consideration determined under whichever one of the paragraphs applies.

Amount for which asset disposed of: election of section CU 3 (8)

(5) If section CU 3 (4)(d) (Disposal of assets) applies to the disposal of the asset, the amount is the greater of the following up to the limit of the market value that the asset has on the date of disposal:

(a) the part of the amount specified in the notice under section CU 3 (8) (Disposal of assets) that is in cash (which may be zero); and

(b) the total amount of loans made on or before the date of disposal by all holding companies of the mining company to the extent to which the loans—

(i) relate to the asset (including a part not disposed of); and

(ii) have been written off and allowed as a deduction under section DU 12 (Amount written off by holding company) or a former Act; and

(iii) have not been repaid, and have not been treated as repaid under this section or section CG 14, on or before the date of disposal.

Asset

(6) For the purposes of subsections (3) to (5),—

(a) a reference to an asset means the part of the asset that is disposed of, which may be some of it or all of it, and a reference to an amount received or receivable for an asset means the amount for the part that is disposed of:

(b) a reference to an asset includes a reference to a share or interest in the asset:

(c) a partner's share or interest in each asset of the partnership is the same as the partner's interest in the totality of the assets of the partnership:

(d) every member of any other association of persons who receive income jointly or carry on activities jointly has a share or interest in each asset of the association that is the same as the member's interest in the totality of the assets of the association.

Amount of net income

(7) For the purposes of section CG 13, the prescribed proportion of the amount that would have been the net income of the mining company is treated as repayment by the mining company of the amount written off. The repayment is treated as having been made on the day following the end of the income year in which the mining company would have had net income.

Origin:	(1) DN 3(4), (8). (2) DN 3(4). (3) DN 3(4). (4) DN 3(5). (5) DN 3(5), (8). (6) DN 3(9)(a), (b). (7) DN 3(4), (9)(c).
Defined terms:	amount, deduction, holding company, income, income year, loan, mining company, mining development expenditure, mining exploration expenditure, net income, notice, person, prescribed proportion.

CQ – Attributed income from foreign equity

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Attributed controlled foreign company income

CQ 1 Attributed controlled foreign company income

Attributed controlled foreign company (CFC) income of a person is income.

Origin:	CG 1(a).
Defined terms:	attributed CFC income, income, person.

CQ 2 When attributed CFC income arises

General rule

(1) A person has attributed CFC income from a foreign company in an income year if all the following apply:

(a) the foreign company is a controlled foreign company (CFC) at any time during one of its accounting periods, under the rules in sections EI 1 to EI 7:

(b) the accounting period ends during the income year:

(c) the person has an income interest in the foreign company for the accounting period, under the rules in sections EI 8 to EI 13:

(d) the person is a New Zealand resident at any time during the accounting period:

(e) the person's income interest is 10% or more for the accounting period, under the rules in sections EI 14 to EI 16:

(f) the CFC has branch equivalent income for the accounting period, under the rules in section EI 21 (Branch equivalent income or loss: calculation rules) (or the special rule in section EI 19 (If CFC derives taxable distribution from non-qualifying trust) applies because the CFC gets a distribution from a non-qualifying trust):

(g) the CFC is not an unqualified grey list CFC for the accounting period, under the rules in section EI 22 (Unqualified grey list CFCs).

Special rule: branch equivalent FIF with taxable distribution

(2) A person also has attributed CFC income if section EI 43 (4) (branch equivalent method) applies because—

(a) the person has an attributing interest in a FIF; and

(b) the person is using the branch equivalent method to calculate FIF income; and

(c) the FIF receives a taxable distribution from a non-qualifying trust.

Treated as derived while person New Zealand resident

(3) Attributed CFC income of a person who has ceased to be a New Zealand resident is treated as being derived while the person is a New Zealand resident.

Dividend income can arise

(4) A person with an income interest of 10% or more in a CFC can also have dividend income under section CD 11 (Attributed repatriations from CFCs) to the extent to which any attributed repatriation is calculated for the person and the CFC under sections CD 32 to CD 39.

Origin:	(1) CG 6(1); CG 7(1); CG 13(1); new. (2) CG 21(2)(a). (3) CG 7(6). (4) new.
Defined terms:	accounting period, attributed CFC income, attributed repatriation, attributing interest, branch equivalent income, branch equivalent method, CFC, distribution, FIF, FIF income, foreign company, grey list, income interest, income year, New Zealand resident, non-qualifying trust, person, taxable distribution.
Comment:	Draft subsection (1)(d) is superfluous, technically, as the person's income interest could never exceed 10% if they were never resident in New Zealand. Arguably, it would be simpler if the additional attributed CFC income under draft section EI 44 (4) (Comparative value method) were FIF income, because it is subject to a separate tax rate anyway.

CQ 3 Calculation of attributed CFC income

The amount of attributed CFC income is calculated under the rules in sections EI 18 to EI 20.

Origin:	new.
Defined terms:	amount, attributed CFC income.

Foreign investment fund income

CQ 4 Foreign investment fund income

Foreign investment fund (FIF) income of a person is income.

