

## Consequential amendments

### Contents of this document

This document records consequential matters that must be attended to in the bill implementing the rewrite. It deals with—

- Cross references in Income Tax Act 1994
- Terminological changes in Income Tax Act 1994
- Parts F to O (except section OB 1) and Y
- Schedules
- Tax Administration Act 1994
- Other enactments
- Issues papers.

### Cross references in Income Tax Act 1994

Update section references throughout Parts F to O and Y and the schedules, that is,—

- change section references to those in rewritten Parts A to E
- omit references to provisions that are not in rewritten Parts A to E because the provisions are being discontinued.

Update subpart references throughout Parts F to O and Y and the schedules.

### Terminological changes in Income Tax Act 1994

Update substantive terminology throughout Parts F to O and Y and the schedules, for example,—

- 'taxpayer' becomes 'person'
- 'gross income' becomes 'income'
- 'allowable deduction' becomes 'deduction'
- 'accrual rules' becomes 'financial arrangements rules'
- 'qualified accruals rules' becomes 'old financial arrangements rules'.

Update drafting terminology throughout Parts F to O and Y and the schedules, using the consistency guidelines.

**Parts F to O (except section OB 1) and Y**

**Part F – Apportionment and recharacterised transactions**

**Section FB 3 (Disposal of trading stock)**

Amend consequentially on the changes to the definition of trading stock.

**Section FB 4 (Income derived from disposal of trading stock together with other assets of a business)**

Amend consequentially on the changes to the definition of trading stock.

**Section FB 4 (4)(b)(i) (Income derived from disposal of trading stock together with other assets of a business)**

Insert '(see section CB 25 (Certificates as to nature of trees))' after 'trees'.

**Section FB 6 (Films)**

Omit.

**New section FB 7**

Insert—

**FB 7 Depreciation: partial income-producing use**

*When this section applies*

- (1) This section applies when—
  - (a) a person has an amount of depreciation loss for an item of depreciable property for an income year; and
  - (b) at a time during the income year, the item is partly used, or is partly available for use, by the person—
    - (i) in deriving counted income or carrying on a business for the purpose of deriving counted income; or
    - (ii) in a way that is subject to fringe benefit tax; and
  - (c) at the same time, the item is partly used, or is partly available for use, by the person for a use that falls outside both paragraph (b)(i) and (ii); and
  - (d) the item is not a motor vehicle to which section DE 1 (When this subpart applies) applies.

***Apportionment***

- (2) The deduction the person is allowed for the depreciation loss cannot be more than the amount calculated using the formula—

$$\text{depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}$$

***Definition of items in formula***

- (3) In the formula,—
- (a) **depreciation loss** means the depreciation loss for the income year:
  - (b) **qualifying use days** means the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls inside subsection (1)(b)(i) or (ii):
  - (c) **all days** means the number of days in the income year on which the person owns the item and uses it or has it available for use.

***Alternative measurement units***

- (4) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.

Origin:	(1) new. (2) new. (3) new. (4) new.
Defined terms:	amount, business, counted income, deduction, depreciable property, depreciation loss, derived, fringe benefit tax, income year, person.

**Section FC 2 (1) (Interest on debentures issued in substitution for shares)**

Replace ‘available subscribed capital per share’ by ‘available subscribed capital per share calculated under the slice rule’.

**Section FC 6 (Effect of specified lease on lessor and lessee), section FC 7 (Income of lessor under specified lease), section FC 8B (Rules for lease asset during term of finance lease), section FC 8D (Lessor’s use of lease asset after finance lease ends), and section FC 8H (Adjustment required for consecutive or successive leases)**

Replace ‘lease term’ by ‘term of the lease’.

**Section FC 12 (Investors in category A group investment funds) and cross heading (Other)**

Omit section and cross heading.

**New cross heading and sections FC 13 to FC 21**

Insert cross heading and sections—

*Non-resident general insurers*

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

*Criteria for treating premium as being derived from New Zealand*

- (1) A premium is treated as being derived from New Zealand, for the purposes of sections FC 14 and FC 15, if—
  - (a) there is a transaction that either—
    - (i) is insurance of the kind described in subsection (2); or
    - (ii) is called insurance in this section and is described in subsection (3) or subsection (4); and
  - (b) an insured person pays the premium for the insurance to an insurer; and
  - (c) the premium meets all 3 conditions in subsections (5) to (7); and
  - (d) the premium is not excluded from the application of this section by subsection (8).

*General insurance*

- (2) For the purposes of subsection (1)(a), the first kind of insurance is general insurance.

*Guarantee given by associated person*

- (3) For the purposes of subsection (1)(a), the second kind of insurance is a guarantee against risk given by an insurer to an insured person, if—
  - (a) the insured person is liable to pay a premium to the insurer for the guarantee; and
  - (b) the insured person is associated with the insurer.

*Guarantee given for money borrowed*

- (4) For the purposes of subsection (1)(a), the third kind of insurance is a guarantee against risk given by an insurer to an insured person, if—
  - (a) the insured person is liable to pay a premium to the insurer for the guarantee; and
  - (b) the risk arises from money lent to the insured person; and
  - (c) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and

- (d) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee.

***First condition: insurer not resident***

- (5) For the purposes of subsection (1)(c), the premium is derived by an insurer who is not resident in New Zealand when the insurer derives it.

***Second condition: not attributable to fixed establishment of insurer***

- (6) For the purposes of subsection (1)(c), the premium is not attributable to a fixed establishment of the insurer in New Zealand through which the insurer carries on business in New Zealand.

***Third condition: New Zealand connection of insured person or insurance contract***

- (7) For the purposes of subsection (1)(c), at least one of the following applies to the premium:
  - (a) the insured person from whom the premium is derived is resident in New Zealand; or
  - (b) the insurance contract from which the premium is derived is offered or entered into in New Zealand; or
  - (c) the insurance contract from which the premium is derived is entered into for the purposes of a business carried on by the insured person in New Zealand through a fixed establishment in New Zealand.

***Premium excluded***

- (8) For the purposes of subsection (1)(d), the premium is excluded from the application of this section if—
  - (a) all risk covered by the premium is located outside New Zealand; and
  - (b) the insurer deriving the premium is not associated with the insured person.

***Definitions for this section and sections FC 14 to FC 17***

- (9) In this section and sections FC 14 to FC 17,—

**insured person** means,—

- (a) in relation to insurance of the kind described in subsection (2), a person who is liable to pay a premium to an insurer for the insurance and is entitled by the payment of the premium to make a claim against the insurer:

- (b) in relation to insurance of the kinds described in subsections (3) and (4), a person who is liable to pay a premium to an insurer for the guarantee, whether or not the payment of the premium entitles the person to make a claim against the insurer

**insurer** means,—

- (a) in relation to insurance of the kind described in subsection (2), a person who provides the insurance and to whom an insured person is liable to pay a premium:
- (b) in relation to insurance of the kinds described in subsections (3) and (4), a person who provides the guarantee and to whom an insured person is liable to pay a premium

**premium** means,—

- (a) in relation to insurance of the kind described in subsection (2), the amount payable by an insured person to an insurer for the insurance under the insurance contract entered into by the insurer and the insured person:
- (b) in relation to insurance of the kind described in subsection (3), the amount payable by an insured person to an insurer for the guarantee under the insurance contract entered into by the insurer and the insured person, whether payable directly or indirectly or by 1 or more transactions:
- (c) in relation to insurance of the kind described in subsection (4), the amount payable by an insured person to an insurer for the guarantee under the insurance contract entered into by the insurer and the insured person.

Origin:	(1) OB 1 'insurance'. (2) OB 1 'insurance'. (3) OB 1 'insurance'. (4) OB 1 'insurance'. (5) CN 4(1)(b). (6) CN 4(1)(c). (7) OE 4(1)(o). (8) OE 4(1)(o). (9) OB 1 'insured person', 'insurer', 'premium' (b).
Defined terms:	amount, associated person, business, derived, fixed establishment, general insurance, insurance contract, insured person, insurer, money lent, New Zealand, offered or entered into in New Zealand, pay, premium, resident in New Zealand.

#### **FC 14 Non-resident general insurers' income**

*When this section applies*

- (1) This section applies when an insurer derives a premium that, under section FC 13, is treated as being derived from New Zealand.

*Income*

- (2) Ten percent of the gross premium derived by the insurer is income of the insurer.

Origin:	(1) CN 4(1)(a). (2) CN 4(1).
Defined terms:	income, insurer, New Zealand, premium.

#### **FC 15 Non-resident general insurers' expenditure**

*When this section applies*

- (1) This section applies when an insurer derives income under section FC 14.

*No deduction*

- (2) The insurer is not allowed a deduction for expenditure or loss incurred in deriving the income, such as an amount paid under the insurance contract.

*Link with subpart DA*

- (3) This section overrides the general permission.

Origin:	(1) CN 4(2). (2) CN 4(2). (3) new.
Defined terms:	amount, deduction, derived, general permission, income, insurance contract, insurer, pay.

#### **FC 16 Liability to make return and pay income tax**

*When this section applies*

- (1) This section applies when an insurer derives income under section FC 14.

*Insurer*

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

*Person on behalf of insurer*

- (3) To the extent to which a person on behalf of the insurer, including a broker or other agent who pays the premium on behalf of another

person, makes a return and pays income tax on the income, no agent described in any of subsections (4) to (6) is liable to do so.

***Agent 1***

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

***Agent 2***

- (5) The person who is liable in the second place as an agent of the insurer to make a return of income and pay income tax on the income is a person who pays the premium, whether or not through a broker or agent.

***Agent 3***

- (6) The person who is liable in the third place as an agent of the insurer to make a return of income and pay income tax on the income is the insured person.

***Bank or other body***

- (7) When a bank or other body to whom any of section NF 9 (1)(a) to (c) (Certificates of exemption) applies pays the premium on behalf of another person to the insurer or to some other person not carrying on a business through a fixed establishment in New Zealand,—
- (a) the bank or other body is not an agent of the insurer; and
  - (b) the person who provides the bank or other body with the funds from which the premium is paid is an agent of the insurer.

Origin:	(1) new. (2) CN 4(4)(a). (3) CN 4(3). (4) CN 4(3)(a). (5) CN 4(3)(b). (6) CN 4(3)(c). (7) CN 4(5).
Defined terms:	derived, fixed establishment, income, income tax, insured person, insurer, New Zealand, person, premium, return of income.

**FC 17 Premiums paid to residents of Switzerland and the Netherlands**

***When this section applies***

- (1) This section applies when—
- (a) an insurer derives income under section FC 14; and

- (b) an agent of the insurer under section FC 16 pays the premium to an insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand; and
- (c) the insurer or other person—
  - (i) is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland; or
  - (ii) is treated as being resident in the Netherlands for the purposes of a double tax agreement between the government of New Zealand and the government of the Netherlands.

***Agent must disclose details***

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

Origin:	(1) CN 4(3A). (2) CN 4(3A).
Defined terms:	business, Commissioner, derived, fixed establishment, income, insurer, New Zealand, payment, person, premium.

