

## **Subpart FE - Interest apportionment on thin capitalisation**

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### *Introductory provisions*

#### **FE 1 What this subpart does**

##### *Interest apportionment*

- (1) This subpart applies, subject to its express provisions,—
- (a) to apportion certain interest expenditure between income derived from New Zealand and other income for a New Zealand taxpayer who—
    - (i) is controlled by a single non-resident; and
    - (ii) has a disproportionately high level of debt funding in relation to their worldwide interest expenditure; and
  - (b) to prescribe an acceptable level of equity for a foreign-owned bank for the application of the interest apportionment rules.

##### *Structure of subpart*

- (2) This subpart sets out—
- (a) the persons to whom the interest apportionment rules may apply:
  - (b) the thresholds for the application of the rules:
  - (c) the consequences of application of the rules:
  - (d) how to calculate the debt percentages of a New Zealand group and a worldwide group:
  - (e) how to calculate a reporting bank's New Zealand equity threshold, net equity, and funding debt:
  - (f) how to determine the membership of a New Zealand group, a worldwide group, and a New Zealand banking group:
  - (g) how to measure ownership interests in companies for the purposes of this subpart.

Defined in this Act: income, income derived from New Zealand, interest, New Zealand, New Zealand banking group, non-resident, reporting bank, taxpayer

Origin: (1) FG 1  
(2) new

**FE 2 When this subpart applies*****Persons to whom interest apportionment rules may apply***

- (1) The interest apportionment rules in sections FE 6 and FE 7 may apply to the following persons if, at a time in an income year, they are:
- (a) a non-resident who is not a company:
  - (b) a non-resident company unless the company is 1 in which—
    - (i) a person resident in New Zealand has a direct ownership interest of 50% or more; and
    - (ii) no non-resident has a direct ownership interest of 50% or more, when added to any direct ownership interests of all persons associated with them:
  - (c) a company that is resident in New Zealand if a non-resident has—
    - (i) an ownership interest in the company of 50% or more:
    - (ii) control of the company by any other means, whether or not in conjunction with the persons associated with the non-resident:
  - (d) the trustee of a non-qualifying trust settled by a non-resident if the value of the settlements made by them (including the value of all settlements made by a person associated with them) are 50% or more of the value of the settlements made on the trust.

***Ownership interests***

- (2) Ownership interests in a company are determined under sections FE 38 to FE 41.

***Treatment of foreign companies***

- (3) For the purposes of this section, a company resident in New Zealand is treated as being a non-resident company if it is treated under a double tax agreement as not being resident in New Zealand.

***Associated persons***

- (4) For the purposes of subsection (1)(b)(ii), a non-resident who does not have a direct or an indirect ownership interest in a company and a relative resident in New Zealand are not associated persons in relation to the company.

Defined in this Act: associated person, company, control, income year, interest, New Zealand, non-qualifying trust, non-resident, non-resident company, relative, resident in New Zealand, settlement, trustee

Origin:	(1)	FG 2(1), (7)
	(2)	new
	(3)	FG 2(8)
	(4)	FG 2(6)

### **FE 3 Interest apportionment for individuals**

#### *Natural person who is not a trustee*

- (1) This subpart applies to a natural person who is not a trustee, with the following modifications:
- (a) the person's New Zealand group is made up only of the person; and
  - (b) in the calculation of the amount of the person's total assets, private and domestic assets are excluded.

#### *Trustees*

- (2) For the purposes of section FE 2(1)(d), this subpart applies to a trustee with the following modifications:
- (a) the trustee's New Zealand group is made up of the trustee and all associated persons who are resident in New Zealand, or carrying on business in New Zealand through a fixed establishment in New Zealand;
  - (b) the debt percentage is calculated by determining the total group debt and total group assets of the members of the trustee's New Zealand group on a consolidated basis equivalent to the generally accepted accounting practice for the consolidation of a group of companies for the purposes of eliminating intra-group balances.

Defined in this Act: amount, associated person, business, fixed establishment, generally accepted accounting practice, group of companies, natural person, New Zealand, resident in New Zealand, total group assets, total group debt, trustee

Origin: (1) FG 4(15)  
(2) FG 4(16)

### **FE 4 Some definitions**

In this subpart,—

- (a) an **excess debt entity** for an income year is a person who—
  - (i) meets the requirements of section FE 2 in the income year; and
  - (ii) is not, at any time in the income year, a reporting bank for a New Zealand banking group, or part of a New Zealand banking group; and
  - (iii) is not an natural person other than a person acting as a trustee:
- (b) a **reporting bank** for an income year for a New Zealand banking group is a person who—
  - (i) meets the requirements of section FE 2 in the income year; and
  - (ii) is the registered bank in the banking group, unless the circumstances set out in section FE 36 apply.

- (c) a **natural person** for an income year is a natural person who—
  - (i) meets the requirements of section FE 2 in the income year; and
  - (ii) is a person who is not acting as a trustee.

Defined in this Act: excess debt entity, income year, natural person, New Zealand, New Zealand banking group, registered bank, reporting bank, trustee

Origin: new

### *Interest apportionment rules*

#### **FE 5 Thresholds for application of interest apportionment rules**

##### *Threshold for excess debt entity*

- (1) An excess debt entity must apportion its interest expenditure for an income year under section FE 6 if the debt percentage of its New Zealand group for the income year—
  - (a) is more than 75%; and
  - (b) for a company or a trustee, is also more than 110% of the debt percentage of the worldwide group.

##### *Threshold for reporting bank*

- (2) A reporting bank must apportion its interest expenditure for an income year under section FE 7 if—
  - (a) the New Zealand net equity of its New Zealand banking group for a tax year is less than its equity threshold; and
  - (b) its group funding debt for the tax year is more than zero.

##### *Threshold for natural person*

- (3) A natural person must apportion their interest expenditure for an income year under section FE 6 if their New Zealand group debt percentage is more than 75%.

##### *Debt percentages*

- (4) The debt percentage of a New Zealand group is calculated under sections FE 14 to FE 16. The debt percentage of a worldwide group is calculated under sections FE 17 and FE 18.

##### *Equity threshold, net equity, group funding debt*

- (5) The calculations that a reporting bank must make for the purposes of section FE 7 are set out as follows:

- (a) for the banking group's equity threshold, see section FE 19:
- (b) for the banking group's net equity, see section FE 21:
- (c) for the banking group's funding debt, see section FE 23.

Defined in this Act: company, excess debt entity, group funding debt, income year, interest, natural person, New Zealand, New Zealand banking group, New Zealand net equity, reporting bank, tax year, trustee

Origin:	(1)	FG 3(1)
	(2)	FG 3(2)
	(3)	FG 3(1)
	(4)	new
	(5)	new

## FE 6 Apportionment of interest by excess debt entity

### *When this section applies*

- (1) This section applies to an excess debt entity if the debt percentage of its New Zealand group for an income year is more than the threshold set out in section FE 5(1). This section overrides sections DA 1, and DB 6 to DB 8 (which relate to deductions for interest expenditure).

### *No deduction*

- (2) The excess debt entity is denied a deduction under section DB 8B(2) (Interest expenditure by excess debt entity or reporting bank) for interest incurred to the extent of the amount calculated under subsection (3), which is treated as expenditure not allocated to income derived from New Zealand.

### *Formula*

- (3) The amount is calculated using the formula—

$$\text{total deduction} \times \frac{\text{group's total debt} - \text{concession}}{\text{group's total debt}} \times \frac{\text{group debt percentage} - \text{threshold amount}}{\text{group debt percentage}}$$

### *Items in formula*

- (4) In the formula,—
  - (a) **total deduction** is the whole amount of the excess debt entity's deduction for interest to which any of sections DB 6 to DB 8 applies less, as applicable,—
    - (i) an amount allowed in relation to interest payable to a company that is a member of the entity's New Zealand group under sections FE 14(2) and FE 28, but this does not include an amount referred to in subparagraph (ii); and
    - (ii) an amount of interest payable under a financial arrangement that is not income of the entity and is excluded from the total group debt of its New Zealand group under section FE 15:

- (b) **group's total debt** is the whole amount of the debt of the excess debt entity's New Zealand group for the income year as calculated under section FE 15, before allowing for a reduction under section FE 13:
- (c) **concession** is any reduction allowed under section FE 13 in the total group debt of the excess debt entity's New Zealand group for the income year (averaged when section FE 8(1)(a) or (b) applies):
- (d) **group debt percentage** is the debt percentage of the excess debt entity's New Zealand group for the income year:
- (e) **threshold amount** is, as applicable,—
  - (i) if the excess debt entity is a company or trustee, the greater of 75% and 110% of the debt percentage of their worldwide group:
  - (ii) if the person is a natural person who is not a trustee, 75%.

Defined in this Act: amount, company, deduction, excess debt entity, financial arrangement, income, income derived from New Zealand, income year, interest, natural person, New Zealand, pay, total group debt, trustee

Origin:	(1)	FG 8(1)
	(2)	FG 8(1)
	(3)	FG 8(1)
	(4)	FG 8(1)

## **FE 7 Apportionment of interest by reporting bank**

### ***When this section applies***

- (1) This section applies to a reporting bank if, at the relevant measurement date referred to in section FE 8(3),—
  - (a) the New Zealand net equity of its New Zealand banking group for a tax year is less than its equity threshold; and
  - (b) its group funding debt for the tax year is more than zero.

### ***Relationship with deduction provisions***

- (2) This section overrides sections DA 1, and DB 6 to DB 8 (which relate to deductions for interest expenditure).

### ***Deduction: formula***

- (3) A reporting bank is allowed a deduction under section DB 8B(3) (Interest expenditure by excess debt entity or reporting bank) for interest incurred to the extent of the amount calculated using the formula—

annual total deduction - interest shortfall.

