

Part H - Taxation of certain entities

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Subpart HB — Attributing companies and loss-attributing companies

Introductory provisions

General provisions

HB 1 Attributing companies and loss-attributing companies

Distributing profits and attributing tax losses

- (1) The rules in this subpart allow a company to choose, for taxation purposes,—
 - (a) to have a distribution of profits to shareholders treated in a similar way to drawings from a partnership's profits; and
 - (b) when it has only 1 class of shares, to have tax losses attributed to shareholders treated in a similar way to those of a partnership.

Requirements for attributing companies

- (2) An attributing company must meet the requirements of sections HB 5 to HB 8, and must maintain the requirements for an income year or particular period under section HB 4.

Requirements for loss-attributing companies

- (3) A loss-attributing company must be or must be eligible to be an attributing company, and must meet the shareholding requirements in section HB 9.

Elections required

- (4) For a company to be an attributing company or a loss-attributing company, all the directors of the company, and every shareholder in the company with legal capacity, must sign an election under section HB 5. An exception applies for a minority shareholder in the situation described in section HB 34.

Shareholders' personal liability

- (5) A shareholder who makes an election referred to in subsection (4) must agree to take personal liability to the extent described in section HB 23.

Defined in this Act: attributing company, company, director, income year, loss-attributing company, share, shareholder, tax loss

Origin:	(1)	HG 1(c), (d)
	(2)	HG 3(1), HG 4(1)(a)
	(3)	HG 14(c)
	(4)	HG 4(1)(b)
	(5)	HG 4(1)(b)

HB 2 Definition of attributing company

In this Act, an **attributing company** means a company other than a unit trust that, for the whole of a relevant income year or particular period, meets the requirements of sections HB 5 to HB 8.

Defined in this Act: attributing company, company, income year, this Act, unit trust

Origin: OB 3(1)

HB 3 Definition of loss-attributing company

In this Act, a **loss-attributing company** means an attributing company that, for the whole of a relevant income year or particular period, meets the requirements of section HB 9. If section HB 11 applies, the company is not eligible to be a loss-attributing company.

Defined in this Act: attributing company, income year, loss-attributing company, this Act

Origin: HG 14

HB 4 Conditions generally

Becoming and continuing as attributing company

- (1) The requirements set out in sections HB 5 to HB 8 are preconditions of, and ongoing conditions applying in, an income year or particular period in relation to the status of attributing company and loss-attributing company. For a company to become and to continue as an attributing company, the requirements in those sections must be met.

Losing status

- (2) Sections HB 10 and HB 11 apply after the status is gained in relation to failure to maintain the requirements and avoidance arrangements.

Defined in this Act: arrangement, attributing company, company, income year, loss-attributing company

Origin: (1) OB 3(1)
(2) HG 7, HG 14(d)

Requirements for attributing companies

HB 5 Effective elections

Making elections

- (1) For the purposes of sections HB 2, HB 4, and HB 10, and having met the requirements in sections HB 5 to HB 8, a company may be an attributing company or a loss-attributing company in an income year or particular period only if all the directors of the company and every shareholder in the company who has legal capacity sign and provide to the Commissioner an election stating that the company is to be an attributing company. Sections HB 32 to HB 44 deal with the elections in detail.

Elections remaining in effect

- (2) The elections that the directors and shareholders have made must remain in effect for the income year or period, and must not have been revoked before the end of the income year or period.

Director at time

- (3) For the purposes of an election, a person is considered a director of a company if they hold the office at the time the notice is provided.

Defined in this Act: attributing company, Commissioner, company, director, income year, loss-attributing company, notice, shareholder

Origin:	(1)	OB 3(1)(f), HG 3(1), HG 4(1), HG 14(a), (b)
	(2)	OB 3(1)(f), HG 3(1), HG 4(1), HG 14(a), (b)
	(3)	HG 3(1)

HB 6 Corporate requirements

Closely held company

- (1) For the purposes of sections HB 2, HB 4, and HB 10, an attributing company must, in an income year or particular period,—
 - (a) have 5 or fewer shareholders who meet the requirements of section HB 7;
or
 - (b) be a flat-owning company.

Exclusions

- (2) A company is not eligible to be an attributing company if, at any time in an income year or particular period, it is—
 - (a) a company that is not resident in New Zealand; or
 - (b) a company that is resident in New Zealand but is treated under and for the purposes of an agreement, as not resident in New Zealand; or

- (c) no longer an attributing company under section HB 10(2) because it has stopped being a loss-attributing company.

Defined in this Act: attributing company, company, flat-owning company, income year, loss-attributing company, resident in New Zealand, shareholder

- Origin:
- (1) HG 1(a), (b), OB 3(1)(b)(ii)
 - (2) OB 1 “foreign company”, OB 3(1)(a), (b)(i), (g)

HB 7 Shareholding requirements

Natural persons, certain trustees, and attributing companies

- (1) For the purposes of sections HB 2, HB 4, and HB 10, a shareholder in an attributing company must be, for an income year or particular period, 1 of the following:
 - (a) a natural person other than a trustee; or
 - (b) a trustee of a trust, but only if subsection (2) applies in relation to the dividends derived by the trustee; or
 - (c) another attributing company.

Dividends derived by trustees

- (2) For the purposes of subsection (1)(b), all dividends that the trustee of a trust derives from an attributing company in an income year must be beneficiary income of 1 or more persons who are not trustees or companies other than attributing companies. But this subsection does not apply to non-cash dividends other than taxable bonus issues.

Special shareholding rules

- (3) When the shares in an attributing company that has 5 or fewer shareholders are held by relatives, other companies, and trustees, the following special rules apply:
 - (a) if a shareholder in an attributing company is connected within the first degree of relationship to another shareholder in the company by either blood relationship, marriage, or adoption, they are treated as a single shareholder, and this treatment continues while they remain a shareholder in the company despite any later death or dissolution:
 - (b) shares in an attributing company that are held by another company are treated as held by the shareholders in that other company:
 - (c) if a shareholder in an attributing company is a trustee, the shareholders are counted (without the trustee) as the larger of the following:
 - (i) the group who signed the election; or
 - (ii) the group who derived beneficiary income from dividends from the attributing company in the period between the first day of the 1991–92 income year and the time of counting.

Defined in this Act: attributing company, beneficiary income, bonus issue, company, dividend, income year, non-cash dividend, relative, share, shareholder, taxable bonus issue, trustee

Origin: (1) OB 3(1)(c)
(2) OB 3(1)(c)(ii)
(3) OB 3(3)

HB 8 Limit on foreign non-dividend income

Dollar limit

- (1) For the purposes of sections HB 2, HB 4, and HB 10, the foreign non-dividend income of an attributing company in an income year must be no more than \$10,000 after deducting the smaller of—
- (a) any part that is income under section CC 3 (Financial arrangements); or
 - (b) 10% of the gross income of the company for the income year.

Change in threshold

- (2) The Governor-General may make an order in Council increasing the sum set out in subsection (1). The order may apply from the start of the income year in which it is made, or to amounts of income derived after the date on which the order is made.

Defined in this Act: amount, attributing company, financial arrangement, foreign non-dividend income, gross, income, income year

Origin: (1) OB 3(1)(d)
(2) OB 3(4)

Further requirements for loss-attributing companies

HB 9 Nature of loss-attributing company shares

For the purposes of sections HB 2, HB 4, and HB 10, all shares in a loss-attributing company must carry—

- (a) the same right to exercise voting power and to take part in decision-making on—
 - (i) the distributions to be made by the company; and
 - (ii) the company’s constitution; and
 - (iii) varying the capital of the company; and
 - (iv) appointing or electing directors of the company; and
- (b) the same rights (in priority, amount payable per share, and so on) when the company distributes its profits or its assets, if the company acquires, redeems, or cancels its shares, or in another way reduces or returns its share capital, whether on liquidation or not.

Defined in this Act: cancellation, loss-attributing company, director, pay, share

Origin: HG 14(a), (b)

Failure to meet requirements

HB 10 When requirements no longer met

Changed circumstances

- (1) If, through changed circumstances, an attributing company no longer meets the requirements set out in sections HB 5 to HB 8, it stops being an attributing company. This subsection applies whether or not it is, or could be, known at the time the circumstances arise that the company is no longer eligible.

Attributing companies: from start of income year of change

- (2) If a company no longer meets the requirements to be an attributing company at some time in an income year, it is treated as no longer an attributing company from the start of the income year in which the change of circumstances occurs. Subsection (5) overrides this subsection.

Loss-attributing companies

- (3) If a company is a loss-attributing company in an income year, but does not meet the requirements for the next income year, it is treated having stopped being an attributing company from the start of that next income year. However, the company may become an attributing company again if it later meets the requirements.

Distribution of dividends

- (4) A company does not stop being an attributing company merely because it does not comply with section HB 23(1)(b) and (2) if—
- (a) the dividends available to be distributed are beneficiary income; and
 - (b) some dividends derived by the trustee from the company have vested or have been distributed as beneficiary income.

Deferring date

- (5) On an application by an attributing company, the Commissioner may defer the date on which the company stops being an attributing company to the start of a later income year if—
- (a) the company did not know, and could not reasonably be expected to have known, at the time the circumstances arose that it no longer met the requirements; and
 - (b) in the circumstances, it would be a disproportionately harsh or inappropriate outcome.

Examples for subsection (5)(a)

- (6) Examples of the circumstances that might apply in subsection (5)(a) are a reasonable expectation or belief that—
- (a) the company would continue to meet the requirements through an extension under section HB 39, or HB 40, or HB 42; or
 - (b) an amount of foreign non-dividend income that the company derives would not breach the threshold in section HB 8; or
 - (c) the dividends referred to in section HB 7(2) would be distributed as beneficiary income.

Examples for subsection (5)(b)

- (7) Examples of the circumstances that might apply in subsection (5)(b) are—
- (a) the length of time between the start of the income year and the date of the change in circumstances;
 - (b) the length of time between the date of the change in circumstances and the date when the company knew, or could reasonably be expected to have known, that the requirements were not met;
 - (c) the sorts of transactions that the company made during the periods of time described in paragraphs (a) and (b).

Defined in this Act: attributing company, beneficiary income, Commissioner, company, dividend, foreign non-dividend income, income year, loss-attributing company, trustee

Origin:	(1)	HG 7(1)
	(2)	HG 7(1)
	(3)	HG 18
	(4)	OB 3(3A)
	(5)	HG 7(2)
	(6)	HG 7(2)
	(7)	HG 7(2)

HB 11 Avoidance arrangements

Failure to meet requirements

- (1) In an income year or particular period in which a company is a loss-attributing company, if a share in the company is, or has been, part of an arrangement whose purpose is to defeat the intent and application of the rules in this subpart, the company is no longer eligible to be a loss-attributing company.

Series of arrangements, and 1 among other purposes

- (2) In subsection (1), the arrangement referred to—
- (a) includes a series of related or connected arrangements; and
 - (b) may have more than 1 purpose, and it is sufficient that 1 purpose among those other purposes has the effect described.

Defined in this Act: arrangement, company, income year, loss-attributing company, share

Origin:	(1)	HG 14(d)
	(2)	HG 14(d)

Special tax matters for attributing companies

Treatment of profits

HB 12 Attributing companies' distributions

A distribution that is a transfer of value to the shareholders of an attributing company must be treated as set out in sections HB 13 to HB 17.

Defined in this Act: attributing company, shareholder, transfer of value

Origin: HG 1(c)

HB 13 Dividends paid by attributing companies

General treatment

- (1) A dividend that an attributing company pays to a person resident in New Zealand is exempt income under section CW 11C (Dividends paid by attributing companies) to the extent to which it is more than a fully imputed distribution under section HB 14.

When shareholder has non-standard balance date

- (2) A dividend that an attributing company pays to a person resident in New Zealand, when the person has a non-standard balance date and the dividend is derived after the end of the tax year but before their balance date, is allocated to the day after the balance date.

Resident withholding income

- (3) A dividend that an attributing company pays to a person resident in New Zealand does not constitute resident withholding income under the RWT rules.

Defined in this Act: attributing company, dividend, exempt income, non-standard balance date, pay, resident in New Zealand, resident withholding income, shareholder, tax year

Origin: (1) HG 9(1), HG 13
(2) HG 13(1)(c)
(3) HG 13(1)(b)

HB 14 Fully imputed distribution*When this section applies*

- (1) This section applies if an attributing company with an imputation credit account or a dividend withholding payment account pays a dividend in an imputation year to a person resident in New Zealand. However, this section does not apply to non-cash dividends other than taxable bonus issues.

Calculating amount of fully imputed distribution

- (2) The amount of a fully imputed distribution is calculating using the formula—

$$\frac{\text{attached imputation credit} + \text{attached dividend withholding payment credit}}{\text{basic rate of tax.}}$$

- (3) In the formula in subsection (2), —
- (a) **attached imputation credit** is the amount determined under subsection (4), and the amount is zero if no imputation credit is attached:
 - (b) **attached dividend withholding payment credit** is the amount determined under subsection (5), and the amount is zero if no dividend withholding payment credit is attached:
 - (c) **basic rate of tax** is basic rate of income tax for companies expressed as a percentage set out in schedule 1, part A, clause 5, applying for the income year of the shareholder in which the dividend is derived.

Imputation credit account company

- (4) An attributing company that is an imputation credit account company is treated as having attached an imputation credit to the dividend. The amount of the imputation credit is the lesser of—
- (a) the maximum imputation credit that may be attached to the dividend under section ME 8(1) (Allocation rules for imputation credits); and
 - (b) an amount calculated using the formula in subsection (6).

Dividend withholding payment account company

- (5) An attributing company that is dividend withholding payment account company is treated as having attached a dividend withholding payment credit to the dividend. The amount of the imputation credit is the lesser of—
- (a) the maximum dividend withholding payment credit that may be attached to the dividend under sections ME 8(1) and MG 10(1) (which relate to imputation credits), taking into account any imputation credit attached to the dividend under subsection (4); and
 - (b) an amount calculated using the formula in subsection (6).

Formula

- (6) The formula referred to in subsections (4) and (5) is—

$$\frac{\text{attached credits} \times \text{amount of dividend}}{\text{amount paid before credits attached.}}$$

Items in formula

- (7) In the formula in subsection (6),—
- (a) **attached credits** is the balance in the company's imputation credit account or dividend withholding payment account, whichever is applicable, on the last day of the imputation year in which the dividend is paid before any debit is made for attaching the relevant imputation credits or dividend withholding payment credits to the dividends paid in the imputation year:
 - (b) **amount of the dividend** is the amount before imputation credits or dividend withholding payment credits, whichever is applicable, are attached:
 - (c) **amount paid before credits attached** is the total amount of dividends paid by the company during the imputation year before attaching any imputation credits, excluding non-cash dividends other than taxable bonus issues.

Relationship with imputation rules and dividend withholding payment rules

- (8) An attributing company may attach imputation credits or dividend withholding payment credits to dividends only under this section.

Relationship with section HB 15

- (9) If part of the dividend is exempt income under section HB 15, the amount of an imputation credit or dividend withholding payment credit is treated as attaching to the part that is not exempt income.

Defined in this Act: amount, attributing company, bonus issue, dividend, dividend withholding payment, dividend withholding payment account, dividend withholding payment account company, dividend withholding payment rules, exempt income, imputation credit, imputation credit account, imputation credit account company, imputation rules, imputation year, non-cash dividend, pay, resident in New Zealand, shareholder, taxable bonus issue

Origin:	(1)	HG 13(1)(a), (2)-(4)
	(2)	HG 13(1)(a)(i)
	(3)	HG 13(1)(a)(i)
	(4)	HG 13(3)
	(5)	HG 13(4)
	(6)	HG 13(3)
	(7)	HG 13(3)
	(8)	HG 13(2)
	(9)	HG 13(1)(a)

HB 15 Exempt income

When amount exempt

- (1) To the extent to which the amount of a dividend that an attributing company pays to a person resident in New Zealand is more than a fully imputed distribution of the company under section HB 14, the amount is exempt income of the person under section CW 11C(1) (Dividends paid by attributing companies).

Beneficiary income

- (2) For the purposes of subsection (1), if an attributing company pays a dividend to a trustee shareholder that is or becomes beneficiary income of a beneficiary resident in New Zealand, the dividend is exempt income of the beneficiary under section CW 11C(2) as if the beneficiary were the shareholder referred to in section HB 14.

Defined in this Act: amount, attributing company, beneficiary income, dividend, exempt income, income year, pay, resident in New Zealand, shareholder, trustee

Origin: (1) HG 13(1)(a)(i)
 (2) HG 13(1A)

HB 16 Credit accounts and statements

When this section applies

- (1) This section applies when an attributing company pays a dividend that is treated either as a fully imputed distribution under section HB 14 or as exempt income under section HB 15.