***Non-resident shippers***

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

***When this section applies***

- (1) This section applies when a ship that belongs to, or is chartered by, a non-resident person carries outside New Zealand cargo, mail, or passengers shipped or embarked in New Zealand. In this section, cargo, mail, or passengers shipped or embarked at a port in New Zealand for carriage outside New Zealand are treated as carried outside New Zealand from that port, even though the ship may call at another port in New Zealand before finally leaving New Zealand.

***Income from New Zealand***

- (2) When this section applies, 5% of the amount payable to the person for the carriage (whether it is payable inside or outside New Zealand) is treated as income of the person derived from New Zealand.

***Excluded income***

- (3) This section is subject to an exemption granted by the Commissioner under section FC 19.

Origin:	(1) CN 1(1), (3). (2) CN 1(1). (3) CN 1(3).
Defined terms:	derived, excluded income, New Zealand, non-resident, person.

**FC 19 Non-resident shippers' excluded income**

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

Origin:	CN 1(2).
Defined terms:	amount, Commissioner, excluded income, income tax, non-resident, person, resident in New Zealand.

**FC 20 Non-resident shippers' expenditure**

*No deduction*

- (1) When a person who is a non-resident is treated by section FC 18 as deriving income from New Zealand for cargo, mail, or passengers shipped outside New Zealand,—
  - (a) the person is not allowed any deduction for any expenditure or loss incurred in relation to that income; and
  - (b) the person has no amount of depreciation loss in relation to that income.

*Link with subpart DA*

- (2) This section overrides the general permission.

Origin:	(1) CN 1(1A). (2) new.
Defined terms:	amount, deduction, depreciation loss, general permission, New Zealand, non-resident, person.

*Non-resident film renters*

**FC 21 Amounts derived by non-residents from renting films**

*Film rental*

- (1) Ten percent of the amounts derived from New Zealand by a non-resident person from the following activities is income of the non-resident person:

- (a) renting, exhibiting, or issuing a film, or making other arrangements for its exhibition:
- (b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film:
- (c) selling or hiring advertising materials relating to a film.

***Remaining amounts***

- (2) Despite any other section of this Act, the rest of the amounts derived from activities in subsection (1) are not income of the non-resident person.

***No deduction***

- (3) No deduction is allowed for an amount to which this section applies.

***Exceptions***

- (4) This section does not apply to a non-resident person if the amounts derived by them from activities in subsection (1) are an insignificant proportion of the total amounts derived by them from any business carried on in New Zealand or elsewhere.

***Link with subpart DA***

- (5) This section overrides the general permission.

Origin:	(1) CN 2(1), (2), (5). (2) CN 2(3). (3) CN 2(2A), (2B). (4) CN 2(1) proviso. (5) new.
Defined terms:	amount, business, deduction, derived from New Zealand, film, general permission, income, non-resident, New Zealand, person.
Comment:	New Zealand companies under the control of non-residents have been removed from the ambit of the non-resident film renter provisions. This is because this application to New Zealand companies is no longer necessary under the current Act. Current section CN 2 (1)(b) was originally enacted as an anti-avoidance provision to prevent the section being circumvented by a non-resident film renter (that is, an actual non-resident) interposing a New Zealand company and stripping profits out of New Zealand by transfer pricing techniques (for example, by high promotion and advertising expenses). Following the introduction of comprehensive transfer pricing provisions in 1995 (contained in current section GD 13), this would no longer present a problem. This removal would also allow the drafting of the provision to be significantly simplified – for example, current section CN 2 (4) can be omitted. Current section CN 2 (4) is intended to prevent the effective 3.3% income tax liability under current section CN 2 being applied twice – first, to the New Zealand company controlled by non-residents and, second, to the non-resident who is paid film rental income by the interposed New Zealand company.

Draft section BC 3 (Income tax liability of person with schedular income) prevents the double taxation of the 10% amount that is income under subsection (1).

**Section FD 2 (Interpretation)**

Amend consequentially on the changes to the sections on international tax.

**Section FD 10 (5) (Special provisions relating to dispositions of property)**

Amend consequentially on the changes to the definition of trading stock.

**New section FD 11**

Insert—

**FD 11 Application of controlled foreign company and foreign investment fund rules**

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

Origin: CG 2.  
Defined terms: company, consolidated group, deduction, income, international tax rules.  
Comment: This section more naturally and simply forms part of subpart FD.

**Section FE 6 (2) (Acquisition of property by amalgamated company on qualifying amalgamation)**

Amend consequentially on the changes to the definition of trading stock.

**Section FF 7 (Standing timber)**

Replace by—

**FF 7 Disposal of timber under matrimonial agreement**

*When subsection (2) applies*

- (1) Subsection (2) applies when timber or a right to take timber is transferred under a matrimonial agreement.

*Transfer of timber or right to take timber*

- (2) The transfer of timber or a right to take timber is treated—
- (a) as if the transferor sold the timber or the right to take timber to the transferee; and
  - (b) as if the transferee gave the transferor consideration; and
  - (c) as if the value of the consideration equalled the costs of timber to the transferor or the costs of the right to take timber to the transferor. The costs are worked out as at the date of the transfer.

***When subsection (4) applies***

- (3) Subsection (4) applies when—
- (a) land with standing timber on it is transferred under a matrimonial agreement; and
  - (b) the standing timber does not consist of ornamental or incidental trees (see section CB 25 (Certificates as to nature of trees)).

***Transfer of land with standing timber on it***

- (4) A transfer of land with standing timber on it is treated, so far as the standing timber is concerned,—
- (a) as if the transferor sold the timber to the transferee; and
  - (b) as if the transferee gave the transferor consideration; and
  - (c) as if the value of the consideration equalled the costs of timber to the transferor. The costs are worked out as at the date of the transfer.

***Status of consideration***

- (5) The amount treated as consideration is,—
- (a) as far as the transferor is concerned, income; and
  - (b) as far as the transferee is concerned, the cost of acquiring the timber or the cost of acquiring the right to take timber.

Origin:	(1) FF 7. (2) FF 7. (3) FF 7. (4) FF 7. (5) FF 7.
Defined terms:	income, matrimonial agreement, right to take timber, standing timber, timber, transferee, transferor.

**Section FF 9 (Specified livestock)**

Replace ‘herd value ratio’.

Replace ‘specified livestock’.

**Section FF 10 (Non-specified livestock)**

Replace ‘deductible excess’.

Replace ‘non-specified livestock’.

Replace ‘specified livestock’.

**Section FF 11 (High-priced livestock)**

Replace ‘assigned percentage’.

Replace ‘specified writedown’.

**Section FF 13 (Trading stock)**

Replace ‘specified livestock’.

**Section FF 15 (Depreciation deduction for qualifying assets) and section FF 16 (Depreciable property)**

Replace by—

**FF 15 Depreciation loss for qualifying items**

*When this section applies*

- (1) This section applies when a qualifying item or an item to which a qualifying improvement has been made is transferred under a matrimonial agreement.

*Transferee treated as transferor*

- (2) After the transfer, the transferee has an amount of depreciation loss under section EZ 12 (Additional depreciation loss for acquisitions or qualifying improvements between 16 December 1991 and 1 April 1994) as if the transferee were the transferor.

*Amount of depreciation loss*

- (3) The amount of the transferee's depreciation loss for the item for the income year in which the item is transferred is the amount of depreciation loss for the item for the income year under section EZ 12 (Additional depreciation loss for acquisitions or qualifying improvements between 16 December 1991 and 1 April 1994) minus the amount that the transferor has for the income year.

Origin:	(1) FF 15. (2) FF 15. (3) FF 15.
Defined terms:	amount, depreciation loss, income year, matrimonial agreement, qualifying improvement, qualifying item, transferee, transferor.

**FF 16 Depreciable property**

*When this section applies*

- (1) This section applies when a transferor who has an amount of depreciation loss for an item transfers the item under a matrimonial agreement.

*Transferee has depreciation loss*

- (2) Whether or not the transferor has in fact had an amount of depreciation loss, the transferee has an amount of depreciation loss for the item from the time of the transfer.

*Transferee's expenditure*

- (3) The transferee is treated as having incurred, in acquiring the item, expenditure of the amount of the consideration for which the transferor

is treated as having disposed of the item. The consideration is described in subsection (4) or section FF 19 (Mining assets).

***Transferor's consideration***

- (4) The transferor is treated as having disposed of the item for consideration, as follows:
- (a) if the transferor acquired the item in the income year in which it is transferred, a consideration equal to the item's cost:
  - (b) in any other case, a consideration equal to the item's adjusted tax value at the start of the income year in which it is transferred.

***Building***

- (5) The depreciation loss that the transferee has when the item is a building must be determined having regard to its cost to the transferor.

***Transferor's depreciation losses***

- (6) In addition to the amount of depreciation loss that the transferee in fact has for the item, the transferee is treated as having had an amount of depreciation loss equal to all the amounts of depreciation loss that the transferor had for the item.

***Limit on transferee's depreciation loss***

- (7) The transferee does not have a greater amount of depreciation loss than that which the transferor would have had if the transferor had kept the item.

***Actions of transferor attributed to transferee***

- (8) An item acquired, erected, installed, altered, extended, improved, or attached by the transferor in the income year in which the item is transferred is treated as if it were acquired, erected, installed, altered, extended, improved, or attached by the transferee in the income year.

***Conditions attributed to item***

- (9) If any of the following conditions applied to the item when the transferor acquired or erected it, the condition is treated as applying to the item at the time it is transferred:
- (a) the item had not previously been used by any person or acquired or held by a person for their use; and
  - (b) if the item is a building or part of a building, it had not previously been occupied.

Origin:	(1) FF 16(1).
	(2) FF 16(1)(a).
	(3) FF 16(1).
	(4) FF 16(2)(a).

	(5) FF 16(1).
	(6) FF 16(2)(b).
	(7) FF 16(1).
	(8) FF 16(1)(b).
	(9) FF 16(1)(b), (3).
Defined terms:	amount, depreciation loss, income year, matrimonial agreement, person, transferee, transferor.

**Section FH 3 (Rules for determining New Zealand foreign attributed income group debt percentage)**

Amend consequentially on the changes to the sections on international tax.

**Section FZ 1 (4) (Deduction for dividends paid on certain preference shares)**

Replace ‘available subscribed capital per share’ by ‘available subscribed capital per share calculated under the slice rule’.

**Part G – Avoidance and non-market transactions**

**Sections GC 8 to GC 10**

Amend consequentially on the changes to the sections on international tax.

**Section GC 9 (7) (Variations in control or income interests in foreign companies)**

Replace ‘available subscribed capital per share’ by ‘available subscribed capital per share calculated under the slice rule’.

**Section GC 11 (Films)**

Omit subsections (3) and (4).

Insert—

**GC 11A Non-market transactions to acquire rights in films**

*Reduced deductions*

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

*Amount of reduced deduction*

- (2) If subsection (1) applies, the deduction must be reduced to an amount equal to the market value of the film right at the time it was acquired by person A.

