

# **Income Tax Bill**

Government Bill

## **Explanatory note**

### *General policy statement*

This bill is the fourth and final stage in the project to rewrite New Zealand's income tax legislation. The objective of the rewrite project is to make the legislation clear. Clear legislation makes an important contribution to increasing voluntary compliance with tax laws, because taxpayers can more easily identify and observe their income tax obligations.

### *Stages of rewrite project*

The first stage of the rewrite project involved the reordering and renumbering of the Income Tax Act 1976. Core provisions were set out in Part B, like provisions were grouped, and an alpha-numeric numbering system was introduced. This stage was completed with the enactment of the Income Tax Act 1994.

The second stage was the enactment of the Taxation (Core Provisions) Act 1996. This stage rewrote the core provisions in Part B to provide an overview of the scheme and purpose of the Act and to change the structure of the Act so that it operated on a gross basis for the determination of income and deductions.

The third stage involved the rewriting of Parts A to E and Y of the 1994 Act and also re-enacted Parts F to O and the schedules. The result was the Income Tax Act 2004.

This, fourth, stage completes the project by re-enacting Parts A to E, consolidating amendments made to those Parts since commencement of the Income Tax Act 2004, rewriting Parts F to O in the same

style as Parts A to E, and re-enacting the schedules with necessary consequential amendments.

### *Policy changes*

Making the law clear is to be achieved by using plain language within a consistent structure. The objective is to do this without substantively changing the policy content, and associated compliance requirements, of the current Act. However, some minor policy changes have been made. They are of 2 kinds—

- changes made in the interest of clarity or simplicity:
- changes approved by the Rewrite Advisory Panel in consultation with tax professional groups.

### *Structural changes*

In rewriting Parts F to O, the linkage with core provisions has been made explicit. In some parts, notably Part I (Treatment of tax losses) and Part L (Tax credits and other credits), the first subpart reflects the structure of the Act as a whole, that is with some central general rules that flow out to the more detailed provisions of the rest of the Parts.

Some shifting of the contents has been undertaken to provide a more coherent structure, particularly for—

- consolidated groups, most of the rules relating to which have been relocated to Part F (Recharacterisation of certain transactions):
- tax credits for families (now in Part M) have been separated from the other rules on tax credits (Part L) because of their unique nature:
- memorandum accounts (the new Part O), and previously subparts ME, MF, MG, MI, and MK:
- the new Part R (Tax collection rules) which incorporates the terminal tax, provisional tax, and refunds rules from old Part M.

The definitions and related material are now located in Part Y, making room for any developments that might occur and to avoid bunching of letters and numbers. Former OB 1 becomes YA 1.

### ***Government undertaking***

Care has been taken in the development of the bill to ensure that it has the same outcomes as the current Act. Some minor policy changes have been made, but these were subject to consultation before approval was given for their inclusion.

If, in the initial years of the new Act's operation, it is found that the Act produces a different result from that which would have been produced under the current Act, the Government will promote a remedial amendment to correct the position from the date of the commencement of the new legislation.

### ***Part by Part analysis***

*Clause A 1* is the title clause

*Clause A 2* deals with commencement. The new Act comes into force on 1 April 2008 and applies with respect to the tax on income derived in the 2008–09 tax year and later tax years or derived in the corresponding income years.

### ***Parts A to E***

Amendments made since 2004 to these Parts of the current Act have been consolidated into the Parts together with further changes that are consequential to the rewriting of Parts F to O. The numbering of these Parts has been changed as necessary to reflect these changes.

### ***Part F***

Part F (Recharacterisation of certain transactions) is now focussed on the recharacterisation of transactions: some commercial arrangements, transactions involving relationship property, distribution and transmission of property. Subparts FE and FF are concerned with interest apportionment. Subparts FM and FO contain most of the rules relating to consolidated groups and amalgamation of companies.

### ***Part G***

Part G (Avoidance and non-market transactions) is restructured but largely unchanged in scope.

### ***Part H***

Part H (Taxation of certain entities) deals with attributing companies, trusts, agents, mutual associations, Maori authorities, and other entities.

### ***Part I***

Part I (Treatment of tax losses) is completely restructured but otherwise unchanged in scope. New terminology has been introduced to avoid the use of terms to mean 2 or 3 different ideas. A net loss now becomes a tax loss, a tax loss component, and a loss balance, as well as retaining the term in its core sense.

### ***Part L***

Part L (Tax credits and other credits) is the part most closely related to core provisions, and subpart LA feeds directly into Part B. The remainder of the Part deals with the different tax credits, for payments, natural persons including children, public benefit gifts, imputation and FDP and other credits, foreign income tax, attributed CFC income, and CTR companies.

### ***Part M***

Part M (Tax credits for families) contains the rules previously in subpart KD, related to family assistance credits for family support, in-work payments, parental tax credits, and family credit abatement, as well as the family tax credit.

### ***Part O***

Part O (Memorandum accounts) deals with the credits and debits arising in memorandum accounts that were previously found in subparts ME, MF, MG, MI and MK, with each credit and debit set out in separate sections. Consolidated groups are treated separately and tables are also provided for ease of navigation.

### ***Part R***

Part R (General collection rules) contains all the rules relating to the withholding and payment of tax. Many administrative provisions have been relocated to the Tax Administration Act 1994. Terminal

tax, provisional tax, employment-related taxes, tax on resident passive income and non-resident passive income, refunds, and the use of intermediaries are all in separate subparts.

### ***Part Y***

Part Y (Definitions and related matters) has been extensively rewritten and restructured for the associated persons rules, the measurement of company control and ownership, and the residence and source rules.

### ***Part Z***

Part Z (Repeals, amendments, and savings) reproduces the previous Part Y.

## **Regulatory impact and business compliance cost statement**

### ***Nature and magnitude of problem***

The problem that needs to be addressed is the manner in which traditional tax drafting has dealt with the complexity of tax law. The structure on which the current Act is based dates from 1916, when the Act comprised 43 pages and 169 sections. Since that time many layers of major changes and new regimes have been added to the legislation with the result that the legislation now comprises over 2000 pages. The 1916 structure was unable to support the increased volume and sophistication of the additional legislation, with the result that (until enactment of the Income Tax Act 2004) it was difficult to discern a cohesive scheme and purpose within the legislation. In addition, language used by drafters to deal with complex policy objectives can be very difficult for some readers to understand.

The new Act will not change the compliance costs associated with the underlying policy of the current Act. This is because it will not alter existing policy content or regulatory requirements, apart from a small number of minor policy modifications.

The problem was discussed in detail in the report *Organisational Review of the Inland Revenue Department*, presented to the Minister of Revenue in 1994. The report stated—

“Currently the legislation attempts to deal with the complexity and to provide certainty and precision through the detailed expression of

policies in the variety of complex circumstances in which they operate. As a result the intent is often blurred in a torrent of convoluted language in sentence of an average length, measured by a 1992 study, of 135 words. Tax practitioners, Treasury and IRD agree that the legislation is difficult to read and understand. That must have a direct bearing on the difficulties and the cost of administering the legislation and the difficulties and the cost for taxpayers of complying with the legislation.” (page 79)

### ***Public policy objective***

The public policy objective is to ensure that New Zealand’s income tax legislation is clear and able to be easily understood by its readers.

### ***Feasible options***

The only feasible option to make tax legislation clear is to rewrite it. However the income tax statute is too large to be rewritten in one step. The Consultative Committee on the Taxation of Income from Capital, whose 1992 report recommended rewriting the tax legislation progressively, recognised this. The Committee’s view was that a reorganisation and rewrite of the entire Act was likely to be a bigger task than the rewriting of the Companies Act 1955 and was too large an undertaking to be completed in one step. It considered a progressive approach would facilitate achievement of the task, and recommended an initial reordering and reformatting of the Act, to be followed by a progressive review and rewrite over several years.

The Government accepted the recommendation and established the working party on the reorganisation of the Income Tax Act 1976. The working party’s second report recommended 3 phases for the rewrite, the resequencing phase, the core provisions phase, and the progressive rewrite phase. The first 2 phases occurred in 1994 and 1996, respectively. The magnitude of the third phase however was such that it was necessary to divide it in to 2 steps, the first of those steps resulting in enactment of the Income Tax Act 2004. This bill therefore represents the second step of the third and final stage of the process.

The options for the bill were,—

first, to amend the current Act by replacing Parts F to O and consequentially amending the schedules and Parts A to E

second, to introduce a new Act which re-enacts Parts A to E (and consolidates amendments made to those parts since 1 April 2004),

rewrites Parts F to O, and makes all necessary consequential amendments, including renumbering.

The extent of the post 2004 amendments to Parts A to E and the extent of the consequential amendments throughout made the second option the only realistic option.

### *Net benefit*

As with any new law, the new Act will initially cause increased costs to the community. This is because existing users will need to update their knowledge of the legislation to take into account the new placement of provisions and the changes in the language used in the rewritten Parts. In addition, the new terminology may have some impact on existing case law.

The benefit of clear legislation will be felt in the longer term. Making the law clearer will result in an overall reduction in business compliance costs. The reorganisation of material into a consistent structure, and its rewrite in plain language, will make it easier for readers to locate all the material they need to read and to understand what they read. Consequently, taxpayers will not need to consult tax professionals as often as they do now on matters of interpretation and application, and tax advisors will be able to understand and apply the law more readily. For similar reasons, the new law will also lower the costs for Inland Revenue staff and for the courts.

### *Consultation*

The rewriting of the legislation contained in the bill has been subject to consultation at various points over the past 9 years. In addition to the discussion document outlining proposals relating to structure, language, and presentation for what became Parts A to E of the current Act, exposure drafts of the rewritten Parts F to O have been made available for consultation with tax professional organisations and the wider public.

The rewrite process has also been undertaken with the oversight of the Rewrite Advisory Panel, a body comprising representatives of the major tax professions, under the Chairmanship of Sir Ivor Richardson, former President of the Court of Appeal.

### *Business compliance cost statement*

The rewritten legislation will increase compliance costs in the short term. It reorganises the legislation in the current Act into a more

consistent framework and rewrites it in plain language. As a result, users of the legislation will incur increased compliance costs during a transitional period in relearning its structure and language and in becoming familiar with the relevant case law.

All taxpayers and their advisors will be affected by the new Act. However, the persons most affected will be advisors on income tax matters.

During the transition from the current Act to the new Act, there will be an increase in compliance costs for existing users. They will need to update their knowledge of the legislation to take into account the new placement and organisation of provisions and the language used in the rewritten Parts, and to deal with any impacts these changes have on existing case law. It is not possible to quantify this increase because there is no way of estimating the behavioural responses of users or the issues they will face. Practical experience with the new legislation is the only way to determine the size of the increase in compliance costs.

In the longer term, the bill will have a positive impact on compliance costs. The reorganisation of provisions into a consistent structure, and its rewrite in plain language, will make it easier for readers to locate the material they need to read and to understand what they read. As a result, taxpayers will not need to consult tax professionals as often as they do now, and tax advisors will be able to understand and apply the law more easily.

Although care has been taken in the development of the bill to ensure that it has the same outcomes as the current Act, it may produce a different result from that which would have been produced under the current Act. This risk may cause compliance costs to be higher than estimated. However, if this situation arises, the Government will promote a remedial amendment to correct the position from the date of commencement of the new Act.

In relation to the rewritten provisions in the current Act, the level of different outcomes has been modest and remedial amendments to correct the position have been promptly enacted.

Two key compliance costs issues were identified in submissions on the exposure draft that preceded the current Act. The first was the potential impact of the new terminology in the rewritten Parts A to E on existing case law, binding rulings, and determinations. The second concern was the difficulties that existing users would face during the transitional period in updating their knowledge.

These concerns were not raised in consultations on the exposure drafts of the rewritten Parts F to Y of this bill.

The Inland Revenue Department is the only agency that assesses and collects income tax. There are no compliance requirements that overlap with those of other agencies.

The publication of exposure drafts of Parts rewritten in this stage of the rewrite project enabled tax practitioners to advise the department of instances in which the proposed legislation made inadvertent changes to the law. The necessary corrections have been made in the bill. Compliance costs that users of the new Act would otherwise have faced have been avoided.

---



*Hon Peter Dunne*

## **Income Tax Bill**

Government Bill

### **Contents**

	Page
A 1 Title	90
A 2 Commencement	90
<b>Part A</b>	
<b>Purpose and interpretation</b>	
AA 1 Purpose of Act	91
AA 2 Interpretation	91
AA 3 Definitions	91
<b>Part B</b>	
<b>Core provisions</b>	
<i>Flowchart B1: Outline of Part</i>	
Subpart BA—Purpose	
BA 1 Purpose	93
Subpart BB—Income tax and resulting obligations	
BB 1 Imposition of income tax	93
BB 2 Main obligations	93
BB 3 Overriding effect of certain matters	94
Subpart BC—Calculating and satisfying income tax liabilities	
<i>Flowchart B2: Calculating and satisfying income tax liabilities</i>	
BC 1 Non-filing and filing taxpayers	98
BC 2 Annual gross income	98
BC 3 Annual total deduction	98
BC 4 Net income and net loss	98
BC 5 Taxable income	99
<i>Flowchart B3: Calculating income tax liability</i>	
BC 6 Income tax liability of filing taxpayer	101
BC 7 Income tax liability of person with schedular income	101

## Income Tax

---

### *Flowchart B4: Satisfying income tax liability*

BC 8	Satisfaction of income tax liability	103
	Subpart BD—Income, deductions, and timing	
BD 1	Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income	103
BD 2	Deductions	104
BD 3	Allocation of income to particular income years	105
BD 4	Allocation of deductions to particular income years	106
	Subpart BE—Withholding liabilities	
BE 1	Withholding liabilities	107
	Subpart BF—Other obligations	
BF 1	Other obligations	108
	Subpart BG—Avoidance	
BG 1	Tax avoidance	108
	Subpart BH—Double tax agreements	
BH 1	Double tax agreements	108

### **Part C**

#### **Income**

##### Subpart CA—General rules

CA 1	Amounts that are income	111
CA 2	Amounts that are exempt income or excluded income	111

##### Subpart CB—Income from business or trade-like activities

###### *Business generally*

CB 1	Amounts derived from business	113
CB 2	Amounts received on disposal of business assets that include trading stock	114

###### *Schemes for profit*

CB 3	Profit-making undertaking or scheme	115
------	-------------------------------------	-----

###### *Personal property*

CB 4	Personal property acquired for purpose of disposal	115
CB 5	Business of dealing in personal property	115

###### *Land*

CB 6	Disposal: land acquired for purpose or with intention of disposal	115
CB 7	Disposal: land acquired for purposes of business relating to land	116
CB 8	Disposal: land used for landfill, if notice of election	117
CB 9	Disposal within 10 years: land dealing business	117

## Income Tax

---

CB 10	Disposal within 10 years: land development or subdivision business	118
CB 11	Disposal within 10 years of improvement: building business	119
CB 12	Disposal: schemes for development or division begun within 10 years	120
CB 13	Disposal: amount from major development or division and not already in income	120
CB 14	Disposal: amount from land affected by change and not already in income	121
CB 15	Transactions between associated persons	122
<i>Exclusions for residential land</i>		
CB 16	Residential exclusion from sections CB 6 to CB 11	123
CB 17	Residential exclusion from sections CB 12 and CB 13	124
CB 18	Residential exclusion from section CB 14	124
<i>Exclusions for business premises</i>		
CB 19	Business exclusion from sections CB 6 to CB 11	125
CB 20	Business exclusion from section CB 12	126
<i>Exclusions for farm land</i>		
CB 21	Farm land exclusion from sections CB 12 and CB 13	126
CB 22	Farm land exclusion from section CB 14	127
<i>Exclusion for investment land</i>		
CB 23	Investment exclusion from section CB 12	127
<b>Timber</b>		
CB 24	Disposal of timber or right to take timber	128
CB 25	Disposal of land with standing timber	128
<b>Farming, forestry, or fishing</b>		
CB 26	Income equalisation schemes	129
<b>Environmental restoration</b>		
CB 27	Environmental restoration accounts	129
<b>Minerals</b>		
CB 28	Disposal of minerals	131
<b>Intellectual property</b>		
CB 29	Sale of patent applications or patent rights	131
<b>Transfer of business</b>		
CB 30	Sale of business: transferred employment income obligations	132
<b>Stolen property</b>		
CB 31	Property obtained by theft	132

## Income Tax

---

### *Mutual associations*

CB 32	Amounts derived by mutual associations	133
CB 33	Amounts derived by members from mutual associations	133

### Subpart CC—Income from holding property (excluding equity)

#### *Land use*

CC 1	Land	135
CC 2	Non-compliance with covenant for repair	135

#### *Financial instruments*

CC 3	Financial arrangements	136
CC 4	Payments of interest	136
CC 5	Annuities	137
CC 6	Prizes received under Building Societies Act 1965	137
CC 7	Consideration other than in money	138
CC 8	Use of money interest payable by Commissioner	138

#### *Royalties*

CC 9	Royalties	139
CC 10	Films	140

#### *Finance leases*

CC 11	Lessee acquiring lease asset on expiry of term of lease	141
CC 12	Lessor acquiring lease asset on expiry of term of lease	141

#### *Hire purchase agreements*

CC 13	Amounts paid in income years after hire purchase agreement ends	142
-------	---	-----

### Subpart CD—Income from equity

#### *Income*

CD 1	Dividend	144
CD 2	Distribution excluded from being dividend	144

#### *What is a dividend?*

CD 3	Meaning of dividend	145
CD 4	Transfers of value generally	145
CD 5	What is a transfer of value?	145
CD 6	When is a transfer caused by a shareholding relationship?	146
CD 7	Bonus issues in lieu of dividend	147
CD 8	Elections to make bonus issue into dividend	147
CD 9	Interests in money or property of foreign unit trust	148
CD 10	Bonus issue by foreign unit trust instead of money or property	149
CD 11	Avoidance arrangements	149
CD 12	Superannuation schemes entering trust rules	149

## Income Tax

---

CD 13	Notional distributions of producer boards and co-operative companies	150
CD 14	Notional distributions of emigrating companies	151
CD 15	Tax credits linked to dividends	151
CD 16	Certain dividends not increased by tax credits	152
CD 17	Credit transfer notice	152
CD 18	Dividend reduced if foreign tax paid on company's income	153
CD 19	Foreign tax credits and refunds linked to dividends	154
CD 20	Benefits of shareholder-employees or directors	154
CD 21	Attributed repatriations from controlled foreign companies	155

### *What is not a dividend?*

CD 22	Returns of capital: off-market share cancellations	156
CD 23	Ordering rule and slice rule	160
CD 24	Returns of capital: on-market share cancellations	161
CD 25	Treasury stock acquisitions	162
CD 26	Capital distributions on liquidation or emigration	163
CD 27	Property made available intra-group	164
CD 28	Transfers of certain excepted financial arrangements within wholly-owned groups	167
CD 29	Non-taxable bonus issues	167
CD 30	Transfer by unit trust of legal interest after beneficial interest vests	167
CD 31	Flat-owning companies	167
CD 32	Employee benefits	168
CD 33	Payments corresponding to notional distributions of producer boards and co-operative companies	168
CD 34	Distribution to member of co-operative company based on member's transactions	169
CD 35	Resident's restricted amalgamations	171
CD 36	Foreign investment fund income	171
CD 37	Maori authority distributions	171

### *Calculation rules*

CD 38	General calculation rule for transfers of value	172
CD 39	Calculation of amount of dividend when property made available	172
CD 40	Adjustment if dividend recovered by company	176
CD 41	Adjustment if amount repaid later	177
CD 42	Adjustment if additional consideration paid	178
CD 43	Available subscribed capital amount	179
CD 44	Available capital distribution amount	186

## Income Tax

---

### *CFC attributed repatriation calculation rules*

CD 45	When does a person have attributed repatriation from a CFC?	192
CD 46	New Zealand repatriation amount	193
CD 47	New Zealand property amount	194
CD 48	Cost of tangible property	195
CD 49	Cost of associated party equity	197
CD 50	Outstanding balances of financial arrangements	198
CD 51	Property transfers between associated persons	200
CD 52	Unrepatriated income balance	202

### *Prevention of double taxation*

CD 53	Prevention of double taxation of share cancellation dividends	203
-------	---	-----

### *Returning share transfers*

CD 54	Replacement payments	204
-------	----------------------	-----

#### Subpart CE—Employee or contractor income

### *Employment income*

CE 1	Amounts derived in connection with employment	205
CE 2	Value and timing of benefits under share purchase agreements	206
CE 3	Restrictions on disposal of shares under share purchase agreements	208
CE 4	Adjustments to value of benefits under share purchase agreements	209

### *Definitions*

CE 5	Meaning of expenditure on account of an employee	209
CE 6	Meaning of share	211
CE 7	Meaning of share purchase agreement	211

### *Attributed income*

CE 8	Attributed income from personal services	211
------	--	-----

### *Restrictive covenants and exit inducement payments*

CE 9	Restrictive covenants	212
CE 10	Exit inducements	213

### *Income protection insurance*

CE 11	Proceeds from claims under policies of income protection insurance	214
-------	--	-----

### *Tax credits*

CE 12	Tax credits added to caregiver's income	214
-------	---	-----

#### Subpart CF—Income from living allowances, compensation, and government grants

CF 1	Benefits, pensions, compensation, and government grants	215
------	---	-----

## Income Tax

---

CF 2	Remission of specified suspensory loans	216
	Subpart CG—Recoveries	
CG 1	Amount of depreciation recovery income	217
CG 2	Remitted amounts	218
CG 3	Bad debt repayment	219
CG 4	Recovered expenditure or loss	219
CG 5	Recoveries or receipts by employers from superannuation schemes	219
CG 6	Receipts from insurance, indemnity, or compensation for trading stock	220
CG 7	Recoveries after deduction of payments under lease	221
	Subpart CH—Adjustments	
	<i>Matching rules: revenue account property, prepayments, and deferred payments</i>	
CH 1	Adjustment for closing values of trading stock, livestock, and excepted financial arrangements	222
CH 2	Adjustment for prepayments	223
CH 3	Adjustment for deferred payment of employment income	223
	<i>Change to accounting practice</i>	
CH 4	Adjustment for change to accounting practice	224
	<i>GST</i>	
CH 5	Adjustment for GST	224
	<i>Finance leases</i>	
CH 6	Adjustments under consecutive or successive finance leases	225
	<i>Avoidance and non-market transactions</i>	
CH 7	Adjustment for avoidance arrangements	225
CH 8	Market value substituted	225
CH 9	Interest apportionment	226
	Subpart CQ—Attributed income from foreign equity	
	<i>Attributed controlled foreign company income</i>	
CQ 1	Attributed controlled foreign company income	226
CQ 2	When attributed CFC income arises	227
CQ 3	Calculation of attributed CFC income	228
	<i>Foreign investment fund income</i>	
CQ 4	Foreign investment fund income	228
CQ 5	When FIF income arises	228
CQ 6	Calculation of FIF income	230
	Subpart CR—Income from life insurance	
CR 1	Income of life insurer	231

**Income Tax**

---

CR 2	Amount of income of life insurer	231
CR 3	Income of non-resident general insurer	232
	Subpart CS—Superannuation funds	
	<i>Withdrawals</i>	
CS 1	Withdrawals	235
	<i>Exclusions</i>	
CS 2	Exclusions of withdrawals of various kinds	237
CS 3	Exclusion of withdrawal on grounds of hardship	239
CS 4	Exclusion of withdrawal to settle division of relationship property	240
CS 5	Exclusion of withdrawal paid as annuity or pension	240
CS 6	Exclusion of withdrawal on partial retirement	240
CS 7	Exclusion of withdrawal when member ends employment	241
CS 8	Exclusion of withdrawal when member ends employment: lock-in rule	245
CS 9	Exclusion of withdrawal from defined benefit fund when member ends employment	245
CS 10	When member treated as not ending employment	245
	<i>Transfers to or from superannuation funds and superannuation schemes</i>	
CS 11	Transfer by superannuation fund to another superannuation fund	246
CS 12	Transfer from superannuation scheme to superannuation fund	247
CS 13	Investment by superannuation fund in another superannuation fund	247
	<i>Treatment of amounts when superannuation fund becomes superannuation scheme or vice versa</i>	
CS 14	Superannuation fund becomes superannuation scheme	248
CS 15	Superannuation fund becomes foreign superannuation scheme	249
CS 16	Superannuation scheme becomes superannuation fund	249
	<i>Treatment of distributions when superannuation fund wound up</i>	
CS 17	Superannuation fund wound up	249
	<i>Treatment of loans to members</i>	
CS 18	Value of loan treated as fund income	249
	Subpart CT—Income from petroleum mining	
CT 1	Disposal of exploratory material or petroleum mining asset	250
CT 2	Damage to assets	251

## Income Tax

---

CT 3	Exploratory well used for commercial production	251
CT 4	Partnership interests and disposal of part of asset	252
CT 5	Petroleum mining operations outside New Zealand	252
<i>Definitions</i>		
CT 6	Meaning of petroleum miner	253
CT 7	Meaning of petroleum mining asset	254
Subpart CU—Income from mineral mining		
<i>Introductory provision</i>		
CU 1	Mining company's 2 kinds of income	256
<i>Income from mining</i>		
CU 2	Mining company that processes or manufactures	256
CU 3	Disposal of assets	257
CU 4	Compensation for lost, destroyed, or damaged assets	259
CU 5	Compensation and scrap payment: income from mining	260
CU 6	Compensation and scrap payment: use to replace or repair asset	261
CU 7	Compensation and scrap payment: not income from mining	261
CU 8	Compensation and scrap payment: more than expenditure	261
CU 9	Previous deduction for income appropriated	263
CU 10	Mining asset used to derive income other than income from mining	263
CU 11	Meaning of asset for sections CU 3 to CU 10	264
CU 12	Application of sections to resident mining operators	265
CU 13	Application of sections to non-resident mining operators	265
CU 14	Recovery of reinvestment profit on disposal of mining shares	266
CU 15	Recovery of reinvestment profit not used for mining purposes	266
CU 16	Recovery of reinvestment profit on repayment of loans	267
CU 17	Repayment by mining company of amount written off	268
CU 18	Amount treated as repayment for purposes of section CU 17: excess	269
CU 19	Amount treated as repayment for purposes of section CU 17: net income	269
CU 20	Mining company or mining holding company liquidated	272
<i>Definitions</i>		
CU 21	Meaning of income from mining	272
CU 22	Meaning of mining company	273
CU 23	Meaning of mining development expenditure	274
CU 24	Meaning of mining exploration expenditure	275
CU 25	Meaning of mining operations	276

## Income Tax

---

CU 26	Meaning of mining venture	277
CU 27	Meaning of resident mining operator	278
CU 28	Meaning of specified mineral	279
CU 29	Other definitions	279
Subpart CV—Income specific to certain entities		
CV 1	Group companies	283
CV 2	Consolidated groups: income of company in group	283
CV 3	Consolidated groups: arrangement for disposal of shares	283
CV 4	Amalgamated companies: amount derived after amalgamation	284
CV 5	Statutory producer boards	284
CV 6	Crown Research Institutes	284
CV 7	Australian wine producer rebate	285
CV 8	Regulations: Australian wine producer rebate	285
CV 9	Supplementary dividend holding companies	286
CV 10	FDPA companies or CTR companies	286
CV 11	Maori authorities	287
CV 12	Trustees: amounts received after person's death	287
CV 13	Amounts derived from trusts	287
CV 14	Distributions from community trusts	288
CV 15	Amounts derived from trusts while person absent from New Zealand	288
CV 16	Non-resident shippers	288
CV 17	Non-resident film renters	289
Subpart CW—Exempt income		
<i>Income from business or trade-like activities</i>		
CW 1	Forestry companies established by Crown, Maori owners, and holding companies buying land with standing timber from founders	292
CW 2	Forestry encouragement agreements	292
CW 3	Forestry companies and Maori investment companies	293
<i>Income from holding property (excluding equity)</i>		
CW 4	Annuities under life insurance policies	293
CW 5	Payments of interest: post-war credits	294
CW 6	Payments of interest: farm mortgages	294
CW 7	Foreign-sourced interest	295
CW 8	Money lent to government of New Zealand	295
<i>Income from equity</i>		
CW 9	Dividend derived by company from overseas	296
CW 10	Dividend within New Zealand wholly-owned group	296
CW 11	Dividend of CTR holding company	298
CW 12	Proceeds of share disposal by qualified foreign equity investor	298

## Income Tax

---

CW 13	Proceeds from share or option acquired under venture investment agreement	304
CW 14	Dividends derived by attributing companies	306
CW 15	Dividends paid by attributing companies	306
<i>Employee or contractor income</i>		
CW 16	Income of Governor-General	306
CW 17	Expenditure on account, and reimbursement, of employees	307
CW 18	Allowance for additional transport costs	307
CW 19	Amounts derived during short-term visits	309
CW 20	Amounts derived by visiting entertainers including sportspersons	309
CW 21	Amounts derived by visiting crew of pleasure craft	311
CW 22	Amounts derived by overseas experts and trainees in New Zealand by government arrangement	312
CW 23	Income for military service in operational area	313
CW 24	Deferred military pay for active service	314
CW 25	Value of board for religious society members	315
CW 26	Jurors' and witnesses' fees	315
<i>Certain income of transitional resident</i>		
CW 27	Certain income derived by transitional resident	315
<i>Income from living allowances, compensation, and government grants</i>		
CW 28	Pensions	316
CW 29	Annuities from Crown Bank Accounts	317
CW 30	Services for members of Parliament	317
CW 31	Maintenance payments	317
CW 32	Allowances and benefits	318
CW 33	Compensation payments	319
CW 34	Payment to claimant of certain accident compensation payments	320
CW 35	Scholarships and bursaries	320
CW 36	Film production grants	321
<i>Income of certain entities</i>		
CW 37	Public authorities	321
CW 38	Local authorities	322
CW 39	Local and regional promotion bodies	323
CW 40	Charities: non-business income	323
CW 41	Charities: business income	324
CW 42	Charitable bequests	327
CW 43	Friendly societies	329
CW 44	Funeral trusts	329
CW 45	Bodies promoting amateur games and sports	330

## Income Tax

---

CW 46	TAB and racing clubs	330
CW 47	Income from conducting gaming-machine gambling	330
CW 48	Bodies promoting scientific or industrial research	331
CW 49	Veterinary services bodies	331
CW 50	Herd improvement bodies	332
CW 51	Community trusts	332
CW 52	Distributions from complying trusts	332
CW 53	Foreign-sourced amounts derived by trustees	332
CW 54	Maori authority distributions	333

### *Income from certain activities*

CW 55	Non-resident aircraft operators	333
CW 56	Non-resident company involved in exploration and development activities	334
CW 57	Disposal of companies' own shares	334
CW 58	New Zealand companies operating in Niue	335
CW 59	Stake money	336
CW 60	Providing standard-cost household service	337
CW 61	Interest paid under the KiwiSaver Act 2006	337
CW 62	Avoidance arrangements	337
CW 63	Exemption under other Acts	338

### Subpart CX—Excluded income

#### *Goods and services tax*

CX 1	GST	340
------	-----	-----

#### *Fringe benefits*

##### *Introductory provisions*

CX 2	Meaning of fringe benefit	340
CX 3	Excluded income	341
CX 4	Relationship with assessable income	341
CX 5	Relationship with exempt income	341

##### *Fringe benefits*

CX 6	Private use of motor vehicle	342
CX 7	Employer or associated person treated as having right to use vehicle under arrangement	343
CX 8	Private use of motor vehicle: use by more than 1 employee	344
CX 9	Subsidised transport	344
CX 10	Employment-related loans	344
CX 11	Employment-related loans: loans by life insurers	345
CX 12	Services for members of Parliament	346
CX 13	Contributions to superannuation schemes	346
CX 14	Contributions to sickness, accident, or death benefit funds	346
CX 15	Contributions to funeral trusts	347

## Income Tax

---

CX 16	Contributions to life or health insurance	347
CX 17	Benefits provided to employees who are shareholders or investors	349
CX 18	Benefits provided to associates of both employees and shareholders	350
<i>Exclusions and limitations</i>		
CX 19	Benefits provided instead of allowances	350
CX 20	Benefits to enable performance of duties	351
CX 21	Business tools	352
CX 22	Benefits to non-executive directors	352
CX 23	Benefits provided on premises	353
CX 24	Benefits related to health or safety	353
CX 25	Benefits provided by charitable organisations	354
CX 26	Non-liable payments	354
CX 27	Assistance with tax returns	355
CX 28	Accommodation	355
CX 29	Entertainment	355
CX 30	Distinctive work clothing	356
CX 31	Contributions to income protection insurance	356
CX 32	Services provided to superannuation fund	357
CX 33	Goods provided at discount by third parties	357
<i>Definitions</i>		
CX 34	Meaning of emergency call	357
CX 35	Meaning of employee share loan	358
CX 36	Meaning of private use	359
CX 37	Meaning of unclassified benefit	359
CX 38	Meaning of work-related vehicle	359
<i>Insurance</i>		
CX 39	Life insurers and fully reinsured persons	360
CX 40	Superannuation fund deriving amount from life insurance policy	361
CX 41	Resident insurance underwriters	361
<i>Petroleum mining</i>		
CX 42	Disposal of ownership interests in controlled petroleum mining entities	362
CX 43	Farm-out arrangements for petroleum mining	362
<i>Mineral mining</i>		
CX 44	Disposal of mining shares	362
CX 45	Disposal of mining shares acquired with reinvestment profit	363
CX 46	Repayment of loans made from reinvestment profit	365

---

**Income Tax**

---

<b><i>Government grants</i></b>		
CX 47	Government grants to businesses	365
CX 48	Amounts remitted as condition of new start grant	366
<b><i>Superannuation contributions</i></b>		
CX 49	Employer's superannuation contributions	368
<b><i>Farming, forestry, or fishing</i></b>		
CX 50	Income equalisation schemes	368
<b><i>Environmental restoration</i></b>		
CX 51	Refund from environmental restoration account	369
<b><i>Inflation-indexed instruments</i></b>		
CX 52	Credits for inflation-indexed instruments	369
<b><i>Share-lending arrangements</i></b>		
CX 53	Share-lending collateral under share-lending arrangements	369
CX 54	Avoidance arrangements	370
<b><i>Minors' beneficiary income</i></b>		
CX 55	Amounts derived by minors from trusts	370
CX 56	Taxable distributions from non-complying trusts	370
<b><i>Transactions between companies in consolidated groups</i></b>		
CX 57	Intra-group transactions	370
Subpart CZ—Terminating provisions		
CZ 1	Share purchase agreement income before 19 July 1968	372
CZ 2	Mining company's 1970–71 tax year	372
CZ 3	Exchange variations on 8 August 1975	373
CZ 4	Mineral mining: company making loan before 1 April 1979	375
CZ 5	Exempt interest: overseas money lent to government or local or public authority before 29 July 1983	375
CZ 6	Commercial bills before 31 July 1986	376
CZ 7	Primary producer co-operative companies: 1987–88 income year	376
CZ 8	Farm-out arrangements for petroleum mining before 16 December 1991	378
CZ 9	Available capital distribution amount: 1965 and 1985 to 1992	378
CZ 10	Transitional relief for calculation of attributed repatriation dividends: 2 July 1992	379
CZ 11	Recovery of deductions for software acquired before 1 April 1993	380

## Income Tax

---

CZ 12	General insurance with risk period straddling 1 July 1993	380
CZ 13	Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996	381
CZ 14	Treatment of superannuation fund interests in group investment funds on 1 April 1999	382
CZ 15	Accident insurance contracts before 1 July 2000	382
CZ 16	Interest payable to exiting company: 2001	383
CZ 17	Dividend of exiting company: 2001	383
CZ 18	Benefit provider approved within 6 months of 25 November 2003	383
CZ 19	Community trust receipts in 2004–05 or 2005–06 tax year	384
CZ 20	Disposal of personal property lease asset under specified lease	385
CZ 21	Superannuation fund loans made to members before 1 April 1989	385

### Part D Deductions

#### Subpart DA—General rules

DA 1	General permission	387
DA 2	General limitations	388
DA 3	Effect of specific rules on general rules	389
DA 4	Treatment of amount of depreciation loss	390

#### Subpart DB—Specific rules for expenditure types

##### *Taxes*

DB 1	Taxes, other than GST, and penalties	392
DB 2	GST	393
DB 3	Determining tax liabilities	394
DB 4	Chatham Islands dues	396

##### *Financing costs*

DB 5	Transaction costs: borrowing money for use as capital	397
DB 6	Interest: not capital expenditure	397
DB 7	Interest: most companies need no nexus with income	397
DB 8	Interest: money borrowed to acquire shares in group companies	399
DB 9	Interest incurred on money borrowed to acquire shares in attributing companies	400
DB 10	Interest expenditure by excess debt entity	401
DB 11	Interest or expenditure connected to profit-related or substituting debentures	401

##### *Financial arrangements adjustments*

DB 12	Negative base price adjustment	402
-------	--------------------------------	-----

## Income Tax

---

DB 13	Base price adjustment under old financial arrangements rules	402
DB 14	Repayment of debt sold at discount to associate of debtor	402
DB 15	Security payment	403
DB 16	Sureties	404
<i>Share-lending arrangements</i>		
DB 17	Share-lending collateral under share-lending arrangements	404
DB 18	Replacement payments and imputation credits under share-lending arrangements	405
<i>Premises or land costs</i>		
DB 19	Transaction costs: leases	405
DB 20	Expenses of failed or withdrawn application for resource consent	405
DB 21	Destruction of temporary building	406
DB 22	Amounts paid for non-compliance with covenant for repair	406
DB 23	Amounts paid for non-compliance and change in use	407
<i>Revenue account property</i>		
DB 24	Cost of revenue account property	409
DB 25	Share losses	409
DB 26	Cancellation of shares held as revenue account property	410
DB 27	Amount from profit-making undertaking or scheme and not already in income	411
DB 28	Amount from major development or division and not already in income	412
DB 29	Amount from land affected by change and not already in income	412
DB 30	Apportionment when land acquired with other property	413
DB 31	Cost of non-specified mineral	414
<i>Bad debts</i>		
DB 32	Bad debts	415
DB 33	Bad debts owed to estates	417
<i>Research and development</i>		
DB 34	Scientific research	418
DB 35	Research or development	418
DB 36	Some definitions	421
DB 37	Patent expenses	422
DB 38	Expenses of failed or withdrawn patent application	422
DB 39	Patent rights: devising patented inventions	423
DB 40	Patent rights acquired before 1 April 1993	423