Credit accounts

- (2) For the purposes of sections ME 5 (Debits arising to imputation credit account) and MG 5 (Debits arising to dividend withholding payment account), if an imputation credit or a dividend withholding payment credit is attached to the dividend, the amount of the credit is debited to whichever is applicable of the company's imputation credit account or dividend withholding payment credit account. The debit arises on the day the company pays the dividend.

Treatment of certain debits in imputation credit account

- (3) The treatment of a refund of an amount of income tax that arises as a debit to an attributing company's imputation credit account is dealt with in section ME 9(7) (Further tax payable where end of year debit balance, or when company ceases to be imputation credit account company).

Dividend statements

- (4) For all dividends, whether or not credits have been attached, the company must complete the following statements detailing the extent to which the dividends are assessable income or exempt income:
- (a) a company dividend statement under section 67(1) of the Tax Administration Act 1994; and
 - (b) a shareholder dividend statement under section 29 of the Tax Administration Act 1994.

Date for completing statements

- (5) The company must complete the statements referred to in subsection (4) by 31 May after the end of the imputation year in which it paid the dividends.

Non-cash dividends

- (6) In addition to the information required in a shareholder dividend statement, if a shareholder asks the company to include in that statement the amount of non-cash dividends that the company has paid to them in the imputation year, the company must provide the information.

Defined in this Act: assessable income, attributing company, company dividend statement, dividend, dividend withholding payment credit, dividend withholding payment credit account, exempt income, imputation credit, imputation credit account, imputation year, non-cash dividend, pay, shareholder, shareholder dividend statement

Origin:	(1)	HG 13(5)
	(2)	HG 13(5)(a), (b)
	(3)	ME 9(7)
	(4)	HG 13(5)(c), (d)
	(5)	HG 13(5)(c), (d)
	(6)	HG 13 (5)(e)

HB 17 Treatment of dividends when company stops being attributing company

When this section applies

- (1) This section applies when, in an income year, a company stops being an attributing company under section HB 10(1) because it no longer meets the requirements set out in sections HB 5 to HB 8.

Dividends distributed in imputation year

- (2) Section HB 14 applies to dividends distributed in the part of the imputation year from the first day of that year to the day before the date on which the company stops being an attributing company. References in that section to an imputation year should be read as references to that part of the year.

Group companies: common interests

- (3) On the day before the date on which the company stops being an attributing company, the company's imputation credit account and dividend withholding

payment credit account are debited under sections ME 5(1)(i) and MG 5(1)(i) (which relate to debits arising to credit accounts) by the lesser of—

- (a) the balance of the credit account on that day after any credits are attached under section HB 14; and
- (b) the largest debit to the credit account that would have arisen before that day if section ME 5(1)(i) or MG 5(1)(i) had applied.

Defined in this Act: attributing company, company, dividend, dividend withholding payment credit account, imputation credit account, imputation year, income year

Origin: (1) HG 13(6)(a)
(2) HG 13(6)(b)
(3) HG 13(6)(b)

Treatment of tax losses

HB 18 Attribution of net losses

A net loss of a loss-attributing company is treated as a loss incurred by the shareholders of the company under sections HB 29 to HB 32.

Defined in this Act: loss-attributing company, net loss, shareholder

Origin: HG 1(d), HG 9(2), HG 16

HB 19 Tax losses not carried forward

In an income year in which a company that is not an attributing company becomes an attributing company, a loss balance that the company has may not be carried forward under subparts IA and IQ (which relate to tax losses generally and foreign losses in particular) to the income year or to later income years.

Defined in this Act: attributing company, company, income year, loss balance

Origin: HG 11(3)

HB 20 Group companies subtracting tax losses

When this section applies

- (1) This section applies if an attributing company is in the same group of companies as a company with a tax loss (**company A**).

When tax losses available

- (2) The amount of company A's tax loss is available to the attributing company to subtract from its net income under section IA 3(2) (Using tax losses in tax year) only if—
- (a) company A is also an attributing company; and
 - (b) the requirements in sections IC 5 to IC 10 (which relate to the grouping of tax losses) are met.

Defined in this Act: amount, attributing company, company, group of companies, net income, tax loss, tax year

Origin: (1) HG 10(b)
 (2) HG 10(b)

HB 21 Treatment of tax losses on amalgamation

If a company that is not an attributing company amalgamates with an attributing company and ceases to exist on amalgamation, the amalgamating company's loss balance is not carried forward under subpart IA (General rules for tax losses) from earlier income years either to the income year of the amalgamation or to later income years.

Defined in this Act: amalgamation, attributing company, company, income year, loss balance, tax loss

Origin: HG 11(3A)

Treatment of dividends

HB 22 Dividends derived by attributing companies

What this section applies to

- (1) This section applies to a dividend—
- (a) that a company derives after it becomes an attributing company; and
 - (b) to which section CW 10 (Dividend within New Zealand wholly-owned group) or CW 11 (Dividend of conduit tax relief holding company) applies.

Dividend not exempt income

- (2) The dividend is not exempt income under sections CW 10 and CW 11, except to the extent to which section CW 9 (Dividend derived by company from overseas) applies to it.

Defined in this Act: attributing company, company, conduit tax relief holding company, dividend, exempt income, wholly-owned group

Origin: (1) HG 10(a), HG 13(1)(aa)
(2) HG 10(a)

Matters relating to shareholders

HB 23 Shareholders' personal liability

Agreement required for election

- (1) A person making an election as shareholder under section HB 5 must agree for an income year in which the election is in effect, to take personal liability on the basis of their effective interest in the company—
- (a) for their share of the company's income tax liability for the income year; and
 - (b) if the company has made an election as shareholder in another company, for any income tax payable for the income year.

Trustee shareholders

- (2) A person making an election as trustee under section HB 33 must agree to take personal liability under subsection (1), modified as follows:
- (a) the trustee together with every beneficiary who has legal capacity must make the election; and
 - (b) the personal liability is limited to the extent of the net assets of the trust; and
 - (c) if the election is made for a majority shareholding under section HB 34, the personal liability includes the effective interests of the minority shareholding.

Majority shareholders

- (3) One or more persons whose effective interests in a company at a particular time add up to 50% or more, may make an election under section HB 34, agreeing to take personal liability described in subsection (1) in relation to the effective interests in the company of the minority shareholding.

Beneficiaries

- (4) In subsection (1), the person includes a beneficiary who makes an election under section HB 33, or a person who assumes liability on their behalf.

Nature of liability

- (5) In sections HB 12 to HB 32, when more than 1 person agrees to take personal liability for a percentage of an income tax liability or for income tax payable in an income year, the liability is joint and several.

Defined in this Act: company, effective interest, income tax, income tax liability, income year, pay, shareholder, trustee

Origin:	(1)	HG 4(1)(b)
	(2)	HG 4(2)(b)
	(3)	HG 4(3)(b)
	(4)	HG 4(2)
	(5)	HG 4(1)(b)(ii), (2)(b), (3)(b)(ii)

HB 24 Interest incurred on money borrowed to acquire shares

When this section applies

- (1) This section applies in an income year for the purposes of determining the amount of a deduction when a shareholder in an attributing company incurs interest on money borrowed to acquire shares in the company.

Deduction

- (2) The deduction that the shareholder has in the income year is limited to the amount set out in section DB 8A (Interest incurred on money borrowed to acquire shares in attributing companies).

Defined in this Act: amount, attributing company, deduction, income year, interest, share, shareholder

Origin:	(1)	HG 9(3) – (5)
	(2)	HG 9(3) – (5)

HB 25 Assessments of shareholders' liabilities

The Commissioner may make an assessment of a shareholder's liability for their share of the income tax payable by an attributing company under section 92AB of the Tax Administration Act 1994. The shareholder is liable as agent for the company.

Defined in this Act: agent, attributing company, Commissioner, income tax, pay, shareholder

Origin:	HG 8
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*Attributing company election tax***HB 26 Liability for attributing company election tax***Payment of tax*

- (1) A company that becomes an attributing company must pay in relation to the change in status an attributing company election tax of an amount calculated under section HB 27 by the date set out in section HB 28.

Payment on amalgamation

- (2) If a company that is not an attributing company amalgamates with an attributing company and ceases to exist on amalgamation, the amalgamated company must pay an attributing company election tax under subsection (1).

Defined in this Act: amalgamation, amount, attributing company, attributing company election tax, company, pay

Origin: (1) HG 11(1)
(2) HG 11(1A)

HB 27 Calculating attributing company election tax*Formula*

- (1) The amount of attributing company election tax that a company must pay under section HB 26 is calculated at the time that is immediately before the company becomes an attributing company using the formula—

$$(\text{total dividends} + \text{account balances} - \text{assessable income} - \frac{\text{account balances}}{\text{company tax rate}}) \times \text{company tax rate}$$

Total dividends

- (2) In the formula, **total dividends** is the sum of the amounts that would be dividends under this Act if the company, at the time referred to in subsection (1),—
- (a) disposed of all its property, other than cash, to an unrelated person at market value for cash; and
 - (b) met all its liabilities at market value, excluding any income tax payable through disposing of the property or meeting the liabilities; and
 - (c) was liquidated, with the amount of cash remaining being distributed to its shareholders without imputation credits or dividend withholding payment credits attached.

Account balances

- (3) In the formula, **account balances** is the sum of the following amounts:
- (a) the balance in the company's imputation credit account:
 - (b) the balance in the company's dividend withholding payment account:
 - (c) an amount of income tax payable for an earlier income year but not paid before the relevant date, minus any refund due for the earlier income year but paid after the relevant date:
 - (d) a dividend withholding payment payable for dividends received before the relevant date but not paid before the date, minus any refund made or due after that date for dividends received before that date.

Assessable income

- (4) In the formula, **assessable income** is the total assessable income that the company would derive by taking the actions described in subsection (2)(a) and (b) minus any deductions that the company would have for taking those actions.

Company tax rate

- (5) In the formula, **company tax rate** is the basic rate of income tax for companies applying in the relevant income year of the company. The rate is that stated in schedule 1, part A, clause 5, expressed as a decimal.

Relevant date

- (6) In subsections (2) and (3), the relevant date for measuring items in the formula is immediately before the company became an attributing company or, as applicable, at the time the company ceased to exist.

Income tax and refund

- (7) For the purposes of subsection (3)(c),—
- (a) income tax payable is income tax that would, when paid, give rise to a credit in the company's imputation credit account under section ME 4 (Credits arising to imputation credit account):
 - (b) a refund of income tax due is a refund paid, credited, or available to be credited, that would, when paid or credited, give rise to a debit to the company's imputation credit account under section ME 5 (Debits arising to imputation credit account):
 - (c) if the company pays income tax or a dividend withholding payment intending to reduce the amount of election tax, the amount of credit in the imputation credit account or dividend withholding payment credit account is reduced by the amount of the credit arising from the company's action, unless the purpose of the payment is merely incidental.

Defined in this Act: amount, assessable income, attributing company, attributing company election tax, basic rates, company, deduction, dividend, dividend withholding payment, dividend withholding payment credit, imputation credit, imputation credit account, income tax, income year, pay, shareholder, this Act

Origin:	(1)	HG 11(2)
	(2)	HG 11(2)
	(3)	HG 11(2)
	(4)	HG 11(2)
	(5)	HG 11(2)
	(6)	HG 11(1B), (2)
	(7)	HG 11(2), (4)

HB 28 Paying attributing company election tax

When payment required

- (1) A company must pay an attributing company election tax under section HB 26 to the Commissioner no later than the company's terminal tax date for the relevant income year. The payment must be accompanied by the prescribed form.

Relationship with tax legislation

- (2) The provisions of this Act and of the Tax Administration Act 1994 apply, modified as necessary, to the election tax and to related late payment penalties under section 139B of the Tax Administration Act 1994 as if it were a tax imposed under section BB 1 (Imposition of income tax). However, this section should not be read as including election tax or a related late payment penalty in the expressions **income tax** or **tax** for the purposes of the provisions listed in section OB 6(3) (Meaning of income tax) or the provisional tax rules, or section 120K of the Tax Administration Act 1994.

Defined in this Act: attributing company election tax, Commissioner, company, income year, pay, provisional tax rules, terminal tax date, this Act

Origin:	(1)	HG 12(1)
	(2)	HG 12 (2)

Special tax matters for loss-attributing companies

HB 29 Treatment of net losses other than certain foreign losses

What this section applies to

- (1) This section applies in a tax year when a loss-attributing company has a net loss that does not include an attributed CFC loss or a FIF loss to which subsection (5) applies.

Calculating amounts for shareholders with effective interests

- (2) Each shareholder in the company is treated as having incurred an amount of loss based on the percentage of their effective interest in the company. Subsection (5) extends the application of this subsection.

Incurred in deriving income

- (3) The shareholder's amount of loss is treated as having been incurred in deriving their assessable income in the tax year or corresponding income year. Section HB 31 overrides this subsection.

Losses not carried forward

- (4) If the company has a loss balance remaining for a tax year after the uses described in section IA 3 (Using tax losses in tax year), the balance is not carried forward to the next income year, and section HB 19 applies.

Other foreign losses

- (5) If an election under section HB 30 has not been made in relation to the net loss then, to the extent to which the tax loss is an attributed CFC loss or a FIF loss, the amount is treated as if it were the shareholder's attributed CFC loss or FIF loss.

Defined in this Act: amount, assessable income, attributed CFC loss, effective interest, FIF loss, income year, loss-attributing company, loss balance, net loss, shareholder, tax loss, tax year

Origin:	(1)	HG 17(1)(a)
	(2)	HG 16(1)(a)
	(3)	HG 16(1)(b)
	(4)	HG 16(1)(c)
	(5)	HG 16(1)(b)

HB 30 Treatment of certain foreign losses

Electing not to attribute foreign losses to shareholders

- (1) By making an election and notifying the Commissioner, a loss-attributing company may choose to exclude an attributed CFC loss or a FIF loss that it has in an income year that corresponds to a tax year from any net loss attributed to the company's shareholders under section HB 29.

Treatment

- (2) If an effective election exists in an income year, the amount of an attributed CFC loss or a FIF loss that a loss-attributing company has in the income year—
 - (a) may be carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and
 - (b) is not included in an amount of net loss attributed to a shareholder under section HB 29; and
 - (c) is not available for use under section HB 20.

Notice of election

- (3) Every person who is, at the time of notifying the Commissioner, a shareholder in the company must sign the notice of election. The notice must be provided before

the start of the income year in which the election is to apply or, if the company has not previously been required to provide a return of income, within the time allowed under section 37 of the Tax Administration Act 1994 for the company's first income year.

Effective election

- (4) The notice of election is effective in an income year in which an election is to apply if—
- (a) it is provided before the start of the income year; and
 - (b) the company remains an attributing company for the whole of the income year; and
 - (c) no revocation is in effect for the income year.

Revoking notice

- (5) A company may revoke an election made under this section only by providing a notice of revocation. Every person who is at the time of providing the notice a shareholder in the company must sign the notice of revocation.

When revocation takes effect

- (6) In the notice of revocation, the company may nominate an income year that is later than the year of notice as the income year in which the revocation takes effect, and it takes effect at the start of that income year. If the company does not nominate an income year in the notice, the revocation takes effect at the start of the income year in which the Commissioner receives the notice.

When losses carried forward

- (7) A revocation does not apply to an attributed CFC loss or a FIF loss that arose in an earlier income year which the company has carried forward under subparts IA and IQ (which relate to the treatment of foreign losses) to the income year in which the revocation takes effect.

Defined in this Act: amount, attributed CFC loss, attributing company, Commissioner, company, FIF loss, income year, loss-attributing company, net loss, notice, notify, return of income, shareholder, tax loss, tax year

Origin:	(1)	HG 17(1)
	(2)	HG 17(1)
	(3)	HG 17(2)(b)
	(4)	HG 17(2)
	(5)	HG 17(3)
	(6)	HG 17(3)
	(7)	HG 17(4)

HB 31 Attribution when balance dates differ

When this section applies

- (1) This section applies in an income year when—
 - (a) a loss-attributing company has a net loss; and
 - (b) an amount of the net loss is attributable to a shareholder under sections HB 18, HB 29(2), and HB 30; and
 - (c) the company or the shareholder, or both, have a non-standard balance date for the income year; and
 - (d) the company's balance date is later than the shareholder's balance date; and
 - (e) because of the difference in balance dates, the shareholder cannot practically quantify the amount of the net loss attributable to them in the time allowed under section 37 of the Tax Administration Act 1994 for providing their return of income.

When loss incurred

- (2) Despite section 38 of the Tax Administration Act 1994, the amount of the shareholder's net loss is treated as having been incurred on the first day of the next income year.