***When share of right acquired***

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

Origin:	(1) GC 11(3). (2) GC 11(3). (3) GC 11(3).
Defined terms:	amount, Commissioner, deduction, film, film right, person, right in a film.

**GC 11B Manipulation of arrangements to acquire rights in films**

If the Commissioner considers that 2 persons have made arrangements so that section DS 2 (Acquiring rights in films), section EK 4 (Expenditure incurred in acquiring rights in feature films), or section EK 5 (Expenditure incurred in acquiring rights in films other than feature films) applies more favourably in relation to a person in an income year than it would have applied without the arrangements,—

- (a) the deduction allowed to the person under section DS 2 (Acquiring rights in films) must be reduced to the amount that the Commissioner considers would have been allowed if the arrangements had not been made:
- (b) the deduction allocated under section EK 4 (Expenditure incurred in acquiring rights in feature films) or section EK 5 (Expenditure incurred in acquiring rights in films other than feature films) must be allocated to the income year as the Commissioner considers it would have been allocated if the arrangements had not been made.

Origin:	GC 11(4).
Defined terms:	arrangement, Commissioner, deduction, income year, person.

**Section GC 14C (Definitions for use in section GC 14B)**

Replace ‘private use or enjoyment’ by ‘private use’.

**Section GC 14D (Attribution rule—calculation)**

Replace ‘monetary remuneration’.

**Section GC 15 (Benefit given to associated person of employee)**

Replace ‘employer of an employee’.

Replace ‘monetary remuneration’.

**Section GC 17 (Fringe benefit tax—general)**

Replace ‘employer of an employee’.

**Section GD 1 (Sale of trading stock for inadequate consideration)**

Amend consequentially on the changes to the definition of trading stock.

**Section GD 1 (2)(b)(i) (Sale of trading stock for inadequate consideration)**

Insert '(see section CB 25)' after 'trees'.

**Section GD 2 (Distribution of trading stock to shareholders of company)**

Amend consequentially on the changes to the definition of trading stock.

**Section GD 2 (3)(a) (Distribution of trading stock to shareholders of company)**

Insert '(see section CB 25)' after 'trees'.

**Section GD 2 (4) (Distribution of trading stock to shareholders of company)**

Replace 'cost' by 'costs'.

**Section GD 12 (Cost of producing film)**

Replace by—

**GD 12 Non-market transactions for incurring film production expenditure**

***Reduced deductions***

- (1) Person A must reduce the deduction allowed to them under section DS 3 (Film production expenditure) in accordance with subsection (2), if—
- (a) the Commissioner is satisfied that person A and a person who supplied goods or provided services to person A in relation to the film (person B) were not dealing with each other at arm's length in relation to the goods or services; and
  - (b) person A incurred more film production expenditure than person A would have incurred if person A and person B had been dealing with each other at arm's length.

***Amount of reduced deduction***

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

Origin:	(1) GD 12(1). (2) GD 12(1A).
Defined terms:	amount, Commissioner, deduction, film, film production expenditure, person.
Comment:	The drafting of this successor provision to section GD 12 (1) and (1A) has been able to be simplified because of the incorporation of paragraph (b) of the existing definition of 'right' in section OB 1 into the film production expenditure provisions.

### **GD 12A Film production expenditure if payments postponed or contingent**

For the purposes of section DS 3 (Film production expenditure), section EK 6 (Film production expenditure for New Zealand films), and section EK 8 (Film production expenditure for films other than New Zealand films), a person is treated as incurring film production expenditure in relation to goods or services only at the time of payment for those goods or services if—

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

Origin:	EO 4(12).
Defined terms:	Commissioner, film production expenditure, person.
Comment:	This provision – current section EO 4 (12) – has a specific anti-avoidance purpose and is properly located in Part G. It was probably an oversight that this provision was not relocated to Part G when the Income Tax Act 1994 was enacted, especially considering that the equivalent provision for the acquisition of films (section GC 11 (1)) was relocated.

### **GD 12B Manipulation of arrangements to incur film production expenditure**

If the Commissioner considers that 2 persons have made arrangements so that section DS 3 (Film production expenditure), section EK 6 (Film production expenditure for New Zealand films), or section EK 8 (Film production expenditure for films other than New Zealand films) applies more favourably in relation to a person in an income year than it would have applied without those arrangements,—

- (a) the deduction allowed to a person under section DS 3 (Film production expenditure) must be reduced to the amount that the Commissioner considers would have been allowed if the arrangements had not been made:
- (b) the deduction allocated under section EK 6 (Film production expenditure for New Zealand films) or section EK 8 (Film production expenditure for films other than New Zealand films) must be allocated to the income year to which the Commissioner considers it would have been allocated if the arrangements had not been made.

Origin:	GD 12(2).
Defined terms:	amount, arrangement, Commissioner, deduction, income year, person.
Comment:	See the comment on draft section GD 12A.

**Section GD 13 (Cross-border arrangement between associated persons)**

Amend consequentially on the changes to the sections on international tax.

**Section GD 13 (13) (Cross-border arrangement between associated persons)**

Insert the following definition after the definition of ‘amount’:

**insurance premium** means a premium treated as being derived from New Zealand under section FC 13 (Premiums derived by non-resident general insurers treated as being derived from New Zealand)

**New section GD 14**

Insert—

**GD 14 Attributing interests in FIFs (foreign investment funds)**

*Disposals below market*

- (1) Subsection (2) applies if—
- (a) a person disposes of an attributing interest in a FIF; and
  - (b) they use the comparative value method or deemed rate of return method to calculate their FIF income or loss for the period up to the disposal; and
  - (c) they received no consideration for the disposal or consideration which was below the market value of the interest at the time.

*Treated as disposal at market value*

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

*Acquisitions not at market value*

- (3) Subsection (4) applies if—
- (a) a person acquires an attributing interest in a FIF; and
  - (b) they use the comparative value method or deemed rate of return method to calculate their FIF income or loss from the interest for the period after the acquisition; and
  - (c) either—
    - (i) the consideration (if any) is not equal to the market value of the interest at the time; or
    - (ii) the acquisition is on a distribution by a company to the person as a shareholder or by a trustee to the person as a beneficiary.

***Treated as acquisition at market value***

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

Origin:	(1) CG 23(5). (2) CG 23(5). (3) CG 23(6). (4) CG 23(6).
Defined terms:	amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, loss, FIF, person, shareholder, trustee.
Comment:	At this stage, unlike current section CG 23 (6)(b), there is no attempt to state that the market value uplift will apply even if it is only that uplift that breaches the \$50,000 threshold.

**New section GD 15**

Insert—

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

***When this section applies***

- (1) This section applies when—
- (a) a person disposes of timber, or a right to take timber, or standing timber, to an associated person; and
  - (b) as a result, an amount is included in their income under section CB 22 (Disposal of timber or right to take timber) or section CB 23 (Disposal of land with standing timber).

***Limit on deduction of disposing person***

- (2) The deduction allowed to the person for the timber, or the right to take timber, or the standing timber must not be more than the amount included in their income.

***Calculation of deduction of acquiring associated person***

- (3) The deduction allowed to the associated person for the cost of acquiring the timber is calculated on the basis that the associated person acquired the timber for the total of—
- (a) the cost to the associated person of acquiring the timber; and
  - (b) the amount (if any) that subsection (2) prevents from being allowed as a deduction to the person disposing of the timber, or the right to take timber, or standing timber.

Origin:	(1) DL 1(1). (2) DL 1(1). (3) DL 1(1).
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Defined terms: amount, associated person, deduction, disposal, income, person, right to take timber, standing timber, timber.
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## Part H – Treatment of net income of certain entities

### Section HE 1 (Unit trusts)

Omit section HE 1 (a) to (d).

### Section HG 16 (Net losses of loss attributing qualifying company to be attributed to shareholders) and section HG 17 (Attributed foreign losses and foreign investment fund losses)

Amend consequentially on the changes to the sections on international tax.

### Section HH 1 (8) (Interpretation)

Add ‘or to any group investment fund to the extent to which it is treated as a company for the purposes of this Act’.

Origin: CF 2(3A)(b).
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## Part I – Treatment of net losses

### Section ID 1 (No offset in calculating some schedular income tax liabilities)

Amend consequentially on the changes to Parts A and B.

### Section IE 1 (Net losses may be offset against future net income)

Omit subsection (4).

Comment: See issues paper 2, page 8, section CG 2 (Remitted amounts), and section DB 35 (Payments for remitted amounts).
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### Section IE 3 (Attributed foreign net losses) and section IE 4 (Foreign investment fund net losses)

Amend consequentially on the changes to the sections on international tax.

### Section IF 3 (Attributed foreign losses) and section IF 4 (Losses, attributed foreign net losses, and foreign investment fund net losses of amalgamating company) and section IF 6 (Attributed foreign losses)

Amend consequentially on the changes to the sections on international tax.

### Section IG 1 (Companies included in group of companies)

Replace ‘employee share purchase scheme’.

### Section IG 4 (Group of companies attributed foreign net losses) and section IG 5 (Group of companies foreign investment fund net losses)

Amend consequentially on the changes to the sections on international tax.

**Sections IG 7 to IG 9**

Amend consequentially on the changes to the sections on international tax.

**Part K – Rebates**

**Section KD 1 (1)(e)(vi) (Determination of net income)**

Omit ‘reserve’.

**Section KD 7 (4)(c) (Commissioner to deliver credit of tax by instalments)**

Omit ‘registered under the Building Societies Act 1965’.

**Part L – Credits**

**Section LC 1 (Credits in respect of tax paid in a country or territory outside New Zealand)**

Amend consequentially on the changes to the sections on international tax.

**Section LC 4 (Foreign tax credits—controlled foreign companies) and section LC 5 (Group of companies controlled foreign company tax credits)**

Amend consequentially on the changes to the sections on international tax.

**Section LC 6 (Election in respect of foreign tax on dividend) and section LC 7 (Dividend paid without deduction in full of foreign tax)**

Omit.

**Section LC 16 (Foreign tax credits of consolidated group members)**

Amend consequentially on the changes to the sections on international tax.

**New section LE 4**

Insert—

**LE 4 Allocation of deductions by section LE 3 holding company**

*When this section applies*

- (1) This section applies when a person is a section LE 3 holding company and derives a supplementary dividend in an income year.

*Deductions*

- (2) The maximum total amount of deductions of the person that may be allocated to the income year is the amount calculated using the formula—

$$\text{gross income} - \frac{\text{non-refundable credits} + \text{convertible credits} + \text{supplementary dividends}}{\text{applicable tax rate}}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **gross income** is the person’s gross income:
  - (b) **non-refundable credits** is the total amount of non-refundable credits that are available under this Part to be set off against the person’s income tax liability:
  - (c) **convertible credits** is the total amount of convertible credits that are available under this Part to be set off against the person’s income tax liability:
  - (d) **supplementary dividends** is the total amount of supplementary dividends derived by the person in the income year:
  - (e) **applicable tax rate** is the applicable basic tax rate.