### ***Definition of items in formula***

- (4) In the formula in subsection (3),—
  - (a) **annual total deduction** is the annual total deduction for the tax year that the reporting bank would have but for this section;



- (b) **interest shortfall** is the total amount of the adjustments for the tax year calculated under subsection (5).

***Interest shortfall: formula***

- (5) The amount of the interest shortfall referred to in subsection (4)(b) is calculated using the formula—

$$\frac{\text{net equity below threshold}}{\text{group funding debt}} \times \frac{\text{interest expenditure}}{\text{days in period}} \times \frac{\text{days in period}}{\text{days in year}}$$

***Definition of items in formula***

- (6) In the formula in subsection (5),—
- (a) **net equity below threshold** is amount by which the New Zealand net equity for the New Zealand banking group is less than the equity threshold under section FE 19:
- (b) **interest expenditure** is the financial value for the New Zealand banking group of interest expenditure measured under generally accepted accounting practice that is incurred—
- (i) by a member of the New Zealand banking group in the corresponding income year; and
- (ii) other than in relation to a share that contributes to the item **total interest** in the formula in section FE 23, or is a deduction referred to in the definition of the item **interest deductions** in that section:
- (c) **group funding debt** is the group funding debt for the New Zealand banking group for the tax year:
- (d) **days in period** is the number of days in the relevant measurement period:
- (e) **days in year** is the number of days in the income year.

***Apportionment of interest shortfall***

- (7) If the annual total deduction for a reporting bank must be apportioned under this Act between parts of an income year, the interest shortfall for a measurement period is attributed to the part of the income year in which the measurement period falls.

Defined in this Act: amount, corresponding income year, deduction, financial value, generally accepted accounting practice, group funding debt, income year, interest, measurement period, New Zealand, New Zealand banking group, New Zealand net equity, reporting bank, share, tax year, this Act

- Origin:
- (1) FG 8B(1), (2), (4), (5)
- (2) new
- (3) FG 8B(1)
- (4) FG 8B(2)
- (5) FG 8B(3)
- (6) FG 8B(3)
- (7) FG 8B(5)

## **FE 8 Measurement dates**

### ***Daily, 3-monthly, or annual basis for excess debt entity***

- (1) An excess debt entity must measure the amount of total group debt and total group assets of its New Zealand group for an income year on 1 of the following dates:
- (a) the average amount at the end of each day of the income year; or
  - (b) the average amount at the end of each 3-month period in the income year; or
  - (c) the amount at the end of the income year.

### ***Different balance dates***

- (2) For the purposes of subsection (1), if the members of the entity's New Zealand group do not have the same balance date, the alternatives in subsection (1) apply as if the entity has the same balance date as that of the New Zealand parent.

### ***Daily, monthly, or quarterly for reporting bank***

- (3) A reporting bank must measure both the equity threshold and the net equity of its New Zealand banking group for an income year on 1 of the following dates:
- (a) each day of the income year; or
  - (b) the last day of each calendar month of the income year; or
  - (c) if the reporting bank does not choose either paragraph (a) or (b), the last day of each quarter of an income year.

### ***Change in identity of reporting bank***

- (4) If the identity of the reporting bank changes, the first measurement date for the new reporting bank is the day after the last measurement date of the former reporting bank.

Defined in this Act: amount, excess debt entity, income year, New Zealand, New Zealand banking group, quarter, reporting bank, total group assets, total group debt

Origin:	(1)	FG 4(5)
	(2)	FG 4(6)
	(3)	FG 8E(1)
	(4)	FG 8E(3)

## **FE 9 Elections**

### ***Return of income***

- (1) An election or choice under this subpart is made by providing a return of income for the relevant income year.

***Measurement date***

- (2) A choice of measurement date under section FE 8 may be changed after a notice of assessment for an income year is received from the Commissioner.

***Control threshold, enlarged New Zealand group***

- (3) A choice of control threshold under section FE 27, or an election to include certain other companies in a New Zealand group under section FE 30 by a person other than an excess debt entity is made by providing notice to the Commissioner with the return of income for the relevant income year.

Defined in this Act: assessment, Commissioner, control, excess debt entity, income year, New Zealand, notice, return of income

Origin:	(1)	FG 10(1)
	(2)	FG 10(2)
	(3)	FG 10(3)

**FE 10 Currency*****Calculations***

- (1) In this subpart, the following values must be calculated in New Zealand currency:
- an amount of total group debt and an amount of total group assets of a New Zealand group or of a worldwide group:
  - a financial arrangement or risk-weighted exposure.

***Currency conversions for excess debt entity***

- (2) If the value referred to in subsection (1) is denominated in a foreign currency, an excess debt entity must convert the value to New Zealand currency at—
- the close of trading spot exchange rate for the foreign currency on the relevant measurement date under section FE 8; or
  - the forward exchange rate that applies on the first day of the income year for the relevant measurement date under section FE 8.

***Currency conversions for reporting bank***

- (3) If the value referred to in subsection (1) is denominated in a foreign currency, a reporting bank must convert the value to New Zealand currency at the close of trading spot exchange rate for the foreign currency on the relevant measurement date under section FE 8.

Defined in this Act: amount, close of trading spot exchange rate, excess debt entity, financial arrangement, income year, New Zealand, reporting bank, total group assets, total group debt

Origin:	(1)	FG 4(7), FG 5(6), FG 8I
	(2)	FG 7
	(3)	FG 8I

### **FE 11 Temporary increases or decreases in value**

A temporary increase or decrease in a value applying in this subpart must be excluded from a calculation made under this subpart if—

- (a) the increase or decrease has, or would have, a purpose or effect of defeating the intent and application of this subpart; or
- (b) the change is produced by an arrangement that has an effect of defeating the intent and application of this subpart.

Defined in this Act: arrangement

Origin: FG 4(8), FG 5(7), FG 8J

## *Calculations*

### **FE 12 Calculation of debt percentages**

#### *Requirement for New Zealand group*

- (1) An excess debt entity must calculate the debt percentage of its New Zealand group under the rules set out in sections FE 14 to FE 16. A natural person must calculate their debt percentage under the rules set out in sections FE 13, FE 14(4), FE 15, FE 16, and FE 18.

#### *Requirement for worldwide group*

- (2) If the debt percentage of the New Zealand group is more than 75% as described in section FE 5(1)(a), the entity or natural person must calculate the debt percentage of their worldwide group under the rules set out in sections FE 17 and FE 18.

#### *Debt percentage of group*

- (3) A debt percentage of a group is found by dividing the amount of total group debt by the amount of total group assets of the group for an income year or accounting year, as applicable. The amounts are calculated on a consolidated basis. Total group debt and total group assets for an income year or accounting year are defined in—
  - (a) sections FE 15 and FE 16 for a New Zealand group; and
  - (b) section FE 18 for a worldwide group.

#### *Membership of a company's New Zealand group*

- (4) For an excess debt entity that is a company, the New Zealand group is made up of all companies, traced tier by tier, that are identified as within the control threshold

(see section FE 27) of the New Zealand parent. Section FE 25 provides the process for determining who is a member of a group based on the identification of a New Zealand parent and the establishment of the control threshold.

***Membership of a company's worldwide group***

- (5) For an excess debt entity that is a company, the worldwide group is made up of all companies, traced tier by tier, that are included in both the entity's New Zealand group and the ultimate non-resident parent's worldwide group. Section FE 31 sets out who is a member of a worldwide group.

***Membership of a trustee's New Zealand and worldwide groups***

- (6) For an excess debt entity that is a trustee, the memberships of the New Zealand group and the worldwide group are determined under section FE 3(2).

Defined in this Act: accounting year, amount, company, control, excess debt entity, income year, natural person, New Zealand, non-resident, total group assets, total group debt, trustee

Origin:	(1)	FG 4(1) FG 5(1)
	(2)	FG 3
	(3)	FG 4(1)
	(4)	new
	(5)	new
	(6)	new

**FE 13 Financial arrangements entered into with persons outside group**

***When this section applies***

- (1) This section applies when a natural person, or an excess debt entity, or a member of an entity's New Zealand group or worldwide group, enters into a financial arrangement with another person (**person B**) as described in this section, and the financial arrangement provides funds to person B.

***Reduction***

- (2) In the calculation of the debt percentage of the New Zealand group, the amount of total group debt and total group assets is reduced by the outstanding balance of the financial arrangement.

***Debt percentage of New Zealand group***

- (3) In the calculation of the debt percentage of a New Zealand group, the reduction applies if the consideration for the financial arrangement is at arm's length, and person B is 1 of the following:
- (a) a non-resident who is not carrying on a business in New Zealand through a fixed establishment in New Zealand; or
  - (b) a person who is not associated with the excess debt entity; or
  - (c) a person who is associated with the excess debt entity but—
    - (i) is not a member of the New Zealand group; and

- (ii) is a person to whom this subpart may apply under section FE 2.

***Debt percentage of worldwide group***

- (4) In the calculation of the debt percentage of a worldwide group, the reduction applies if person B is not associated with the excess debt entity.

Defined in this Act: amount, business, consideration, excess debt entity, financial arrangement, fixed establishment, natural person, New Zealand, non-resident, outstanding balance, total group assets, total group debt

Origin:	(1)	FG 6(1)
	(2)	FG 6(1)
	(3)	FG 6(1)
	(4)	FG 6(2)

***Debt percentage of New Zealand group***

**FE 14 Consolidation of debts and assets**

***Company calculation***

- (1) For an excess debt entity that is a company, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets of the members of the entity's New Zealand group.

***Trustee calculation***

- (2) For an excess debt entity that is a trustee, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets for the group that is made up of—
- (a) the entity; and
  - (b) all associated persons resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand.

