

Subpart FM - Consolidated groups of companies

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Introductory provisions

FM 1 What this subpart applies to

This subpart applies to eligible companies in a wholly-owned group of companies that choose to form a consolidated group of companies which is treated for tax purposes as if it were a single company.

Defined in this Act: company, consolidated group, group of companies

Origin: FD 1

FM 2 The consolidation rules

Purpose

- (1) The consolidation rules are intended to ensure that, unless a provision of this Act expressly provides otherwise or the context requires another result, this Act applies to companies in a consolidated group as if they were a single company.

Meaning

- (2) The **consolidation rules** means the following:
- (a) this subpart:
 - (b) section LC 16 (Foreign tax credits of consolidated group members):
 - (c) section MB 7 (Provisional tax of consolidated group members):
 - (d) sections ME 10 to ME 14 (which relate to imputation credit accounts):
 - (e) sections ME 25 to ME 28 (which relate to policyholder credit accounts):
 - (f) section ME 40 (Determinations by Commissioner as to credits and debits arising to imputation credit accounts):
 - (g) sections MF 7 to MF 10 (which relate to branch equivalent tax accounts):
 - (h) sections MG 13 to MG 16A (which relate to dividend withholding payment accounts):
 - (i) section NB 1 (Withholding tax obligations of consolidated group members):
 - (j) sections NH 5 and NH 6 (which relate to dividend withholding payments):
 - (k) sections 73 and 74 of the Tax Administration Act 1994 (which relate to annual returns of consolidated groups).

Defined in this Act: branch equivalent tax account, company, consolidated group, consolidation rules, dividend withholding payment, dividend withholding payment account, imputation credit account, pay, policyholder credit account, provisional tax, this Act, wholly-owned group

- Origin: (1) FD 1
(2) OB 1 “consolidation rules”

FM 3 Taxation of consolidated group and group companies

Taxable income of group

- (1) The taxable income for a tax year of a consolidated group is the sum of the amounts calculated under subsection (2) for each company in the group for all or part of the corresponding income year.

Calculation for each company in group

- (2) For each company in a consolidated group for all or part of an income year, it is necessary to calculate the amount that would be its taxable income under subpart BC (Calculating and satisfying income tax liabilities) as modified by this section and sections FM 4 to FM 12, for the part of the income year in which the company is in the group.

Joint and several liability

- (3) Each company in a consolidated group is jointly and severally liable for the amount of income tax assessed for the group in relation to the taxable income.

Individual liability

- (4) The joint and several liability of each company in a consolidated group is substituted for their individual income tax liability, but only to the extent—
- (a) of the income tax liability of the group for the period of the income year in which the company is in the group; and
 - (b) to which section FM 29 does not apply.

Group return

- (5) The nominated company in a consolidated group must assess the amount of income tax and provide a single return of income for a tax year for the companies in the group in the corresponding income year. A group company cannot make a separate assessment or return for the tax year unless it is, for part of the corresponding income year, not part of the group.

Credits

- (6) To determine whether credits are available to be offset against the income tax liability of a group for a tax year, the group is treated as if it were 1 company.

Provisions setting limits

- (7) For the purposes of this Act, if a provision sets a limit or provides a threshold, and its application depends on whether or not something is more or less than the limit or threshold, the consolidated group is treated as if it were 1 company.

Withholding tax obligations of companies

- (8) Each company in a consolidated group is liable to comply with its obligations under the PAYE rules, the FBT rules, the SSCWT rules, the RWT rules, and the NRWT rules.

Defined in this Act: amount, company, consolidated group, FBT rules, income tax, income tax liability, income year, nominated company, NRWT rules, PAYE rules, return of income, RWT rules, SSCWT rules, tax year, taxable income

| | | |
|---------|-----|-----------------|
| Origin: | (1) | HB 1(1) |
| | (2) | HB 2(1) |
| | (3) | HB 1(1) |
| | (4) | HB 1(1) |
| | (5) | HB 1(1)(a), (d) |
| | (6) | HB 2(1)(f) |
| | (7) | HB 2(1)(f) |
| | (8) | NB 1 |

FM 4 Limiting joint and several liability of group companies***Named companies bearing liability***

- (1) Despite section FM 3(2), at any time before making an assessment for a consolidated group for a tax year, the nominated company of the group may ask the Commissioner for approval for 1 or more named companies in the group to bear the group's income tax liability for the tax year.

Approval by Commissioner

- (2) The Commissioner must approve a request under subsection (1) unless limiting the liability to the named companies will significantly prejudice the recovery, or likely recovery, of the income tax liability of the group for the tax year.

Liability limited to named companies

- (3) For a tax year to which an approval referred to in subsection (2) relates,—
- only a company named in the request is liable for the income tax liability of the group, and if more than 1 company is named, the liability is joint and several:
 - section MB 7(1) (Provisional tax of consolidated group members) does not impose on a company other than a named company joint and several liability for the amount of provisional tax payable by the group.

When named companies fail to meet liability

- (4) Despite subsection (3), the joint and several liability of companies in the group other than the named company or companies is not extinguished to the extent to which—
- a named company fails to satisfy their tax obligations under this section; and

- (b) the Commissioner determines that the income tax liability of the group that is attributable to the taxable income of a company other than a named company is to be recovered from that other company.

Defined in this Act: amount, assessment, Commissioner, company, consolidated group, income tax liability, nominated company, pay, provisional tax, tax year, taxable income

| | | |
|---------|-----|---------------------|
| Origin: | (1) | HB 1(3) |
| | (2) | HB 1(4) |
| | (3) | HB 1(3), HB 1(5)(b) |
| | (4) | HB 1(5) |

FM 5 Liability when company leaves consolidated group

Company leaving group

- (1) In an income year in which a company stops being part of a consolidated group, the company's liability under section FM 3(2) is removed—
 - (a) if the assessment is made after the company stops being part of the group; and
 - (b) to the extent to which the amount assessed is more than an earlier assessment of income tax (if any) of the group for the income year; and
 - (c) the Commissioner considers that the recovery, or likely recovery, of the amount of income tax assessed for the income year will not be significantly prejudiced.

When company leaves

- (2) For the purposes of subsection (1)(a), the date the company stops being part of the group is the later of—
 - (a) the date on which the company is treated under the Act as no longer part of the group; and
 - (b) the date of the event that causes the company to be no longer treated as part of the group.

Notifying company and group

- (3) For the purposes of subsection (1)(c), the Commissioner must notify the company and the consolidated group if the discretion is to be exercised.

Defined in this Act: amount, assessment, Commissioner, company, consolidated group, income tax, income year, notify

| | | |
|---------|-----|---------|
| Origin: | (1) | HB 1(2) |
| | (2) | HB 1(2) |
| | (3) | HB 1(2) |

FM 6 Some general rules for the treatment of consolidated groups***References to income, net losses, tax payable, and credits***

- (1) For the purposes of the consolidation rules, a reference to any of the following amounts should be read as if the relevant amount were determined on the basis of a single assessment on the basis set out in section FM 3(1):
- (a) income, assessable income, net income, or taxable income of a consolidated group:
 - (b) a net loss, an attributed CFC net loss, or a FIF net loss of a consolidated group:
 - (c) tax payable by a consolidated group:
 - (d) a tax credit available to a consolidated group.

Shares

- (2) For the purposes of applying the consolidation rules to particular provisions in this Act, the shares or options over shares of a consolidated group are treated as comprising all the shares or options over shares of the companies in the group at the relevant time.

Dividends

- (3) A dividend that 1 company in a consolidated group pays to another company in the group continues to be taken into account for the purposes of—
- (a) the imputation rules:
 - (b) the dividend withholding payment rules:
 - (c) subpart MF (Branch equivalent tax accounts of companies):
 - (d) sections FM 8(2)(c), GC 24, GC 26, ME 10 to ME 14, MG 13 to MG 16A, NH 5 and NH 6 (which relate to dividends and consolidated groups):
 - (e) sections 73 and 74 of the Tax Administration Act 1994.

International tax rules

- (4) The international tax rules apply, modified as necessary, as if the consolidated group were a single company.

Balances of imputation credit and dividend withholding payment accounts

- (5) Sections ME 2 and MG 1 (which relate to a company's accounts), and OB 6(1)(f) (Meaning of income tax) apply for the purposes of sections GC 4, ME 10 to ME 14, ME 25 to ME 28, MF 7 to MF 10, MG 13 to MG 16A, NH 5, and NH 6, and sections 73 and 74 of the Tax Administration Act 1994, as if the references to—
- (a) the imputation rules were references to sections ME 10 to ME 14:
 - (b) the dividend withholding payment rules were references to sections MG 13 to MG 16A, NH 5 and NH 6.

Defined in this Act: assessable income, assessment, attributed CFC net loss, branch equivalent tax account, company, consolidated group, consolidation rules, dividend, dividend withholding payment, dividend withholding payment account, FIF net loss, imputation credit account, imputation rules, income, income tax, international tax rules, net loss, option, pay, share, taxable income

| | | |
|---------|-----|---------|
| Origin: | (1) | FD 2(1) |
| | (2) | FD 2(2) |
| | (3) | FD 2(3) |
| | (4) | FD 11 |
| | (5) | FD 2(4) |

Calculating taxable income for group returns

Accounting generally

FM 7 Treatment of amounts derived or expenditure incurred

Sections FM 8 to FM 22 set out the treatment of certain amounts derived or expenditure incurred while a company is part of a consolidated group. The treatment applies to the part of a company's income year when the company is part of the group.

Defined in this Act: company, consolidated group, income year

Origin: HB 2(1)

FM 8 Transactions between group companies: income

Amounts not income of company

- (1) If a company in a consolidated group derives an amount from a transaction or arrangement with another company in the same group, and the amount would not be income if the group were 1 company, the amount is excluded income of the company under section CX 46 (Intra-group transactions).

Exclusion of certain amounts

- (2) Despite subsection (1), this section does not apply to an amount that—
- (a) arises from the disposal of the company's trading stock; or
 - (b) arises under section EW 31 (Base price adjustment formula) from—
 - (i) the disposal of a financial arrangement to which the financial arrangements rules apply; or
 - (ii) the remission of a financial arrangement to which the financial arrangements rules apply, if the parties were not group companies for the whole term of the arrangement; or
 - (c) is a dividend under section CD 3(1) (Transfers of value generally) between group companies arising from the release of an obligation to repay money lent before the companies are treated as part of the group under section FM 27.

Defined in this Act: amount, arrangement, company, consolidated group, excluded income, financial arrangement, financial arrangements rules, income, income year, money lent, pay, trading stock

Origin: (1) HB 2(1)(a)
(2) HB 2(1)(a)

FM 9 Transactions between group companies: expenditure or loss

A company in a consolidated group is denied a deduction under section DV 15(2) (Consolidated group: expenditure incurred by group companies) for expenditure or loss incurred through a payment or disposal to, or a transaction or arrangement with, another company in the same group, when the deduction would be denied if the group were 1 company. However, this section does not apply to—

- (a) expenditure incurred in acquiring trading stock; or
- (b) expenditure or loss arising under sections FM 14 to FM 22.

Defined in this Act: arrangement, company, consolidated group, deduction, dividend, loss, pay, trading stock

Origin: HB 2(1)(b)

FM 10 Amounts treated as company's income: group nexus

If a company in a consolidated group derives an amount that would not be income of the company but for this section, but would be income of the group if the group were 1 company (whether because of a nexus between the amount and the carrying on of a business by another group company, or for another reason) the amount is treated as income of the company under section CV 7 (Consolidated group: income of company in group).

Defined in this Act: amount, business, company, consolidated group, income

Origin: HB 2(1)(e)

FM 11 Expenditure allowed as deduction: group nexus

When this section applies

- (1) This section applies when a company in a consolidated group incurs expenditure—
 - (a) that would not be allowed as a deduction but for this section; and
 - (b) for which a deduction is denied as described in section FM 9.

Treatment of expenditure

- (2) The company is allowed a deduction under section DV 15(3) (Consolidated group: expenditure incurred by group companies) if the group would be allowed a deduction for an item of expenditure as 1 company because of a nexus between the expenditure and the carrying on of a business by another group company.

Interest on money borrowed

- (3) If the expenditure relates to interest on money borrowed from a person who is not part of the group, and a deduction is not allowed as described in section FM 9, the company is allowed a deduction to the extent to which—
- (a) the company is allowed a deduction for the interest under any of sections DB 7 or DB 8 (which relate to deductions for interest expenditure); or
 - (b) the company would be allowed a deduction under those sections because it is treated as having used the money borrowed to acquire certain shares when, through interposed intra-group borrowings, the money borrowed was in fact used by another group company in acquiring the shares.

Expenditure

- (4) In this section, expenditure includes a loss or an amount of depreciation loss incurred by the company.

Defined in this Act: amount, business, company, consolidated group, deduction, depreciation loss, interest, loss, money, share

| | | |
|---------|-----|-----------------|
| Origin: | (1) | HB 2(1)(c) |
| | (2) | HB 2(1)(c) |
| | (3) | HB 2(1)(d) |
| | (4) | HB 2(1)(c), (d) |

FM 12 Determining cost of property of group companies

If a company in a consolidated group incurs expenditure or loss that would be taken into account in determining the cost of property if the group were 1 company, but would not otherwise be taken into account but for this section, the expenditure or loss may be taken into account in determining the cost of property of companies in the group.

Defined in this Act: company, consolidated group, loss, property

Origin: HB 2(2)

FM 13 Part-year financial statements

When this section applies

- (1) This section applies in an income year when—

- (a) a company joins or leaves a consolidated group during the income year; or
- (b) a consolidated group is formed or ceases to exist during the income year.

Who must provide statements

- (2) The part-year financial statements required under sections FM 30(5) and FM 32(3) must be incorporated in the return of income for the income year as follows:
 - (a) when the financial statements relate to a period in which the company is not part of the group, the company:
 - (b) when the financial statements relate to a period in which the company is part of the group, the group:
 - (c) when the financial statements relate to a period in which the company is part of another group, the other group.

Detailed statements

- (3) The part-year financial statements must detail, as applicable, the gross income, gross deductions, income tax liability, or net loss of the company in a fair and reasonable way. For this purpose the relevant part of the income year is treated as a complete income year.

Defined in this Act: company, consolidated group, deduction, gross, income, income tax liability, income year, net loss, return of income

| | | |
|---------|-----|---------|
| Origin: | (1) | FD 9(1) |
| | (2) | FD 9(1) |
| | (3) | FD 9(2) |

Accounting for particular property

FM 14 Depreciating property and revenue account property

What this section applies to

- (1) This section applies—
- (a) to determine income and deductions in relation to a later disposal of property, or in relation to the depreciation or amortisation of the acquisition cost of property under this Act;
 - (b) when property is transferred from company A to company B and both companies are in the same consolidated group at the time the transfer takes place, and the property transferred is—
 - (i) depreciating property; or
 - (ii) revenue account property, but not trading stock or a financial arrangement to which the financial arrangements rules apply.