**Income Tax**

---

DB 41	Patent applications or patent rights acquired on or after 1 April 1993	424
<i>Marketing</i>		
DB 42	Public benefit gifts by company	425
<i>Theft and bribery</i>		
DB 43	Property misappropriated by employees or service providers	426
DB 44	Making good loss from misappropriation by partners	427
DB 45	Restitution of stolen property	428
DB 46	Bribes paid to public officials	428
<i>Pollution control</i>		
DB 47	Avoiding, remedying, or mitigating effects of discharge of contaminant	430
<i>Repayments</i>		
DB 48	Payments for remitted amounts	432
DB 49	Restrictive covenant breached	433
<i>Matching rules: revenue account property, prepayments, and deferred payments</i>		
DB 50	Adjustment for opening values of trading stock, live-stock, and excepted financial arrangements	434
DB 51	Adjustment for prepayments	435
DB 52	Adjustment for deferred payment of employment income	436
<i>Change to accounting practice</i>		
DB 53	Adjustment for change to accounting practice	436
<i>Exempt income</i>		
DB 54	Expenditure incurred in deriving exempt dividend	437
<i>Use of motor vehicle under certain arrangements</i>		
DB 55	Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 7	438
<i>Payments to spouses, civil union partners, or de facto partners</i>		
DB 56	Payments to spouses, civil union partners, or de facto partners other than for services	438
<i>Avoidance and non-market transactions</i>		
DB 57	Adjustment for avoidance arrangements	439
DB 58	Market value substituted	440
Subpart DC—Employee or contractor expenditure		
DC 1	Lump sum payments on retirement	441
DC 2	Pension payments to former employees	441
DC 3	Pension payments to former partners	443

## Income Tax

---

DC 4	Payments to working partners	444
DC 5	Payments to spouses, civil union partners, or de facto partners: services	445
DC 6	Contributions to employees' benefit funds	446
DC 7	Contributions to employees' superannuation schemes	446
DC 8	Attribution of personal services	447
DC 9	Restrictive covenants or exit inducements	447
DC 10	Sale of business: transferred employment income obligations	448
DC 11	Transfers of employment income obligations to associates	449
DC 12	Loans to employees under share purchase schemes	450
DC 13	Criteria for approval of share purchase schemes: before period of restriction ends	451
DC 14	Criteria for approval of share purchase schemes: when period of restriction ends	453
DC 15	Some definitions	454
Subpart DD—Entertainment expenditure		
DD 1	Entertainment expenditure generally	456
DD 2	Limitation rule	457
DD 3	When limitation rule does not apply	458
DD 4	Employment-related activities	458
DD 5	Promoting businesses, goods, or services	459
DD 6	Entertainment as business or for charitable purpose	461
DD 7	Entertainment outside New Zealand	461
DD 8	Entertainment that is income or fringe benefit	461
DD 9	Relationship with FBT rules	461
DD 10	Interpretation: reimbursement and apportionment	462
DD 11	Some definitions	462
Subpart DE—Motor vehicle expenditure		
<i>Introductory provisions</i>		
DE 1	What this subpart does	463
DE 2	Deductions for business use	464
DE 3	Methods for calculating proportion of business use	465
DE 4	Default method for calculating proportion of business use	466
<i>Actual records</i>		
DE 5	Actual records	466
<i>Logbook</i>		
DE 6	Using logbook for test period	466
DE 7	Logbook requirements	467
DE 8	Logbook term	467
DE 9	Inadequate logbook	468

**Income Tax**

---

DE 10	Variance during logbook term	469
DE 11	Replacement vehicles	469
<i>Mileage rates</i>		
DE 12	Mileage rate method	470
Subpart DF—Government grants and compensation		
DF 1	Government grants to businesses	470
DF 2	Repayment of grant-related suspensory loans	472
DF 3	Identifying expenditure for purposes of sections DF 1 and DF 2	473
DF 4	Accident compensation payment for attendant care	473
Subpart DN—Attributed losses from foreign equity		
<i>Attributed controlled foreign company loss</i>		
DN 1	Attributed controlled foreign company loss	474
DN 2	When attributed CFC loss arises	475
DN 3	Calculation of attributed CFC loss	475
DN 4	Ring-fencing cap on deduction	475
<i>Foreign investment fund loss</i>		
DN 5	Foreign investment fund loss	476
DN 6	When FIF loss arises	477
DN 7	Calculation of FIF loss	478
DN 8	Ring-fencing cap on deduction: not branch equivalent method	479
DN 9	Ring-fencing cap on deduction: branch equivalent method	480
Subpart DO—Farming and aquacultural business expenditure		
<i>Farming</i>		
DO 1	Enhancements to land, except trees	482
DO 2	Erosion and shelter plantings	482
DO 3	Trees on farms	483
DO 4	Improvements to farm land	484
DO 5	Expenditure on land: planting of listed horticultural plants	486
DO 6	Expenditure on land: horticultural replacement planting	488
DO 7	Accounting for expenditure on listed horticultural plants under sections DO 5 and DO 6	490
DO 8	Meaning of planting and plot	491
DO 9	Meaning of replaced area fraction and diminished value	491
DO 10	Farming or horticulture expenditure of lessor or sublessor	492
DO 11	Improvement destroyed or made useless	493

---

**Income Tax**

---

***Aquaculture***

DO 12	Improvements to aquacultural business	494
DO 13	Improvement destroyed or made useless	495
Subpart DP—Forestry expenditure		
DP 1	Expenditure of forestry business	497
DP 2	Plant or machinery	498
DP 3	Improvements to forestry land	499
DP 4	Improvement destroyed or made useless	500
DP 5	Forestry encouragement agreement: deductions	501
DP 6	Forestry encouragement agreement: no deduction	502
DP 7	Land contouring: no deduction	502
DP 8	Forestry business on land bought from Crown, Maori owners, or holding company: no deduction	503
DP 9	Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company	503
DP 10	Cost of acquiring timber or right to take timber: other cases	504
DP 11	Cost of timber	505
Subpart DQ—Income equalisation schemes and environmental restoration accounts schemes		
DQ 1	Main income equalisation scheme	506
DQ 2	Adverse event income equalisation scheme	507
DQ 3	Thinning operations income equalisation scheme	507
DQ 4	Environmental restoration accounts scheme	508
Subpart DR—Life insurance business expenditure		
DR 1	Mortality profit formula: negative result	509
DR 2	Disposal of property	510
DR 3	Specific deductions denied to life insurers and fully re-insured persons	511
Subpart DS—Film industry expenditure		
DS 1	Acquiring film rights	511
DS 2	Film production expenditure	512
DS 3	Clawback of deductions for film reimbursement schemes	514
DS 4	Meaning of film reimbursement scheme	515
Subpart DT—Petroleum mining expenditure		
<b><i>Petroleum exploration expenditure</i></b>		
DT 1	Petroleum exploration expenditure	517
DT 2	Arrangement for petroleum exploration expenditure and sale of property	518
DT 3	Acquisition of privileges and permits	519
DT 4	Acquisition of exploratory material	520

## Income Tax

---

### *Petroleum development expenditure*

DT 5	Petroleum development expenditure	520
DT 6	Expenditure on petroleum mining assets	521
DT 7	Exploratory well expenditure	521
DT 8	Acquisition of certain petroleum mining assets	522
DT 9	Disposal of petroleum mining asset to associate	522
DT 10	Disposal of petroleum mining asset outside association	523
DT 11	Association ending	524

### *Other expenditure*

DT 12	Damage to assets	525
DT 13	Disposal of ownership interests in controlled petroleum mining entities	525
DT 14	Farm-out arrangements	526
DT 15	Persons associated with petroleum miner	526
DT 16	Removal or restoration operations	527

### *General provisions*

DT 17	Attribution of expenditure	528
DT 18	Replacement permits	528
DT 19	Partnership interests and disposal of part of asset	529
DT 20	Petroleum mining operations outside New Zealand	529

#### Subpart DU—Mineral mining expenditure

DU 1	Mining exploration expenditure and mining development expenditure	530
DU 2	Mining exploration expenditure or mining development expenditure on acquisition of asset	530
DU 3	Replacing or repairing asset	532
DU 4	Income appropriated to expenditure	533
DU 5	Non-mining asset used to derive income from mining	534
DU 6	Depreciation	535
DU 7	Limit on deduction	536
DU 8	Meaning of asset for sections DU 1 to DU 7	537
DU 9	Application of sections to resident mining operators	538
DU 10	Application of sections to non-resident mining operators	539
DU 11	Disposal of mining shares by company	540
DU 12	Amount written off by holding company	541

#### Subpart DV—Expenditure specific to certain entities

### *Superannuation funds*

DV 1	Publicising superannuation funds	543
DV 2	Transfer of expenditure to master fund	543
DV 3	Formula for calculating maximum deduction	545
DV 4	Carry forward of expenditure	546

## Income Tax

---

### *Other entities*

DV 5	Investment funds: transfer of expenditure to master funds	548
DV 6	Formula for calculating maximum deduction	550
DV 7	Carry forward of expenditure	551
DV 8	Non-profit organisations	551
DV 9	Trusts	552
DV 10	Building societies	552
DV 11	Distribution to member of co-operative company, excluded from being dividend	553
DV 12	Maori authorities: donations	554
DV 13	Group companies	554
DV 14	Amalgamated company: expenditure on improvements for farming, horticultural, aquacultural, and forestry businesses	555
DV 15	Amalgamated companies: property passing on resident's restricted amalgamation	556
DV 16	Consolidated groups: intra-group transactions	556
DV 17	Consolidated groups: expenditure or loss incurred by group companies	557
DV 18	Statutory producer boards and co-operative companies	558
DV 19	Association rebates	558
	Subpart DW—Expenditure specific to certain industries	
DW 1	Airport operators	560
DW 2	Bloodstock racing	561
DW 3	Non-resident general insurers, shippers, and film renters	562
	Subpart DX—Other expenditure	
DX 1	Testamentary annuities	562
DX 2	Tax credits: conduit financing arrangements	564
DX 3	Tax credits: supplementary dividend holding companies	564
	Subpart DZ—Terminating provisions	
DZ 1	Commercial bills before 31 July 1986	565
DZ 2	Life insurers acquiring property before 1 April 1988	566
DZ 3	Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991	567
DZ 4	Expenditure on abandoned exploratory well before 16 December 1991	568
DZ 5	Farm-out arrangements for petroleum mining before 16 December 1991	569
DZ 6	Partnership interests and disposal of part of asset before 16 December 1991	571
DZ 7	Petroleum mining operations outside New Zealand before 16 December 1991	571
DZ 8	Buying patent rights before 1 April 1993	571
DZ 9	Premium paid on land leased before 1 April 1993	572

## Income Tax

---

DZ 10	General insurance with risk period straddling 1 July 1993	572
DZ 11	Film reimbursement scheme on or before 30 June 2001	573
DZ 12	Mineral mining: 1954–2005	575
DZ 13	Enhancements to land unamortised at end of 2004–05 year	577
DZ 14	Deductions under specified leases	577

### Part E

#### Timing and quantifying rules

Subpart EA—Matching rules: revenue account property,  
prepayments, and deferred payments

EA 1	Trading stock, livestock, and excepted financial arrangements	579
EA 2	Other revenue account property	580
EA 3	Prepayments	581
EA 4	Deferred payment of employment income	583

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

#### *Introductory provisions*

EB 1	When this subpart applies	586
EB 2	Meaning of trading stock	586
EB 3	Valuation of trading stock	587
EB 4	Trading stock valuation methods	588
EB 5	Transfers of trading stock within wholly-owned groups	588

#### *Standard valuation*

EB 6	Cost	589
EB 7	Cost allocation: cost-flow method	590
EB 8	Cost allocation: budgeted method or standard cost method	590
EB 9	Discounted selling price	591
EB 10	Replacement price	592
EB 11	Market selling value	593
EB 12	Valuing closing stock consistently	594

#### *Low-turnover valuation*

EB 13	Low-turnover valuation	594
EB 14	Low-turnover valuation methods	595
EB 15	Cost for low-turnover traders	595
EB 16	Cost allocation: cost-flow method for low-turnover traders	595
EB 17	Costs: manufactured or produced stock of low-turnover traders	596
EB 18	Costs: other stock of low-turnover traders	596
EB 19	Discounted selling price for low-turnover traders	597

## Income Tax

---

EB 20	Replacement price for low-turnover traders	598
EB 21	Market selling value for low-turnover traders	599
EB 22	Valuing closing stock consistently for low-turnover traders	599
<i>Low value trading stock</i>		
EB 23	Valuing closing stock under \$5,000	600
<i>Disposal of business assets</i>		
EB 24	Apportionment on disposal of business assets that include trading stock	601
Subpart EC—Valuation of livestock		
<i>Introductory provisions</i>		
EC 1	Application of this subpart	603
EC 2	Valuation of livestock	604
EC 3	Livestock valuation methods	604
EC 4	Transfers of livestock within wholly-owned groups	605
EC 5	Transfer of livestock because of self-assessed adverse event	606
<i>Valuation of specified livestock</i>		
EC 6	Application of sections EC 7 to EC 27	607
EC 7	Valuation methods	607
EC 8	Restrictions on use of herd scheme	608
EC 9	Restrictions on use of national standard cost scheme	608
EC 10	Restrictions on use of cost price method	609
EC 11	Restrictions on making of elections	611
EC 12	Interests in livestock	612
EC 13	Changes in partnership interests	613
<i>Herd scheme</i>		
EC 14	Herd scheme	614
EC 15	Determining national average market values	614
EC 16	Valuation under herd scheme	615
EC 17	Herd value ratio	616
EC 18	Inaccurate herd value ratio	617
EC 19	Chatham Islands adjustment to herd value	617
EC 20	Herd livestock disposed of before values determined	618
EC 21	Herd livestock on death before values determined	619
<i>National standard cost scheme</i>		
EC 22	National standard cost scheme	619
EC 23	Determining national standard costs	619
EC 24	Methods for determining costs using national standard cost scheme	620
<i>Other methods</i>		
EC 25	Cost price, replacement price, or market value	621

## Income Tax

---

EC 26	Bailee's treatment of livestock	621
	<i>Definitions</i>	
EC 27	Some definitions	622
	<b><i>Valuation of non-specified livestock</i></b>	
EC 28	Application of sections EC 29 to EC 31	623
EC 29	Determining standard values	623
EC 30	Closing value methods	623
EC 31	Enhanced production	623
	<b><i>Valuation of high-priced livestock</i></b>	
EC 32	Application of sections EC 33 to EC 37	624
EC 33	Determining depreciation percentages	625
EC 34	General rule	625
EC 35	Livestock reaching national average market value and livestock no longer used for breeding	626
EC 36	Immature livestock and recently bought livestock	628
EC 37	Bailment	628
	<b><i>Valuation of bloodstock</i></b>	
EC 38	Application of sections EC 39 to EC 48	628
EC 39	First income year in breeding business	629
EC 40	Later income years in breeding business	629
EC 41	Reduction: bloodstock not previously used for breeding in New Zealand	630
EC 42	Reduction: bloodstock previously used for breeding in New Zealand	631
EC 43	Accident, birth deformity, or infertility	632
EC 44	Other bloodstock	632
EC 45	Residual value of bloodstock	633
EC 46	Use of bloodstock for racing	633
EC 47	Change of use of bloodstock in course of business	634
EC 48	Replacement breeding stock	634
	Subpart ED—Valuation of excepted financial arrangements	
ED 1	Valuation of excepted financial arrangements	636
ED 2	Transfers of certain excepted financial arrangements within wholly-owned groups	638
	Subpart EE—Depreciation	
	<b><i>Introductory provision</i></b>	
EE 1	What this subpart does	642
	<b><i>Meaning of own</i></b>	
EE 2	Nature of ownership of item	643
EE 3	Ownership of goods subject to reservation of title	644
EE 4	Ownership of lessee's improvements: lessee	644

## Income Tax

---

EE 5	Ownership of lessee's improvements: other person	645
	<b><i>Meaning of depreciable property</i></b>	
EE 6	What is depreciable property?	646
EE 7	What is not depreciable property?	647
EE 8	Election that property not be depreciable	647
	<b><i>How amounts of depreciation loss and depreciation recovery income are calculated</i></b>	
EE 9	Description of elements of calculation	649
EE 10	Calculation rule: item temporarily not available	650
EE 11	Calculation rule: income year in which item disposed of	650
	<b><i>Methods</i></b>	
EE 12	Depreciation methods	651
	<b><i>Amount of depreciation loss under diminishing value method or straight-line method</i></b>	
EE 13	Application of sections EE 14 to EE 19	653
EE 14	Diminishing value or straight-line method: calculating amount of depreciation loss	653
EE 15	Amount of adjusted tax value	653
EE 16	Amount resulting from standard calculation	654
EE 17	Amount resulting from petroleum-related depreciable property calculation	655
EE 18	Cost: change from diminishing value to straight-line method	656
EE 19	Cost: fixed life intangible property	656
	<b><i>Amount of depreciation loss under pool method</i></b>	
EE 20	Application of sections EE 21 to EE 24	657
EE 21	Pool method: calculating amount of depreciation loss	657
EE 22	Cases affecting pool	659
EE 23	Combined pools	660
EE 24	Property ceasing to qualify for pool	660
	<b><i>Depreciation rates</i></b>	
EE 25	Setting of economic depreciation rate	661
EE 26	Economic rate for certain depreciable property	662
EE 27	Economic rate for buildings	663
EE 28	Economic rate for certain aircraft and motor vehicles	664
EE 29	Economic rate for plant, equipment, or building, with high residual value	665
EE 30	Annual rate for item acquired in person's 1995–96 or later income year	666
EE 31	Election in relation to certain depreciable property acquired on or after 1 April 2005	667
EE 32	Annual rate for fixed life intangible property	668

## Income Tax

---

EE 33	Annual rate for patents: applications lodged with complete specifications before 1 April 2005	668
EE 34	Annual rate for patent applications lodged with complete specifications on or after 1 April 2005	671
EE 35	Annual rate for patents: applications lodged with complete specifications on or after 1 April 2005	672
EE 36	Annual rate for plant variety rights	673
EE 37	Special rate or provisional rate	676
EE 38	Using economic rate or provisional rate instead of special rate	676
<i>Improvements, items of low value, or items no longer used</i>		
EE 39	Improvements	677
EE 40	Items of low value	679
EE 41	Items no longer used	681
<i>Transfers of depreciable property: first, certain amalgamations and, second, associated persons</i>		
EE 42	Transfer of depreciable property in certain amalgamations on or after 14 May 2002	682
EE 43	Transfer of depreciable property on or after 24 September 1997	684
EE 44	Transfer of radiocommunications licence right on or after 24 September 1997	686
EE 45	Transfer of depreciable intangible property on or after 1 July 1997	687
<i>Disposals and similar events</i>		
EE 46	Application of sections EE 50 to EE 54	688
EE 47	Consideration for purposes of section EE 46	688
EE 48	Items for purposes of section EE 46	691
EE 49	Events for purposes of section EE 46	691
EE 50	Effect of disposal or event	693
EE 51	Amount of depreciation recovery income when item partly used for business	694
EE 52	Amount of depreciation loss when item partly used to produce income	695
EE 53	Amount of depreciation recovery income when lost or stolen items recovered	697
EE 54	Amount of depreciation recovery income when compensation received	698
<i>Interpretation provisions</i>		
EE 55	Cost: GST	698
<i>Adjusted tax value</i>		
EE 56	Meaning of adjusted tax value	699

## Income Tax

---

EE 57	Formula	700
EE 58	Base value in section EE 57 when none of sections EE 59, EE 60, and EZ 23(1) applies	700
EE 59	Base value in section EE 57 when no previous deduction	701
EE 60	Base value in section EE 57 when property is petroleum-related depreciable property	702
EE 61	Total deductions in section EE 57	703
<i>Definitions</i>		
EE 62	Meaning of annual rate	705
EE 63	Meaning of depreciable intangible property	706
EE 64	Meaning of estimated useful life	707
EE 65	Meaning of excluded depreciable property	707
EE 66	Meaning of maximum pooling value	708
EE 67	Meaning of poolable property	709
EE 68	Other definitions	709
Subpart EF—Taxes and levies		
EF 1	Fringe benefit tax	711
EF 2	ESCT	711
EF 3	ACC levies and premiums	712
EF 4	Use of money interest payable by Commissioner	714
EF 5	Use of money interest payable by person	714
EF 6	Different tax years	716
Subpart EG—Recognition of accounting treatment		
EG 1	Election to use balance date used in foreign country	716
EG 2	Adjustment for changes to accounting practice	719
Subpart EH—Income equalisation schemes		
<i>Introductory provisions</i>		
EH 1	Income equalisation schemes	723
EH 2	Income Equalisation Reserve Account	724
<i>Main income equalisation scheme</i>		
<i>Application</i>		
EH 3	Persons to whom main income equalisation scheme applies	725
<i>Deposits and accounts</i>		
EH 4	Main deposit	725
EH 5	Main income equalisation account	727
<i>Interest</i>		
EH 6	Interest on deposits in main income equalisation account	728
<i>Deduction</i>		
EH 7	Deduction of deposit	729

## Income Tax

---

### *Refunds: automatic*

EH 8	Refund of excess deposit	729
EH 9	Income does not include excess deposit	729
EH 10	Refund at end of 5 years	730
EH 11	Income when refund given at end of 5 years	730

### *Refunds: on application*

EH 12	Application for refund by person, trustee of estate, Official Assignee, or liquidator	730
EH 13	Refund on request	731
EH 14	Income when refund given on request	731
EH 15	Refund for development or recovery	732
EH 16	Income when refund given for development or recovery	733
EH 17	Refund on retirement	733
EH 18	Income when refund given on retirement, and election to allocate amount to earlier year	734
EH 19	Refund on death	735
EH 20	Income when refund given on death	735
EH 21	Income when refund given on death, and election to allocate amount to earlier year	735
EH 22	Income when refund given on death, and election to allocate amount to later year or years	736
EH 23	Refund on bankruptcy	737
EH 24	Income when refund given on bankruptcy	738
EH 25	Refund on liquidation	738
EH 26	Income when refund given on liquidation	738

### *Refunds: general provisions*

EH 27	Amendment of assessment	739
EH 28	Minimum refund	739
EH 29	Deposits from which refunds come	739

### *Tax credit*

EH 30	When person entitled to tax credit	739
EH 31	Kind and amount of refund that entitles person to tax credit	740
EH 32	Kind of person entitled to tax credit	740
EH 33	Amount of tax credit	741

### *Definitions*

EH 34	Meaning of income from forestry	741
EH 35	Meaning of main maximum deposit	742
EH 36	Other definitions	743

## Income Tax

---

### *Adverse event income equalisation scheme*

#### *Application*

EH 37	Persons to whom adverse event income equalisation scheme applies	744
-------	--	-----

#### *Deposits and accounts*

EH 38	Adverse event deposit	745
EH 39	Adverse event income equalisation account	745

#### *Interest*

EH 40	Interest on deposits in adverse event income equalisation account	746
-------	---	-----

#### *Deduction*

EH 41	Deduction of deposit	747
-------	----------------------	-----

#### *Refunds: automatic*

EH 42	Refund of excess deposit	747
EH 43	Income does not include excess deposit	748

#### *Refunds: on application*

EH 44	Application for refund by person, trustee of estate, Official Assignee, or liquidator	748
EH 45	Refund on request	749
EH 46	Income when refund given on request	749
EH 47	Refund on retirement	749
EH 48	Income when refund given on retirement, and election to allocate amount to earlier year	750
EH 49	Refund on death	750
EH 50	Income when refund given on death	751
EH 51	Income when refund given on death, and election to allocate amount to earlier year	751
EH 52	Income when refund given on death, and election to allocate amount to later year or years	752
EH 53	Refund on bankruptcy	753
EH 54	Income when refund given on bankruptcy	753
EH 55	Refund on liquidation	753
EH 56	Income when refund given on liquidation	754

#### *Refunds: general provisions*

EH 57	Amendment of assessment	754
EH 58	Minimum refund	754
EH 59	Deposits from which refunds come	755

#### *Transfers*

EH 60	Transfer of deposit	755
-------	---------------------	-----

#### *Definitions*

EH 61	Meaning of adverse event maximum deposit	756
-------	--	-----

## Income Tax

---

EH 62	Other definitions	757
<b><i>Thinning operations income equalisation scheme</i></b>		
<i>Application</i>		
EH 63	Persons to whom thinning operations income equalisation scheme applies	758
<i>Deposits and accounts</i>		
EH 64	Thinning operations deposit	759
EH 65	Thinning operations income equalisation account	760
<i>Interest</i>		
EH 66	Interest on deposits in thinning operations income equalisation account	761
<i>Deductions</i>		
EH 67	Deduction of deposit	762
<i>Refunds: automatic</i>		
EH 68	Refund of excess deposit	762
EH 69	Income does not include excess deposit	763
<i>Refunds: on application</i>		
EH 70	Application for refund by person or liquidator	763
EH 71	Refund on request	763
EH 72	Income when refund given on request	764
EH 73	Refund for development or recovery	764
EH 74	Income when refund given for development or recovery	765
EH 75	Refund on liquidation	766
EH 76	Income when refund given on liquidation	766
<i>Refunds: general provisions, and tax credits</i>		
EH 77	Sections of main income equalisation scheme that apply to thinning operations income equalisation scheme	766
<i>Definitions</i>		
EH 78	Meaning of thinning operations maximum deposit	766
EH 79	Other definitions	767
Subpart EI—Spreading of specific income		
<b><i>Farming and forestry</i></b>		
EI 1	Spreading backward of income from timber	769
<b><i>Inflation-indexed instruments</i></b>		
EI 2	Interest from inflation-indexed instruments	769
<b><i>Intellectual property</i></b>		
EI 3	Assigning or granting copyright	770

## Income Tax

---

### *Land*

EI 4	Amount paid to lessor for non-compliance with covenant for repair	772
EI 5	Amount paid for non-compliance: when lessor ceases to own land	773
EI 6	Leases: income derived in anticipation	773
EI 7	Disposal of land to Crown	774

### *Shareholder-employees*

EI 8	Matching rule for employment income of shareholder-employee	775
------	---	-----

Subpart EJ—Spreading of specific expenditure

### *Farming and forestry*

EJ 1	Spreading backward of deductions for costs of timber	777
EJ 2	Spreading forward of deductions for repairs to fishing boats	777
EJ 3	Spreading forward of fertiliser expenditure	779

### *Films*

EJ 4	Expenditure incurred in acquiring film rights in feature films	780
EJ 5	Expenditure incurred in acquiring film rights in films other than feature films	782
EJ 6	Certification of New Zealand films	783
EJ 7	Film production expenditure for New Zealand films	784
EJ 8	Film production expenditure for films other than New Zealand films	784
EJ 9	Avoidance arrangements	785

### *Leases*

EJ 10	Personal property lease payments	786
EJ 11	Amount paid by lessee for non-compliance with covenant for repair	786

### *Petroleum mining*

EJ 12	Petroleum development expenditure	787
EJ 13	Relinquishing petroleum mining permit	788
EJ 14	Spreading deduction backwards	789
EJ 15	Disposal of petroleum mining asset	789
EJ 16	Disposal of petroleum mining asset to associate	790
EJ 17	Partnership interests and disposal of part of asset	790
EJ 18	Petroleum mining operations outside New Zealand	791

### *Definitions*

EJ 19	Meaning of offshore development	791
EJ 20	Meaning of onshore development	792

---

**Income Tax**

---

<b><i>Superannuation contributions</i></b>		
EJ 21	Contributions to employees' superannuation schemes	793
<b><i>Research, development, and resulting market development</i></b>		
EJ 22	Deductions for market development: product of research, development	794
EJ 23	Allocation of deductions for research, development, and resulting market development	794
Subpart EK—Environmental restoration accounts		
EK 1	Environmental Restoration Funds Account	796
EK 2	Persons who may make payment to environmental restoration account	796
EK 3	Payments to environmental restoration account	797
EK 4	Environmental restoration account	798
EK 5	Details to be provided with payment to environmental restoration account	799
EK 6	Interest on payments to environmental restoration account	800
EK 7	Deduction for payment	800
EK 8	Deduction for transfer	801
EK 9	Refund of payment if excess, lacking details	802
EK 10	Certain refunds not income	803
EK 11	Application for refund	803
EK 12	Refund if request or excess balance	804
EK 13	Income when refund given on request	805
EK 14	Application for transfer	806
EK 15	Transfer on request	806
EK 16	Transfer on death, bankruptcy, or liquidation	807
EK 17	Minimum refund or transfer	808
EK 18	Payments from which refunds come	809
EK 19	Environmental restoration account of amalgamating company	809
EK 20	Environmental restoration account of consolidated group company	810
EK 21	Notices in electronic format	810
EK 22	Meaning of maximum payment	811
EK 23	Other definitions	812
Subpart EW—Financial arrangements rules		
<b><i>Introductory provisions</i></b>		
EW 1	What this subpart does	815
EW 2	Relationship of financial arrangements rules with other provisions	816

***Meaning of financial arrangement and excepted financial arrangement***

EW 3	What is a financial arrangement?	817
EW 4	What is not a financial arrangement?	818
EW 5	What is an excepted financial arrangement?	819
EW 6	Relationship between financial arrangements and excepted financial arrangements	823
EW 7	Change from private or domestic purpose	824
EW 8	Election to treat certain excepted financial arrangements as financial arrangements	824

***Application of financial arrangements rules***

EW 9	Persons to whom financial arrangements rules apply	825
EW 10	Financial arrangements to which financial arrangements rules apply	826
EW 11	What financial arrangements rules do not apply to	827

***Calculation and allocation of income and expenditure over financial arrangement's term***

EW 12	When use of spreading method required	827
EW 13	When use of spreading method not required	828
EW 14	What spreading methods do	828
EW 15	What is included when spreading methods used	829
EW 16	Yield to maturity method or alternative	830
EW 17	Straight-line method	830
EW 18	Market valuation method	831
EW 19	Choice among first 3 spreading methods	832
EW 20	Determination method or alternative	832
EW 21	Financial reporting method	833
EW 22	Default method	834
EW 23	Failure to use method for financial reporting purposes	835
EW 24	Consistency of use of spreading method	835
EW 25	Consistency of use of straight-line method and market valuation method	836
EW 26	Change of spreading method	837
EW 27	Spreading method adjustment formula	838

***Calculation and allocation of income and expenditure when rights and obligations under financial arrangement cease***

EW 28	How base price adjustment calculated	839
EW 29	When calculation of base price adjustment required	839
EW 30	When calculation of base price adjustment not required	841
EW 31	Base price adjustment formula	842

## Income Tax

---

### *Consideration*

#### *Consideration when financial arrangement involves property or services*

EW 32	Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease	844
EW 33	Consideration for hire purchase agreement or finance lease	846
EW 34	Consideration in foreign currency	846
EW 35	Value relevant for non-financial arrangements rule	847

#### *Consideration treated as paid to person*

EW 36	Consideration when person exits from rules: accrued entitlement	848
EW 37	Consideration when person enters rules: accrued obligation	849
EW 38	Consideration when disposal for no, or inadequate, consideration	850
EW 39	Consideration affected by unfavourable factors	850

#### *Consideration treated as paid by person*

EW 40	Consideration when person exits from rules: accrued obligation	851
EW 41	Consideration when person enters rules: accrued entitlement	852
EW 42	Consideration when acquisition for no, or inadequate, consideration	853
EW 43	Consideration when debt sold at discount to associate of debtor	853
EW 44	Consideration when debt forgiven for natural love and affection	854
EW 45	Consideration when debtor released from obligation	855
EW 46	Consideration when debtor released as condition of new start grant	856

#### *Consideration when legal defeasance has occurred*

EW 47	Legal defeasance	858
-------	------------------	-----

#### *Consideration when anti-avoidance provision applies*

EW 48	Anti-avoidance provisions	858
-------	---------------------------	-----

#### *Income and deduction provisions specifically related to financial arrangements*

EW 49	Income and deduction when debt sold at discount to associate of debtor	859
EW 50	Income when debt forgiven to trustee	860
EW 51	Deduction for security payment	862

Income Tax

---

<i>Treatment of original share acquired under financial arrangement</i>		
EW 52	Share supplier under share-lending arrangement	862
<i>One kind of avoidance</i>		
EW 53	Adjustment required	863
<i>Application of financial arrangements rules to cash basis persons</i>		
EW 54	Meaning of cash basis person	865
EW 55	Effect of being cash basis person	865
EW 56	Natural person	866
EW 57	Thresholds	866
EW 58	Financial arrangements, income, and expenditure relevant to criteria	869
EW 59	Exclusion by Commissioner	870
EW 60	Trustee of deceased's estate	870
EW 61	Election to use spreading method	871
EW 62	When and how calculation of cash basis adjustment required	872
EW 63	Cash basis adjustment formula	874
Subpart EX—Controlled foreign company and foreign investment fund rules		
<i>Controlled foreign company rules</i>		
<i>When is a company a controlled foreign company?</i>		
EX 1	Meaning of CFC	878
<i>Calculation of person's control interest</i>		
EX 2	Four categories for calculating control interests	878
EX 3	Control interest: total of direct, indirect, and associated person interests	879
EX 4	Limits to requirement to include associated person interests	880
EX 5	Direct control interests	880
EX 6	Direct control interests include options and similar rights	882
EX 7	Indirect control interests	883
<i>Calculation of person's income interest</i>		
EX 8	Income interests: total of direct and indirect interests	884
EX 9	Direct income interests	885
EX 10	Indirect income interests	886
EX 11	Options and similar rights in certain cases	887
EX 12	Reduction of total income interests	888
EX 13	Income interests of partners	888

## Income Tax

---

### *Ten percent threshold and variations in income interest level*

EX 14	Attribution: 10% threshold	889
EX 15	Associates and 10% threshold	889
EX 16	Income interests for certain purposes	889
EX 17	Income interest if variations within period	890

### *Calculation of attributed CFC income or loss*

EX 18	Formula for calculating attributed CFC income or loss	891
EX 19	Taxable distribution from non-complying trust	891
EX 20	Reduction in attributed CFC loss	892

### *Calculation of branch equivalent income or loss*

EX 21	Branch equivalent income or loss: calculation rules	893
-------	---	-----

### *Grey list exemption*

EX 22	Unqualified grey list CFCs	901
EX 23	Tax concession grey list CFCs	902

### *Residence of companies*

EX 24	Residence in grey list country	903
EX 25	Companies moving to or from New Zealand	903

### *Change of CFC's balance date*

EX 26	Change of CFC's balance date	904
-------	------------------------------	-----

### *Ownership measurement concession*

EX 27	Use of quarterly measurement	905
-------	------------------------------	-----

### *Anti-avoidance rule: stapled stock*

EX 28	Anti-avoidance rule: stapled stock	906
-------	------------------------------------	-----

### **Foreign investment fund rules**

#### *What is a foreign investment fund?*

EX 29	Meaning of FIF	906
-------	----------------	-----

#### *Attributing interests in FIFs*

EX 30	Attributing interests in FIFs	907
EX 31	Direct income interests in FIFs	908
EX 32	CFC rules exemption	909
EX 33	Grey list exemption	909
EX 34	Foreign exchange control exemption	910
EX 35	Income interest of non-resident or transitional resident	911
EX 36	New resident's accrued superannuation entitlement exemption	911
EX 37	Non-resident's pension or annuity exemption	913

#### *Calculation of FIF income or loss*

EX 38	Four calculation methods	914
EX 39	Exclusion of amounts of death benefit	915

## Income Tax

---

EX 40	Limits on choice of calculation methods	915
EX 41	Default calculation method	918
EX 42	Accounting profits method	918
EX 43	Branch equivalent method	920
EX 44	Comparative value method	923
EX 45	Deemed rate of return method	924
	<i>Additional FIF income or loss if CFC owns FIF</i>	
EX 46	Additional FIF income or loss if CFC owns FIF	928
	<i>Relationship with other provisions in Act</i>	
EX 47	Codes: comparative value and deemed rate methods	930
EX 48	Top-up FIF income: deemed rate of return method	931
EX 49	Top-up FIF income: 1 April 1993 uplift interests	932
	<i>Changing calculation method</i>	
EX 50	Limits on changes of method	933
EX 51	Consequences of changes in method	935
	<i>Cases of entry into and exit from FIF rules</i>	
EX 52	Migration of persons holding FIF interests	937
EX 53	Changes in application of FIF exemptions	938
EX 54	FIFs migrating from New Zealand	940
	<i>Measurement of cost</i>	
EX 55	Measurement of cost	941
	<i>Change of FIF's balance date</i>	
EX 56	Change of FIF's balance date	943
	<i>Market value rules</i>	
EX 57	Market value of life policy and superannuation entitlements	944
EX 58	Non-market transactions in FIF interests	945
	<i>Commissioner's default assessment power</i>	
EX 59	Commissioner's default assessment power	945
	Subpart EY—Life insurance rules	
	<i>Introductory provisions</i>	
EY 1	What this subpart does	948
EY 2	Matters to which this subpart relates	949
EY 3	Meaning of actuarial reserves	949
EY 4	Actuarial reserves: calculation	949
EY 5	Actuarial reserves: actuary's declaration	951
EY 6	Actuarial reserves: powers of Commissioner	952
EY 7	Meaning of claim	952
EY 8	Meaning of life insurance	953
EY 9	Meaning of life insurance policy	955
EY 10	Meaning of life insurer	955

## Income Tax

---

EY 11	Superannuation schemes providing life insurance	956
EY 12	Meaning of life reinsurance	959
EY 13	Meaning of life reinsurance policy	961
EY 14	Life insurance and life reinsurance: how sections relate	961