***When member not resident***

- (3) If a member of a New Zealand group is not resident in New Zealand, the assets and debts of the member are included in a consolidation only to the extent to which the group member is carrying on business in New Zealand through a fixed establishment in New Zealand.

***Treatment of specified leases and particular interest expenditure***

- (4) In this subpart, in the determination of total group debt and total group assets and the calculation of an amount for which a deduction is denied,—
- (a) a specified lease under section FZ 2 (Recharacterisation of amounts derived under specified leases) is treated as a financial arrangement that provides funds to the issuer; and
  - (b) expenditure incurred by the lessee under a specified lease for which a deduction is allowed under section BD 2 (Deductions) is treated as an amount of interest to which any of sections DB 6 to DB 8 (which relate to deductions for interest expenditure) applies; and
  - (c) interest that is allowed as a deduction under either of the following sections is treated as an amount of interest to which any of sections DB 6 to DB 8 applies, if not already allowed under those sections:
    - (i) section DP 1(1)(b) (Expenditure of forestry business);
    - (ii) section DV 10(1)(a) or (b) (Building societies).

Defined in this Act: associated person, business, excess debt entity, financial arrangement, fixed establishment, generally accepted accounting practice, group of companies, interest, issuer, lease, lessee, New Zealand, resident in New Zealand, specified lease, total group assets, total group debt, trustee

Origin:	(1)	FG 4(9)
	(2)	FG 4(15)
	(3)	FG 4(17)
	(4)	FG 9

**FE 15 Total group debt**

***Meaning***

- (1) In this subpart for a New Zealand group, **total group debt** means the sum of the outstanding balances of all financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, measured on the date the entity chooses under section FE 8 if both the following conditions are met:
- (a) the financial arrangement provides funds to the natural person, or the entity, or another member of the group; and
  - (b) the financial arrangement gives rise to an amount for which the natural person, or the entity, or another member of the group, would have a deduction.

***Exchange rate fluctuations***

- (2) Subsection (1)(b) does not include a deduction for an amount that arises only from movement in currency exchange rates.

***Section 90A Tax Administration Act 1994***

- (3) For a determination on whether a financial arrangement provides funds, refer to section 90A of the Tax Administration Act 1994.

Defined in this Act: amount, business, deduction, excess debt entity, financial arrangement, natural person, New Zealand, outstanding balance

Origin:	(1)	FG 4(2)
	(2)	FG 4(2)
	(3)	new

**FE 16 Total group assets**

***Meaning***

- (1) In this subpart, for a New Zealand group, **total group assets** for an income year means the total assets of a natural person, or an excess debt entity, or another member of the New Zealand group, measured under the following paragraphs, as applicable or as the person or entity chooses:
- (a) the value of the assets shown in the financial statements of the entity's New Zealand group; or
  - (b) the net current value of the assets; or
  - (c) market value, for trading stock that is valued at market value in calculating the person or entity's income tax liability for the income year, or that of a member of the group; or
  - (d) adjusted tax value of a personal property lease asset at the start of the income year, in the case of a specified lease or a finance lease that is not recognised as an asset under general accepted accounting practice; or
  - (e) if allowed under generally accepted accounting practice, a combination of the financial statement values and net current values.

***Generally accepted accounting practice***

- (2) The amount of total group assets must be calculated under generally accepted accounting practice, with the exception of the values referred to in subsection (1)(c) or (d).

Defined in this Act: adjusted tax value, amount, excess debt entity, finance lease, generally accepted accounting practice, income tax liability, income year, lease, market value, natural person, New Zealand, personal property lease asset, specified lease, trading stock

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



*Debt percentage of worldwide group*

**FE 17 Consolidation of debts and assets**

For an excess debt entity that is a company, the debt percentage of a worldwide group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets of the members of the entity's worldwide group using—

- (a) a financial standard used in the country in which the entity's ultimate non-resident parent company resides, as described in section FE 18(1)(a), if applicable; or
- (b) generally accepted accounting practice.

Defined in this Act: company, excess debt entity, generally accepted accounting practice, non-resident company

Origin: FG 5(10)

**FE 18 Measurement of debts and assets of worldwide group**

*Standards applying*

- (1) The amount of total group debt and the amount of total group assets of the worldwide group of a natural person or an excess debt entity must be calculated—
  - (a) using a standard that is equivalent to generally accepted accounting practice for consistent and non-distorting financial reporting; and
  - (b) in accordance with the financial reporting standards of the country where the worldwide group's consolidated financial accounts are prepared.

*Date of measurement*

- (2) The amount of total group debt and the amount of total group assets of the worldwide group of a natural person or an excess debt entity for an income year are measured at the worldwide group's balance date that immediately precedes the relevant income year.

*Measurement of amounts*

- (3) A natural person or an excess debt entity may choose to measure—
  - (a) the amount of total group debt by applying section FE 15, applying the provision as if it referred to a deduction that would be allowed if the person or entity or another group member were resident in New Zealand; or
  - (b) the amount of total group debt and amount of total group assets on a basis listed in section FE 8(1)(a) or (b).

***Commissioner's estimate***

- (4) If a natural person or an excess debt entity is unable to calculate the debt percentage of their worldwide group for an income year, they may ask the Commissioner to estimate the percentage under this subpart. The estimate is then treated as the percentage applying for the purposes of this subpart.

***Default percentage***

- (5) The debt percentage of the worldwide group or a natural person or an excess debt entity is treated as 68.1818% in the following cases:
- (a) the person or entity is unable to calculate the percentage, and does not ask the Commissioner to make an estimate under subsection (4):
  - (b) the Commissioner cannot reasonably estimate the debt percentage under subsection (4):
  - (c) no member of the entity's worldwide group (other than the entity) is not resident in New Zealand.

Defined in this Act: accounting year, amount, Commissioner, deduction, excess debt entity, generally accepted accounting practice, income year, natural person, New Zealand, resident in New Zealand, total group assets, total group debt

Origin:	(1)	FG 5(4)
	(2)	FG 5(3)
	(3)	FG 5(5)
	(4)	FG 5(12), (13)
	(5)	FG 5(12), (13)

*New Zealand banking group*

**FE 19 Banking group's equity threshold**

***Requirement for New Zealand banking group: formula***

- (1) A reporting bank must calculate the equity threshold of its New Zealand banking group for a tax year using the formula—

$$0.04 \times (\text{risk-weighted exposures} - \text{deductions from equity value}).$$

***Definition of items in formula***

- (2) In the formula,—
- (a) **risk-weighted exposures** is the sum of the following values:
- (i) for an asset included in a balance sheet, the regulatory value of the asset:
  - (ii) for an exposure not included in a balance sheet, the regulatory value of the exposure:
  - (iii) for an amount of goodwill that is not taken into account in adjustment 4: intangible assets in determining the New Zealand net equity of the group under section FE 21, the financial value of the goodwill:
- (b) **deductions from equity value** is the total amount of the regulatory values of adjustments 1 to 10 referred to in section FE 21.

***Assets of fixed establishments***

- (3) For the purposes of this section, the assets of a fixed establishment include those treated as assets of the fixed establishment under generally accepted accounting practice.

Defined in this Act: amount, deduction, financial value, fixed establishment, generally accepted accounting practice, New Zealand banking group, New Zealand net equity, regulatory value, reporting bank, tax year

Origin:	(1)	FG 8H(1)
	(2)	FG 8H(1)
	(3)	FG 8H(2)

**FE 20 Financial value and regulatory value**

***Financial value***

- (1) In sections FE 19, and FE 21 to FE 23, the **financial value** of an item for a New Zealand banking group at a time is the amount recorded for the item in the group's financial statements that—

- (a) relate to the time; and
- (b) are prepared for external reporting purposes; and
- (c) are consistent with generally accepted accounting practice for the consolidation of a group of companies for the purposes of eliminating intra-group balances.

***Regulatory value***

- (2) In section FE 19, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item for the purposes of the Capital Adequacy Framework issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

Defined in this Act: amount, financial statements, financial value, generally accepted accounting practice, group of companies, issue, New Zealand, New Zealand banking group, registered bank, regulatory value

Origin: (1) FG 8F  
(2) FG 8F

**FE 21 New Zealand net equity**

***Formula***

- (1) A reporting bank must calculate the New Zealand net equity of its New Zealand banking group for a tax year using the formula—
- equity value - adjustments 1 to 11.

***Definition of items in formula***

- (2) The items in the formula are defined in subsections (3) to (14).

***Equity value***

- (3) **Equity value** is the total financial value of—
- (a) the shareholders' equity for the group; and
  - (b) the branch equity relating to fixed establishments of the group; and
  - (c) any shares issued by a member of the group whose value is not included under paragraph (a) or (b); and
  - (d) any financial arrangement that is a loan or provision of funds—
    - (i) that is not taken into account in calculating the group's funding debt; and
    - (ii) that is made by a non-resident who is not a member of the New Zealand banking group or associated under section OD 7 or OD 8(3) with a member of the group; and
    - (iii) that is made to a member of the group; and

- (iv) that does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
- (v) whose value is not included under paragraph (a) or (b); and
- (vi) that does not relate to a supply of goods or services.

***Fixed-rate shares***

- (4) **Adjustment 1** is the financial value of fixed-rate shares that are—
- (a) issued by a member of the group on or after 1 January 2005, or before that date if the measurement period starts on or after 1 January 2010; and
  - (b) owned by a person resident in New Zealand; and
  - (c) included in equity value under subsection (3).

***Tax debts***

- (5) **Adjustment 2** is the financial value of a tax debt that is a financial arrangement—
- (a) included in equity value under subsection (3)(a) to (c); and
  - (b) in relation to which a member of the group is allowed a deduction for the tax year for interest to which any of sections DB 6 to DB 8 (which relate to interest expenditure) applies.

***Policyholder liabilities***

- (6) **Adjustment 3** is the financial value of unvested policyholder benefit liabilities and policyholder retained profits included in equity value under subsection (3).