Defined in this Act: amount, income year, loss-attributing company, net loss, non-standard balance date, return of income, shareholder, tax loss

Origin: (1) HG 16(2)
 (2) HG 16(2)

HB 32 Attribution when loss results in reduction in value of shares

When this section applies

- (1) This section applies in an income year if—
 - (a) a loss-attributing company has a net loss that causes a reduction in the total value of shares in the company; and
 - (b) a shareholder who has an amount of the net loss attributed to them under sections HB 18, HB 29(2), and HB 30, suffers no, or substantially no, corresponding economic loss, whether because of a call option, a put option, or any other reason.

Treatment of shareholder, company, and amount

- (2) The shareholder is treated for the income year as having no amount of the company's tax loss component attributed to them. The amount must not be attributed to another shareholder, and section HB 19 applies.

Defined in this Act: amount, income year, loss-attributing company, net loss, share, shareholder, tax loss

Origin: (1) HG 16(3), (4)
(2) HG 16(3), (4)

Elections: attributing companies

HB 33 Elections by trustee shareholders

If a shareholder referred to in section HB 5 is acting as trustee, they must make an election together with—

- (a) 1 or more beneficiaries of the trust who are natural persons with legal capacity; or
- (b) if no beneficiary has legal capacity, a natural person (who may also be the trustee) who assumes liability on behalf of the beneficiary or beneficiaries.

Defined in this Act: shareholder, trustee

Origin: HG 4(2)(a)

HB 34 Elections by majority shareholders

When this section applies

- (1) This section applies when 1 or more shareholders (the **majority**) in a company have, at the time of making an election, effective interests in the company amounting to 50% or more, and the effective interest of 1 or more other shareholders (the **minority**) is less than 50%.

Majority assuming minority's liability

- (2) The majority may sign a notice of election, advising the Commissioner that the company is to be an attributing company. For the notice of election to be effective, the majority must agree to an extension of their personal liability under section HB 23(3).

Minority treated as making election

- (3) The minority is treated as having made an election under section HB 5 in relation to their shareholding in the company at the time the election is made.

Election additional

- (4) An election under this section may be in addition to any other election a shareholder may make or have made under section HB 5.

Defined in this Act: attributing company, Commissioner, company, effective interest, notice, shareholder

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

HB 35 When elections take effect

When election takes effect

- (1) In a notice of election under section HB 5, an income year later than the year of notice may be nominated as the year in which the election is to take effect and, if so, the election takes effect at the start of that income year. If no income year is nominated in the notice, the election takes effect at the start of the income year following the year of notice.

Shareholder's election after company becomes attributing company

- (2) If a shareholder makes an election when the company is already an attributing company, the election takes effect when the Commissioner receives it.

Company's first income year

- (3) Despite subsection (1), if the company has not previously been required to provide a return of income, the first income year of the company may be nominated as the year in which the election is to take effect. The Commissioner must be advised of this decision in the notice of election to be received within the time allowed under section 37 of the Tax Administration Act 1994 for providing a return for the company's first income year.

Effective election

- (4) An election is effective until revoked.

Defined in this Act: attributing company, Commissioner, company, income year, notice, return of income, shareholder

Origin:	(1)	HG 3(2), HG 4(4)
	(2)	HG 4(4)(b)
	(3)	HG 3(3), HG 4(5)
	(4)	HG 3(2)

HB 36 Revocation of directors' elections

Revoking an election

- (1) An election by directors under section HB 5 may be revoked only by a resolution of the board of directors. The board must advise the Commissioner of the resolution by providing a notice of revocation.

When revocation takes effect

- (2) The revocation of an election takes effect at the start of the income year that the board nominates in the notice of revocation. If the board has not nominated an income year, the revocation takes effect at the start of the income year in which the notice of revocation is provided.

Defined in this Act: Commissioner, director, income year, notice

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

HB 37 Revocation of shareholders' elections: by notice

Notice

- (1) A person who, as a shareholder in a company, has made an election under section HB 5, may revoke it by notifying both the company and the Commissioner.

When revocation takes effect

- (2) In the notice, the person may nominate an income year later than the year of notice as the income year in which revocation becomes effective, and the revocation takes effect at the start of that income year. If no income year is nominated, it takes effect at the start of the income year in which the Commissioner receives the notice.

Measuring effective interests

- (3) For measuring the effective interest in the company (as defined in section HB 45 and measured under section HB 46) of the person revoking the election, the revocation takes effect—
 - (a) when both the company and the Commissioner have received the notice;
or
 - (b) on a later date nominated in the notice.

Periods of grace and Commissioner's power to defer

- (4) Sections HB 10(5) and HB 39 to HB 42 (which relate to a company's failure to maintain the requirements and when periods of grace apply) override this section.

Defined in this Act: Commissioner, company, effective interest, income year, notice, notify, shareholder

- Origin:
- (1) HG 5(1)
 - (2) HG 5(1)(b)
 - (3) HG 5(1)(a)
 - (4) HG 5(1)

HB 38 Revocation of shareholders' elections: by event

Event

- (1) An election by a person as shareholder under section HB 5 is revoked if an event described in the following paragraphs occurs:
 - (a) the person dies:
 - (b) the person disposes of all of their shares, unless they dispose of them to an existing shareholder in the company for whom an effective election exists:
 - (c) if sections HB 33 and HB 34 apply, a beneficiary acquires legal capacity:
 - (d) if section HB 34 applies,—
 - (i) the effective interests of a minority shareholder increase to 50% or more; or
 - (ii) the total effective interests of the majority shareholder or shareholders fall below 50%:
 - (e) for an election made jointly by 2 or more persons, 1 person revokes the election or is treated as having revoked the election.

When revocation by event takes effect

- (2) The revocation of an election under this section takes effect at the start of the income year in which the event occurred.

Periods of grace and Commissioner's power to defer

- (3) Sections HB 10(5) and HB 39 to HB 42 (which relate to a company's failure to maintain the requirements and when periods of grace apply) override this section.

Defined in this Act: Commissioner, company, effective interest, income year, share, shareholder

- Origin:
- (1) HG 5(2)
 - (2) HG 5(2)
 - (3) HG 5(2)

HB 39 Period of grace following death of shareholder

12-month period

- (1) Despite section HB 38(1)(a), a company does not stop being an attributing company because a shareholder or another person has died if, within 12 months of the death of the person, it meets the requirements of sections HB 5 to HB 8.

Extension of time

- (2) The Commissioner may extend the 12-month period referred to in subsection (1) on the application of the company, the personal representative of the deceased person, or a person who is entitled as a shareholder to make an election under section HB 5.

Defined in this Act: attributing company, Commissioner, company, shareholder

Origin: (1) HG 6(1)
(2) HG 6(1)

HB 40 Period of grace following revocation of election

When this section applies

- (1) This section applies to a company that has been an attributing company but no longer meets the requirement in section HB 5 for an effective election through revocation of a shareholder's election under section HB 37 or HB 38. But this section does not apply when—
- (a) the revocation is brought about by the death of a person; or
 - (b) a joint election is revoked.

Revocation by notice

- (2) When section HB 37 applies, the company does not stop being an attributing company if, within 63 days of the date when the company received the notice of revocation, a person other than the shareholder who revoked the election makes an election relating to the whole of the relevant shareholding.

Revocation by event

- (3) When section HB 38 applies, the company does not stop being an attributing company if, within 63 days of the date when the event that gave rise to the revocation occurred, an election relating to the whole of the relevant shareholding is made or is in effect.

Extension of time

- (4) In subsections (2) and (3), the Commissioner may extend the 63-day period on the application of the company or a person who is entitled to make an election under section HB 5.

Defined in this Act: attributing company, Commissioner, company, notice, shareholder

Origin: (1) HG 6(2)(a), (b)
(2) HG 6(2)(a)
(3) HG 6(2)(b)
(4) HG 6(2)(a), (b)

HB 41 Period of grace following revocation of joint election

When this section applies

- (1) This section applies to a company that has been an attributing company, but an election that shareholders have made jointly has been revoked through an event described in section HB 38.

Cause of revocation

- (2) The company does not stop being an attributing company if, within the relevant period in section HB 39(1) or HB 40(2) and (3), an election relating to the whole of the relevant shareholding is made.

Defined in this Act: attributing company, company, shareholder

Origin: (1) HG 6(2)(c)
 (2) HG 6(2)(c)

HB 42 Period of grace for new shareholder

When this section applies

- (1) This section applies to a company that has been an attributing company but fails to meet the requirement in section HB 5 for an effective election when—
 - (a) a person other than an existing shareholder acquires shares in the company; or
 - (b) an existing shareholder gains legal capacity.

Period for making election

- (2) The company does not stop being an attributing company if, within 63 days of the date on which either the shares were acquired or the shareholder gained legal capacity, an election relating to the whole of the relevant shareholding is made.

Extension of time

- (3) The Commissioner may extend the 63-day period in subsection (2) on the application of the company, the new shareholder, the existing shareholder, or a person who is entitled to make an election as shareholder under section HB 5.

Defined in this Act: attributing company, Commissioner, company, share, shareholder

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

Elections: loss-attributing companies

HB 43 Elections by directors and shareholders required

Election and notification

- (1) For a company to become a loss-attributing company, every person who is a director of the company, and every shareholder in the company with legal capacity, must advise the Commissioner in a notice of election.

Minority shareholders

- (2) Despite subsection (1) and assuming the other requirements in sections HB 5 to HB 8 have been met, if a shareholder whose effective interest in a company is less than 50% has not signed the notice, the election is nevertheless effective if 1 or more shareholders in the company whose interests amount to more than 50% have signed the notice.

Notifying the Commissioner

- (3) The notice must be provided before the start of the relevant income year or, if the company has not previously been required to provide a return of income, within the time allowed under section 37 of the Tax Administration Act 1994 for providing a return for the company's first income year.

Directors and shareholders at the time

- (4) A person is considered a director of a company under subsection (1) if they hold the office at the time the notice is provided. Similarly, a person is considered a shareholder if they have an effective interest in the company at the time the notice is provided.

Defined in this Act: Commissioner, company, director, effective interest, income year, loss-attributing company, notice, notify, return of income, shareholder

Origin:	(1)	HG 14(c)(i)
	(2)	HG 14A
	(3)	HG 14(c)(ii)
	(4)	HG 14(c)(i)

HB 44 Revocation of elections

Sections HB 33 to HB 42 apply to an election made under section HB 43 as if it were an election by a director or a shareholder under section HB 5.

Defined in this Act: director, shareholder

Origin:	HG 15
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Effective interests in attributing companies

HB 45 Meaning of effective interest

What this section does

- (1) This section defines an **effective interest** in a company, which is the measure of a person’s liability under section HB 23.

Effective interest defined

- (2) **Effective interest** for a person, a company, at a particular time or for an income year, means—
- (a) the person’s voting interest in the company at the time or for the income year, unless paragraph (b) applies:
 - (b) if there is a market value circumstance for the company at the time or at some time during the income year, the average of—
 - (i) the person’s voting interest in the company at the time or for the income year; and
 - (ii) the person’s market value interest in the company at the time or for the income year.

Defined in this Act: company, effective interest, income year, market value circumstance, market value interest, voting interest

Origin: (1) OB 1 “effective interest”
(2) OB 1 “effective interest”

HB 46 Measuring effective interests

Sections OD 2 to OD 5

- (1) A person’s voting interest and market value interest in a company is measured under sections OD 2 to OD 5. If the person is a company, the voting interest and market value interest are measured at a particular time or for an income year under those sections as if—
- (a) the person were not a company; and
 - (b) sections OD 3(3)(c) and (d), and OD 4(3)(c) and (d) did not apply.

If interests vary during income year

- (2) If a person’s voting interest or market value interest varies during an income year, the measure of their effective interest is the weighted average of their voting interest or market value interest, as applicable, for the income year.

If election made during income year

- (3) If a shareholder makes an election after the start of the income year, their voting interest and market value interest is measured from the earliest day in the income year when they became a shareholder in the company, even if the day is earlier than the date of the election.

Shareholders' interests after revocation

- (4) A person who revokes an election under section HB 37 or HB 38 is treated as having no voting interest and no market value interest for the period of the income year after the revocation takes effect unless they make a later election for the same income year. In this subsection, the person includes a trustee when an election is made under section HB 33 by a person other than the trustee.

When majority shareholders' liabilities excluded

- (5) If a majority shareholder has made an election and agreed under sections HB 23 and HB 34 to take personal liability to the extent of a minority shareholder's effective interest in the company, any effective interest for which the minority shareholder has agreed to be personally liable under section HB 23 is excluded in measuring the majority shareholder's effective interest.

Minority shareholder's liability after revocation

- (6) If a majority shareholder's election is revoked under section HB 37(1) or HB 38(1)(d), the effective interest of the minority shareholder for which the majority shareholder is liable is treated as zero for the part of the income year that follows the day on which the revocation takes effect.

Defined in this Act: company, effective interest, income year, market value interest, shareholder, trustee, voting interest

Origin:	(1)	HG 2(a), OB 1 "effective interest"
	(2)	HG 2(b)
	(3)	HG 2(c)(ii)
	(4)	HG 2(c)(i)
	(5)	HG 2(d)(i)
	(6)	HG 2(d)(ii)

Subpart HC — Trusts

Introductory provisions

HC 1 Outline of subpart

What this subpart does

- (1) This subpart, with the trust rules,—
 - (a) provides for the taxation of distributions from trusts, for this purpose defining—
 - (i) beneficiary income:
 - (ii) trustee income:
 - (iii) a taxable distribution.
 - (b) classifies trusts into the following 3 categories for the purposes of determining the treatment of distributions that are not beneficiary income:
 - (i) complying trusts; and
 - (ii) foreign trusts; and
 - (iii) non-complying trusts:
 - (c) determines who is a settlor, and sets out their income tax liability:
 - (d) sets out the treatment of trusts settled by persons becoming resident in New Zealand.

Disclosure requirements: non-resident trustees

- (2) Section 59 of the Tax Administration Act 1994 requires the disclosure of a settlement on a trust with a non-resident trustee.

Excluded: certain funds and distributions

- (3) The trust rules do not apply to—
 - (a) unit trusts:
 - (b) group investment funds to the extent to which they are treated as companies under this Act:
 - (c) Maori authorities:
 - (d) a distribution under section HZ 1 (Distributions from trusts of pre-1989 tax reserves).

Defined in this Act: amount, beneficiary income, complying trust, distribution, foreign trust, group investment fund, income tax liability, Maori authority, non-complying trust, non-resident, resident in New Zealand, settlement, settlor, taxable distribution, this Act, trust rules, trustee, trustee income, unit trust

Origin: (1) new
(2) new
(3) s 9, IT Amendment Act 1988 (No 5), HH 1(8), HH 3(6), HH 4(8)

HC 2 Obligations of trustees for calculating income and providing returns

For the purposes of the obligations imposed by section BB 2 (Main obligations), the trustees of a trust are treated, in their capacity as trustees, as if they were a single person, and must—

- (a) calculate the trust's taxable income for a tax year; and
- (b) for that tax year, provide a joint return of income for the trust under section 42(1)(a) of the Tax Administration Act 1994.

Defined in this Act: income, return of income, tax year, taxable income, trustee

Origin: HD 1(1)(a)

HC 3 Multiple settlements

For the purposes of this subpart, if a settlement is made on a trust and further settlements are made on the same terms, a trustee of the trust may treat all the settlements as 1 trust.

Defined in this Act: settlement, trustee

Origin: HH 1A

Trust income

HC 4 Amounts derived by trustees

An amount of income derived in an income year by a trustee of a trust is either—

- (a) beneficiary income under section HC 5; or
- (b) trustee income under section HC 6.

Defined in this Act: amount, beneficiary income, income, income year, trustee, trustee income

Origin: OB 1 “beneficiary income”, “trustee income”

HC 5 Beneficiary income

Meaning

- (1) An amount of income derived in an income year by a trustee of a trust is **beneficiary income** to the extent to which—
- (a) it vests absolutely in interest in a beneficiary of the trust in the income year; or
 - (b) it is paid or applied to or for the benefit of a beneficiary of the trust in the income year, or within 6 months after the end of the income year.

Exclusions

- (2) Beneficiary income does not include—
- (a) an amount of income derived by a trustee of a trust in an income year in which the trust is a superannuation fund; or
 - (b) an amount of income derived by a trustee that is income to which section CC 3(2) (Financial arrangements) applies.

Defined in this Act: amount, beneficiary income, financial arrangement, income, income year, pay, superannuation fund, trustee

Origin: (1) OB 1 “beneficiary income”
(2) OB 1 “beneficiary income”

HC 6 Trustee income

Meaning

- (1) To the extent to which it is not beneficiary income, an amount of income derived by a trustee of a trust in an income year is **trustee income**.