*Restriction on offsetting or carrying forward*

- (4) If subsection (2) prevents an amount from being allocated to an income year, the section LE 3 holding company may offset or carry forward the amount under subsection (5) and under no other provision of this Act.

*Offsetting or carrying forward*

- (5) If subsection (2) prevents an amount from being allocated to an income year, the section LE 3 holding company may—
- (a) carry forward to a later income year under subpart IE (Net losses) and subpart IF (Net losses—companies) some or all of the amount as an available net loss; or
  - (b) offset under subpart IG (Net losses—groups of companies) or subpart IH (Losses—Miners) some or all of the amount as a net loss against the net income of another company for the income year.

*Non-refundable credits and convertible credits not affected*

- (6) This section does not affect the calculation under this Part of the non-refundable credits and convertible credits of a section LE 3 holding company.

Origin:	(1) EQ 1(1). (2) EQ 1(1). (3) EQ 1(1). (4) EQ 1(3). (5) EQ 1(2). (6) EQ 1(4).
Defined terms:	amount, applicable basic tax rate, available net loss, convertible credit, deduction, derived, gross income, income tax liability, income year, net income, net loss, non-refundable credit, person, section LE 3 holding company, supplementary dividend.

**Section LF 1 (2)(b)(i) (Underlying foreign tax credits generally, and interpretation)**  
Replace the reference to ‘income interest of 10% or greater’ by a reference to sections EI 14 to EI 17.

### **Part M – Tax payments**

**Section ME 5 (1) (Debits arising to imputation credit account)**  
Replace ‘available subscribed capital per share cancelled’ by ‘available subscribed capital per share calculated under the ordering rule’.

**Section MF 4 (Credits and debits arising to branch equivalent tax account of company) and section MF 5 (Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability)**  
Amend consequentially on the changes to the sections on international tax.

**Sections MF 8 to MF 10**  
Amend consequentially on the changes to the sections on international tax.

**Section MF 13 (Credits and debits arising to branch equivalent tax account of person)**  
Amend consequentially on the changes to the sections on international tax.

**Section MF 15 (Extension of branch equivalent tax account provisions to certain foreign investment fund income)**  
Amend consequentially on the changes to the sections on international tax.

### **Part N – Withholding taxes, and taxes on income of others**

**Section NC 2 (Tax deductions to be made by employers)**  
Replace ‘extra emolument’ by ‘extra pay’.

**Section NC 4 (Benefits and superannuation and other payments deemed to be salary or wages)**  
Replace ‘monetary remuneration’.

**Section NC 8 (Applications of tax codes specified in tax code declarations or tax code certificates)**  
Replace ‘extra emolument’ by ‘extra pay’.

**Section NC 21 (Regulations)**  
Replace ‘extra emolument’ by ‘extra pay’.

**New sections ND 1A to ND 1X**

Insert—

**ND 1A Payments towards fringe benefits**

If an employee pays a sum for receiving a fringe benefit, the value of the benefit is reduced by the amount paid. When section GC 15 (1) (Benefit given to associated person of employee) applies, the value of the benefit is reduced if a person associated with the employee pays an amount for the benefit. But this section does not apply to—

- (a) an employment-related loan:
- (b) a payment to acquire or improve an asset if receiving or using the asset does not constitute a fringe benefit.

Origin:	CI 4(1)(a).
Defined terms:	associated person, employee, employment-related loan, loan.

**ND 1B Private use of motor vehicle: value of benefit**

*Determination of value*

- (1) This section determines the value of the benefit that an employer provides to an employee by making a motor vehicle available for their private use. But, if the vehicle is owned in part by an employee or a person associated with the employee, the value of the benefit is determined under sections NC 1D to NC 1F.

*Test period*

- (2) To calculate the value of the benefit, an employer may choose to use a test period to establish private use (see section ND 1C).

*Payment quarterly*

- (3) If fringe benefit tax is paid quarterly, the value of the benefit is calculated using the formula—

$$\frac{\text{days} \times \text{schedule 2 amount}}{90}$$

*Payment annually*

- (4) If fringe benefit tax is paid annually, the value of the benefit is the total of the amounts calculated under subsection (3) for 4 quarters in the applicable year.

***Payment by income year***

- (5) If fringe benefit tax is paid on an income year basis, the value of the benefit is calculated using the formula—

$$\frac{\text{days} \times \text{schedule 2 amount}}{365}$$

***Definition of items in formulas***

- (6) In the formula—
- (a) in subsection (3), **days** refers to the number of days in the quarter on which the motor vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle, or 90, whichever is less:
  - (b) in subsection (5), **days** refers to the number of days in the income year on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle:
  - (c) **schedule 2 amount** refers to the amount calculated under schedule 2, part A, as the value of the benefit that would have been received for unlimited private use of the vehicle in that quarter or income year, as applicable.

Origin:	(1) new. (2) CI 11. (3) CI 3(1)(a). (4) CI 3(1)(b). (5) CI 3(1)(c). (6) CI 3(1).
Defined terms:	associated person, employee, employer, fringe benefit tax, income year, motor vehicle, private use, quarter, work-related vehicle.

**ND 1C Private use of motor vehicle: test period to establish private use**

***Election to use test period***

- (1) To establish the value of the benefit provided through a motor vehicle being made available to an employee for their private use, an employer may choose to record the details of the use of the vehicle by the employee for a test period. The number of days on which a vehicle is available for an employee's private use that is ascertained in the test period is the number used in the relevant calculation in section ND 1B.

***Duration of test period***

- (2) If fringe benefit tax is paid quarterly or annually, the test period is a quarter. If fringe benefit tax is paid on an income year basis, the test period is 3 consecutive months of an income year.

***Representative pattern of use***

- (3) The employer must choose a test period that shows, or is likely to show, a pattern of use of the motor vehicle by the employee that fairly represents the use of the vehicle by the employee over the whole of the applicable term. The employer must keep a record of the test period, including accurate details of the days in the period on which the vehicle is available for the employee's private use. For this purpose, a day on which the vehicle is a work-related vehicle is treated as a day on which the vehicle is not available for private use.

***Three-year term***

- (4) The number of days of availability for private use ascertained in the test period applies for a term of 3 years. The term starts, as applicable, as follows:
- (a) if fringe benefit tax is paid quarterly, on the first day of the test period:
  - (b) if fringe benefit tax is paid annually, on the first day of the year in which the test period occurs:
  - (c) if fringe benefit tax is paid on an income year basis, on the first day of the income year in which the test period occurs.

***Reduction of term***

- (5) The term is reduced if the actual number of days of actual private use of the motor vehicle is 20 or more percentage points higher than the number ascertained in the test period. In this case, the term ends on the last day of the applicable quarter, year, or income year. If the employer chooses to start another test period, the existing term ends immediately before the start of the new term.

***Fair representation***

- (6) If the Commissioner considers that the result ascertained in the test period does not, or does no longer, fairly represent the actual private use of the motor vehicle by the employee, the Commissioner may give notice to the employer that the term will end on a specified date. Following notification, the employer must not use that result again.

***Replacement motor vehicle***

- (7) A replacement motor vehicle is treated in the same way as the vehicle it replaces if the result ascertained in the test period is likely to be fairly representative of the average availability for the private use of the vehicle during the term.

Origin:	(1) CI 11(1), (2), (3). (2) CI 11(4), (5).
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	(3) CI 11(6), (7), (8).
	(4) CI 11(9), (10), (11).
	(5) CI 11(12), (13).
	(6) CI 11(14).
	(7) CI 11(15).
Defined terms:	Commissioner, employee, employer, fringe benefit tax, income year, motor vehicle, notice, private use, quarter, work-related vehicle, year.

**ND 1D Private use of motor vehicle: determining taxable value in cases of part ownership**

When a fringe benefit is provided by way of a motor vehicle being made available to an employee for their private use, and the vehicle is owned in part by the employee (or, when section GC 15(1) (Benefit given to associated person of employee) applies, a person associated with the employee), the value of the fringe benefit is reduced in the two cases described in sections ND 1E and ND 1F.

Origin:	CI 4.
Defined terms:	associated person, employee, motor vehicle, private use.

**ND 1E Private use of motor vehicle: first case**

*Valuation of motor vehicle*

- (1) The first case referred to in section ND 1D is when the employer has not valued the motor vehicle at cost price or market value (excluding GST) under schedule 2, part A, clause 3.

*Calculating the taxable value*

- (2) To calculate the taxable value of the fringe benefit, the cost price (including GST) of the motor vehicle to the employee or the associated person determined under schedule 2, part A, clause 2 is reduced in the following way:
- (a) if fringe benefit tax is paid quarterly, by an amount equal to 2.5% of the cost price of the vehicle:
  - (b) if fringe benefit tax is paid annually, by an amount equal to 2.5% of the cost price of the vehicle for each quarter in which the vehicle was part owned by the employee or the associated person:
  - (c) if fringe benefit tax is paid on an income year basis, by an amount equal to 10% of the cost price of the vehicle.

***Different accounting basis***

- (3) In subsection (2)(c), if the period for which employer accounts for fringe benefit tax differs from a normal income year for the reasons described in subsection (4), the percentage by which the taxable value of the fringe benefit is reduced is calculated using the formula—

$$\frac{10\% \text{ of the number of days more or less than normal income year}}{365}.$$

***Period longer or shorter than income year***

- (4) The period for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—
- (a) begun or ceased business during that income year; or
  - (b) chosen (with the agreement of the Commissioner) to file a fringe benefit return for the year ending with the date of the annual balance of their accounts.

***Part ownership for part year***

- (5) If an employee has not been part owner of the motor vehicle for the whole of the income year (or the accounting period), the reduction is calculated by reference to the proportion of the number of days of that income year or period referred to in subsection (4) for which the employee was not a part owner to the total number of days of that income year or accounting period.

Origin:	(1) new. (2) CI 4(1)(b). (3) CI 4(2). (4) CI 4(2). (5) CI 4(3).
Defined terms:	Commissioner, employer, fringe benefit tax, income year, motor vehicle, quarter.

**ND 1F Private use of motor vehicle: second case**

***Valuation of motor vehicle***

- (1) The second case referred to in section ND 1D is when the employer has valued the motor vehicle on a cost price or market value (excluding GST) under schedule 2, part A, clause 3.

***Calculating the taxable value***

- (2) To calculate the taxable value of the fringe benefit, the cost price (excluding GST) of the motor vehicle to the employee or the associated

person determined under schedule 2, part A, clause 3(b)(i) is reduced in the following way:

- (a) when fringe benefit tax is paid quarterly, by a percentage calculated using the formula—  
$$2.5 + (2.5 \times \text{schedule 2 amount});$$
- (b) when fringe benefit tax is paid annually, by a percentage for each quarter in which the vehicle was part owned by the employee or associated person calculated using the formula—  
$$2.5 + (2.5 \times \text{schedule 2 amount});$$
- (c) when fringe benefit tax is paid on an income year basis, by a percentage calculated using the formula—  
$$10 + (10 \times \text{schedule 2 amount}).$$

***Definition of item in formula***

- (3) In the formula, **schedule 2 amount** is the rate of goods and services tax specified in schedule 2, part A, clause 3(b)(ii) or clause 3(b)(iii) for the employer and the relevant quarter and relevant income year, as applicable.