***Intangible assets***

- (7) **Adjustment 4** is the financial value of intangible assets, but does not include the value of—
- (a) the goodwill of a business that is not a banking, financing, leasing, or life insurance business—
    - (i) acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the group; or
    - (ii) relating to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the group:
  - (b) a film or film right:
  - (c) property that is depreciable property or is expected to become depreciable property.

***Capital gains***

- (8) **Adjustment 5** is the total amount of capital gain arising for the 2004-05 or later tax year from a transfer of an intangible asset between a member of the group and

a person who is associated under section OD 7 or OD 8(3) with a member of the group.

***Asset revaluation reserves***

- (9) **Adjustment 6** is the financial value of revaluation reserves included in equity value under subsection (3).

***Future tax benefits***

- (10) **Adjustment 7** is the financial value of net future tax benefits included in equity value under subsection (3) that arise from—
- (a) a net loss for the tax year:
  - (b) a loss carried forward from an earlier tax year:
  - (c) a timing or temporary difference to the extent to which the item giving rise to the difference would contribute to the amount of a net loss for the tax year if allowed as a deduction.

***Prudential deductions***

- (11) **Adjustment 8** is the financial value of a credit enhancement or advance that is, for the purposes of the Capital Adequacy Framework described in section FE 20(2),—
- (a) a credit enhancement that a member of the group provides to—
    - (i) an associated funds management and securitisation scheme of a non-member:
    - (ii) an affiliated insurance group that is a non-member when the credit has not been expensed:
  - (b) an advance by a member of the group of a capital nature to a connected person who is a non-member.

***Offshore assets***

- (12) **Adjustment 9** is the financial value of shares in a non-resident company that—
- (a) are held by—
    - (i) a member or potential member of the group; or
    - (ii) a company resident in New Zealand in which a member or potential member of the group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a conduit tax relief credit is attached; and
  - (b) are not interests in a FIF for which the FIF income or FIF loss is calculated using the comparative value method or the deemed rate of return method; and
  - (c) are not shares in a grey list company that—
    - (i) are listed on the official list of a recognised exchange; and
    - (ii) are revenue account property; and

- (iii) would not be a sufficient interest in the company if the class of shares were the only class of share issued by the company.

***Cross holdings***

- (13) **Adjustment 10** is the financial value of—
- (a) interests included in equity value under subsection (3) held by a person who—
    - (i) is not a member of the group because of an exclusion under section FE 35; and
    - (ii) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand:
  - (b) shares in or loans (other than on an arm's length basis) to a person who is not a member of the group because of an exclusion under section FE 35.

***Notional offshore investments***

- (14) **Adjustment 11** is the amount of notional offshore investment for the group for the income year under section FE 22.

***Components of adjustment items counted once***

- (15) For the purposes of this section, if a component of an item described in adjustments 1 to 10 is a component of 1 or more other adjustment items, the value of the component is counted once only at its highest value.

Defined in this Act: acquire, amount, business, company, comparative value method, conduit tax relief credit, deduction, deemed rate of return method, depreciable property, direct voting interest, dividend, FIF, FIF income, FIF loss, film, film right, financial arrangement, financial value, fixed establishment, fixed-rate share, goods, grey list company, income year, interest, issue, loan, loss, measurement period, net loss, New Zealand, New Zealand banking group, New Zealand net equity, non-resident, non-resident company, pay, property, recognised exchange, reporting bank, resident in New Zealand, revenue account property, services, share, shareholder, shares of the same class, tax year, voting interest

Origin:	(1)	FG 8G(1)-(3)
	(2)	FG 8G(1)-(3)
	(3)	FG 8G(1)-(3)
	(4)	FG 8G(1)-(3)
	(5)	FG 8G(1)-(3)
	(6)	FG 8G(1)-(3)
	(7)	FG 8G(1)-(3)
	(8)	FG 8G(1)-(3)
	(9)	FG 8G(1)-(3)
	(10)	FG 8G(1)-(3)
	(11)	FG 8G(1)-(3)
	(12)	FG 8G(1)-(3)
	(13)	FG 8G(1)-(3)
	(14)	FG 8G(1)-(3)
	(15)	FG 8G(1)-(3)

## FE 22 Notional offshore investment

### *When this section applies*

- (1) This section applies for the purposes of section FE 21(14) to determine an amount of notional offshore investment for a New Zealand banking group for a tax year.

### *Formula*

- (2) The amount of notional offshore investment is calculated using the formula—

$$\frac{(\text{foreign tax credits} - \text{threshold}) \times 12}{\text{rate} \times \text{interest rate of return} \times \text{months}}$$

### *Definition of items in formula*

- (3) In the formula,—
- (a) **foreign tax credits** is the total amount of foreign tax credits for the tax year claimed as a credit against the income tax liability for the tax year of a member of the group or a person excluded from the group under section FE 35 that does not arise from—
- (i) attributed CFC income or from FIF income; or
  - (ii) income derived before 1 July 2005.
- (b) **threshold** is—
- (i) the amount set by the Governor-General by Order in Council as the threshold amount for the purposes of this subsection; or
  - (ii) \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year that includes that date, if no threshold is set under subparagraph (i);
  - (iii) \$5,000,000 if no threshold amount is set under subparagraph (i) or (ii):
- (c) **rate** is the rate of tax for companies set out in schedule 1, part A, item 5 for the tax year:
- (d) **interest rate of return** is—
- (i) the percentage amount set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
  - (ii) 7%, if no interest rate of return is set under subparagraph (i):
- (e) **months** is the number of months beginning on or after 1 July 2005 in the corresponding income year.

Defined in this Act: amount, attributed CFC income, corresponding income year, FIF income, income, income tax liability, interest, New Zealand, New Zealand banking group, tax year

Origin: (1) FG 8G(4)  
(2) FG 8G(4)



(3) FG 8G(4)

### FE 23 Banking group's funding debt

#### *Formula*

- (1) A reporting bank must calculate the funding debt of its New Zealand banking group for a tax year using the formula—

$$\frac{\text{total interest} + \text{interest deductions} - \text{shares}}{\text{days in quarter.}}$$

#### *Definition of items in formula*

- (2) In the formula,—
- (a) **total interest** is the financial value of the total interest-bearing debt for the group, measured on the last day of a quarter in the reporting bank's corresponding income year:
  - (b) **interest deductions** is the financial value not included in paragraph (a) of a financial arrangement in relation to which the group has a deduction for interest to which any of sections DB 6 to DB 8 (which relate to interest expenditure) applies, other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country:
  - (c) **shares** is the financial value of shares included in paragraph (a), measured on the last day of a quarter in the reporting bank's corresponding income year:
  - (d) **days in quarter** is the number of days in a quarter in the reporting bank's corresponding income year.

Defined in this Act: corresponding income year, deduction, financial arrangement, financial value, interest, New Zealand, New Zealand banking group, quarter, reporting bank, share, tax year

Origin: (1) FG 8B(3)  
(2) FG 8B(3)

### FE 24 Regulations

#### *When this section applies*

- (1) This section applies for the purposes of sections FE 21 and FE 22.

#### *Specifications*

- (2) The Governor-General may, from time to time, by Order in Council—
- (a) specify a type of instrument that is included in equity value under section FE 21(3):

- (b) specify a type of instrument that is not included in equity value under section FE 21(3):
- (c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under paragraph (a) or (b):
- (d) amend or delete a specification under paragraphs (a) to (c):
- (e) set, replace, or repeal a figure for the threshold amount for the purposes of the definition of **threshold** in section FE 22(3)(b)(i):
- (f) set, replace, or repeal a figure for the definition of **interest rate of return** in section FE 22(3)(d)(i).

***Application or effective date***

- (3) An Order in Council under subsection (2) may—
  - (a) come into effect on or after 1 July 2005:
  - (b) apply for measurement periods and quarters that—
    - (i) are in the 2005–06 or a subsequent income year; and
    - (ii) commence on or after 1 July 2005.

Defined in this Act: amount, group of persons, income year, interest, measurement period, quarter

Origin:	(1)	FG 8G(5), (6)
	(2)	FG 8G(5)
	(3)	FG 8G(6)

***Determining membership of groups***

*New Zealand group*

**FE 25 New Zealand group for excess debt entity that is a company**

***Steps to determine membership***

- (1) The following steps are used to determine the membership of the New Zealand group of an excess debt entity that is a company:
  - (a) identifying the New Zealand parent (section FE 26):
  - (b) establishing the companies under the parent's control (section FE 27):
  - (c) identifying the members of the New Zealand group (sections FE 28 and FE 29):

- (d) if a non-resident has ownership interests in 2 or more New Zealand groups, establishing whether the groups may be combined into a single New Zealand group (section FE 30).

***Entity as company***

- (2) Sections FE 26 to FE 30 apply only to an excess debt entity that is a company.

Defined in this Act: company, control, excess debt entity, non-resident

- Origin:
- (1) new
  - (2) FG 4(10), (11)

**FE 26 Identifying New Zealand parent**

***Identifying resident company***

- (1) The New Zealand parent of an excess debt entity is the entity identified in whichever is applicable of subsections (2) to (6).

***Entity as parent***

- (2) The excess debt entity is treated as the New Zealand parent if—
  - (a) the entity is not resident in New Zealand; or
  - (b) the entity is resident in New Zealand, and—
    - (i) a non-resident has a direct ownership interest in the entity of 50% or more, as determined under section FE 39; and
    - (ii) no single non-resident carrying on business in New Zealand through a fixed establishment in New Zealand has an ownership interest in the entity of 50% or more.