Beneficiary income of minors

- (2) An amount of beneficiary income to which section HC 33 applies that is derived in an income year by a person who is a minor is treated as if it were trustee income for the purposes of determining the tax rate that applies, paying the tax, and providing returns of income.

Exclusions from corpus

- (3) The amount that is the market value of a property settlement referred to in section HC 7(3) to (5) is treated as trustee income of the trustee of the recipient trust

derived in the income year of settlement, whether the settlement is made directly or indirectly, or by 1 transaction or a series of transactions.

Defined in this Act: amount, beneficiary income, corpus, income, income year, minor, pay, return of income, settlement, trustee, trustee income

Origin:	(1)	OB 1 “trustee income”
	(2)	HH 3A(1)(a)
	(3)	HH 1(7)

HC 7 Corpus of trust

Meaning

- (1) In the trust rules, **corpus** means an amount that is equal to the market value of a settlement of property on the trust at the date of the settlement. Subsection (2) overrides this subsection.

Settlements excluded from corpus

- (2) Corpus does not include an amount equal to the market value of the property settlements described in subsections (3) to (5).

Settlement on another trust

- (3) A property settlement by a trustee of another trust is excluded from corpus to the extent to which, if the property were distributed to a beneficiary of the other trust, the beneficiary being resident in New Zealand, the distribution would be beneficiary income or a taxable distribution to that beneficiary.

Deduction

- (4) A property settlement for which the settlor is allowed a deduction is excluded from corpus.

Income or dividend

- (5) A property settlement is excluded from corpus if, but for the fact of the settlement,—
- (a) it would be income of the settlor; or
 - (b) it would be a dividend liable to a dividend withholding payment under section NH 1 (Liability to make deduction in respect of foreign withholding payment dividend); or
 - (c) it would fall under paragraph (i) or (ii) if the settlor had been resident in New Zealand at the time of the settlement.

Defined in this Act: amount, beneficiary income, corpus, deduction, distribution, dividend, dividend withholding payment, income, foreign withholding payment dividend, income, resident in New Zealand, settlement, settlor, taxable distribution, trust rules, trustee

- Origin:
- (1) OB 1 “corpus” (a)
 - (2) OB 1 “corpus” (b)
 - (3) OB 1 “corpus” (c)
 - (4) OB 1 “corpus” (f)
 - (5) OB 1 “corpus” (d), (e)

HC 8 Amounts received after person’s death

An amount that a trustee of an estate of a deceased person receives in a tax year is treated as income derived by the trustee in the tax year under section CV 3 (Amounts received after person’s death) if it is not income that the person derived during their lifetime but would have been included in the person’s income had they been alive when it was received.

Defined in this Act: amount, income, tax year, trustee

- Origin: HH 8

Classification of trusts

HC 9 Classifying trusts: complying, foreign, non-complying

Complying trusts

- (1) At the time a distribution is made, a trust is a complying trust in relation to the distribution if—
 - (a) it meets both the following requirements:
 - (i) no trustee income derived during the life of the trust up to the time of distribution includes any non-resident withholding income, or non-resident foreign-sourced income, or exempt income under section CW 44C (Foreign-sourced amounts derived by trustees); and
 - (ii) the tax obligations in relation to the trustee’s income tax liability have been satisfied for all income years in the life of the trust up to the time of distribution; and
 - (b) it is a superannuation fund.

Election by foreign trust to be complying trust

- (2) A foreign trust may be a complying trust at the time a distribution is made by—
- (a) making an election under section HC 28(2) within 12 months of the date on which the settlor becomes resident in New Zealand; and
 - (b) meeting the requirements of subsection (1)(a).

Foreign trusts

- (3) A trust is a foreign trust in relation to a distribution if no settlor is resident in New Zealand at any time since the later of 17 December 1987 and the date on which a settlement was first made on the trust up to the time of distribution.

Non-complying trusts

- (4) A trust is a non-complying trust in relation to a distribution if it is neither of the following:
- (a) a complying trust; or
 - (b) a foreign trust.

Life of the trust

- (5) The life of the trust referred to in subsection (1) includes every income year from the start of the income year in which a settlement was first made on the trust up to the time of distribution.

Complying trusts: meeting requirements

- (6) For the purposes of subsection (1)(a),—
- (a) section HC 27(2)(e) does not apply in determining whether the requirements are met:
 - (b) the requirements may be met by a person who has made an election under section HC 31.

Defined in this Act: amount, complying trust, distribution, exempt income, foreign trust, foreign-sourced amount, income tax, income tax liability, New Zealand, non-complying trust, non-resident withholding income, resident in New Zealand, settlement, settlor, superannuation fund, trustee, trustee income

Origin:	(1)	OB 1 “qualifying trust”
	(2)	HH 2(2)
	(3)	OB 1 “foreign trust”
	(4)	OB 1 “non-qualifying trust”
	(5)	OB 1 “qualifying trust”, “foreign trust”
	(6)	HH 4(5) proviso

HC 10 Charitable trusts

In the trust rules, a trust is a **charitable trust** in an income year if—

- (a) all income accumulated by the trust is held for charitable purposes; and
- (b) any income derived by the trustee in the income year is exempt income under either section CW 34(1) (Charities: non-business income) or CW 35(1) (Charities: business income).

Defined in this Act: business, charitable purpose, charitable trust, exempt income, income, income year, trust rules, trustee

Origin: HH 1(5), HH 1(6)

Distributions from trusts

HC 11 Distributions from trusts

Transfers of value

- (1) A transfer of value from a trust to a person is a **distribution** if the cause of the transfer is a relationship between the trust and the person as a beneficiary of the trust.

Transfers to other trusts included

- (2) A transfer of value under this section includes a settlement of property by a trustee on another trust when—
 - (a) the property would have been beneficiary income of, or a taxable distribution to, a beneficiary, had a distribution been made at the time to a person who was a beneficiary resident in New Zealand; or
 - (b) in a case to which sections EW 51 and EZ 36 (which relate to forgiveness of debt) apply, the property is an amount forgiven and treated as paid as described in section EW 46(1) or (2), or EZ 36(1).

When distribution made

- (3) The distribution is made when what is transferred vests absolutely in interest in, is paid to, or is applied for the benefit of, the person.

Manner of distribution

- (4) A distribution may be made directly or indirectly, or by 1 transaction or a series of transactions that may be connected or unconnected.

Nature of beneficiary relationship

- (5) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value.

Defined in this Act: beneficiary income, distribution, pay, resident in New Zealand, settlement, taxable distribution, transfer of value, trustee

Origin:	(1)	OB 1 “distribution”
	(2)	OB 1 “distribution”
	(3)	OB 1 “distribution”
	(4)	OB 1 “distribution”
	(5)	OB 1 “distribution”

HC 12 Taxable distributions from non-complying and foreign trusts

What this section applies to

- (1) This section applies, in relation to a trust that is a non-complying trust or a foreign trust but not a superannuation fund, when a trustee makes a distribution.

Taxable distributions: non-complying trusts

- (2) For a trust that is a non-complying trust at the time the distribution is made, a distribution to a beneficiary is a taxable distribution to the extent to which it is not a distribution of—
- (a) beneficiary income; or
 - (b) a part of the corpus of the trust; or
 - (c) a payment or a transaction representing the corpus of the trust.

Taxable distributions: foreign trusts

- (3) For a trust that is a foreign trust at the time the distribution is made, a distribution to a beneficiary is a taxable distribution to the extent to which it is not a distribution of—
- (a) beneficiary income; or
 - (b) a part of the corpus of the trust; or
 - (c) a profit from the realisation of a capital asset or another capital gain except—
 - (i) a gain required to be taken into account for the purpose of determining an income tax liability, minus any capital loss that the trustee incurs in the income year in which the amount was derived;
 - (ii) a capital gain derived by the trustee (but not beneficiary income) whether derived through a transaction or series of transactions between the trustee and a person associated with them under section OD 7 (Defining when 2 persons are associated persons) or OD 8(3) (Further definitions of associated persons); or

- (d) a payment or a transaction representing either corpus of the trust referred to in paragraph (b) or a capital gain referred to in paragraph (c).

Amounts not subject to ordering rule

- (4) An amount referred to section HC 13(2)(c) is a taxable distribution.

Inadequate records

- (5) If, and to the extent to which, a trust's records do not allow an accurate determination of the elements of a distribution under this section, the distribution is a taxable distribution.

Defined in this Act: amount, associated person, beneficiary income, corpus, distribution, foreign trust, income tax liability, income year, non-complying trust, pay, superannuation fund, taxable distribution, trustee, trustee income

- Origin:
- (1) OB 1 "taxable distribution"
 - (2) OB 1 "taxable distribution" (a), (b)
 - (3) OB 1 "taxable distribution" (c), (d)
 - (4) HH 6(2)(c)
 - (5) HH 6(3)

HC 13 Ordering rule for distributions from non-complying and foreign trusts

When this section applies

- (1) This section applies for the purposes of the trust rules in an income year in relation to a distribution to a beneficiary by a trustee other than a distribution described in subsection (2).

Exclusions

- (2) This section does not apply to the following distributions which are treated (except for the distribution described in paragraph (c)) as consisting of those amounts that reflect the terms of the trust or the terms of the exercise of the trustee's discretion:
 - (a) a distribution by the trustee of a complying trust is treated as exempt income under section CW 44B (Distributions from complying trusts), except when an election to pay income tax on trustee income has been made for the purposes of section HZ 2 (Trusts that may become complying trusts); or
 - (b) a distribution by the trustee of a non-discretionary trust—
 - (i) created by will or codicil, or by an order of court varying or modifying the provisions of a will or codicil; or
 - (ii) created on an intestacy or partial intestacy; or
 - (iii) on which no settlement has been made after 17 December 1987; or
 - (c) a distribution by a trustee to the extent to which it is made by disposing of property or providing services to a beneficiary in either case at less than

market value, that is treated as a taxable distribution under section HC 12 (4); or

- (d) a distribution from a trust (except a non-complying trust) settled by a natural person who, within 12 months of becoming a New Zealand resident, makes an election to which section HC 28 applies.

Order of elements of distribution

- (3) The distribution is treated as consisting of the following elements (whether as part of an earlier or contemporaneous distribution from the trust in the income year), and is made in the following order, applying the next paragraph only if the amount of the distribution is more than the cumulative amounts described in that paragraph and any preceding paragraph:

- (a) first, an amount of income that the trustee derives in the income year (whether, as between the parties to the trust, the income is treated as derived by a beneficiary or not) minus any deduction taken into account in the income year in calculating net or taxable income for the income year:
- (b) secondly, an amount of income that the trustee has derived in earlier income years (but not beneficiary income) minus any deduction taken into account in calculating net or taxable income for the income year:
- (c) thirdly, an amount that the trustee derives in the income year from the realisation of a capital asset of the trust or any other capital gain minus any capital loss that the trustee incurs in the income year:
- (d) fourthly, an amount that the trustee derives in earlier income years from the realisation of a capital asset of the trust or other capital gain minus any capital loss that the trust incurs in the relevant income years:
- (e) lastly, the corpus of the trust.

Transactions that are not genuine

- (4) In the determination of the elements of a distribution to a beneficiary (**beneficiary A**), no amount of income or capital gain derived by the trustee of a trust is treated as having been distributed to another beneficiary of the trust (**beneficiary B**) if the effect is that some or all of the distribution to beneficiary A would be treated as not being a taxable distribution, unless the distribution to beneficiary B meets all the following requirements:

- (a) it is a genuine transaction; and
- (b) it places the amount beyond the possession and control of the trustee in their capacity of trustee; and
- (c) it does not itself constitute a settlement.

Defined in this Act: amount, beneficiary income, complying trust, corpus, deduction, distribution, foreign trust, income year, net income, New Zealand resident, non-discretionary trust, pay, settlement, taxable distribution, taxable income, trust rules, trustee, trustee income

Origin:	(1)	HH 6(1)(c), (2)
	(2)	HH 6(2)
	(3)	HH 6(1)
	(4)	HH 6(4)

Tax treatment of amounts that beneficiaries derive from trusts

HC 14 Amounts derived as beneficiary income

An amount that a person derives in an income year as beneficiary income is income of the person under section CV 4(a) (Amounts derived from trusts), except to the extent to which it is beneficiary income to which section HC 33 applies.

Defined in this Act: amount, beneficiary income, income year

Origin: HH 3(1), HH 3A(1)(b)

HC 15 Taxable distributions from foreign trusts

An amount that a person derives in an income year as a taxable distribution from a foreign trust is income of the person under section CV 4(b) (Amounts derived from trusts).

Defined in this Act: amount, foreign trust, income, income year, taxable distribution

Origin: HH 3(1)

HC 16 Taxable distributions from non-complying trusts

Excluded income

- (1) An amount that a person derives in an income year as a taxable distribution from a non-complying trust is excluded income of the person under section CX 44C (Taxable distributions from non-complying trusts).

Relationship with other provisions

- (2) Although the amount referred to in subsection (1) is excluded income, section BF 1(b) applies to impose income tax on the amount. Section HC 19 applies to determine the amount on which the income tax is imposed, and section HC 32 sets the rate of tax for the purposes of section BF 1(b).

Defined in this Act: amount, exempt income, income tax, income year, non-complying trust, taxable distribution

Origin: (1) HH 3(1)
(2) BF 1(b), HH 3(4)

HC 17 Distributions from complying trusts

An amount that a person derives in an income year is exempt income of the person under section CW 44B (Distributions of complying trusts) if—

- (a) the amount is not beneficiary income; and
- (b) the amount is a distribution from a complying trust, other than a community trust; and
- (c) the person receives the amount as beneficiary of the trust.

Defined in this Act: amount, beneficiary income, community trust, complying trust, distribution, exempt income, income year

Origin: HH 3(5)

HC 18 Distributions from community trusts

What this section applies to

- (1) This section applies to an amount that a community trust distributes to a person to the extent to which it does not represent—
 - (a) income (but not beneficiary income) derived by the trustee in or before the 2003–04 tax year:
 - (b) corpus of the trust:
 - (c) a capital gain of the trust:
 - (d) a distribution, settlement, or dividend made or paid to the trust in the 2004–05 tax year on the winding up of a trust or company, when—
 - (i) the community trust provided the corpus of the trust and the trust would have been for charitable purposes but for the distribution, settlement, or dividend:
 - (ii) the company is wholly-owned by the community trust and would have been established, maintained, and carried on for exclusively charitable purposes but for the distribution, settlement or dividend.

Income

- (2) Despite sections HC 12 and HC 17, the amount is income of the person under section CV 5 (Distributions from community trusts) if the person receives the amount as beneficiary of the trust.

Defined in this Act: amount, beneficiary income, charitable purpose, community trust, company, corpus, distribution, dividend, income, income year, pay, settlement, tax year, trustee, trustee income

Origin: (1) HH 5A
(2) HH 5A

HC 19 Use of tax losses to reduce taxable distributions from non-complying trusts

When this section applies

- (1) This section applies in a tax year if a person who has a tax loss component or loss balance to which sections IA 2 to IA 10 (which relate to the use of tax losses) apply, derives a taxable distribution from a non-complying trust to which section HC 16 applies.

Reducing taxable distribution

- (2) The person may reduce the amount of a taxable distribution by an amount calculated using the formula—

$$\frac{\text{tax loss} \times \text{trustee rate}}{\text{distribution rate.}}$$

Definition of items in formula

- (3) In the formula,—
- (a) **tax loss** is the amount of a tax loss component or loss balance that the person chooses to use:
 - (b) **trustee rate** is the minimum rate of income tax on the taxable income of trustees set out in schedule 1, expressed as a percentage:
 - (c) **distribution rate** is the rate of the income tax on the taxable distribution set out in schedule 1, expressed as a percentage.

Loss no longer available

- (4) If a person takes an amount of a tax loss or a tax loss component into account under this section, the amount is treated as subtracted from net income for the tax year for the purposes of section IA 2(2) (Tax losses).

Defined in this Act: amount, income tax, income year, loss balance, non-complying trust, tax loss, tax year, taxable distribution, taxable income, trustee

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

HC 20 Temporary absences of beneficiaries

When this section applies

- (1) This section applies if a person who is a beneficiary of a trust resident in New Zealand stops being a resident and then, within the period of 5 years of the date of ending their residence, becomes resident in New Zealand again.

Income derived during the period

- (2) The person is treated as deriving income under section CV 6 (Amounts derived from trusts during absence from New Zealand) to the extent of the amount of beneficiary income or taxable distribution from a foreign trust or a non-complying trust that would have been the person's income had they remained in New Zealand during the period of their absence.