### *Premium loading*

EY 15	How premium loading is calculated	961
EY 16	Premium loading: when life insurers providing life insurance at start of income year	962
EY 17	Premium loading: when life insurers not providing life insurance at start of income year	963
EY 18	Premium loading formulas	963
EY 19	Premium loading formulas: when life insurers not providing life insurance at start of income year	964
EY 20	Premium loading formulas: option when more than 1 life insured	965
EY 21	Premium loading formula (life): when annuity payable on death	965
EY 22	Premium loading formulas: when annuity payable on survival to date or age specified in policy	966
EY 23	Premium loading formula (life): when partial reinsurance exists	967
EY 24	Premium loading formulas: individual result may never be negative	967

### *Mortality profit*

EY 25	How mortality profit is calculated	967
EY 26	Mortality profit: when life insurers providing life insurance at start of income year	968
EY 27	Mortality profit: when life insurers not providing life insurance at start of income year	968
EY 28	Mortality profit formula	969
EY 29	Mortality profit formula: when life insurers not providing life insurance at start of income year	970
EY 30	Mortality profit formula: option when more than 1 life insured	971
EY 31	Mortality profit formula: when annuity payable on death	972
EY 32	Mortality profit formula: when partial reinsurance exists	972
EY 33	Mortality profit formula: individual result may be negative only in some cases	973
EY 34	Mortality profit formula: negative result	973

### *Discontinuance profit*

EY 35	How discontinuance profit is calculated	974
EY 36	Discontinuance profit for income year	975
EY 37	Discontinuance profit formula (existing policies)	975
EY 38	Discontinuance profit formula (new policies)	976

## Income Tax

---

EY 39	Discontinuance profit formula (existing policies): when partial reinsurance exists	977
EY 40	Discontinuance profit formula (new policies): when partial reinsurance exists	977
EY 41	Discontinuance profit formulas: individual result may never be negative	978
<b><i>Policyholder income</i></b>		
EY 42	How policyholder income is calculated	978
EY 43	Policyholder income formula	978
EY 44	Policyholder income formula: when partial reinsurance exists	980
EY 45	Policyholder income formula: when life insurance business transferred	981
<b><i>Disposal of property</i></b>		
EY 46	Income from disposal of property	982
EY 47	Deductions for disposal of property	983
<b><i>Non-resident life insurers</i></b>		
EY 48	Non-resident life insurers with life insurance policies in New Zealand	983
EY 49	Non-resident life insurer becoming resident	984
Subpart EZ—Terminating provisions		
<b><i>Life insurance</i></b>		
EZ 1	Life insurers acquiring property before 1 April 1988	988
EZ 2	Deductions for disposal of property: 1982–83 and 1989–90 income years	989
<b><i>Petroleum mining</i></b>		
EZ 3	Petroleum development expenditure from 1 October 1990 to 15 December 1991	990
<b><i>Livestock</i></b>		
EZ 4	Valuation of livestock bailed or leased as at 2 September 1992	991
EZ 5	Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006	992
EZ 6	Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006	994
<b><i>Patent rights</i></b>		
EZ 7	Buying patent rights before 1 April 1993	995
<b><i>Leases of land</i></b>		
EZ 8	Premium paid on land leased before 1 April 1993	996
<b><i>Foreign investment fund rules</i></b>		
EZ 9	FIF interests held on 1 April 1993	997

## Income Tax

---

### *Depreciation*

EZ 10	Pool method for items accounted for by globo method for 1992–93 income year	997
EZ 11	Pool items accounted for by globo method for 1992–93 income year	997
EZ 12	Amounts of depreciation recovery income and depreciation loss for part business use up to the 2004–05 income year	998
EZ 13	Amount of depreciation loss for item acquired from associated person on or before 23 September 1997	999
EZ 14	Annual rate for item acquired on or after 1 April 1993 and before end of person’s 1994–95 income year	1000
EZ 15	Pre-1993 depreciation rate	1001
EZ 16	Annual rate for excluded depreciable property: 1992–93 tax year	1002
EZ 17	Amount of depreciation loss for plant or machinery additional to section EZ 16 amount	1004
EZ 18	Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994	1005
EZ 19	Section EZ 18 amount of depreciation loss when items transferred between companies in wholly-owned group before 1 April 1993	1006
EZ 20	Section EZ 18 amount of depreciation loss when person previously exempt from tax acquires item	1007
EZ 21	Adjusted tax value for software acquired before 1 April 1993	1008
EZ 22	Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995	1008
EZ 23	Base value and total deductions in section EE 57: before 1 April 1995	1009
EZ 24	Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005	1010

### *Definitions*

EZ 25	Meaning of new asset	1011
EZ 26	Meaning of New Zealand-new asset	1013
EZ 27	Meaning of qualifying capital value	1014
EZ 28	Meaning of qualifying improvement	1015
EZ 29	Meaning of qualifying asset	1016

### *Accident insurance*

EZ 30	Private insurers under Accident Insurance Act 1998	1017
EZ 31	Base premium for 1998–99 premium year under Accident Insurance Act 1998	1018

### *CFC and FIF rules*

EZ 32	Disclosure restrictions on grey list CFCs before 2011–12	1019
-------	--	------

## Income Tax

---

### *Old financial arrangements rules*

EZ 33	Application of old financial arrangements rules	1021
EZ 34	Election to apply financial arrangements rules in subpart EW	1021
EZ 35	Accruals in relation to income and expenditure in respect of financial arrangements	1021
EZ 36	Excepted financial arrangement that is part of financial arrangement	1028
EZ 37	Cash basis holder	1028
EZ 38	Income and expenditure where financial arrangement redeemed or disposed of	1033
EZ 39	Forgiveness of debt	1038
EZ 40	Accrued income written off	1039
EZ 41	Sale of debt to associate of debtor	1040
EZ 42	Post facto adjustment	1041
EZ 43	Variable principal debt instruments	1042
EZ 44	Relationship with rest of Act	1043
EZ 45	Application of old financial arrangements rules	1043
EZ 46	Election to treat short term trade credit as financial arrangement	1045
EZ 47	Election to continue to treat certain excepted financial arrangements as financial arrangements	1045
EZ 48	Definitions	1046
EZ 49	Determination of core acquisition price where consideration for property denominated in foreign currency	1059
EZ 50	Rules for non-market transactions	1060
EZ 51	Transitional adjustment when changing to financial arrangements rules	1061
EZ 52	References to new rules include old rules	1063

### **Part F**

#### **Recharacterisation of certain transactions**

##### Subpart FA—Recharacterisation of certain commercial arrangements

#### *Introductory provision*

FA 1	What this subpart does	1066
------	------------------------	------

#### *Debentures and shares*

FA 2	Recharacterisation of certain debentures	1066
FA 3	Recharacterisation of certain dividends: recovery of cost of shares held on revenue account	1068
FA 4	Recharacterisation of shareholder's base: company repurchasing share	1068

---

**Income Tax**

---

*Leases*

FA 5	Assets acquired and disposed of after deduction of payments under lease	1070
------	---	------

*Finance leases*

FA 6	Recharacterisation of amounts derived under finance leases	1072
FA 7	Determining amount of loan	1072
FA 8	Deductibility of expenditure under finance lease	1072
FA 9	Treatment when lease ends: lessee acquiring asset	1073
FA 10	Treatment when lease ends: lessor acquiring asset	1074
FA 11	Consecutive or successive finance leases	1075

*Hire purchase agreements*

FA 12	Recharacterisation of amounts derived under hire purchase agreements	1076
FA 13	Agreements recharacterised as sale with finance provided	1077
FA 14	Deductibility of expenditure or loss under hire purchase agreement	1077
FA 15	Treatment when agreement ends: seller acquiring property	1078
FA 16	Treatment when agreement ends: when seller is cash basis person	1080
FA 17	Treatment when agreement ends: when buyer is cash basis person	1080
FA 18	Treatment of amounts paid in income years after agreement ends	1081

Subpart FB—Transfers of relationship property

FB 1	What this subpart does	1082
FB 2	Personal property	1083
FB 3	Land acquired for certain purposes or under certain conditions	1083
FB 4	Land under scheme for major development or division	1084
FB 5	Disposal of land	1085
FB 6	Timber or right to take timber	1085
FB 7	Land with standing timber	1086
FB 8	Patent applications and patent rights	1086
FB 9	Financial arrangements rules	1087
FB 10	Continuity provisions: shares and options	1087
FB 11	Pension payments to former employees	1087
FB 12	Pension payments to former partners	1088
FB 13	Trading stock	1088
FB 14	Specified livestock	1089
FB 15	Specified livestock valued under herd scheme	1090
FB 16	Non-specified livestock	1091
FB 17	High-priced livestock	1092

## Income Tax

---

FB 18	Bloodstock	1093
FB 19	Leased assets	1093
FB 20	Mining assets	1094
FB 21	Depreciable property	1096
	Subpart FC—Distribution, transmission, and gifts of property	
	<b><i>Introductory provisions</i></b>	
FC 1	What this subpart does	1098
FC 2	Transfer at market value	1099
	<b><i>Exceptions for property transferred on death of person</i></b>	
FC 3	Property transferred to spouse or partner	1099
FC 4	Property transferred to charities or to close relatives and others	1100
FC 5	Land transferred to close relatives	1101
FC 6	Forestry assets transferred to close relatives	1101
FC 7	Transfer of prepaid property	1102
FC 8	Transfer of certain financial arrangements	1102
	Subpart FE—Interest apportionment on thin capitalisation	
	<b><i>Introductory provisions</i></b>	
FE 1	What this subpart does	1104
FE 2	When this subpart applies	1105
FE 3	Interest apportionment for individuals	1106
FE 4	Some definitions	1107
	<b><i>Interest apportionment rules</i></b>	
FE 5	Thresholds for application of interest apportionment rules	1108
FE 6	Apportionment of interest by excess debt entity	1109
FE 7	Apportionment of interest by reporting bank	1110
FE 8	Measurement dates	1111
FE 9	Elections	1112
FE 10	Currency	1113
FE 11	Temporary increases or decreases in value	1113
	<b><i>Calculations</i></b>	
FE 12	Calculation of debt percentages	1114
FE 13	Financial arrangements entered into with persons outside group	1115
	<b><i>Debt percentage of New Zealand group</i></b>	
FE 14	Consolidation of debts and assets	1116
FE 15	Total group debt	1117
FE 16	Total group assets	1118

## Income Tax

---

<i>Debt percentage of worldwide group</i>		
FE 17	Consolidation of debts and assets	1119
FE 18	Measurement of debts and assets of worldwide group	1119
<i>New Zealand banking group</i>		
FE 19	Banking group's equity threshold	1121
FE 20	Financial value and regulatory value	1121
FE 21	Banking group's New Zealand net equity	1122
FE 22	Notional offshore investment	1126
FE 23	Banking group's funding debt	1127
FE 24	Regulations	1128
<b><i>Determining membership of groups</i></b>		
<i>New Zealand group</i>		
FE 25	New Zealand group for excess debt entity that is a company	1129
FE 26	Identifying New Zealand parent	1130
FE 27	Establishing companies under parent's control	1132
FE 28	Identifying members of New Zealand group	1133
FE 29	Holding companies	1134
FE 30	Ownership interests in companies outside New Zealand group	1135
<i>Worldwide group</i>		
FE 31	Worldwide group for corporate excess debt entity	1136
FE 32	Joint venture parties	1137
<i>New Zealand banking group</i>		
FE 33	New Zealand banking group	1138
FE 34	Identifying ultimate parent	1138
FE 35	Persons who may be excluded from banking groups	1139
FE 36	Identifying members of New Zealand banking group	1140
FE 37	Reporting bank for New Zealand banking group	1142
<b><i>Measuring ownership interests in companies</i></b>		
FE 38	Measuring ownership interests in companies	1143
FE 39	Direct ownership interests	1143
FE 40	Tiered ownership interests	1143
FE 41	Treatment of associated persons' interests	1144
Subpart FF—Interest apportionment for conduit investment		
<b><i>Introductory provisions</i></b>		
FF 1	What this subpart does	1145
FF 2	When interest apportionment rule applies	1146
FF 3	Steps required to determine treatment of excessive interest expenditure	1146

## Income Tax

---

### *Interest apportionment rule*

FF 4	Threshold for application of interest apportionment rule	1147
FF 5	Determination of excess amount of interest expenditure of group	1148
FF 6	Conduit tax relief	1149
FF 7	Surplus to foreign dividends	1150

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

FF 8	Identifying members of FAI groups	1153
FF 9	Calculating debt percentage of New Zealand FAI groups	1153
FF 10	Calculating debt percentage of consolidated FAI groups	1155
FF 11	Changes in FAI group membership	1157

#### Subpart FL—Emigration of resident companies

FL 1	What this subpart does	1157
FL 2	Treatment of emigrating companies and their shareholders	1158

#### Subpart FM—Consolidated groups of companies

### *Introductory provisions*

FM 1	What this subpart applies to	1160
FM 2	Consolidation rules	1160
FM 3	Liability of consolidated groups and group companies	1161
FM 4	Limiting joint and several liability of group companies	1162
FM 5	Liability when company leaves consolidated group	1163
FM 6	Some general rules for the treatment of consolidated groups	1164

### *Calculating taxable income for consolidated group returns*

#### *Accounting generally*

FM 7	Treatment of amounts derived or expenditure incurred	1165
FM 8	Transactions between group companies: income	1166
FM 9	Amounts that are company's income	1167
FM 10	Expenditure: intra-group transactions	1167
FM 11	Expenditure: nexus with income derivation	1168
FM 12	Expenditure when deduction would be denied to consolidated group	1168
FM 13	Capital expenditure	1169
FM 14	Part-year financial statements	1169

#### *Accounting for particular property*

FM 15	Amortising property and revenue account property	1170
FM 16	Land or business: certain farming or forestry expenditure	1172
FM 17	Trading stock	1173
FM 18	Financial arrangements: transfer from company A to company B	1173

## Income Tax

---

FM 19	Financial arrangements: transfer for fair and reasonable consideration	1174
FM 20	Financial arrangements: transfer at market value	1175
FM 21	Property transfers when companies leave consolidated groups	1176
FM 22	Arrangements to avoid consolidation rules	1177
FM 23	Arrangements for disposal of shares	1177
<i>Treatment of foreign dividends</i>		
FM 24	General treatment of foreign dividends	1178
FM 25	Reduction in payments for foreign dividends	1179
FM 26	Using tax losses to pay FDP	1180
FM 27	Refunds of FDP	1181
FM 28	Refund when consolidated group has loss	1182
FM 29	Treatment of credit balance in consolidated group's FDP account	1183
FM 30	Application of certain provisions to consolidated groups	1184
<b>Membership of consolidated groups</b>		
<i>Eligibility and restrictions</i>		
FM 31	Eligibility rules	1186
FM 32	Restriction on membership of consolidated groups	1187
FM 33	When membership is reduced	1187
<i>Nominated companies</i>		
FM 34	Nominated companies	1187
<i>Forming, joining, or leaving consolidated groups</i>		
FM 35	Forming consolidated group	1188
FM 36	Joining existing consolidated group	1189
FM 37	Leaving consolidated group	1189
<i>When membership starts and stops</i>		
FM 38	Notice requirements on forming or joining consolidated group	1190
FM 39	Choosing to leave consolidated group	1191
FM 40	Losing eligibility or entitlement to be part of consolidated group	1192
FM 41	No nominated company	1193
FM 42	When company liquidated	1193
Subpart FN—Imputation groups of companies		
FN 1	When this subpart applies	1194
FN 2	Imputation rules	1194
FN 3	Liabilities of companies in imputation group	1195
FN 4	Eligibility rules	1195
FN 5	Imputation groups or subgroups with reduced numbers	1197
FN 6	Nominated companies	1197

## Income Tax

---

FN 7	Forming imputation groups	1198
FN 8	Trans-Tasman imputation groups and resident imputation subgroups	1199
FN 9	Joining existing imputation group	1199
FN 10	When membership of imputation group ends	1200
FN 11	Company choosing to leave imputation group	1200
FN 12	Company no longer eligible or entitled to membership	1201
FN 13	Imputation group with no nominated company	1202
FN 14	Effect of liquidation of company	1202
Subpart FO—Amalgamation of companies		
<i>Introductory provisions</i>		
FO 1	What this subpart does	1203
FO 2	Amalgamation rules	1204
FO 3	Resident's restricted amalgamations	1204
FO 4	Rights and obligations of amalgamated companies	1205
FO 5	Amalgamations and remitted liabilities	1206
<i>Treatment of shares, income, expenditure, and bad debts</i>		
FO 6	Cancellation of shares	1206
FO 7	Income derived after amalgamation	1206
FO 8	Bad debts and expenditure or loss on resident's restricted amalgamation	1207
FO 9	Unexpired portion of prepaid expenditure	1207
<i>Property passing to amalgamated company on amalgamation</i>		
FO 10	When property passes on resident's restricted amalgamation	1208
FO 11	When property passes on amalgamation other than resident's restricted amalgamation	1209
FO 12	Financial arrangements: resident's restricted amalgamation, companies in wholly-owned group	1210
FO 13	Financial arrangements: resident's restricted amalgamation, calculation method unchanged	1211
FO 14	Financial arrangements: resident's restricted amalgamation, other cases	1212
FO 15	Financial arrangements: amalgamation other than resident's restricted amalgamation	1212
FO 16	Amortising property	1213
FO 17	Land	1214
<i>Treatment of financial arrangements between amalgamating companies</i>		
FO 18	When amalgamating companies are parties to financial arrangement	1215

## Income Tax

---

FO 19	Calculation of outstanding accrued balance: consideration for discharge	1216
FO 20	Calculation of outstanding accrued balance: amounts remitted	1217
Subpart FZ—Terminating provisions		
<i>Debentures</i>		
FZ 1	Treatment of interest payable under debentures issued before certain date	1219
<i>Leases</i>		
FZ 2	Effect of specified lease on lessor and lessee	1219
FZ 3	Income of lessor under specified lease	1222
FZ 4	Deductions under specified leases	1223
<i>Relationship property</i>		
FZ 5	Land used in specified activity	1224
FZ 6	Commercial bills	1225
<i>Estate property</i>		
FZ 7	Transitional valuation rule for estate property	1225
<b>Part G</b>		
<b>Avoidance and non-market transactions</b>		
Subpart GA—Avoidance: general		
GA 1	Commissioner’s power to adjust	1227
GA 2	Commissioner’s power to adjust: FBT	1228
Subpart GB—Avoidance: specific		
<i>Arrangements involving dividend stripping</i>		
GB 1	Arrangements involving dividend stripping	1231
<i>Arrangements involving transfer pricing</i>		
GB 2	Arrangements involving transfer pricing	1232
<i>Arrangements involving tax losses</i>		
GB 3	Arrangements for carrying forward loss balances: companies	1233
GB 4	Arrangements for grouping tax losses: companies	1233
<i>Arrangements to defeat continuity provisions</i>		
GB 5	Arrangements involving trust beneficiaries	1234
<i>Arrangements involving attributing companies</i>		
GB 6	Arrangements involving attributing companies	1235
<i>Arrangements involving CFCs</i>		
GB 7	Arrangements involving CFC control interests	1235
GB 8	Arrangements involving attributed repatriation from CFCs	1236

## Income Tax

---

GB 9	Temporary disposals of direct control or income interests	1236
GB 10	Temporary acquisitions of direct control or income interests	1237
GB 11	Temporary increases in totals for control interest categories	1238
GB 12	Temporary reductions in totals for control interest categories	1239
GB 13	When combination of changes reduces income	1240
GB 14	When combination of changes increases loss	1241
GB 15	CFC income or loss: arrangements related to quarterly measurement	1242
<i>Arrangements involving FIFs</i>		
GB 16	FIF income or loss: arrangements for measurement day concessions	1243
<i>Arrangements involving film rights</i>		
GB 17	Excessive amounts for film rights or production expenditure	1243
GB 18	Arrangements to acquire film rights or incur production expenditure	1244
GB 19	When film production expenditure payments delayed or contingent	1245
<i>Arrangements involving petroleum mining</i>		
GB 20	Arrangements involving petroleum mining	1245
<i>Arrangements involving financial arrangements</i>		
GB 21	Dealing that defeats intention of financial arrangements rules	1248
<i>Arrangements involving trust beneficiary income</i>		
GB 22	Arrangements involving trust beneficiary income	1248
<i>Excessive remuneration</i>		
GB 23	Excessive remuneration to relatives	1249
GB 24	Exemption for genuine contracts	1251
GB 25	Close company remuneration to shareholders, directors, or relatives	1251
<i>Arrangements involving repatriation of commercial bills</i>		
GB 26	Arrangements involving repatriation of commercial bills	1252
<i>Attribution rule for income from personal services</i>		
GB 27	Attribution rule for income from personal services	1253
GB 28	Interpretation of terms used in section GB 27	1255
GB 29	Attribution rule: calculation	1257

## Income Tax

---

<i>Arrangements involving restrictive covenants</i>		
GB 30	Arrangements to avoid taxation of restrictive covenant payments	1259
<i>Arrangements involving fringe benefit tax</i>		
GB 31	FBT arrangements: general	1259
GB 32	Benefits provided to employee's associates	1260
<i>Arrangements involving depreciation loss</i>		
GB 33	Arrangements involving depreciation loss	1261
<i>Arrangements involving imputation rules</i>		
GB 34	ICA arrangements for carrying amounts forward	1262
GB 35	Imputation arrangements to obtain tax advantage	1262
GB 36	Reconstruction of imputation arrangements to obtain tax advantage	1264
GB 37	Arrangements for payment of dividend by other companies	1265
GB 38	When sections GB 35 to GB 37 apply to consolidated groups	1266
<i>Arrangements involving foreign dividends</i>		
GB 39	FDP arrangements: general	1267
GB 40	BETA arrangements for carrying amounts forward	1267
GB 41	FDPA arrangements for carrying amounts forward	1268
<i>Arrangements involving Maori authority credits</i>		
GB 42	Maori authority credit arrangements to obtain tax advantage	1268
GB 43	Reconstruction of Maori authority credit arrangements to obtain tax advantage	1270
<i>Arrangements involving family support credits</i>		
GB 44	Arrangements involving family support credits	1271
<i>Arrangements involving money not at risk</i>		
GB 45	Arrangements involving money not at risk	1271
GB 46	Deferral of surplus deductions from arrangements	1273
GB 47	Calculation rules for sections GB 45 and GB 46	1275
GB 48	Defined terms for sections GB 45 and GB 46	1276
<i>Arrangements involving returning share transfers</i>		
GB 49	Arrangements involving returning share transfers	1277
Subpart GC—Market value substituted		
<i>Disposals of trading stock or similar property</i>		
GC 1	Disposals of trading stock at below market value	1279
GC 2	Disposals of timber rights or standing timber	1279
GC 3	Disposals by life insurers	1280
GC 4	Disposals and acquisitions of FIF attributing interests	1280

## Income Tax

---

### *Leases*

GC 5	Leases for inadequate rent	1281
------	----------------------------	------

### *Transfer pricing arrangements*

GC 6	Purpose of rules and nature of arrangements	1282
GC 7	Excess amount payable by person	1283
GC 8	Insufficient amount receivable by person	1284
GC 9	Compensating arrangement: person paying less than arm's length amount	1285
GC 10	Compensating arrangement: person receiving more than arm's length amount	1286
GC 11	Requests for matching treatment	1287
GC 12	Effect on person's withholding obligations	1288
GC 13	Calculation of arm's length amounts	1288
GC 14	Definitions for sections GC 6 to GC 13	1289

### Subpart GZ—Terminating provisions

GZ 1	Limitation on section GB 20: petroleum mining arrangements	1290
------	--	------

## **Part H**

### **Taxation of certain entities**

#### Subpart HA—Attributing companies and loss-attributing companies

#### *Introductory provisions*

HA 1	What this subpart does	1292
HA 2	Meaning of attributing company	1293
HA 3	Meaning of loss-attributing company	1293
HA 4	Conditions applying	1294

#### *Attributing company status*

HA 5	Elections to become attributing company	1294
HA 6	Corporate requirements	1295
HA 7	Shareholding requirements	1295
HA 8	Shareholders' personal liability	1297
HA 9	Limit on foreign non-dividend income	1298
HA 10	Nature of loss-attributing company shares	1298
HA 11	When requirements no longer met	1299
HA 12	Avoidance arrangements	1301

#### *Treatment of profits, dividends, and tax losses*

HA 13	Attributing companies' distributions	1301
HA 14	Dividends paid by attributing companies	1301
HA 15	Fully imputed distributions	1302
HA 16	Exempt income	1304
HA 17	Dividends derived by attributing companies	1304

## Income Tax

---

HA 18	Treatment of dividends when attributing company status ends	1305
HA 19	Credit accounts and dividend statements	1306
HA 20	Attribution of tax losses	1307
HA 21	Loss balances not carried forward	1307
HA 22	Group companies using tax losses	1307
HA 23	Treatment of tax losses on amalgamation	1308
<i>Special tax matters for loss-attributing companies</i>		
HA 24	Treatment of tax losses other than certain foreign losses	1308
HA 25	Treatment of certain foreign losses	1309
HA 26	Attribution when balance dates differ	1310
HA 27	Attribution when loss results in reduction in value of shares	1311
<i>Elections: attributing companies</i>		
HA 28	Elections by trustee shareholders	1312
HA 29	Elections by majority shareholders	1312
HA 30	When elections take effect	1313
HA 31	Revocation of directors' elections	1313
HA 32	Revocation of shareholders' elections: by notice	1314
HA 33	Revocation of shareholders' elections: by event	1315
HA 34	Period of grace following death of shareholder	1315
HA 35	Period of grace following revocation of election	1316
HA 36	Period of grace following revocation of joint election	1317
HA 37	Period of grace for new shareholder	1317
<i>Elections: loss-attributing companies</i>		
HA 38	Elections by directors and shareholders required	1318
HA 39	Revocation of elections	1318
<i>Attributing company election tax</i>		
HA 40	Liability for attributing company election tax	1319
HA 41	Calculating attributing company election tax	1319
HA 42	Paying attributing company election tax	1321
<i>Effective interests in attributing companies</i>		
HA 43	Meaning of effective interest	1321
HA 44	Measuring effective interests	1322
Subpart HC—Trusts		
<i>Introductory provisions</i>		
HC 1	What this subpart does	1325
HC 2	Obligations of joint trustees for calculating income and providing returns	1326
HC 3	Multiple settlements	1326
HC 4	Corpus of trust	1327

## Income Tax

---

### *Trust income*

HC 5	Amounts derived by trustees	1327
HC 6	Beneficiary income	1328
HC 7	Trustee income	1329
HC 8	Amounts received after person's death	1329

### *Classification of trusts*

HC 9	Classifying trusts	1330
HC 10	Complying trusts	1330
HC 11	Foreign trusts	1331
HC 12	Non-complying trusts	1331
HC 13	Charitable trusts	1331

### *Distributions from trusts*

HC 14	Distributions from trusts	1332
HC 15	Taxable distributions from non-complying and foreign trusts	1333
HC 16	Ordering rule for distributions from non-complying and foreign trusts	1334

### *Tax treatment of amounts that beneficiaries derive from trusts*

HC 17	Amounts derived as beneficiary income	1337
HC 18	Taxable distributions from foreign trusts	1337
HC 19	Taxable distributions from non-complying trusts	1338
HC 20	Distributions from complying trusts	1338
HC 21	Distributions from community trusts	1338
HC 22	Use of tax losses to reduce taxable distributions from non-complying trusts	1339
HC 23	Temporary absences of beneficiaries	1340

### *Tax treatment of trustee income*

HC 24	Trustees' obligations	1341
HC 25	Foreign-sourced amounts: non-resident trustees	1341
HC 26	Foreign-sourced amounts: resident trustees	1343

### *Settlors and their liabilities*

HC 27	Who is a settlor?	1344
HC 28	Activities treated as those of settlor	1345
HC 29	Settlors' liability to income tax	1346

### *Treatment of transition situations*

HC 30	Treatment of foreign trusts when settlor becomes resident	1348
-------	---	------

### *Valuation of property, trading stock, and financial arrangements*

HC 31	When existing trusts come into tax base	1349
-------	---	------

## Income Tax

---

### *Rate and payment of income tax*

HC 32	Liability of trustee as agent	1351
HC 33	Choosing to satisfy income tax liability of trustee	1351
HC 34	Taxable distributions from non-complying trusts	1352
HC 35	Beneficiary income of minors	1352
HC 36	Trusts and minor beneficiary rule	1354
HC 37	Testamentary trusts and minor beneficiary rule	1356

### Subpart HD—Agents

#### *Introductory provisions*

HD 1	What this subpart does	1357
HD 2	Joint liability of principal and agent for tax obligations	1358
HD 3	Agents' duties and liabilities	1358
HD 4	Treatment of principals	1359
HD 5	Matters between principals and agents	1359
HD 6	When relationship effectively that of principal and agent	1360
HD 7	Rate of tax	1360

#### *Particular cases*

HD 8	Circumstances giving rise to agency	1361
HD 9	Guardians	1361
HD 10	Mortgagees in possession	1361
HD 11	Nominated companies	1361
HD 12	Trusts	1362
HD 13	Unit trusts	1362
HD 14	Companies issuing debentures	1362
HD 15	Shell companies	1364
HD 16	Non-resident general insurers	1367
HD 17	Agent paying premiums to residents of Switzerland	1368

#### *Absentees*

HD 18	Agency in relation to absentees generally	1369
HD 19	Persons receiving absentees' income	1369
HD 20	Persons carrying on business for or with absentees	1370
HD 21	Companies	1370
HD 22	Banking companies	1370
HD 23	Trustees of group investment funds	1371
HD 24	Shipping businesses	1371
HD 25	Persons remitting amounts outside New Zealand	1371

#### *Non-residents*

HD 26	Agency in relation to non-residents generally	1372
HD 27	Employers	1372
HD 28	Government pensions and payments under superannuation schemes	1373
HD 29	Persons buying goods from overseas	1373

## Income Tax

---

Subpart HE—Mutual associations		
HE 1	Income and deductions of mutual associations	1374
HE 2	Classes of mutual transaction	1374
HE 3	Association rebates	1375
HE 4	Apportionment when transactions with members and non-members	1376
HE 5	Association rebates paid by shares or credit	1376
Subpart HF—Maori authorities		
<i>Introductory provisions</i>		
HF 1	Maori authorities and the Maori authority rules	1377
HF 2	Who is eligible to be a Maori authority?	1378
HF 3	Applying provisions to Maori authorities	1380
<i>Maori authority distributions</i>		
HF 4	What constitutes a Maori authority distribution?	1380
HF 5	Notional distributions of co-operative companies	1381
HF 6	Tax treatment of Maori authority distributions	1382
HF 7	Taxable Maori authority distributions	1382
HF 8	Proportional allocation	1382
<i>Changing status</i>		
HF 9	Treatment of companies and trusts that choose to apply this subpart	1385
HF 10	Market value calculations	1385
HF 11	Choosing to become Maori authority	1386
Subpart HR—Other entities		
<i>Partnerships and joint ventures</i>		
HR 1	Partnerships and joint ventures	1387
<i>Funds</i>		
HR 2	Group investment funds	1388
HR 3	Definitions for section HR 2: group investment funds	1389
HR 4	Government Superannuation Fund	1392
<i>Airport operators</i>		
HR 5	Airport operators: general	1392
HR 6	Airport operator's assets	1393
HR 7	Meaning of airport operator's activities	1395
<i>Transitional residents</i>		
HR 8	Transitional residents	1395
Subpart HZ—Terminating provisions		
HZ 1	Distributions from trusts of pre-1989 tax reserves	1396
HZ 2	Trusts that may become complying trusts	1397

## Part I

**Treatment of tax losses**

Subpart IA—General rules for tax losses

IA 1	What this subpart does	1398
IA 2	Tax losses	1398
IA 3	Using tax losses in tax year	1400
IA 4	Using loss balances carried forward to tax year	1401
IA 5	Restrictions on companies' loss balances carried forward	1402
IA 6	Restrictions on companies grouping tax losses	1403
IA 7	Restrictions relating to ring-fenced tax losses	1403
IA 8	Restrictions relating to schedular income	1405
IA 9	Ordering rules	1406
IA 10	Amended assessments	1406

Subpart IC—Grouping tax losses

*Introductory provisions*

IC 1	Company A making tax loss available to company B	1407
IC 2	Threshold levels for grouping tax losses in tax year	1408
IC 3	Common ownership: group of companies	1409
IC 4	Common ownership: wholly-owned groups of companies	1410

*Requirements and methods*

IC 5	Company B using company A's tax loss	1410
IC 6	Common ownership for period	1412
IC 7	Residence of company A	1413
IC 8	Limitations on amounts used	1413
IC 9	Date for payment and notice to Commissioner	1414
IC 10	When companies have different balance dates	1415
IC 11	Reduction of amounts used by companies	1415
IC 12	Bad debts or decline in value of shares	1416

Subpart ID—Use of tax losses by consolidated groups

ID 1	Treatment of tax losses by consolidated groups	1417
ID 2	Pre-consolidation losses: general treatment	1418
ID 3	Pre-consolidation losses: use by group companies	1419
ID 4	Pre-consolidation losses on entry: part-year rule	1420
ID 5	Pre-consolidation losses on exit: part-year rule	1421

Subpart IE—Treatment of tax losses on amalgamation of companies

IE 1	When this subpart applies	1422
IE 2	Treatment of tax losses by amalgamating company	1423
IE 3	Treatment of tax losses by amalgamated company	1424
IE 4	Group companies' treatment of tax losses on amalgamation	1424
IE 5	Applying the continuity provisions when companies amalgamate	1425

## Income Tax

---

Subpart IP—Meeting requirements for part-years		
<i>Introductory provisions</i>		
IP 1	When this subpart applies	1426
IP 2	Group companies' common span	1427
<i>Tax loss components carried forward</i>		
IP 3	Continuity breach: tax loss components of companies carried forward	1427
<i>Grouping part-year tax losses</i>		
IP 4	Breach in income year in which tax loss component arises	1429
IP 5	Breach in tax year in which loss balance is grouped	1430
<i>Statements and notices</i>		
IP 6	Financial statements required	1430
IP 7	Notices required	1432
Subpart IQ—Attributed CFC net losses and FIF net losses		
IQ 1	General treatment of attributed CFC net losses and FIF net losses	1432
IQ 2	Ring-fencing cap on attributed CFC net losses	1433
IQ 3	Ring-fencing cap on FIF net losses	1434
IQ 4	Group companies using attributed CFC net losses	1435
IQ 5	Group companies using FIF net losses	1436
IQ 6	Pre-consolidation losses: general treatment	1438
IQ 7	When group membership lacking in loss period	1439
IQ 8	When group membership lacking in tax year of use	1440
IQ 9	When attributed CFC net loss becomes FIF net loss	1441
Subpart IS—Mining companies' and petroleum miners' tax losses		
IS 1	General treatment of mining companies' tax losses	1442
IS 2	Treatment of tax losses resulting from certain expenditure	1442
IS 3	Holding companies' tax losses	1443
IS 4	Adjustments in certain circumstances	1444
IS 5	Petroleum miners' tax losses	1444
IS 6	When company stops being mining company	1445
Subpart IT—Life insurers' net losses		
IT 1	Life insurers' policyholder net losses	1446
Subpart IV—Treatment of certain supplementary dividends		
IV 1	Supplementary dividend holding companies	1447

## Income Tax

---

	Subpart IW—Use of tax losses to pay shortfall penalties	
IW 1	Shortfall penalties	1448
	Subpart IZ—Terminating provisions	
IZ 1	Use of specified activity net losses	1449
IZ 2	Petroleum mining companies: treatment of payments from shareholders	1452
IZ 3	Petroleum mining companies: use of loss balances	1453
IZ 4	Tax losses for tax years before 1977–78 tax year	1455
IZ 5	Companies' tax losses for tax years before 1991–92 tax year	1456
IZ 6	Companies' tax losses for 1990–91 and 1991–92 tax years	1456
IZ 7	Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92	1457

### Part L

#### Tax credits and other credits

	Subpart LA—General rules for tax credits	
LA 1	What this Part does	1459
LA 2	Satisfaction of income tax liability	1459
LA 3	When total tax credit less than or equal to income tax liability	1459
LA 4	When total credit more than income tax liability	1460
LA 5	Treatment of remaining credits	1460
LA 6	Remaining refundable credits: PAYE, RWT, and certain other items	1461
LA 7	Remaining refundable credits: family scheme income	1462
LA 8	Remaining refundable credits: NRWT	1462
LA 9	Use of tax credits	1463
LA 10	Meaning of tax credit	1463
	Subpart LB—Tax credits for payments, deductions, and family income assistance	
LB 1	Tax credits for PAYE income payments	1463
LB 2	Tax credits for provisional tax payments	1464
LB 3	Tax credits for RWT	1464
LB 4	Tax credits for family scheme income	1464
LB 5	Tax credits for NRWT	1465
LB 6	Tax credits for caregivers	1465
	Subpart LC—Tax credits for natural persons	
	<i>Tax credits for persons on low incomes</i>	
LC 1	When net income under low income amount	1467
LC 2	When net income in low income abatement range	1468

---

**Income Tax**

---

***Tax credits for children***

LC 3	Child's income	1469
------	----------------	------

***Tax credits for transitional circumstances***

LC 4	Tax credits for transitional circumstances	1470
LC 5	Meaning of engaged in full-time work	1472

***Tax credits for housekeeping***

LC 6	Tax credits for housekeeping	1474
LC 7	Meaning of housekeeper	1474
LC 8	Some definitions	1476

***Tax credits for absentees***

LC 9	Tax credits for absentees	1476
------	---------------------------	------

***Adjustments to certain tax credits***

LC 10	Adjustment for change in return date	1477
LC 11	Adjustment when person is non-resident for part of tax year	1478
LC 12	Assessment when person is non-resident	1479

Subpart LD—Tax credits for public benefit gifts

LD 1	Tax credits for public benefit gifts	1480
LD 2	Exclusions	1481
LD 3	Meaning of public benefit gift	1481

Subpart LE—Tax credits for imputation credits

LE 1	Tax credits for imputation credits	1482
LE 2	Use of remaining credits by companies and trustees	1483
LE 3	Use of remaining credits by others	1484
LE 4	Trustees for minor beneficiaries	1484
LE 5	Beneficiaries of trusts	1485
LE 6	Partners in partnerships	1485
LE 7	Credit transfer notices	1486
LE 8	Application of imputation ratio	1487
LE 9	Application of combined imputation and FDP ratio	1487
LE 10	When income tax unpaid	1488
LE 11	Evidential requirements	1488