***Top tier New Zealand resident company***

- (3) If subsection (2) does not apply, the excess debt entity's New Zealand parent is the company (**company A**) that meets all the following requirements:
  - (a) company A is either—
    - (i) resident in New Zealand; or
    - (ii) not resident in New Zealand but carrying on business in New Zealand through a fixed establishment in New Zealand; and
  - (b) company A has an ownership interest in the entity; and
  - (c) a non-resident has a direct ownership interest in company A; and
  - (d) if company A is resident in New Zealand, a non-resident who has an ownership interest in the entity of 50% or more, also has an ownership interest in company A of 50% or more; and
  - (e) no company that meets the requirements of paragraphs (a) to (d) has a direct ownership interest in company A.

***When parent controlled by non-resident***

- (4) Despite subsection (3), if the interest apportionment rule in section FE 6 applies to the excess debt entity only through the application of section FE 2(1)(c)(ii), the entity's New Zealand parent is the company (**company B**) that meets all the following requirements:
- (a) company B is either—
    - (i) resident in New Zealand; or
    - (ii) not resident in New Zealand but carrying on business in New Zealand through a fixed establishment in New Zealand; and
  - (b) company B has an ownership interest in the entity; and
  - (c) if company B is resident in New Zealand, a non-resident who has control of the entity by any means, has control of company B by any means; and
  - (d) no company that meets the requirements of paragraphs (a) to (c) has a direct ownership interest in company B.

***Tie-breaker***

- (5) If more than 1 company is identified as New Zealand parent under subsection (3) or (4), the New Zealand parent is the company that has the highest value in ownership interests calculated by multiplying—
- (a) the total direct ownership interests in company A of non-residents who also have ownership interests in the entity of 50% or more;
  - (b) the ownership interests of company A in the entity.

***Entity as parent***

- (6) If subsection (2) does not apply, and no company meets the requirements of subsection (3) or (4), the excess debt entity is treated as the New Zealand parent.

***Determining ownership interests in subsections (3) and (4)***

- (7) In subsections (3) and (4), ownership interests are determined under sections FE 38 to FE 41, but for the purpose of identifying a New Zealand parent, the ownership interests of an associated person are ignored.

Defined in this Act: associated person, business, company, control, excess debt entity, fixed establishment, interest, New Zealand, New Zealand resident, non-resident, non-resident company, resident in New Zealand

Origin:	(1)	FG 4(10)
	(2)	FG 4(10)(a)
	(3)	FG 4(10)(b)
	(4)	FG 4(11)
	(5)	FG 4(10)(d)
	(6)	FG 4(10)(c)
	(7)	FG 4(10)

**FE 27 Establishing companies under parent's control**

***Choosing threshold***

- (1) A control threshold that the New Zealand parent of an excess debt entity chooses under this section must apply consistently to all companies that are members of the group.

***Percentages***

- (2) The New Zealand parent of an excess debt entity may choose as the relevant control threshold a percentage that is either—
- (a) more than 50%; or
  - (b) 66% or more.

***Threshold over 50%***

- (3) For a control threshold that is more than 50%, the company or companies treated as controlled by the New Zealand parent are those in which direct ownership interests of more than 50% are held collectively by either or both—
- (a) the New Zealand parent; and
  - (b) any other company included in the New Zealand group.

***Threshold of 66% or more***

- (4) For a control threshold of 66% or more, the companies treated as controlled by the New Zealand parent are those in which direct ownership interests of 66% or more are held collectively by any combination of—
- (a) the New Zealand parent; and
  - (b) a non-resident if—
    - (i) they have ownership interests of 50% or more in both the entity and the New Zealand parent; and
    - (ii) a company included in the New Zealand group as a result of the control percentage would have been included in the group under section FE 28 through the application of the control test in subsection (3), had the control percentage in that subsection been chosen; and
  - (c) any other company or companies that are included in the New Zealand group under section FE 28 through the application of any of these paragraphs.

***Default threshold of 66%***

- (5) If the New Zealand parent does not choose a control threshold under subsection (3) or (4), the control threshold applying to the New Zealand group is 66% or more.

***Application to other companies of New Zealand parent***

- (6) The control threshold applying for an income year in relation to the entity and its New Zealand parent applies to any company of the New Zealand parent.

Defined in this Act: company, control, excess debt entity, income year, New Zealand, non-resident

- Origin:
- (1) FG 4(12) - (14B)
  - (2) FG 4(13), (14)
  - (3) FG 4(13)
  - (4) FG 4(14)
  - (5) FG 4(14A)
  - (6) FG 4(14B)

## **FE 28 Identifying members of New Zealand group**

### *New Zealand parent's group*

- (1) A New Zealand group is made up of—
- (a) an excess debt entity; and
  - (b) the entity's New Zealand parent; and
  - (c) a company that is—
    - (i) resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand; and
    - (ii) identified under section FE 27 as under the control of the New Zealand parent;
    - (iii) not a member of the New Zealand banking group of a registered bank;
  - (d) a conduit tax relief holding company as described in section FE 29.

### *Entity's group*

- (2) Despite subsection (1), if the excess debt entity is not a company identified under section FE 27 as under the control of the New Zealand parent because the threshold is not met, the New Zealand group is made up only of—
- (a) the entity; and
  - (b) any company that is resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand, and that—
    - (i) would be, under section FE 27 under the control of the entity, if the entity is treated as the New Zealand parent; or
    - (ii) would be, under section FE 27 under the control of another company (**company C**) if the entity is identified as under the control of company C, and company C is included in the New Zealand group and treated as the New Zealand parent; or
    - (iii) would be, under section FE 27 under the control of company C included in the entity's New Zealand group under subparagraph (ii), if company C is treated as the New Zealand parent:

- (iv) is not a member of the New Zealand banking group of a registered bank; and
- (c) a conduit tax relief holding company.

Defined in this Act: business, company, conduit tax relief holding company, control, excess debt entity, fixed establishment, New Zealand, New Zealand banking group, registered bank, resident in New Zealand

- Origin:
- (1) FG 4(12)
  - (2) FG 4(14C), (14E)

## **FE 29 Holding companies**

### *Company included in New Zealand group*

- (1) A company is included in an excess debt entity's New Zealand group under section FE 28 if it is,—
  - (a) on the date referred to in section FE 8, a conduit tax relief holding company for a conduit tax relief company—
    - (i) that is a member of the entity's New Zealand group; and
    - (ii) in which the holding company has direct ownership interests of more than 50%:
  - (b) a member of the New Zealand group of a company described in paragraph (a).

### *When subsection (1) does not apply*

- (2) Subsection (1) does not apply in relation to an income year if, at the end of the income year, the total dividends to the extent fully credited and previously derived by the conduit tax relief holding company are not more than the total dividends to the extent fully credited and previously paid by the conduit tax relief holding company.

Defined in this Act: company, conduit tax relief company, conduit tax relief holding company, dividend, excess debt entity, income year, New Zealand

- Origin:
- (1) FG 4(14C), (14E)
  - (2) FG 4(14F)

## **FE 30 Ownership interests in companies outside New Zealand group**

### *When this section applies*

- (1) This section applies when—
  - (a) a New Zealand group is in existence; and
  - (b) a particular excess debt entity (**company D**) is outside the group; and

- (c) company D is resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand; and
- (d) a single non-resident has ownership interests of 50% or more in both—
  - (i) the New Zealand group; and
  - (ii) company D.

***Consistency in group membership***

- (2) The New Zealand parent of company D may choose to include the company in the New Zealand group if every company to be included in the enlarged group that is a New Zealand parent in the group makes the same election in relation to all other companies that are not in a New Zealand group with that parent before this section applies.

***When company D cannot be part of group***

- (3) Despite subsection (2), company D cannot be part of the New Zealand group if—
  - (a) another company (**company E**) that is outside the group has a direct ownership in company D; and
  - (b) company E is resident in New Zealand, or is carrying on business in New Zealand through a fixed establishment in New Zealand; and
  - (c) either—
    - (i) a New Zealand parent in the group, after the application of subsection (2), has control of company E under section FE 27(3);  
or
    - (ii) the single non-resident has ownership interests of 50% or more in company E.

Defined in this Act: business, company, control, excess debt entity, fixed establishment, New Zealand, New Zealand banking group, non-resident, resident in New Zealand

- Origin:
- (1) FG 4(14D)
  - (2) FG 4(14D)
  - (3) FG 4(14D)

*Worldwide group*

**FE 31 Worldwide group for excess debt entity that is a company**



***Members of worldwide group***

- (1) A worldwide group for an income year is made up of—
- (a) an excess debt entity that is a company; and
  - (b) the entity's New Zealand group for the income year; and
  - (c) the entity's worldwide GAAP group, as described in subsection (2); and
  - (d) the entity's ultimate non-resident parent, as described in subsection (3); and
  - (e) the ultimate non-resident parent's worldwide GAAP group, as described in subsection (4); and
  - (f) any non-resident that—
    - (i) is not a company; and
    - (ii) has ownership interests in the entity of 50% or more; and
  - (g) any person associated with the non-resident referred to in paragraph (f).

***Worldwide GAAP group***

- (2) An excess debt entity's worldwide GAAP group is made up of all non-residents who are required to be included with the entity in the consolidated financial statements under, as the entity chooses,—
- (a) generally accepted accounting practice; or
  - (b) an equivalent standard for consistent and non-distorting financial reporting that is—
    - (i) set in the country where the ultimate non-resident parent of the parent, as described in subsection (3), resides; or
    - (ii) applied when preparing the consolidated financial statements of the international group of which the entity is part.

***Ultimate non-resident parent***

- (3) An excess debt entity's ultimate non-resident parent is the company that meets the following requirements:
- (a) the company has ownership interests in the entity of 50% or more; and
  - (b) the company is not excluded from the entity's worldwide group under section FE 32; and
  - (c) no other company has both—
    - (i) an ownership interest in the entity of 50% or more;
    - (ii) an ownership interest in the company referred to in paragraphs (a) and (b).