Acquisition by company B

- (2) Company B is treated as acquiring the property on the date it was acquired by company A for the relevant amount set out in subsections (3) to (5).

Whole pool

- (3) When the property forms the whole of a pool of property that is depreciated by company A under sections EE 20 to EE 24 (which relate to depreciation loss calculated under the pool method), the amount in subsection (2) is the adjusted tax value of the pool immediately before the property is transferred to company B.

Part pool

- (4) When the property forms only part of a pool of property that is depreciated by company A under sections EE 20 to EE 24, the amount in subsection (2) is the lesser of—
- (a) the market value of the property transferred to company B; and
 - (b) the adjusted tax value of the whole of the pool immediately before the property is transferred to company B.

Not pool property

- (5) If subsections (3) and (4) do not apply, the amount in subsection (2) is the sum of the following amounts of expenditure incurred by company A before the property is transferred to company B for which no deduction has been allowed:
- (a) the original purchase price of the property;
 - (b) expenditure incurred—
 - (i) in purchasing or improving the property; or

- (ii) in securing or improving company A's legal rights to the property.

Deductions for depreciation loss and amortisation

- (6) For depreciating property other than pooled property, and for the purposes of sections EE 39 to EE 44 (which relate to disposals and depreciation recovery income) company B is treated as allowed the deductions that company A is allowed for amounts of depreciation loss under section EZ 5, EZ 6 or under any other amortisation provision of this Act. This subsection applies only in relation to an amount of depreciation loss or amortisation of the acquisition cost up to the time the property is transferred to company B.

Defined in this Act: acquire, adjusted tax value, amount, company, consolidated group, deduction, depreciating property, depreciation loss, financial arrangement, financial arrangements rules, income, market value, other amortisation provision, pool, property, revenue account property, this Act, trading stock

- Origin:
- (1) FD 10(1), (2)
 - (2) FD 10(1)(c)
 - (3) FD 10(1)(e)(i), (ii)
 - (4) FD 10(1)(e)(i), (iii)
 - (5) FD 10(1)(e)(i)
 - (6) FD 10(2)

FM 15 Land or business: certain farming or forestry expenditure

When this section applies

- (1) This section applies in an income year when company A and company B are in the same consolidated group for the whole of the income year, and —
 - (a) company A transfers land to company B, and company B holds the land for the remainder of the income year; or
 - (b) company A stops carrying on a business, and company B carries on the business for the remainder of the income year.

Deductions for certain farming and forestry expenditure

- (2) Company A remains entitled to a deduction under sections DO 4, DO 4B, DO 4C, DO 6 (which relate to farming and aquaculture expenditure), or DP 3 (Improvements to forestry land) that it otherwise would have been allowed had it not transferred the land or stopped the business.

Defined in this Act: business, company, consolidated group, deduction, income year, land

- Origin:
- (1) FD 10(3)
 - (2) FD 10(3)

FM 16 Trading stock

When this section applies

- (1) This section applies in an income year in which company A transfers identifiable trading stock to company B when—
 - (a) company A and company B are in the same consolidated group at the time of the transfer; and
 - (b) company A and company B choose to value the trading stock under subpart EB (Valuation of trading stock (including dealer's livestock)) or at the cost to company A, as applicable; and
 - (c) the nominated company notifies the Commissioner within the time for providing the group's return of income (or a later time if the Commissioner agrees).

Stock held at start of income year

- (2) If company A held the trading stock at the start of the income year, the consideration for the transfer is the value of the stock at the start of the income year determined under subpart EB.

Stock acquired

- (3) If subsection (2) does not apply, the consideration for the transfer is the cost of the trading stock to company A.

Defined in this Act: Commissioner, company, consideration, consolidated group, cost, income year, nominated company, return of income, trading stock

| | | |
|---------|-----|-------------|
| Origin: | (1) | FD 10(5) |
| | (2) | FD 10(5)(c) |
| | (3) | FD 10(5)(d) |

FM 17 Financial arrangements: transfer from company A to company B

When this section applies

- (1) This section applies in an income year in which company A transfers a financial arrangement to which the financial arrangements rules apply to company B when—
 - (a) company A and company B are in the same consolidated group for the whole of the income year; and
 - (b) the method of calculating income and expenditure from the financial arrangement does not change after the transfer, and the consolidated group's return is made on this basis; and
 - (c) company A or company B is not able to carry a net loss forward under sections IE 1 and IF 1 (which relate to net losses of companies and group companies) from an earlier income year unless—

- (i) section IG 6 (Loss carry forward and grouping by consolidated group and consolidated group members) applies; and
- (ii) the net losses are those of the consolidated group.

Treatment of companies

- (2) In the income year of transfer and in later income years,—
 - (a) company A is treated as if it had never been a party to the financial arrangement, and section EW 31 (Base price adjustment formula) does not apply:
 - (b) company B is treated as if it had taken all the actions that company A undertook in entering into the financial arrangement, incurring expenditure and deriving income, and providing its return of income in relation to the financial arrangement.

Defined in this Act: company, consolidated group, financial arrangement, income, income year, net loss, return of income

- Origin:
- (1) FD 10(4)
 - (2) FD 10(4A)

FM 18 Financial arrangements: transfer for fair and reasonable consideration

When this section applies

- (1) This section applies in an income year in which company A transfers a financial arrangement to company B when—
 - (a) section FM 17 does not apply to the transfer; and
 - (b) the method of calculating income and expenditure from the financial arrangement does not change after the transfer, and the consolidated group's return is made on this basis.

Consideration for transfer

- (2) In calculating the base price adjustment, company A's consideration for the transfer is a fair and reasonable amount of the income that would have been derived, or the expenditure that would have been incurred, by company A in the year of transfer if the transfer had not taken place.

Defined in this Act: amount, company, consideration, consolidated group, financial arrangement, income, income year, return of income, year of transfer

- Origin:
- (1) FD 10(4)
 - (2) FD 10(4B)

FM 19 Financial arrangements: transfer at market value

When this section applies

- (1) This section applies in an income year in which company A transfers a financial arrangement to company B when neither section FM 17 or FM 18 applies to the transfer.

Consideration for transfer

- (2) The consideration for the transfer is the market value of the financial arrangement on the date of the transfer.

Defined in this Act: company, consideration, financial arrangement, income year, market value

Origin: (1) FD 10(4)
(2) FD 10(4C)

FM 20 Property transfers when companies leave groups

When this section applies

- (1) This section applies to the extent to which a transfer of property has not previously been taken into account in the calculation of a consolidated group's taxable income under sections FM 8 to FM 12, or FM 14 to FM 19 and FM 22 when—
- (a) a company leaves a consolidated group, but not through a liquidation; and
 - (b) the company holds property that has at any time been transferred between companies in the same group; and
 - (c) sections FM 14, or FM 16 to FM 19 applied to the transfer of the property.

Disposal and acquisition at market value

- (2) The company is treated as disposing of the property immediately before it stops being part of the group to a person not associated with it, and reacquiring it at that time at its market value.

Market value at time of transfer

- (3) If the item of property or its market value cannot be separately identified, the company is treated as disposing of and reacquiring the property at its market value at the time of the transfer under the relevant provision referred to in subsection (1)(c). If the property is transferred more than once, the time of disposal and reacquisition is the date of the latest transfer at which its market value can be determined.

Defined in this Act: company, consolidated group, consolidation rules, liquidation, market value, property, taxable income

Origin: (1) FD 10(6), (7)
(2) FD 10(6), (7)

(3) FD 10(7)

FM 21 Arrangements to avoid consolidation rules

When this section applies

- (1) This section applies when—
- (a) a company joins a consolidated group and at the time holds property that it later transfers to another group company; and
 - (b) the relevant provision referred to in section FM 20(1)(c) would apply to the transfer of the property; and
 - (c) after the transfer the company leaves the group, whether by liquidation or otherwise.

Arrangement to defeat consolidation rules

- (2) If, in undertaking the activities, it could reasonably be concluded that the company was involved in an arrangement that had a purpose or effect of defeating the intent and application of the consolidation rules, the relevant provision does not apply to the transfer.

Defined in this Act: arrangement, company, consolidated group, consolidation rules, property

Origin: (1) FD 10(9)
(2) FD 10(9)

FM 22 Arrangements for disposal of shares

When this section applies

- (1) This section applies when—
- (a) company A and company B are in the same consolidated group; and
 - (b) the value of company A's net assets have been reduced as a result of a dividend, distribution, payment, arrangement, or transaction between company A and company B at the time the dividend, distribution, payment, arrangement, or transaction is made.

Arm's length transaction on disposal of shares

- (2) If another company disposes of shares in company A for consideration that is less than would have been received in an arm's length transaction because of the reduction in the value of company A's net assets, the disposal is treated as if it were a sale at arm's length. The amount that would have been received in an arm's length transaction is income of the other company under section CV 8 (Consolidated group: arrangements for disposal of shares).

Relationship with sections FM 8 and FM 10

- (3) Subsection (2) does not apply to income taken into account under section FM 8 or FM 10.

Defined in this Act: amount, arrangement, company, consideration, consolidated group, dispose, distribution, dividend, income, pay, share

| | | |
|---------|-----|----------|
| Origin: | (1) | FD 10(8) |
| | (2) | FD 10(8) |
| | (3) | FD 10(8) |

Membership of consolidated groups

Eligibility and restrictions

FM 23 Eligibility rules

When company eligible

- (1) A company is eligible to be part of a consolidated group at a particular time if, at the time,—
- (a) it is resident in New Zealand; and
 - (b) it is not treated under, and for the purposes of, a double tax agreement as resident in another country; and
 - (c) it is not a company that derives only exempt income (except income under sections CW 9 to CW 11B (which relates to exempt income from equity); and
 - (d) when subsection (2) applies, it meets the relevant condition; and
 - (e) subsections (3) to (5) do not apply to it.

Restriction when company of certain type

- (2) Despite subsection (1), if a company in a consolidated group is 1 of the following types of company, all companies in the group at the time must be the same type as that company:
- (a) a qualifying company;
 - (b) a mining company.

Non-standard balance date

- (3) Despite subsection (1), if a company in a consolidated group has a non-standard balance date, all companies in the group at the time must have the same non-standard balance date.

Loss attributing qualifying companies

- (4) A company is not eligible to be part of a consolidated group if it is a loss attributing qualifying company.

Anti-avoidance measure

- (5) A company is not eligible to be part of a consolidated group if, for a purpose of enabling a company to be part of a group so as to defeat the intent and application of the consolidation rules, the company's shares—
- (a) are subject to an arrangement, or to a series of related or connected arrangements; or
 - (b) have rights attaching to them extinguished or altered directly or indirectly by any means.

Defined in this Act: arrangement, company, consolidated group, consolidation rules, double tax agreement, exempt income, income, loss attributing qualifying company, mining company, New Zealand, non-standard balance date, resident in New Zealand, right, share

| | | |
|---------|-----|-------------------------|
| Origin: | (1) | OB 1 "eligible company" |
| | (2) | FD 3(c), (d) |
| | (3) | FD 3(b) |
| | (4) | OB 1 "eligible company" |
| | (5) | FD 3(e) |

FM 24 Restriction on membership of groups

A company is not eligible to be part of more than 1 consolidated group at a particular time. If circumstances arise in which a company would, apart from this section, be treated at a particular time as part of more than 1 consolidated group, then—

- (a) the company is treated as part of the group of which it was first part; or
- (b) if the company is in 2 or more groups simultaneously, the Commissioner may specify the group of which it is part, having regard to all the circumstances of the case.

Defined in this Act: Commissioner, company, consolidated group

| | |
|---------|------|
| Origin: | FD 5 |
|---------|------|

FM 25 When membership is reduced

A consolidated group continues to exist if the number of group companies is reduced to 1 company, but if the group has no company at any time, the group ceases to exist.

Defined in this Act: company, consolidated group

| | |
|---------|---------|
| Origin: | FD 8(9) |
|---------|---------|

Nominated companies

FM 26 Nominated companies

Group company at the time

- (1) The nominated company of a consolidated group at any time must be part of the group at the time.

Agent

- (2) A nominated company is, at a time, the agent of the consolidated group and of each company that is part of the group at the time.

Changing nominated company

- (3) A nominated company may notify the Commissioner that it is, at a particular date, no longer to continue as the agent for the group, and that another company is to become the nominated company for the group.

When notice takes effect

- (4) A notice referred to in subsection (3) takes effect—
- (a) on the date the Commissioner receives the notice; or
 - (b) a later date set out in the notice.

Replacing nominated company

- (5) If the nominated company for a consolidated group is liquidated, the other companies in the group may choose a replacement. The replacement company—
- (a) becomes the nominated company for the group from the date of liquidation; and
 - (b) must notify the Commissioner of its selection as nominated company within 20 days after the date of liquidation, or a longer period if the Commissioner agrees.

Defined in this Act: agent, Commissioner, company, consolidated group, liquidation, nominated company, notice, notify

| | | |
|---------|-----|-----------------|
| Origin: | (1) | FD 6(2) |
| | (2) | FD 6(1) |
| | (3) | FD 6(3) |
| | (4) | FD 6(3) |
| | (5) | FD 8(5) proviso |

Forming, joining, or leaving consolidated groups

FM 27 Forming a consolidated group

Election

- (1) Two or more companies may choose to form a consolidated group of companies if the companies are, at the time,—
 - (a) a wholly-owned group of companies; and
 - (b) eligible under section FM 23.

Notifying Commissioner

- (2) The Commissioner must be notified of an election under subsection (1). For the purposes of section FM 3(2), the notice must state that each company in the group acknowledges their joint and several liability for the amount of income tax assessed for the group.

Nominated company

- (3) A notice under subsection (2) must nominate 1 of the companies in the group as its agent. In this subpart, the company is called the **nominated company**.

Defined in this Act: agent, Commissioner, company, consolidated group, group of companies, nominated company, notice, notify, wholly-owned group

| | | |
|---------|-----|---------------------|
| Origin: | (1) | FD 3(a), FD 4(1) |
| | (2) | FD 4(1), FD 4(2)(b) |
| | (3) | FD 4(1)(a) |

FM 28 Joining an existing consolidated group

When this section applies

- (1) This section applies when 2 or more companies have formed a consolidated group and the group has not ceased to exist.

Eligible for and entitled to membership

- (2) If a company is eligible under section FM 23 and entitled to join the consolidated group, it may choose to join the group by notifying the Commissioner.

Joint and several liability

- (3) The company providing the notification referred to in subsection (2) must agree in the notice to be jointly and severally liable under section FM 3(2) for the income tax payable by the consolidated group.