Origin:	(1) new. (2) CI 4(1)(c). (3) CI 4(1)(c).
Defined terms:	employer, fringe benefit tax, income year, motor vehicle, quarter.

**ND 1G Subsidised transport: value of benefit**

***Employer providing transport***

- (1) If an employer provides their employee with subsidised transport, the value of the benefit is 25% of the highest published market fare the employer charges the public for the equivalent transport (in terms of class, extent, and occasion).

***Third person providing transport***

- (2) If a third person provides the employee with subsidised transport under an arrangement with their employer, the value of the benefit is the greater of—
  - (a) 25% of the highest published market fare the person charges the public for the equivalent transport (in terms of class, extent, and occasion); and
  - (b) the amount that the employer has paid or is liable to pay the person for the benefit provided.

***'Amount' defined***

- (3) In this section, for a registered person who may claim input tax for subsidised transport, **amount** means the GST-inclusive amount.

Origin:	(1) CI 3(6). (2) CI 3(6). (3) CI 3(8A).
Defined terms:	amount, arrangement, employee, employer, input tax, person, registered person, subsidised transport.

**ND 1H Employment-related loans: value of benefit**

The value of a benefit provided by way of an employment-related loan in a period is the amount by which the prescribed interest is more than—

- (a) the amount of interest that accrued on the loan in that period; or  
(b) as applicable, the income that would have accrued to the employer's benefit in that period calculated under the yield to maturity method as if the loan were a financial arrangement.

Origin:	CI 3(2).
Defined terms:	employer, employment-related loan, financial arrangement, loan, prescribed interest.

**ND 1I Employment-related loans: repayment**

***Income applied to repay the loan***

- (1) An amount of income that is applied in an income year to repay an employment-related loan is treated as having been applied towards repayment on the first day of the income year or, if the date of the advance of the loan falls after that day, that later date.

***Salary, wages, dividend, or interest***

- (2) Subsection (1) applies only to income that is received in the income year in which it is paid, or in a previous income year, from the employer by way of salary or wages, extra pay, dividend, or interest, and that is not resident withholding income, non-resident withholding income, or an amount subject to tax deduction under the PAYE rules.

***Election by employee as to timing***

- (3) If the amount that the employee derives and that is applied in this way relates to a previous income, the employee may treat the amount as having been derived in that previous income year. If so, the employee must give notice to the Commissioner of their decision within the time allowed to the employer for filing a return of income or within a longer time that the Commissioner allows.

***Non-standard tax year***

- (4) If the employer has a non-standard tax year, references in this section to an income year are treated as references to that tax year.

Origin:	(1) CI 3(3). (2) CI 3(3). (3) CI 3(5). (4) CI 3(4).
Defined terms:	amount, Commissioner, derived, dividend, employee, employer, employment-related loan, extra pay, income year, interest, non-resident withholding income, notice, pay, PAYE rules, resident withholding income, return of income, salary or wages.

**ND 1J Employment-related loans: regulations**

***Declaring rate of interest***

- (1) The Governor-General may make regulations by Order in Council to declare the rate of interest applying to employment-related loans.

***When regulations apply***

- (2) When regulations referred to in subsection (1) are made, they apply to quarters starting from a date at least 1 month after the date the regulations were made. But regulations that reduce the rate of interest from the prescribed rate of interest at the time, if made at least 1 month before the quarter ends, may apply for that quarter.

Origin:	(1) CI 6(1). (2) CI 6(2), (3).
Defined terms:	employment-related loan, interest, loan, prescribed rate of interest, quarter.

**ND 1K ‘Prescribed interest’ defined**

In sections ND 1I and ND 1J, **prescribed interest** means,—

- (a) for loans made after 31 March 1985, the amount of interest that would have accrued on the loan during the quarter or income year had the interest been calculated on the daily balance of that loan at the prescribed rate of interest:
- (b) for loans made on or before 31 March 1985, if the interest on that loan is not subject to review, the non-concessionary rate of interest for the year in which the agreement to make the loan was signed or, if the agreement was not in writing, the year in which the loan was agreed to by all parties.

Origin:	OB 1 'prescribed interest'.
Defined terms:	amount, income year, interest, loan, non-concessionary rate of interest, prescribed rate of interest, quarter, year.

**ND 1L Contributions to superannuation schemes: value of benefit**

*Amount of contribution*

- (1) The value of a benefit by way of an employer's contribution to a superannuation scheme is the amount of the contribution made by the employer.

*'Amount' defined*

- (2) In this section, for a registered person who may claim input tax for a contribution to a superannuation scheme, **amount** means the GST-inclusive amount.

Origin:	(1) CI 3(8). (2) CI 3(8A).
Defined terms:	amount, contribution, employer, input tax, registered person, superannuation scheme.

**ND 1M Contribution to insurance funds: value of benefit**

The value of a benefit provided by way of an insurance benefit is the amount of the insurance premium or contribution made by the employer.

Origin:	CI 3(7), (8).
Defined terms:	contribution, employer.

**ND 1N Goods and services generally: value of goods**

*Determining the value*

- (1) The value of a fringe benefit that consists of the provision of goods is determined as follows:
- (a) when the person providing the goods manufactured, produced, or processed them, their market value:
  - (b) when the person providing the goods bought them, or paid for them to be bought, dealing at arm's length with the supplier of the goods, the cost of the goods to the person or, if that cost would be more than the market value of the goods, their market value:
  - (c) if the person providing the goods is a company included in a group of companies, then the value of the benefit under either paragraph (a) or (b), as the person chooses, applying the provisions as if the group of companies were one company.

*Definitions for this section*

(2) In this section,—

**cost**, for a registered person who may claim input tax for the goods, means the GST-inclusive cost of the goods bought, or the amount that the person paid for the goods

**price**, for a registered person who may claim input tax for goods that they manufacture, produce, or process, means the GST-inclusive price of those goods to that person.

Origin:	(1) CI 3(9)(a), (b), (c), (d). (2) CI 3(9A).
Defined terms:	company, cost, group of companies, input tax, market value, person, price, registered person.

**ND 10 Goods and services generally: value of services**

*Determining the value*

(1) The value of a fringe benefit that consists of providing services (other than making available a motor vehicle for private use, providing an employment-related loan, or providing subsidised transport) is,—

(a) when an employer normally provides the services as part of their business, the price at the time they provided the services for the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms between buyers and sellers independent of each other:

(b) when an employer pays for the services to be provided, dealing at arm's length with the supplier of the services, the amount paid or payable:

(c) if neither paragraph (a) nor paragraph (b) applies, the price or fee that the employer or supplier providing the services would, at that time, have charged the public, had they provided the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms.

*Definitions for this section*

(2) In this section,—

**amount**, for a registered person who may claim input tax for that service, means the GST-inclusive amount

**fee** and **price**, for a registered person who may claim input tax for that service, mean the GST-inclusive fee or price.

Origin:	(1) CI 3(10). (2) CI 3(10A).
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Defined terms: amount, business, employer, employment-related loan, fee, input tax, loan, motor vehicle, New Zealand, price, private use, registered person, subsidised transport.

**ND 1P When value of fringe benefit cannot be ascertained**

If, under sections ND 1B, ND 1G, ND 1H, ND 1I, ND 1M, ND 1N, and ND 1O, the value of a fringe benefit cannot be ascertained, the value is the market value, or otherwise as the Commissioner determines.

Origin: CI 3(11).  
Defined terms: Commissioner, market value.

**ND 1Q ‘Market value’ defined**

In sections ND 1N and ND 1P, **market value** means the lowest price, at the time at which the goods were provided to the employee, for which the identical goods were sold by the same person to arm’s length buyers in the open market in New Zealand in sales freely offered and made on ordinary trade terms.

Origin: CI 3(9)(a).  
Defined terms: employee, identical goods, market value, New Zealand, person.

**ND 1R ‘Identical goods’ defined**

In the fringe benefit tax rules, **identical goods** means other goods that are the same in terms of physical characteristics, quality, and reputation, except for minor differences in appearance that do not affect the value of the goods. For the purposes of section ND 1P, identical goods must be those that are manufactured, produced, or processed by the person providing them.

Origin: OB 1 ‘identical goods’.  
Defined terms: fringe benefit tax rules, identical goods.

**ND 1S Low-value goods: with staff discount**

*When this section applies*

- (1) This section applies to low-value goods that an employer sells in the normal course of their business to an employee when all the following apply:
- (a) the retail price of identical goods is \$200 or less; and
  - (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer normally provides to employees; and

- (c) at the time of the sale, the staff discount is not more than 5% of the price of identical goods to arm's length purchasers in the open market in New Zealand.

***Cost of goods to employer***

- (2) When this section applies, the goods are treated as having been sold at the cost price to the employer.

Origin:	(1) CI 2(6). (2) CI 2(6).
Defined terms:	business, employee, employer, employment, identical goods, New Zealand.

**ND 1T Low-value goods: with special discount and staff discount**

***When this section applies***

- (1) This section applies to low-value goods that an employer sells to an employee when all the following apply:
  - (a) the employer bought the goods or paid for them to be bought, dealing at arm's length with the supplier of the goods; and
  - (b) the price of the goods before any special discount that the employer normally offers to arm's length purchasers in the open market in New Zealand is \$200 or less; and
  - (c) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount to the employee that is in addition to the special discount; and
  - (d) at the time of the sale, a reasonable quantity of those goods is available in the open market in New Zealand for purchase at the special discount; and
  - (e) the price is at least 95% of the cost of the goods to the employer, or 95% of the price at the time of the sale of identical goods in the open market in New Zealand, whichever is less.

***Cost price***

- (2) When this section applies, goods are treated as having been sold at the cost price to the employer.

Origin:	(1) CI 2(5). (2) CI 2(5).
Defined terms:	employee, employer, identical goods, New Zealand.

**ND 1U Definitions for sections ND 1S and ND 1T**

*'Cost' and 'price' defined*

- (1) In sections ND 1S and ND 1T,—

**cost**, for a registered person who may claim input tax for the cost of the goods, means the GST-inclusive cost of the goods to the person

**price**, for a registered person who may claim input tax for goods provided to an employee, means the GST-inclusive price.

*Group companies*

- (2) For the purposes of sections ND 1S and ND 1T, if a company that is included in a group of companies sells goods to an employee of another company in the group, the sale is treated as if it were made direct from employer to employee.

Origin:	(1) CI 2(6A). (2) CI 2(7).
Defined terms:	company, cost, employee, employer, group of companies, input tax, price, registered person.