***Ultimate non-resident parent's worldwide GAAP group***

- (4) The ultimate non-resident parent's worldwide GAAP group is made up of—
- (a) the ultimate non-resident parent; and

- (b) any non-resident who is required to be included with the ultimate non-resident parent in consolidated group accounts under, as the non-resident parent chooses,—
  - (i) the standard referred to in subsection (2)(b)(i), if applicable; or
  - (ii) generally accepted accounting practice.

***Measuring ownership interests***

- (5) In subsection (3), ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: company, consolidated group, excess debt entity, generally accepted accounting practice, income year, New Zealand, non-resident, ultimate parent

Origin:	(1)	FG 5(8)
	(2)	FG 5(8)(c)
	(3)	FG 5(8)(c)
	(4)	FG 5(8)(d)
	(5)	new

**FE 32 Joint venture partners**

***When this section applies***

- (1) This section applies, despite section FE 31, when—
  - (a) ownership interests of 50% are held by each of 2 joint venture partners in a company (**company F**) that is included in a worldwide group; and
  - (b) a person holds an ownership interest equal to 50% in company F and—
    - (i) the person has an interest in a joint venture partner referred to in paragraph (a); or
    - (ii) a joint venture partner referred to in paragraph (a) has an interest in the person.

***Exclusion of 1 joint venture partner***

- (2) An excess debt entity may choose to exclude company F from its worldwide group for an income year.

***Ownership interests***

- (3) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: company, excess debt entity, income year

Origin:	(1)	FG 5(9)
	(2)	FG 5(9)
	(3)	FG 5(9)

*New Zealand banking group*

**FE 33 New Zealand banking group**

The following steps are used to determine the membership of a New Zealand banking group:

- (a) identifying the ultimate parent of a registered bank (section FE 34):
- (b) determining whether a person may be excluded from a banking group (section FE 35):
- (c) identifying a person and a fixed establishment as a member of a banking group (section FE 36).

Defined in this Act: fixed establishment, New Zealand banking group, registered bank, ultimate parent

Origin: new

**FE 34 Identifying ultimate parent**

***Identifying company***

- (1) The ultimate parent is the company identified in whichever is applicable of subsection (2) or (3).

***Registered bank's parent***

- (2) An ultimate parent of a registered bank is a company—
  - (a) that has an ownership interest in the registered bank of 50% or more; and
  - (b) in which no other company that has an ownership interest in the registered bank of 50% or more has an ownership interest.

***Fixed establishment's parent***

- (3) The ultimate parent of a registered bank's fixed establishment in New Zealand is the registered bank.

***Ownership interests***

- (4) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: company, fixed establishment, New Zealand, registered bank, ultimate parent

Origin: (1) FG 8C(9)  
(2) FG 8C(9)  
(3) FG 8C(10)  
(4) new

### **FE 35 Persons who may be excluded from banking groups**

#### ***Reporting bank's exclusions***

- (1) A reporting bank may determine the members of its New Zealand banking group by excluding from the group a person or fixed establishment described in subsections (2) to (5).

#### ***Life insurance providers***

- (2) A reporting bank may choose to exclude from its New Zealand banking group a person or a fixed establishment whose main activity is providing life insurance.

#### ***Entity owning life insurer or banker***

- (3) A reporting bank may choose to exclude from its New Zealand banking group a person resident in New Zealand—
- (a) who has a voting interest of 100% in a person excluded under subsection (2); and
  - (b) whose main activity is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing.

#### ***Resident group company with other activities***

- (4) A reporting bank may choose to exclude from its New Zealand banking group a person resident in New Zealand—
- (a) who is required under generally accepted accounting practice to be included in consolidated group accounts with a person or fixed establishment excluded under subsection (2) or (3); and
  - (b) whose main activity is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing.

#### ***Fixed establishment with other activities***

- (5) A reporting bank may choose to exclude from its New Zealand banking group a fixed establishment of a non-resident if—
- (a) the non-resident has a voting interest of 100% in a person excluded under subsection (2); and
  - (b) the fixed establishment has a main activity of financing the person excluded under subsection (2); and
  - (c) the main activity of the fixed establishment is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing.

Origin:	(1)	FG 8C(8)
	(2)	FG 8C(8)(a)
	(3)	FG 8C(8)(b)
	(4)	FG 8C(8)(d)
	(5)	FG 8C(8)(c)

### **FE 36 Identifying members of New Zealand banking group**

#### ***Entities included in group***

- (1) The New Zealand banking group of a registered bank includes the entities described in subsection (2), and may also include the entities in described in subsections (3) to (6) if the conditions set out in those subsections are met.

#### ***Registered bank or fixed establishment***

- (2) The banking group includes—
- (a) the registered bank, if resident in New Zealand;
  - (b) the registered bank's fixed establishment, if the registered bank is not resident in New Zealand.

#### ***Resident person in group with registered bank***

- (3) A resident person is included in the banking group if the person is in the same group of companies as the registered bank, and the following conditions under generally accepted accounting practice are met:
- (a) for a resident registered bank with no non-resident ultimate parent, the consolidated group accounts include both the person and the registered bank, or would include both but for relevant materiality thresholds; or
  - (b) for a non-resident registered bank with no non-resident ultimate parent, the consolidated group accounts would include the person and the registered bank if the registered bank were resident in New Zealand and the relevant materiality thresholds were met.

#### ***Resident in group with non-resident ultimate parent***

- (4) A resident is included in the banking group if—
- (a) the person is in the same group of companies as a non-resident ultimate parent; and
  - (b) under generally accepted accounting practice, the consolidated group accounts would include the person and the ultimate parent if the ultimate parent were resident in New Zealand and the relevant materiality thresholds were met.

#### ***Fixed establishment in group with registered bank***

- (5) A fixed establishment in New Zealand of a non-resident is included in the banking group separately from the non-resident if—

- (a) the fixed establishment is in the same group of companies as a non-resident registered bank with no non-resident ultimate parent; and
- (b) under generally accepted accounting practice, the consolidated group accounts would include the fixed establishment and the registered bank if the registered bank were resident in New Zealand and the relevant materiality thresholds were met.

***Fixed establishment in group with non-resident ultimate parent***

- (6) A fixed establishment in New Zealand of a non-resident is included in the banking group separately from the non-resident if—
  - (a) the fixed establishment is in the same group of companies as a non-resident ultimate parent; and
  - (b) under generally accepted accounting practice, the consolidated group accounts would include the fixed establishment and the ultimate parent if the ultimate parent were resident in New Zealand and the relevant materiality thresholds were met.

Defined in this Act: consolidated group, fixed establishment, generally accepted accounting practice, group of companies, New Zealand, New Zealand banking group, non-resident, registered bank, resident in New Zealand, ultimate parent

Origin:	(1)	FG 8C(1)
	(2)	FG 8C(2)
	(3)	FG 8C(7)
	(4)	FG 8C(5)
	(5)	FG 8C(6)
	(6)	FG 8C(4)

**FE 37 Reporting bank for New Zealand banking group**

***When subsection (2) applies***

- (1) Subsection (2) applies on a day when a New Zealand banking group has either—
  - (a) a single registered bank, or
  - (b) no registered bank but a fixed establishment of a single registered bank.

***Registered bank***

- (2) The reporting bank for the day is the registered bank.

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

- (3) Subsection (4) applies on a day when a New Zealand banking group has either—
  - (a) more than 1 registered bank; or
  - (b) no registered bank but fixed establishments of more than 1 registered bank.

***Notice or Commissioner's appointment***

- (4) The reporting bank is—
- (a) the registered bank that first notifies the Commissioner of an election to be the reporting bank, if the Commissioner receives the notice within 6 months after the end of the tax year in which the day occurs; or
  - (b) if paragraph (a) does not apply, the registered bank chosen by the Commissioner.

Defined in this Act: Commissioner, fixed establishment, New Zealand, New Zealand banking group, notice, registered bank, reporting bank, tax year

Origin: (1) FG 8D  
(2) FG 8D(1)  
(3) FG 8D(2)  
(4) FG 8D(3)

***Measuring ownership interests in companies***

**FE 38 Measuring ownership interests in companies**

For the purposes of this subpart, a person's ownership interest in a company is the percentage that is found by adding together—

- (a) any direct ownership interests they hold in the company; and
- (b) any direct ownership interests held in the company by an associated person; and
- (c) any indirect ownership interests they hold in the company; and
- (d) any indirect ownership interests held in the company by an associated person.

Defined in this Act: associated person, company

Origin: FG 2(2), (3)

**FE 39 Direct ownership interests**

A person's direct ownership interest in a company referred to in section FE 38 is equal to the highest percentage of shares or rights the person holds in the categories listed in section EX 5(1) (Direct control interests), applying the subsection as if the company were a foreign company.

Defined in this Act: company, control, foreign company, right, share

Origin: FG 2(2), (3)

#### **FE 40 Tiered ownership interests**

##### *When this section applies*

- (1) This section applies when a person has a direct ownership interest in a company (the **first tier company**), and that company has an ownership interest in another company (the **second tier company**).

##### *When interest less than 50%*

- (2) If the person's direct ownership interest in the first tier company is less than 50%, they are treated as holding an indirect ownership interest in the second tier company. The interest is calculated by multiplying the percentage that is the person's direct ownership interest in the first tier company by the percentage that is the first tier company's ownership in the second tier company.

##### *When interest more than 50%*

- (3) If the person's direct ownership interest in the first tier company is equal to or more than 50%, they are treated as holding an indirect ownership interest in the second tier company that is equal to the first tier company's ownership interest in the second tier company.