Subpart LF—Tax credits for FDP credits

LF 1	Tax credits for FDP credits	1489
LF 2	Trustees for minor beneficiaries	1490
LF 3	Beneficiaries of trusts	1490
LF 4	Partners in partnerships	1491
LF 5	Credit transfer notices	1492
LF 6	Application of FDP ratio	1492
LF 7	Application of combined imputation and FDP ratio	1493
LF 8	Credits for persons who are non-resident or who receive exempt income	1493

## Income Tax

---

LF 9	When income tax unpaid	1494
LF 10	Evidential requirements	1495
	Subpart LJ—Tax credits for foreign income tax	
LJ 1	What this subpart does	1495
LJ 2	Tax credits for foreign income tax	1496
LJ 3	Meaning of foreign income tax	1497
LJ 4	Meaning of segment of foreign-sourced income	1497
LJ 5	Calculation of New Zealand tax	1497
LJ 6	Taxable distributions and NRWT rules	1499
LJ 7	Repaid foreign tax	1500
	Subpart LK—Tax credits relating to attributed CFC income	
	<i>Amounts of credits</i>	
LK 1	Tax credits relating to attributed CFC income	1501
LK 2	Calculation of amount of credit	1502
LK 3	Currency conversion	1503
	<i>Use of credits in later tax years</i>	
LK 4	Use of remaining credits	1504
LK 5	Companies' credits carried forward	1504
LK 6	Use of credits by group companies	1504
	<i>Treatment of taxable distributions</i>	
LK 7	Taxable distributions and NRWT rules	1506
	<i>Consolidated companies</i>	
LK 8	Tax credits of consolidated companies	1507
LK 9	Use of company's credits carried forward	1507
LK 10	When group membership lacking in tax year in which credit arises	1508
LK 11	When group membership lacking in tax year in which credit used	1509
	<i>Amalgamations of companies</i>	
LK 12	Treatment of credits when companies amalgamate	1510
LK 13	Use of credits by amalgamated company	1510
LK 14	Use by amalgamated company of credits carried forward	1511
LK 15	Use of amalgamating company's credits	1512
	Subpart LL—Underlying foreign tax credits	
LL 1	What this subpart does	1512
LL 2	Tax credits for underlying foreign tax	1513
LL 3	Meaning of grey list dividend	1515
LL 4	Tracking accounts	1517
LL 5	Meaning of foreign dividend company net earnings	1520
LL 6	Foreign dividend company lower tier UFTCs	1521
LL 7	Conduit financing arrangements	1522

## Income Tax

---

LL 8	Currency conversion	1523
LL 9	Some definitions	1524
	Subpart LO—Tax credits for Maori authority credits	
LO 1	Tax credits for Maori authority credits	1527
LO 2	Beneficiaries of trusts	1528
LO 3	Application of Maori authority distribution ratio	1529
LO 4	When income tax unpaid	1529
LO 5	Evidential requirements	1530
	Subpart LP—Tax credits for supplementary dividends	
	<i>Introductory provision</i>	
LP 1	What this subpart does	1531
	<i>Use of credits</i>	
LP 2	Tax credits for supplementary dividends	1531
LP 3	Use of remaining credits	1533
LP 4	Continuity rules for carrying credits forward	1534
LP 5	Application of benchmark dividend rules and imputation credit ratio	1535
LP 6	Deriving supplementary dividend and breach of terms of trust	1535
	<i>Supplementary dividend holding companies</i>	
LP 7	Requirements for supplementary dividend holding companies	1536
LP 8	Relationship with exempt income rules	1536
LP 9	Relationship with RWT rules	1537
LP 10	Limitation on deductions	1537
	Subpart LQ—Tax credits of CTR companies	
LQ 1	Tax credits of CTR companies	1539
LQ 2	Limitation on amount of credit	1540
LQ 3	Determining percentage of non-resident shareholders	1541
LQ 4	Date for determining percentage of non-resident shareholders	1542
LQ 5	CTR additional dividends	1543
	Subpart LR—Tax credits for policyholder income	
LR 1	Tax credits for policyholder income	1544
	Subpart LZ—Terminating provisions	
	<i>Underlying foreign tax credits</i>	
LZ 1	Low tax jurisdiction companies	1545
	<i>Credits for certain non-resident investment companies</i>	
LZ 2	Certain development projects	1546
LZ 3	Interest derived from development investments	1547
LZ 4	Dividends derived from development investments	1547

## Income Tax

---

LZ 5	Some definitions	1548
	<i>Credits for interest on home vendor mortgages</i>	
LZ 6	Interest on home vendor mortgages	1548
LZ 7	Maximum amount of credit under section LZ 6	1549
LZ 8	Meaning of home vendor mortgage	1550
	<i>Credits for savings in special home ownership accounts</i>	
LZ 9	Savings in special home ownership accounts	1550
LZ 10	Maximum amount for 1 special home ownership account for 1 tax year	1551
LZ 11	Maximum amount for all special home ownership accounts for all tax years	1551
LZ 12	Meaning of increase in savings	1551
	<b>Part M</b>	
	<b>Tax credits for families</b>	
	Subpart MA—General provisions	
MA 1	What this Part does	1553
MA 2	Relationship with core provisions	1553
MA 3	Excluded income	1553
MA 4	Calculation of amounts of credit producing negative amounts	1553
MA 5	Advice from outside agencies	1554
MA 6	Avoidance arrangements	1554
MA 7	Meaning of full-time earner	1554
MA 8	Some definitions	1555
	Subpart MB—Adjustment of net income for family scheme	
MB 1	Adjustments for calculation of family scheme income	1557
MB 2	Adjustment for period that is less or more than 1 year	1559
MB 3	When person carries on 1 or more businesses	1559
MB 4	Family scheme income of major shareholders in close companies	1560
MB 5	Treatment of distributions from superannuation schemes	1561
	Subpart MC—Entitlements under family scheme	
MC 1	What this subpart does	1562
MC 2	Who qualifies for entitlements under family scheme?	1563
MC 3	First requirement: person's age	1563
MC 4	Second requirement: principal care	1564
MC 5	Third requirement: residence	1564
MC 6	When person does not qualify	1564
MC 7	When spouse or partner entitled under family scheme	1565
MC 8	Continuing requirements	1565
MC 9	Credits for person aged 18	1566

## Income Tax

---

MC 10	Principal caregiver	1567
MC 11	Relationship periods and entitlement periods	1568
Subpart MD—Family assistance credit		
<i>Calculating amount of credit</i>		
MD 1	Family assistance credit	1569
MD 2	Calculating net contributions to credits	1570
<i>Family support</i>		
MD 3	Calculation of family support	1571
<i>In-work payment</i>		
MD 4	Entitlement to in-work payment	1572
MD 5	First requirement: person's age	1573
MD 6	Second requirement: principal care	1573
MD 7	Third requirement: residence	1573
MD 8	Fourth requirement: person not receiving benefit	1574
MD 9	Fifth requirement: full-time earner	1574
MD 10	Calculation of in-work payment	1576
<i>Parental tax credit</i>		
MD 11	Entitlement to parental tax credit	1577
MD 12	Calculation of parental tax credit	1578
<i>Family credit abatement</i>		
MD 13	Calculation of family credit abatement	1579
MD 14	Person receiving protected family support	1581
MD 15	Family scheme income for purposes of section MD 14	1581
Subpart ME—Family tax credit		
ME 1	Family tax credit	1582
ME 2	Meaning of employment for this subpart	1583
Subpart MF—Payment of credits		
MF 1	Application for payment of tax credit by instalment	1584
MF 2	When person not entitled to payment by instalment	1585
MF 3	Calculating amount of interim family assistance credit	1586
MF 4	Requirements for calculating instalment of tax credit	1587
MF 5	Recovery of overpaid tax credit	1587
MF 6	Overpayment of tax credit	1588
MF 7	Orders in Council	1588
Subpart MZ—Terminating provisions		
MZ 1	Entitlement to child tax credit	1590
MZ 2	Calculation of child tax credit	1591

## Part O

**Income Tax**

---

**Memorandum accounts**

Subpart OA—General provisions

*Introductory provisions*

OA 1	What this Part does	1593
OA 2	Memorandum accounts	1593
OA 3	General rules for maintaining memorandum accounts	1594
OA 4	Certain credits and debits arising only in group accounts	1595

*Credits and debits*

OA 5	Credits	1595
OA 6	Debits	1597

*Opening balances*

OA 7	Opening balances of memorandum accounts	1599
------	---	------

*Shareholder continuity requirements*

OA 8	Shareholder continuity requirements for memorandum accounts	1600
------	---	------

*Treatment of credits and debits on resident's restricted amalgamation*

*General provision*

OA 9	General treatment of credits and debits on resident's restricted amalgamation	1602
------	---	------

*When companies amalgamate*

OA 10	Memorandum accounts on resident's restricted amalgamation	1603
OA 11	FDP account on resident's restricted amalgamation	1604
OA 12	CTR account on resident's restricted amalgamation	1605
OA 13	Policyholder credit account on resident's restricted amalgamation	1606

*Amalgamation of companies in consolidated groups*

OA 14	Continuity of shareholding when group companies amalgamate	1607
OA 15	When credits or debits due but not recorded	1608
OA 16	When FDP account ends on resident's restricted amalgamation	1609
OA 17	When policyholder credit account ends on resident's restricted amalgamation	1610

*Maximum permitted ratios*

OA 18	Calculation of maximum permitted ratios	1611
-------	---	------

## Income Tax

---

### Subpart OB—Imputation credit accounts

#### *Introductory provisions*

OB 1	General rules for companies with imputation credit accounts	1614
OB 2	Australian companies with imputation credit accounts	1615
OB 3	Imputation credit accounts	1617

#### *Imputation credits*

OB 4	ICA payment of tax	1618
OB 5	ICA deposit in tax pooling account	1619
OB 6	ICA transfer from tax pooling account	1619
OB 7	ICA payment of further income tax	1620
OB 8	ICA RWT withheld	1620
OB 9	ICA dividend derived with imputation credit	1621
OB 10	ICA dividend derived with FDP credit	1621
OB 11	ICA payment of FDP	1622
OB 12	ICA transfer from FDP account	1622
OB 13	ICA transfer of debit balance on leaving wholly-owned group	1623
OB 14	ICA payment of tax on leaving wholly-owned group	1624
OB 15	ICA payment of tax on joining wholly-owned group	1625
OB 16	ICA attribution for personal services	1625
OB 17	ICA transfer from policyholder credit account	1626
OB 18	ICA transfer from ASC account	1626
OB 19	ICA transfer to master fund	1627
OB 20	ICA distribution with Maori authority credit	1627
OB 21	ICA balance of Maori authority credit account	1628
OB 22	ICA replacement payment to company under share-lending arrangement	1628
OB 23	ICA credit transfer to company	1629
OB 24	ICA credit on resident's restricted amalgamation	1629
OB 25	ICA reversal of tax advantage arrangement	1630
OB 26	ICA elimination of double debit	1631
OB 27	ICA NRWT withheld	1632
OB 28	ICA payment of amount of tax for schedular payment	1633
OB 29	ICA payment of schedular income tax	1633

#### *Imputation debits*

OB 30	ICA payment of dividend	1634
OB 31	ICA allocation of provisional tax	1634
OB 32	ICA refund of income tax	1635
OB 33	ICA amount applied to pay other taxes	1636
OB 34	ICA refund from tax pooling account	1636
OB 35	ICA transfer within tax pooling account	1637
OB 36	ICA refund of FDP	1638
OB 37	ICA refund of tax credit	1639

## Income Tax

---

OB 38	ICA overpayment of FDP	1639
OB 39	ICA transfer for net foreign attributed income	1640
OB 40	ICA attribution for personal services	1641
OB 41	ICA debit for loss of shareholder continuity	1642
OB 42	ICA on-market cancellation	1643
OB 43	ICA breach of imputation ratio	1643
OB 44	ICA debit on leaving wholly-owned group	1644
OB 45	ICA redemption debit	1645
OB 46	ICA transfer from member fund	1647
OB 47	ICA transfer to policyholder credit account	1648
OB 48	ICA credit balance when Maori authority credit account starts	1650
OB 49	ICA replacement payment by company under share-lending arrangement	1651
OB 50	ICA returning share transfer	1651
OB 51	ICA credit transfer by company	1652
OB 52	ICA imputation credit of consolidated imputation group	1652
OB 53	ICA debit on resident's restricted amalgamation	1653
OB 54	ICA tax advantage arrangement	1654
OB 55	ICA retrospective imputation credit	1655
OB 56	ICA final balance	1655
OB 57	ICA refund of NRWT	1656
OB 58	ICA refund of amount of tax for schedular payment	1656
OB 59	ICA refund of schedular income tax	1657
<b><i>Imputation credits attached to dividends</i></b>		
OB 60	Imputation credits attached to dividends	1657
OB 61	ICA benchmark dividend rules	1658
OB 62	Retrospective attachment of imputation credits	1660
OB 63	Australian dividends	1662
OB 64	Replacement payments	1663
<b><i>Further income tax</i></b>		
OB 65	Further income tax for ICA closing debit balance	1664
OB 66	Further income tax when company stops being ICA company	1664
OB 67	Reduction of further income tax	1665
OB 68	Income tax paid satisfying liability for further income tax	1666
OB 69	Further income tax paid satisfying liability for income tax	1666
OB 70	Application of other provisions	1668
<b><i>Imputation additional tax</i></b>		
OB 71	Imputation additional tax on leaving wholly-owned group	1668

## Income Tax

---

OB 72	Imputation additional tax on joining wholly-owned group	1671
<i>Distributions of statutory producer boards and co-operative companies</i>		
OB 73	Statutory producer boards attaching imputation credits to cash distributions	1673
OB 74	Statutory producer boards attaching imputation credits to notional distributions	1675
OB 75	Statutory producer boards' notional distributions that are dividends	1676
OB 76	Statutory producer boards attaching FDP credits	1677
OB 77	When and how statutory producer board makes election	1678
OB 78	Co-operative companies attaching imputation credits to cash distributions	1678
OB 79	Co-operative companies attaching imputation credits to notional distributions	1680
OB 80	Co-operative companies' notional distributions that are dividends	1681
OB 81	Co-operative companies attaching FDP credits	1682
OB 82	When and how co-operative company makes election	1682
Subpart OC—FDP accounts		
<i>Introductory provisions</i>		
OC 1	General rules for companies with FDP accounts	1684
OC 2	FDP accounts	1686
OC 3	Choosing to become FDPA company	1686
OC 4	When company chooses to stop being FDPA company	1686
OC 5	When company emigrates	1687
<i>FDP credits</i>		
OC 6	FDPA payment of FDP	1687
OC 7	FDPA dividend derived with FDP credit	1688
OC 8	FDPA payment of FDP for transfer from CTR account	1688
OC 9	FDPA transfer for net foreign attributed income	1689
OC 10	FDPA payment of FDP for conduit debit balance	1689
OC 11	FDPA credit transfer to company	1690
OC 12	FDPA reversal of tax advantage arrangement	1690
<i>FDP debits</i>		
OC 13	FDPA payment of dividend	1691
OC 14	FDPA refund of FDP	1691
OC 15	FDPA overpayment of FDP	1692
OC 16	FDPA refund of tax credit	1693
OC 17	FDPA credit transfer by company	1693
OC 18	FDPA transfer to imputation credit account	1693
OC 19	FDPA transfer to CTR account	1695

## Income Tax

---

OC 20	FDPA transfer to policyholder credit account	1696
OC 21	FDPA transfer to group account	1698
OC 22	FDPA breach of FDP ratio	1698
OC 23	FDPA breach of FDP ratio by PCA company	1699
OC 24	FDPA debit for loss of shareholder continuity	1700
OC 25	FDPA tax advantage arrangement	1701
OC 26	FDPA final balance	1701

### *FDP credits attached to dividends*

OC 27	FDP credits attached to dividends	1702
OC 28	FDPA benchmark dividend rules	1703
OC 29	FDP credits and imputation credits attached to dividends	1704

### *Further FDP*

OC 30	Payment of further FDP for closing debit balance	1705
OC 31	Payment of further FDP when company no longer New Zealand resident	1706
OC 32	Reduction of further FDP	1707
OC 33	FDP paid satisfying liability for further FDP	1707
OC 34	Further FDP paid satisfying liability for FDP	1708

### *Some definitions*

OC 35	Meaning of FDP reference period	1708
OC 36	Meaning of maximum deficit debit	1709
OC 37	Meaning of policyholder FDP ratio	1709
OC 38	Meaning of reduced deficit debit	1710
OC 39	Meaning of shareholder FDP ratio	1711

## Subpart OD—CTR accounts

### *Introductory provisions*

OD 1	General rules for companies with CTR accounts	1713
OD 2	CTR accounts	1714
OD 3	Choosing to become CTR company	1714
OD 4	When company stops being CTR company	1714

### *CTR credits*

OD 5	CTRA tax credit for conduit tax relief	1715
OD 6	CTRA transfer from FDP account	1717
OD 7	CTRA dividend derived with CTR credit	1717
OD 8	CTRA reduction of FDP	1717
OD 9	CTRA reversal of tax advantage arrangement	1718

### *CTR debits*

OD 10	CTRA payment of dividend	1718
OD 11	CTRA transfer to FDP account	1719
OD 12	CTRA transfer to group account	1720
OD 13	CTRA adjustment for conduit tax relief	1721
OD 14	CTRA break in shareholding chain for group company	1721

## Income Tax

---

OD 15	CTRA break in shareholding chain for company	1723
OD 16	CTRA increase in resident shareholding	1724
OD 17	CTRA breach of CTR ratio	1725
OD 18	CTRA tax advantage arrangement	1726
OD 19	CTRA final balance	1727

### *CTR credits attached to dividends*

OD 20	CTR credits attached to dividends	1727
OD 21	CTRA benchmark dividend rules	1728
OD 22	CTR credits and imputation credits attached to dividends	1730

### *Payment of FDP and refunds*

OD 23	FDP payable for CTR debits	1731
OD 24	FDP payable on resident's restricted amalgamation	1732
OD 25	Refunds on transfers to CTR account	1733

### Subpart OE—Branch equivalent tax accounts

#### *Introductory provision*

OE 1	General rules for companies and other persons with branch equivalent tax accounts	1734
------	---	------

#### *Companies with branch equivalent tax accounts*

##### *Introductory provisions*

OE 2	Branch equivalent tax accounts of companies	1735
OE 3	Choosing to become BETA company	1736
OE 4	When company stops being BETA company	1736
OE 5	Treatment of attributed CFC income and FIF income in this subpart	1737

##### *Branch equivalent tax credits*

OE 6	BETA payment of income tax on foreign income	1737
OE 7	BETA payment of income tax	1738
OE 8	BETA unused amount of debit balance	1740
OE 9	BETA refund of FDP	1741
OE 10	BETA credit for loss of shareholder continuity	1742
OE 11	BETA final balance	1742

##### *Branch equivalent tax debits*

OE 12	BETA payment of FDP	1743
OE 13	BETA reduction in FDP	1743
OE 14	BETA refund of income tax	1744
OE 15	BETA debit for loss of shareholder continuity	1745
OE 16	BETA final balance	1745

#### *Persons with branch equivalent tax accounts*

##### *Introductory provisions*

OE 17	Person choosing to become BETA person	1746
OE 18	When person stops being BETA person	1746

## Income Tax

---

<i>Branch equivalent tax credits</i>		
OE 19	BETA person's payment of income tax on foreign income	1747
<i>Branch equivalent tax debits</i>		
OE 20	BETA person's payment of income tax	1748
OE 21	BETA person's refund of income tax	1749
OE 22	BETA person's final balance	1749
Subpart OF—Available subscribed capital accounts		
<i>Introductory provisions</i>		
OF 1	General rules for companies with ASC accounts	1750
OF 2	ASC accounts	1751
OF 3	Choosing to become ASC account company	1751
OF 4	When public unit trust or group investment fund is liquidated	1752
<i>ASC credits</i>		
OF 5	ASCA redemption credit	1752
<i>ASC debits</i>		
OF 6	ASCA transfer to imputation credit account	1753
Subpart OJ—Policyholder credit accounts		
<i>Introductory provision</i>		
OJ 1	General rules for companies and other persons with policyholder credit accounts	1756
<i>Companies with policyholder credit accounts</i>		
<i>Introductory provision</i>		
OJ 2	Policyholder credit accounts of companies	1756
<i>Policyholder credits of PCA company</i>		
OJ 3	PCA transfer from imputation credit account	1757
OJ 4	PCA transfer from FDP account	1758
OJ 5	PCA transfer of life insurance business	1758
OJ 6	PCA credit for maximum deficit in FDP account	1759
OJ 7	PCA credit for reduced deficit in FDP account	1760
<i>Policyholder debits of PCA company</i>		
OJ 8	PCA payment of tax relating to policyholder base	1760
OJ 9	PCA transfer to imputation credit account	1761
OJ 10	PCA transfer to group account	1763
OJ 11	PCA company's transfer of life insurance business	1764
<i>Persons with policyholder credit accounts</i>		
<i>Introductory provisions</i>		
OJ 12	Choosing to become PCA person	1765
OJ 13	Choosing to stop being PCA person	1765

## Income Tax

---

### *Policyholder credits of PCA person*

OJ 14	PCA person's equivalent credit	1766
OJ 15	PCA person's credit for transfer of life insurance business	1767

### *Policyholder debits of PCA person*

OJ 16	PCA person's payment of tax relating to policyholder base	1768
OJ 17	PCA person's equivalent debit	1769
OJ 18	PCA person's debit for transfer of life insurance business	1770

### Subpart OK—Maori authority credit accounts

#### *Introductory provision*

OK 1	General rules for Maori authorities with Maori authority credit accounts	1772
------	--	------

#### *Maori authority credits*

OK 2	MACA payment of tax	1773
OK 3	MACA payment of tax to other Maori authorities	1773
OK 4	MACA payment of further income tax	1774
OK 5	MACA distribution with Maori authority credit	1774
OK 6	MACA dividend derived with imputation credit	1775
OK 7	MACA dividend derived with FDP credit	1775
OK 8	MACA RWT withheld	1775
OK 9	MACA reversal of tax advantage arrangement	1776

#### *Maori authority debits*

OK 10	MACA distribution	1777
OK 11	MACA allocation of provisional tax	1777
OK 12	MACA refund of income tax	1778
OK 13	MACA payment of other taxes	1779
OK 14	MACA refund of FDP	1779
OK 15	MACA debit for loss of shareholder continuity	1780
OK 16	MACA breach of Maori authority credit ratio	1780
OK 17	MACA tax advantage arrangement	1781
OK 18	MACA final balance	1782

#### *Maori authority credits attached to distributions*

OK 19	Maori authority credits attached to distributions	1782
OK 20	MACA benchmark distribution rules	1784

#### *Further income tax*

OK 21	Further income tax for closing debit balance	1785
OK 22	Further income tax paid when Maori authority no longer Maori authority	1785
OK 23	Further income tax paid satisfying liability for income tax	1786

## Income Tax

---

OK 24	Income tax paid satisfying liability for further income tax	1787
	Subpart OP—Memorandum accounts of consolidated groups	
	<i><b>Introductory provisions</b></i>	
OP 1	Memorandum accounts of consolidated groups	1791
OP 2	When credits and debits arise only in group accounts	1792
	<i><b>Consolidated groups and imputation credit accounts</b></i>	
	<i>Introductory provisions</i>	
OP 3	Changes in consolidated imputation groups	1793
OP 4	Resident imputation subgroups	1794
OP 5	When credits and debits arise only in consolidated imputation group accounts	1794
OP 6	Provisions applying to consolidated imputation groups	1795
	<i>Imputation credits of consolidated imputation groups</i>	
OP 7	Consolidated ICA payment of tax	1796
OP 8	Consolidated ICA deposit in tax pooling account	1797
OP 9	Consolidated ICA transfer from tax pooling account	1798
OP 10	Consolidated ICA allocation from company with overpaid provisional tax	1798
OP 11	Consolidated ICA payment of further income tax	1799
OP 12	Consolidated ICA dividend derived with imputation credit	1799
OP 13	Consolidated ICA dividend derived with FDP credit	1799
OP 14	Consolidated ICA payment of FDP	1800
OP 15	Consolidated ICA replacement payment to company under share-lending arrangement	1801
OP 16	Consolidated ICA credit transfer to company	1801
OP 17	Consolidated ICA RWT withheld	1802
OP 18	Consolidated ICA transfer from group company's FDP account	1802
OP 19	Consolidated ICA transfer from group's FDP account	1803
OP 20	Consolidated ICA transfer from group company's policyholder credit account	1803
OP 21	Consolidated ICA transfer from group's policyholder credit account	1804
OP 22	Consolidated ICA group company's credit	1804
OP 23	Consolidated ICA elimination of double debit	1805
OP 24	Consolidated ICA reversal of tax advantage arrangement	1806
OP 25	Consolidated ICA NRWT withheld	1807
OP 26	Consolidated ICA payment of amount of tax for schedular payment	1807
OP 27	Consolidated ICA payment of schedular income tax	1808

## Income Tax

---

### *Imputation debits of consolidated imputation groups*

OP 28	Consolidated ICA payment of dividend	1808
OP 29	Consolidated ICA allocation of provisional tax	1809
OP 30	Consolidated ICA refund of income tax	1809
OP 31	Consolidated ICA amount applied to pay other taxes	1810
OP 32	Consolidated ICA refund from tax pooling account	1811
OP 33	Consolidated ICA transfer to tax pooling account	1812
OP 34	Consolidated ICA refund of FDP	1812
OP 35	Consolidated ICA refund of tax credit	1813
OP 36	Consolidated ICA overpayment of FDP	1814
OP 37	Consolidated ICA group company's debit	1814
OP 38	Consolidated ICA transfer for net foreign attributed income	1815
OP 39	Consolidated ICA replacement payment by company under share-lending arrangement	1817
OP 40	Consolidated ICA returning share transfer	1818
OP 41	Consolidated ICA credit transfer by company	1818
OP 42	Consolidated ICA debit for loss of shareholder continuity	1819
OP 43	Consolidated ICA breach of imputation ratio	1819
OP 44	Consolidated ICA transfer to policyholder credit account	1820
OP 45	Consolidated ICA redemption debit	1821
OP 46	Consolidated ICA tax advantage arrangement	1823
OP 47	Consolidated ICA final balance	1823
OP 48	Consolidated ICA refund of NRWT	1824
OP 49	Consolidated ICA refund of amount of tax for schedular payment	1824
OP 50	Consolidated ICA refund of schedular income tax	1825

### ***Consolidated groups and FDP accounts***

#### *Introductory provisions*

OP 51	FDP accounts of consolidated FDP groups	1825
OP 52	Choosing to stop being consolidated FDP group	1826
OP 53	When group company emigrates	1827
OP 54	When credits and debits arise only in consolidated FDP group accounts	1827
OP 55	Provisions applying to consolidated FDP groups	1828

#### *FDP credits of consolidated FDP groups*

OP 56	Consolidated FDPA payment of FDP	1829
OP 57	Consolidated FDPA payment of further FDP	1829
OP 58	Consolidated FDPA dividend derived with FDP credit	1830
OP 59	Consolidated FDPA group company's credit	1830
OP 60	Consolidated FDPA credit transfer to company	1831
OP 61	Consolidated FDPA transfer from group's CTR account	1832

## Income Tax

---

OP 62	Consolidated FDPA transfer for net foreign attributed income	1832
OP 63	Consolidated FDPA reversal of tax advantage arrangement	1833
	<i>FDP debits of consolidated FDP groups</i>	
OP 64	Consolidated FDPA payment of dividend	1834
OP 65	Consolidated FDPA credit transfer by company	1834
OP 66	Consolidated FDPA refund of FDP	1835
OP 67	Consolidated FDPA overpayment of FDP	1835
OP 68	Consolidated FDPA refund of tax credit	1836
OP 69	Consolidated FDPA transfer to imputation credit account	1837
OP 70	Consolidated FDPA transfer to group's CTR account	1837
OP 71	Consolidated FDPA group company's debit	1838
OP 72	Consolidated FDPA breach of FDP ratio	1838
OP 73	Consolidated FDPA debit for loss of shareholder continuity	1839
OP 74	Consolidated FDPA transfer to policyholder credit account	1839
OP 75	Consolidated FDPA breach of FDP ratio by PCA company	1840
OP 76	Consolidated FDPA tax advantage arrangement	1840
OP 77	Consolidated FDPA final balance	1841
	<b>Consolidated groups and CTR credits</b>	
	<i>Introductory provisions</i>	
OP 78	CTR accounts of consolidated groups	1841
OP 79	When credits and debits arise only in CTR group accounts	1842
OP 80	Provisions applying to consolidated groups with CTR accounts	1843
	<i>CTR credits of consolidated groups</i>	
OP 81	Consolidated CTRA tax credit for conduit tax relief	1843
OP 82	Consolidated CTRA reduction of FDP	1845
OP 83	Consolidated CTRA dividend derived with CTR credit	1845
OP 84	Consolidated CTRA group company's credit	1846
OP 85	Consolidated CTRA transfer from group's FDP account	1847
OP 86	Consolidated CTRA reversal of tax advantage arrangement	1848
	<i>CTR debits of consolidated groups</i>	
OP 87	Consolidated CTRA payment of dividend	1849
OP 88	Consolidated CTRA transfer to group's FDP account	1849
OP 89	Consolidated CTRA adjustment for conduit tax relief	1850
OP 90	Consolidated CTRA group company's debit	1851
OP 91	Consolidated CTRA increase in resident shareholding	1852

**Income Tax**

---

OP 92	Consolidated CTRA breach of CTR ratio	1853
OP 93	Consolidated CTRA tax advantage arrangement	1854
OP 94	Consolidated CTRA final balance	1854
	<i>Consolidated groups' FDP payments and refunds</i>	
OP 95	FDP payable for credits and debits in group's CTR account	1855
OP 96	Refund on transfer from group's FDP account	1856
	<b><i>Consolidated groups and branch equivalent tax accounts</i></b>	
	<i>Introductory provisions</i>	
OP 97	Branch equivalent tax accounts of consolidated BETA groups	1856
OP 98	Choosing to stop being consolidated BETA group	1857
OP 99	When credits and debits arise only in branch equivalent tax group accounts	1857
	<i>Branch equivalent tax credits of consolidated BETA groups</i>	
OP 100	Consolidated BETA payment of income tax on foreign income	1858
OP 101	Consolidated BETA payment of income tax	1859
OP 102	Consolidated BETA remaining debit balances	1861
OP 103	Consolidated BETA refund of FDP	1862
OP 104	Consolidated BETA credit for loss of shareholder continuity	1863
	<i>Branch equivalent tax debits of consolidated BETA groups</i>	
OP 105	Consolidated BETA payment of FDP	1864
OP 106	Consolidated BETA reduction of FDP	1864
OP 107	Consolidated BETA refund of income tax	1865
OP 108	Consolidated BETA debit for loss of shareholder continuity	1866
	<b><i>Consolidated groups and policyholder credit accounts</i></b>	
	<i>Introductory provision</i>	
OP 109	Policyholder credit accounts of consolidated groups	1866
	<i>Policyholder credits of consolidated groups</i>	
OP 110	Consolidated PCA transfer from imputation credit account	1867
OP 111	Consolidated PCA transfer from FDP account	1867
OP 112	Consolidated PCA group company's credit	1868
OP 113	Consolidated PCA maximum deficit debit in FDP account	1869
OP 114	Consolidated PCA reduced deficit debit in FDP account	1869

## Income Tax

---

### *Policyholder debits of consolidated groups*

OP 115	Consolidated PCA payment of tax relating to policyholder base	1870
OP 116	Consolidated PCA transfer to imputation credit account	1871
<i>Subpart OZ—Terminating provisions</i>		
OZ 1	No imputation credit for pre-imputation tax paid	1873
OZ 2	No imputation debit for pre-imputation refund	1873
OZ 3	Overpaid income tax or FDP for pre-imputation income year	1873
OZ 4	Terminating modifications to debits for loss of shareholder continuity	1874
OZ 5	ASCA lost excess available subscribed capital	1875
OZ 6	ASCA redemption of unused investments	1877

## **Part R** **General collection rules**

### Subpart RA—General withholding and payment obligations

#### *Introductory provisions*

RA 1	What this Part does	1900
RA 2	Amounts treated as income tax	1900

#### *Payment and withholding obligations*

RA 3	Terminal tax obligations	1900
RA 4	Provisional tax obligations	1901
RA 5	Tax obligations for employment-related taxes	1901
RA 6	Withholding and payment obligations for passive income	1901
RA 7	Payment of tax by public authorities	1902
RA 8	Liability of persons receiving payments or benefits	1902
RA 9	Treatment of amounts withheld as received	1902
RA 10	When obligations not met	1902
RA 11	Adjustment to correct errors: certain underpayments	1903
RA 12	Adjustment to correct errors: certain excess amounts	1904

#### *Payment dates*

RA 13	Payment dates for terminal tax	1906
RA 14	Payment dates for provisional tax	1907
RA 15	Payment dates for interim and other tax payments	1907
RA 16	Payment date when taxable activity ends	1909
RA 17	Payment date when RWT exemption certificate expires	1910
RA 18	Payment date for emigrating companies	1910

#### *Refunds*

RA 19	Refunds of excess amounts or when amounts mistakenly paid	1911
-------	---	------

## Income Tax

---

### *Amalgamations*

RA 20	Amalgamation of companies	1911
-------	---------------------------	------

### *Regulations*

RA 21	Regulations	1912
-------	-------------	------

### *Application of other provisions*

RA 22	Limits on application of other provisions for purposes of PAYE rules	1913
-------	--	------

RA 23	Application of other provisions for purposes of ESCT rules and NRWT rules	1914
-------	---	------

### Subpart RB—Terminal tax

RB 1	Payment of terminal tax	1915
------	-------------------------	------

RB 2	Income tax liability for non-filing taxpayers for non-resident passive income	1915
------	---	------

RB 3	Schedular income tax liability for filing taxpayers for non-resident passive income	1916
------	---	------

RB 4	Using refunds to satisfy tax liabilities	1916
------	--	------

### Subpart RC—Provisional tax

#### *Introductory provisions*

RC 1	What this subpart does	1918
------	------------------------	------

RC 2	Provisional tax rules and their application	1919
------	---	------

RC 3	Who is required to pay provisional tax?	1919
------	---	------

RC 4	Choosing to pay provisional tax	1920
------	---------------------------------	------

#### *Calculating provisional tax liability*

RC 5	Methods for calculating provisional tax liability	1921
------	---	------

RC 6	Standard method	1922
------	-----------------	------

RC 7	Estimation method	1924
------	-------------------	------

RC 8	GST ratio method	1925
------	------------------	------

#### *Instalments of provisional tax*

RC 9	Provisional tax payable in instalments	1926
------	--	------

RC 10	Calculating amount of instalment under standard and estimation methods	1931
-------	--	------

RC 11	Calculating amount of instalment using GST ratio	1932
-------	--	------

RC 12	Voluntary payments	1932
-------	--------------------	------

RC 13	Paying 2 instalments for tax year	1933
-------	-----------------------------------	------

RC 14	Paying 1 instalment for tax year	1934
-------	----------------------------------	------

#### *Requirements for using GST ratio*

RC 15	Choosing to use GST ratio	1935
-------	---------------------------	------

RC 16	Who may use GST ratio?	1935
-------	------------------------	------

RC 17	When GST ratio must not be used	1936
-------	---------------------------------	------

RC 18	Changing calculation method	1937
-------	-----------------------------	------

RC 19	Disposal of assets	1939
-------	--------------------	------

## Income Tax

---

### *Transitional years*

RC 20	Calculating residual income tax in transitional years	1940
RC 21	Paying provisional tax in transitional years	1941
RC 22	Calculating instalments in transitional years: standard method	1943
RC 23	Calculating instalments in transitional years: estimation method	1944
RC 24	Calculating instalments in transitional years: GST ratio method	1945
RC 25	Consequences of change in balance date	1945

### *When persons start or stop paying GST, or change taxable periods*

RC 26	Registering for GST or cancelling registration	1947
RC 27	Payment of provisional tax instalments when GST cycle changed	1948

### *Treatment of groups of companies and amalgamated companies*

RC 28	Provisional tax rules and consolidated groups	1949
RC 29	Residual income tax of consolidated groups	1950
RC 30	Consolidated groups using estimation method	1951
RC 31	Consolidated groups using GST ratio method	1951
RC 32	Wholly-owned groups of companies	1952
RC 33	Amalgamated companies: calculating residual income tax	1954

### *Attribution rule for income from personal services*

RC 34	Attribution rule for income from personal services	1954
-------	--	------

### *Credits*

RC 35	Further income tax credited to provisional tax liability	1956
-------	--	------

### *Disaster relief*

RC 36	Persons affected by adverse events	1957
-------	------------------------------------	------

### *Early-payment discounts*

RC 37	Availability of early-payment discounts	1958
RC 38	Crediting income tax with early-payment discount	1958
RC 39	Credit treated as payment of income tax	1959
RC 40	Some definitions	1959

### Subpart RD—Employment-related taxes

#### *Introductory provision*

RD 1	What this subpart does	1962
------	------------------------	------

#### *PAYE rules and PAYE income payments*

##### *Introductory provisions*

RD 2	PAYE rules and their application	1963
------	----------------------------------	------