**ND 1V Minor unclassified benefits**

*Liability to tax*

- (1) An employer is liable to pay fringe benefit tax on a minor unclassified benefit only within the limits described in this section. In this section, an employer includes a person associated with the employer at any time in the relevant year.

*Quarterly total*

- (2) When fringe benefit tax is paid quarterly, an employer is liable for fringe benefit tax on an unclassified benefit provided in a quarter only if—
- (a) the total taxable value of all unclassified benefits provided in the quarter to an employee by the employer is more than \$75; or
  - (b) the total taxable value of all unclassified benefits provided in the quarter to all employees by the employer (whether accounted for on a quarterly or an income year basis) is more than \$450.

***Yearly total***

- (3) When fringe benefit tax is paid either annually or on an income year basis, an employer is liable for fringe benefit tax on unclassified benefits provided in the year or income year only if—
- (a) the total taxable value of all unclassified benefits provided in the year or income year to an employee by the employer is more than \$300; or
  - (b) the total taxable value of all unclassified benefits provided in the year or income year to all employees by the employer is more than \$1,800.

***Fraction or multiple of total***

- (4) When an employer accounts for fringe benefit tax on an income year basis, or when the period for which they have accounted under section ND 14 differs from an income year for the reasons described in subsection (5), an employer is liable for fringe benefit tax on unclassified benefits provided in the period only if—
- (a) the total taxable value of all unclassified benefits provided in the period to an employee by the employer is more than the figure that is the same fraction or multiple of \$300 as the number of days in the period is a fraction or multiple of 365; or
  - (b) the total taxable value of all unclassified benefits provided in the period to all employees by the employer is more than the figure that is the same fraction or multiple of \$1,800 as the number of days in the period is a fraction or multiple of 365.

***Period longer or shorter than income year***

- (5) In subsection (4), the period for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—
- (a) started or ceased business during that income year; or
  - (b) chosen (with the agreement of the Commissioner) to file a return under this subpart for the year ending with the date of the annual balance of their accounts.

Origin:	(1) CI 5(1). (2) CI 5(1). (3) CI 5(2). (4) CI 5(3). (5) CI 5(3).
Defined terms:	associated person, business, Commissioner, employee, employer, fringe benefit tax, income year, quarter, unclassified benefit, year.

## ND 1W Adjustments for minor benefits on amalgamation

### *Minor benefits*

- (1) If a company that is an employer ceases to exist through amalgamation, that company is allowed an adjustment for minor benefits in the period in which the amalgamation occurs.

### *Quarterly adjustment by amalgamating company*

- (2) If the amalgamating company pays fringe benefit tax quarterly, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$450 referred to in section ND 1V (2)(b) by an amount calculated using the formula—

$$\frac{450 \times \text{number of days in the quarter after amalgamation}}{\text{days in the quarter.}}$$

### *Quarterly adjustment by amalgamated company*

- (3) If an amalgamated company pays fringe benefit tax quarterly, and the amalgamated company is a new company established on amalgamation, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$450 referred to in section ND 1V (2)(b) by an amount calculated using the formula—

$$\frac{450 \times \text{number of days in the quarter before amalgamation}}{\text{days in the quarter.}}$$

### *Modification for yearly adjustment*

- (4) If the company pays fringe benefit tax annually, the formulas in subsections (2) and (3) apply as if the references were to—
- (a) a year instead of a quarter:
  - (b) the figure of \$1,800 referred to in section ND 1V (3)(b) instead of \$450.

Origin:	(1) CI 7. (2) CI 7(a). (3) CI 7(b). (4) CI 7(c).
Defined terms:	amalgamated company, amalgamating company, amalgamation, company, employer, fringe benefit tax, quarter, year.

## ND 1X Application

### *Crown*

- (1) The fringe benefit tax rules bind the Crown.

### *References*

- (2) The provisions of this Act and of the Tax Administration Act 1994 apply to fringe benefit tax as if it were income tax imposed under section BB 1 (Imposition of tax), and as if a reference to an income year

were a reference to a quarter or an income year, as required. But nothing in the fringe benefit tax rules should be construed to include fringe benefit tax in the words ‘income tax’ or ‘tax’ for the purposes of section OZ 1 (3)(a) to (o) (References to particular regimes in former Act, etc).

Origin:	(1) CI 10. (2) CI 8.
Defined terms:	fringe benefit tax, fringe benefit tax rules, income tax, income year, quarter, year of assessment.

**Section ND 3 (Attributed fringe benefits)**

Replace ‘private use or enjoyment’ by ‘private use’.

**Part O – Definitions and related matters**

**Section OB 2 (Meaning of source deduction payment—shareholder-employees of close companies)**

Replace ‘extra emolument’ by ‘extra pay’.

**Section OB 3 (2) (Meaning of ‘qualifying company’)**

Omit.

**Section OB 6 (1)(b) (Meaning of ‘income tax’)**

Add a reference to section CD 9 (Tax credits linked to dividends).

**Section OB 7 (Determination of ‘consideration’ if consideration for property is denominated in foreign currency)**

Omit.

**Section OC 2 (Energy trading operators)**

Omit.

**Section OC 4 (1) (Co-operative marketing companies—regulations)**

Replace ‘available subscribed capital per share’ by ‘available subscribed capital per share calculated under the slice rule’.

**Subpart OD (Control Interests, Associated Parties, etc)**

Replace subpart heading by—

*Control interests, associated parties, and nominees*

**Section OD 1 (2)(a) (Defining when a company is under the control of any persons)**

Omit.

**Section OD 3 (3)(b) (Voting interests)**

Omit.

**Section OD 4 (3)(b) (Market value interests)**

Omit.

**Section OD 7 (2)(a) (Defining when 2 persons are associated persons)**

Omit.

**Section OD 8 (3) (Further definitions of associated persons)**

Amend consequentially on the changes to the sections on international tax.

**Section OD 8 (5) (Further definitions of associated persons)**

Omit.

**New cross heading and section**

Insert—

*Nominees*

**OD 9 Nominees are transparent**

*Look-through nominees*

- (1) If a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored.

*'Nominee' defined*

- (2) A person holds or does something as a nominee for another person if the person acts on the other person's behalf. However, a trustee is a nominee only if the trustee is a bare trustee.

Origin:	(1) CG 3(a); OB 3(2); OD 3(3)(b); OD 4(3)(b); OD 7(2)(a). (2) OB 1 'nominee'.
Defined terms:	person.

**Section OE 3 (Non-resident may elect to be treated as resident)**

Omit.

**Section OE 4 (Classes of income deemed to be derived from New Zealand)**

Replace heading by—

*Classes of income treated as having a source in New Zealand*

**Section OE 4 (1) (Classes of income deemed to be derived from New Zealand)**

Replace opening words of subsection (1) by:

Subject to section FB 2 (Apportionment of income derived partly in New Zealand and partly elsewhere) and section OE 5, the following classes of income have a source in New Zealand:

Replace paragraph (o) by:

- (o) income that, under section EG 45 (Non-resident life insurers with life insurance policies in New Zealand), is treated as being derived from New Zealand:
- (oa) a premium that, under section FC 13 (Premiums derived by non-resident general insurers treated as being derived from New Zealand), is treated as being derived from New Zealand:

**Section OE 4 (2) (Classes of income deemed to be derived from New Zealand)**

Omit.

**Section OZ 1 (References to particular regimes in former Act, etc)**

Omit definition of 'life insurance rules'.

Omit definition of 'time bar'.

## Schedules

**Schedule 2 (Fringe Benefit Values)**

Replace 'private use or enjoyment' by 'private use'.

**Schedule 3 (International Tax Rules—Excluded Countries)**

- (a) replace the shoulder number by 'Sections EI 22 and EI 23'
- (b) replace 'Excluded Countries' in both places by 'Grey List Countries'.

**Schedule 4 (Foreign Entities)**

Replace by:

## SCHEDULE 4

### Foreign Investment Funds

#### PART A

**Section EI 29 (d)**

#### Entities Deemed to be Foreign Investment Funds

#### PART B

**Section EI 33 (1)(c)**

#### Foreign Entities Where Grey List Exemption Does Not Apply

## PART C

### Section EI 40(2)(h)

#### **Foreign Entities Where Accounting Profits Method May Not be Used**

##### **Schedule 6A (Specified types of entertainment)**

Omit.

##### **Schedule 7 (Expenditure on Land and Aquaculture Improvements)**

- (a) replace percentages in all parts by percentages multiplied by 1.2
- (b) replace ‘General description of expenditure’ by ‘Improvement’
- (c) replace ‘Percentage of diminished value of expenditure allowed as a deduction’ by ‘Percentage of diminished value of improvement allowed as a deduction’
- (d) make the order of the parts in the schedule reflect the order of the sections referring to the parts
- (e) Part A
  - (i) omit the following:
    - item 1 - the words ‘animal or’
    - item 2
    - item 3
    - item 9
    - item 13
  - (ii) make these amendments—
    - item 4 – replace ‘clause’ by ‘item’
    - item 8 – replace ‘primarily’ by ‘mainly’
    - item 12 – replace ‘primarily and principally’ by ‘mainly’
      - add ‘(see section DO 6 (Certificates as to purposes of planting))’ after ‘production’
- (f) Part B
  - replace items 5 and 6 by:
    - 5. The construction of roads to or on the land (including any culverts and bridges necessary for the construction), when the roads are formed and wholly or substantially metalled or sealed.
    - 6. The construction of roads to or on the land (including any culverts and bridges necessary for the construction), when the roads—
      - (a) are not access tracks for which a deduction may be allowed under section DP 3 (b) (Specific kinds of forestry expenditure); and

- (b) are 1 of the following:
  - (i) roads that are formed and partially metalled or sealed:
  - (ii) roads that are not metalled or sealed.

**Schedule 19 (Basic Tax Deductions)**

Clause 8 – replace ‘extra emolument’ by ‘extra pay’.

**Tax Administration Act 1994**

Review the Tax Administration Act 1994 for cross references and for provisions that were part of rewritten segments in the 1976 Act, or now relate to them, and that also need to be rewritten.

**Section 14**

Replace by—

**14 Giving of notices by Commissioner**

*When this section applies*

- (1) This section applies when this Act or any other Act requires the Commissioner to give a notice to a person.

*Notice in writing*

- (2) The Commissioner must give the notice in writing.

*To whom notice to be given*

- (3) The Commissioner must give the notice to—
  - (a) the person; or
  - (b) a representative authorised to act on behalf of the person.

*Methods*

- (4) The Commissioner must use one of the following methods to give the notice:
  - (a) delivery to the addressee; or
  - (b) post to the addressee’s usual or last known place of residence;  
or
  - (c) post to the addressee’s usual or last known place of business or, if there are several of them, to any of them; or
  - (d) fax to the addressee; or
  - (e) an electronic means of delivery, other than fax, to the addressee.

***Delivered notice***

- (5) A notice to a corporate body is treated as having been delivered to it only if the delivery is made to its offices during working hours.