Defined in this Act: company

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

#### **FE 41 Treatment of associated persons' interests**

##### *Aggregating ownership interests*

- (1) For the purposes of section FE 39, a person's direct ownership interests include the direct ownership interests of a person associated with them. But if an aggregation of ownership interests results in the same percentage shares or rights in a company being counted more than once, the person's ownership interest in the company must be adjusted to the extent necessary to avoid multiple counting.

##### *Relative resident in New Zealand*

- (2) For the purposes of sections FE 38 to FE 40, a non-resident who does not have a direct or an indirect ownership interest in a company and a relative resident in New Zealand are not associated persons in relation to the company.

Defined in this Act: associated person, company, New Zealand, non-resident, relative, resident in New Zealand, right, share

Origin: (1) FG 2(4), (5)



(2) FG 2(6)

## **FF – Interest apportionment for conduit investment**

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### *Introductory provisions*

#### **FF 1 What this subpart does**

##### *What this subpart does*

- (1) This subpart applies to restrict the conduit tax relief that a company has under subpart KH (Conduit tax relief) or section NH 7 (Reduction in liability under conduit tax relief) by limiting the amount of interest expenditure that may be apportioned to the company's New Zealand operations, and apportioning the excess to conduit investments.

##### *Structure of subpart*

- (2) This subpart sets out—
  - (a) the companies to which the interest apportionment rule applies:
  - (b) the thresholds for the application of the rule:

- (c) how to identify the members of a company's foreign attributed interest group (**FAI group**):
- (d) the formulas for the calculation of—
  - (i) the debt percentage of a New Zealand FAI group:
  - (ii) the debt percentage of a consolidated FAI group:
  - (iii) the amount of excess interest to be allocated against foreign attributed income:
  - (iv) the company's share of the apportionment:
- (e) how to determine the amount to be applied to reduce conduit tax relief under section KH 1 (Conduit tax relief):
- (f) the treatment of any remaining balance of interest expenditure.

Defined in this Act: amount, company, conduit company, FAI group, foreign attributed income, income, interest, New Zealand, share

Origin: (1) new  
(2) new

## **FF 2 When interest apportionment rule applies**

The interest apportionment rule in this subpart applies to a company (**conduit company**) for a tax year if—

- (a) the conduit company is a dividend withholding payment account company or a conduit tax relief company; and
- (b) in the tax year, the conduit company—
  - (i) derives foreign attributed income; or
  - (ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment, or would be required to do so but for section NH 7 (Reduction in liability under conduit tax relief); and
- (c) the threshold test in section FF 4 is satisfied.

Defined in this Act: amount, company, conduit company, conduit tax relief company, dividend, dividend withholding payment, dividend withholding payment account, dividend withholding payment account company, foreign attributed income, imputation year, interest, pay

Origin: FH 1(1)

### **FF 3 Steps required to determine treatment of excessive interest expenditure**

The following are the steps required to determine if a conduit company has an excessive amount of interest expenditure apportioned to its New Zealand operations, and how the amount is to be treated:

- (a) step 1: identify the members of the conduit company's New Zealand FAI group (section FF 8):
- (b) step 2: calculate the debt percentage of the New Zealand FAI group (section FF 9):
- (c) step 3: if the debt percentage is more than 66%, and the conduit company chooses to make the calculation, calculate the debt percentage of its consolidated FAI group (section FF 10):
- (d) step 4: determine whether an excess amount of interest expenditure exists (section FF 5):
- (e) step 5: determine the conduit company's share of the excess amount of interest expenditure for inclusion in the formula in section KH 1(2) (Conduit tax relief) reducing the income tax rebate for conduit relief (section FF 6):
- (f) step 6: use any surplus amount to adjust the amount of the conduit company's foreign dividends by treating the company as having an additional amount of income and a debit in its conduit tax relief account (section FF 7).

Defined in this Act: amount, company, conduit company, conduit tax relief account, dividend, FAI group, foreign dividend, income, interest, New Zealand

Origin: new

### ***Interest apportionment rule***

#### **FF 4 Threshold for application of interest apportionment rule**

##### ***When interest apportionment rule applies***

- (1) The interest apportionment rule in this subpart applies for a tax year only if—
  - (a) the amount of a conduit company's conduit tax relief determined under subsection (2) for the tax year is \$50,000 or more; or
  - (b) the debt percentage of a conduit company's New Zealand FAI group, as determined under sections FF 8 and FF 9, for the tax year is more than 66%.

***Determination of threshold amount***

- (2) The amount of conduit tax relief referred to in subsection (1)(a) is the sum of the income tax rebates under section KH 1 (Conduit tax relief) and reductions in dividend withholding payments under section NH 7 (Reduction in liability under conduit tax relief) that—
- (a) the company has for the tax year as a conduit tax relief company, or would have if it were a conduit tax relief company; and
  - (b) all companies associated with the company have for the tax year as conduit tax relief companies, or would have if they were conduit tax relief companies.

***Calculation***

- (3) For the purposes of subsection (2), the calculation of each amount of rebate is made as if item **EIA** in the formula in section KH 1(2) were zero.

Defined in this Act: amount, company, conduit company, conduit tax relief company, dividend withholding payment, FAI group, interest, New Zealand, pay, tax year

Origin:           (1)     FH 1(2)  
                      (2)     FH 1(1)  
                      (3)     FH 1(2)

**FF 5 Determination of excess amount of interest expenditure of group**

***When this section applies***

- (1) This section applies to determine whether a group of companies has an excess amount of interest expenditure in a tax year.

***Formula***

- (2) The amount is calculated using the formula—

$$\text{group interest expenditure} \times \frac{\text{NZ FAI group debt percentage} - \text{relief debt percentage}}{\text{NZ FAI group debt percentage}}$$

***Definition of items in formula***

- (3) In the formula, —
- (a) **group interest expenditure** is the total amount of deductions for interest under any of sections DB 6 to DB 8 (as modified by section FE 6) or section FZ 2 (Recharacterisation of amounts derived under specified leases), that members of the company's FAI group at the end of the tax year are allowed for the tax year, excluding—
    - (i) any amount payable to another company in the FAI group; and

- (ii) any amount for a financial arrangement excluded, when sections FF 9 and FF 10 are applied, as a result of the rules in section FE 15 (Total group debt):
- (b) **NZ FAI group debt percentage** is the debt percentage of the company's New Zealand FAI group for the tax year calculated under section FF 9:
- (c) **relief debt percentage** is the greatest of the following:
  - (i) 66%:
  - (ii) the debt percentage of the New Zealand FAI group for the tax year as calculated for the conduit company without any reduction of the total group assets under section FF 9(3) and (4):
  - (iii) the debt percentage of the consolidated FAI group for the tax year under section FF 10, if the conduit company chooses to make the modified calculation described in that section.

***Negative result***

- (4) If the result of the formula is negative, it is treated as zero.

Defined in this Act: amount, company, conduit company, deduction, FAI group, financial arrangement, income, interest, lease, lessee, New Zealand, pay, specified lease, tax year, total group assets

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

**FF 6 Conduit tax relief**

***What this section does***

- (1) This section provides for the calculation of a conduit company's share of an excess amount of expenditure determined under section FF 5. The result is included as an item in the formula in section KH 1(2) (Conduit tax relief) that determines the company's income tax rebate for conduit tax relief.

***Conduit company's share: formula***

- (2) The conduit company's share of an excess amount of interest expenditure for a tax year is calculated using the formula—

$$\text{net foreign attributed income} - \frac{\text{company credits}}{\text{rate}} \times \text{interest apportionment percentage.}$$

***Definition of items in formula***

- (3) In the formula in subsection (2),—
  - (a) **net foreign attributed income** is the conduit company's foreign attributed income for the tax year minus its net loss for the tax year:

- (b) **company credits** is the sum of—
- (i) an amount that the conduit company is able to credit under section MF 5(4) (Use of credit to reduce dividend withholding payment or use of debit to satisfy income tax liability) against its income tax liability for the tax year, determined as if the amount of rebate calculated under section KH 1 were zero; and
  - (ii) an amount that another company in the same group of companies is able to credit under section MF 5(4) against the conduit company's income tax liability for the tax year, determined as if the amount of rebate calculated under section KH 1 were zero:
- (c) **rate** is the rate of income tax set out in schedule 1, part A, clause 5 for the tax year:
- (d) **interest apportionment percentage** is the amount calculated for the tax year under subsection (4).

***Interest apportionment percentage: formula***

- (4) An interest apportionment percentage for a tax year is the lesser of 1 and the amount calculated using the formula—

$$\frac{\text{excess amount} \times \text{rate}}{\text{rate} \times \text{net foreign attributed income} - \text{credits}}$$

- (5) In the formula in subsection (4),—
- (a) **excess amount** is the excess amount of interest expenditure that the conduit company's FAI group has for the tax year, calculated under section FF 5:
  - (b) **rate** is the rate of income tax set out in schedule 1, part A, clause 5 for the tax year:
  - (c) **net foreign attributed income** is the total foreign attributed income for the tax year minus the total amount of net losses for the tax year of all companies (including the conduit company) that are part of the conduit company's FAI group at the end of the tax year:
  - (d) **credits** is the total amount that can be credited against the income tax liability for the tax year under section MF 5(4) of all companies (including the conduit company) that are part of the conduit company's FAI group at the end of the tax year, determined as if the amount of rebate calculated under section KH 1 for all companies were zero.

Defined in this Act: amount, company, conduit company, FAI group, foreign attributed income, group of companies, income tax, income tax liability, interest, net loss, tax year

- Origin:
- (1) FH 6, FH 7
  - (2) FH 7
  - (3) FH 7

- (4) FH 6
- (5) FH 6

## **FF 7 Surplus to dividend withholding payments**

### *When this section applies*

- (1) This section applies when the total amount of interest expenditure that is apportioned at the end of a tax year to all members of a conduit company's FAI group under section FF 6(4) is less than the amount of interest expenditure calculated for all members of the group under section FF 5(2). In this section, the difference is called the **surplus amount**.