Allocation

- (3) The amount is treated as derived on the day on which the person becomes resident in New Zealand again.

Defined in this Act: amount, beneficiary income, foreign trust, income, non-complying trust, resident in New Zealand, taxable distribution

Origin: (1) HH 3(3)
 (2) HH 3(3)
 (3) HH 3(3)

*Tax treatment of trustee income***HC 21 Trustees' obligations***Liability as individual for trustee income*

- (1) A trustee must satisfy the income tax liability for the taxable income of the trustee as if they were an individual beneficially entitled to the trustee income. In determining the income tax liability, the trustee is not—
- (a) allowed a rebate of income tax under Part K (Rebates); or
 - (b) entitled to be a cash basis person, unless section EW 60 (Trustee of deceased's estate) applies.

Calculating trustees' deductions

- (2) For the purposes of calculating a trustee's deductions under section DV 9(2) (Trusts) in an income year, beneficiary income of the trust is treated as if it were trustee income.

Superannuation funds

- (3) Sections CX 34, and DV 1 to DV 4 (which relate to superannuation funds) override this section.

Defined in this Act: beneficiary income, cash basis person, deduction, income tax liability, income year, superannuation fund, taxable income, trustee, trustee income

Origin:	(1)	HH 4(1), (2)
	(2)	DV 9(2)
	(3)	HH 4(1)

HC 22 Foreign-sourced amounts: non-resident trustees*When this section applies*

- (1) This section applies if a trustee who is not resident in New Zealand derives in an income year a foreign-sourced amount that would be assessable income if it were derived by a person resident in New Zealand.

Trustee income

- (2) Despite section BD 1(4)(a) and (b), and BD 1(5)(c) (Income, exempt income, excluded income non-residents' foreign-sourced income, and assessable income), the amount is assessable income of the trustee if, at any time in the income year,—
- (a) a settlor of the trust is resident in New Zealand; or

- (b) the trust is a superannuation fund; or
- (c) the trust is a testamentary trust or an inter vivos trust, of which—
 - (i) a trustee is resident in New Zealand; and
 - (ii) a settlor died resident in New Zealand (whether or not they died in the income year).

First exception

- (3) Subsection (2) does not apply if—
 - (a) the trustee is resident outside New Zealand at all times in the income year; and
 - (b) no settlement has been made on the trust after 17 December 1987, and if an election has been made under section HZ 2 (Trusts that may become complying trusts), the election has not been made by the trustee.

Second exception

- (4) Subsection (2) does not apply if—
 - (a) the trustee is resident outside New Zealand at all times in the income year; and
 - (b) if a settlement has been made on the trust after 17 December 1987, it was made only by a settlor not resident in New Zealand at any time since that date.

Extent to which subsections (3) and (4) apply

- (5) Subsections (3) and (4) do not—
 - (a) affect a settlor's income tax liability under the trust rules;
 - (b) apply to determine if a trustee's obligations under section HC 9(1)(a)(ii) are met for the purposes of a trust satisfying the requirements of a complying trust.

Treatment of non-resident trustee in other provisions

- (6) Only for the purpose of calculating the taxable income of a trustee referred to in subsection (2), and not for determining whether an amount is beneficiary income, the trustee is treated as resident in New Zealand for the purposes of—
 - (a) sections EW 9 and EW 11 (which relate to financial arrangements);
 - (b) section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand);
 - (c) section MF 11 (Person may elect to maintain branch equivalent tax account);
 - (d) the FIF rules;
 - (e) the international tax rules.

Defined in this Act: amount, assessable income, beneficiary income, branch equivalent tax account, complying trust, excluded income, exempt income, FIF rules, financial arrangement, foreign-sourced amount, income, income tax liability, income year, international tax rules, non-resident, non-residents' foreign-sourced income, resident in New Zealand, settlement, settlor, superannuation fund, taxable income, trust rules, trustee

Origin:	(1)	HH 4(3)
	(2)	HH 4(3)
	(3)	HH 4(6)
	(4)	HH 4(6) provisos
	(5)	HH 4(3A)
	(6)	HH 4(3A)

HC 23 Foreign-sourced amounts: resident trustees

A foreign-sourced amount that a trustee who is resident in New Zealand derives in an income year is exempt income under section CW 44C (Foreign-sourced amounts derived by trustees) if—

- (a) no settlor of the trust is resident in New Zealand at any time in the income year; and
- (b) the trust is not—
 - (i) a superannuation fund; or
 - (ii) a testamentary trust or an inter vivos trust of which a settlor died resident in New Zealand (whether or they died in the income year).

Defined in this Act: exempt income, foreign-sourced amount, income year, resident in New Zealand, settlor, superannuation fund, trustee

Origin:	HH 4(3B)
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Settlors and their liabilities

HC 24 Who is a settlor?

When this section applies

- (1) This section applies for the purposes of—
 - (a) the trust rules; and
 - (b) the consolidation rules; and
 - (c) section CW 47 (New Zealand companies operating in Niue); and
 - (d) sections HC 7 and HC 9(2); and
 - (e) section OB 1, the definition of **settlement**; and
 - (f) section OD 8(3) (Further definitions of associated person).

Settlor defined

- (2) A **settlor** of a trust is a person who, at any time,—
- (a) transfers value to or for the benefit of the trust, or on terms of the trust under section HC 25; or
 - (b) is treated as a settlor under section HC 26.

Trusts for retirement benefits for employees

- (3) Despite subsection (2), this section does not apply to a trust that a person resident in New Zealand settles as an employer for the benefit of 1 or more employees, if the trust—
- (a) is established or created mainly to provide retirement benefits to natural persons; and
 - (b) is neither a foreign superannuation scheme nor a superannuation fund.

Defined in this Act: associated person, consolidation rules, employee, employer, foreign superannuation scheme, resident in New Zealand, settlement, settlor, superannuation scheme, superannuation fund, trust rules

Origin:	(1)	s OB 1 “settlor”
	(2)	s OB 1 “settlor”
	(3)	s HH 1(10)

HC 25 Transfers of value to trusts

What is included in transfer

- (1) A transfer of value to a trust includes—
- (a) releasing the trust from an obligation to pay money to the person, either by agreement or by operation of law; or
 - (b) providing financial assistance to or for the benefit of the trust with an obligation to pay on demand, when the right to demand is not exercised or is deferred.

Manner of distribution

- (2) A distribution may be made directly or indirectly, or by 1 transaction or a series of transactions that may be connected or unconnected.

Nature of beneficiary relationship

- (3) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value.

Defined in this Act: amount, distribution, pay, transfer of value

- Origin:
- (1) s OB 1 “settlor” (a)
 - (2) s OB 1 “settlor” (b)
 - (3) s OB 1 “settlor” (b)

HC 26 Activities treated as those of settlor

When this section applies

- (1) This section describes certain activities by a person that result in the person being treated as a settlor. This section applies for the purposes of the trust rules.

Avoidance

- (2) If a person acts, or refrains from acting, or enters into a transaction or series of transactions with or in relation to a trust, when what is done or not done has the effect of defeating the intent and application of the trust rules, the person is treated as the settlor of the trust.

Shareholders in companies

- (3) If a company settles a trust, when it would have been a controlled foreign company at the date of settlement if it had been a foreign company at that time, a person who has, or would have, a control interest of 10% or more in the company is treated as a settlor of the trust. The categories of control interest are listed in section EX 2 (Four categories for calculating control interests), and a control interest is calculated under sections EX 3 to EX 7.

Shareholders in controlled foreign companies

- (4) If a controlled foreign company settles a trust, a person who has a control interest of 10% or more in the company is treated as a settlor of the trust. The categories of control interest are listed in section EX 2 (Four categories for calculating control interests), and a control interest is calculated under sections EX 3 to EX 7.

Second trusts

- (5) If a trustee of a trust (**trust A**) settles another trust or makes a distribution to, or on terms of, another trust (in either situation, **trust B**), a person who is a settlor of trust A is treated as a settlor of trust B. This treatment includes a person who is a settlor of trust A under this subsection.

Control over trustee or settlor

- (6) If a person (**person A**) acquires rights or powers in relation to a trustee or a settlor of an existing trust, when acquiring those rights or powers has the purpose or effect of enabling person A to require the trustee to treat them (or another person nominated by them) as a beneficiary of the trust, person A is treated as a settlor of the trust.

Defined in this Act: amount, business, charitable trust, company, control interest, controlled foreign company, distribution, foreign company, nominee, settlement, settlor, trust rules, trustee

Origin:	(1)	HH 1(1)–(4), (8), (10), OB 1 “settlor”
	(2)	OB 1 “settlor” (a)
	(3)	HH 1(2)
	(4)	HH 1(2)
	(5)	HH 1(3)
	(6)	HH 1(4)

HC 27 Settlers’ liability to income tax

When this section applies

- (1) This section applies to person who makes a settlement to or for the benefit of a trust after 17 December 1987, whether or not they settled property on the trust on or before that date.

When this section does not apply

- (2) This section does not apply to—
- (a) a settlor of a charitable trust:
 - (b) a settlor of a trust that has a trustee resident in New Zealand for the whole of the income year, or if the first settlement on the terms of the trust is made in the income year, from the start of the day on which the settlement is made to the end of the income year:
 - (c) a settlor of a superannuation fund:
 - (d) a settlor who is a natural person who settles property on trust and is not resident in New Zealand at the time of any settlement, and had not previously been resident after 17 December 1987, unless they choose to satisfy the income tax liability of the trustee under section HC 31:
 - (e) a settlor of a trust who establishes, through full disclosure to the Commissioner of the settlements made, that another person who has settled property on the trust should have a greater liability, having regard to the respective settlements made:
 - (f) a settlor of a trust to the extent to which the trustee income is derived from the settlor’s remitting an amount under a financial arrangement to which section EH 37 (Other definitions) applies.

Liable as agent

- (3) If a trustee of the trust derives trustee income in an income year, and a settlor of the trust is resident in New Zealand in the income year, the settlor is liable as agent of the trustee for income tax payable by the trustee, other than income tax that the trustee is liable for as agent under section HC 30. If there is more than 1 settlor, the liability is joint and several. The agency relationship is dealt with in section HD 11(2) (Trusts).

Limited effect of disclosure

- (4) A disclosure under subsection (2)(e) does not apply to determine if a trustee’s obligations under section HC 9(1)(a)(ii) are met for the purposes of a trust satisfying the requirements of a complying trust.

Defined in this Act: agent, amount, charitable trust, Commissioner, financial arrangement, income tax, income year, income tax liability, pay, resident in New Zealand, settlement, settlor, superannuation fund, trustee, trustee income

Origin:	(1)	HH 4(4)
	(2)	HH 4(5)
	(3)	HH 4(4)
	(4)	HH 4(5) proviso

HC 28 Treatment of foreign trusts when settlor becomes resident

What this section applies to

- (1) This section applies to a trust that meets the following requirements:
 - (a) a settlor of the trust is a natural person who becomes resident in New Zealand; and
 - (b) the trust would have been a foreign trust in relation to a distribution had a distribution been made immediately before a settlor became resident.

Election to satisfy tax liability

- (2) A settlor, trustee, or beneficiary of the trust may choose, by the election expiry date, to satisfy the income tax liability of the trustee under section HC 31.

Tax consequences of making election

- (3) For the purposes of section HC 12 and the definition of **taxable distribution**, if an election described subsection (2) has been made, the trust is treated as follows:
 - (a) as a foreign trust to the extent to which the distribution consists of an amount derived by the trustee before the date of the election;
 - (b) as a complying trust to the extent to which the distribution consists of an amount derived by the trustee on or after the date on which the election is made, if the requirements under section HC 9(1) have been met;
 - (c) as a non-complying trust to the extent to which the distribution is made, when an election is made but the requirements referred to in paragraph (b) are not met, for as long as the requirements are not met.

Tax consequences when no election made

- (4) For the purposes of section HC 12 and the definition of **taxable distribution**, if the election referred to in subsection (2) is not made, the trust is treated as follows:
 - (a) as a foreign trust to the extent to which the distribution consists of an amount derived by the trustee before the election expiry date;
 - (b) as a non-complying trust to the extent to which a distribution consists of an amount derived by the trustee on or after the election expiry date.

Election expiry date

- (5) In this section, the election expiry date is the day that is the first anniversary of the day on which the settlor first became resident in New Zealand.

Calculating income derived before election, or election expiry date

- (6) For the purposes of subsections (2) and (3), the amount derived in the part of the income year before the person makes the election, or before the election expiry date, is either—
- (a) the sum of all amounts derived in the part year; or
- (b) an amount calculated using the formula—

$$\text{amount derived in income year of election} \times \frac{\text{days before election date or election expiry date}}{365}$$

Defined in this Act: amount, complying trust, distribution, foreign trust, income, income tax liability, income year, non-complying trust, resident in New Zealand, settlor, taxable distribution, trustee

Origin:	(1)	HH 2(1)
	(2)	HH 2(1)
	(3)	HH 2(2)
	(4)	HH 2(3)
	(5)	HH 2(3)(a)
	(6)	HH 2(4)

Valuation of property, trading stock, and financial arrangements**HC 29 When existing trusts come into tax base*****When this section applies***

- (1) This section applies in an income year if, through a change in circumstances, an amount derived by a trustee of a trust on a day in the income year is assessable income when it would not have been assessable income had it been derived before that day (other than only as non-resident withholding income). Examples of a change in circumstances are—
- (a) a non-resident settlor becomes resident in New Zealand, section HC 28;
- (b) a charitable trust loses its charitable status, section HC 10.

Establishing cost of trust property

- (2) The cost of premises, plant, equipment, and trading stock of the trust at the date of the change in circumstances, at the option of a person who is liable to satisfy any income tax payable by the trustee, is either—
- (a) the historical cost of the property or trading stock minus any accumulated depreciation loss, or other value (but no higher than market value) that the

trust used at that date for income tax purposes in a country or territory in which the trust is liable to pay income tax on its trustee income; or

- (b) the value that would be used at that date calculated as if the income derived by the trustee had been assessable income (other than only as non-resident withholding income).

Consideration for financial arrangements

- (3) For the purposes of this Act, the consideration for a financial arrangement of the trust at the date of the change in circumstances, at the option of a person who is liable to satisfy any income tax payable by the trustee, is either—

- (a) the market value of the financial arrangement on that date; or
- (b) the value calculated using the formula—

consideration paid to person + expenditure – consideration paid by person – income.

Definition of items in formula

- (4) In the formula,—

- (a) **consideration paid to person** is the consideration paid to the person before the relevant period:
- (b) **expenditure** is the expenditure that would have been incurred under the financial arrangements rules before the relevant period:
- (c) **consideration paid by person** is the consideration paid before the relevant period:
- (d) **income** is the income that would have been derived under the financial arrangements rules before the relevant period.

Defined in this Act: amount, assessable income, business, charitable trust, consideration, depreciation loss, financial arrangement, financial arrangements rules, income, income tax, income year, non-resident, non-resident withholding income, pay, resident in New Zealand, this Act, trading stock, trustee, trustee income

Origin:	(1)	HH 5
	(2)	HH 5(a)
	(3)	HH 5(b)
	(4)	HH 5(b)

Rate and payment of income tax

HC 30 Liability of trustee as agent

When this section applies

- (1) This section applies in an income year when a beneficiary of a trust, other than a beneficiary of a community trust, derives an amount of beneficiary income or a taxable distribution.

Agency

- (2) The trustee must, as agent, satisfy the income tax liability of the beneficiary for their beneficiary income and taxable distributions derived. The agency relationship is dealt with in section HD 11(1) (Trusts).

Relationship to other provisions

- (3) Section HD 4(b) (Treatment of principals) overrides this section.

Defined in this Act: agent, amount, beneficiary income, community trust, income tax liability, taxable distribution, trustee

Origin:	(1)	HH 3(2)
	(2)	HH 3(2)
	(3)	HK 3(1A)

HC 31 Election to satisfy income tax liability of trustee

Election to satisfy tax liability

- (1) A trustee, settlor, or beneficiary of a trust may choose to satisfy the income tax liability of the trustee of the trust.

Liability of person making election

- (2) The person making an election referred to in subsection (1) is liable for the income tax payable by the trustee, other than income tax that the trustee is liable for as agent.

Application of election

- (3) An election may apply either for an income year or from the date on which the election is made. It then applies for all following income years.

Time of providing election

- (4) Notification of an election under this section must be provided within the time allowed for providing a return of income for the relevant income year. If section HC 28 applies, notification must be provided by the election expiry date.

Defined in this Act: agent, income tax, income tax liability, income year, pay, return of income, settlor, trustee

Origin: (1) HH 4(7)
(2) HH 4(7)
(3) HH 4(7)
(4) HH 4(7)

HC 32 Rate of tax: taxable distributions from non-complying trusts

Income tax is imposed on a taxable distribution from a non-complying trust under section BF 1(b) at the rate set out in schedule 1, part A, clause 5.