## Income Tax

---

RD 3	PAYE income payments	1964
RD 4	Payment of amounts of tax to Commissioner	1965
RD 5	When payment credited or applied	1966
<i>Types of PAYE income payments</i>		
RD 6	Salary or wages	1966
RD 7	Certain benefits and payments	1968
RD 8	Extra pay	1968
RD 9	Schedular payments	1969
<i>Calculating amounts of tax</i>		
RD 10	Maximum amount	1971
RD 11	Amounts of tax for PAYE income payments	1971
RD 12	Reduction in certain circumstances	1972
<i>Adjustments for certain PAYE income payments</i>		
RD 13	Multiple payments of salary or wages	1973
RD 14	Advance payments of salary or wages	1973
RD 15	Changes to tax rates for salary or wages	1974
RD 16	Payments of salary or wages in pay periods	1975
RD 17	Payments to private domestic workers	1976
RD 18	Payment of extra pay with other PAYE income payments	1977
RD 19	Schedular payments without notification	1977
RD 20	Schedular payments to non-resident entertainers	1978
RD 21	Schedular payments to subcontractors	1979
<i>Paying amounts of tax</i>		
RD 22	When amounts of tax not withheld or payment insufficient	1979
RD 23	PAYE income payment forms for amounts of tax paid to Commissioner	1980
RD 24	Bonds given by employers of certain non-resident employees	1982
RD 25	Exemption certificates for non-resident contractors	1983
<b><i>FBT rules and fringe benefits</i></b>		
<i>Introductory provisions</i>		
RD 26	FBT rules and their application	1984
RD 27	Liability for FBT	1984
<i>Value of fringe benefits</i>		
RD 28	Determining fringe benefit values	1985
RD 29	Private use of motor vehicle: calculation methods	1986
RD 30	Private use of motor vehicle: formulas	1986
RD 31	Private use of motor vehicle: 24-hour period	1988
RD 32	Motor vehicle test period	1989
RD 33	Replacement motor vehicles	1990

## Income Tax

---

RD 34	Subsidised transport	1991
RD 35	Employment-related loans: value using prescribed interest rates	1991
RD 36	Employment-related loans: value using market interest rates	1992
RD 37	Repayment of employment-related loans	1994
RD 38	Contributions to superannuation schemes	1995
RD 39	Contributions to funds, trusts, and insurance premiums	1995
RD 40	Benefits provided by charitable organisations	1996
RD 41	Goods	1997
RD 42	Services	1998
RD 43	Goods at staff discount	1999
RD 44	Goods on special with staff discount	2000
RD 45	Goods sold by group companies	2001
RD 46	Unclassified benefits	2001
RD 47	Adjustments for unclassified benefits on amalgamation	2002
	<i>Attributing fringe benefits to employees</i>	
RD 48	Attribution of certain fringe benefits	2004
RD 49	When attributed benefits provided to more than 1 employee	2005
RD 50	Application of thresholds to attributed benefits	2005
RD 51	Employer's liability for attributed benefits	2006
RD 52	Calculation of all-inclusive pay	2006
RD 53	Calculation for certain employees when information lacking	2009
RD 54	Pooling non-attributed benefits	2009
	<i>Taxable value of fringe benefits</i>	
RD 55	Value of and payments towards fringe benefits	2010
RD 56	Private use of motor vehicle: taxable value in cases of part ownership	2011
RD 57	Private use of motor vehicle: when schedular value not used	2011
RD 58	Private use of motor vehicle: when schedular value used	2012
	<i>Options for payment of FBT</i>	
RD 59	Single rate option	2013
RD 60	Alternate rate option	2014
RD 61	Close company option	2014
RD 62	Small business option	2016
RD 63	Changes in payment periods	2017
RD 64	When employer stops employing staff	2018

## Income Tax

---

### *ESCT rules and employer's superannuation contributions*

#### *Introductory provisions*

RD 65	ESCT rules and their application	2019
RD 66	Employer's superannuation contributions	2019

#### *Calculating amounts of tax*

RD 67	Calculating amounts of tax for employer's superannuation contribution	2022
RD 68	Choosing to have amount treated as salary or wages	2022
RD 69	Choosing to apply different rates of tax	2022
RD 70	Calculating amounts of tax on failure to withhold	2023
RD 71	Amounts of tax treated as paid to and received by superannuation funds	2024

#### *Tax on certain withdrawals from superannuation funds*

RD 72	Recovery of tax paid by superannuation funds	2024
-------	--	------

#### Subpart RE—Tax on resident passive income

#### *Introductory provisions*

RE 1	RWT rules and their application	2026
RE 2	Resident passive income	2026

#### *Withholding obligations*

RE 3	Obligation to withhold RWT	2028
RE 4	Persons who have withholding obligations	2029
RE 5	No withholding obligation in certain circumstances	2031
RE 6	When obligation to withhold unreasonable	2031
RE 7	When resident passive income paid to trustees	2032
RE 8	When resident passive income paid to agents	2032
RE 9	Agents' or trustees' obligations in relation to certain dividends	2033
RE 10	Special rule relating to payments of interest	2034
RE 11	Notification by companies	2034

#### *Calculating amounts of tax*

RE 12	Interest	2035
RE 13	Dividends other than non-cash dividends	2035
RE 14	Non-cash dividends other than bonus issues in lieu	2036
RE 15	Bonus issues in lieu	2037
RE 16	Taxable Maori authority distributions	2038
RE 17	Replacement payments under share-lending arrangements	2039
RE 18	Payments made by RWT proxies	2040
RE 19	Choosing higher rates	2041

#### *Paying amounts of tax*

RE 20	Paying RWT	2041
-------	------------	------

## Income Tax

---

RE 21	Basis for payment of RWT	2041
RE 22	When payment treated as non-resident passive income	2043
RE 23	When amount of tax treated as FDP credit	2043
RE 24	When amount of tax treated as Maori authority credit	2044
RE 25	When amount of tax treated as imputation credit	2044
RE 26	Payment by proxy	2044
<i><b>RWT exemption certificates</b></i>		
RE 27	RWT exemption certificates	2045
RE 28	When certificates expire	2045
RE 29	Establishing whether person holds certificate	2046
RE 30	When unincorporated bodies hold certificates	2047
Subpart RF—Tax on non-resident passive income		
<i><b>Introductory provisions</b></i>		
RF 1	NRWT rules and their application	2050
RF 2	Non-resident passive income	2050
<i><b>Withholding obligations</b></i>		
RF 3	Obligation to withhold amounts of tax for non-resident passive income	2052
RF 4	Non-resident passive income received by agents and others	2052
RF 5	When amounts of tax already withheld	2053
RF 6	When amounts of tax not withheld or partly withheld	2053
<i><b>Calculating amounts of tax</b></i>		
RF 7	General rate for NRWT	2054
RF 8	Certain dividends	2054
RF 9	When dividends fully imputed or fully credited	2055
RF 10	Non-cash dividends	2056
RF 11	Dividends paid to companies under control of non-residents	2058
RF 12	Certain amounts of interest	2059
<i><b>Paying amounts of tax</b></i>		
RF 13	Basis for payment of amounts of tax for non-resident passive income	2060
RF 14	Treatment of FDP credits	2061
RF 15	Commissioner's power to vary amounts of tax	2061
Subpart RG—Payments for foreign dividends		
<i><b>Introductory provisions</b></i>		
RG 1	FDP rules and their application	2062
RG 2	Foreign dividends	2063
<i><b>Obligation to make payments</b></i>		
RG 3	Obligation to pay FDP	2064

## Income Tax

---

<i>Calculation of payments</i>		
RG 4	Calculating amount of FDP	2064
<i>Adjustments to payments</i>		
RG 5	Credit balance in branch equivalent tax account	2065
RG 6	Using loss balances	2066
RG 7	Reduction of payments for conduit tax relief	2068
Subpart RM—Refunds		
<i>Introductory provision</i>		
RM 1	What this subpart does	2071
<i>Refunds for overpaid amounts</i>		
RM 2	Refunds for overpaid tax	2072
RM 3	Refunds for overpaid FDP	2072
RM 4	Overpayment on amended assessment	2072
RM 5	Overpayment on income statements	2073
RM 6	Refunds after 4-year period ends	2073
RM 7	Refunds to PAYE intermediaries	2074
RM 8	Overpaid RWT or NRWT	2074
RM 9	Calculations for attributed and non-attributed fringe benefits	2075
<i>Use of refunds</i>		
RM 10	Using refund to satisfy tax liability	2075
RM 11	Using GST refund to pay instalment of provisional tax	2076
RM 12	Reduction in provisional tax liability	2077
<i>Limits on refunds and transfers</i>		
<i>ICA companies</i>		
RM 13	Limits on refunds for ICA companies	2078
RM 14	Limits on refunds when company stops being ICA company	2079
RM 15	Changes in credit balances	2079
RM 16	Treatment of amounts not refunded	2079
RM 17	Treatment of further income tax paid	2080
<i>Companies receiving foreign dividends</i>		
RM 18	Limits on refunds related to foreign dividends	2081
RM 19	Treatment of financial arrangements	2082
RM 20	Treatment of amounts not refunded	2082
RM 21	Refunds when loss balances used to reduce net income	2083
<i>Maori authorities</i>		
RM 22	Limits on refunds for Maori authorities	2085
RM 23	Limits on refunds when Maori authority stops being Maori authority	2085
RM 24	Increase in credit balances	2086

## Income Tax

---

RM 25	Treatment of amounts not refunded	2086
RM 26	Treatment of further income tax paid	2087
RM 27	Application when no credits arise	2087
<i>Persons with policyholder credit accounts</i>		
RM 28	Limits on refunds for PCA persons	2087
RM 29	Limits on refunds when person no longer PCA person	2088
RM 30	Changes in credit balances	2088
RM 31	Treatment of amounts not refunded	2088
<i>Attributing companies</i>		
RM 32	Application of sections RM 13 to RM 17 to attributing companies	2089
<i>Certain unit trusts and group investment funds</i>		
RM 33	Limits on refunds for certain unit trusts and group investment funds	2090
Subpart RP—Intermediaries		
<b><i>Introductory provision</i></b>		
RP 1	What this subpart does	2091
<b><i>PAYE intermediaries</i></b>		
<i>Obligations and treatment of PAYE intermediaries</i>		
RP 2	PAYE intermediaries	2092
RP 3	Requirements for listed PAYE intermediaries	2092
RP 4	Payment of subsidies to certain PAYE intermediaries	2093
RP 5	Subsidy claims	2094
RP 6	Operation of PAYE intermediaries' trust accounts	2095
<i>Employers' responsibilities</i>		
RP 7	General responsibilities of employers	2096
RP 8	Information required from employers	2097
RP 9	Authorised transfers from accounts	2097
RP 10	When transfers from accounts not authorised	2097
RP 11	Employer's superannuation contributions	2098
RP 12	When payments made directly to employees	2098
<i>PAYE intermediaries' responsibilities</i>		
RP 13	General responsibilities of PAYE intermediaries	2099
RP 14	Collection, payment, and information requirements	2099
RP 15	When employers have authorised transfers from accounts	2100
RP 16	Obligations for employer's superannuation contributions	2100
<b><i>Tax pooling intermediaries</i></b>		
RP 17	Tax pooling intermediaries	2100
RP 18	Deposits in tax pooling accounts	2101
RP 19	Transfers from tax pooling accounts	2102
RP 20	Refusals to transfer amounts	2103

## Income Tax

---

RP 21	Refunds from tax pooling accounts	2103
	Subpart RZ—Terminating provisions	
	<i>Provisional tax</i>	
RZ 1	Certain elections to become person with provisional tax liability	2104
RZ 2	Amount of provisional tax based on 1997–98 or earlier tax year	2104
	<i>Refunds</i>	
RZ 3	Limits on refunds: transitional dates	2105
	<i>Withdrawal income</i>	
RZ 4	Withdrawal income	2106
RZ 5	Payment and rate of withdrawal tax	2107
RZ 6	Relief in certain cases	2107
RZ 7	Recovery of amounts payable to Commissioner	2108
	<b>Part Y</b>	
	<b>Definitions and related matters</b>	
	Subpart YA—General definitions	
YA 1	Definitions	2109
YA 2	Meaning of income tax	2265
YA 3	Treatment of attributing company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax	2267
	Subpart YB—Associated persons and nominees	
	<i>Table Y1</i>	
	<i>Associated persons</i>	
YB 1	What this subpart does	2272
YB 2	Two companies with common control	2272
YB 3	Two companies with common control: 1988 version provisions	2274
YB 4	Company and associate’s associate: 1988 version provisions	2274
YB 5	Company and non-corporate 25% interest holder	2275
YB 6	Company and relative of 25% interest holder: 1973 version provisions	2276
YB 7	Company and non-corporate 50% interest holder: 1988 version provisions	2277
YB 8	Company and non-corporate 50% interest holder: 1990 version provisions	2278
YB 9	Relatives: persons with blood or adoption relationships	2278
YB 10	Relatives: person and their spouse or partner	2279
YB 11	Relatives: person with blood relationship to spouse or partner of other person	2280

## Income Tax

---

YB 12	Trusts: person and trustee for their relative	2281
YB 13	Trusts: person and trustee for person	2281
YB 14	Trusts: trusts with common settlor	2282
YB 15	Trusts: trustee and settlor: 1988 version provisions	2283
YB 16	Partnerships: partnership and partner	2284
YB 17	Partnerships: partnership and associate of partner	2284
YB 18	Persons habitually acting together: 1988 version provisions	2285
YB 19	Person and controlled non-profit organisation: 1990 version provisions	2286
YB 20	Some definitions	2286
<i>Nominees</i>		
YB 21	Transparency of nominees	2288
	Subpart YC—Measurement of company control and ownership	
<i>Control</i>		
YC 1	Meaning of control	2289
<i>Voting and market value interests</i>		
YC 2	Voting interests	2290
YC 3	Market value interests	2290
YC 4	Look-through rule for corporate shareholders	2291
YC 5	Treatment of special corporate entities	2292
YC 6	Disregarding certain securities	2293
<i>Voting and market value interests: modifications for continuity provisions</i>		
YC 7	When sections YC 8 to YC 19 apply	2294
YC 8	Death of share or option holder	2294
YC 9	Shares or options held by trustees	2295
YC 10	Shareholders holding less than 10% direct interests	2296
YC 11	No look-through rule for companies in certain cases	2296
YC 12	Public unit trusts	2297
YC 13	Corporate spin-outs	2298
YC 14	Disregarding concessionary rules	2301
YC 15	Directors' knowledge of failure to meet requirements of continuity provision	2301
YC 16	Disregarding market value changes	2302
YC 17	Demutualisation of insurers	2303
YC 18	Reverse takeovers	2306
YC 19	Legislative conversion of foreign company of proprietors	2308
YC 20	Credit account continuity provisions: excluded fixed return securities	2309

## Income Tax

---

### Subpart YD—Residence and source in New Zealand

#### *Residence*

YD 1	Residence of natural persons	2310
YD 2	Residence of companies	2311
YD 3	Country of residence of foreign companies	2312

#### *Source*

YD 4	Classes of income treated as having New Zealand source	2313
YD 5	Apportionment of income derived partly in New Zealand	2316
YD 6	Apportionment of income from sea transport	2317
YD 7	Apportionment of film rental income	2318
YD 8	Apportionment of premiums derived by non-resident general insurers	2319

#### *CTR companies: special residence rules*

YD 9	Residence of CTR company shareholders	2321
YD 10	Meaning of CTR holding company	2321
YD 11	Meaning of CTR group member	2323

### Subpart YE—References to balance dates and years

YE 1	References to balance dates and years	2324
------	---------------------------------------	------

### Subpart YZ—Terminating provisions

YZ 1	Source rule for interest	2325
------	--------------------------	------

## **Part Z**

### **Repeals, amendments, and savings**

ZA 1	Repeals	2327
ZA 2	Consequential amendments to other enactments	2327
ZA 3	Transitional provisions	2328
ZA 4	Saving of binding rulings	2329
ZA 5	Saving of accrual determinations	2330
ZA 6	Comparative tables of old and new provisions	2331

#### **Schedule 1**

#### **Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits**

#### **Schedule 2**

#### **Basic tax rates for PAYE income payments**

#### **Schedule 3**

#### **Payment of provisional tax and terminal tax**

#### **Schedule 4**

#### **Rates of tax for schedular payments**

#### **Schedule 5**

#### **Fringe benefit values for motor vehicles**

Income Tax

---

Schedule 10	2356
<b>Straight-line equivalents of diminishing value rates of depreciation</b>	
Schedule 11	2359
<b>New banded rates of depreciation</b>	
Schedule 12	2360
<b>Old banded rates of depreciation</b>	
Schedule 13	2361
<b>Depreciable land improvements</b>	
Schedule 14	2362
<b>Depreciable intangible property</b>	
Schedule 17	2363
<b>Types and classes of livestock</b>	
Schedule 18	2365
<b>Categories of livestock for which national standard costs to be declared</b>	
Schedule 19	2366
<b>Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant</b>	
Schedule 20	2368
<b>Expenditure on farming, horticultural, aquacultural, and forestry improvements</b>	
Schedule 24	2372
<b>International tax rules: grey list countries</b>	
Schedule 25	2374
<b>Foreign investment funds</b>	
Schedule 26	2375
<b>Low tax jurisdictions or territories</b>	
Schedule 27	2380
<b>Countries and types of income with unrecognised tax</b>	
Schedule 31	2381
<b>Annualised equivalent amount for Part M</b>	
Schedule 32	2383
<b>Recipients of public benefit gifts</b>	
Schedule 36	2386
<b>State enterprises</b>	
Schedule 37	2387
<b>Statutory producer boards</b>	
Schedule 48	2388
<b>Enactments repealed</b>	

<b>Schedule 49</b>	2389
<b>Enactments amended</b>	
<b>Schedule 50</b>	2425
<b>Amendments to Tax Administration Act 1994</b>	
<b>Schedule 51</b>	2532
<b>Identified changes in legislation</b>	
<b>Schedule 52</b>	2535
<b>Comparative tables of old and rewritten provisions</b>	

**The Parliament of New Zealand enacts as follows:**

**A 1 Title**

This Act is the Income Tax Act 2006.

Compare: 2004 No 35 s A 1

**A 2 Commencement**

*1 April 2008*

5

- (1) This Act comes into force on 1 April 2008.

*Act effective for 2008–09 income year and later*

- (2) However, except when the context requires otherwise, this Act applies only with respect to the tax on income derived in the 2008–09 income year and later income years.

10

Defined in this Act: income year, tax

Compare: 2004 No 35 s A 2

## Part A

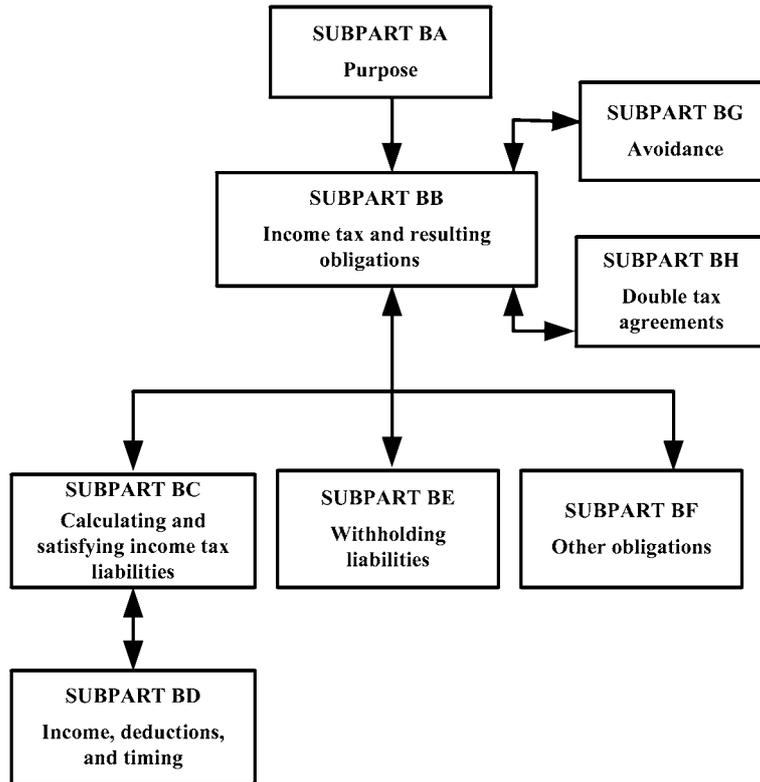
### Purpose and interpretation

#### Contents

AA 1	Purpose of Act	
AA 2	Interpretation	5
AA 3	Definitions	
<hr style="width: 20%; margin: 10px auto;"/>		
<b>AA 1</b>	<b>Purpose of Act</b>	
	The main purposes of this Act are—	
	(a) to define, and impose tax on, net income:	
	(b) to impose obligations concerning tax:	10
	(c) to set out rules for calculating tax and for satisfying the obligations imposed.	
	Defined in this Act: net income, tax	
	Compare: 2004 No 35 s AA 1	
<b>AA 2</b>	<b>Interpretation</b>	15
	<i>Aids to interpretation</i>	
(1)	Diagrams, flowcharts, readers' notes, and the lists of defined terms following sections are included in this Act only as interpretational aids. If there is conflict between an interpretational aid and a provision of this Act, the provision prevails.	20
	<i>Defined terms</i>	
(2)	If a defined term is used in a section and is not included in the list of defined terms following the section, the term is nevertheless used in the section as defined.	
	Compare: 1994 No 164 s AA 2	25
<b>AA 3</b>	<b>Definitions</b>	
	Definitions of terms that apply generally for the purposes of this Act, and general provisions on the interpretation and construction of this Act, appear in <b>Part Y</b> (Definitions and related matters).	30
	Compare: 2004 No 35 s AA 3(2)	

## Part B Core provisions

*Flowchart B1: Outline of Part*



## Subpart BA—Purpose Contents

### BA 1 Purpose

---

#### **BA 1 Purpose**

- The purposes of this Part are— 5
- (a) to impose income tax, provisional tax, withholding liabilities, and other tax obligations concerning taxes:
  - (b) to set out procedures to be followed for calculating tax and satisfying the obligations imposed under this Act:
  - (c) to provide a basis for applying the other Parts: 10
  - (d) generally to set up the scheme of the Act and the main links between its Parts.

Defined in this Act: income tax, provisional tax, tax

Compare: 2004 No 35 s BA 1

## Subpart BB—Income tax and resulting obligations Contents

- BB 1 Imposition of income tax
  - BB 2 Main obligations
  - BB 3 Overriding effect of certain matters
- 

#### **BB 1 Imposition of income tax** 20

Income tax is imposed on taxable income, at the rate or rates of tax fixed by an annual taxing Act, and is payable to the Crown under this Act and the Tax Administration Act 1994.

Defined in this Act: annual taxing Act, income tax, pay, tax, taxable income

Compare: 2004 No 35 s BB 1 25

#### **BB 2 Main obligations**

##### *Income tax liability*

- (1) A person's income tax liability for a tax year must be calculated, and satisfied by the person, under **subpart BC** (Calculating and satisfying income tax liabilities). 30

##### *Non-filing taxpayer*

- (2) Despite **subsection (1)**, a non-filing taxpayer is not required to file a return of income.

*Provisional tax*

- (3) A person liable to pay provisional tax must pay provisional tax for a tax year under the provisional tax rules.

*Withholding liabilities*

- (4) A person who has a withholding liability must satisfy it under **subpart BE** (Withholding liabilities). 5

*Other obligations*

- (5) A person who has an obligation under **subpart BF** (Other obligations) must satisfy it under that subpart.

Defined in this Act: income tax liability, non-filing taxpayer, pay, provisional tax rules, provisional tax, return of income, tax year 10

Compare: 2004 No 35 s BB 2

**BB 3 Overriding effect of certain matters***Tax avoidance arrangements: subpart BG*

- (1) Under **Part G** (Avoidance and non-market transactions), the Commissioner may counteract a tax advantage from a tax avoidance arrangement. 15

*Double tax agreements: subpart BH*

- (2) Under **subpart BH** (Double tax agreements) a double tax agreement has effect in relation to— 20
- (a) income tax; or
  - (b) any other tax imposed by this Act; or
  - (c) the exchange of information that relates to a tax, as defined in paragraphs (a)(i) to (v) of the definition of **tax** in section 3 of the Tax Administration Act 1994. 25

Defined in this Act: Commissioner, double tax agreement, income tax, tax, tax avoidance arrangement

Compare: 2004 No 35 s BB 3

**Subpart BC—Calculating and satisfying  
income tax liabilities 30**

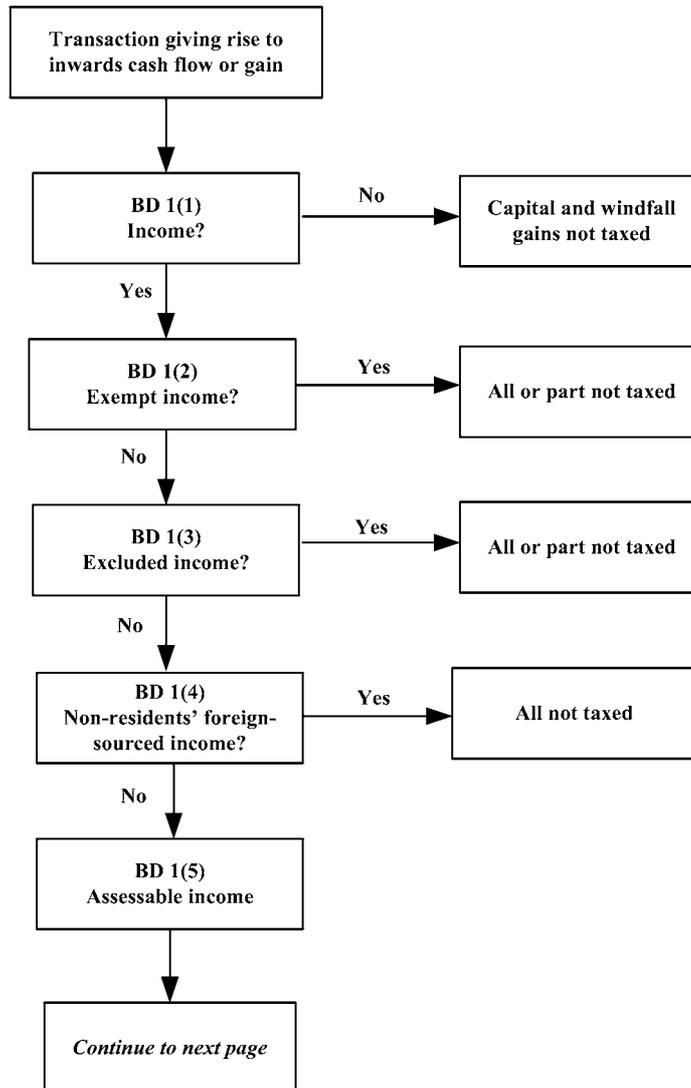
**Contents**

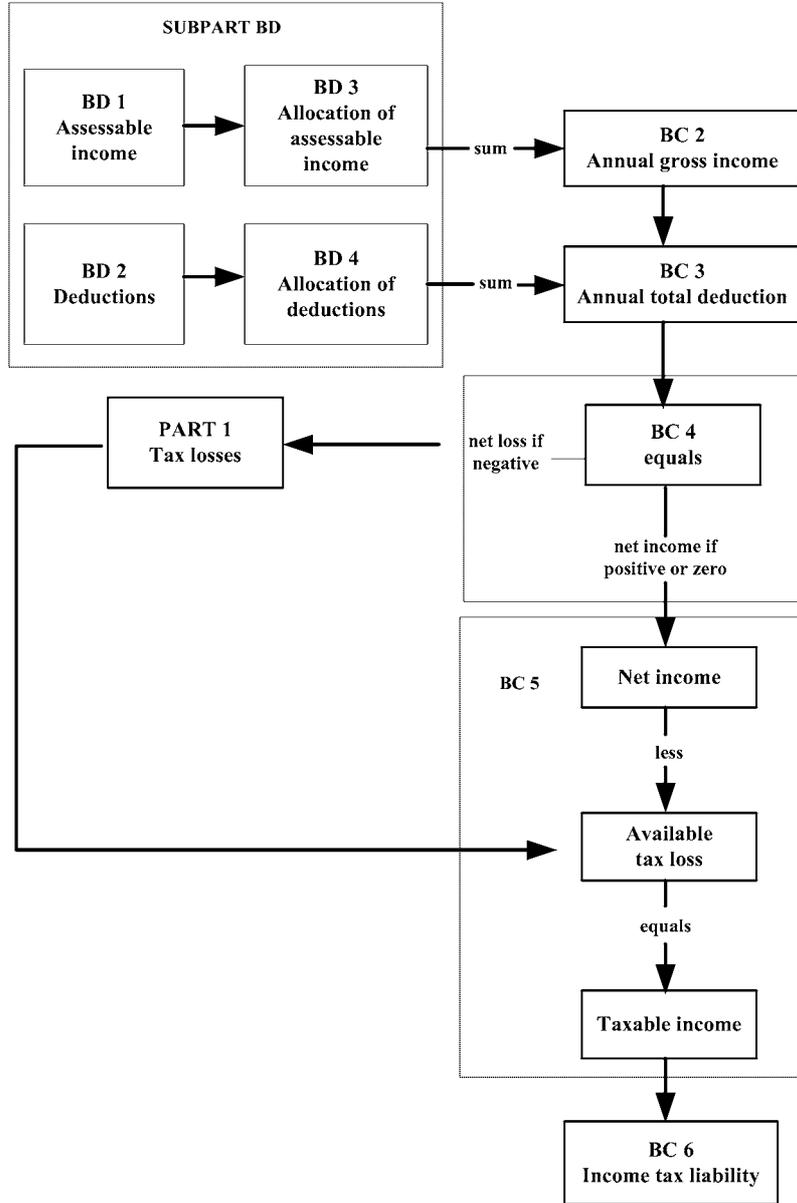
BC 1	Non-filing and filing taxpayers	
BC 2	Annual gross income	
BC 3	Annual total deduction	
BC 4	Net income and net loss	35

BC 5	Taxable income	
	<i>Flowchart B3: Calculating income tax liability</i>	
BC 6	Income tax liability of filing taxpayer	
BC 7	Income tax liability of person with schedular income	
	<i>Flowchart B4: Satisfying income tax liability</i>	5
BC 8	Satisfaction of income tax liability	

---

*Flowchart B2: Calculating and satisfying income tax liabilities*





**BC 1 Non-filing and filing taxpayers***Non-filing taxpayer*

- (1) The income tax liability of a non-filing taxpayer for a tax year is the total tax withheld from amounts of income included in the taxpayer's annual gross income for the year. 5

*Filing taxpayer*

- (2) The income tax liability of a filing taxpayer for a tax year is calculated under **sections BC 2 to BC 6**.

*Filing taxpayer with schedular income*

- (3) If a filing taxpayer has schedular income, their income tax liability calculation is modified by **section BC 7**. 10

Defined in this Act: amount, annual gross income, filing taxpayer, income, income tax liability, non-filing taxpayer, schedular income, tax, tax year

Compare: 2004 No 35 s BC 1

**BC 2 Annual gross income** 15

A person's **annual gross income** for a tax year is the total of their assessable income that is allocated to the corresponding income year.

Defined in this Act: annual gross income, assessable income, corresponding income year, tax year 20

Compare: 2004 No 35 s BC 2

**BC 3 Annual total deduction**

A person's **annual total deduction** for a tax year is the total of their deductions that are allocated to the corresponding income year. 25

Defined in this Act: annual total deduction, corresponding income year, deduction, tax year

Compare: 2004 No 35 s BC 3

**BC 4 Net income and net loss***Income more than deductions* 30

- (1) If, for a tax year, a person's annual gross income is more than their annual total deduction, the difference is their **net income** for the year.

*Income equal to deductions*

- (2) If, for a tax year, a person's annual gross income equals their annual total deduction, their **net income** for the year is zero.

*Deductions more than income*

- (3) If, for a tax year, a person's annual total deduction is more than their annual gross income, the difference is their **net loss** for the year, and their net income for the year is zero. 5

*Treatment of net loss*

- (4) A person's net loss for a tax year is included under **Part I** (Treatment of tax losses) in their tax loss for the tax year that may, under **Part I**, be— 10
- (a) subtracted from their net income for a future tax year:
  - (b) made available to another person to subtract from that other person's net income for that or a future tax year:
  - (c) used in certain other ways. 15

Defined in this Act: annual gross income, annual total deduction, net income, net loss, tax loss, tax year

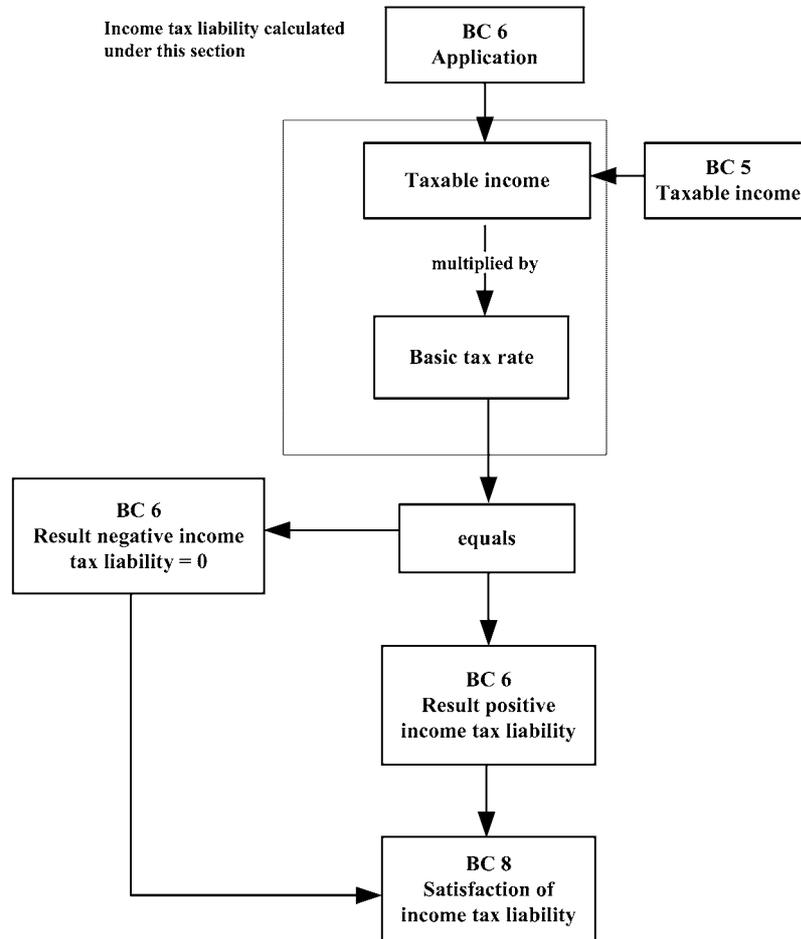
Compare: 2004 No 35 s BC 4

**BC 5 Taxable income**

A person's **taxable income** for a tax year is determined by subtracting any available tax loss that the person has from their net income under **Part I** (Treatment of tax losses). 20

Defined in this Act: available tax loss, net income, net loss, taxable income, tax year

Compare: 2004 No 35 s BC 5

*Flowchart B3: Calculating income tax liability*

**BC 6 Income tax liability of filing taxpayer***Calculation of amount*

- (1) The income tax liability of a filing taxpayer for a tax year is the amount calculated by multiplying their taxable income for the tax year by the basic tax rate. The income tax liability of a filing taxpayer with schedular income is determined under **section BC 7**. 5

*When liability zero or negative*

- (2) If the income tax liability calculated under **subsection (1)** is zero or negative, the filing taxpayer's income tax liability for the tax year is zero. 10

Defined in this Act: amount, basic tax rate, filing taxpayer, income tax liability, schedular income, tax year, taxable income

Compare: 2004 No 35 s BC 6

**BC 7 Income tax liability of person with schedular income** 15*Modified income tax liability*

- (1) The income tax liability for a tax year of a person who has schedular income for the year is the total of—
- (a) their schedular income tax liability for the year calculated under **subsection (2) or (3)**; and 20
  - (b) the amount that would be their income tax liability for the year if they had no schedular income.

*Schedular income tax liability*

- (2) If a person has 1 kind of schedular income for a tax year, their **schedular income tax liability** for the year is the amount that would be the income tax liability for the year if their only income for the year were that schedular income. 25

*Multiple schedular income*

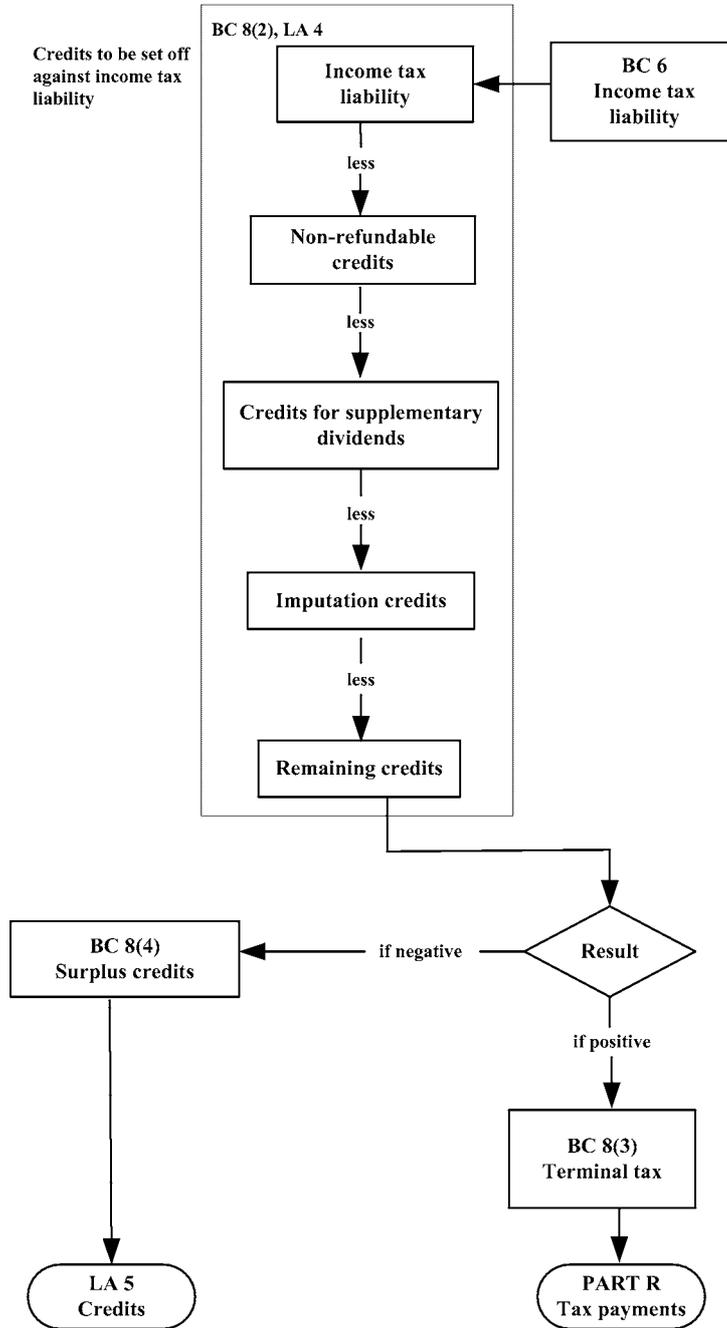
- (3) If a person has more than 1 kind of schedular income for a tax year, their **schedular income tax liability** for the year is the total of the amounts calculated for each kind of schedular income. 30

Defined in this Act: amount, income, income tax liability, schedular income, schedular income tax liability, tax year

Compare: 2004 No 35 s BC 7

35

Flowchart B4: Satisfying income tax liability



**BC 8 Satisfaction of income tax liability***Use of tax credits*

- (1) Credits for tax paid, tax withheld, or other circumstances, calculated under **Parts L** (Tax credits and other credits) and **M** (Tax credits for families), satisfy a person's income tax liability for a tax year as far as the credits extend. 5

*Ordering rule*

- (2) The order in which the person uses their credits is set out in **section LA 4** (When total credit more than income tax liability).