***Posted notice***

- (6) A posted notice is treated as having been delivered at the time it would have been delivered in the ordinary course of post. For the purposes of proving delivery,—
- (a) it is sufficient to prove that the notice was properly addressed; and
  - (b) the notice is presumed to have been posted on the day on which it was dated. This paragraph applies in the absence of proof to the contrary.

***Faxed notice***

- (7) A faxed notice, or a notice given by an electronic means other than fax, is treated as having been delivered on the day after the day on which it is sent. For the purposes of proving delivery, it is sufficient to prove that a correct machine-generated acknowledgment of receipt exists. This subsection applies in the absence of proof to the contrary.

***Relationship with other provisions***

- (8) A provision in this Act or any other Act that deals specifically with a matter dealt with in a provision in this section overrides the provision in this section.

Origin:	(1) section 14(1). (2) section 14(1). (3) section 14(1). (4) section 14(1). (5) section 14(1); ITA 1994, OB 1, 'notice'. (6) section 14(1). (7) section 14(2). (8) section 14(1).
Defined terms:	Commissioner, person.

**14A Giving of notices to Commissioner**

***When this section applies***

- (1) This section applies when this Act or any other Act requires a person to give a notice to the Commissioner.

***Notice in writing***

- (2) The person must give the notice in writing.

***To whom notice to be given***

- (3) The person may give the notice to any office of the department.

***Methods***

- (4) The person may use one of the following methods to give the notice:
- (a) delivery to the addressee; or
  - (b) post to the addressee's usual or last known place of business; or
  - (c) fax to the addressee; or
  - (d) an electronic means of delivery, other than fax, to the addressee.

***Delivered notice***

- (5) A notice is treated as having been delivered only if the delivery is made during working hours.

***Posted notice***

- (6) A posted notice is treated as having been delivered at the time it would have been delivered in the ordinary course of post. For the purposes of proving delivery,—
- (a) it is sufficient to prove that the notice was properly addressed; and
  - (b) the notice is presumed to have been posted on the day on which it was dated. This paragraph applies in the absence of proof to the contrary.

***Faxed notice***

- (7) A faxed notice, or a notice given by an electronic means other than fax, is treated as having been delivered on the day after the day on which it is sent. For the purposes of proving delivery, it is sufficient to prove that a correct machine-generated acknowledgment of receipt exists. This subsection applies in the absence of proof to the contrary.

***Relationship with other provisions***

- (8) A provision in this Act or any other Act that deals specifically with a matter dealt with in a provision in this section overrides the provision in this section.

Origin:	(1) new.
	(2) new.
	(3) new.
	(4) new.
	(5) new.
	(6) new.
	(7) new.
	(8) new.
Defined terms:	Commissioner, person.

**14B Giving of notices to other persons**

*When this section applies*

- (1) This section applies when this Act or the Income Tax Act 1994 requires a person to give a notice to a person other than the Commissioner.

*Notice in writing*

- (2) The person must give the notice in writing.

*Methods*

- (3) The person may use one of the following methods to give the notice:
- (a) delivery to the addressee; or
  - (b) post to the addressee's usual or last known place of residence; or
  - (c) post to the addressee's usual or last known place of business or, if there are several of them, to any of them; or
  - (d) fax to the addressee; or
  - (e) an electronic means of delivery, other than fax, to the addressee.

*Delivered notice*

- (4) A notice to a corporate body is treated as having been delivered to it only if the delivery is made to its offices during working hours.

*Posted notice*

- (5) A posted notice is treated as having been delivered at the time it would have been delivered in the ordinary course of post. For the purposes of proving delivery,—
- (a) it is sufficient to prove that the notice was properly addressed; and
  - (b) the notice is presumed to have been posted on the day on which it was dated. This paragraph applies in the absence of proof to the contrary.

*Faxed notice*

- (6) A faxed notice, or a notice given by an electronic means other than fax, is treated as having been delivered on the day after the day on which it is sent. For the purposes of proving delivery, it is sufficient to prove that a correct machine-generated acknowledgment of receipt exists. This subsection applies in the absence of proof to the contrary.

*Relationship with other provisions*

- (7) A provision in this Act or any other Act that deals specifically with a matter dealt with in a provision in this section overrides the provision in this section.

Origin:	(1) new.
	(2) new.
	(3) new.
	(4) new.
	(5) new.
	(6) new.
	(7) new.
Defined terms:	Commissioner, person.

**Sections 90 to 90AE**

Amend sections 90 to 90AE consequentially on the changes to the sections on financial arrangements.

**Section 91 (1)**

Insert new subsection—

- (1A) For the purposes of subsection (1)(f), the Crown Minerals Act 1991 is used to determine by analogy the equivalents in the context of the relevant foreign regime for the licensing and conduct of petroleum mining operations of—
- (a) obtaining a permit; or
  - (b) determining whether or when a permit has been relinquished; or
  - (c) interpreting other relevant documents or matters relating to the licensing and conduct of petroleum operations.

**New cross headings and sections 91AA to 91AJ—**

Insert—

*Determinations relating to depreciation*

**91AA Determination on maximum pooling value**

*Application for determination*

- (1) A person may apply, in writing, to the Commissioner for the issue of a determination allowing them a maximum pooling value for an item of depreciable property greater than that currently available to them.

*Factors*

- (2) When determining whether or not to grant an application, the Commissioner must have regard to the following factors:
- (a) whether or not items of the kind concerned are relatively homogeneous in nature;
  - (b) whether or not the person's compliance costs will be materially reduced by pooling items of the kind concerned;
  - (c) the frequency with which the person acquires and disposes of items of the kind concerned.

**Issue**

- (3) The Commissioner may issue the determination after having regard to the factors in subsection (2).

Origin:	(1) EG 11(6). (2) EG 11(7). (3) EG 11(6).
Defined terms:	Commissioner, depreciable property, maximum pooling value, person.
Comment:	The Commissioner's current power to issue determinations setting a maximum pooling value above \$2,000 has been retained. It is not a 'self-assessment' determination.

**91AB Determination setting economic rate**

***One or both rates***

- (1) Having followed the procedure in section EF 25 (Economic rate) of the Income Tax Act 1994, the Commissioner may set in a determination—
- (a) only the diminishing value rate for the kind of item; or
  - (b) both the diminishing value rate and the straight-line rate for the kind of item.

***Contents of determination***

- (2) An economic rate set in a determination may be expressed to apply in any way, including—
- (a) to items of a kind, whenever they are acquired or used; or
  - (b) to items of a kind, having regard to—
    - (i) the date on which, or income year in which, a particular person acquired or used such an item; or
    - (ii) the date on which, or income year in which, any person first acquired or used such an item; or
    - (iii) whether or not such an item has been used before in New Zealand or elsewhere or has been available for use before in New Zealand or elsewhere.

This subsection is overridden by subsection (3).

***No lowering of rate***

- (3) A determination setting an economic rate cannot be expressed to apply to an item of depreciable property that—
- (a) is already subject to a higher economic rate under an existing determination; and
  - (b) is acquired—
    - (i) before the date on which the new determination is issued; or

- (ii) after the date on which the new determination is issued, under a binding contract entered into before that date.

This subsection is overridden by subsection (4).

***Exception to rule that rate cannot be lowered***

- (4) A determination setting an economic rate can be expressed to apply to an item of depreciable property that—
  - (a) is already subject to a higher economic rate under an existing determination; and
  - (b) is reacquired, after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued.

Origin:	(1) EG 4(2). (2) EG 4(6). (3) EG 4(7). (4) EG 4(7).
Defined terms:	Commissioner, depreciable property, diminishing value rate, economic rate, income year, New Zealand, person, straight-line rate.

**91AC Determination setting special rates and provisional rates**

***Person applying for determination***

- (1) A person may apply, in writing, to the Commissioner for the issue of a determination allowing the person to use for an item, for a specified tax year or years,—
  - (a) a special rate higher or lower than the economic rate set in a determination under section 91AB; or
  - (b) a provisional rate, when no applicable economic rate is set in a determination under section 91AB.

***Factors***

- (2) When determining whether or not to grant an application for a special rate or a provisional rate, the level of any such rate, and the tax year or years to which it applies, the Commissioner must have regard to—
  - (a) the formula in section EF 25 (4) (Economic rate) of the Income Tax Act 1994; and
  - (b) the rate of depreciation (if any) that the person uses for the item for financial reporting purposes.

***Commissioner setting special rate***

- (3) The Commissioner may issue a determination setting a special rate after having regard to the factors in subsection (2).

***Commissioner setting provisional rate***

- (4) The Commissioner may issue a determination setting a provisional rate after doing the following:
- (a) determining a figure having regard to the factors in subsection (2); and
  - (b) rounding the figure up or down to the nearest rate specified in schedule 11 of the Income Tax Act 1994.

***Scope of determination***

- (5) A determination setting a provisional rate for an item and a person may also be expressed to apply to—
- (a) items of the same kind as the item;
  - (b) any other person or class of persons.

***When determination ceases to apply***

- (6) A determination setting a provisional rate ceases to apply to the item and the person, or any other person, at the time at which an economic rate set under section 91AB for that kind of item comes into force, unless the determination specifically provides that it does not cease to apply.

Origin:	(1) EG 10(1). (2) EG 10(2). (3) new. (4) EG 10(3). (5) EG 10(5). (6) EG 10(5).
Defined terms:	Commissioner, economic rate, person, provisional rate, special rate, tax year.

**91AD Commissioner may decline to issue special rate or provisional rate**

***When declining to issue***

- (1) The Commissioner may decline to issue a determination under section 91AC when,—
- (a) for an application for a special rate, one of the circumstances described in subsection (2) exists;
  - (b) for an application for a provisional rate, one of the circumstances described in subsection (3) exists.

***Circumstances for declining special rate***

- (2) For the purposes of subsection (1)(a), the circumstances are as follows:
- (a) an appropriate special rate would not differ from the economic rate already applicable to the item by an amount equal to or more than 50% of the amount by which the next highest or lowest, as applicable, rate in schedule 11 of the Income Tax Act 1994 is more or less than the already applicable economic rate; or
  - (b) the Commissioner is reviewing the economic rate applicable to the item and will set a new economic rate equal to or more than an appropriate special rate within 6 months of the Commissioner receiving the person's application for a special rate; or
  - (c) the person has supplied insufficient information to enable the Commissioner to calculate an appropriate rate.

***Circumstances for declining provisional rate***

- (3) For the purposes of subsection (1)(b), the circumstances are as follows:
- (a) an economic rate already applies to the item; or
  - (b) the Commissioner is in the process of determining an economic rate applicable to the item for the tax year to which the application relates and will set it within 6 months of the Commissioner receiving the person's application for a provisional rate; or
  - (c) the person has supplied insufficient information to enable the Commissioner to calculate an appropriate rate.

Origin:	(1) EG 10(4). (2) EG 10(4). (3) EG 10(4).
Defined terms:	Commissioner, economic rate, person, provisional rate, special rate, tax year.