Origin:	CG 1(b).
Defined terms:	FIF income, income, person.

CQ 5 When FIF income arises

General rule

(1) A person has FIF income in an income year if all the following apply:

(a) at any time in the year, the person has—

(i) rights in a foreign company, or a foreign superannuation scheme, or an entity listed in schedule 4, part B; or

(ii) rights under a life insurance policy issued by a non-resident:

(b) at that time, the rights are an attributing interest in a FIF under the rules in section EI 30 (Attributing interests in FIFs) and section EI 31 (Direct income interest in a FIF):

(c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of:

(i) the CFC rules exemption in section EI 32 (CFC rules exemption):

(ii) the grey list exemption in section EI 33 (Grey list exemption):

(iii) the foreign exchange control exemption in section EI 34 (Foreign exchange control exemption):

(iv) the immigrant’s 4-year exemption in section EI 35 (Immigrant’s four-year exemption):

(v) the immigrant’s accrued superannuation entitlement exemption in section EI 36 (Immigrant’s exemption for accrued superannuation entitlement):

(vi) the non-resident's annuity or pension exemption in section EI 37 (Non-resident's pension or annuity exemption):

(d) if the person is a natural person and not acting as a trustee, the total cost (calculated under the rules in section EI 56 (Measurement of cost)) of attributing interests in FIFs that the person holds at any time during the year when the person is a New Zealand resident is more than $50,000:

(e) the person is a New Zealand resident at any time during the year and the person held the attributing interest at that time:

(f) under the relevant calculation method chosen by the person, an income amount is calculated for the year under the rules in sections EI 38 to EI 45, section EI 48 (Top up income: deemed rate of return method), or section EI 49 (Top up income:1 April 1993 uplift interests).

Look-through calculation methods

(2) Despite subsection (1), if the calculation method is the accounting profits method or branch equivalent method,—

(a) FIF income arises in the income year only if the relevant accounting period of the FIF ends during the year; and

(b) the tests in subsection (1)(a), (b), (c), and (e) are applied on the basis that references in subsection (1)(a), (b), (c), and (e) to any time in the year are read as references to any time in the relevant accounting period.

Special rule: CFC with FIF interest

(3) A person with an income interest of 10% or more in a CFC can also have FIF income in an income year under the special rule in section EI 46 (Additional FIF income or loss if CFC owns FIF), which applies when the CFC has an attributing interest in a FIF (whether or not the CFC is an unqualified grey list CFC under the rules in section EI 22 (Unqualified grey list CFCs)).

Treated as derived while person New Zealand resident

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

Origin:	(1) CG 15(1), (2). (2) CG 7(5); CG 16(2). (3) CG 7(5). (4) CG 16(5).

Defined terms:	accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, CFC, derived, FIF, FIF income, foreign company, foreign superannuation scheme, grey list, income interest, income year, interest in a FIF, life insurance policy, New Zealand resident, non-resident, person, trustee.

CQ 6 Calculation of FIF income

The amount of any FIF income is calculated, using the relevant calculation method, under the rules in sections EI 42 to EI 49.

Origin:	new.
Defined terms:	amount, calculation method, FIF income.

CR – Income from life insurance

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CR 1 Income of life insurer

Premium loading

(1) The premium loading that a life insurer has in an income year from the business of providing life insurance is income of the life insurer for the income year.

Mortality profit

(2) The mortality profit that a life insurer has in an income year from the business of providing life insurance is income of the life insurer for the income year.

Discontinuance profit

(3) The discontinuance profit that a life insurer has in an income year from the business of providing life insurance is income of the life insurer for the income year.

Policyholder income

(4) Policyholder income that a life insurer has in an income year is income of the life insurer for the income year.

Disposal of property

(5) An amount that a life insurer derives from disposing of any property of their life insurance business is income of the life insurer.

Origin:	(1) CM 6(1). (2) CM 5(1). (3) CM 7(1). (4) CM 15(3). (5) CM 10.
Defined terms:	amount, business, derived, discontinuance profit, income, income year, life insurance, life insurer, mortality profit, policyholder income, premium loading, property.

CR 2 How income of life insurer quantified

Premium loading

(1) The premium loading that a life insurer has in an income year from the business of providing life insurance is quantified under sections EG 12 to EG 21.

Mortality profit

(2) The mortality profit that a life insurer has in an income year from the business of providing life insurance is quantified under sections EG 22 to EG 31.

Discontinuance profit

(3) The discontinuance profit that a life insurer has in an income year from the business of providing life insurance is quantified under sections EG 32 to EG 38.

Policyholder income

(4) Policyholder income that a life insurer has in an income year is quantified under sections EG 39 to EG 42.

Disposal of property

(5) The amount of income that a life insurer derives from disposing of any property of their life insurance business is quantified under section EG 43 (Income from disposal of property).

Origin:	(1) new. (2) new. (3) new. (4) new. (5) new.
Defined terms:	amount, business, derived, discontinuance profit, income, income year, life insurance, life insurer, mortality profit, policyholder income, premium loading, property.