Defined in this Act: Commissioner, company, consolidated group, income tax, notice, notify, pay

| | | |
|---------|-----|---------|
| Origin: | (1) | FD 7(1) |
| | (2) | FD 7(1) |
| | (3) | FD 7(2) |

FM 29 Leaving a consolidated group

A company stops being part of a consolidated group if—

- (a) it chooses to leave the group and notifies the Commissioner of its election (see section FM 31); or
- (b) it no longer meets the eligibility criteria set out in section FM 23 (see section FM 32); or
- (c) if it is not a nominated company, it is no longer entitled to be part of the same group as the nominated company (see section FM 32); or
- (d) it is part of a consolidated group that no longer has a nominated company (see section FM 33).

Defined in this Act: Commissioner, company, consolidated group, nominated company

Origin: FD 8(1)

When membership starts and stops

FM 30 Forming or joining consolidated group

When this section applies

- (1) This section applies when—
 - (a) 2 or more companies choose to form a consolidated group under section FM 27; or
 - (b) a company chooses to join an existing consolidated group under section FM 28.

Condition

- (2) Despite subsection (1), this section applies only if a company forming or joining a group remains entitled to be part of the group either at the start of the relevant income year or for the notice period, as applicable.

Setting out income year in notice

- (3) For a notice given to the Commissioner within the notice period in an income year, the company may provide that the election applies for the income year. The company is treated as part of the group from the start of the income year.

When notice does not specify income year

- (4) If the notice referred to in subsection (3) does not specify an income year, the company is treated as part of the group from the start of the income year following that in which the Commissioner receives the notice.

Setting out entitlement date in notice

- (5) Despite subsections (3) and (4), if a company becomes eligible to join a group during an income year, and the notice is given to the Commissioner within the

notice period, they may provide that the election applies from the date when they first became entitled to make an election. The company treated as part of the group from that date, and part-year financial statements under section FM 13 are required.

Notice period

- (6) In this section, **notice period** means 1 of the following:
- (a) 63 working days after the start of an income year; or
 - (b) if the company joining, or the companies forming, the group in the income year are incorporated or formed in the same income year, 63 working days after the latest incorporation or formation; or
 - (c) if the company or companies become entitled to make an election during an income year, 63 working days from the date they first became entitled; or
 - (d) an extended period if the Commissioner agrees that the notice could not reasonably have been provided within the 63-day period.

Anti-avoidance measure

- (7) Subsection (5) does not apply if it would be reasonable to conclude that an arrangement has been entered into for a purpose of enabling the company to meet the requirements of the subsection so as to defeat the intent and application of the consolidation rules.

Defined in this Act: arrangement, Commissioner, company, consolidated group, consolidation rules, income year, notice, working day

| | | |
|---------|-----|----------------------------|
| Origin: | (1) | FD 4(3), FD 7(3) |
| | (2) | FD 4(7), FD 7(7) |
| | (3) | FD 4(3), FD 7(3) |
| | (4) | FD 4(3), FD 7(3) |
| | (5) | FD 4(5), FD 7(5) |
| | (6) | FD 4(4), (6), FD 7(4), (6) |
| | (7) | FD 4(8), FD 7(8) |

FM 31 Choosing to leave consolidated group

When this section applies

- (1) This section applies when a company chooses to leave a consolidated group and notifies the Commissioner of its election.

Effective date

- (2) When the company notifies the Commissioner of its election, it may set out in the notice a date from which it is no longer to be treated as part of the group. The date must not be later than the first day of the next income year. However, unless subsection (3) applies, if the company does not set out a date in the notice, it is treated as no longer part of the group from the start of the income year in which the Commissioner receives the notice.

First income year

- (3) Despite subsection (2), if a company leaves a group in the same income year in which it became part of the group, it is treated as leaving the group on the date when it became part of the group, and not from the start of the income year.

Defined in this Act: Commissioner, company, consolidated group, income year, notice

| | | |
|---------|-----|---------|
| Origin: | (1) | FD 8(2) |
| | (2) | FD 8(2) |
| | (3) | FD 8(2) |

FM 32 Losing eligibility or entitlement to be part of consolidated group

When this section applies

- (1) This section applies when a company is no longer eligible to be part of a consolidated group or, if it is not the nominated company, when it is no longer entitled to be part of the same group as the nominated company.

Effective date

- (2) Unless subsections (3) or (4) apply, the company is treated as no longer part of the group from the start of the income year in which the relevant event occurs, making it no longer—
- (a) eligible to be part of the group; or
 - (b) if it is not the nominated company, entitled to be part of the same group as the nominated company.

Notifying date

- (3) Despite subsection (2), the company may notify the Commissioner that it is no longer to be treated as part of the group from the date on which its eligibility or its entitlement ended. For the notice to be effective, the company must—
- (a) provide the notice within 20 working days after the date on which the company's eligibility or entitlement ended, although the Commissioner may agree to extend this period if it is reasonable to do so in the circumstances; and
 - (b) provide part-year financial statements under section FM 13.

First income year

- (4) Despite subsections (2) and (3), if a company leaves a group in the same income year in which it became part of the group, the company is treated as leaving the group on the date when it became part of the group, and not from the start of the income year.

Anti-avoidance measure

- (5) A notice under this section is not valid if it is made in connection with an arrangement entered into for a purpose of enabling the company to leave a group

so as to defeat the intent and application of the consolidation rules. When this subsection applies, the company is treated as leaving the group on the date on which its eligibility or entitlement ended.

Defined in this Act: arrangement, Commissioner, company, consolidated group, consolidation rules, income year, nominated company, notice, notify, working day

| | | |
|---------|-----|--------------|
| Origin: | (1) | FD 8(3) |
| | (2) | FD 8(3), (4) |
| | (3) | FD 8(6) |
| | (4) | FD 8(4) |
| | (5) | FD 8(7) |

FM 33 No nominated company

If, during an income year, no nominated company exists for a consolidated group and no company in the group is notified as a replacement under section FM 26(4), all companies in the group are treated as having left the group with effect from the start of the income year.

Defined in this Act: company, consolidated group, income year, nominated company, notify

| | |
|---------|---------|
| Origin: | FD 8(5) |
|---------|---------|

FM 34 When company liquidated

If a company is no longer part of a consolidated group because it is liquidated,—

- (a) the company is not treated as leaving the group from the start of the income year of the liquidation under sections FM 31 and FM 32:
- (b) part-year financial statements are not required under section FM 32(3).

Defined in this Act: company, consolidated group, income year, liquidation

| | |
|---------|---------|
| Origin: | FD 8(8) |
|---------|---------|

FN – Imputation groups of companies

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FN 1 What this subpart applies to

This subpart applies when 2 or more companies in a wholly-owned group of companies form an imputation group to enable a company in the group to pay an imputed dividend when another company in the group has a credit for New Zealand tax paid.

Defined in this Act: company, dividend, group of companies, imputation group, pay, wholly-owned group

Origin: new

FN 2 The imputation rules

The **imputation rules** means the following:

- (a) this subpart:
- (b) section CD 9 (Tax credits linked to dividends):
- (c) sections GC 21 to GC 23 (which relate to tax avoidance and imputation):

- (d) sections LB 1 and LB 2 (which relate to credits of tax):
- (e) section MD 2 (Limit on refunds and allocations of tax):
- (f) sections ME 1 to ME 14 (which relate to imputation credit accounts generally):
- (g) sections ME 30 to ME 40 (which relate to particular kinds of imputation credit accounts):
- (h) subpart MZ (Terminating provisions):
- (i) section OB 6(1)(d) (Meaning of income tax):
- (j) sections 29, 64, 67, 69, 70, 97, 101, 139B, 140B, 140D(1) and (2), and 180 of the Tax Administration Act 1994 (which relate to assessments, statements, returns, and penalties).

Defined in this Act: assessment, dividend, imputation credit account, imputation rules, income tax, return of income, tax avoidance

Origin: OB 1 “imputation rules”

FN 3 Liabilities of companies in imputation group

A company in an imputation group is jointly and severally liable for further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising from the operation of the imputation credit account of the group.

Defined in this Act: company, further income tax, imputation credit account, imputation group, income tax, interest

Origin: FDA 4

FN 4 Eligibility rules

When company eligible

- (1) A company is eligible to be part of an imputation group at a particular time if, at the time,—
 - (a) it is resident in New Zealand or resident in Australia; and
 - (b) it is not treated under a double tax agreement as resident in a country other than New Zealand or Australia, as applicable, for the purposes of taxation in the relevant country; and
 - (c) it is required to maintain an imputation credit account under section ME 1 (Companies required to maintain imputation credit account), or chooses to maintain an account under section ME 1A (Companies electing to maintain imputation credit account); and
 - (d) if it is a company in a consolidated group, it meets the criteria set out in subsection (2); and

- (e) if it is a qualifying company or a mining company, it meets the condition set out in subsection (3); and
- (f) subsections (4) and (5) do not apply to it.

Consolidated group companies

- (2) A company that is part of a consolidated group is eligible to be part of an imputation group at a particular time if, at the time,—
 - (a) all companies in the consolidated group meet the criteria set out in subsection (1) and are part of the imputation group; and
 - (b) for an imputation group that includes or will include companies from more than 1 consolidated group, the companies in the consolidated groups are part of a single wholly-owned group of companies from the earliest date on which a credit arose and remains uncanceled in the imputation credit account of a consolidated group or an imputation group, all of whose members are, or would be, in the imputation group.

Restriction when company of certain type

- (3) Despite subsections (1) and (2), if a company in an imputation group is 1 of the following types of company, all companies in the group at the time must be the same type as that company:
 - (a) a qualifying company; or
 - (b) a mining company.

Loss attributing qualifying companies

- (4) A company is not eligible to be part of an imputation group if it is a loss-attributing qualifying company.

Anti-avoidance measure

- (5) A company is not eligible to be part of an imputation group if, for a purpose of enabling a company to be part of an imputation group so as to defeat the intent and application of the imputation rules, the company's shares—
 - (a) are subject to an arrangement or to a series of related or connected arrangements; or
 - (b) have rights attaching to them extinguished or altered, either directly or indirectly, by any means.

Defined in this Act: arrangement, company, consolidated group, dividend, double tax agreement, group of companies, imputation credit account, imputation group, imputation rules, loss attributing qualifying company, mining company, New Zealand, resident in Australia, resident in New Zealand, right, share, wholly-owned group

| | | |
|---------|-----|------------------|
| Origin: | (1) | FDA 1(1) |
| | (2) | FDA 1(2) |
| | (3) | FDA 1(1)(c), (d) |
| | (4) | FDA 1(1)(a)(iii) |
| | (5) | FDA 1(1)(f) |

FN 5 When membership is reduced

An imputation group or a resident imputation subgroup continues to exist if the number of group companies is reduced to 1 company, but if the group has no company at any time, the group ceases to exist.

Defined in this Act: company, imputation group, resident imputation subgroup

Origin: FDA 3(2)-(4)

FN 6 Nominated companies

Group company at the time

- (1) The nominated company of an imputation group at any time must be part of the group at the time.

Trans-Tasman imputation groups

- (2) For a trans-Tasman imputation group, the nominated company—
 - (a) must not be an Australian imputation credit account company;
 - (b) is the nominated company for the resident imputation subgroup associated with the trans-Tasman imputation group.

Agent

- (3) For the purposes of the imputation rules, a nominated company is, at a time, the agent of the imputation group and of each company that is part of the group at the time. For a trans-Tasman imputation group, the nominated company is also the agent for the resident imputation subgroup associated with the trans-Tasman imputation group.

Changing nominated company

- (4) A nominated company may notify the Commissioner that it is, at a particular date, no longer to continue as the agent for the group, and that another company is to become the nominated company.

When notice takes effect

- (5) A notice under subsection (4) has effect 30 days after the date on which the Commissioner receives it.

Replacing nominated company

- (6) If a nominated company of an imputation group is liquidated, the other companies in the group may choose a replacement. The replacement company—
 - (a) becomes the nominated company from the date of the liquidation, on complying with paragraph (b); and

- (b) must notify the Commissioner of its selection as nominated company within 30 days after the date of the liquidation, or a longer period if the Commissioner agrees.

Defined in this Act: agent, Australian imputation credit account company, Commissioner, company, imputation credit account company, imputation group, liquidation, nominated company, notice, notify, resident imputation subgroup, trans-Tasman imputation group

| | | |
|---------|-----|----------|
| Origin: | (1) | FDA 5(1) |
| | (2) | FDA 5(2) |
| | (3) | FDA 5(3) |
| | (4) | FDA 5(4) |
| | (5) | FDA 5(5) |
| | (6) | FDA 6(6) |

FN 7 Forming imputation groups

Election

- (1) Two or more companies may choose to form an imputation group of companies if the companies are, at the time,—
- (a) a wholly-owned group of companies; and
- (b) eligible under section FN 4.

Notifying Commissioner

- (2) The Commissioner must be notified of an election under subsection (1).

Nominated company

- (3) A notice under subsection (2) must nominate 1 of the companies in the group as its agent. In this subpart, the company is called the **nominated company**.

Consolidated group companies

- (4) A nominated company of a consolidated group may notify the Commissioner that, having met the eligibility criteria in section FN 4, all the group companies have chosen—
- (a) to form an imputation group with eligible companies that are not part of the consolidated group; or
- (b) to join an existing imputation group.

Effective date

- (5) A notice under subsection (1) or (4) has effect from the start of the imputation year in which the Commissioner receives the notice.

Defined in this Act: agent, Commissioner, company, consolidated group, group of companies, imputation group, imputation year, nominated company, notice, notify, wholly-owned group

- Origin:
- (1) FDA 2(1)
 - (2) FDA 2(1)-(3)
 - (3) FDA 2(4)
 - (4) FDA 2(3)
 - (5) FDA 2(5)

FN 8 Trans-Tasman imputation groups and resident imputation subgroups

Trans-Tasman imputation group

- (1) If at least 1 company in an imputation group is an Australian imputation credit account company, and at least 1 company in the group is not an Australian imputation credit account company, the imputation group is a trans-Tasman imputation group.

Resident imputation subgroup

- (2) One or more companies in a trans-Tasman imputation group forms a resident imputation subgroup that is associated with the trans-Tasman imputation group by notifying the Commissioner. The subgroup consists of the companies in the group that are not Australian imputation credit account companies.

Defined in this Act: Australian imputation credit account company, Commissioner, company, imputation credit account company, imputation group, notify, resident imputation subgroup, trans-Tasman imputation group

- Origin:
- (1) OB 1 “trans-Tasman imputation group”
 - (2) FDA 3(1), OB 1 “resident imputation subgroup”

FN 9 Joining existing imputation group

Generally

- (1) A company that is eligible under section FN 4(1) may join an imputation group by notifying the Commissioner.