Defined in this Act: income tax, non-complying trust, taxable distribution

Origin: HH 3(4)

HC 33 Rate of tax: beneficiary income of minors

When this section applies

- (1) This section applies in an income year when a person who is a minor derives an amount of beneficiary income from a trust. The amount is treated as trustee income for the purposes of determining the rate of tax that applies, who pays the relevant tax, and who provides the returns of income.

Amounts excluded from rule

- (2) This section does not apply—
- (a) if the total amount of beneficiary income that the minor derives in an income year is less than \$1,000; or
 - (b) to beneficiary income derived—
 - (i) from a trust settled in the way described in section HC 34:
 - (ii) from a testamentary trust described in section HC 35:
 - (iii) from a Māori authority:
 - (iv) directly from a group investment fund:
 - (v) for whom a child disability allowance is paid under the Social Security Act 1964.

Excluded income

- (3) The amount the minor derives as beneficiary is excluded income of the minor under section CX 44B (Amounts derived by minors from trusts).

Meaning of minor

- (4) For the purposes of this section, and sections HC 34, HC 35, and LB 1A (Treatment of imputation credits of beneficiary minor), a **minor** is a natural person resident in New Zealand who is under 16 years of age on the trust's

balance date for the income year in which the income derived by the trustee is also beneficiary income of the minor.

Relationship with other provisions

- (5) This section overrides sections HC 4, HC 15 to HC 17, HC 19, HC 20, and HC 30.

Defined in this Act: amount, beneficiary income, distribution, excluded income, group investment fund, income year, imputation credit, Māori authority, minor, pay, resident in New Zealand, return of income, trustee, trustee income

Origin:	(1)	HH 3A
	(2)	HH 3A–3C, 3E
	(3)	HH 3(1)(b)
	(4)	HH 3F(2), (2A)
	(5)	HH 3A(1)(b)

HC 34 Minors' beneficiary income from unrelated source

When this section applies

- (1) This section applies for the purposes of section HC 33(2)(b)(i), but does not apply if services are provided to the trust by a relative, guardian, or associated person, except those services that are incidental to the operation of the trust. Examples of incidental services are bookkeeping, accounting, or trustee services.

Amounts excluded from application of minor beneficiary rule

- (2) Section HC 33(3) does not apply to beneficiary income derived by person who is a minor if all the settlements on the trust were made by—
- (a) a person who is not a relative or a guardian of the minor, nor a person associated with a relative or a guardian; or
 - (b) a person who is a relative acting as agent of the minor if—
 - (i) the settlor has received the property from a person other than a relative, guardian, or their associate; or
 - (ii) the settlor is required by a court order to pay damages or compensation to the minor; or
 - (iii) a protection order has been made against the settlor under section 14 of the Domestic Violence Act 1995 in relation to which the minor is a protected person, when the settlement (which may be made jointly with another person) is made before the order is made or during the time the order is in force.

Amounts treated as excluded from application of minor beneficiary rule

- (3) If more than 1 settlement is made on the trust and not all settlements meet the requirements set out in subsection (2), section HC 33(3) does not apply if the only settlements that fail to meet the requirements are made through—
- (a) the disposal, for less than market value, of property whose total value is not more than \$5,000 at the end of the income year (the settlement being valued on the date of settlement); or
 - (b) providing financial assistance for less than market value in the form of a loan whose total value is no more than \$1,000 on any day in the income year.

Settlements outside the exclusion

- (4) Subsection (3) does not apply if none of the settlements is of a kind referred to in subsection (2).

Meaning of financial assistance, guardian, relative

- (5) In this section,—

financial assistance may include assistance through a loan, guarantee, security, or in another way, and financial assistance is treated as having been provided to, or for the benefit of, a trust for less than market value if—

- (a) the assistance is provided at below market rates; or
- (b) an amount payable for the assistance are payable on demand and the right to demand is not exercised or is deferred

guardian has the meaning set out in section 15 of the Care of Children Act 2004, but does not include a guardian appointed under—

- (a) section 110(1)(a) to (d) of the Children, Young Persons, and their Families Act 1989; or
- (b) section 31 of the Care of Children Act 2004; or
- (c) section 53 of the Public Trust Office Act 1957 by a court order; or
- (d) section 7(4) of the Adoption Act 1955

relative means a person (**person A**) who is connected with another person (**person B**) in any of the following ways:

- (a) through blood relationship within the fourth degree;
- (b) by marriage if person A is married (or is in a relationship in the nature of marriage) to person B or to a person who is connected by blood relationship or adoption to person B, or who is a guardian of person B;
- (c) by adoption if person A has been adopted as the child or person B, or as a child of a person who is related within the third degree to person B;
- (d) through a trust if person A is the trustee of the trust under which person B has benefited or is eligible to benefit.

Defined in this Act: agent, amount, associated person, beneficiary income, financial assistance, guardian, income year, minor, pay, relative, settlement, settlor, trustee

- Origin:
- (1) HH 3C, HH 3D(3), (4)
 - (2) HH 3C
 - (3) HH 3D(1), (2)
 - (4) HH 3D(1A)
 - (5) HH 3F(1), (3), (4)

HC 35 Minors' beneficiary income from testamentary trust

When this section applies

- (1) This section applies for the purposes of section HC 33(2)(b)(ii).

Amounts excluded from application of minor beneficiary rule

- (2) Section HC 33(3) does not apply to beneficiary income derived by person who is a minor if all the settlements on the trust were made under a will, codicil, intestacy, or court variation if—
 - (a) the minor is alive within 12 months of the date of the settlor's death; or
 - (b) the minor has a brother, sister, half-brother, or half-sister alive within 12 months of the date of the settlor's death.

Defined in this Act: beneficiary income, minor, settlement, settlor

- Origin:
- (1) HH 3C(1)(e)
 - (2) HH 3C(1)(e)

Subpart HD—Agents

General provisions

HD 1 Outline of subpart

When this subpart applies

- (1) This subpart set out the circumstances in which a person is treated for the purposes of this Act and the Tax Administration Act 1994 as an agent of another person in relation to the tax obligations of that other person.

Provisions relating to agents

- (2) The following provisions in other subparts of this Act set up certain agency relationships for income tax purposes, or provide certain tax consequences and requirements of an agency relationship:
 - (a) section EY 48(5) (Non-resident life insurers may become resident):
 - (b) section FC 16(3) (Liability to make return and pay income tax):
 - (c) sections FD 4(2) and FD 6 (which relate to consolidated groups and nominated companies):
 - (d) sections FDA 2(4) and FDA 5 (which relate to imputation groups and nominated companies):
 - (e) section HB 25 (Assessments of shareholders' liabilities):
 - (f) section HC 27(3) (Settlors' liability to income tax):
 - (g) section HC 30(2) (Income tax liability on beneficiary income and taxable distributions):
 - (h) section LD 6 (Allowance for provisional tax paid by agent):
 - (i) section NF 2(4), (6) and (7) (Deduction of resident withholding tax):
 - (j) section NF 3(1) and (5) (Requirements for agents or trustees to make resident withholding tax deductions on receipt of payments):
 - (k) section NF 5 (Non-resident withholding tax deducted in substitution for resident withholding tax):
 - (l) section NG 8(2) (Deduction of non-resident withholding tax):
 - (m) section NG 15 (Deductions of non-resident withholding tax deemed to be received by person entitled to payment):
 - (n) section OB 1, the definition of **offered or entered into in New Zealand**.

Defined in this Act: agent, beneficiary income, company, consolidated group, deduction, imputation group, income tax, income tax liability, nominated company, non-resident, non-resident withholding tax, offered or entered into in New Zealand, pay, provisional tax, resident withholding tax, return of income, settlor, shareholder, taxable distribution, this Act, trustee

Origin: (1) HK 1(1)
(2) new

HD 2 Joint liability of principal and agent for tax obligations

Principals and agents are jointly and severally liable for the tax obligations relating to the agency, and the Commissioner may issue an assessment for the same tax to both an agent and their principal. The liability of the one remains despite an assessment of the other.

Defined in this Act: agent, assessment, Commissioner

Origin: HK 3(2)

HD 3 Agents' duties and liabilities

Assessments, returns, and payment of tax

- (1) An agent must—
- (a) make the assessments that their principal is required to make; and
 - (b) provide the returns of income tax required of their principal; and
 - (c) satisfy their principal's income tax liability.

Joint and several liability

- (2) If 2 or more persons are liable as agents in relation to the same tax, the liability is joint and several.

Agent as separate person

- (3) The agent is treated in their capacity as agent as a separate person, and may claim in relation to the agency income only those rebates or exemptions to which the principal is entitled.

Defined in this Act: agent, assessment, income tax, income tax liability, pay, return of income

Origin: (1) HK 1(1)
(2) HK 3(3)
(3) HK 1(1), (2)

HD 4 Treatment of principals

Despite section HD 3,—

- (a) a principal remains liable for their tax obligations, and is not released from them merely through the existence of the agency; and

- (b) if the Commissioner agrees, the principal and the agent may decide that the principal is to undertake the duties set out in section HD 3(1).

Defined in this Act: agent, Commissioner

Origin: HK 3(1), (1A)

HD 5 Matters between principals and agents

Assessment as authority

- (1) The Commissioner's assessment is, as between principal and agent, sufficient authority for the payment of tax by the agent.

Recovering payment

- (2) On paying tax, an agent is entitled to be reimbursed by the principal, and may—
 - (a) recover the amount from the principal; or
 - (b) deduct the amount from money that the agent holds if the money belongs or is payable to the principal.

Retaining funds

- (3) For the purposes of paying tax in relation to which an agent is or may become liable, the agent may retain an amount from money that belongs or is payable to the principal. This subsection applies only in relation to tax payable for a tax year or for a previous tax year.

Effective relationship

- (4) If a person who is carrying on business in New Zealand is sufficiently under the control of another person in business, whether in New Zealand or elsewhere, so that the relationship between them is effectively that of principal and agent, the Commissioner may treat the first business as the principal's business carried on by the agent on behalf of the principal.

Hardship

- (5) The Commissioner may set a new due date for an agent to pay a tax liability if, when the assessment is made,—
 - (a) the agent—
 - (i) is unable to pay the tax liability because they do not hold money that belongs to the principal; and
 - (ii) has not paid away money after being assessed in relation to the agency; and
 - (b) the enforcement of payment would cause hardship to the agent.

Defined in this Act: agent, amount, assessment, business, Commissioner, New Zealand, pay, tax year

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

HD 6 Rate of tax

Calculating rate

- (1) The rate of tax on the tax liability payable by an agent is calculated by using the formula—

principal's taxable income x principal's tax rate x proportion of agency taxable income.

Definitions of items in formula

- (2) In the formula,—
- (a) **principal's taxable income** is the amount of their taxable income for a tax year calculated under section BC 5 (Taxable income):
 - (b) **principal's tax rate** is the relevant rate set out in schedule 1:
 - (c) **proportion of agency taxable income** is the tax liability relating to the proportion of each principal's taxable income that relates to the agency.

Defined in this Act: agent, pay, tax year, taxable income

Origin:	(1)	HK 2
	(2)	HK 2

Particular cases

HD 7 Circumstances giving rise to agency

For the purposes of this Act and the Tax Administration Act 1994, a person is treated as an agent in relation to the income of another person in the circumstances set out in sections HD 8 to HD 14.

Defined in this Act: agent, income, this Act

Origin:	new
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HD 8 Guardians

A person (**person A**) is treated as an agent of another person (**person B**) if, as guardian, manager, or otherwise, person A receives, controls, or disposes of income that the person B derives while under a legal disability.

Defined in this Act: agent, income

Origin: HK 9

HD 9 Mortgagees in possession

A person (**person A**) is treated as an agent of another person (**person B**) if, as mortgagee in possession of land or other property, person A derives income from the land or property on behalf or for the benefit of the person B as mortgagor.

Defined in this Act: agent, income

Origin: HK 10

HD 10 Nominated companies

Consolidated groups

- (1) A nominated company is treated under section FD 6(1) (Nominated companies) as the agent of a consolidated group, and of each company that is at the time a member of that group.

Imputation groups

- (2) A nominated company is treated under section FDA 5(3) (Nominated company) as the agent of an imputation group, and of each company that is at the time a member of that group.

Defined in this Act: agent, company, consolidated group, imputation group, nominated company

Origin: (1) FD 6(1)
(2) FDA 5(3)

HD 11 Trusts

Beneficiary income and taxable distributions

- (1) If a beneficiary of a trust, other than a beneficiary of a community trust, derives an amount of beneficiary income or taxable distribution in a tax year, the trustee of the trust is treated under section HC 30 (Liability of trustee as agent) as the agent of the beneficiary.

Settlers

- (2) If a trustee of a trust, other than a charitable trust, derives trustee income in a tax year, and a settlor of the trust is resident in New Zealand in the tax year, the settlor is treated under section HC 27 (Settlor's liability to income tax) as the agent of the trustee for income tax payable by the trustee (but not for income tax that the trustee is liable for as agent).

Defined in this Act: agent, beneficiary income, charitable trust, community trust, income tax, income tax liability, pay, resident in New Zealand, settlor, tax year, taxable distribution, trustee, trustee income

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

HD 12 Unit trusts

A trustee of a unit trust is treated as an agent of the unit trust in relation to income derived by the unit trust.

Defined in this Act: agent, income, trustee, unit trust

Origin: HE 1

HD 13 Companies issuing debentures

Agency

- (1) A company is treated as an agent of a person if—
- (a) the company has issued a debenture; and
 - (b) the person, as a debenture holder, derives income from the debenture.

Excluded debentures

- (2) Subsection (1) does not apply to a debenture if—
- (a) it is a debenture to which section FC 1 (Floating rate of interest on debentures) applies; or
 - (b) it is issued to a New Zealand resident, and the company provides the Commissioner with a certified list containing particulars of the debentures, debenture holders, and details of the interest payments before an assessment is made in a tax year of the debenture holder.

Liability of persons named

- (3) A person named as a debenture holder in the list referred to in subsection (2)(b) is liable for income tax on income derived from the debenture. Subsection (4) overrides this subsection.

Continuing liability until notification

- (4) Despite section BB 2 (Main obligations), if a debenture holder disposes of a debenture, they remain liable for income tax unless they notify the Commissioner of the disposal before an assessment is made in a tax year that takes into account the income derived from the debentures. On notification, the subsequent holder is liable in relation to the debentures, and the liability of the transferor is ended.

Recovery of tax paid

- (5) If a person who formerly held a debenture pays income tax on taxable income that takes into account income derived by a subsequent holder, the income tax is treated as paid on behalf of the subsequent holder to the extent of the liability of the subsequent holder, and the person may recover that amount from them.

Matters not taken into account

- (6) For the purposes of subsection (1), it does not matter whether the debenture is charged on the company's property, nor whether a debenture holder is an absentee.

Defined in this Act: absentee, agent, assessment, Commissioner, company, debentures, debenture holder, income, income tax, interest, New Zealand resident, notify, pay, tax year, taxable income

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

HD 14 Shell companies***When this section applies***

- (1) This section applies when—
- (a) an arrangement has been entered into in relation to a company; and
 - (b) an effect of the arrangement is that the company cannot meet an income tax liability whether existing at the time of the arrangement or arising after that time; and
 - (c) it is reasonable to conclude that—
 - (i) a purpose of the arrangement is to have the effect described in paragraph (b); and
 - (ii) if a director of the company at the time of the arrangement made reasonable inquiries, they would have anticipated the existence of an income tax liability that the company would, or would likely, be required to meet.

When this section does not apply

- (2) This section does not apply to an arrangement if—
- (a) the Commissioner is a party to the arrangement;
 - (b) the income tax liability is no more than an amount of income tax that arises as a direct result of the performance of the arrangement, and that liability has been met;
 - (c) at the time of the arrangement, the company was under statutory management under the Reserve Bank of New Zealand Act 1989 or the Corporations (Investigation and Management) Act 1989.

Director's liability

- (3) All persons who are directors of the company at the time the arrangement is entered into are treated as agents of the company in relation to its income tax liability, and the liability is joint and several. But a director has no liability if—
- (a) they do not derive a benefit from the arrangement, and at the first reasonable opportunity after becoming aware of the arrangement, or the aspects of the arrangement that cause this section to apply to it, they record formally their dissent in relation to the arrangement either with the company or with the Commissioner; or
 - (b) they were not at the relevant time involved in the executive management of the company and had no knowledge of the arrangement, or the aspects of the arrangement that cause this section to apply to it.