*Terminal tax*

- (3) If the person's income tax liability is more than the total of their credits, the difference is the person's **terminal tax**. The person must pay the terminal tax to complete the satisfaction of their income tax liability. 10

*Remaining credits*

- (4) The treatment of any credits remaining after the person's income tax liability is satisfied is dealt with in **section LA 5** (Treatment of remaining credits). 15

Defined in this Act: income tax liability, pay, tax, tax credit, tax year, terminal tax

Compare: 2004 No 35 s BC 9 20

**Subpart BD—Income, deductions, and timing****Contents**

- BD 1 Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income 25

BD 2 Deductions

BD 3 Allocation of income to particular income years

BD 4 Allocation of deductions to particular income years

- BD 1 Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income** 30

*Amounts of income*

- (1) An amount is **income** of a person if it is their income under a provision in **Part C** (Income).

*Exempt income*

- (2) An amount of income of a person is **exempt income** if it is their exempt income under a provision in **subpart CW** (Exempt income) or **CZ** (Terminating provisions).

*Excluded income*

5

- (3) An amount of income of a person is **excluded income** if—
- (a) it is their excluded income under a provision in **subpart CX** (Excluded income) or **CZ**; and
  - (b) it is not their non-residents' foreign-sourced income.

*Non-residents' foreign-sourced income*

10

- (4) An amount of income of a person is **non-residents' foreign-sourced income** if—
- (a) the amount is a foreign-sourced amount; and
  - (b) the person is a non-resident when it is derived; and
  - (c) the amount is not income of a trustee to which **section HC 25(2)** (Foreign-sourced amounts: non-resident trustees) applies.

15

*Assessable income*

- (5) An amount of income of a person is **assessable income** in the calculation of their annual gross income if it is not income of any of the following kinds:
- (a) their exempt income;
  - (b) their excluded income;
  - (c) their non-residents' foreign-sourced income.

20

Defined in this Act: amount, annual gross income, assessable income, excluded income, exempt income, foreign-sourced amount, income, non-resident, non-residents' foreign-sourced income

25

Compare: 2004 No 35 s BD 1

**BD 2 Deductions**

An amount is a **deduction** of a person if they are allowed a deduction for the amount under **Part D** (Deductions).

30

Defined in this Act: amount, deduction

Compare: 2004 No 35 s BD 2

**BD 3 Allocation of income to particular income years***Application*

- (1) Every amount of income must be allocated to an income year under this section.

*General rule*

5

- (2) An amount of income is allocated to the income year in which the amount is derived, unless a provision in any of **Parts C or E to I** provides for allocation on another basis.

*Interpretation of derive*

- (3) When the time of derivation of an amount of income is being determined, regard must be had to case law, which—
- (a) requires some people to recognise income on an accrual basis; and
- (b) requires other people to recognise income on a cash basis; and
- (c) more generally, defines the concept of derivation.

10

15

*Income credited in account*

- (4) Despite **subsection (3)**, income that has not previously been derived by a person is treated as being derived when it is credited in their account or, in some other way, dealt with in their interest or on their behalf.

20

*Role of Part E*

- (5) **Part E** (Timing and quantifying rules) contains a number of provisions that—
- (a) specifically modify the allocation of income or have the effect of modifying the allocation of income; or
- (b) allocate income as part of the process of quantifying it.

25

*Single allocation*

- (6) An amount of income may be allocated only once.

30

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s BD 3

**BD 4 Allocation of deductions to particular income years***Application*

- (1) Every deduction must be allocated to an income year under this section.

*General rule*

5

- (2) A deduction for an amount of expenditure or loss is allocated to the income year in which the expenditure or loss is incurred, unless a provision in any of **Parts D to I** provides for allocation on another basis.

*Interpretation of incur*

10

- (3) When the time of incurrence of an amount of expenditure or loss is being determined, regard must be had to case law, which—

- (a) requires some people to recognise expenditure or loss on an accrual basis; and  
 (b) requires other people to recognise expenditure or loss on a cash basis; and  
 (c) more generally, defines the concept of incurrence.

15

*Role of Part E*

- (4) **Part E** (Timing and quantifying rules) contains a number of provisions that—

20

- (a) specifically modify the allocation of deductions or have the effect of modifying the allocation of deductions; or  
 (b) allocate deductions as part of the process of quantifying them.

25

*Allocation*

- (5) If an expenditure or loss gives rise to more than 1 deduction, the deductions are allocated to income years to the extent that their total is no more than the amount of the expenditure or loss.

30

Defined in this Act: amount, deduction, income year, loss

Compare: 2004 No 35 s BD 4

**Subpart BE—Withholding liabilities****Contents**

- BE 1 Withholding liabilities 35

**BE 1 Withholding liabilities***PAYE payments*

- (1) A person who makes a PAYE payment must withhold an amount from the payment under the PAYE rules.

*Resident passive income*

5

- (2) A person who makes a payment of resident passive income must withhold an amount from the payment under the RWT rules.

*Non-resident passive income*

- (3) A person who makes a payment of non-resident passive income must withhold an amount from the payment under the NRWT rules.

*Fringe benefits*

- (4) A person who provides a fringe benefit to another person must pay fringe benefit tax under the FBT rules.

*Employer's superannuation contributions*

- (5) A person who makes an employer's superannuation contribution to a superannuation fund must pay ESCT under the ESCT rules.

*FDP*

20

- (6) A person who receives dividends must pay FDP under the FDP rules.

Defined in this Act: amount, dividend, employer's superannuation contribution, ESCT, ESCT rules, FBT rules, FDP, FDP rules, fringe benefit, fringe benefit tax, non-resident passive income, NRWT rules, pay, PAYE payment, PAYE rules, resident passive income, RWT rules, superannuation fund

25

Compare: 2004 No 35 s BE 1

**Subpart BF—Other obligations****Contents**

- BF 1 Other obligations 30

**BF 1 Other obligations**

A person must pay the following under the relevant Part:

- (a) attributing company election tax under **Part H** (Taxation of certain entities):
- (b) income tax on taxable distributions from non-complying trusts under **Part H**: 5
- (c) further income tax under **Part O** (Memorandum accounts):
- (d) further FDP under **Part O**:
- (e) withdrawal tax under **Part R** (General collection rules). 10

Defined in this Act: attributing company election tax, further FDP, further income tax, income tax, non-complying trust, pay, taxable distribution, withdrawal tax

Compare: 2004 No 35 s BF 1

**Subpart BG—Avoidance****Contents**

15

BG 1 Tax avoidance

---

**BG 1 Tax avoidance**

*Avoidance arrangement void*

- (1) A tax avoidance arrangement is void as against the Commissioner for income tax purposes. 20

*Reconstruction*

- (2) Under **Part G** (Avoidance and non-market transactions), the Commissioner may counteract a tax advantage that a person has obtained from or under a tax avoidance arrangement. 25

Defined in this Act: Commissioner, income tax, tax avoidance arrangement

Compare: 2004 No 35 s BG 1

**Subpart BH—Double tax agreements****Contents**

BH 1 Double tax agreements

---

**BH 1 Double tax agreements**

30

*Meaning*

- (1) **Double tax agreement** means an agreement that—
  - (a) has been negotiated for 1 or more of the purposes set out in **subsection (2)**; and

- (b) has been agreed between—
- (i) the government of any territory outside New Zealand and the government of New Zealand; or
  - (ii) the Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office; and
- (c) has entered into force as a result of a declaration by the Governor-General by Order in Council under **subsection (3)**. 5
- Purposes* 10
- (2) The following are the purposes for which a double tax agreement may be negotiated:
- (a) to provide relief from double taxation:
  - (b) to provide relief from tax:
  - (c) to tax the income derived by non-residents from any source in New Zealand: 15
  - (d) to determine the income to be attributed to non-residents or their agencies, branches, or establishments in New Zealand:
  - (e) to determine the income to be attributed to New Zealand residents who have special relationships with non-residents: 20
  - (f) to prevent fiscal evasion:
  - (g) to facilitate the exchange of information:
  - (h) to assist in recovering unpaid tax. 25
- Entry into force*
- (3) An agreement to which **subsection (1)(a) and (b)** apply enters into force on the date specified by the Governor-General by Order in Council.
- Overriding effect* 30
- (4) Despite anything in this Act, except **subsection (5)**, or in any other Inland Revenue Act or the Official Information Act 1982 or the Privacy Act 1993, a double tax agreement has effect in relation to—
- (a) income tax: 35
  - (b) any other tax imposed by this Act:
  - (c) the exchange of information that relates to a tax, as defined in paragraphs (a)(i) to (v) of the definition of **tax** in section 3 of the Tax Administration Act 1994.

*Agreement for recovery of tax*

- (5) An agreement that provides for the recovery of unpaid tax is subject to Part 10A of the Tax Administration Act 1994.

*Reference to profits*

- (6) A reference in a double tax agreement to the profits of an activity or business is to be read, if possible, as a reference to the amount that would be a person's net income if that activity or business were their only activity or business. 5

Defined in this Act: business, double tax agreement, income, income tax, Inland Revenue Acts, net income, New Zealand, New Zealand resident, non-resident, pay, source in New Zealand, tax 10

Compare: 2004 No 35 s BH 1

## Part C Income

### Subpart CA—General rules

#### Contents

CA 1	Amounts that are income	5
CA 2	Amounts that are exempt income or excluded income	
<b>CA 1 Amounts that are income</b>		
	<i>Amounts specifically identified</i>	
(1)	An amount is income of a person if it is their income under a provision in this Part.	10
	<i>Ordinary meaning</i>	
(2)	An amount is also income of a person if it is their income under ordinary concepts.	
	Defined in this Act: amount, income	
	Compare: 2004 No 35 s CA 1	15
<b>CA 2 Amounts that are exempt income or excluded income</b>		
	<i>What this section does</i>	
(1)	This section identifies the subparts in this Act that deal with exempt income and excluded income.	
	<i>Exempt income</i>	20
(2)	An amount of income of a person is <b>exempt income</b> if it is their exempt income under a provision in <b>subpart CW</b> (Exempt income) or <b>CZ</b> (Terminating provisions).	
	<i>Excluded income</i>	
(3)	An amount of income of a person is <b>excluded income</b> if—	25
	(a) it is their excluded income under a provision in <b>subpart CX</b> (Excluded income) or <b>CZ</b> ; and	
	(b) it is not their non-residents' foreign-sourced income.	
	Defined in this Act: amount, excluded income, exempt income, non-residents' foreign-sourced income	30
	Compare: 2004 No 35 s CA 2	

**Subpart CB—Income from business or trade-  
like activities  
Contents**

<i><b>Business generally</b></i>		
CB 1	Amounts derived from business	5
CB 2	Amounts received on disposal of business assets that include trading stock	
<i><b>Schemes for profit</b></i>		
CB 3	Profit-making undertaking or scheme	
<i><b>Personal property</b></i>		
CB 4	Personal property acquired for purpose of disposal	10
CB 5	Business of dealing in personal property	
<i><b>Land</b></i>		
CB 6	Disposal: land acquired for purpose or with intention of disposal	15
CB 7	Disposal: land acquired for purposes of business relating to land	
CB 8	Disposal: land used for landfill, if notice of election	
CB 9	Disposal within 10 years: land dealing business	
CB 10	Disposal within 10 years: land development or subdivision business	20
CB 11	Disposal within 10 years of improvement: building business	
CB 12	Disposal: schemes for development or division begun within 10 years	25
CB 13	Disposal: amount from major development or division and not already in income	
CB 14	Disposal: amount from land affected by change and not already in income	
CB 15	Transactions between associated persons	30
<i><b>Exclusions for residential land</b></i>		
CB 16	Residential exclusion from sections CB 6 to CB 11	
CB 17	Residential exclusion from sections CB 12 and CB 13	
CB 18	Residential exclusion from section CB 14	
<i><b>Exclusions for business premises</b></i>		
CB 19	Business exclusion from sections CB 6 to CB 11	35
CB 20	Business exclusion from section CB 12	
<i><b>Exclusions for farm land</b></i>		
CB 21	Farm land exclusion from sections CB 12 and CB 13	
CB 22	Farm land exclusion from section CB 14	40

<i>Exclusion for investment land</i>	
CB 23	Investment exclusion from section CB 12
<i>Timber</i>	
CB 24	Disposal of timber or right to take timber
CB 25	Disposal of land with standing timber
	5
<i>Farming, forestry, or fishing</i>	
CB 26	Income equalisation schemes
<i>Environmental restoration</i>	
CB 27	Environmental restoration accounts
<i>Minerals</i>	
CB 28	Disposal of minerals
	10
<i>Intellectual property</i>	
CB 29	Sale of patent applications or patent rights
<i>Transfer of business</i>	
CB 30	Sale of business: transferred employment income obligations
	15
<i>Stolen property</i>	
CB 31	Property obtained by theft
<i>Mutual associations</i>	
CB 32	Amounts derived by mutual associations
CB 33	Amounts derived by members from mutual associations
	20

---

### *Business generally*

#### **CB 1 Amounts derived from business**

##### *Income*

- (1) An amount that a person derives from a business is income of the person. 25

##### *Exclusion*

- (2) **Subsection (1)** does not apply to an amount that is of a capital nature. 30

Defined in this Act: amount, business, income

Compare: 2004 No 35 s CB 1

## **CB 2 Amounts received on disposal of business assets that include trading stock**

### *When this section applies*

- (1) This section applies in an income year when—
- (a) a person (**person A**) who owns or carries on a business disposes of some or all of the assets of the business to another person (**person B**); and 5
  - (b) the disposal is made outside the ordinary course of the business, or to put an end to the business or a part of it; and 10
  - (c) the assets consist of or include trading stock of the business, or a share or interest in trading stock.

### *Assessable income of person A*

- (2) An amount that person A receives from the disposal of the trading stock is taken into account in determining their income for the income year. The amount is derived at the time of disposal referred to in **subsection (1)**. 15

### *Price of acquisition by person B*

- (3) In the calculation of the taxable income of person B for the income year or a later income year, person B is treated as acquiring the trading stock for the amount of the disposal referred to in **subsection (2)**. 20

### *Disposal*

- (4) In this section, a disposal—
- (a) includes the passing of property by an exchange, gift, distribution under a will or on intestacy; and 25
  - (b) does not include a disposal under any of **sections FC 3 to FC 8** (which relate to distributions after death) that is not at market value.

### *Relationship with section CB 1*

- (5) This section overrides **section CB 1**. 30

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

Compare: 2004 No 35 s FB 3

### *Schemes for profit*

#### **CB 3 Profit-making undertaking or scheme**

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

5

Defined in this Act: amount, income

Compare: 2004 No 35 s CB 2

### *Personal property*

#### **CB 4 Personal property acquired for purpose of disposal**

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

10

Defined in this Act: amount, income, personal property

Compare: 2004 No 35 s CB 3

#### **CB 5 Business of dealing in personal property**

15

An amount that a person derives from disposing of personal property is income of the person if their business is to deal in property of that kind.

Defined in this Act: amount, business, income, personal property

Compare: 2004 No 35 s CB 4

20

### *Land*

#### **CB 6 Disposal: land acquired for purpose or with intention of disposal**

##### *Income*

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

25

(a) for 1 or more purposes that included the purpose of disposing of it:

(b) with 1 or more intentions that included the intention of disposing of it.

30

*Exclusions*

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 16** and for business premises in **section CB 19**.

*Land partially sold or sold with other land*

- (3) This section and **sections CB 7 to CB 23** apply whether the land disposed of—
- (a) is part only of the land to which the relevant section applies: 5
  - (b) is the whole of the land to which the relevant section applies: 10
  - (c) is the whole of the land to which the relevant section applies, together with other land.

Defined in this Act: amount, business, dispose, income, land

Compare: 2004 No 35 ss CB 5, OB 1 “land” paragraph (a)(i)

**CB 7 Disposal: land acquired for purposes of business relating to land** 15

*Income*

- (1) An amount that a person (**person A**) derives from disposing of land is income of person A if—
- (a) both the following apply: 20
    - (i) at the time person A acquired the land they, or an associated person, carried on a business of dealing in land; and
    - (ii) person A acquired the land for the purpose of the business; or 25
  - (b) both the following apply:
    - (i) at the time person A acquired the land they, or an associated person, carried on a business of developing land or dividing land into lots; and
    - (ii) person A acquired the land for the purpose of the business; or 30
  - (c) all the following apply:
    - (i) at the time person A acquired the land they, or an associated person, carried on a business of erecting buildings; and 35
    - (ii) person A acquired the land for the purpose of the business; and
    - (iii) before or after acquiring the land person A, or the associated person, made improvements to it.

*Exclusions*

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 16** and for business premises in **section CB 19**.

Defined in this Act: amount, associated person, business, dispose, improvements, income, land

5

Compare: 2004 No 35 s CB 6

**CB 8 Disposal: land used for landfill, if notice of election**

An amount that a person derives from disposing of land is income of the person if—

- (a) the person uses the land as a landfill before disposing of the land; and 10
- (b) at the time of disposal, the land is not being used as a landfill; and
- (c) the person acquiring the land is not an associated person under **subpart YB** (Associated persons and nominees) to the extent to which those rules apply for the purposes of the whole of this Act, excluding the 1973, 1988, and 1990 version provisions; and 15
- (d) the person gives written notice to the Commissioner of an election that the land be subject to this section by the day that is the later of the following: 20
- (i) the day that is 12 months after the day on which the person acquires the land;
- (ii) 24 June 2006; and
- (e) the person makes an election under **paragraph (d)** for all land that the person acquires and uses as a landfill; and 25
- (f) any person associated with the person makes an election under **paragraph (d)** for all land that the associated person acquires and uses as a landfill.

Defined in this Act: associated person, Commissioner, dispose

30

Compare: 2004 No 35 s CB 6B

**CB 9 Disposal within 10 years: land dealing business***Income*

- (1) An amount that a person derives from disposing of land is income of the person if— 35

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

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

*Income: associated person in business of dealing in land*

- (2) An amount that a person (**person A**) derives from disposing of land within 10 years of acquiring it is income of person A if a person (**person B**) associated with them at the time the land was acquired carried on a business of dealing in land, whether or not—
- (a) person A carried on a business of dealing in land; or
- (b) the land was acquired for the purpose of person B's business.

*Exclusions*

- (3) **Subsections (1) and (2)** are overridden by the exclusions for residential land in **section CB 16** and for business premises in **section CB 19**.

Defined in this Act: amount, associated person, business, dispose, income, land, year

Compare: 2004 No 35 s CB 7

**CB 10 Disposal within 10 years: land development or subdivision business** 20

*Income*

- (1) An amount that a person derives from disposing of land is income of the person if—
- (a) they dispose of the land within 10 years of acquiring it; and
- (b) at the time they acquired the land, they carried on a business of developing land or dividing land into lots, whether or not the land was acquired for the purpose of the business.

*Income: associated person in business of developing or subdividing land*

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

- (a) person A carried on a business of developing land or dividing land into lots:
- (b) the land was acquired for the purpose of person B's business.

*Exclusions*

5

- (3) **Subsections (1) and (2)** are overridden by the exclusions for residential land in **section CB 16** and for business premises in **section CB 19**.

Defined in this Act: amount, associated person, business, dispose, income, land, year

10

Compare: 2004 No 35 s CB 8

### **CB 11 Disposal within 10 years of improvement: building business**

*Income*

- (1) An amount that a person derives from disposing of land is income of the person if—
- (a) they dispose of the land within 10 years of completing improvements to it; and
  - (b) at the time they began the improvements, they carried on a business of erecting buildings, whether or not the land was acquired for the purpose of the business.

20

*Income: associated person in business of erecting buildings*

- (2) An amount that a person (**person A**) derives from disposing of land within 10 years of completing improvements on it is income of person A if another person (**person B**) associated with person A at the time the improvements were begun carried on a business of erecting buildings, whether or not—
- (a) person A carried on a business of erecting buildings; or
  - (b) the land was acquired for the purpose of person B's business.

25

30

*Exclusions*

- (3) **Subsections (1) and (2)** are overridden by the exclusions for residential land in **section CB 16** and for business premises in **section CB 19**.

Defined in this Act: amount, associated person, business, dispose, improvements, income, land, year

35

Compare: 2004 No 35 s CB 9

### **CB 12 Disposal: schemes for development or division begun within 10 years**

#### *Income*

- (1) An amount that a person derives from disposing of land is income of the person if the amount is derived in the following circumstances: 5
- (a) an undertaking or scheme, which is not necessarily in the nature of a business, is carried on; and
  - (b) the undertaking or scheme involves the development of the land or the division of the land into lots; and 10
  - (c) the person, or another person for them, carries on development or division work on or relating to the land; and
  - (d) the development or division work is not minor; and
  - (e) the undertaking or scheme was begun within 10 years of the date on which the person acquired the land. 15

#### *Exclusions*

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 17**, for business premises in **section CB 20**, for farm land in **section CB 21**, and for investment land in **section CB 23**. 20

Defined in this Act: amount, business, dispose, income, land, year

Compare: 2004 No 35 s CB 10

### **CB 13 Disposal: amount from major development or division and not already in income** 25

#### *Income*

- (1) An amount that a person derives from disposing of land is income of the person if—
- (a) the amount is not income under any of **sections CB 6 to CB 12 and CB 14**; and 30
  - (b) the amount is derived in the following circumstances:
    - (i) an undertaking or scheme, which is not necessarily in the nature of a business, is carried on; and
    - (ii) the undertaking or scheme involves the development of the land or the division of the land into lots; and 35

- (iii) the person, or another person for them, carries on development or division work on or relating to the land; and
- (iv) the development or division work involves significant expenditure on channelling, contouring, drainage, earthworks, kerbing, levelling, roading, or any other amenity, service, or work customarily undertaken or provided in major projects involving the development of land for commercial, industrial, or residential purposes. 10

*Exclusions*

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 17** and for farm land in **section CB 21**.

*Relationship with section DB 28*

- (3) **Section DB 28** (Amount from major development or division and not already in income) deals with a deduction for the value of the land. 15

Defined in this Act: amount, business, deduction, dispose, income, land

Compare: 2004 No 35 s CB 11

**CB 14 Disposal: amount from land affected by change and not already in income** 20

*Income*

- (1) An amount that a person derives from disposing of land is income of the person if—
- (a) the amount is not income under any of **sections CB 6 to CB 12**; and 25
  - (b) the person disposed of the land within 10 years of acquiring it; and
  - (c) the total amount that they derive from its disposal is more than the cost of the land; and 30
  - (d) at least 20% of the excess arises from a factor, or more than 1 factor, that—
    - (i) relates to the land; and
    - (ii) is described in **subsection (2)**; and
    - (iii) occurs after the person acquired the land, for the factors described in **subsection (2)(c), (e), (g), and (i)**. 35

- Factors for purposes of subsection (1)(d)*
- (2) The factors referred to in **subsection (1)(d)** are—
- (a) the rules of an operative district plan under the Resource Management Act 1991:
  - (b) the likelihood of the imposition of rules: 5
  - (c) a change to the rules:
  - (d) the likelihood of a change to the rules:
  - (e) a consent granted under the Resource Management Act 1991:
  - (f) the likelihood of a consent being granted: 10
  - (g) a decision of the Environment Court made under the Resource Management Act 1991:
  - (h) the likelihood of a decision being made:
  - (i) the removal of a condition, covenant, designation, heritage order, obligation, prohibition, or restriction under the Resource Management Act 1991: 15
  - (j) the likelihood of the removal of a condition, covenant, designation, heritage order, obligation, prohibition, or restriction:
  - (k) an occurrence of a similar nature to any of the occurrences described in any of **paragraphs (a) to (j)**: 20
  - (l) the likelihood of an occurrence of a similar nature to any of the occurrences described in any of **paragraphs (a) to (j)**.

*Exclusions* 25

- (3) **Subsection (1)** is overridden by the exclusions for residential property in **section CB 18** and for farm land in **section CB 22**.

Defined in this Act: amount, dispose, income, land, year

Compare: 2004 No 35 s CB 12

**CB 15 Transactions between associated persons** 30

*Income*

- (1) An amount that a person (the **transferee**) derives from disposing of land is income of the transferee under whichever is applicable of **sections CB 6 to CB 14** if—
- (a) the land has been transferred to the transferee from another person (the **transferor**); and 35
  - (b) the transferor and the transferee are associated persons at the time of the transfer; and

- (c) the amount derived is more than the cost of the land to the transferee; and
- (d) the amount derived would have been income of the transferor under any of **sections CB 6 to CB 14** if the transferor had retained and disposed of the land. 5

*Date on which some transferees acquire land*

- (2) For the purposes of **sections CB 7 to CB 12 and CB 14**, if the transferor and transferee are associated persons at the time of the transfer, the transferee is treated as having acquired the land on the date on which the transferor acquired it. 10

Defined in this Act: amount, associated person, dispose, income, land

Compare: 2004 No 35 s CB 13

*Exclusions for residential land*

**CB 16 Residential exclusion from sections CB 6 to CB 11**

*Exclusion* 15

- (1) **Sections CB 6 to CB 11** do not apply if—
  - (a) the person—
    - (i) acquired the land with a dwellinghouse on it; or
    - (ii) acquired the land and erected a dwellinghouse on it; and 20
  - (b) the dwellinghouse was occupied mainly as a residence by—
    - (i) the person and any member of their family living with them; or
    - (ii) if the person is a trustee, 1 or more beneficiaries of the trust. 25

*What exclusion applies to*

- (2) The exclusion applies to the land that has the dwellinghouse on it. It also applies to land related to the land that has the dwellinghouse on it if the total area of the related land is— 30
  - (a) 4,500 square metres or less; or
  - (b) more than 4,500 square metres, if the larger area is required for the reasonable occupation and enjoyment of the dwellinghouse.

*Who exclusion does not apply to*

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

Defined in this Act: dispose, land, trustee

5

Compare: 2004 No 35 s CB 14

**CB 17 Residential exclusion from sections CB 12 and CB 13***Exclusion: developing or dividing land for residential use*

- (1) **Section CB 12** does not apply if—
- (a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and 10
  - (b) the development, division, or improvement is for use in, and for the purposes of, the residing on the land of the person or any member of their family living with them. 15

*Exclusion: dividing residential land*

- (2) **Sections CB 12 and CB 13** do not apply if—
- (a) the land is a lot that came out of a larger area of land that the person divided into 2 or more lots; and
  - (b) the larger area of land— 20
    - (i) was 4,500 square metres or less immediately before it was divided; and
    - (ii) was occupied by the person mainly as residential land for themselves and a member of their family living with them. 25

Defined in this Act: land

Compare: 2004 No 35 s CB 15

**CB 18 Residential exclusion from section CB 14***Exclusion*

- (1) **Section CB 14** does not apply if— 30
- (a) the person acquired the land and used it or intended to use it for residential purposes; and
  - (b) they disposed of the land to another person who acquired it for residential purposes.

*Purpose of acquisition for purposes of subsection (1)(b)*

- (2) For the purposes of **subsection (1)(b)**, the purpose of the acquisition by the other person is ascertained from the circumstances of the disposal and other relevant matters.

*Meaning of residential purposes*

5

- (3) In this section, **residential purposes**—
- (a) means a purpose that the person has of using the land or intending to use the land mainly as a residence for themselves and members of their family living with them; and
- (b) includes the purpose of erecting a dwellinghouse on the land to be occupied as such a residence.

10

Defined in this Act: dispose, land, residential purposes

Compare: 2004 No 35 s CB 16

*Exclusions for business premises*

15

**CB 19 Business exclusion from sections CB 6 to CB 11***Exclusion*

- (1) **Sections CB 6 to CB 11** do not apply to a disposal of land if—
- (a) the land is the premises of a business; and
- (b) the person acquired and occupied, or erected and occupied, the premises mainly to carry on a substantial business from them.

20

*Who exclusion does not apply to*

- (2) The exclusion does not apply to a person who has engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of premises for businesses.

25

*Meaning of land*

- (3) In this section, **land** includes land that—
- (a) is reserved, with the premises, for the use of the business; and
- (b) is of an area no greater than that required for the reasonable occupation of the premises and the carrying on of the business.

30

Defined in this Act: business, dispose, land

Compare: 2004 No 35 s CB 17

35

**CB 20 Business exclusion from section CB 12**

**Section CB 12** does not apply if—

- (a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and 5
- (b) the development, division, or improvement is for use in, and for the purposes of, the carrying on of a business by the person on the land; and
- (c) the business does not consist of the undertaking or scheme. 10

Defined in this Act: business, land

Compare: 2004 No 35 s CB 18

*Exclusions for farm land***CB 21 Farm land exclusion from sections CB 12 and CB 13**

*Exclusion* 15

- (1) **Sections CB 12 and CB 13** do not apply if—
  - (a) the land is a lot resulting from the division of a larger area of land into 2 or more lots; and
  - (b) immediately before the land was divided, the larger area of land was occupied or used by the person, their spouse, civil union partner or de facto partner, or both of them, mainly for the purposes of a farming or agricultural business carried on by either or both of them; and 20
  - (c) the area and nature of the land disposed of mean that it is then capable of being worked as an economic unit as a farming or agricultural business; and 25
  - (d) the land was disposed of mainly for the purpose of using it in a farming or agricultural business.

*Circumstances for purposes of subsection (1)(d)* 30

- (2) The circumstances of the disposal of the land are relevant to the decision on whether the land was disposed of mainly for the purpose of using it in a farming or agricultural business. The circumstances include—
  - (a) the consideration for the disposal of the land: 35
  - (b) current prices paid for land in that area:
  - (c) the terms of the disposal:
  - (d) a zoning or other classification relating to the land:

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

Defined in this Act: business, dispose, land, pay

Compare: 2004 No 35 s CB 19

5

## CB 22 Farm land exclusion from section CB 14

### *Exclusion*

- (1) **Section CB 14** does not apply if—
- (a) the person (**person A**) acquired the land, and they, their spouse, civil union partner or de facto partner, or both of them used or intended to use the land mainly for the purposes of a farming or agricultural business carried on by them, their spouse, civil union partner, or de facto partner, or both of them; and 10
- (b) they disposed of the land to another person (**person B**) mainly for the purposes of the continuing use of the land in a farming or agricultural business. 15

### *Purposes of acquisition for purposes of subsection (1)(b)*

- (2) For the purposes of **subsection (1)(b)**, person B's purposes in acquiring the land are ascertained from circumstances of the disposal arising after person A acquired the land and other relevant matters, not including the factors described in **section CB 14(1)**. 20

Defined in this Act: business, dispose, land

Compare: 2004 No 35 s CB 20

25

### *Exclusion for investment land*

## CB 23 Investment exclusion from section CB 12

**Section CB 12** does not apply if—

- (a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and 30
- (b) the development, division, or improvement is for use in, and for the purposes of, the person's deriving from the land income of the kind described in **section CC 1** (Land).

Defined in this Act: income, land

Compare: 2004 No 35 s CB 21

35

## *Timber*

### **CB 24 Disposal of timber or right to take timber**

#### *Income*

- (1) An amount is income of a person if they derive it from—
- (a) disposing of timber; or 5
  - (b) disposing of a right to take timber.

#### *Whether or not person owns land*

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

#### *Disposal for below market value*

- (3) **Section GC 2** (Disposal of timber rights or standing timber) may apply to treat a person as deriving an amount on the grant of a right to take timber or disposal of standing timber. 10

Defined in this Act: amount, dispose, income, own, right to take timber, standing timber 15

Compare: 2004 No 35 s CB 22

### **CB 25 Disposal of land with standing timber**

#### *When this section applies*

- (1) This section applies when a person disposes of land with standing timber on it. 20

#### *Exclusions*

- (2) This section does not apply when the standing timber is of 1 of the following kinds:
- (a) trees that are ornamental or incidental, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994; or 25
  - (b) trees in a crop subject to a forestry right, as defined in section 2 of the Forestry Rights Registration Act 1983, registered under the Land Transfer Act 1952; or
  - (c) trees subject to a right to take a benefit (in the form of a profit a prendre) granted before 1 January 1984. 30

*Income*

- (3) The amount that the person derives from disposing of the standing timber is income of the person.

Defined in this Act: amount, dispose, income, standing timber

Compare: 2004 No 35 s CB 23

5

*Farming, forestry, or fishing***CB 26 Income equalisation schemes**

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

- (a) **sections EH 11, EH 14, EH 16, EH 18, EH 20 to EH 22, EH 24, and EH 26** (which relate to the main income equalisation scheme): 10
- (b) **sections EH 46, EH 48, EH 50 to EH 52, EH 54, and EH 56** (which relate to the adverse event income equalisation scheme): 15
- (c) **sections EH 72, EH 74, and EH 76** (which relate to the thinning operations income equalisation scheme).

Defined in this Act: adverse event income equalisation scheme, income, main income equalisation scheme, person, thinning operations income equalisation scheme

20

Compare: 2004 No 35 s CB 24

*Environmental restoration***CB 27 Environmental restoration accounts***Income from refund*

- (1) A person who receives a refund for a tax year under **section EK 12** (Refund if request or excess balance) derives for the person's corresponding income year an amount of income calculated using the formula— 25

$$\frac{\text{refund}}{\text{tax rate.}} \quad 30$$

*Income from transfer from environmental restoration account*

- (2) If there is a transfer from a person's environmental restoration account under **section EK 15, EK 16, or EK 19** (which relate to environmental restoration accounts), the person derives for 35

the corresponding income year an amount of income calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

*Definitions of items in formulas*

5

- (3) The items in the formulas are defined in **subsections (4) to (6)**.

*Refund*

- (4) **Refund** is the amount of the refund.

*Tax rate*

- (5) **Tax rate** is the highest rate of income tax on taxable income that— 10
- (a) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); and
  - (b) would apply to the person for the tax year if the person had sufficient taxable income. 15

*Transfer*

- (6) **Transfer** is the amount in the environmental restoration account that is transferred.

*Income arising from renewal of resource consent*

- (7) A person who incurs expenditure of a type listed in **schedule 19, part A, paragraphs 2 to 5** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 19, part C** derives income under **subsection (8)** if— 20
- (a) the deduction under **section DB 47** (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the expenditure is determined by the period for which a resource consent is granted; and 25
  - (b) the period of the grant of the resource consent is extended by more than 50% in a later income year or a new resource consent is granted for a period that is more than 50% of the total period of the resource consent. 30

*Amount of income*

- (8) The person derives for the income year in which the period of the resource consent is extended, or the new resource consent is granted, an amount of income equal to the greater of zero and the difference between— 5
- (a) the total deduction under **section DB 47** for the person for the period from the grant of the resource consent to the beginning of the income year:
- (b) the total deduction for the expenditure that the person would have had under **section DB 47** for the period referred to in **paragraph (a)**, if the period of the resource consent at the time of the grant had been 35 years. 10
- Defined in this Act: corresponding income year, environmental restoration account, income, income tax, resource consent, taxable income, tax year
- Compare: 2004 No 35 s CB 24B 15

*Minerals***CB 28 Disposal of minerals***Income*

- (1) An amount that a person derives from disposing of minerals taken from land is income of the person. 20

*Whether or not person owns land*

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

Defined in this Act: amount, dispose, income, mineral, own

Compare: 2004 No 35 s CB 25 25

*Intellectual property***CB 29 Sale of patent applications or patent rights**

If a person derives an amount from the sale of a patent application with a complete specification or from the sale of patent rights, the amount is income of the person. 30

Defined in this Act: amount, income, patent rights

Compare: 2004 No 35 s CB 26

### *Transfer of business*

#### **CB 30 Sale of business: transferred employment income obligations**

##### *When this section applies*

- (1) This section applies when **section DC 10** (Sale of business: transferred employment income obligations) applies and the reduction in the consideration is more than the amount the buyer actually pays for the transferred obligation. 5

##### *Income*

- (2) The excess is income of the buyer. 10

##### *Timing of income*

- (3) The income is allocated to the income year in which the reduction of the transferred provision is required to be recognised by the buyer under generally accepted accounting practice. 15

Defined in this Act: amount, generally accepted accounting practice, income, income year, pay

Compare: 2004 No 35 s CB 27

### *Stolen property*

#### **CB 31 Property obtained by theft** 20

##### *Income*

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

##### *Timing of income*

- (2) The income is allocated to the income year in which the person obtains possession or control of the property. 25

##### *Whether or not constructive trust*

- (3) **Subsection (1)** applies whether or not the person holds the property as a trustee under a constructive trust. 30

Defined in this Act: amount, claim of right, income, income year, possession, property, trustee

Compare: 2004 No 35 s CB 28

### *Mutual associations*

#### **CB 32 Amounts derived by mutual associations**

*When this section applies*

- (1) This section applies when an association enters into a transaction of a kind described in **section HE 2** (Classes of mutual transaction) with— 5
- (a) 1 or more members; or
  - (b) 1 or more members along with 1 or more persons who are not members of the association.

*Income* 10

- (2) If the association derives from the transaction an amount that would be income under ordinary concepts but for the mutual character of the transaction, the amount is income of the association.