Consolidated groups

- (2) If the companies in a consolidated group are eligible under section FN 4(2), the nominated company of the consolidated group may notify the Commissioner that all the companies in the group are to join an imputation group.

Joint and several liability

- (3) The companies referred to in subsections (1) and (2) must agree in the notice to be jointly and severally liable under section FN 3 for any further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising from the operation of the imputation credit account of the group.

Defined in this Act: Commissioner, company, consolidated group, further income tax, imputation credit account, imputation group, interest, nominated company, notice, notify, resident

- Origin:
- (1) FDA 2(1)
 - (2) FDA 2(2), (3)

(3) FDA 4

FN 10 When membership of imputation group ends

A company stops being part of an imputation group if—

- (a) the company chooses to leave the group and notifies the Commissioner (see section FN 11); or
- (b) the company no longer meets the eligibility criteria set out in section FN 4 (see section FN 12); or
- (c) the company is not a nominated company and is no longer entitled to be part of the same group as the nominated company (see section FN 12); or
- (d) the company is in a group that no longer has a nominated company (see section FN 13).

Defined in this Act: Commissioner, company, imputation group, nominated company

Origin: FDA 6(1)

FN 11 Company choosing to leave imputation group

When this section applies

- (1) This section applies when a company chooses to leave an imputation group and notifies the Commissioner of its election.

Effective date

- (2) When the company notifies the Commissioner of its election, it may set out in the notice a date from which it is no longer to be treated as part of the group. However, unless subsection (3) applies, if the company does not set out a date in the notice, it is treated as no longer part of the group from the start of the imputation year in which the Commissioner receives the notice.

First imputation year

- (3) Despite subsection (2), if a company leaves an imputation group in the same imputation year in which it joined the group, it is treated as leaving the group on the date when it became part of the group, and not from the start of the imputation year.

Defined in this Act: Commissioner, company, imputation group, imputation year, notice

Origin: (1) FDA 6(2)
(2) FDA 6(2)
(3) FDA 6(2)

FN 12 Company no longer eligible or entitled to membership

When this section applies

- (1) This section applies when a company is no longer eligible to be part of an imputation group or, if it is not the nominated company, when it is no longer entitled to be part of the same group as the nominated company.

Effective date

- (2) Unless subsections (3) or (4) apply, the company is treated as no longer part of the group from the start of the imputation year in which the relevant event occurs, making it no longer—
- (a) eligible to be part of the group; or
 - (b) if it is not the nominated company, entitled to be part of the same group as the nominated company.

Notifying date

- (3) Despite subsection (2), the company may notify the Commissioner that it is no longer to be treated as part of the group from the date on which its eligibility or its entitlement ended. The company must provide the notice within 30 days after the date on which the company's eligibility or entitlement ended, although the Commissioner may agree to extend this period if it is reasonable to do so in the circumstances.

First imputation year

- (4) Despite subsections (2) and (3), if a company leaves an imputation group in the same imputation year in which it became part of the group, the company is treated as leaving the group on the date when it became part of the group, and not at the start of that imputation year.

Anti-avoidance measure

- (5) A notice under this section is not valid if it is made in connection with an arrangement entered into for a purpose of enabling the company to leave an imputation group so as to defeat the intent and application of the imputation rules. When this subsection applies, the company is treated as leaving the group on the date on which its eligibility or entitlement ended.

Defined in this Act: arrangement, Commissioner, company, imputation group, imputation rules, imputation year, nominated company, notice, notify

| | | |
|---------|-----|------------------|
| Origin: | (1) | FDA 6(3), (4) |
| | (2) | FDA 6(3), (8)(a) |
| | (3) | FDA 6(3), (4) |
| | (4) | FDA 6(3), (4) |
| | (5) | FDA 6(3), (8)(b) |

FN 13 Imputation group with no nominated company

If, during an imputation year, no nominated company exists for an imputation group and no replacement is made under section FN 6(6), all companies in the group are treated as having left the group with effect from the start of the imputation year.

Defined in this Act: company, imputation group, imputation year, nominated company

Origin: FDA 6(5)

FN 14 Effect of liquidation of company

If a company no longer part of an imputation group because it is liquidated, sections FN 11 and FN 12 do not apply to treat the company as leaving the group from the start of the income year in which the liquidation occurred.

Defined in this Act: company, imputation group, income year, liquidation

Origin: FDA 6(9)

Subpart FO - Amalgamation of companies

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Introductory provisions

FO 1 What this subpart does

This subpart sets out the rules that provide for some tax consequences when companies amalgamate. In general, the rules provide roll-over relief for amalgamations of resident companies.

Defined in this Act: amalgamation, resident

Origin: FE 1(1)

FO 2 The amalgamation rules

The **amalgamation rules** means the following:

- (a) this subpart:
- (b) sections CD 25, CD 32(23) and (24), and CD 33(8) (which relate to the treatment of dividends):
- (c) sections DB 8(3) to (5), and DV 13 (which relate to the treatment of deductions when an amalgamating company ceases to exist on a resident amalgamation):
- (d) sections IF 4 to IF 6, IG 8, and IG 9 (which relate to net losses):
- (e) sections LC 8 to LC 12 (which relate to tax credits):
- (f) sections MB 11, MD 2(8) and (9), ME 29, MF 16, and MG 17 (which relate to residual income tax, excess tax, and credit and tax accounts):
- (g) sections NC 15(7), ND 1R, ND 3(7), NH 4(7) and NH 4(8) and (9) (which relate to payment and returns):
- (h) sections 75 and 76 of the Tax Administration Act 1994 (which relate to notification of amalgamations and the responsibilities of the amalgamated company).

Defined in this Act: amalgamated company, amalgamating company, amalgamation, deduction, dividend, pay, resident amalgamation, residual income tax, return of income

Origin: FE 1(2)

FO 3 Resident amalgamations

What is a resident amalgamation?

- (1) In the amalgamation rules, an amalgamation is a **resident amalgamation** if, at the time of the amalgamation, each of the amalgamating companies and the amalgamated company—
- (a) is resident in New Zealand; and
 - (b) is not treated under, and for the purposes of, a double tax agreement as resident in another country; and
 - (c) is not a company that derives only exempt income (except income exempt under sections CW 9 to CW 11B (which relate to income from equity)); and
 - (d) if the amalgamated company is a qualifying company, it meets the condition in subsection (2); and
 - (e) if the amalgamated company is a loss attributing qualifying company, it meets the condition in subsection (3).

Qualifying companies

- (2) If the amalgamated company is a qualifying company immediately after the amalgamation, each of the amalgamating companies must be a qualifying company at the time of the amalgamation.

Loss attributing qualifying companies

- (3) If the amalgamated company is a loss attributing qualifying company immediately after the amalgamation, each of the amalgamating companies must be a loss attributing qualifying company at the time of the amalgamation.

Companies opting out

- (4) Even if they meet the requirements in subsection (1), the companies may choose that the amalgamation will not be treated as a resident amalgamation by notifying the Commissioner in the way set out in section 75 of the Tax Administration Act 1994.

Defined in this Act: amalgamated company, amalgamation, Commissioner, company, double tax agreement, exempt income, income, loss attributing qualifying company, New Zealand, notify, qualifying company, resident amalgamation

- Origin:
- (1) OB 1 “qualifying amalgamation”
 - (2) OB 1 “qualifying amalgamation”
 - (3) OB 1 “qualifying amalgamation”
 - (4) OB 1 “qualifying amalgamation”

FO 4 Rights and obligations of amalgamated companies

When this section applies

- (1) This section applies when an amalgamating company ceases to exist on amalgamation.

Amalgamated company assuming rights, obligations, and liabilities

- (2) For the tax year of amalgamation and for earlier tax years, the amalgamated company, under section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993,—
- (a) must comply with the obligations of the amalgamating company under the tax Acts; and
 - (b) must meet the liabilities of the amalgamating company under the tax Acts; and
 - (c) is entitled to the rights and powers of the amalgamating company under the tax Acts.

Relationship with Companies Act 1993

- (3) The amalgamation rules apply despite anything to the contrary in section 225(d) of the Companies Act 1993.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, pay, right, tax year

| | | |
|---------|-----|------------|
| Origin: | (1) | FE 8 |
| | (2) | FE 8 |
| | (3) | FE 1(1)(c) |

FO 5 Amalgamations and remitted liabilities

Sections CG 2 (Remitted amounts) and DB 38 (Payments for remitted amounts) do not apply merely because an amalgamated company succeeds to a liability of an amalgamating company on an amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount

| | |
|---------|------|
| Origin: | FE 9 |
|---------|------|

Treatment of shares, income, expenditure, and bad debts

FO 6 Cancellation of shares

If an amalgamating company (**company A**) holds shares in another amalgamating company (**company B**), and the shares are cancelled on the amalgamation, company A is treated as having disposed of the shares in company B immediately before the amalgamation for an amount equal to the cost of the shares to company A.

Defined in this Act: amalgamating company, amalgamation, cancellation, dispose, share

Origin: FE 2

FO 7 Income derived after amalgamation

When this section applies

- (1) This section applies when an amalgamating company ceases to exist on an amalgamation, and an amount is derived by the amalgamated company after the amalgamation as a result of something that the amalgamating company did or did not do.

Income of amalgamated company

- (2) The amount is income of the amalgamated company under section CV 6 (Amalgamated companies) if it would have been income of the amalgamating company but for the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, income, tax year

Origin: (1) FE 4(b)
(2) FE 4(b)

FO 8 Bad debts and expenditure or loss on resident amalgamation

When this section applies

- (1) This section applies when an amalgamating company ceases to exist on a resident amalgamation, and the amalgamated company at any time—
- (a) writes off as bad the amount of a debt that it acquires from the amalgamating company at the time of the amalgamation; or
 - (b) incurs an amount of expenditure or loss (including an amount of depreciation loss) as a result of something that the amalgamating company did or did not do.

Deduction of amalgamated company

- (2) The amalgamated company is allowed a deduction under section DV 14(2) (Amalgamated company: property passing on resident amalgamation) for the amount if—
- (a) the amalgamating company would have been allowed the deduction but for the amalgamation; and
 - (b) the amalgamated company is not otherwise allowed the deduction.

Defined in this Act: amalgamated company, amalgamating company, amount, deduction, depreciation loss, loss, resident amalgamation, tax year

Origin: (1) FE 3
(2) FE 3

FO 9 Unexpired portion of accrual expenditure

If an amalgamating company ceases to exist on an amalgamation, the unexpired portion under section EA 3 (Prepayments) of an amount of expenditure of the amalgamating company for the tax year of amalgamation is treated as the amalgamated company's unexpired amount of the expenditure.

Defined in this Act: accrual expenditure, amalgamated company, amalgamating company, amalgamation, amount, tax year

Origin: FE 4(a)

Property passing to amalgamated company on amalgamation

FO 10 When property passes on resident amalgamation

When this section applies

- (1) This section applies when property belonging to an amalgamating company becomes the property of the amalgamated company on a resident amalgamation.

What this section does not apply to

- (2) Despite subsection (1), this section—
- (a) does not apply to property that is a financial arrangement (see sections FO 12 to FO 15):
 - (b) is subject to the rules for—
 - (i) depreciating property in section FO 16:
 - (ii) land in section FO 17.

Property passing

- (3) The passing of ownership is treated as a disposal of the property by the amalgamating company and an acquisition of the property by the amalgamated company.

Timing and consideration

- (4) Unless subsections (5) or (6) apply, the amalgamated company is treated as having acquired the property on the date on which the amalgamating company acquired it for an amount that is the sum of—
- (a) the price paid for the property; and
 - (b) any expenditure incurred in buying or improving the property; and
 - (c) any expenditure incurred in securing or improving the amalgamating company's legal rights to the property.

Trading stock

- (5) If the property is trading stock for both the amalgamating company and the amalgamated company, the consideration for the disposal and acquisition is taken as the value of the stock to the amalgamating company determined under subpart EB (Valuation of trading stock (including dealer's livestock)) at the time of the amalgamation.

Revenue account property

- (6) If the property is revenue account property of the amalgamating company but not revenue account property of the amalgamated company, the consideration for the disposal and acquisition is taken as the market value of the property at the time of the amalgamation. But this subsection does not apply to land that is revenue account property merely because of the 10-year rule in sections CB 6 to CB 8 and CB 11 (which relate to the disposal of land), in which case section FO 17(3) may apply.

Treatment of amalgamating company

- (7) The amalgamating company is treated as having disposed of the property immediately before the amalgamation. The company does not derive income or have a deduction in relation to the disposal under sections EE 37 to EE 44 (which relate to the disposal of depreciable property) unless sections FO 12 to FO 17 provide otherwise.

Deduction for amalgamating company

- (8) An amalgamating company is allowed a deduction under section DV 14(3) (Amalgamated company: property passing on resident amalgamation) for an amount of depreciation loss for property transferred to the amalgamated company for the period beginning on the first day of the income year of amalgamation and ending on the day before the date of the amalgamation.

| | | |
|---------|-----|---------------|
| Origin: | (1) | FE 6(1)–(3) |
| | (2) | FE 6(3A) |
| | (3) | FE 6(1) |
| | (4) | FE 6(1)(c)(i) |
| | (5) | FE 6(2) |
| | (6) | FE 6(3B) |
| | (7) | FE 6(1A) |
| | (8) | FE 6A |

FO 11 When property passes on amalgamation other than resident amalgamation

Disposal and acquisition

- (1) If property belonging to an amalgamating company becomes the property of the amalgamated company on an amalgamation that is not a resident amalgamation,—
- (a) the amalgamating company is treated as having disposed of the property for an amount equal to the market value of the property at the time of the amalgamation; and
 - (b) the amalgamated company is treated as having acquired the property at that market value.

Timing: depreciable property

- (2) For the purposes of section EE 34 (Transfer of depreciable property on or after 24 September 1997), the amalgamating company is treated as existing at the time the amalgamated company is treated as acquiring the property.

Defined in this Act: acquire, amalgamated company, amalgamating company, amalgamation, depreciable property, dispose, market value, property, resident amalgamation

| | | |
|---------|-----|---------|
| Origin: | (1) | FE 5(1) |
| | (2) | FE 5(2) |

FO 12 Financial arrangements: resident amalgamation: companies in wholly-owned group

When this section applies

- (1) This section applies, despite sections EW 43 and GD 11 (which relate to non-market transfers of financial arrangements) in a tax year in which the obligations that an amalgamating company has under a financial arrangement pass to the amalgamated company on a resident amalgamation when,—
- (a) the financial arrangements rules apply to the financial arrangement; and
 - (b) for the whole of the tax year before the amalgamation, the amalgamating company and the amalgamated company were in the same wholly-owned group of companies; and

- (c) the method of calculating income and expenditure from the financial arrangement does not change after the amalgamation, and the amalgamated company's return is made on this basis; and
- (d) sections IE 1 and IF 1 (which relate to net losses of companies and consolidated groups) do not apply to allow the amalgamating company to carry a net loss forward from an earlier tax year for use in the tax year unless section IF 4 applies when the net losses are those of the consolidated group.