**91AE Effect on special rate of change in circumstances**

***When this section applies***

- (1) This section applies when—
- (a) the Commissioner has issued a determination setting a special rate for a person's item of depreciable property; and
  - (b) the circumstances that applied at the time the determination was issued—
    - (i) no longer exist; or
    - (ii) have changed materially.

***Commissioner revoking determination***

- (2) The Commissioner may—
- (a) revoke the determination without issuing a new determination;  
or
  - (b) revoke the determination and issue a new determination setting a new special rate for the item.

***Effect of revocation***

- (3) If the Commissioner revokes the determination without issuing a new determination, the person must depreciate the item applying the economic rate or an applicable provisional rate.

***When revocation takes effect***

- (4) A revocation takes effect—
- (a) if notice of the revocation is given to the person under section 91AH (5), on the day after the date of the notice; or
  - (b) if the notice is published in the *Gazette*, on the day after the date of the publication.

Origin:	(1) EG 10(6). (2) EG 10(6). (3) EG 10(6). (4) EG 10(7).
Defined terms:	Commissioner, depreciable property, economic rate, notice, person, provisional rate, special rate.

**91AF Disputing or challenging determination**

***Persons to whom section applies***

- (1) This section applies to—
- (a) a person who applied for a determination under section 91AC;  
or
  - (b) a person to whom a determination made under section 91AC applies through the operation of section 91AC (5)(b).

***Disputing or challenging determination***

- (2) The person may dispute or challenge the determination under Parts IVA and VIIIA.

***Application of Part VIII***

- (3) Part VIII, except section 125, applies with any necessary modifications to the dispute or challenge in the same manner and to the same extent as if the dispute or challenge were an objection made under section 126.

Origin:	(1) EG 10(8). (2) EG 10(8). (3) EG 10(9).
Defined terms:	person.

#### **91AG Notice of setting of economic rate**

Within 30 days of issuing a determination under section 91AB, the Commissioner must publish a notice in the *Gazette* that—

- (a) gives notice that the determination has been issued; and
- (b) states where copies of it can be obtained.

Origin:	EG 14(2)(b).
Defined terms:	Commissioner.

#### **91AH Applications for determinations**

##### ***Making an application***

- (1) A person making an application for a determination under section 91AC must make it in accordance with—
  - (a) the procedures, if any, prescribed by regulations made under section 225; or
  - (b) the procedures prescribed by the Commissioner, if the regulations do not provide for the person's case or if no regulations have been made.

##### ***Time for response***

- (2) Within 6 months of receiving an application, the Commissioner must respond to it by—
  - (a) issuing the determination; or
  - (b) deciding to decline to issue a determination.

##### ***Notice to person of issue or non-issue***

- (3) Within 30 days of issuing a determination or deciding to decline to issue a determination, the Commissioner must give to the person—
  - (a) notice of the decision; and
  - (b) either—
    - (i) a copy of the determination; or
    - (ii) the reasons for declining to issue the determination.

***Notice in Gazette of issue under section 91AC (4)***

- (4) Within 30 days of issuing a determination under section 91AC (4) that is expressed to apply to a class of persons, the Commissioner must publish a notice in the *Gazette* that—
- (a) gives notice that the determination has been issued; and
  - (b) states where copies of it can be obtained.

***Notice of revocation***

- (5) Within 30 days of revoking a determination under section 91AE(2), the Commissioner must give the person who applied for the determination notice of—
- (a) the decision; and
  - (b) the reasons for revoking the determination.

***Notice to person's representative***

- (6) If a representative of a person applies for a determination, the Commissioner gives the notice referred to in subsection (3) or subsection (5) to the representative.

Origin:	(1) EG 13. (2) EG 14(1). (3) EG 14(2). (4) EG 14(2). (5) EG 14(2). (6) EG 14(2).
Defined terms:	Commissioner, notice, person.

*Determinations relating to livestock*

**91AI Publication and revocation of determinations relating to livestock**

***Publication in Gazette***

- (1) A determination issued under section ED 16 (Setting national average market values), section ED 18 (Determination of national standard cost by Commissioner), or section ED 19 (Methods for determining costs using national standard cost scheme) of the Income Tax Act 1994 must be published in the *Gazette* no later than 30 days after it has been signed by the Commissioner.

***When determinations revoked***

- (2) If the Commissioner revokes a determination made under section ED 16 (Setting national average market values), section ED 18 (Determination of national standard cost by Commissioner), or section ED 19 (Methods for determining costs using national standard

cost scheme) of the Income Tax Act 1994, and substitutes a new determination, that new determination does not apply for an income year that ends on or before the day 30 days before the day on which the new determination is published in the *Gazette*.

Origin:	(1) EL 3A(2), (3); EL 4(7), (8); EL 8(2), (3). (2) EL 3A(2), (3); EL 4(7), (8); EL 8(2), (3).
Defined terms:	Commissioner, income year.

*Determinations relating to prepayments*

**91AJ Exemptions from the rule in section EB 3 (Prepayments and certain deferred payments)**

*Commissioner's discretion*

- (1) For the purposes of section EB 3 (Prepayments and certain deferred payments) of the Income Tax Act 1994, the Commissioner may determine whether and the extent to which a person is not required to comply with section EB 3 in relation to an unexpired portion expenditure (except expenditure on employment income for services that have been performed), having regard to—
- (a) the nature and amount of the kinds of expenditure that the person regularly incurs:
  - (b) the nature and size of the activity giving rise to the expenditure that the person incurs:
  - (c) the costs of the person in complying with section EB 3:
  - (d) whether, for the person and the expenditure, the difference between expenditure incurred under section EB 3 and expenditure that would be allowed as a deduction if the Commissioner were to exercise the discretion under this section is not material.

*Cancellation*

- (2) The Commissioner may cancel a determination under this section at any time.

*Class of persons*

- (3) In this section, a reference to a person includes a class of persons.

Origin:	(1) EF 1(3). (2) EF 1(4). (3) EF 1(3).
Defined terms:	Commissioner, employment income, incurred, person.

**Sections 61 and 183**

Amend sections 61 and 183 consequentially on the changes to the sections on international tax.

**Section 108**

Insert a new subsection (3B)—

- (3B) Despite subsection (3), this section does not apply to an assessment or income statement to the extent to which it merely gives effect to section CD 10 (5) of the Income Tax Act 1994 (Non-cash benefits of shareholder-employees or directors).

Origin:	CF 6(5).
Defined terms:	assessment, dividend, income statement.

**New sections 113A and 113B**

Insert new sections after section 113—

**113A Amended assessments if dividend recovered or repaid**

*When this section applies*

- (1) This section applies if—
- (a) a company recovers a dividend from a shareholder under section 56 of the Companies Act 1993 or an equivalent provision of foreign law; or
  - (b) the release of a debt is treated as a dividend and the released amount is repaid; or
  - (c) close company expenditure to which section CD 28 (2) (Adjustment if amount repaid later) of the Income Tax Act 1994 applies is treated as a dividend and the expenditure is repaid; or
  - (d) a loan made before 1 April 1992 was treated as a dividend under section 4 (1)(b) of the Income Tax Act 1976 and the loan is repaid.

*Amendment of assessments*

- (2) If the Commissioner is given notice of the recovery or repayment, the Commissioner must amend each relevant assessment to the extent necessary to ensure that the dividend and any attached imputation credit or dividend withholding payment credit are disregarded.

*Time bar*

- (3) This section applies despite the time bar.

Origin:	(1) CF 2(8)(a)(i). (2) CF 2(8)(a)(i). (3) CF 2(8)(a)(i).
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Defined terms: close company, Commissioner, company, dividend, dividend withholding payment credit, imputation credit, notice, shareholder, time bar.
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**113B Amended assessments for attributed repatriation dividends**

*When this section applies*

- (1) Subsection (2) applies if—
- (a) a person has derived a dividend from a controlled foreign company (CFC) under section CD 11 (Attributed repatriations from CFCs); and
  - (b) a financial arrangement of the CFC has matured with 5 years of the date on which it was entered into, or an amount owing under the financial arrangement has been remitted or released giving rise to a dividend; and
  - (c) a person has notified the Commissioner in writing of the maturity or dividend described in paragraph (c); and
  - (d) as a result,—
    - (i) section CD 26 (13) (Calculation of dividend amount of property made available) ceases to apply; and
    - (ii) section CD 37 (11) (Outstanding balances of financial arrangements) requires the financial arrangement or amount remitted or released to be disregarded when attributed repatriation dividends from the CFC are calculated.

*Amendment of assessments*

- (2) The Commissioner must amend each relevant assessment to give effect to section CD 26 (13) (Calculation of dividend amount of property made available) and section CD 37 (11) (Outstanding balances of financial arrangements) despite the time bar.

Origin:	(1) CF 2 (17)(d). (2) CF 2 (17)(d).
Defined terms:	amount, attributed repatriation, CFC, Commissioner, controlled foreign company, dividend, financial arrangement, maturity, person, time bar.

**Other enactments**

When drafters are preparing the consequential amendments, they will carry out a comprehensive search for references in other enactments to the Income Tax Act 1994. Some references that have already been found are—

**Holidays Act 1981** – replace ‘in terms of paragraph (a)(iii) of the definition of “monetary remuneration” in section OB 1 of the Income Tax Act 1994’ in section 5.

**Holidays Act 1981** – replace ‘section CB 12 of the Income Tax Act 1994’ in section 6.

**Petroleum Sector Reform Act 1988** – replace ‘qualified accruals rules’ in section 3 (1).

**Tarawera Forest Act 1967** – replace ‘section DL 5 of the Income Tax Act 1994’ in section 16.

### Issues papers

The issues papers recommended that certain provisions should not be included in the rewrite. Submissions were made on the issues papers. The issues papers and the submissions have been considered, and the conclusion is that the provisions listed below should not be included. When drafters are preparing the consequential amendments, they will check to ensure that the provisions are not included. The provisions are—

CB 1 (1)(a)	issues paper 1
CB 1 (1)(c) (except farm vendor finance mortgages)	issues paper 1
CB 3 (d)	issues paper 1
CB 5 (1)(d)	issues paper 1
CC 2	issues paper 2
CC 3	issues paper 1
CK 2	issues paper 1
CN 3 (2)	issues paper 2
CZ 1 (3)	issues paper 1
CZ 3	issues paper 1
CZ 4 (1) and (2)	issues paper 1
CZ 6 (except (c)(vi) and (d)(vii))	issues paper 2
DF 3 (2)	issues paper 1
DI 1 (b) and (c) and (2)	issues paper 2
DZ 1	issues paper 1
DZ 2	issues paper 1
DZ 3	issues paper 1
DZ 4	issues paper 1
EB 3	issues paper 2
EJ 2	issues paper 2
EZ 1	issues paper 1
EZ 2	issues paper 1
EZ 3	issues paper 1
EZ 7	issues paper 1
EZ 8	issues paper 1
IE 1 (4)	issues paper 2
OC 2	issues paper 1