Shareholder's liability

- (4) A person who is a controlling shareholder or an interested shareholder at the time of the arrangement is treated as an agent of the company in relation to its income tax liability but, despite section HD 3(2), the liability is limited to the greater of—
- (a) the market value of the person's direct and indirect shareholding in the company at the time of the arrangement; and
 - (b) the value of the benefit that the person derives from the arrangement.

Items excluded from shareholder's liability

- (5) For the purposes only of determining the extent of the liability in subsection (4), the following are excluded:
- (a) a late payment penalty;
 - (b) interest arising for late payment of some or all of the liability.

Company liquidations

- (6) In order to give effect to this section, if a company has been liquidated, the Commissioner may at any time after the liquidation make an assessment of a company for an income tax liability of the company as if it had not been liquidated. The time bar applies, but this subsection overrides other provisions in this Act and the Tax Administration Act 1994.

Agents for purposes of notification or objection procedures

- (7) In making an assessment under subsection (6), the Commissioner must nominate 1 or more persons as having the tax liability set out in the assessment. The nominated person or persons are treated as agents of the company in relation to any notification or objection procedure concerning the assessment.

When liability does not arise

- (8) No liability arises under this section for a tax year in relation to which—
- (a) a company has provided returns within the time allowed under section 37 of the Tax Administration Act 1994 for the providing returns for the tax year in which the company is liquidated; and
 - (b) the Commissioner has not issued a notice of assessment of the company for the tax year before the end of 4 years following the end of the tax year in which the company is liquidated.

Defined terms for this section

- (9) In this section,—

director means,—

- (a) a person who occupies the position of director, whether or not the position has that title;
- (b) for an entity that is treated as a company under this Act, a person who acts in the same or similar way as a director would if the entity were a company incorporated in New Zealand under the Companies Act 1993

controlling shareholder, for a company, means a person whose voting interest or market value interest in the company at the time of the arrangement, together with any interests of an associated person, is 50% or more

interested shareholder means a person who, at the time the arrangement is entered into, has a voting interest or market value interest in the company, and because of the size of the benefit that the person derives from the arrangement, it is reasonable to conclude that the person is a party to the arrangement.

Defined in this Act: agent, amount, arrangement, assessment, associated person, Commissioner, company, controlling shareholder, director, income tax, income tax liability, interest, interested shareholder, market value interest, notice, notify, return of income, tax year, this Act, time bar, voting interest

Origin:	(1)	HK 11(1)
	(2)	HK 11(2)
	(3)	HK 11(3), (6)
	(4)	HK 11(4)
	(5)	HK 11(4)
	(6)	HK 11(7)
	(7)	HK 11(8)
	(8)	HK 11(9)
	(9)	HK 11(10)

Absentees

HD 15 Agency in relation to absentees generally

What sections HD 16 to HD 22 do

- (1) Sections HD 16 to HD 22 apply for the purposes of this Act to treat a person as an agent in relation to the income of an absentee when certain conditions are met. The person must meet the tax obligations set out in section HD 3 in relation to the gross income to which the agency applies.

Absentee defined

- (2) In this subpart, **absentee** means—
- (a) a natural person who is for the time being out of New Zealand;
 - (b) an overseas company, unless it has a fixed and permanent place of business in New Zealand at which it carries on business in its own name;
 - (c) an overseas company when the Commissioner declares that it is an absentee for the purposes of this Act by giving notice to the company, or its agent or representative in New Zealand.

Defined in this Act: absentee, agent, business, Commissioner, company, gross, income, New Zealand, notice, overseas company, this Act

Origin: (1) HK 1, HK 16
(2) OB 1 “absentee”

HD 16 Persons receiving absentees’ income

A person is treated as an agent if they receive, control, or dispose of income derived by an absentee.

Defined in this Act: absentee, agent, income

Origin: HK 20

HD 17 Persons carrying on business for or with absentees

A person is treated as an agent if they carry on in New Zealand—

- (a) a business for an absentee, whether or not the income is received by the agent:

- (b) a business in partnership with an absentee, in relation to the amount that would be the taxable income of the absentee derived from the business in a tax year without any apportionment under section FB 2(1) (Apportionment of income derived partly in New Zealand and partly elsewhere).

Defined in this Act: absentee, agent, amount, business, income, tax year, taxable income

Origin: HK 16, HK 17

HD 18 Companies

Paying dividends

- (1) A New Zealand company is an agent of an absentee to whom it pays or credits dividends as a shareholder, or as a holder of a debenture to which section FC 1 or FC 2 (which relate to debentures) applies.

Relationship with RWT rules

- (2) Section NG 3 (Non-resident withholding tax to be final tax in certain cases) overrides this section.

Defined in this Act: absentee, agent, company, debentures, dividend, non-resident withholding tax, pay, RWT rules, shareholder

Origin: (1) HK 21
(2) new

HD 19 Banking companies

Receiving deposit in course of business activities

- (1) A person, including a banking or other company, or a local or public authority, is treated as an agent if in the course of their business activities, they receive or hold money as a deposit and pay interest to an absentee on the money deposited by the absentee.

Threshold

- (2) This section applies only if the interest paid on the deposit is more than \$100.

Relationship with RWT rules

- (3) Section NG 3 (Non-resident withholding tax to be final tax in certain cases) overrides this section.

Defined in this Act: absentee, agent, banking company, business, company, interest, local authority, non-resident withholding tax, pay, public authority

Origin: (1) HK 23
(2) HK 23
(3) new

HD 20 Trustees of group investment funds

A person is treated as an agent if they are a trustee of a group investment fund and an absentee is an investor to whom a dividend is paid or credited.

Defined in this Act: absentee, agent, dividend, group investment fund, pay, trustee

Origin: HK 22

HD 21 Shipping businesses

A person is treated as an agent if they are the master of a ship owned by or under charter to an absentee who carries on a business carrying goods or passengers.

Defined in this Act: absentee, agent, business

Origin: HK 18(1)

HD 22 Persons remitting amounts outside New Zealand

Absentee landlords, mortgagors, or creditors

(1) A person is treated as an agent if they are a tenant, mortgagor, or other person who remits an amount to an absentee who is their landlord, mortgagee, or creditor, when the amount is income derived by the absentee. But this subsection applies only after the Commissioner has notified the person that they are accountable as the absentee's agent.

When fund outside New Zealand

(2) If the amount referred to in subsection (1) is paid by or on account of a person resident in New Zealand from a fund outside New Zealand, it is treated as an amount to which this section applies.

Defined in this Act: absentee, agent, amount, Commissioner, income, New Zealand, notify, resident in New Zealand

Origin: (1) HK 19
(2) HK 19

Non-residents

HD 23 Agency in relation to non-residents generally

What sections HD 24 and HD 25 do

- (1) Sections HD 24 and HD 25 apply for the purposes of this Act to treat a person as an agent in relation to the income of a non-resident taxpayer when certain conditions are met. The person must meet the tax obligations set out in section HD 3 in relation to the gross income to which the agency applies.

Non-resident taxpayer defined

- (2) In sections HD 24 and HD 25, a **non-resident taxpayer** means a person who—
- (a) is liable for income tax on employment income derived in New Zealand; and
 - (b) has no fixed and permanent place to live in New Zealand.

Defined in this Act: agent, employment income, gross, income, income tax, New Zealand, non-resident, non-resident taxpayer, this Act

Origin: (1) HK 24(1)
(2) HK 24(4)

HD 24 Employers

Employment of non-resident taxpayers

- (1) An employer who employs a non-resident taxpayer is treated as an agent in relation to the employment income derived in New Zealand by the non-resident taxpayer. If the taxpayer does not meet their income tax liability, the employer must deduct the amount of income tax payable from their employment income and pay it to the Commissioner on the taxpayer's behalf.

Employment by non-resident traders

- (2) A non-resident trader who employs a person in New Zealand is treated as an agent in relation to the person's employment income. If the trader has an agent in New Zealand, the agent must meet the trader's obligations under section HD 3.

Defined in this Act: agent, Commissioner, employer, employment income, income tax, income tax liability, New Zealand, non-resident taxpayer, non-resident trader, pay

Origin: (1) HK 24(2)
(2) HK 25

HD 25 Government pensions and payments under superannuation schemes

If a non-resident taxpayer derives a pension from the government of New Zealand or under an unregistered superannuation scheme established in New Zealand, the income tax payable must be deducted from an instalment or instalments of the pension or payment and paid to the Commissioner on the taxpayer's behalf.

Defined in this Act: Commissioner, income tax, New Zealand, non-resident taxpayer, pay, superannuation scheme

Origin: HK 24(3)

HD 26 Persons buying goods from overseas

Who this section applies to

- (1) This section applies in relation to a purchase of goods to—
- (a) a person in New Zealand (**person A**); and
 - (b) a person who is resident in a country or territory outside New Zealand, and not resident in New Zealand (**person B**).

Treatment of persons buying goods

- (2) If person A is instrumental in arranging the purchase of goods from person B, and the goods are either in New Zealand or are to be imported into New Zealand under the contract of purchase, person A and person B and the income are treated as follows:
- (a) person B is treated as carrying on a business in New Zealand; and
 - (b) person A is treated as person B's agent in relation to the income derived from the business; and
 - (c) the income from the business is treated as derived from New Zealand.

Exemption

- (3) Person A is not liable as agent for the payment of income tax if the Commissioner is satisfied that in corresponding circumstances in a country or territory outside New Zealand, person B, if resident in New Zealand, would not be liable for income tax in that country or territory.

Defined in this Act: agent, business, Commissioner, derived from New Zealand, income, income tax, New Zealand, pay, resident in New Zealand

Origin: (1) HK 26(1)
(2) HK 26(1)
(3) HK 26(2)

Subpart HE — Mutual associations

HE 1 Income and deductions of mutual associations

Income and allocation

- (1) The treatment of amounts derived by mutual associations and from mutual associations is dealt with in—
- (a) section CB 29 (Amounts derived by mutual associations); and
 - (b) section CB 30 (Amounts derived by members from mutual associations).

Deductions and allocation

- (2) The treatment of association rebates that a mutual association pays to a member is dealt with in section DV 14 (Association rebates).

Defined in this Act: amount, association, association rebate, deduction, income, member

Origin	(1)	new
	(2)	new

HE 2 Classes of mutual transaction

When mutual transactions arise

- (1) In this subpart, and sections CB 29, CB 30, and DV 14, a mutual transaction arises when an association—
- (a) enters into a transaction with members of the association, or a transaction with members of the association and other persons; and
 - (b) the association takes the transaction into account in an income year in determining its net income or net loss under section BC 4 (Net income and net loss).

Transfers of value

- (2) For the purposes of subsection (1), a transaction means a transfer of value from an association to a person when the cause of the transfer is the membership of the person in the association, and includes—
- (a) the borrowing by the association of money from 1 or more of members, to the extent to which the money is applied as a loan to a member;
 - (b) the lending by the association of money to 1 or more of members;
 - (c) for an association that is a statutory producer board—
 - (i) a levy paid by 1 or more of members;
 - (ii) a produce transaction.

Defined in this Act: association, income year, levy, member, net income, net loss, produce transactions, statutory producer board, transfer of value

Origin (1) HF 1(8)
(2) HF 1(8)

HE 3 Association rebate

Meaning

- (1) In this subpart and in sections CB 29, CB 30, and DV 14, an **association rebate** means a payment by an association to a member that is made—
- (a) through a distribution of profits of the association:
 - (b) not later than 6 months after the end of the accounting year of the association in relation to which the payment is made.

Exclusion

- (2) An association rebate does not include—
- (a) a cash distribution for which the association has made a determination under section ME 30(1) or ME 35(1)(a) (which relate to imputation credits of statutory producer boards or co-operative companies); or
 - (b) a distribution described in section CD 18 (Capital distributions on liquidation) or CD 24 (Payments corresponding to notional distributions of producer boards and co-operative companies).

Defined in this Act: accounting year, association, association rebate, imputation credit, member, statutory producer board

Origin (1) HF 1(9) “rebate”
(2) HF 1(9) “rebate”

HE 4 Apportionment when transactions with members and non-members

In determining its net income or net loss for an income year under section BC 4 (Net income and net loss), if an association takes into account transactions with both members and non-members, the association must apportion the expenditure or loss that it incurs in the income year between those transactions with members, and those with persons who are not members.

Defined in this Act: association, income year, member, net income, net loss

Origin: HF 1(4)

HE 5 Association rebates paid by shares or credit

When this section applies

- (1) This section applies when an association that enters into mutual transactions with members pays an association rebate to 1 or more members through—
- (a) issuing fully or partly paid-up shares in the association; or
 - (b) providing credit for all or part of an amount unpaid on shares in the association.

Not bonus issue

- (2) The amount, or the relevant part of it, is not treated as a bonus issue.

Defined in this Act: association, association rebate, bonus issue, member, shares

Origin: (1) HF 1(7)
(2) HF 1(7)

HF — Māori authorities

Introductory provisions

HF 1 Māori authorities and the Māori authority rules

Who is a Māori authority?

- (1) A Māori authority is a person eligible under section HF 2 who has made an effective election under section HF 11.

Māori authority rules

- (2) The Māori authority rules means the following:
- (a) section GC 27A (Arrangement to obtain tax advantage with respect to Māori authority credit account provisions (subpart MK));
 - (b) this subpart;
 - (c) section LD 3A (Māori authority credit to be credited against income tax assessed);
 - (d) section MD 2B (Limits on refunds of tax in relation to Māori authorities);
 - (e) subpart MK (Māori authority credit accounts);
 - (f) schedule 1, part A, clause 2 (Basic rates of income tax and specified superannuation contribution withholding tax);
 - (g) sections 31, 57, 68B, 70B, 140CB, 140DB, and 181B of the Tax Administration Act 1994.

Defined in this Act: arrangement, basic rates, income tax, Māori authority, Māori authority credit account, Māori authority rules, specified superannuation contribution withholding tax, tax advantage

- Origin:
- (1) OB 1 “Māori authority”
 - (2) OB 1 “Māori authority rules”

HF 2 Who is eligible to be a Māori authority?

What this section does

- (1) This section sets out the persons eligible to choose under section HF 11 to become a Māori authority.

Companies

- (2) The following are eligible to make an election:
- (a) a company established by an order made under Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):
 - (b) a company that owns land that is subject to Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):
 - (c) a company that, on behalf of beneficiaries under the deed of settlement between the Crown and Māori dated 23 September 1992, receives and manages assets that are distributed to the company by the Treaty of Waitangi Fisheries Commission:
 - (d) a company that,—
 - (i) on behalf of Māori claimants, receives and manages assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and
 - (ii) is contemplated by the deed of settlement of the claim as performing the functions described in subparagraph (i).

Trusts

- (3) The following are eligible to make an election:
- (a) the trustees of a trust established by an order made under Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):
 - (b) the trustees of a trust who own land that is subject to Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):
 - (c) the trustees of a trust who, on behalf of beneficiaries under the deed of settlement between the Crown and Māori dated 23 September 1992, receives and manages assets that are distributed to the company by the Treaty of Waitangi Fisheries Commission:
 - (d) the trustees of a trust who,—
 - (i) on behalf of Māori claimants, receive and manage assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and
 - (ii) are contemplated by the deed of settlement of the claim as performing the functions described in subparagraph (i).

Māori Trustee

- (4) The Māori Trustee in the Māori Trustee's capacity as an agent for an owner of land that is subject to Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993) is eligible to make an election.

Māori Trust Board

- (5) A Māori Trust Board, as defined in section 2 of the Māori Trust Boards Act 1955, is eligible to make an election.

Crown Forestry Rental Trust

- (6) The Crown Forestry Rental Trust, established by deed in accordance with section 34 of the Crown Forest Assets Act 1989, is eligible to make an election.

Treaty of Waitangi Fisheries Commissioner

- (7) The Treaty of Waitangi Fisheries Commission, established under the Māori Fisheries Act 1989, is eligible to make an election.

Defined in this Act: agent, Commissioner, company, Māori authority, trustee

Origin:	(1)	HI 2
	(2)	HI 2(a), (c), (i), (k)
	(3)	HI 2(b), (d), (j), (l)
	(4)	HI 2(e)
	(5)	HI 2(f)
	(6)	HI 2(g)
	(7)	HI 2(h)

HF 3 Applying provisions to Māori authorities

Relationship with provisions generally

- (1) A provision in the Māori authority rules overrides any other provision in this Act that may apply to a Māori authority unless a provision specifically provides otherwise.

Relationship with company rules

- (2) A Māori authority must not—
- (a) amalgamate with a company that is not a Māori authority; or
 - (b) be part of a consolidated group that includes a company that is not a Māori authority; or
 - (c) be a co-operative company if a shareholder is not a Māori authority.