Amalgamated company's election

- (2) The amalgamated company may choose to apply subsections (3) and (4) by providing a return of income for the tax year.

Treatment of amalgamating company

- (3) The amalgamating company is treated as if it had never been party to the financial arrangement. Section EW 31 (Base price adjustment formula) does not apply, in relation to transfer of the financial arrangement or the obligations under it.

Treatment of amalgamated company

- (4) The amalgamated company is treated as if it had taken the place of the amalgamating company in relation to the financial arrangement in terms of—
 - (a) the date the company entered into the arrangement; and
 - (b) the consideration paid; and
 - (c) the income derived; and
 - (d) the expenditure incurred; and
 - (e) the returns of income provided.

Defined in this Act: amalgamated company, amalgamating company, consideration, consolidated group, financial arrangement, financial arrangements rules, group of companies, income, net loss, resident amalgamation, return of income, tax year, wholly-owned group

| | | |
|---------|-----|-------------------------------|
| Origin: | (1) | FE 6(5), (6), FE 7(1)(a), (2) |
| | (2) | FE 7(1)(a)(iii) |
| | (3) | FE 6(6)(a) |
| | (4) | FE 6(6)(b) |

FO 13 Financial arrangements: resident amalgamation: calculation method unchanged

When this section applies

- (1) This section applies in a tax year in which a financial arrangement belonging to an amalgamating company passes to the amalgamated company on a resident amalgamation when—
 - (a) the method of calculating income and expenditure from the financial arrangement does not change after the amalgamation; and
 - (b) section FO 12 does not apply.

Calculating base price adjustment

- (2) The amalgamating company is treated as having disposed of the financial arrangement. In calculating the base price adjustment, the consideration is the amount that would fairly and reasonably represent the income or expenditure that the amalgamating company would have derived or would have incurred in the tax year if the amalgamation had not taken place.

Defined in this Act: amalgamated company, amalgamating company, consideration, dispose, financial arrangement, income, resident amalgamation, tax year

Origin: (1) FE 6(5), (7), FE 7(1)(b), (3)
(2) FE 6(7), FE 7(3)

FO 14 Financial arrangements: resident amalgamation: other cases

When this section applies

- (1) This section applies in a tax year in which a financial arrangement belonging to an amalgamating company passes to the amalgamated company on a resident amalgamation when sections FO 12 and FO 13 do not apply.

Market value

- (2) The amalgamating company is treated as having disposed of the financial arrangement. The consideration for the disposal is the market value of the financial arrangement on the date the amalgamated company acquires it.

Defined in this Act: amalgamated company, amalgamating company, amount, consideration, dispose, financial arrangement, market value, resident amalgamation, tax year

Origin: (1) FE 6(5), (8), FE 7(1)(b)
(2) FE 6(8), FE 7(4)

FO 15 Financial arrangements: amalgamation other than resident amalgamation

When this section applies

- (1) This section applies when an obligation that an amalgamating company has in relation to a financial arrangement passes to the amalgamated company on an amalgamation that is not a resident amalgamation.

Market value

- (2) The amalgamating company is treated as having disposed of the financial arrangement or relieved itself of the obligations immediately before the amalgamation. The consideration for the disposal is the market price for assuming the obligations at the time of the amalgamation.

Timing: depreciable property

- (3) For the purposes of section EE 34 (Transfer of depreciable property on or after 24 September 1997), the amalgamating company is treated as existing at the time the amalgamated company is treated as assuming the obligations.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, consideration, depreciable property, dispose, financial arrangement, market value, property, resident amalgamation

| | | |
|---------|-----|---------|
| Origin: | (1) | FE 5 |
| | (2) | FE 5(1) |
| | (3) | FE 5(2) |

FO 16 Depreciating property

When this section applies

- (1) This section applies in a tax year in which depreciating property belonging to an amalgamating company passes to the amalgamated company on a resident amalgamation. The passing of ownership is treated as a disposal of the property by the amalgamating company and an acquisition by the amalgamated company.

Value: all pool property

- (2) If the depreciating property forms the whole of a pool of property that is depreciated under sections EE 20 to EE 24 (which relate to depreciation under the pool method), the consideration for the disposal and acquisition is taken as the adjusted tax value of the pool immediately before the amalgamation.

Value: part pool property

- (3) If the depreciating property forms part of a pool of property that is depreciated under sections EE 20 to EE 24, the consideration for the disposal and acquisition is taken as the lesser of—
- (a) the market value of the property; or
 - (b) the adjusted tax value of the pool immediately before the amalgamation.

Deductions for depreciation loss

- (4) If the depreciating property is other than pool property of the amalgamating company, the amalgamated company is treated as having been allowed the deduction that the amalgamating company would have had for an amount of depreciation loss (or a deduction under any other amortisation provision of this Act) relating to the property.

Defined in this Act: acquire, adjusted tax value, amalgamated company, amalgamating company, amount, consideration, deduction, depreciating property, depreciation loss, market value, other amortisation provision, pool, pool method, property, resident amalgamation, tax year, this Act

| | | |
|---------|-----|-----------------|
| Origin: | (1) | FE 6(1), (4) |
| | (2) | FE 6(1)(c)(ii) |
| | (3) | FE 6(1)(c)(iii) |

(4) FE 6(4)

FO 17 Land

When this section applies

- (1) This section applies when land belonging to an amalgamating company passes to the amalgamated company on a resident amalgamation.

Disposal at market value

- (2) If the land is not revenue account property of the amalgamating company, but the disposal of the land would give rise to income for the amalgamated company under any of sections CB 5 to CB 12 (which relate to the disposal of land), the amalgamating company is treated as having disposed of the land to the amalgamated company at the market value of the land at the date of the amalgamation.

Disposal of land within 10 year period

- (3) If the land is, or may be, revenue account property of the amalgamating company because of the 10 year rule in any of sections CB 7 to CB 9 and CB 12, and the amalgamated company disposes of the land within the 10 year period after the amalgamating company acquired it, an amount derived from the disposal is income of the amalgamated company under whichever is applicable of sections CB 5 to CB 12.

Defined in this Act: amalgamated company, amalgamating company, amount, dispose, income, land, market value, resident amalgamation, revenue account property

Origin: (1) FE 6(3A), (3B)
(2) FE 6(3B)
(3) FE 6(3A)

Treatment of financial arrangements between amalgamating companies

FO 18 When amalgamating companies are parties to financial arrangement

When this section applies

- (1) This section applies when amalgamating companies are parties to a financial arrangement that exists on the date of the amalgamation of the companies.

Financial arrangement discharged

- (2) The financial arrangement is, for the purposes of section EW 31 (Base price adjustment formula), treated as having been discharged immediately before the amalgamation. The consideration for the discharge is,—
- (a) on a resident amalgamation, the amalgamating company's outstanding accrued balance for the financial arrangement (see section FO 19); or

- (b) on an amalgamation other than a resident amalgamation, the market value of the financial arrangement on the date of the amalgamation.

Amounts remitted

- (3) An amount outstanding under a financial arrangement is not regarded as remitted merely because it is treated as discharged under subsection (2). However, for these purposes, an amalgamated company is treated as having remitted an amount equal to the excess over market value of the outstanding accrued balance for the financial arrangement (see section FO 20).

When borrower insolvent

- (4) If an amalgamating company that is the borrower under the arrangement is insolvent and is unlikely to be able to meet its obligations under the arrangement, the company is treated as having paid to the other party to the arrangement in consideration for the discharge an amount that is the market value of the financial arrangement on the date of the amalgamation.

Test of insolvency

- (5) For the purposes of subsection (4), a company is treated as insolvent if it does not meet the solvency test in section 4 in the Companies Act 1993.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, company, consideration, financial arrangement, market value, resident amalgamation

| | | |
|---------|-----|----------------|
| Origin: | (1) | FE 10(1) – (5) |
| | (2) | FE 10(2) |
| | (3) | FE 10(3), (5) |
| | (4) | FE 10(4) |
| | (5) | FE 10(6)(c) |

FO 19 Calculation of outstanding accrued balance: consideration for discharge

Formula

- (1) In section FO 18(2)(a), the outstanding accrued balance is calculated using the formula—

consideration + prior expenditure + expenditure accrued in year - income accrued in year - consideration paid.

Definition of items in formula

- (2) In the formula,—
 - (a) **consideration** is the consideration paid to the amalgamating company under the financial arrangement:
 - (b) **prior expenditure** is the expenditure that the amalgamating company incurs less the income that it derives from the financial arrangement calculated under either a spreading method or section EW 53 (Adjustment

required) in all tax years (other than the current tax year) since the financial arrangement was entered into:

- (c) **expenditure accrued in year** is the expenditure that the amalgamating company accrues from the financial arrangement for the period from the first day of the tax year in which the amalgamation occurs to the date of the amalgamation, calculated either—
 - (i) if the amalgamating company was party to the financial arrangement in an earlier tax year, using the spreading method it used to calculate income and expenditure under the financial arrangement in the tax year; or
 - (ii) using a spreading method that the amalgamating company chooses, if the method could have been used if the tax year had ended immediately before the amalgamation:
- (d) **income accrued in year** is the income that the amalgamating company accrues from the financial arrangement for the period described in paragraph (c) and calculated as described in that paragraph:
- (e) **consideration paid** is the consideration that the amalgamating company pays for the financial arrangement before the date of the amalgamation.

Defined in this Act: amalgamating company, amalgamation, consideration, financial arrangement, income, pay, spreading method, tax year

Origin: (1) FE 10(6)(a)
(2) FE 10(6)(a)

FO 20 Calculation of outstanding accrued balance: amounts remitted

Formula

- (1) In section FO 18(3), the outstanding accrued balance is calculated using the formula—

consideration + prior income + income accrued in year - expenditure accrued in year - consideration paid.

Definition of items in formula

- (2) In the formula,—
 - (a) **consideration** is the consideration paid by the party under the financial arrangement:
 - (b) **prior income** is the income that the party derives less the expenditure that it incurs under the financial arrangement calculated under either a spreading method or section EW 53 (Adjustment required) in all tax years other than the current tax year from the time the financial arrangement was entered into:

- (c) **income accrued in year** is the income that the party accrues from the financial arrangement for the period from the first day of the tax year in which the amalgamation occurs to the date of the amalgamation, calculated either—
 - (i) using the spreading method used to calculate income and expenditure under the financial arrangement in the tax year, if the party was a party to the financial arrangement in an earlier tax year; or
 - (ii) using a spreading method that the party chooses, if the method could have been used if the tax year had ended immediately before the amalgamation:
- (d) **expenditure accrued in year** is the expenditure that the party accrues to the financial arrangement for the period described in paragraph (c) and calculated as described in that paragraph:
- (e) **consideration paid** is the consideration paid to the party under the financial arrangement before the date of the amalgamation.

Defined in this Act: amalgamation, amount, consideration, financial arrangement, income, spreading method, tax year

Origin: (1) FE 10(6)(b)
 (2) FE 10(6)(b)

FZ - Terminating provisions

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Debentures

FZ 1 Treatment of interest payable under debentures issued before a certain date

When this section applies

- (1) This section applies for the purposes of section FA 2 (Recharacterisation of certain debentures).

Substituting debentures

- (2) A debenture issued before 8pm New Zealand standard time on 23 October 1986 is a substituting debenture if the rate of interest may be determined by reference to the dividend payable by the company issuing the debenture or in any other manner.

Profit-related debentures

- (3) Section FA 2 does not apply to a profit-related debenture if the rate of interest payable under it is determined by a fixed relationship to—
- (a) banking rates; or
 - (b) general commercial rates.

Defined in this Act: amount, company, debentures, dividend, interest, pay, profit-related debenture, substituting debenture

| | | |
|---------|-----|-----------------|
| Origin: | (1) | FC 1, FC 2 |
| | (2) | FC 1(1)(b), (c) |
| | (3) | FC 1(3) |

Leases

FZ 2 Effect of specified lease on lessor and lessee

Lease treated as sale

- (1) The leasing of a personal property lease asset under a specified lease is treated as a sale of the asset, made at the start of the term of the lease, by the lessor to the lessee. The lessee is treated as having incurred, through the sale, capital expenditure of an amount equal to the cost price of the asset.

Loan applied to finance acquisition of asset

- (2) A lessor under a specified lease is treated as having advanced to the lessee a loan of an amount equal to the cost price of the personal property lease asset. The lessee is treated as having applied the loan in the financing of the acquisition of the asset.

Lessor denied deduction

- (3) A lessor under a specified lease is denied a deduction under section DZ 14(2) (Deductions under specified leases) for an amount of depreciation loss for the personal property lease asset.

Asset sold to lessor

- (4) At the end of the term of a specified lease, if the personal property lease asset is not acquired by the lessee under the terms of the lease or in the exercise of an option under the lease, the asset is treated as sold at the end of the term of the lease to the lessor for—
- (a) an amount equal to the guaranteed residual value, if any, set out for the asset in the lease; or
 - (b) if no guaranteed residual value is set out in the lease, no consideration.

Treatment when lease terminated

- (5) If a specified lease is terminated before the term of the lease ends (whether by cancellation, surrender, or otherwise),—
- (a) the personal property lease asset relating to the lease is treated as sold on the date of the termination to the lessor by the lessee at a price equal to the amount by which the amount of the outstanding balance (at the time of termination) of a loan advance by the lessor to the lessee is more than the amount or the sum of the amounts payable by the lessee to the lessor in

consideration for the release by the lessor of the lessee from the obligations of the lessee under the lease:

- (b) despite paragraph (a), if, in relation to the amount of the outstanding balance and the amount or the sum of the amounts payable by the lessee to the lessor, no excess arises, the asset is treated as having been sold for no consideration:
- (c) if the value of the consideration payable by the lessee to the lessor in relation to the termination is more than the amount of the outstanding balance (at the time of termination) of a loan advanced by the lessor to the lessee, an amount equal to the amount of the excess is treated as income derived by the lessor in the income year in which the lease is terminated.

Subsequent sale, assignment, or lease

- (6) If, on or after the end of the term of a specified lease, the personal property lease asset relating to the lease is sold, assigned, or leased under a specified lease by the lessor to another person, and the value of the consideration on the sale, assignment, or lease—
 - (a) is more than the amount determined for the first specified lease under subsection (4), the amount determined is increased by a further amount that is equal to the part, if any, of the excess paid by the lessor to the lessee:
 - (b) is less than the amount determined for the first specified lease under subsection (4)(a), and the lessee is required to make a further payment to the lessor equal to the difference between the guaranteed residual value for the lease value, and the value of the consideration, the amount determined is reduced by the amount of the further payment.