Defined in this Act: amount, association, income, income year, member 15

Compare: 2004 No 35 s HF 1(1)

#### **CB 33 Amounts derived by members from mutual associations**

*When this section applies*

- (1) This section applies when an association, in relation to a mutual transaction, pays an association rebate to a member in an income year in circumstances where a payment for the transaction would be taken into account in determining the taxable income of the member. 20

*Income* 25

- (2) The amount of the association rebate is income of the member in the income year but only to the extent of the amount of the association's deduction under **section DV 19** (Association rebates).

*Statutory producer boards: timing of payment* 30

- (3) If a statutory producer board pays an association rebate to a member that is a mutual association, the association is treated as deriving the amount in the income year in which the producer board chooses under **section DV 19(6)** to have the amount as the deduction. 35

*When amount paid*

- (4) For the purposes of this section, an amount is treated as having been paid to a person when it is credited in account or dealt with in some way in their interest or on their behalf. **Subsection (3)** overrides this subsection. 5

*Relationship with dividend rules*

- (5) An association rebate—
- (a) is not a dividend to the extent to which it is a payment of the kind described in **subsection (2)** and is no more than the amount of the deduction the association is allowed under **section DV 19**; and 10
- (b) for an association that is not a company, and to the extent to which it is more than the amount of the deduction the association is allowed under **section DV 19**, is income of the member. 15

Defined in this Act: amount, association, association rebate, deduction, dividend, income, income year, member, pay, statutory producer board

Compare: 2004 No 35 s HF 1(3)(c), (5), (6)

**Subpart CC—Income from holding property  
(excluding equity) 20**

**Contents***Land use*

- CC 1 Land  
CC 2 Non-compliance with covenant for repair

*Financial instruments* 25

- CC 3 Financial arrangements  
CC 4 Payments of interest  
CC 5 Annuities  
CC 6 Prizes received under Building Societies Act 1965  
CC 7 Consideration other than in money 30  
CC 8 Use of money interest payable by Commissioner

*Royalties*

- CC 9 Royalties  
CC 10 Films

*Finance leases* 35

- CC 11 Lessee acquiring lease asset on expiry of term of lease  
CC 12 Lessor acquiring lease asset on expiry of term of lease

*Hire purchase agreements*

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

*Land use*

- CC 1 Land** 5
- Income*
- (1) An amount described in **subsection (2)** is income of the owner of land if they derive the amount from—
- (a) a lease, licence, or easement affecting the land; or
  - (b) the grant of a right to take the profits of the land. 10
- Amounts*
- (2) The amounts are—
- (a) rent:
  - (b) a fine:
  - (c) a premium: 15
  - (d) a payment for the goodwill of a business:
  - (e) a payment for the benefit of a statutory licence:
  - (f) a payment for the benefit of a statutory privilege:
  - (g) other revenues.
- Relationship with section GC 5* 20
- (3) The treatment of leases of property to related parties for less than an adequate rent is dealt with in **section GC 5** (Leases for inadequate rent).
- Defined in this Act: amount, business, income, lease, own, pay
- Compare: 2004 No 35 s CC 1 25
- CC 2 Non-compliance with covenant for repair**
- When this section applies*
- (1) This section applies when a person who is a lessor of land derives an amount for non-compliance by the lessee with an obligation under a lease of the land— 30
- (a) to maintain the land; or
  - (b) to make repairs to improvements on the land.

*Income*

- (2) The amount is income of the lessor.

*Timing of income*

- (3) The income is allocated to the income year in which the lessor receives the amount. 5

*Relationship with sections EI 4 and EI 5*

- (4) **Subsection (3)** is overridden by **sections EI 4** (Amount paid to lessor for non-compliance with covenant for repair) and **EI 5** (Amount paid for non-compliance: when lessor ceases to own land). 10

Defined in this Act: amount, income, income year, lease, repairs

Compare: 2004 No 35 s CC 2

***Financial instruments*****CC 3 Financial arrangements***Income: party to financial arrangement*

15

- (1) If a person who is a party to a financial arrangement is treated as deriving an amount of income under the financial arrangement under **subpart EW** (Financial arrangements rules), the amount is income of the person.

*Income: trustee*

20

- (2) Income derived by a trustee in the circumstances described in **section EW 50** (Income when debt forgiven to trustee) is income of the trustee.

Defined in this Act: amount, financial arrangement, income, trustee

Compare: 2004 No 35 s CC 3

25

**CC 4 Payments of interest***Income*

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

*Apportionment*

- (2) Interest due but unpaid on the date on which a person disposes of a security is apportioned between the person disposing of the security and the person acquiring it.

Defined in this Act: income, interest, pay

5

Compare: 2004 No 35 s CC 4

**CC 5 Annuities***Income*

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

*Apportionment*

10

- (2) Income under an annuity due but unpaid on the date on which a person disposes of the annuity is apportioned between the person disposing of the annuity and the person acquiring it.

*Relationship with sections CW 4 and CW 29*

- (3) This section is overridden by **sections CW 4** (Annuities under life insurance policies) and **CW 29** (Annuities from Crown Bank Accounts).

15

Defined in this Act: income, pay

Compare: 2004 No 35 s CC 5

**CC 6 Prizes received under Building Societies Act 1965**

20

*Income*

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

*Timing of income*

25

- (2) The income is allocated as follows:
- (a) a cash prize is allocated to the day on which the bonus ballot giving rise to the prize is held; and
  - (b) an advance is allocated to the day on which the advance is made or, if the advance is made in a series of advances, to the first day on which an advance is made.

30

Defined in this Act: income

Compare: 2004 No 35 s CC 6

**CC 7 Consideration other than in money***When this section applies*

- (1) This section applies when—
- (a) a lender provides money to a borrower for use in a business that the borrower carries on in New Zealand; and 5
  - (b) the borrower provides to the lender, as some or all of the consideration, a tangible or intangible benefit that—
    - (i) is not interest; and
    - (ii) may or may not be relief from an obligation; and 10
    - (iii) may or may not be convertible into money; and
  - (c) the borrowing is a commercial transaction under which the borrower would have been liable to pay interest at the current commercial rate, given the nature and term of the loan, if the borrower had not provided the benefit, whether or not the contract between the borrower and the lender provides for the payment of interest if the benefit is not provided. 15

*Income*

- (2) The amount described in **subsection (3)** is income of the lender. 20

*Amount of income*

- (3) The amount is the interest that the borrower would have been liable to pay if the lender had lent the money to the borrower in consideration of the payment of interest at the current commercial rate, given the nature and term of the loan, reduced by the amount of any interest that the borrower pays. 25

Defined in this Act: amount, business, income, interest, New Zealand, pay

Compare: 2004 No 35 s CC 7

**CC 8 Use of money interest payable by Commissioner***Income* 30

- (1) Interest payable by the Commissioner to a person under Part 7 of the Tax Administration Act 1994 is income of the person.

*Timing of income*

- (2) Interest to which this section applies is allocated under **section EF 4** (Use of money interest payable by Commissioner). 35

*Relationship with financial arrangements rules*

- (3) Interest to which this section applies is disregarded for the purposes of the financial arrangements rules.

Defined in this Act: Commissioner, financial arrangements rules, income, interest, pay

5

Compare: 2004 No 35 s CC 8

**Royalties****CC 9 Royalties***Income*

- (1) A royalty derived by a person is income of the person. 10

*Meaning of royalty*

- (2) **Royalty** includes a payment of any kind derived as consideration for—
- (a) the use of, or right to use, a copyright, patent, plant variety rights, trademark, design or model, plan, secret formula or process, or other similar property or right: 15
  - (b) the use of, or right to use, a mine or quarry:
  - (c) the extraction, removal, or other exploitation of standing timber or a natural resource:
  - (d) the right to extract, remove, or otherwise exploit standing timber or a natural resource: 20
  - (e) the use of, or right to use, a film, a videotape, or a tape in connection with radio broadcasting:
  - (f) the supply of scientific, technical, industrial, or commercial knowledge or information: 25
  - (g) the total or partial forbearance of the use of, or the grant of a right to use, property or a right referred to in any of **paragraphs (a) to (e)**:
  - (h) the supply of assistance that enables the application or use of anything in any of **paragraphs (a) to (f)**: 30
  - (i) the total or partial forbearance of the supply of knowledge or information or assistance referred to in **paragraph (f) or (h)**.

*Relevance of description of payment*

- (3) For the purposes of **subsection (2)**, none of the following is relevant: 35
- (a) how the payment is described or computed:

- (b) whether the payment is periodical or otherwise:
- (c) whether the payment is an instalment of the purchase price of real property:
- (d) whether the payment is an instalment of the purchase price of personal property. 5

Defined in this Act: income, pay, royalty, standing timber

Compare: 2004 No 35 s CC 9

## CC 10 Films

*When this section applies*

- (1) This section applies when a person has a right or interest of any of the kinds described in **subsection (2)** in or to— 10
  - (a) a film; or
  - (b) a print of the film; or
  - (c) publicity material for the film; or
  - (d) any other tangible asset relating to the film. 15

*Right or interest*

- (2) The right or interest is a right or interest, including a future or contingent right or interest, of any of the following kinds:
  - (a) copyright in the film:
  - (b) a licence relating to the copyright: 20
  - (c) an equitable right in the copyright:
  - (d) an equitable right in a licence relating to the copyright:
  - (e) any other right existing in or attaching to the film:
  - (f) a right to income, or a share of income, from the rental, sale, use, or other exploitation of the film. 25

*Income*

- (3) The following amounts are income of the person:
  - (a) an amount received or receivable by the person for—
    - (i) the use of, or the right to use, the film or a right or interest in a right in the film: 30
    - (ii) the granting of a licence for a future right in the film:
    - (iii) the disposal of some or all of a right or interest in a right in the film:
    - (iv) the assignment of a right or an interest in a right: 35
    - (v) the assignment of a right to derive income from the use of a right or interest; and

- (b) an amount derived by the person from the rental, sale, use, or other exploitation of the film.

*Relationship with sections CV 17 and YD 7*

- (4) This section is overridden by **sections CV 17 and YD 7** (which relate to film rental income). 5

Defined in this Act: amount, film, income

Compare: 2004 No 35 s CC 10

***Finance leases***

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

*When this section applies* 10

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

*Income of lessee* 15

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

Defined in this Act: consideration, finance lease, income, lessee, pay, personal property lease asset, tax year 20

Compare: 2004 No 35 s FC 8E

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

*When this section applies*

- (1) This section applies for the purposes of **section FA 10(3)** (Treatment when lease ends: lessor acquiring asset), when, after the term of a finance lease,— 25

- (a) a lessor under the lease sells, assigns, or leases the personal property lease asset to another person under another finance lease; and 30

- (b) the consideration is more than the amount determined under **section FA 10(2)**.

*Income of lessor*

- (2) To the extent to which the difference between the amount determined under **section FA 10(2)** and the consideration is not paid by the lessor to the lessee under the original finance lease, the amount is income of the lessor in the tax year in which the original lease term ends. 5

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

Compare: 2004 No 35 s FC 8D(2)

*Hire purchase agreements* 10**CC 13 Amounts paid in income years after hire purchase agreement ends***When this section applies*

- (1) This section applies for the purposes of **section FA 18** (Treatment of amounts paid in income years after agreement ends), when an amount that is liable to be paid under a hire purchase agreement is paid in an income year that is later than the income year in which the agreement ends. 15

*Income of seller*

- (2) An amount that the buyer is liable to pay under the terms of the agreement is income of the seller in the income year in which they receive it. 20

*Income of buyer*

- (3) An amount paid by the seller to the buyer under **section FA 18(3)(b)** is income of the buyer in the income year in which the amount is paid. 25

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

Compare: 2004 No 35 s FC 10(5)(d)-(f)

Subpart CD—Income from equity  
**Contents** 30

*Income*

- CD 1 Dividend  
 CD 2 Distribution excluded from being dividend

*What is a dividend?*

CD 3	Meaning of dividend	
CD 4	Transfers of value generally	
CD 5	What is a transfer of value?	
CD 6	When is a transfer caused by a shareholding relationship?	5
CD 7	Bonus issues in lieu of dividend	
CD 8	Elections to make bonus issue into dividend	
CD 9	Interests in money or property of foreign unit trust	
CD 10	Bonus issue by foreign unit trust instead of money or property	10
CD 11	Avoidance arrangements	
CD 12	Superannuation schemes entering trust rules	
CD 13	Notional distributions of producer boards and co-operative companies	15
CD 14	Notional distributions of emigrating companies	
CD 15	Tax credits linked to dividends	
CD 16	Certain dividends not increased by tax credits	
CD 17	Credit transfer notice	
CD 18	Dividend reduced if foreign tax paid on company's income	20
CD 19	Foreign tax credits and refunds linked to dividends	
CD 20	Benefits of shareholder-employees or directors	
CD 21	Attributed repatriations from controlled foreign companies	25

*What is not a dividend?*

CD 22	Returns of capital: off-market share cancellations	
CD 23	Ordering rule and slice rule	
CD 24	Returns of capital: on-market share cancellations	
CD 25	Treasury stock acquisitions	30
CD 26	Capital distributions on liquidation or emigration	
CD 27	Property made available intra-group	
CD 28	Transfers of certain excepted financial arrangements within wholly-owned groups	
CD 29	Non-taxable bonus issues	35
CD 30	Transfer by unit trust of legal interest after beneficial interest vests	
CD 31	Flat-owning companies	
CD 32	Employee benefits	
CD 33	Payments corresponding to notional distributions of producer boards and co-operative companies	40
CD 34	Distribution to member of co-operative company based on member's transactions	
CD 35	Resident's restricted amalgamations	
CD 36	Foreign investment fund income	45

CD 37	Maori authority distributions	
	<i>Calculation rules</i>	
CD 38	General calculation rule for transfers of value	
CD 39	Calculation of amount of dividend when property made available	5
CD 40	Adjustment if dividend recovered by company	
CD 41	Adjustment if amount repaid later	
CD 42	Adjustment if additional consideration paid	
CD 43	Available subscribed capital amount	
CD 44	Available capital distribution amount	10
	<i>CFC attributed repatriation calculation rules</i>	
CD 45	When does a person have attributed repatriation from a CFC?	
CD 46	New Zealand repatriation amount	
CD 47	New Zealand property amount	15
CD 48	Cost of tangible property	
CD 49	Cost of associated party equity	
CD 50	Outstanding balances of financial arrangements	
CD 51	Property transfers between associated persons	
CD 52	Unrepatriated income balance	20
	<i>Prevention of double taxation</i>	
CD 53	Prevention of double taxation of share cancellation dividends	
	<i>Returning share transfers</i>	
CD 54	Replacement payments	25

---

## *Income*

**CD 1 Dividend**

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

Defined in this Act: dividend, income

Compare: 2004 No 35 s CD 1 30

**CD 2 Distribution excluded from being dividend**

A distribution, derived by a member of a co-operative company, that is excluded by **section CD 34** from being a dividend is income of the member.

Defined in this Act: co-operative company, dividend, income

Compare: 2004 No 35 s CD 1B 35

### *What is a dividend?*

#### **CD 3 Meaning of dividend**

**Sections CD 4 to CD 21** define what is a **dividend**.

Defined in this Act: dividend

Compare: 2004 No 35 s CD 2

5

#### **CD 4 Transfers of value generally**

*Transfers of value from company*

- (1) A transfer of value from a company to a person is a dividend if—
- (a) the cause of the transfer is a shareholding in the company, as described in **section CD 6**; and 10
  - (b) none of the exclusions in **sections CD 22 to CD 37** applies to the transfer.

*Calculation rules*

- (2) **Sections CD 38 to CD 42** apply for the purposes of calculating the amount of the dividend. 15

Defined in this Act: company, dividend, transfer of value

Compare: 2004 No 35 s CD 3

#### **CD 5 What is a transfer of value?**

*General test*

20

- (1) A **transfer of value** from a company to a person occurs when—
- (a) the company provides money or money's worth to the person; and
  - (b) if the person provides any money or money's worth to the company under the same arrangement, the market value of what the company provides is more than the market value of what the person provides. 25

*Release of debt*

- (2) A company provides money's worth to a person if the person is released from an obligation to pay money to the company, either by agreement or by operation of law. 30

*Provision of services for less than market value*

- (3) Despite **subsection (1)**, a transfer of value does not occur to the extent to which the money's worth provided by the company is only the provision of services.

*Limit to subsection (3)*

5

- (4) **Subsection (3)** does not apply to the provision of services by a company that is a close company, if the provision is the benefit of expenditure of the company.

Defined in this Act: arrangement, close company, company, pay, services, transfer of value

10

Compare: 2004 No 35 s CD 4

## CD 6 When is a transfer caused by a shareholding relationship?

*General test*

- (1) A transfer of value from a company to a person (the **recipient**) is caused by a shareholding in the company if—
- (a) the recipient at any relevant time—
- (i) holds shares in the company; or
- (ii) is associated with a shareholder; or
- (iii) is the trustee of a trust, and a beneficiary of the trust is either a shareholder or the spouse, civil union partner, or de facto partner of a shareholder; and
- (b) the company makes the transfer because of that shareholding of the relevant shareholder.

20

25

*Indication that test met*

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

30

*Deductible distributions of producer boards*

- (3) Despite **subsection (1)**, a transfer of value by a statutory producer board to a member is not caused by a shareholding if—
- (a) the transfer is a cash distribution; and
- (b) the distribution is a deduction under **subpart HE** (Mutual transactions) or any other provision of this Act; and

35

- (c) the board does not choose to treat the distribution as a dividend under **section OB 73** (Statutory producer boards attaching imputation credits to cash distributions).

*Deductible distributions of co-operative companies*

- (4) Despite **subsection (1)**, a transfer of value by a co-operative company to a shareholder is not caused by a shareholding if— 5
- (a) the transfer is a cash distribution; and
- (b) the distribution is a deduction under **subpart HE** or any other provision of this Act; and
- (c) the company does not choose to treat the distribution as a dividend under **section OB 82** (When and how co-operative company makes election). 10

*Relationship with sections DV 18 and subpart HE*

- (5) For the purposes of **subsections (3)(b) and (4)(b)**, **subpart HE** is not overridden by **section DV 18** (Statutory producer boards and co-operative companies). 15

Defined in this Act: arrangement, associated person, company, co-operative company, deduction, share, shareholder, statutory producer board, transfer of value, trustee

Compare: 2004 No 35 s CD 5 20

**CD 7 Bonus issues in lieu of dividend**

*Bonus issues in lieu*

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

*Amount of dividend*

- (2) The amount of the dividend is the money or money's worth offered as an alternative, minus any RWT payable in relation to the dividend. 25

Defined in this Act: amount, bonus issue in lieu, dividend, pay, RWT

Compare: 2004 No 35 s CD 6

**CD 8 Elections to make bonus issue into dividend** 30

*Treating bonus issues as dividends*

- (1) A bonus issue that is not a bonus issue in lieu is a dividend if—
- (a) the bonus issue—
- (i) is issued fully paid from reserves of the company: 35

- (ii) if a dividend, would not be exempt income under **section CW 10** (Dividend within New Zealand wholly-owned group) or **CW 11** (Dividend of CTR holding company); and
- (b) the company chooses under this section to treat the bonus issue as a dividend. 5

*Form of election*

- (2) A company chooses to treat a bonus issue as a dividend by—
  - (a) resolving, when it makes the bonus issue, that it is a dividend; and 10
  - (b) resolving, when it makes the bonus issue, the amount to be treated as a dividend, which must be more than zero; and
  - (c) giving notice to the Commissioner under section 63 of the Tax Administration Act 1994 of the election and the amount. 15

*Amount of dividend*

- (3) The amount of the dividend is the amount chosen by the company. 20
- Defined in this Act: amount, bonus issue, bonus issue in lieu, Commissioner, company, dividend, notice, pay
- Compare: 2004 No 35 s CD 7

**CD 9 Interests in money or property of foreign unit trust**

*Interest absolutely vested in unit holder*

- (1) If a beneficial interest in money or property of a unit trust that is a foreign company vests absolutely in a unit holder, the money or property is a dividend for the unit holder. 25

*Amount of dividend*

- (2) The amount of the dividend is the value of the money or property. 30
- Defined in this Act: dividend, foreign company, unit holder, unit trust
- Compare: 2004 No 35 s CD 7B

### CD 10 Bonus issue by foreign unit trust instead of money or property

#### *Interest absolutely vested in unit holder*

- (1) A bonus issue made to a unit holder by a unit trust that is a foreign company is a dividend for the unit holder if the issue is made under an arrangement or decision that the unit trust will make the bonus issue instead of causing a beneficial interest in money or property of the unit trust to vest absolutely in the unit holder. 5

#### *Amount of dividend* 10

- (2) The amount of the dividend is the value of the money or property in which a beneficial interest would have vested in the unit holder if the bonus issue had not been made.

Defined in this Act: bonus issue, dividend, foreign company, unit holder, unit trust  
Compare: 2004 No 35 s CD 7C 15

### CD 11 Avoidance arrangements

An amount treated as a dividend under any of the following sections is a dividend:

- (a) **section GB 1** (Arrangements involving dividend stripping): 20
- (b) **section GB 23(7)** (Excessive remuneration to relatives):
- (c) **section GB 25** (Close company remuneration to shareholders, directors, or relatives).

Defined in this Act: amount, close company, director, dividend, relative, shareholder 25

Compare: 2004 No 35 ss GD 1(3), GD 3, GD 5

### CD 12 Superannuation schemes entering trust rules

#### *When this section applies*

- (1) This section applies when a superannuation scheme that is treated as a company because it is a unit trust becomes a superannuation fund. 30

*Treatment as liquidated*

- (2) The company is treated as liquidated immediately before the date on which the scheme becomes a superannuation fund.

Defined in this Act: company, liquidation, superannuation fund, superannuation scheme

5

Compare: 2004 No 35 s HH 1(9)

### **CD 13 Notional distributions of producer boards and co-operative companies**

*Notional distributions of producer boards*

- (1) A notional distribution of a statutory producer board is a dividend if the board determines to attach an imputation credit to the notional distribution under **section OB 74** (Statutory producer boards attaching imputation credits to notional distributions). 10

*Calculation: section OB 75*

15

- (2) The amount of the dividend is calculated under **section OB 75** (Statutory producer boards' notional distributions that are dividends).

*Notional distributions of co-operative companies*

- (3) A notional distribution of a co-operative company is a dividend if the company determines to attach an imputation credit to the notional distribution under **section OB 79** (Co-operative companies attaching imputation credits to notional distributions). 20

*Calculation: section OB 80*

25

- (4) The amount of the dividend is calculated under **section OB 80** (Co-operative companies' notional distributions that are dividends).

*Corresponding payments not dividends*

- (5) **Section CD 33** means that a payment that corresponds to a notional distribution may not be a dividend. 30

Defined in this Act: amount, co-operative company, dividend, imputation credit, pay, statutory producer board

Compare: 2004 No 35 s CD 8

**CD 14 Notional distributions of emigrating companies***Dividend*

- (1) A notional distribution of an emigrating company under **section FL 2** (Treatment of emigrating companies and their shareholders) is a dividend for a shareholder of the company. 5

*Amount of dividend*

- (2) The amount of the dividend is determined by a shareholder's entitlement in the circumstances set out in **section FL 2**.  
 Defined in this Act: amount, dividend, emigrating company, shareholder  
 Compare: 2004 No 35 s FCB 2(b) 10

**CD 15 Tax credits linked to dividends***Imputation and FDP credits*

- (1) The amount of a dividend is increased by—  
 (a) an imputation credit attached to the dividend;  
 (b) an FDP credit attached to the dividend. 15

*Relationship with sections CD 16 and CD 17*

- (2) **Subsection (1)** is overridden by **sections CD 16 and CD 17**.

*When subsection (1) does not apply*

- (3) **Subsection (1)** does not apply in—  
 (a) **Part L** (Tax credits and other credits), except for **subpart LP** (Tax credits for supplementary dividends); or  
 (b) **Part M** (Tax credits for families); or  
 (c) **Part O** (Memorandum accounts); or  
 (d) **Part R** (General collection rules). 20

*Arrangement for dividend from another company* 25

- (4) **Section GB 37** (Arrangements for payment of dividend by other companies) may apply to treat an imputation credit as not being included in the amount of a dividend.  
 Defined in this Act: amount, arrangement, dividend, FDP credit, imputation credit, income, tax 30

Compare: 2004 No 35 s CD 9

**CD 16 Certain dividends not increased by tax credits***When this section applies*

- (1) This section applies when a unit trust manager, in the ordinary course of their management activities for a unit trust,—
- (a) acquires units from unit holders under the terms on which the units were offered to potential unit holders; and 5
  - (b) derives a dividend from the redemption or other cancellation of units in the unit trust.

*Credit not included*

- (2) For the purposes of **Parts B, C, E, and F**, the dividend derived does not include an amount of imputation credit attached to it to the extent to which the dividend (exclusive of the imputation credit) recovers the price paid by the unit trust manager to acquire the units. 10 15

*Relationship with section FA 3*

- (3) To the extent to which **subsection (2)** applies, **section FA 3** (Recharacterisation of certain dividends: recovery of cost of shares held on revenue account) does not apply.

*Some definitions*

- (4) In this section,— 20
- imputation credit** includes an FDP credit
- unit trust manager** includes—
- (a) a person nominated by the unit trust manager; or
  - (b) a trustee or a manager of a group investment fund that derives category A income; or 25
  - (c) a person nominated by the trustee or the manager of the group investment fund.

Defined in this Act: amount, cancellation, dividend, FDP credit, imputation credit, pay, tax, unit trust, unit trust manager 30

Compare: 2004 No 35 s CD 10

**CD 17 Credit transfer notice***When this section applies*

- (1) This section applies when a share user under a share-lending arrangement— 35

- (a) derives a dividend for the original share, with an imputation credit attached; and
- (b) issues a credit transfer notice for the dividend.
- Credit not included*
- (2) The dividend derived by the share user does not include the amount of the imputation credit. 5
- Income*
- (3) The amount of the imputation credit is income derived by the share supplier when the credit transfer notice is issued.
- Meaning of imputation credit* 10
- (4) In this section, **imputation credit** includes an FDP credit.  
 Defined in this Act: amount, credit transfer notice, dividend, FDP credit, imputation credit, original share, share-lending arrangement, share supplier, share user  
 Compare: 2004 No 35 s CD 10B
- CD 18 Dividend reduced if foreign tax paid on company's income** 15
- When this section applies*
- (1) This section applies when a person—
- (a) derives a dividend from a company that is a foreign company; and 20
- (b) has a liability under the laws of a country or territory outside New Zealand for income tax on income of the company corresponding to the liability that the person would have under the laws of New Zealand for income tax on income of the company if the company were a partnership in which the person were a partner; and 25
- (c) pays the income tax; and
- (d) provides to the Commissioner upon request, in the time allowed by the Commissioner, sufficient information to satisfy the Commissioner as to the amount of income tax paid. 30
- Amount of dividend reduced*
- (2) The amount of the dividend is reduced by the greater of zero and the amount calculated using the formula— 35
- total tax paid – earlier reductions.

*Definition of items in formula*

- (3) In the formula,—
- (a) **total tax paid** is the total amount of income tax on income of the company that the person has paid in the country by the time that the person derives the dividend: 5
- (b) **earlier reductions** is the total amount of reductions under this section that, by the time that the person derives the dividend, have affected other dividends derived by the person from the company.
- Defined in this Act: Commissioner, company, dividend, foreign company, income, income tax, New Zealand, pay 10
- Compare: 2004 No 35 s CD 10C

**CD 19 Foreign tax credits and refunds linked to dividends***Foreign tax credits*

- (1) If a double tax agreement gives a person a tax credit in a foreign country when they derive a dividend from that country, the amount of the dividend is increased by the tax credit. 15

*Foreign tax refunds*

- (2) When a person who has derived a dividend from outside New Zealand also derives a refund of income tax of a foreign country, the refund is treated as a dividend if— 20
- (a) the company paying the dividend was entitled to deduct the tax from the dividend; and
- (b) the person was not personally liable to pay the tax.
- Defined in this Act: amount, company, dividend, double tax agreement, income tax, New Zealand, pay, tax 25
- Compare: 2004 No 35 s CD 11

**CD 20 Benefits of shareholder-employees or directors***Unclassified fringe benefits*

- (1) A non-cash benefit provided by a company to an employee is a dividend if— 30
- (a) the benefit is an unclassified benefit; and
- (b) the employee is a shareholder in the company; and
- (c) the company chooses, under **section CX 17(2)** (Benefits provided to employees who are shareholders or investors), to treat the benefit as a dividend. 35

*Non-executive directors' non-cash benefits*

- (2) A non-cash benefit provided by a company to a non-executive director of the company is a dividend if the director is a shareholder in the company, even if the benefit is provided solely because the director is a non-executive director. 5

*Other shareholder-employee benefits*

- (3) In any other case of a non-cash benefit provided by a company to a person who is both an employee and a shareholder, the benefit is not a dividend if—
- (a) the application of **section CX 17(2)** means it is a fringe benefit; and 10
  - (b) **section CD 32** accordingly excludes it from being a dividend.

*Meaning of non-executive director*

- (4) In this section, **non-executive director** means a person whose only services to the company as an employee are the formal occupation of the role of director and compliance with the associated statutory obligations. 15

Defined in this Act: company, director, dividend, employee, fringe benefit, non-executive director, shareholder, unclassified benefit 20

Compare: 2004 No 35 s CD 12

## **CD 21 Attributed repatriations from controlled foreign companies**

*Attributed repatriations*

- (1) An amount of attributed repatriation of a person who has an income interest in a CFC is a dividend. 25

*Calculation: sections CD 45 to CD 52*

- (2) The amount of the dividend is calculated under **sections CD 45 to CD 52**.

*Timing of income* 30

- (3) The dividend is treated as having been paid by the CFC to the person, and as having been derived by the person,—
- (a) 6 months after the end of the accounting period of the CFC for which the attributed repatriation is calculated, if the person is a company for which the dividend is 35

- exempt income under **section CW 9** (Dividend derived by company from overseas); and
- (b) at the end of the accounting period, in any other case.

*New Zealand residents*

- (4) The dividend of a person who has stopped being a New Zealand resident is treated as being derived while the person is a New Zealand resident. 5

Defined in this Act: accounting period, amount, attributed repatriation, CFC, company, dividend, exempt income, income interest, New Zealand resident, pay

Compare: 2004 No 35 s CD 13

10

***What is not a dividend?***

**CD 22 Returns of capital: off-market share cancellations**

*When this section applies*

- (1) This section applies when a company pays an amount to a shareholder because of the off-market cancellation of a share in the company, other than on liquidation of the company. 15

*Ordering rule*

- (2) The amount is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the ordering rule, if— 20
- (a) 1 of the bright line tests in **subsection (3)** is met; and
- (b) the company is not an unlisted trust that has chosen the slice rule for the share under **subsection (4)**; and
- (c) the anti-avoidance rule in **subsection (6)** does not apply.

*Bright line tests*

- (3) The bright line tests referred to in **subsection (2)(a)** are as follows: 25
- (a) the cancellation is part of a pro rata cancellation that results in a fifteen percent capital reduction for the company: 30
- (b) the cancellation is part of a pro rata cancellation that results in a ten percent capital reduction for the company and the Commissioner has given a notice under **subsection (8)**:

- (c) the cancellation is not part of a pro rata cancellation and results in the shareholder suffering a fifteen percent interest reduction:
- (d) the company is an unlisted trust and the cancellation is not part of a pro rata cancellation: 5
- (e) the share is a non-participating redeemable share.

*Unlisted trusts choosing slice rule*

- (4) If the company is an unlisted trust, it may issue a share on terms that the ordering rule does not apply and that instead the slice rule applies to the cancellation. If this happens, the amount paid is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the slice rule (but still subject to the anti-avoidance rule in **subsection (6)**). 10

*Calculation concessions for foreign unlisted widely-held trusts* 15

- (5) If a company is an unlisted widely-held trust not resident in New Zealand and a shareholder cannot obtain sufficient information to calculate the available subscribed capital per share under the ordering rule,— 20
  - (a) the share is treated as if it were issued under **subsection (4)** on terms that the slice rule applies; and
  - (b) the available subscribed capital under the slice rule is— 25
    - (i) the amount paid for the issue of the share, if **subparagraph (ii)** does not apply; or
    - (ii) the value of the money or property in which a beneficial interest would have vested in the shareholder had the share not been issued, if the share is a taxable bonus issue under **paragraph (d)** of the definition of the term. 30

*Overriding anti-avoidance rule*

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

*Factors relevant in applying anti-avoidance rule* 35

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

- (a) the nature and amount of dividends paid by the company before or after the cancellation; and
  - (b) the issue of shares in the company after the cancellation; and
  - (c) the expressed purpose or purposes of the cancellation; and
  - (d) any other relevant factor. 5
- Commissioner notifying view*
- (8) If no part of a payment on cancellation of a share is in lieu of the payment of a dividend, the Commissioner may give notice to the company that **subsection (6)** does not apply to the cancellation. 10
- Some definitions*
- (9) In this section,—
- counted associate** means— 15
- (a) a person associated with the shareholder other than merely by virtue of being a relative; or
  - (b) a spouse, civil union partner or de facto partner, or minor child of the shareholder, or a trustee of a trust under which a spouse, civil union partner or de facto partner, or minor child of the shareholder is a beneficiary 20
- fifteen percent capital reduction** means the circumstance in which the total amount paid by the company on account of the cancellation (or on account of any other pro rata cancellation of participating shares in the company occurring at the same time) is at least 15% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation 25
- fifteen percent interest reduction** means the circumstance in which, immediately after and as a result of the cancellation (together with any other cancellation of participating shares in the company occurring at the same time),— 30
- (a) the total direct voting interests in the company of the shareholder and any counted associates is 85% or less of their total direct voting interests in the company immediately before the cancellation; and 35
  - (b) if at the time of the cancellation a market value circumstance exists, the total direct market value interests in

the company of the shareholder and any counted associates is 85% or less of their total direct market value interests immediately before the cancellation

**non-participating redeemable share** means a share that meets the following conditions: 5

- (a) the share is issued, under the company's constitution or establishing legislation, on terms that involve the share being required or allowed to be redeemed or repaid before the company is liquidated; and
- (b) the share is— 10
  - (i) a redeemable share under section 68 of the Companies Act 1993 or an equivalent provision of foreign law; or
  - (ii) issued under 1 of New Zealand's Acts relating to co-operative companies; or 15
  - (iii) subject to **section FA 2** (Recharacterisation of certain debentures) and **FZ 1** (Treatment of interest payable under debentures issued before certain date); or
  - (iv) a unit in a unit trust that is not a widely-held trust; and 20
- (c) the share is either a fixed-rate share or a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule; and 25
- (d) the shareholder does not have shareholder decision-making rights in relation to the share except—
  - (i) a protective right; or
  - (ii) if the company is subject to 1 of New Zealand's Acts relating to co-operative companies 30

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

**protective right** means a shareholder decision-making right that—

- (a) arises only if the shareholder's position may be altered to the shareholder's detriment or if the company defaults on its obligations under the terms of the share; and 35
- (b) is granted to the shareholder only to assist the shareholder to prevent the alteration or to remedy the default; and 40

- (c) when the share is issued is not expected to arise
- ten percent capital reduction** means the circumstance in which the total amount paid by the company on account of the cancellation, or paid on account of any other pro rata cancellation of participating shares in the company occurring at the same time, is at least 10% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation 5
- unlisted trust** means a unit trust or group investment fund, the units or interests in which are not quoted on the official list of a recognised exchange. 10
- Defined in this Act: amount, associated person, available subscribed capital, cancellation, Commissioner, company, co-operative company, counted associate, direct market value interest, direct voting interest, dividend, fifteen percent capital reduction, fifteen percent interest reduction, fixed-rate share, group investment fund, liquidation, market value circumstance, New Zealand, non-participating redeemable share, notice, off-market cancellation, ordering rule, participating share, pay, pro rata cancellation, protective right, recognised exchange, relative, resident in New Zealand, share, shareholder, shareholder decision-making right, slice rule, ten percent capital reduction, trustee, unit trust, unlisted trust, unlisted widely-held trust, widely-held trust 15 20

Compare: 2004 No 35 s CD 14

## CD 23 Ordering rule and slice rule

### *Ordering rule*

- (1) Under the **ordering rule**, the available subscribed capital per share is calculated for a share using the formula— 25
- $$\frac{\text{available subscribed capital of class}}{\text{shares being cancelled of class.}}$$

### *Definition of items in formula*

- (2) In the formula in **subsection (1)**,— 30
- (a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:
- (b) **shares being cancelled of class** is the number of shares of the same class as the share, including the share, being cancelled at the time. 35

### *Slice rule*

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

available subscribed capital of class  
shares of class.

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—
- (a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation: 5
  - (b) **shares of class** is the number of shares of the same class as the share, including the share, on issue at the time.

*Amount when foreign company information inadequate* 10

- (5) Despite **subsections (2) to (4)**, the available subscribed capital per share calculated under the ordering rule is zero if—
- (a) the company is not resident in New Zealand; and
  - (b) the relevant shareholder cannot obtain sufficient information to calculate the actual available subscribed capital per share using the relevant rule. 15

Defined in this Act: available subscribed capital, cancellation, foreign company, ordering rule, resident in New Zealand, share, shareholder, shares of the same class, slice rule

Compare: 2004 No 35 s CD 15 20

## CD 24 Returns of capital: on-market share cancellations

*Companies acquiring own shares*

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

*When excess amount relevant* 25

- (2) Despite **subsection (1)**, any excess of the amount paid over the available subscribed capital per share calculated under the ordering rule—
- (a) is treated as a dividend and not a return of capital when applying— 30
    - (i) **section CD 29**;
    - (ii) **section CD 43(2)(c)**;
    - (iii) **section GA 1(4)** (Commissioner's power to adjust); and

- (b) gives rise to an imputation credit account debit under **section OB 42** (ICA on-market cancellation).