Treatment of tax losses

- (3) No person other than a Māori authority may subtract some or all of a tax loss component or loss balance from the net income of a Māori authority, and a Māori authority may not subtract some or all of a tax loss component or loss balance from the net income of another person who is not a Māori authority.

Defined in this Act: amalgamation, company, consolidated group, co-operative company, loss balance, Māori authority, Māori authority rules, net income, shareholder, tax loss component, this Act

Origin:	(1)	HI 1(1)
	(2)	HI 1(2)
	(3)	HI 1(2)

*Māori authority distributions***HF 4 What constitutes a Māori authority distribution?***Transfer of value*

- (1) A transfer of value from a Maori authority to a person is a Māori authority distribution if the cause of the transfer is the membership of the person in the Māori authority.

Distributions

- (2) A transfer of value under this section includes an amount advanced to a member by a Māori authority, to the extent to which the advance is not a genuine investment by the authority but a distribution of an amount that falls within sections BD 1(1) and CA 1(2) (which relate to amounts that are income).

Distributions with credits attached

- (3) A Māori authority distribution includes the amount of any credit attached to it.

Dividends

- (4) A Māori authority distribution that, but for this subsection, would be a dividend of a member, is treated as not being a dividend except for the purposes of section CW 10 (Dividend within New Zealand wholly-owned group).

Value of distribution by reference to market values

- (5) For the purposes of this section, if the transfer of value is—
- (a) the disposal of property to a member without consideration, or for a consideration that is less than the market value of the property, the value of the Māori authority distribution is the amount by which the market value of the property is more than the consideration; and
 - (b) the acquisition of property from a member for a consideration that is more than the market value of the property, the value of the Māori authority distribution is the amount by which the market value is less than the consideration.

Defined in this Act: amount, dividend, income, Māori authority, member, transfer of value, wholly-owned group

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

HF 5 Notional distributions of co-operative companies

A Māori authority that is a co-operative company may make a notional distribution to a member under section ME 5 (Debits arising to imputation credit account) as if a Māori authority credit were an imputation credit.

Defined in this Act: co-operative company, imputation credit, Māori authority, Māori authority credit, member

Origin: HI 4(3)

HF 6 Tax treatment of Māori authority distributions

A Māori authority distribution to a member is—

- (a) income of the member under section CV 7 (Māori authority distributions), if the amount is—
 - (i) a taxable Māori authority distribution; or
 - (ii) a notional distribution:
- (b) exempt income of the member under section CW 44D (Māori authority distributions), if paragraph (a) does not apply.

Defined in this Act: amount, exempt income, income, Māori authority, member, taxable Māori authority distribution

Origin: HI 5(1)

HF 7 Taxable Māori authority distributions

An Māori authority distribution is a **taxable Māori authority distribution** if the source is income of the Māori authority that is—

- (a) derived by the Māori authority in the 2004–05 tax year or a later tax year; and
- (b) not exempt income of the Māori authority; and
- (c) not a cash distribution made to a member in relation to a notional distribution for which the Māori authority has made a determination under section ME 35 (Co-operative company may make annual determination to attach imputation credit to certain distributions).

Defined in this Act: co-operative company, exempt income, imputation credit, income, Māori authority, member, tax year, taxable Māori authority distribution

Origin: HI 5(2), (3)

HF 8 Proportional allocation

If a Māori authority distribution consists of a taxable Māori authority distribution and another amount, the Māori authority must allocate an equal proportion of each type of distribution to every member to whom the distribution is made.

Defined in this Act: amount, Māori authority, member, taxable Māori authority distribution

Origin: HI 6

Table HF 9
Transitional rules

**CONSEQUENCES OF CHANGE IN ENTITY
STATUS FOR PURPOSE OF MĀORI
AUTHORITY RULES**

Row	If	becomes	then
1	a company	a Māori authority	(a) the company ceases to be an imputation authority credit account company, and the rules relating to a company ceasing to be an imputation credit account company apply; and (b) retained earnings, accumulated profits, and capital reserves are treated as an amount from which may be made a distribution that is not a taxable Māori authority distribution.
2	a trust	a Māori authority	trustee income is treated as an amount from which may be made a distribution that is not a taxable Māori authority distribution.
3	a Māori authority	a company that is not a Māori authority	(a) the Māori authority may transfer a credit balance in the Māori authority credit account to the company's imputation credit account, and section MK 8 applies to a debit balance in the Māori authority credit account; and (b) taxable income derived by the Māori authority in the 2003–04 or an earlier tax year is available subscribed capital.
4	a Māori authority	a trust that is not a Māori authority	taxable income of the Māori authority in the 2003–04 or an earlier tax year is treated as being trustee income.

Row	If	becomes	and reverts to being	then
5	a Māori authority	a company that is not a Māori authority	a Māori authority	(a) market value calculations are required in accordance with section HF 10; and (b) the company must apply row 1.
6	a Māori authority	a trust that is not a Māori authority	a Māori authority	(a) market value calculations are required in accordance with section HF 10; and (b) the company must apply row 2.

How to use this table

Read columns from left to right according to the row that fits the situation.

*Changing status***HF 9 Treatment of companies and trusts that choose to apply this subpart***Company becoming Māori authority*

- (1) If a company becomes a Māori authority in a tax year, the company must apply row 1 of table HF 9.

Trust becoming Māori authority

- (2) If a trust becomes a Māori authority in a tax year, the trustee must apply row 2 of table HF 9.

Māori authority becoming company

- (3) If a Māori authority is a company that stops being a Māori authority in a tax year, it must apply row 3 of table HF 9.

Māori authority becoming trust

- (4) If a Māori authority is a trust that stops being a Māori authority in a tax year, the trustee must apply row 4 of table HF 9.

Defined in this Act: company, Māori authority, tax year, trustee

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

HF 10 Market value calculations*When this section applies*

- (1) This section applies to property of a company or a trust when the company or the trustees of the trust, having stopped being a Māori authority, revert to being a Māori authority.

Treatment

- (2) The company or the trustees, as applicable, are treated as—
- (a) disposing of the company's property, or the trust's property, immediately before becoming a Māori authority for a consideration that is the market value of the property on the date of disposal; and
 - (b) acquiring the property of the Māori authority for a consideration that is the market value of the property on the date of disposal referred to in paragraph (a).

Market value for both

- (3) In subsection (2), the market value of the property is the market value for both the company, or the trustees, as applicable, and the Māori authority.

Depreciation

- (4) Despite sections EE 47 to EE 50, and EZ 21 (which relate to depreciation), the cost to a Māori authority of property to which this section applies, is the lesser of—
- (a) the market value of the property on the date it was acquired; and
 - (b) the original cost of the property to the company or the trust.

Defined in this Act: company, Māori authority, trustee

Origin:	(1)	HI 9
	(2)	HI 9(2), (4)
	(3)	HI 9(3), (5)
	(4)	HI 9(6)

Māori authority elections

HF 11 Electing to be Māori authority

Notice

- (1) A person who is eligible under section HF 2 may choose to become a Māori authority by providing a notice to the Commissioner.

Acceptance notified

- (2) Having received a notice under subsection (1), the Commissioner must notify the person of the acceptance of the election and provide an acceptance date in the notice.

When election takes effect

- (3) The election takes effect on the date set out in the notice of acceptance.

When election no longer effective

- (4) An election under this section stops having effect if the person—
- (a) notifies the Commissioner that the election is cancelled, and the election stops being effective from the date set out in the notice;
 - (b) stops being a Māori authority.

Defined in this Act: Commissioner, Māori authority, notice, notify

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

Subpart HG — Other entities

HG 1 Partnerships and joint ventures

Partnership income

- (1) For the purposes of the obligations imposed by section BB 2 (Main obligations), the partners in a partnership are treated, in their capacity as partners, as if the partnership were a separate person. The partners must—
 - (a) calculate the net income of the partnership for a tax year; and
 - (b) for that tax year, provide a joint return of income for the partnership under section 42(1)(b) of the Tax Administration Act 1994.

Partner's obligations

- (2) Each partner in a partnership has a separate obligation under section BB 2 for calculating and satisfying their income tax liability, including income derived as a partner in the partnership.

Joint income

- (3) For the purposes of the obligations imposed by section BB 2 (Main obligations), a person (**person A**) who derives or incurs an amount jointly with another person must—
 - (a) calculate the net income of person A for a tax year, taking into account their share of the joint income; and
 - (b) for that tax year, provide a separate return of income under section 42(1)(c) of the Tax Administration Act 1994.

Airport operators excluded

- (4) Subsection (3) does not apply to an amount derived or incurred by an airport operator in relation to activities carried on as an airport operator.

Defined in this Act: airport operator, amount, income, income tax liability, net income, return of income, tax year, taxable income

Origin:	(1)	HD 1(1)
	(2)	HD 1(1)
	(3)	HD 1(1)(c)
	(4)	HD 1(2)

HG 2 Group investment funds*Separate returns*

- (1) The trustee of a group investment fund must provide for a tax year under section 33 of the Tax Administration Act 1994, a separate return of its category A income and its category B income.

Income from excepted group investment fund

- (2) If the trustee of a group investment fund derives an amount that is income derived from investments and funds of an excepted group investment fund or category B income, the amount is treated as income derived by the trustee under the trust rules.

Category A income

- (3) If the trustee of a group investment fund derives from the investments and funds of the group investment fund an amount that is category A income, the amount is treated as income to which the trustee is beneficially entitled.

Defined in this Act: amount, category A income, category B income, excepted group investment fund, group investment fund, income, income tax liability, return of income, trust, tax year, trust rules, trustee

Origin:	(1)	HE 2(1)
	(2)	HE 2(1A)
	(3)	HE 2(1A)(a)

HG 3 Definitions for section HG 2: Group investment funds*Category A income*

- (1) **Category A income**, for a group investment fund other than an excepted group investment fund, means an amount derived from the investments and funds of the group investment fund, calculated using the formula—

$$\frac{\text{last day value} - \text{designated source investments} - \text{pre-1983 investments}}{\text{last day value}} \times \text{fund income}$$

Definitions for items in formula

- (2) In the formula,—
- last day value** means the amount of the current value of all investments and funds of the group investment fund on the last day of an income year:
 - designated source investments** means the designated source investments of the group investment fund on the last day of the income year:
 - pre-1983 investments** means the pre-1983 investments of the group investment fund on the last day of the income year:
 - fund income** is the income derived from all investments and funds of the group investment fund in an income year.

Category B income

- (3) **Category B income**, for a group investment fund other than an excepted group investment fund, means the income derived from investments and funds of the group investment fund that is not category A income.

Current value

- (4) **Current value**, for a group investment fund, means the capital value (as defined by the Trustee Companies Act 1967 or the Public Trustee Act 2001) of the investments and funds of the group investment fund that is—
- (a) for any day in an income year, unless paragraph (b) applies,—
 - (i) last determined before the day under section 31 of the Trustee Companies Act 1967 or section 66 of the Public Trust Act 2001; or
 - (ii) determined on the day, if that day is the day on which the capital value is determined:
 - (b) for the purposes of the definition of **designated source investments** in subsection (8), and **pre-1983 investments** in subsection (9), the current value attributable to the investments and funds referred to in paragraph (a) at the time the amount is ascertained, determined as if those investments and funds comprised all the investments and funds in the group investment fund at the time.

Designated sources

- (5) **Designated sources**, for a group investment fund, means a trust (other than the trust under which the fund is established) whose trustee is a trustee of the group investment fund, that—
- (a) is created—
 - (i) by will or codicil, or by order of court varying or modifying the provisions of a will or codicil; or
 - (ii) on intestacy (including partial intestacy) or by order of court varying or modifying, in relation to an estate, the application of the law relating to the distribution of intestate estates; or
 - (iii) by order of court; or
 - (iv) by an enactment; or
 - (v) to administer funds that are compensation or other money arising from the death of, or injury to, a person; or
 - (vi) to vary the terms of a will or codicil, or in relation to an estate, to vary the application of the law relating to the distribution of intestate estates, in either case for the sole purpose of effecting a settlement out of court of an application made, or proposed to be made, under the Family Protection Act 1955 or a claim, or a proposed claim, to be made under the Law Reform (Testamentary Promises) Act 1949, if the Commissioner considers that the terms are mainly the same as those likely to have been ordered by the court:

- (b) is not carried on for the private benefit of an individual, and whose funds are applied all or mainly for benevolent, philanthropic, cultural, or public purposes within New Zealand.

Excepted group investment fund

- (6) **Excepted group investment fund** means a group investment fund whose investments and funds are invested wholly—
 - (a) in investments authorised under section 4(1)(a) to (j) of the Trustee Act 1956 (which is interpreted as if the Trustee Amendment Act 1988 had not been enacted), and are not investments authorised solely by the instrument (if any) creating the trust under which the fund is established; or
 - (b) in, and for the purposes of, the carrying of a forestry business on land in New Zealand, to the extent to which the investments and funds are invested in the land that the fund owned or otherwise held on 22 June 1983 for the purposes of the forestry business.

Group investment fund

- (7) **Group investment fund** means a group investment fund established under—
 - (a) the Public Trust Act 2001; or
 - (b) the Trustee Companies Act 1967; or
 - (c) the Public Trust Office Act 1957.

Designated source investments

- (8) **Designated source investments**, for a group investment fund at any time, means the current value of investments and funds from designated sources invested at the time in the group investment fund.

Pre-1983 investments

- (9) **Pre-1983 investments**, for a group investment fund at any time, means the current value of investments and funds that were invested in the group investment fund at 22 June 1983 (other than investments and funds attributable to amounts from designated sources) as if those investments and funds had continued to be invested at the time, including—
 - (a) money deposited between 15 June and 23 June 1983 with the trustee of the group investment fund for investment in the fund; and
 - (b) money deposited between 22 June and 16 July 1983 with the trustee of the group investment fund for investment in the fund, which, on or before 22 June 1983, was committed to deposit that money.

Defined in this Act: amount, business, category A income, category B income, Commissioner, current value, designated sources, designated source investments, excepted group investment fund, group investment fund, income, income year, New Zealand, pre-1983 investments, trustee

- Origin:
- (1) OB 1 “category A income”
 - (2) HE 2(3), OB 1 “category A income”

- (3) OB 1 “category B income”
- (4) HE 2(2), OB 1 “current value”
- (5) HE 2(3)
- (6) OB 1 “designated group investment fund”
- (7) OB 1 “group investment fund”
- (8) HE 2(3)
- (9) HE 2(3)

HG 4 Government Superannuation Fund

The Government Superannuation Fund Authority is treated for income tax purposes as if the Government Superannuation Fund were a superannuation scheme that is a trust and the Authority a trustee of that scheme.

Defined in this Act: income tax, Government Superannuation Fund, superannuation scheme, trust, trustee

Origin: HJ 1

Subpart HZ — Terminating provisions

HZ 1 Distributions from trusts of pre-1989 tax reserves

When this section applies

- (1) This section applies if, and to the extent to which, a distribution is received from a trust that is not a unit trust, a group investment fund, or a superannuation scheme, when the distribution—
 - (a) consists of amount of income or a capital gain derived by the trustee in the 1987–88 or earlier tax year; and
 - (b) is not also beneficiary income to which an entitlement exists in the tax year.

Treatment of distribution

- (2) The distribution is not income, and the provisions of this Act and the Tax Administration Act 1994 that correspond to the provisions of the Income Tax Act 1976, the Income Tax Act 1994, and the Income Tax Amendment Act (No 5) 1988 specified in the provision to section 9 of the Act last referred to, do not apply.

Defined in this Act: beneficiary income, distribution, group investment fund, income, superannuation scheme, tax year, this Act, trustee, trustee income, unit trust

Origin: (1) HZ 1
 (2) HZ 1

HZ 2 Trusts that may become complying trusts

When this section applies

- (1) This section applies in relation to a settlement made on a trust on or before 17 December 1987 (whether or not an further settlements have been made on the trust after that date) when a settlor, trustee, or beneficiary of the trust chooses under section 228(7) of the Income Tax Act 1976 on or before 31 May 1989 to pay income tax on trustee income derived in the 1988–89 and subsequent tax years.

Trustee income derived in earlier tax years

- (2) Trustee income that is derived from outside New Zealand, or derived from New Zealand only as non-resident withholding income in relation to which the income tax obligations have been satisfied, in the 1987–88 and earlier tax years when no trustee was resident in New Zealand is treated as liable to income tax (other than only as non-resident withholding income).

Trustee's obligations

- (3) The trustee's obligations in relation to their income tax liability on the trustee income are treated as having been satisfied.

Defined in this Act: complying trust, income tax, income tax liability, non-resident withholding income, pay, resident in New Zealand, settlement, settlor, tax year, trustee, trustee income

Origin: (1) HZ 2
(2) HZ 2
(3) HZ 2