Consideration more than amount determined under subsection (4)

- (7) Despite subsection (6), if the value of the consideration on the sale, assignment, or lease is more than the amount determined under subsection (4), the part, if any, of the excess that is not paid to the lessee is treated as income under section CZ 20 (Disposal of personal property lease asset under specified lease).

Associated persons

- (8) If the lessee under a specified lease, or another person who is associated with the lessee, at any time acquires the personal property lease asset, and disposes of the asset, and the value of the consideration for the disposal is more than the value of the consideration for which the lessee or other person acquired it, an amount equal to the excess is income under section CZ 20.

Defined in this Act: amount, cancellation, cost price, deduction, depreciation loss, guaranteed residual value, income, lease, lessee, lessor, outstanding balance, pay, personal property lease asset, specified lease, term of the lease

- Origin:
- (1) FC 6(2)
 - (2) FC 6(3)
 - (3) FC 6(4)

- (4) FC 6(5)
- (5) FC 6(6)
- (6) FC 6(7)
- (7) FC 6(7) proviso
- (8) FC 6(8)

FZ 3 Income of lessor under specified lease

Interest

- (1) The income of a lessor derived under a specified lease is treated as interest.

Treatment of amount derived

- (2) The amount of interest derived under subsection (1) is treated as—
 - (a) during the term of the lease, derived during the initial period and each instalment period, an amount that is calculated either,—
 - (i) on the outstanding balance for the initial period, and each instalment period, at such a rate and in such a manner that the aggregate of all of the amounts so calculated is equal to the amount first mentioned in paragraph (b); or
 - (ii) for the initial period and each instalment period, under such other method commonly applied in commercial usage as, having regard to the term of the lease and to the frequency of the personal property lease payments, results in the allocation to that initial period and to each instalment period of an amount that is fair and reasonable and results in the sum of all amounts so allocated being equal to the amount first mentioned in paragraph (b):
 - (b) in relation to the term of the lease, an amount that is equal to the sum of the personal property lease payments under the specified lease and the amount of the guaranteed residual value, if any, under the specified lease, reduced by the cost price of the personal property lease asset.

Calculation for income year

- (3) The interest derived by a lessor is, for an income year, treated as an amount equal to the sum of the amounts calculated under subsection (2)(a) as a calculated for the initial period, if any, and each instalment period that ends in the income year.

Defined in this Act: amount, guaranteed residual value, income, income year, initial period, instalment period, interest, lessor, personal property lease asset, personal property lease payment, specified lease, term of the lease

- Origin:
- (1) FC 7(1)
 - (2) FC 7(2)
 - (3) FC 7(3)

FZ 4 Deductions under specified leases

A lessee under a specified lease is denied a deduction for expenditure incurred by them under the lease except to the extent described in section DZ 14(3) (Deductions under specified leases).

Defined in this Act: deduction, lessee, specified lease

Origin: FC 8

Relationship property

FZ 5 Land used in specified activity

When this section applies

- (1) This section applies for the purposes of the definition of **established activity** in section IE 2 (Specified activity net losses) when—
- (a) person A transfers land under a settlement of relationship property to person B; and
 - (b) person A conducted a specified activity on the land and, as at 1 October 1982, and the conduct of the activity constituted person A's livelihood or sole source of income; and
 - (c) person B conducts the same specified activity on the land.

Treatment of person B

- (2) Person B is treated as continuing the specified activity, and that activity is treated as constituting their livelihood and sole source of income.

Date of commencement

- (3) For the purposes of section IE 21(7), if person A was an existing farmer immediately before the date of transfer, person B is treated as having acquired the land on the date it was acquired by person A. However, if person B starts to conduct the same kind of specified activity on the land that person A conducted immediately before the date of transfer, person B is not treated as having acquired the land on that date.

Defined in this Act: established activity, existing farmer, income, land, settlement of relationship property, specified activity

Origin: (1) FF 18(1)
(2) FF 18(1)
(3) FF 18(3)

FZ 6 Commercial bills

When this section applies

- (1) This section applies for the purposes of section CZ 6 (Commercial bills before 31 July 1986) when person A transfers a commercial bill under a settlement of relationship property to person B.

Transfer at cost

- (2) The transfer is treated as a disposal by person A and an acquisition by person B for an amount that equals the cost of the bill to person A.

Defined in this Act: amount, commercial bill, settlement of relationship property

Origin: (1) FF 5
(2) FF 5

Estate property

FZ 7 Transitional valuation rule for estate property

What this section applies to

- (1) This section applies to property transferred under section FC 1(1)(a) (What this subpart applies to) either on a person's death or on a distribution by an executor, administrator, or trustee of an estate, if—
- (a) the death or distribution occurred before 1 October 2005; and
 - (b) in the tax year in which the property passes, all beneficiaries of the deceased person are resident in New Zealand, and no income of a beneficiary is exempt income under section CW 36 (Charitable bequests).

Market value or value under settlement of relationship property

- (2) The valuation of the transferred property for tax purposes for the corresponding income year in which the death or distribution occurred is measured as transfer occurring immediately before the death of the person, or at the date of distribution, as applicable, at—
- (a) market value; or
 - (b) a value under subpart FB (Transfers of relationship property) for property of the type; or
 - (c) a value under subsection (4).

Returns of income

- (3) For the purposes of providing a return of income for the deceased person, beneficiary, and estate, a value determined under subsection (2) is treated as correct.

Requirements of other provisions

- (4) Despite subsection (3), if this Act, or the Income Tax Act 1994, requires the use of a market value for an item of property, that value must be used in the return of income.

Defined in this Act: corresponding income year, distribution, exempt income, income, income year, market value, New Zealand, property, settlement of relationship property, resident in New Zealand, return of income, tax year, this Act, trustee

| | | |
|---------|-----|-------------------|
| Origin: | (1) | FI 9(1), FI 10(1) |
| | (2) | FI 9(1), FI 10(1) |
| | (3) | FI 9(2), FI 10(2) |
| | (4) | FF 9(3), FI 10(3) |

Subpart CB - Income from business or trade-like activities

CB 1B Amounts received on disposal of business assets that include trading stock

When this section applies

- (1) This section applies in an income year when—
 - (a) a person (**person A**) who owns or carries on a business disposes of some or all of the assets of the business to another person (**person B**); and
 - (b) the disposal is made outside the ordinary course of the business, or to put an end to the business or a part of it; and
 - (c) the assets consist of or include trading stock of the business, or a share or interest in trading stock.

Assessable income of person A

- (2) An amount that person A receives from the disposal of the trading stock is taken into account in determining their assessable income for the income year.

Price of acquisition by person B

- (3) In the calculation of the taxable income of person B for the income year or a later income year, person B is treated as acquiring the trading stock for the amount of the disposal referred to in subsection (2).

Disposal

- (4) In this section, a disposal—
 - (a) includes the passing of property by an exchange, gift, distribution under a will or on intestacy; and
 - (b) does not include a disposal under any of sections FC 1 to FC 6 (which relate to distributions after death) that is not at market value.

Relationship with section CB 1

- (5) This section overrides section CB 1 (Amounts derived from business).

Defined in this Act: amount, assessable income, business, dispose, distribution, income year, market value, property, taxable income, trading stock

| | | |
|---------|-----|------|
| Origin: | (1) | FB 3 |
| | (2) | FB 3 |
| | (3) | FB 3 |
| | (4) | FB 3 |
| | (5) | new |

Subpart CC - Income from holding property (excluding equity)

Finance leases

CC 11 Lessee acquiring lease asset on expiry of term of lease

When this section applies

- (1) This section applies for the purposes of section FA 9 (Treatment when lease ends: lessee acquiring asset), when, after the term of a finance lease, a lessee acquires the personal property lease asset and then disposes of it.

Income of lessee

- (2) If the lessee disposes of the lease asset for an amount that is more than the consideration paid for it, the difference is income of the lessee in the tax year in which they dispose of the asset.

Defined in this Act: consideration, finance lease, income, lessee, pay, personal property lease asset, tax year

Origin: (1) FC 8E
(2) FC 8E

CC 12 Lessor acquiring lease asset on expiry of term of lease

When this section applies

- (1) This section applies for the purposes of section FA 10(3) (Treatment when lease ends: lessor acquiring asset), when, after the term of a finance lease,—
- (a) a lessor under the lease sells, assigns, or leases the personal property lease asset to another person under another finance lease; and
- (b) the consideration is more than the lessor's notional acquisition price under the original lease.

Income of lessor

- (2) To the extent to which the difference between the notional acquisition price and the consideration is not paid by the lessor to the lessee under the original finance lease, the amount is income of the lessor in the tax year in which the original lease term ends.

Defined in this Act: consideration, finance lease, income, lessee, lessor, pay, personal property lease asset, tax year

Origin: (1) FC 8B, FC 8D
(2) FC 8B, FC 8D

Hire purchase agreements

CC 13 Amounts paid in income years after hire purchase agreement ends

When this section applies

- (1) This section applies for the purposes of section FA 18 (Treatment of amounts paid in income years after agreement ends), when an amount that is liable to be paid under a hire purchase agreement is paid in an income year that is later than the income year in which the agreement ends.

Income of seller

- (2) An amount that the buyer is liable to pay under the terms of the agreement is income of the seller in the income year in which they receive it.

Income of buyer

- (3) An amount paid by the seller to the buyer under section FA 18(3)(b) is income of the buyer in the income year in which the amount is paid.

Defined in this Act: amount, hire purchase agreement, income, income year, pay

| | | |
|---------|-----|------------------|
| Origin: | (1) | FC 10(5)(d)-(f) |
| | (2) | FC 10(5)(d) |
| | (3) | FC 10(5)(e), (f) |

Subpart CG - Recoveries

CG 7 Recoveries after deduction of payments under lease

When this section applies

- (1) This section applies, for the purposes of section FA 5 (Assets acquired and disposed of after deduction of payments under lease) when—
- (a) a person leases, rents, or hires an asset that is—
 - (i) plant, machinery, or other equipment; or
 - (ii) a motor vehicle; or
 - (iii) a temporary building; and
 - (b) they are allowed a deduction for the rental payments; and
 - (c) they acquire the asset and later dispose of it for an amount that is more than the amount paid to acquire the asset.

Income

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

Consideration less payments or total deductions

- (3) The amount is the lesser of the amount by which the consideration on disposal is more than either the sum of the payments made or the total amount of the deductions referred to in subsection (1)(b).

Timing of income

- (4) The income is allocated to the tax year of the disposal of the asset.

Defined in this Act: amount, deduction, dispose, income, motor vehicle, pay, tax year, temporary building

| | | |
|---------|-----|---------|
| Origin: | (1) | FC 5(1) |
| | (2) | FC 5(1) |
| | (3) | FC 5(1) |
| | (4) | FC 5(1) |

Subpart CH - Adjustments

Finance leases

CH 6 Adjustments under consecutive or successive finance leases

When this section applies

- (1) This section applies if—
- (a) a lease is a consecutive or a successive lease that, under the definition of **lease**, is treated as part of the original lease because the same lease asset is leased to the same lessee; and
 - (b) the full lease runs for more than 75% of the lease asset's estimated useful life, although the lessor and lessee did not contemplate at the start of the term of the original lease that it would; and
 - (c) an adjustment is made under section FA 11 (Consecutive or successive finance leases).

Income

- (2) The amount of an adjustment is income of the lessor or the lessee, as applicable, in the tax year in which the adjustment is made.

Defined in this Act: amount, finance lease, income, lease, lessee, lessor, tax year, term of the lease

Origin: (1) FC 8H
 (2) FC 8I(3)(a)

CR - Income from life insurance and general insurance

CR 3 Income of non-resident general insurer

What this section applies to

- (1) This section applies to a premium that is treated as derived from New Zealand under section OE 9 (Apportionment of premiums derived by non-resident general insurers) if—
- (a) an insured person pays the premium to an insurer for insurance of any of the kinds described in subsection (3); and
 - (b) the premium meets all 3 conditions in subsection (4); and
 - (c) the premium is not excluded from the application of this section by section OE 9(2).

Amount of income

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

Kinds of insurance

- (3) The kinds of insurance referred to in subsection (1)(a) are—
- (a) general insurance:
 - (b) a guarantee against risk given by an insurer to an insured person if—
 - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
 - (ii) the insured person is associated with the insurer:
 - (c) a guarantee against risk given by an insurer to an insured person if—
 - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
 - (ii) the risk arises from money lent to the insured person
 - (iii) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and
 - (iv) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee.

Conditions for premium

- (4) The premium referred to in subsection (1)(b) is—
- (a) a premium derived by an insurer who is not resident in New Zealand when they derive it:

- (b) a premium that is not attributable to a fixed establishment of the insurer in New Zealand through which they carry on business in New Zealand;
- (c) a premium to which at least 1 of the following applies:
 - (i) the insured person from whom the premium is derived is resident in New Zealand; or
 - (ii) the insurance contract from which the premium is derived is offered or entered into in New Zealand; or
 - (iii) the insurance contract from which the premium is derived is entered into for the purposes of a business carried on by the insured person in New Zealand through a fixed establishment in New Zealand.

Defined in this Act: amount, business, derived from New Zealand, fixed establishment, general insurance, gross, income, insurance, insurance contract, insured person, insurer, money lent, New Zealand, non-resident, offered or entered into in New Zealand, pay, premium, resident in New Zealand

- Origin:
- (1) FC 13(1)
 - (2) FC 14(2)
 - (3) FC 13(2), (3), (4)
 - (4) FC 13(5), (6), (7)

Subpart CV - Income specific to certain entities

CV 3 Non-resident shippers

When this section applies

- (1) This section applies when a ship that belongs to, or is chartered by, a non-resident person carries outside New Zealand cargo, mail, or passengers shipped or embarked in New Zealand.

Amount of income

- (2) Five percent of the amount payable to the person for the carriage (whether payable inside or outside New Zealand) is treated as income of the person.

Exemption

- (3) Despite subsection (2), the Commissioner may determine that some or all of an amount that would otherwise be income of a person under this section is exempt income if, and to the extent to which, in corresponding circumstances, similar persons resident in New Zealand are not liable to, or are exempt from, income tax imposed by the laws of the country or territory in which the person is resident.

Place of shipping

- (4) In this section, cargo, mail, or passengers shipped or embarked at a port in New Zealand for carriage outside New Zealand are treated as carried outside New Zealand from that port, even though the ship may call at another port in New Zealand before finally leaving New Zealand.

Defined in this Act: amount, Commissioner, exempt income, income, income tax, New Zealand, non-resident, pay, resident in New Zealand

| | | |
|---------|-----|----------|
| Origin: | (1) | FC 18(1) |
| | (2) | FC 18(2) |
| | (3) | FC 19 |
| | (4) | FC 18(1) |

CV 4 Non-resident film renters

When this section applies

- (1) This section applies when a non-resident person derives an amount from 1 or more of the following activities:
- (a) renting, exhibiting, or issuing a film, or making other arrangements for its exhibition:
 - (b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film:
 - (c) selling or hiring advertising materials relating to a film.