### *Outline of section*

- (2) This section provides for an adjustment to the amount of a conduit company's foreign dividends, and for an amount of income derived by the company and a debit arising in its conduit tax relief account through the following calculations that determine:
  - (a) the tax cash value of the surplus amount (subsection (3)); and
  - (b) the amount of the adjustment (subsection (5)) and amount of income (subsection (7)); and
  - (c) the amount of the debit (subsection (8)).

### *Surplus amount as percentage: formula*

- (3) The surplus amount is given its tax cash value for the tax year, being the lesser of 1 and the percentage calculated using the formula—

$$\frac{\text{surplus amount} \times \text{rate}}{\text{group dividend withholding payments.}}$$

### *Definition of items in formula*

- (4) In the formula in subsection (3),—
  - (a) **surplus amount** is the amount that is the difference between the result of the calculation made under section FF 5(2) and that made under section FF 6(4) as described in subsection (1):
  - (b) **rate** is the rate of income tax set out in schedule 1, part A, clause 5 for the tax year:
  - (c) **group dividend withholding payments** is the total amount of dividend withholding payments—
    - (i) calculated after taking into account an amount of a net loss that the conduit company chooses to use to satisfy a liability to pay some or all of a dividend withholding payment under section NH 3 (Payment and recovery of dividend withholding payment), but before taking into account a reduction in liability under section NH 7 (Reduction in liability under conduit tax relief); and



- (ii) required to be deducted from dividends paid during the tax year to a company that is a member of the conduit company's FAI group at the end of the tax year.

***Adjustment to foreign dividends: formula***

- (5) The adjustment to be made to the amount of the conduit company's foreign dividends is calculated using the formula—

$$\frac{\text{company dividend withholding payments} \times \text{surplus percentage}}{\text{rate}}$$

***Definition of items in formula***

- (6) In the formula in subsection (5),—
  - (a) **company dividend withholding payments** is the total amount of dividend withholding payments—
    - (i) calculated after taking into account an amount of a net loss that the company chooses to use to satisfy a liability to pay some or all of a dividend withholding payment under section NH 3, but before taking into account a reduction in liability under section NH 7; and
    - (ii) required to be deducted from dividends paid during the tax year to the company during the tax year:
  - (b) **surplus percentage** is the percentage figure given by the formula in subsection (4):
  - (c) **rate** is the rate of income tax set out in schedule 1, part A, clause 5 for the tax year.

***Income***

- (7) The conduit company is treated as deriving under section CV 5 (DWP account companies or conduit tax relief companies) on the last day of the tax year an amount of income equal to the adjustment calculated under subsection (5).

***Debit in conduit tax relief account***

- (8) If the conduit company is a conduit tax relief company, the conduit tax relief account is adjusted by a debit under section MI 5(1)(b) (Debits arising to conduit tax relief account) that is calculated by multiplying the amount of income referred to in subsection (7) by the company's tax rate for the tax year.

Defined in this Act: amount, company, conduit company, conduit tax relief account, conduit tax relief company, dividend, dividend withholding payment, FAI group, foreign dividend, income, income tax, interest, net loss, pay, tax year

Origin:	(1)	FH 8(1)
	(2)	new
	(3)	FH 8(2)
	(4)	FH 8(2)
	(5)	FH 8(4)

- (6) FH 8(4)
- (7) FH 8(3)
- (8) FH 8(5)

### ***Membership and debt percentages of FAI groups***

#### **FF 8 Identifying members of FAI groups**

##### ***New Zealand group under thin capitalisation rules***

- (1) If a conduit company is a person described in section FE 2 (When this subpart applies), the company's FAI group is made up of the members of its New Zealand group under section FE 28 (Identifying members of New Zealand group). However, the grouping rules for holding companies in section FE 29 (Holding companies) do not apply.

##### ***Resident group companies***

- (2) If subsection (1) does not apply, a conduit company's FAI group is made up of—
- (a) the conduit company; and
  - (b) a company that is—
    - (i) in the same group of companies as the conduit company; and
    - (ii) resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand.

Defined in this Act: business, company, conduit company, FAI group, fixed establishment, group of companies, New Zealand, resident in New Zealand

- Origin:
- (1) FH 2(1)
  - (2) FH 2(2)

#### **FF 9 Calculating debt percentage of New Zealand FAI groups**

##### ***When this section applies***

- (1) This section applies to determine the debt percentage of a New Zealand FAI group for a tax year.

##### ***Total group debt divided by total group assets***

- (2) The debt percentage of a conduit company's New Zealand FAI group is found by dividing the amount of total group debt by the amount of total group assets of the group for a tax year, applying, as relevant, sections FE 3, FE 8, FE 10(1), FE 11 to FE 16, FE 25 to FE 28 and FE 30, as if the conduit company were an excess debt entity calculating the debt percentage of their New Zealand group.

***Formula***

- (3) For the purposes of this section, the amount that is the total group assets of the New Zealand FAI group as determined under section FE 16 (Total group assets) is reduced by the sum of the amounts calculated for each member of the group using the formula—

$$\text{percentage of non-resident shareholders} \times (\text{CFC rights} + \text{FIF interests}).$$

***Definition of items in formula***

- (4) In the formula,—
- (a) **percentage of non-resident shareholders** is either,—
- (i) for a member receiving conduit tax relief through an income tax rebate under section KH 1 (Conduit tax relief), the percentage of that member's shareholders who are not resident in New Zealand used to calculate the amount of the rebate under section KH 1(2); or
  - (ii) for a member receiving conduit tax relief through a reduction in dividend withholding payment under section NH 7 (Reduction in liability under conduit tax relief), the average of the percentages of that member's shareholders not resident in New Zealand used to calculate the amount of the reduction under section NH 7(1):
- (b) **CFC rights** is the total value of the rights that the member has in a CFC that—
- (i) are determined under section FE 16 at the relevant measurement date; and
  - (ii) result in the member having attributed CFC income or attributed CFC loss for an accounting period that includes the relevant measurement date:
- (c) **FIF interests** is the total value of interests that the member has in a FIF that—
- (i) are determined under section FE 16 at the relevant measurement date; and
  - (ii) in relation to which they determine their FIF income or FIF loss under the accounting profits method or the branch equivalent method.

***Modifications in certain circumstances***

- (5) For the purposes of this section, if the conduit company and each company in the same New Zealand group are the company's FAI group under section FF 8(2), the following modifications apply:
- (a) sections FE 26 to FE 30 (which relate to the identification of members of a New Zealand group) do not apply;
  - (b) the group of companies referred to in section FE 14 (Consolidation of debts and assets) is the group identified under section FF 8(2):

- (c) section FE 8(2) (Measurement dates) applies as if the company were the New Zealand parent.

Defined in this Act: accounting period, accounting profits method, amount, attributed CFC income, attributed CFC loss, branch equivalent method, CFC, company, conduit company, dividend, dividend withholding payment, excess debt entity, FAI group, FIF, FIF income, FIF loss, group of companies, New Zealand, non-resident, pay, resident in New Zealand, shareholder, total group assets, total group debt

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

## **FF 10 Calculating debt percentage of consolidated FAI groups**

### *When this section applies*

- (1) This section applies when the debt percentage of a New Zealand FAI group for a tax year is more than the threshold percentage set out in section FF 4(1)(b) to determine whether, on a consolidated basis, a higher threshold for the application of the interest apportionment rule is justified.

### *Conduit company's election*

- (2) If the debt percentage of a conduit company's New Zealand FAI group for a tax year is more than 66%, the company may choose to calculate the debt percentage of its consolidated FAI group under section FF 9, as modified by subsection (3).

### *Modifications*

- (3) For the purposes of the consolidated calculation,—
- (a) the assets of the group exclude all income interests in a CFC or FIF in a country that is not included in the grey list, calculated under the accounting profits or branch equivalent method:
- (b) the debts and assets of a CFC or FIF are consolidated with the FAI group if, for the accounting period in which the relevant measurement date under section FE 8(1) (Measurement dates) falls,—
- (i) the FAI group holds total income interests of 40% or more in a CFC; or
- (ii) the FAI group would be treated under section EX 8 (Income interests: total of direct and indirect interests) if the FIF were a CFC as holding total income interests of 40% or more in the FIF:
- (c) a percentage of the debts and assets of a CFC or FIF equal to the total percentage income interest of the FAI group in the CFC or FIF is consolidated with the FAI group if, for the accounting period in which the relevant measurement date under section FE 8(1) falls,—

- (i) the FAI group holds total income interests of 5% or more but less than 40% in a CFC; or
- (ii) the FAI group would be treated under section EX 8 if the FIF were a CFC as holding total income interests of 5% or more but less than 40% in the FIF.

***Accounting practice***

- (4) A consolidation under this section is made as if the CFC or FIF were a member of the FAI group using—
  - (a) generally accepted accounting practice for consolidation of a group of companies for the elimination of intra-group balances; and
  - (b) the values shown in the financial accounts for the accounting period calculated according to a financial reporting standard that is equivalent to generally accepted accounting practice.

Defined in this Act: accounting period, branch equivalent method, CFC, company, conduit company, FAI group, FIF, generally accepted accounting practice, grey list, group of companies, income interest, New Zealand, tax year

- Origin:
- (1) FH 4(1)
  - (2) FH 4(1), (2)
  - (3) FH 4(3), (4), (5)(c), 7(a), 8(a)
  - (4) FH 3(6)

**FF 11 Changes in FAI group membership**

A temporary change in membership of a conduit company's FAI group is disregarded in making the calculations in section FF 7 if a purpose or effect of the change is to defeat the intent and application of the section.

Defined in this Act: conduit company, FAI group

- Origin: FH 8(6)