Income and exempt income

- (2) Ten percent of the amounts derived from New Zealand by the non-resident person is income of the person. The remainder is exempt income of the non-resident person.

Insignificant proportion

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

Defined in this Act: amount, arrangement, business, derived from New Zealand, exempt income, film, income, New Zealand, non-resident

| | | |
|---------|-----|---------------|
| Origin: | (1) | FC 21(1) |
| | (2) | FC 21(1), (2) |
| | (3) | FC 21(4) |

CV 5 DWP account companies or conduit tax relief companies

When this section applies

- (1) This section applies when the amount of a foreign dividend of a dividend withholding payment account company or a conduit tax relief company is adjusted under section FF 7 (Surplus to dividend withholding payments).

Income

- (2) The amount of the adjustment calculated under section FF 7(5) is treated as income derived by the company at the time referred to in section FF 7(7).

Defined in this Act: amount, conduit tax relief company, dividend, dividend withholding payment account company, foreign dividend, income

| | | |
|---------|-----|---------|
| Origin: | (1) | FH 8 |
| | (2) | FH 8(3) |

CV 6 Amalgamated company: amount derived after amalgamation

When this section applies

- (1) This section applies for the purposes of section FO 7 (Income derived after amalgamation) when an amount is derived by the amalgamated company after an amalgamation as a result of something that the amalgamating company did or did not do.

Income

- (2) The amount is income of the amalgamated company in the tax year in which it is derived if it would have been income of the amalgamating company but for the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amount, income, tax year

Origin: (1) FE 4(b)
(2) FE 4(b)

CV 7 Consolidated group: income of company in group

When this section applies

- (1) This section applies for the purposes of section FM 10 (Amounts treated as company's income: group nexus) to an amount is derived by a company in a consolidated group, when the amount would be income of the group if the group were 1 company.

Income

- (2) The amount is treated as income of the company.

Defined in this Act: amount, company, consolidated group, income

Origin: (1) HB 2(1)(e)
(2) HB 2(1)(e)

CV 8 Consolidated group: arrangement for disposal of shares

When this section applies

- (1) This section applies for the purposes of section FM 22 (Arrangements for disposal of shares) when shares in company A in a consolidated group are disposed of by another company for consideration that is less that would have been received in an arm's length transaction because of a reduction in the value of company A's assets.

Income

- (2) The amount that would have been received in an arm's length transaction is treated as income derived by the other company at the time of disposal.

Defined in this Act: amount, company, consolidated group, income

Origin: (1) FD 10(8)
(2) FD 10(8)

Subpart CX - Excluded income

Transactions between companies in consolidated groups

CX 46 Intra-group transactions

When this section applies

- (1) This section applies for the purposes of section FM 8 (Transactions between group companies: income) when a company in a consolidated group derives an amount from a transaction or arrangement with another company in the same group and the amount would not be income if the group were 1 company.

Excluded income

- (2) The amount is excluded income of the company.

Defined in this Act: amount, company, consolidated group, excluded income, income

Origin: (1) HB 2(1)(a)
 (2) HB 2(1)(a)

Subpart CZ - Terminating provisions

CZ 20 Disposal of personal property lease asset under specified lease

When this section applies

- (1) This section applies for the purposes of section FZ 2 (Effect of specified lease on lessor and lessee) when a personal property lease asset that is leased under a specified lease is sold, assigned or leased on or after the term of the lease.

Income of lessor

- (2) The amount of the excess described in section FZ 2(7) is income derived by the lessor in the income year in which the term of the lease ends.

Income of lessee

- (3) The amount of the excess described in section FZ 2(8) is income of the lessee in the income year in which the asset is disposed of.

Defined in this Act: amount, income year, lessee, lessor, personal property lease asset, specified lease, term of the lease

| | | |
|---------|-----|---------|
| Origin: | (1) | FC 6 |
| | (2) | FC 6(7) |
| | (3) | FC 6(8) |

Subpart DB - Specific rules for expenditure types

DB 8B Interest expenditure by excess debt entity or reporting bank

When this section applies

- (1) This section applies for the purposes of sections FE 6 and FE 7 (which relate to apportionment of interest on thin capitalisation).

No deduction for excess debt entity (with qualification)

- (2) The excess debt entity referred to in section FE 6 (Apportionment of interest by excess debt entity) is denied a deduction for interest incurred to the extent of the amount calculated under section FE 6(3).

No deduction for reporting bank (with qualification)

- (3) The reporting bank referred to in section FE 7 (Apportionment of interest by reporting bank) is denied a deduction for interest incurred in excess of the amount calculated in section FE 7(3).

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: amount, deduction, excess debt entity, general permission, interest, reporting bank

| | | |
|---------|-----|-------------------|
| Origin: | (1) | FG 8(1), FG 8B(1) |
| | (2) | FG 8(1) |
| | (3) | FG 8B(1) |
| | (4) | new |

DB 8C Profit-related or substituting debentures

When this section applies

- (1) This section applies for the purposes of section FA 2 (Recharacterisation of certain debentures).

No deduction

- (2) A company issuing either a profit-related debenture or a substituting debenture is denied a deduction for—
- (a) interest payable under the debenture; or
 - (b) expenditure or loss incurred in connection with the debenture; or
 - (c) expenditure or loss incurred in borrowing the money secured by or owing under the debenture.

Relationship with sections DB 5 to DB 8

- (3) This section overrides sections DB 5 to DB 8.

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: debentures, deduction, general permission, interest, profit-related debenture, substituting debenture

| | | |
|---------|-----|------------------|
| Origin: | (1) | FC 1, FC 2 |
| | (2) | FC 1(1), FC 2(2) |
| | (3) | new |
| | (4) | new |

DB 18B Cancellation of shares held as revenue account property

When this section applies

- (1) This section applies for the purposes of section FA 4(3)(b) (Recharacterisation of shareholder's base: company repurchasing share).

No deduction

- (2) A shareholder is denied a deduction for the amount added to the cost of their remaining shares of the same class as that of the share cancelled, unless the share is trading stock of the shareholder.

Link with subpart DA

- (3) This section overrides the general permission.

Defined in this Act: debentures, deduction, general permission, interest, profit-related debenture, substituting debenture

| | | |
|---------|-----|---------|
| Origin: | (1) | FC 4(e) |
| | (2) | FC 4(e) |
| | (3) | new |

DB 21B Apportionment when land acquired with other property

If a person derives income under sections CB 5 to CB 12 from the disposal of land, and the land is acquired together with other property, the cost of acquisition must be apportioned between the land and the other property.

Defined in this Act: income, land, property

| | |
|---------|-------|
| Origin: | FB 4A |
|---------|-------|

Subpart DV - Expenditure specific to certain entities

DV 14 Amalgamated company: property passing on resident amalgamation

When this section applies

- (1) This section applies for the purposes of sections FO 8 and FO 10 (which relate to resident amalgamations).

Deduction for bad debts or expenditure or loss

- (2) On a resident amalgamation, an amalgamated company is allowed a deduction for an amount written off as bad, or an amount of expenditure or loss (including an amount of depreciation loss) incurred as a result of something that the amalgamating company did or did not do if—
- (a) the amalgamating company would have been allowed the deduction but for the amalgamation; and
 - (b) the amalgamated company is not otherwise allowed the deduction.

Depreciation loss for property transferred

- (3) On a resident amalgamation, an amalgamating company is allowed a deduction for an amount of depreciation loss for property transferred to the amalgamated company for the period described in section FO 10(8).

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: amalgamated company, amalgamating company, amount, deduction, depreciation loss, general permission, resident amalgamation

| | | |
|---------|-----|-------|
| Origin: | (1) | FE 3 |
| | (2) | FE 3 |
| | (3) | FE 6A |
| | (4) | new |

DV 15 Consolidated group: expenditure incurred by group companies

When this section applies

- (1) This section applies for the purposes of sections FM 9 and FM 11 (which relate to expenditure incurred by group companies).

No deduction

- (2) Subject to the exceptions in section FM 9, a company in a consolidated group is denied a deduction for expenditure or loss through a payment or disposal to, or a transaction or arrangement with, another company in the same group when the

deduction would be denied if the group were 1 company. Subsection (3) overrides this subsection.

Deduction allowed if nexus exists

- (3) Despite subsection (2), if the group would be allowed a deduction for an item of expenditure as 1 company because of a nexus between the expenditure and the carrying on of a business by another group company, the company is allowed a deduction. However, this subsection is overridden by section FM 11(3).

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: arrangement, company, consolidated group, deduction, general permission, loss, pay

| | | |
|---------|-----|-----------------|
| Origin: | (1) | HB 2(1)(b) |
| | (2) | HB 2(1)(b) |
| | (3) | HB 2(1)(c), (d) |
| | (4) | new |

Subpart DW - Expenditure specific to certain industries

DW 3 Non-resident general insurers, shippers, and film renters

No deduction

- (1) A person listed in subsection (2) is denied a deduction for expenditure incurred in deriving the income described in the relevant section.

Persons

- (2) The persons referred to in subsection (1) are—
- (a) a non-resident person who derives income under section CR 3 (Income of non-resident general insurer); and
 - (b) a non-resident person who derives income under section CV 3 (Non-resident shippers) for cargo, mail, or passengers shipped outside New Zealand;
 - (c) a non-resident person who derives income under section CV 4 (Non-resident film renters) from the activities described in that section.

Non-resident shipper's expenditure on depreciation

- (3) The non-resident person referred to in subsection (2)(b) has no amount of depreciation loss in relation to that income.

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: amount, deduction, depreciation loss, film, general permission, income, insurer, New Zealand, non-resident

| | | |
|---------|-----|-----------------------------|
| Origin: | (1) | FC 15, FC 20, FC 21(3), (5) |
| | (2) | FC 15, FC 20, FC 21(3), (5) |
| | (3) | FC 20(1)(b) |
| | (4) | new |

Subpart DZ - Terminating provisions

DZ 14 Deductions under specified leases

When this section applies

- (1) This section applies for the purposes of sections FZ 2 and FZ 4 (which relate to specified leases).

Lessor

- (2) In an income year in which a lessor leases a personal property lease asset to a lessee under a specified lease, the lessor is denied a deduction for an amount of depreciation loss for the asset.

Lessee

- (3) A lessee under a specified lease is denied a deduction for expenditure incurred by them under the lease except to the extent to which the expenditure—
- (a) would be allowed as a deduction to the lessee under section BD 2 (Deductions); and
 - (b) is not more than the sum of the amounts calculated under section FZ 3(2)(a) (Income of lessor under specified lease) for the initial period, if any, and each instalment period that ends in the income year.

Link with subpart DA

- (4) This section overrides the general permission.

Defined in this Act: amount, deduction, depreciation loss, general permission, income year, initial period, instalment period, lessee, lessor, personal property lease asset, specified lease

| | | |
|---------|-----|---------|
| Origin: | (1) | FC 6 |
| | (2) | FC 6(4) |
| | (3) | FC 8 |
| | (4) | new |

Subpart EB - Valuation of trading stock (including dealer's livestock)

Disposal of business assets

EB 25 Apportionment on disposal of business assets that include trading stock

When this section applies

- (1) This section applies when a person disposes of trading stock together with other assets of a business to another person. This section applies also if a person disposes of an interest in trading stock together with other assets of a business or an interest in those other assets.

Apportionment

- (2) The total amount received on disposal must be apportioned between the trading stock and the other assets in a way that reflects their respective market values.

Purchase price

- (3) The amount apportioned to the trading stock under subsection (2) is treated as the price paid for it by the buyer.

Amended meaning of trading stock

- (4) For the purposes of this section, **trading stock** is treated as—
 - (a) including the creation or grant of a right to take timber:
 - (b) including a disposal of land with standing timber except to the extent to which the timber is any of the following:
 - (i) trees that are ornamental or incidental, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994; or
 - (ii) timber subject to a forestry right (as defined in section 2 of the Forestry Rights Registration Act 1983) registered under the Land Transfer Act 1952; or
 - (iii) timber subject to a profit à prendre granted before 1 January 1984:
 - (c) excluding a financial arrangement to which the financial arrangements rules apply.

Transfers under settlement of relationship property

- (5) A disposal under this section includes a transfer under a settlement of relationship property.

Defined in this Act: amount, business, dispose, financial arrangement, financial arrangements rules, land, market value, registered bank, settlement of relationship property, right to take timber, timber, trading stock

| | | |
|---------|-----|--------------|
| Origin: | (1) | FB 4(1), (3) |
| | (2) | FB 4(1) |
| | (3) | FB 4(1) |
| | (4) | FB 4(2), (4) |
| | (5) | FF 13(1) |

Subpart EE - Depreciation

EE 42B Amount of depreciation loss when item partly used to produce income

When subsection (2) applies

- (1) Subsection (2) applies when—
- (a) a person has an amount of depreciation loss for an item of depreciable property for an income year, other than an amount arising under section EE 41(2); and
 - (b) at a time during the income year, the item is partly used, or partly available for use, by the person—
 - (i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or
 - (ii) in a way that is subject to fringe benefit tax; and
 - (c) at the same time, the item is partly used, or is partly available for use, by the person for a use that falls outside both paragraph (b)(i) and (ii); and
 - (d) the item is not a motor vehicle to which subpart DE (Motor vehicle expenditure) applies.

Partial use: formula

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

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

Definition of items in formula

- (3) In the formula in subsection (2),—
- (a) **depreciation loss** means the amount of depreciation loss for the income year:
 - (b) **qualifying use days** means the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within subsection (1)(b)(i) or (ii):
 - (c) **all days** means the number of days in the income year on which the person owns the item and uses it or has it available for use.

Other units of measurement

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

When subsection (6) applies

- (5) Subsection (6) applies when—
- (a) a person has an amount of depreciation loss for an item of depreciable property arising under section EE 41(2); and
 - (b) the item was, at any time during the period the person owned it, dealt with in—
 - (i) subsection (2); or
 - (ii) any applicable paragraph in section EZ 10 (Amounts of depreciation recovery income and depreciation loss for part business use in or before 1992-93 income year); and
 - (c) the item is not a motor vehicle to which subpart DE applies.

Deduction for depreciation loss: formula

- (6) The deduction the person has for the amount of depreciation loss is calculated using the formula—

$$\text{disposal depreciation loss} \times \frac{\text{all deductions}}{(\text{base value} - \text{adjusted tax value at date})}$$

Definition of items in formula

- (7) In the formula in subsection (6)—
- (a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under section EE 41(2);
 - (b) **all deductions** is all amounts of depreciation loss relating to the item for which the person has been allowed a deduction in each of the income years in which the person has owned the item;
 - (c) **base value** has whichever is applicable of the meanings in sections EE 48 to EE 50;
 - (d) **adjusted tax value at date** is the item's adjusted tax value on the date on which the disposal or event occurs.

Defined in this Act: adjusted tax value, amount, assessable income, business, deduction, depreciable property, depreciation loss, fringe benefit tax, income year, motor vehicle, property

| | | |
|---------|-----|---------|
| Origin: | (1) | FB 7(1) |
| | (2) | FB 7(2) |
| | (3) | FB 7(3) |
| | (4) | FB 7(4) |
| | (5) | FB 7(5) |
| | (6) | FB 7(6) |
| | (7) | FB 7(7) |

Subpart EZ - Terminating provisions

EZ 16 Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994

...

When subsections (6) and (7) apply

- (5) Subsections (6) and (7) apply when person A transfers a qualifying asset or an item to which a qualifying improvement has been made under a settlement of relationship property to person B.

Person B's amount of depreciation loss

- (6) After the transfer, person B has an amount of depreciation loss under this section as if person B were person A.

Calculating amount

- (7) The amount of person B's depreciation loss for the asset or item for the year of transfer is the amount of depreciation loss for the asset or item for the income year under this section minus the amount that person A has for the income year.

Defined in this Act: amount, depreciation loss, income year, settlement of relationship property, year of transfer

Origin: add FF 15

Subpart HK - Agency

HK 27 Non-resident general insurers

When this section applies

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

Insurer

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

Person acting on insurer's behalf

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

Agent paying premium or providing funds

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

Person paying premium

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

Insured person

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

Bank or building society

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

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

| | | |
|---------|-----|----------|
| Origin: | (1) | FC 16(1) |
| | (2) | FC 16(2) |
| | (3) | FC 16(3) |
| | (4) | FC 16(4) |
| | (5) | FC 16(5) |
| | (6) | FC 16(6) |
| | (7) | FC 16(7) |

HK 28 Agent paying premiums to residents of Switzerland and the Netherlands

When this section applies

- (1) This section applies when—
 - (a) an insurer derives income under section CR 3 (Income of non-resident general insurer); and
 - (b) an agent of the insurer under section HK 27 pays the premium to an insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand; and
 - (c) the insurer or other person—
 - (i) is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland; or
 - (ii) is treated as being resident in the Netherlands for the purposes of a double tax agreement between the government of New Zealand and the government of the Netherlands.

Disclosure

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

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

| | | |
|---------|-----|----------|
| Origin: | (1) | FC 17(1) |
| | (2) | FC 17(2) |

Subpart LC - Foreign tax

LC 1 Credits in respect of tax paid in country or territory outside New Zealand

- (5B) Subsection (5C) applies in relation to income derived or expenditure incurred through activities in more than 1 country when—
- (a) a person carries on business partly in 1 country and partly in another country; or
 - (b) a contract is made in 1 country and is performed, in whole or in part, by a person in 1 or more other countries.
- (5C) The amount of income derived from the business or under the contract, and the amount of expenditure incurred in deriving the income, must be apportioned to each country by treating the activities in the country as if they were carried out by a separate and independent person undertaking only those activities and dealing at arm's length.

Defined in this Act: amount, business, income

Origin: (5B) FB 2(1A)
 (5C) FB 2(1A)

OB 1 for Part F

| | | |
|--|-----------------------|---------------------------------|
| Accounting period | | |
| Accounting profits method | | |
| Accounting year | | |
| Accrual expenditure | | |
| Acquire | Limited scope | |
| Adjusted tax value | | |
| Agent | | |
| Amalgamated company | | |
| Amalgamating company | | |
| Amalgamation | | |
| Amalgamation provisions | Delete, 3 refs only | Replace with amalgamation rules |
| Amalgamation rules | Index entry - FO 2 | See above |
| Amount | | |
| Arrangement | | |
| Assessable income | | |
| Assessment | | |
| Associated person | | |
| Attributed CFC income | | |
| Attributed CFC net loss | | |
| Australian imputation credit account company | | |
| Available subscribed capital | | |
| Bloodstock | | |
| Branch equivalent method | | |
| Building society | | |
| Business | | |
| Cancellation | | |
| Cash basis person | | |
| CFC | | |
| Close of trading spot exchange rate | | |
| Close relative | New for subpart FC | |
| Commercial bill | | |
| Commissioner | | |
| Company | | |
| Comparative value method | | |
| Conduit tax relief account | | |
| Conduit tax relief company | | |
| Conduit tax relief credit | | |
| Conduit tax relief holding company | | |
| Consideration | Update section refs | |
| Consolidated group | Update section refs | |
| Consolidation rules | Index entry - FM 2(2) | |
| Continuity provisions | | |
| Control | | |
| Convertible note | | |
| Corresponding income year | | |
| Cost | Limited scope | |

| | | |
|--|---|-------------|
| Cost price | Limited scope | |
| Date of transfer | Update section refs, and query extend to FD | |
| De facto partner | To be omitted | |
| Debenture holder | | |
| Debentures | | |
| Deduction | | |
| Deemed rate of return method | | |
| Depreciable property | | |
| Depreciating property | | |
| Depreciation loss | | |
| Depreciation percentage | | |
| Derived from New Zealand | | |
| Direct voting interest | | |
| Dispose | | |
| Distribution | | |
| Dividend | Update section refs | |
| Dividend withholding payment | | |
| Dividend withholding payment account | | |
| Dividend withholding payment account company | | |
| Double tax agreement | | |
| Eligible company | 11 refs in FD and OB, OD (1) - amend for bill | delete |
| Employee | | |
| Employer | | |
| Established activity | Reference FZ 5(1) | |
| Estimated useful life | | |
| Excepted financial arrangement | | |
| Excess debt entity | New for subpart FE | Index entry |
| Excluded income | | |
| Exempt income | | |
| FAI group | New entry for OB 1 | Ref to FF 1 |
| FBT rules | | |
| FIF | | |
| FIF income | | |
| FIF loss | | |
| FIF net loss | | |
| Film | | |
| Film right | | |
| Finance lease | | |
| Financial arrangement | | |
| Financial arrangements rules | | |
| Financial statements | | |
| Financial value | FE 20 | |
| Fixed establishment | | |
| Fixed-rate share | | |
| Foreign attributed income | | |
| Foreign company | | |
| Foreign dividend | | |
| Fringe benefit tax | | |
| Further income tax | | |
| General insurance | | |
| General permission | | |
| Generally accepted accounting practice | | |

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|-------------------------------------|---|---|
| Goods | Limited scope - expand? | |
| Grey list company | | |
| Gross | | |
| Group funding debt | | |
| Group of companies | | |
| Group of persons | | |
| Guaranteed residual value | | |
| Herd scheme | | |
| High-priced livestock | | |
| Hire purchase agreement | | |
| Hire purchase asset | 26 refs, 2 in EE 3, 2 in EW 33, 6 in EZ 45, 4 in OB 1 - amend for bill | delete |
| Hire purchase payment | ref in OB 1 | delete |
| Hire purchase term | ref in OB 1 | delete |
| Imputation credit account | | |
| Imputation credit account company | | |
| Imputation group | Update section ref | |
| Imputation rules | Index entry - FN 2 | |
| Imputation year | | |
| Income | | |
| Income derived from New Zealand | | |
| Income interest | | |
| Income tax | | |
| Income tax liability | | |
| Income year | | |
| Income year of transfer | To year of transfer? | |
| Initial period | Check use | |
| Instalment period | Check use | |
| Insurance | update | Take from FC 13 to OB 1 for the purposes of sections (FC 14 to FC 17), CR 3 |
| Insurance contract | | |
| Insured person | | Take from FC 13 to OB 1 for the purposes of sections (FC 14 to FC 17), CR 3 |
| Insurer | | Take from FC 13 to OB 1 for the purposes of sections (FC 14 to FC 17), CR 3 |
| Interest | Limited scope | |
| International tax rules | Update section ref | |
| Issue | | |
| Land | Update section refs | |
| Lease | Update section refs | |
| Lessee | | |
| Lessee's acquisition cost | 9 refs, 1 in GC 14, 5 in OB 1, including "consideration" - amend for bill | delete |
| Lessor | | |
| Lessor's disposition value | 4 refs, including OB 1 "consideration" - amend for bill | delete |
| Lessor's outstanding balance | 3 refs in FD and OB 1 | delete |
| Liquidation | | |
| Loan | | |
| Loss | | |
| Loss attributing qualifying company | | Old term |

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|--|--|---|
| Market value | | |
| Matrimonial agreement | settlement of relationship property | delete |
| Measurement period | | |
| Mining company | | |
| Mining development expenditure | | |
| Mining exploration expenditure | | |
| Money | | |
| Money lent | | |
| Mortgage | | |
| Motor vehicle | | |
| National average market value | | |
| Natural person | New for subpart FE | |
| Net balance due | | Omit - incorporated FA 15 |
| Net income | | |
| Net loss | | |
| New Zealand | | |
| New Zealand banking group | | |
| New Zealand net equity | | |
| New Zealand resident | | |
| Nominated company | Update section refs, FM 27(3), FN 7(3) | |
| Non-qualifying trust | | |
| Non-resident | | |
| Non-resident company | | |
| Non-specified livestock | | |
| Non-standard balance date | | |
| Notice | | |
| Notice period | New for section FM 30(6) | |
| Notify | | |
| NRWT rules | | |
| Offered or entered into in New Zealand | | |
| Off-market cancellation | | |
| Operating lease | | |
| Option | Update section refs | |
| Other amortisation provision | | |
| Outstanding balance | Update section refs | |
| Pay | | |
| PAYE rules | | |
| Personal property | | |
| Personal property lease asset | | |
| Personal property lease payment | Check use | |
| Policyholder credit account | | |
| Pool | | |
| Pool method | | |
| Premium | Update section refs | Take from FC 13 to OB 1 for the purposes of sections (FC 14 to FC 17), CR 3 |
| Profit-related debenture | New for subpart FA (FA 2(4)) | |
| Property | | |
| Provisional tax | | |
| Qualifying amalgamation | Replace with resident amalgamation | delete |
| Quarter | | |
| Recognised exchange | | |

| | | |
|-------------------------------------|--|--|
| Registered bank | | |
| Regulatory value | FE 20 | |
| Relative | | |
| Repealed provision | Index entry - FZ 4(4) | |
| Resident | | |
| Resident amalgamation | Replaces qualifying amalgamation - FO 3(1) | |
| Resident imputation subgroup | | |
| Resident in Australia | | |
| Resident in New Zealand | | |
| Resident mining operator | | |
| Residual income tax | | |
| Return of income | | |
| Revenue account property | | |
| Right | Limited scope | |
| Right to take timber | | |
| RWT rules | | |
| Services | Expand? | |
| Settlement | | |
| Settlement of relationship property | | |
| Share | Update section refs | |
| Shareholder | Update section refs | |
| Shares of the same class | | |
| Slice rule | | |
| Specified lease | | |
| Specified livestock | | |
| Spouse | | |
| Spreading method | | |
| SSCWT rules | | |
| Standard value | | |
| Straight-line method | | |
| Substituting debenture | New for subpart FA (FA 2(5)) | |
| Surplus amount | Index entry - FF 7(1) | |
| Tax avoidance | | |
| Tax year | | |
| Taxable income | | |
| Tax-base property | New for subpart FD | |
| Temporary building | | |
| Term of the lease | | |
| This Act | | |
| Timber | | |
| Total assets for an income year | An/the, update section ref, FE 16 | |
| Total debt | FE 15 | |
| Trading stock | Update section refs - EB 25(4) | |
| Trans-Tasman imputation group | | |
| Transfer amount | New for section FB 19 | |
| Transfer of value | Expand? | |
| Trustee | | |
| Ultimate parent | | |
| Voting interest | | |
| Wholly-owned group | | |
| Working day | | |
| Year of transfer | ? from income year of transfer | |

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Trading stock, replace para (d)

- (d) in section EB 25 (Apportionment on disposal of business assets that include trading stock)—
 - (i) includes anything produced or manufactured:
 - (ii) includes anything acquired for the purposes of manufacture, sale, or exchange:
 - (iii) includes livestock:
 - (iv) includes timber:
 - (v) includes a right to take timber:
 - (vi) includes any other real or personal property if the business of the person who disposed of it is dealing in property for the purpose of disposal:
 - (vii) includes anything for which expenditure is incurred after 8.30pm New Zealand Standard Time on 31 July 1986 and which would be trading stock if possession of it were taken:
 - (viii) does not include a financial arrangement to which the financial arrangements rules apply

Origin: FB 4(5)

OE 4B Apportionment of income derived partly in New Zealand

When this section applies

- (1) This section applies when—
 - (a) a person carries on business partly in New Zealand and partly outside New Zealand; or
 - (b) a contract is made in New Zealand and is performed, in whole or in part, by a person outside New Zealand; or
 - (c) a contract is made outside New Zealand and is performed, in whole or in part, by a person in New Zealand.

Apportionment

- (2) The amount of income derived from the business or under the contract, and the amount of expenditure incurred in deriving the income, must be apportioned between New Zealand and sources outside New Zealand to the extent necessary to achieve the result in subsection (3).

Necessary effect of apportionment

- (3) The result of the apportionment must be that the person's net income or net loss, in relation to the business or contract, is the same as a separate and independent person would have if carrying out only the person's activities in New Zealand and dealing at arm's length.

Derived from New Zealand

- (4) Income apportioned to New Zealand under subsection (2) is treated as derived from New Zealand.

Relationship with section OE 4

- (5) This section overrides section OE 4.

Defined in this Act: amount, business, derived from New Zealand, gross, income, New Zealand

| | | |
|---------|-----|---------|
| Origin: | (1) | FB 2(1) |
| | (2) | FB 2(1) |
| | (3) | FB 2(1) |
| | (4) | FB 2(1) |
| | (5) | OE 4(1) |

OE 9 Apportionment of premiums derived by non-resident general insurers

Derived from New Zealand

- (1) A premium that an insured person pays to an insurer under section CR 3 (Income of non-resident general insurer) is treated as derived from New Zealand unless it is excluded under subsection (2).

When premium excluded

- (2) A premium is excluded from the application of this section if—
- (a) all risk covered by the premium is located outside New Zealand; and
 - (b) the insurer deriving the premium is not associated with the insured person.

Defined in this Act: derived from New Zealand, income, insured person, insurer, New Zealand, non-resident, pay, premium

Origin: (1) FC 13
(2) FC 13

OE 10 Apportionment of income derived by non-resident shippers

An amount that a non-resident person derives under section CV 3 (Non-resident shippers) is treated as derived from New Zealand.

Defined in this Act: amount, derived from New Zealand, income, New Zealand, non-resident

Origin: FC 18(2)