Defined in this Act: amount, available subscribed capital, company, dividend, imputation credit account, on-market cancellation, ordering rule, pay, share

Compare: 2004 No 35 s CD 16

5

## CD 25 Treasury stock acquisitions

### *Treasury stock generally*

- (1) An amount paid by a company in acquiring any of its shares is not a dividend if—
- (a) the acquisition is treated as not resulting in the cancellation of the share, under section 67A(1) of the Companies Act 1993 or section 24 of the Co-operative Companies Act 1996 (each of which relates to treasury stock); and 10
  - (b) the acquisition is not part of a pro rata cancellation or something that is in substance a pro rata cancellation. 15

### *Reversion to on-market cancellation treatment*

- (2) **Subsections (4) to (6)** apply in the case of an acquisition of a share to which **subsection (1)** or section CD 17(1) of the Income Tax Act 2004 or section CF 3(1)(d) or (da) of the Income Tax Act 1994 applies if,— 20
- (a) before the first anniversary of the acquisition, the company cancels the share; or
  - (b) at the first anniversary, the company has failed to transfer a share of the same class in an arm's length transfer, except if the company is established under New Zealand co-operative company legislation; or 25
  - (c) after the first anniversary, the company, which is established under New Zealand co-operative company legislation, cancels the share. 30

### *Requirement for arm's length transfers*

- (3) When **subsection (2)(b)** is applied,—
- (a) a transfer is arm's length only if it is—
    - (i) to a person not associated with the company; or
    - (ii) in a transaction that occurs on a recognised exchange, through a broker or some other agent 35

- independent of the company, and that is not preceded by any arrangement between the transferee and the company for the transfer; and
- (b) each arm's length transfer of a share is taken into account only in relation to a single share acquisition to which **subsection (1)** has applied. 5

*Reduction of available subscribed capital*

- (4) If **subsection (2)** applies, then, with effect from the cancellation or the first anniversary, depending on which first causes **subsection (2)** to apply, the available subscribed capital of the class of the share is reduced by the available subscribed capital per share calculated under the ordering rule as at the date of the cancellation or first anniversary. 10

*Imputation credit account debit*

- (5) If **subsection (2)** applies, then, with effect from the date of the acquisition by the company, **section OB 42** (ICA on-market cancellation) apply as if the original acquisition were an on-market cancellation but item "ASC per share excess" of the formula in **section OB 42** were equal to only the excess of the amount received by the shareholder over the reduction described in **subsection (4)**. 15  
20

*Relief from imputation penalty tax*

- (6) No imputation penalty tax is imposed under section 140B of the Tax Administration Act 1994 (nor any late payment penalty imposed under that Act in relation to the imputation penalty tax) if it would not have arisen had **subsection (5)** applied only with effect from the date of cancellation or first anniversary, depending on which first causes **subsection (2)** to apply. 25

Defined in this Act: agent, amount, arrangement, associated person, available subscribed capital, cancellation, company, co-operative company, dividend, imputation credit account, imputation penalty tax, New Zealand, on-market cancellation, ordering rule, pay, pro rata cancellation, recognised exchange, share, shareholder 30

Compare: 2004 No 35 s CD 17

**CD 26 Capital distributions on liquidation or emigration** 35

*When this section applies*

- (1) This section applies when a shareholder—

- (a) is paid an amount in relation to a share on the liquidation of the company:
- (b) is treated under **section FL 2** (Treatment of emigrating companies and their shareholders) as being paid an amount in relation to a share in the company. 5
- Return of subscribed capital or capital gains*
- (2) The amount paid is a dividend only to the extent to which it is more than—
- (a) the available subscribed capital per share calculated under the ordering rule; and 10
- (b) the available capital distribution amount calculated under **section CD 44**.
- Statutory producer board capital levies*
- (3) If the company is a statutory producer board, the amount is not a dividend to the extent to which it is a return of a levy charged specifically for capital development. 15
- Non-deductible capital*
- (4) An amount that is not a dividend as a result of **subsection (3)** is nevertheless treated as a return of capital for the purposes of the capital limitation. 20
- Defined in this Act: amount, available capital distribution amount, available subscribed capital, capital limitation, company, dividend, emigrating company, levy, liquidation, ordering rule, pay, share, shareholder, statutory producer board
- Compare: 2004 No 35 s CD 18
- CD 27 Property made available intra-group** 25
- When this section applies*
- (1) This section applies when—
- (a) a transfer of value is made by a company (the **first company**) to another company (the **associated company**); and 30
- (b) in the absence of this section, the transfer would be a dividend under **section CD 6(1)(a)(ii)**, because the associated company is associated with a shareholder in the first company, or under **section CD 6(1)(a)(iii)**, because the associated company is the trustee of a trust of which a shareholder in the first company, or a shareholder's 35

spouse, civil union partner, or de facto partner, is a beneficiary.

*Intra-group property arrangements worth \$10,000 or less*

- (2) The transfer of value is not a dividend if—
- (a) the transfer consists of making property available for less than market value; and 5
  - (b) the transfer is not a loan; and
  - (c) in the tax year of the first company in which the transfer occurs, the total amount of transfers of value by the first company to the associated company that would be dividends for the year in the absence of this section, is \$10,000 or less. 10

*Downward transfers of value*

- (3) The transfer of value is also not a dividend if—
- (a) either— 15
    - (i) the first company has a voting interest in the associated company; or
    - (ii) the first company is associated with a company (the **parent company**) that has a voting interest in the associated company and that could have received the transfer of value without it being assessable income, non-resident passive income, or a gain subject to FDP for the parent company; and 20
  - (b) the associated company does not have a voting interest in the first company; and 25
  - (c) no person, other than the parent company, has both—
    - (i) a voting interest or, if there is a market value circumstance in relation to either the first company or the associated company, a market value interest in the first company; and 30
    - (ii) a voting interest or, if there is a market value circumstance in relation to either the first company or the associated company, a market value interest in the associated company, of more than 10%. 35

*Relationship with section FA 3*

- (4) **Subsection (3)** does not apply to a transfer of value that is subject to **section FA 3** (Recharacterisation of certain dividends: recovery of cost of shares held on revenue account).

*Rules for identifying voting interests*

5

- (5) For the purposes of **subsection (3)(a) and (b)**,—
- (a) for the purposes of determining if a company has a voting interest in another company, the look-through rule in **section YC 4** (Look-through rule for corporate shareholders) does not apply to treat the initial company's voting interest as held by its shareholders or anyone else; and 10
- (b) a zero voting interest is not a voting interest.

*Rules for identifying voting and market value interests*

- (6) For the purposes of **subsection (3)(c)**,— 15
- (a) for the purposes of determining the extent to which a person, other than the parent company, has a voting interest or market value interest in the first company or the associated company, the look-through rule in **section YC 4** does not apply to treat the person's voting interest or market value interest as held by the person's shareholders or anyone else unless the person treated as holder is the parent company; and 20
- (b) for the purposes of determining the extent to which a person, other than the parent company, has a voting interest or market value interest of more than 10% in the associated company, the look-through rule in **section YC 4** does not apply to treat a voting interest or market value interest of the first company or the parent company in the associated company as held by their respective shareholders or anyone else; and 25 30
- (c) a zero voting interest is not a voting interest and a zero market value interest is not a market value interest.

Defined in this Act: amount, assessable income, associated person, company, dividend, FDP, loan, market value circumstance, market value interest, non-resident passive income, shareholder, tax year, transfer of value, trustee, voting interest 35

Compare: 2004 No 35 s CD 19

- CD 28 Transfers of certain excepted financial arrangements within wholly-owned groups**
- When **section ED 2** (Transfers of certain excepted financial arrangements within wholly-owned groups) applies to a transfer of an excepted financial arrangement within a wholly-owned group of companies, the transfer does not give rise to a dividend. 5
- Defined in this Act: dividend, excepted financial arrangement, wholly-owned group of companies
- Compare: 2004 No 35 s CD 20 10
- CD 29 Non-taxable bonus issues**
- A non-taxable bonus issue is not a dividend.
- Defined in this Act: dividend, non-taxable bonus issue
- Compare: 2004 No 35 s CD 21
- CD 30 Transfer by unit trust of legal interest after beneficial interest vests** 15
- If money or property of a unit trust is a dividend under **section CD 9** for a unit holder, a transfer to the unit holder of the legal interest in the money or property is not a dividend.
- Defined in this Act: dividend, unit holder, unit trust 20
- Compare: 2004 No 35 s CD 21B
- CD 31 Flat-owning companies**
- Occupation rights*
- (1) If a flat-owning company makes residential property available to a person, that is not a dividend. 25
- Meaning of flat-owning company*
- (2) In this section, **flat-owning company** means a company—
- (a) whose constitution provides that every registered shareholder is entitled to the use of a specific residential property in New Zealand owned by the company; and 30
- (b) whose only significant assets are residential properties available for use by specific shareholders and funds reserved for meeting the company's costs.
- Defined in this Act: company, dividend, flat-owning company, New Zealand, shareholder 35
- Compare: 2004 No 35 s CD 22

**CD 32 Employee benefits***FBT rules*

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

*Board*

- (2) An amount that is employment income under **section CE 1(c)** (Amounts derived in connection with employment) is not a dividend. 5

Defined in this Act: amount, dividend, employment income, FBT rules, fringe benefit, fringe benefit tax

Compare: 2004 No 35 s CD 23 10

**CD 33 Payments corresponding to notional distributions of producer boards and co-operative companies***Statutory producer board payments*

- (1) An amount paid by a statutory producer board to a person in relation to a tax year is not a dividend if— 15
- (a) the person was a member of the board at some time during the tax year; and
  - (b) unless the Commissioner allows otherwise, the amount is calculated on the basis of the member's share of— 20
    - (i) the total produce transactions of members with the board during the tax year; or
    - (ii) the total levies payable by members to the board for the tax year; and
  - (c) the amount corresponds to a notional distribution amount treated as a dividend under **section CD 13(1)**. 25

*Co-operative company payments*

- (2) An amount paid by a co-operative company to a person in relation to a tax year is not a dividend if—
- (a) the person was a shareholder of the company at some time during the tax year; and 30
  - (b) the amount is calculated on the basis of the shareholder's share of the total produce transactions of shareholders with the company during the tax year; and
  - (c) the amount corresponds to a notional distribution amount treated as a dividend under **section CD 13(3)**. 35

*Non-deductible capital*

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

Defined in this Act: amount, capital limitation, Commissioner, co-operative company, dividend, levy, member, pay, produce transactions, producer board, shareholder, statutory producer board, tax year

5

Compare: 2004 No 35 s CD 24

**CD 34 Distribution to member of co-operative company based on member's transactions**

10

*Election by co-operative company that distribution not be dividend*

- (1) A co-operative company may choose that an amount of a distribution (the **trading distribution**) to a member of the co-operative company is not a dividend if—

15

- (a) the trading distribution is made by the co-operative company, or by a company (the **subsidiary company**) in which the co-operative company owns voting interests equal to 100%; and
- (b) the requirements of **subsection (2)** are met.

20

*Further requirements for election*

- (2) A co-operative company may make an election under **subsection (1)** if—

- (a) the co-operative company is resident in New Zealand for the period to which the trading distribution relates; and

25

- (b) the company making the distribution is resident in New Zealand for the period to which the trading distribution relates; and

- (c) the co-operative company believes on reasonable grounds that the member at the time of the distribution—

30

(i) is resident in New Zealand;

(ii) has a fixed establishment in New Zealand; and

- (d) the value of the trading distribution is determined by the value for the period of transactions between the member and the co-operative company or subsidiary company that meet the requirements of **subsection (3)**; and

35

- (e) the number of shares in the co-operative company held by the member determines the value of the transactions with the co-operative company or subsidiary company that the member has a right to enter.
- Transactions must involve trading stock* 5
- (3) A transaction must—
- (a) be the sale and purchase of trading stock of the vendor that is not intangible property; and
- (b) not be subject to **section CB 2** (Amounts received on disposal of business assets that include trading stock). 10
- Amount excluded from being dividend*
- (4) The amount of a trading distribution that is excluded under **subsection (1)** from being a dividend for a member is the lesser of the following:
- (a) the amount of the trading distribution: 15
- (b) the amount of the trading distribution relating to shares in the co-operative company that the member acquires for the purpose of obtaining the right to enter transactions with the co-operative company or subsidiary company. 20
- Form of election*
- (5) The co-operative company makes an election under **subsection (1)** for an income year containing the period to which a trading distribution relates by giving the Commissioner notice of the election when providing the company's return of income for the tax year to which the income year corresponds. 25
- Period of election*
- (6) The election applies for distributions in the income year referred to in **subsection (5)** and for distributions in later income years. 30
- Defined in this Act: company, co-operative company, foreign-sourced amount, resident in New Zealand, shareholder, trading stock
- Compare: 2004 No 35 s CD 24B

**CD 35 Resident's restricted amalgamations**

An amount derived by an amalgamated company on a resident's restricted amalgamation from an amalgamating company that ends its existence on the amalgamation is not a dividend if it arises from—

5

- (a) the amalgamated company acquiring property of the amalgamating company; or
- (b) the amalgamated company being relieved of an obligation owed to the amalgamating company.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, dividend, resident's restricted amalgamation

10

Compare: 2004 No 35 s CD 25

**CD 36 Foreign investment fund income**

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

15

- (a) at the time the person derives the amount, the person's interest in the company is an attributing interest, or would have been if the company had not been liquidated; and
- (b) the person calculates their FIF income or loss in relation to the interest and the period in which the amount is paid under the comparative value method or the deemed rate of return method.

20

Defined in this Act: amount, attributing interest, company, comparative value method, deemed rate of return method, dividend, FIF income, foreign investment fund, loss, liquidation, pay

25

Compare: 2004 No 35 s CD 26

**CD 37 Maori authority distributions**

A Maori authority distribution is not a dividend except for the purposes of **section CW 10** (Dividend within New Zealand wholly-owned group).

30

Defined in this Act: dividend, Maori authority, wholly-owned group

Compare: 2004 No 35 s HI 4(2)



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

5

*Using FBT rules*

- (4) Unless the property made available is a loan, the amount of the dividend for each quarter is the value of the fringe benefit for that quarter calculated under the FBT rules as if—
- (a) making the property available were the provision of a fringe benefit by the company to an employee in relation to employment, despite anything in **sections CX 6 to CX 38** (which relate to fringe benefits); and 10
  - (b) the company were not to choose to pay fringe benefit tax on an income year basis under **section RD 61** (Close company option). 15

*Using difference from benchmark rate*

- (5) If the property made available is a loan, the amount of the dividend for each quarter is the excess, if any, of interest, calculated for the quarter on the basis of the daily balance of the loan and the benchmark rate specified in **subsections (6) to (8)**, over the actual amount of interest accruing on the loan in the quarter. However, the company may choose instead to calculate the dividend as the excess of the benchmark interest rate amount over the amount of income accruing to the company in the quarter calculated under the yield to maturity method. 20 25

*Benchmark rate: fringe benefit tax rate for certain loans*

- (6) For the purposes of **subsection (5)**, the benchmark rate of interest is the prescribed rate of interest if— 30
- (a) all amounts payable to the company for the loan are expressed in New Zealand dollars; and
  - (b) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter. 35

*Setting benchmark rate*

- (7) For the purposes of **subsection (5)**, the benchmark rate is the rate set by the Commissioner if—
- (a) all amounts payable to the company in relation to the loan are payable in a single currency other than New Zealand dollars; and 5
  - (b) the Commissioner has set a benchmark rate for that currency and the quarter; and
  - (c) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter. 10

*Default benchmark rate*

- (8) For the purposes of **subsection (5)**, if neither **subsection (6)** nor **(7)** applies, the benchmark rate of interest is a market rate determined at the end of the quarter for a loan made on the same terms between persons at arm's length. 15

*Daily loan balance: certain repayments backdated*

- (9) For the purposes of **subsection (5)**, in determining the daily balance of a loan during a tax year, an amount repaid during the tax year is treated as having been applied in repayment of the loan at the start of the company's tax year or, if later, the day the loan was made, if— 20
- (a) the amount is repaid by applying any salary, wages, extra pay, dividends, or interest payable by the company to the borrower; and 25
  - (b) the amount payable by the company is income of the borrower in the tax year or a previous tax year; and
  - (c) the amount payable by the company is payable without any amount of tax being withheld and paid under the PAYE rules, the RWT rules, or the NRWT rules. 30

*Daily loan balance: company nominating amount*

- (10) Subject to **subsection (9)**, for the purposes of **subsection (5)**, the daily balance of the loan for a tax year is treated as being equal to the notional balance chosen under **subsection (11)** by the company making the loan if— 35
- (a) the borrower is a company; and
  - (b) the loan is a variable principal debt instrument; and

- (c) the company making the loan notifies the Commissioner that this subsection applies for the loan and the tax year; and
- (d) the amount of the dividend calculated as a result for the loan, the borrower, and the tax year is no more than 30% greater or less than the amount that would be calculated if this section did not apply. 5

*Notional balance options*

- (11) The notional balance referred to in **subsection (10)** is whichever of the following is chosen by the company making the loan and notified to the Commissioner: 10
  - (a) the average of the outstanding balances of the loan at the end of each month in the company's tax year:
  - (b) the average of—
    - (i) the outstanding balance of the loan at the start of the tax year or the first time during the tax year at which the loan exists, whichever is later; and 15
    - (ii) the outstanding balance of the loan at the end of the tax year or the last time during the tax year at which the loan exists, whichever is earlier. 20

*Notice generally by tax returns*

- (12) Reference in this section to a company notifying the Commissioner is a reference to—
  - (a) a notice given to the Commissioner with the company's return of income for the relevant tax year; or 25
  - (b) if no return is required, a notice given by the date on which a return would be required to be filed for the tax year if a return had been required.

*Attributed repatriation dividends*

- (13) No amount of dividend arises under **section CD 4** as a result of any difference between the interest, if any, payable by a person to a CFC in an accounting period of the CFC under a loan and the benchmark rate of interest specified in any of **subsections (6) to (8)** if— 30
  - (a) the outstanding balance of the loan at the end of the accounting period is taken into account under **sections CD 46 to CD 52** in calculating the New Zealand repatriation amount of the CFC for the accounting period; and 35

- (b) as a result, the person derives a dividend under **section CD 21**.

*When loan disregarded*

- (14) **Subsection (13)** does not apply to the extent to which the loan is a loan to which— 5
- (a) **section CD 50(11)** applies, meaning that the loan is disregarded for the accounting period; or
- (b) **section CZ 10(4)** (Transitional relief for calculation of attributed repatriation dividends: 2 July 1992) applies, meaning that the loan is effectively disregarded for the accounting period. 10

Defined in this Act: accounting period, amount, amount of tax, attributed repatriation, CFC, Commissioner, company, dividend, employee, extra pay, FBT rules, fringe benefit, fringe benefit tax, income, income year, interest, loan, New Zealand, New Zealand repatriation amount, notice, notify, NRWT rules, pay, PAYE rules, prescribed rate of interest, quarter, return of income, RWT rules, shareholder, tax year, variable principal debt instrument 15

Compare: 2004 No 35 s CD 28

**CD 40 Adjustment if dividend recovered by company**

*When dividends recovered* 20

- (1) If a company recovers a dividend from a shareholder under section 56 of the Companies Act 1993 or an equivalent provision of foreign law, this section applies to the extent necessary to ensure that—
- (a) the recovered dividend and any attached imputation credit or FDP credit are disregarded for the purposes of this Act; and 25
- (b) the resulting refunds are made.

*Amendment of assessments*

- (2) Section 113B of the Tax Administration Act 1994 requires the Commissioner to amend assessments if given notice of the recovery. 30

*Refunds*

- (3) If the Commissioner is given notice of the recovery, the Commissioner must refund any relevant— 35
- (a) income tax, FDP, or FDP penalty tax of the shareholder; and
- (b) NRWT or RWT of the company.

*Relationship with subpart RM*

- (4) The refund is made despite **sections RM 2 to RM 6** (which relate to refunds of excess tax) and **RM 18 to RM 21** (which relate to limits on refunds), but subject to the other provisions of this Act. 5

*Adjustments to accounts*

- (5) A credit or debit (as applicable) arises as at the date of recovery, and must be recorded in—
- (a) the imputation credit account of the company; or
  - (b) if the shareholder is an ICA company or FDP company, the imputation credit account or FDP account of the shareholder. 10

Defined in this Act: assessment, Commissioner, company, dividend, FDP, FDP account, FDP credit, FDP penalty tax, FDPA company, ICA company, imputation credit, imputation credit account, income tax, notice, NRWT, RWT, shareholder 15

Compare: 2004 No 35 s CD 29

**CD 41 Adjustment if amount repaid later***When released debt repaid*

- (1) If the release by a company of a shareholder's obligation to pay money to the company has been treated as a dividend and the released amount is later repaid to the company, this section applies to the extent necessary to ensure that—
- (a) the dividend is disregarded for the purposes of this Act; and
  - (b) the resulting refunds are made. 20 25

*When close company expenditure repaid*

- (2) If any expenditure of a close company that shareholders in the company believed on reasonable grounds was only for the benefit of the company is nevertheless a dividend and the expenditure is later repaid to the company, this section applies to the extent necessary to ensure that—
- (a) the dividend is disregarded for the purposes of this Act; and
  - (b) the resulting refunds are made. 30

*Amendment of assessments*

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

*Refunds*

5

- (4) If the Commissioner is given notice of the repayment, the Commissioner must refund any relevant tax of the shareholder.

*Relationship with sections RM 2 to RM 6*

- (5) The refund is made despite **sections RM 2 to RM 6** (which relate to refunds of excess tax), but subject to the other provisions of this Act. 10

*Repayment of pre-1992 loans*

- (6) **Subsection (1)** also applies to the repayment of an amount treated as a dividend under section 4(1)(b) of the Income Tax Act 1976 (as it applied before 1 April 1992 to give the Commissioner a discretion to treat loans as dividends), as if the amount repaid were a released amount that is repaid. 15

Defined in this Act: amount, assessment, close company, Commissioner, company, dividend, notice, pay, shareholder, tax

20

Compare: 2004 No 35 s CD 30

**CD 42 Adjustment if additional consideration paid***Differences from market value*

- (1) If a dividend from a company arises because of a difference between the market value of property provided by or to the company and the consideration paid for it, the dividend is disregarded for the purposes of this Act if the conditions in **subsections (2) to (4)** are met. 25

*Market value*

- (2) The consideration paid must have been an amount that the company considered was the market value, having taken reasonable steps at the time of the transaction to ascertain a market value. 30

*Difference paid*

- (3) The recipient of the dividend must have later paid to the company—
- (a) sufficient additional consideration to reflect the actual market value of the property at the time of the transaction; or 5
  - (b) a refund of any excess consideration paid by the company.

*Accounts adjusted*

- (4) Any necessary adjustments must have been made to the accounts of the company and the recipient for the additional consideration or refund. 10

Defined in this Act: amount, company, dividend, pay

Compare: 2004 No 35 s CD 31

### **CD 43 Available subscribed capital amount** 15

*Formula for calculating amount of available subscribed capital*

- (1) For a share (the **share**) in a company at any relevant time (the **calculation time**), the amount of **available subscribed capital** is calculated using the formula— 20
- 1 July 1994 balance + subscriptions – returns.

*Definition of items in formula*

- (2) In the formula in **subsection (1)**,—
- (a) **1 July 1994 balance** is,— 25
    - (i) if the company existed before 1 July 1994, the amount calculated under **subsection (3)**; and
    - (ii) in any other case, zero:
  - (b) **subscriptions**, subject to **subsections (6) to (21)**, is the total amount of consideration that the company received, after 30 June 1994 and before the calculation time, for the issue of shares of the same class (the **class**) as the share: 30
  - (c) **returns**, subject to **subsections (22) to (23)**, is the total amount of consideration that the company paid, after 30 June 1994 and before the calculation time, on the cancellation of shares in the relevant class and that was not 35

a dividend because of **section CD 22 or CD 24** or a corresponding provision of an earlier Act.

*1 July 1994 balance*

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

$$\frac{\text{paid-up capital} + \text{premiums}}{\text{all shares issued}} \times 30 \text{ June 1994 shares.}$$
 5

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—
- (a) **paid-up capital**, subject to **subsection (5)** relating to bonus issues, is the total amount of capital paid up before 1 July 1994 for shares in the class: 10
  - (b) **premiums** is the total amount of qualifying share premium paid to the company before 1 July 1994 for shares in the class, but not including amounts applied before 1 July 1994 in paying up capital: 15
  - (c) **all shares issued** is the number of shares in the class ever issued at the end of 30 June 1994:
  - (d) **30 June 1994 shares** is the number of shares in the class on issue at the end of 30 June 1994. 20

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

- (5) The capital amount included in calculating the 1 July 1994 amount does not include an amount paid up by way of a bonus issue made after 30 September 1988, unless—
- (a) the bonus issue was a taxable bonus issue; or 25
  - (b) the amount was paid up by application of an amount of qualifying share premium.

*Subscriptions amount: taxable bonus issues and debt capitalisations*

- (6) The subscriptions amount includes,— 30
- (a) in the case of a bonus issue in lieu, the amount offered as an alternative to the bonus issue; and
  - (b) in the case of a taxable bonus issue that is not a bonus issue in lieu, the amount of the dividend arising from the taxable bonus issue; and 35
  - (c) in the case of shares issued on conversion of, or as consideration for the release of, a debt claim against the company, the amount of debt converted or released.

*Subscriptions amount: non-taxable and exempt bonus issues*

- (7) The subscriptions amount does not include—
- (a) an amount for a bonus issue if neither **subsection (6)(a) nor (b)** applies; or
  - (b) an amount for a taxable bonus issue made to a shareholder to whom the bonus issue was exempt income under **section CW 9** (Dividend derived by company from overseas) or **CW 10** (Dividend within New Zealand wholly-owned group), or under a corresponding repealed provision, except to the extent to which the taxable bonus issue is fully credited. 5 10

*Subscriptions amount: reinvested exempt dividends*

- (8) The subscriptions amount does not include—
- (a) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend to a shareholder,— 15
    - (i) if the dividend was exempt income of the shareholder under **section CW 9** or **CW 10**, or a corresponding provision of an earlier Act; and
    - (ii) if the shareholder was not required to withhold and pay an amount of FDP from the dividend by **section RG 3** (Obligation to pay FDP); and 20
    - (iii) to the extent to which the dividend is not fully credited; or
  - (b) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend at a time when the company is a controlled foreign company to another controlled foreign company (regardless of whether either company is resident in a grey list country). 25 30

*Subscriptions amount: share-for-share exchanges*

- (9) **Subsection (10)** applies if—
- (a) the company receives an amount, directly or indirectly, for the issue of shares in the class that is in the form of shares in another company; and 35
  - (b) immediately after the issue there are 1 or more persons whose common voting interests (or common market value interests), as measured in **section IC 3(3) and (4)**

- (Common ownership: group of companies), in the company and the other company total 10% or greater; and
- (c) the receipt is not on an amalgamation.

*Subscriptions amount: no uplift for share-for-share exchanges*

5

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

10

*Subscriptions amount: company share capital reorganisation*

- (11) **Subsection (12)** applies if a company receives an amount for the issue of shares in the class in the form of—
- (a) a shareholder giving up rights of membership in the company; or
- (b) a shareholder giving up rights of membership in a company associated with the company or that is in substance the same company.

15

20

*Subscriptions amount: no uplift for share capital reorganisation*

- (12) If **subsection (11)** applies, the subscriptions amount does not include the amount received to the extent to which it is more than the total available subscribed capital per share of the rights given up at the date they are given up, calculated—
- (a) under the slice rule; and
- (b) after deducting any ineligible capital amount described in **subsections (13) and (14)**; and
- (c) as if the rights given up were shares, if they are not shares.

25

30

*Subscriptions amount: when ineligible capital arises*

- (13) For the purposes of **subsections (10) and (12)**, an ineligible capital amount arises if—
- (a) a company (the **acquiring company**) issues shares in consideration for acquiring, directly or indirectly,

35

- shares in another company (the **acquired company**);  
and
- (b) the acquired company has issued shares in anticipation of the shares being acquired by the acquiring company; and 5
- (c) those shares issued in anticipation are not a fully credited taxable bonus issue; and
- (d) the acquiring company pays an amount in consideration for acquiring the shares in the acquired company in addition to issuing shares in the acquiring company. 10
- Subscriptions amount: amount of ineligible capital*
- (14) The ineligible capital amount is the lesser of—
- (a) the total of the available subscribed capital per share calculated under the slice rule of the shares in the acquired company that is attributable to the shares issued in anticipation, except to the extent to which the shares issued in anticipation are a fully credited taxable bonus issue; and 15
- (b) the total additional amount paid by the acquiring company referred to in **subsection (13)(d)**. 20
- Subscriptions amount: amalgamated company*
- (15) The subscriptions amount for a company that is an amalgamated company resulting from an amalgamation—
- (a) includes an amount, as if it were consideration received at the time of the amalgamation for the issue of the amalgamated company's shares, equal to the available subscribed capital, at the time of the amalgamation, of all shares in the amalgamating companies that are— 25
- (i) of an equivalent class to the class; and
- (ii) not held directly or indirectly by an amalgamating company; and 30
- (iii) not shares in the amalgamated company;
- (b) does not include any other amount for the agreement of shareholders of an amalgamating company to the amalgamation and the resulting property acquisitions by the amalgamated company. 35
- Subscriptions amount: emigrating company*
- (16) If a company has been treated under **section FL 2** (Treatment of emigrating companies and their shareholders) as paying a

distribution to shareholders, the subscriptions amount includes the amount of the distribution that is a dividend.

*Subscriptions amount: Maori authority*

- (17) If the company is a Maori authority, the subscriptions amount includes the taxable income derived by the Maori authority in the 2003–04 tax year or an earlier tax year. 5

*Subscriptions amount: no double counting*

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

*Subscriptions amount: treasury stock sales excluded* 10

- (19) The subscriptions amount does not include the amount of consideration received by a company for disposing of a share if the disposal is taken into account under **section CD 25** to determine that the amount paid by the company on a previous share acquisition is not subject to **section CD 25(4) to (6)**. 15

*Subscriptions amount: superannuation fund's interest in GIF*

- (20) The subscriptions amount of a company that is a group investment fund includes the value of the interest of a superannuation fund in the group investment fund at the end of 31 March 1999. 20

*1 July 1994 and subscriptions amount: foreign currency conversions*

- (21) If an amount of consideration that a company receives for the issue of shares is payable in a foreign currency, the amount paid is treated, for the purposes of this section, as if it were converted into New Zealand currency at the calculation time. 25

*Returns amount: on-market cancellations by associate*

- (22) If the acquisition of a share by an associate of the company is within the meaning of an acquisition under **paragraph (d)** of the definition of **on-market cancellation**, it is treated in the same way for the purposes of calculating the returns amount. 30

*Returns amount: recovered amounts*

- (23) The returns amount does not include any amount recovered by the company before the calculation time under section 56 of the Companies Act 1993 or an equivalent provision of foreign law. 5

*Returns amount: shares cancelled on amalgamation*

- (24) If shares in an amalgamated company held by an amalgamating company are cancelled on the amalgamation, the returns amount included in calculating the available subscribed capital amount of a share in the amalgamated company that is of the same class as the cancelled shares is increased by the amount calculated using the formula— 10
- $$\text{cancelled shares} \times \text{asc per share.}$$

*Definition of items in formula*

- (25) In the formula in **subsection (24)**,— 15
- (a) **cancelled shares** is the number of cancelled shares:
- (b) **asc per share** is the available subscribed capital per share calculated under the slice rule of each cancelled share immediately before the amalgamation.

*Meaning of fully credited*

- (26) In this section, the part of a dividend that is **fully credited** is the part that is calculated using the formula— 20
- $$\text{dividend excluding credits} \times \frac{\text{actual ratio}}{\text{maximum ratio.}} \quad 25$$

*Definition of items in formula*

- (27) In the formula in **subsection (26)**,—
- (a) **dividend excluding credits** is the dividend excluding any attached imputation credit or FDP credit:
- (b) **actual ratio** is the total of the imputation ratio and FDP ratio of the dividend: 30
- (c) **maximum ratio** is the maximum imputation ratio specified in **section OA 18** (Calculation of maximum permitted ratios).

*Meaning of qualifying share premium*

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

- (a) the amount was credited to a share premium account in the company's books; and 5
- (b) the issue of shares was not in consideration for the acquisition, directly or indirectly, of shares in another company. 10

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, associated person, available subscribed capital, bonus issue, bonus issue in lieu, cancellation, common market value interest, common voting interest, company, controlled foreign company, dividend, exempt income, FDP, FDP credit, FDP ratio, fully credited, grey list, group investment fund, imputation credit, imputation ratio, Maori authority, New Zealand, on-market cancellation, pay, qualifying share premium, share, shareholder, shares of the same class, slice rule, superannuation fund, tax year, taxable bonus issue, taxable income 15

Compare: 2004 No 35 s CD 32

**CD 44 Available capital distribution amount**

*Formula for calculating amount of available capital distribution* 20

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

$$(\text{receipt} - \text{asc per share}) \times \frac{\text{capital gains} + (\text{capital property distributed} - \text{cost}) - \text{capital losses}}{\text{total receipts} - \text{total asc.}} \quad 25$$

*Definition of items in formula* 30

(2) In the formula,—

- (a) **receipt** is the amount received by the shareholder on the liquidation for the share: 35
- (b) **asc per share** is the available subscribed capital per share calculated under the ordering rule for the share at the time of the liquidation: 35
- (c) **capital gains** is the total of the capital gain amounts available for distribution to shareholders in the company on the liquidation, but excluding any gain occurring when the company distributes property to a shareholder on the liquidation: 40

- (d) **capital property distributed** is the total market value of capital property of the company distributed to shareholders on the liquidation:
- (e) **cost** is the total cost to the company of the capital property included in the **capital property distributed** item: 5
- (f) **capital losses** is the total of capital loss amounts of the company arising in the 1992–93 or a later tax year, but excluding any loss occurring when the company distributes property to shareholders on the liquidation: 10
- (g) **total receipts** is the total of all amounts received by shareholders on the liquidation:
- (h) **total asc** is the total of the available subscribed capital of all shares in the company at the time of the liquidation. 15

*Positive amounts*

- (3) Despite **subsection (1)**, the available capital distribution amount per share is zero if either multiplier in the formula is negative.

*When foreign company information inadequate*

- (4) Despite **subsection (1)**, the available capital distribution amount is zero if— 20
  - (a) the company is not resident in New Zealand; and
  - (b) the shareholder cannot obtain sufficient information to calculate the actual available capital distribution amount. 25

*Capital gain amount: bonus issued capital gains*

- (5) A capital gain amount is treated as still being available for distribution to the extent to which— 30
  - (a) it has been applied to pay up a bonus issue made after 30 September 1988; and
  - (b) the bonus issue is a non-taxable bonus issue; and
  - (c) the bonus issued share is still on issue at the time of the company's liquidation.

This subsection is overridden by **subsection (6)**.

*Capital gain amount: capital gains after 31 March 1988 and before 1992–93*

- (6) A capital gain amount, derived after 31 March 1988 and before the 1992–93 tax year, is not available for distribution to the extent to which a capital loss amount has arisen for the company in the tax year in which the capital gain amount was derived or in a later tax year before the 1992–93 tax year. Capital loss amounts are offset against capital gain amounts in the chronological order in which each arose and, to the extent offset, are then disregarded for the purposes of this subsection.

*Capital gain amount: when capital gain amounts arise*

- (7) For the purposes of this section, a company derives a capital gain amount if,—
- (a) after 31 March 1988, it disposes of capital property for an amount of consideration that is more than the cost of the property to the company, including a disposal that the company is treated as making under **section DB 27** (Amount from profit-making undertaking or scheme and not already in income) or **DB 28** (Amount from major development or division and not already in income); the capital gain amount is the excess; or
  - (b) after 31 March 1988, it receives a capital gain, including a gift, and no part is income of the company; the capital gain amount is the amount of the capital gain; or
  - (c) an amount is derived by the company from another company on liquidation of the other company that is excluded from being a dividend as a result of **section CD 26(2)(b)** and this section; or
  - (d) an amount is derived by the company that is attributable to a revaluation of livestock in the 1992–93 or a later tax year under section 86D of the Income Tax Act 1976 or **section EC 16** (Valuation under herd scheme) or **EC 20** (Herd livestock disposed of before values determined); or
  - (e) the amount is described in **section CZ 9(1)** (Available capital distribution amount: 1965 and 1985–1992).

*Capital gain amount: amalgamated company inheriting gain*

- (8) An amalgamated company is treated as deriving a capital gain amount at the time of the amalgamation equal to a capital gain amount of an amalgamating company to the extent to which— 5
- (a) the amalgamating company ends its existence on the amalgamation; and
  - (b) the amalgamating company's capital gain amount was available for distribution at the time and was not distributed to anyone other than the amalgamated company. 10

*Capital losses amount: when capital losses arise*

- (9) For the purposes of this section, a company incurs a capital loss if it disposes of capital property for an amount of consideration less than the cost of the property to the company. The capital loss amount is the deficit. 15

*Capital losses amount: company existing before 1 April 1988*

- (10) In the case of a company that existed before 1 April 1988, the capital losses amount cannot be more than the total of— 20
- (a) the amount of the **capital gains** item in the formula in **subsection (1)** to the extent derived after 31 March 1988; and
  - (b) the amount of the **capital property distributed** item, minus the amount of the **cost** item, in the formula.

*Related person transactions* 25

- (11) No capital gain amount is derived or capital loss amount is incurred by a company after 31 March 1988 on disposing of property under an arrangement with a related person. This subsection is overridden by **subsection (12)**.

*Close companies liquidations* 30

- (12) **Subsection (11)** does not apply if—
- (a) the company is a close company; and
  - (b) the related person is not a company; and
  - (c) the disposal is on the liquidation of the company.

*Reinvested exempt dividends*

- (13) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of any shares subscribed for by the company in another company does not include any consideration for the subscribed shares that is excluded from the available subscribed capital of the other company under **section CD 43(7)(b) or (8)**. 5

*Amounts written up*

- (14) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of the relevant capital property is increased to the extent to which— 10
- (a) the value of the property is written up in the company's books; and
  - (b) because it was attributed to the write-up,— 15
    - (i) an amount paid before 11 June 1965 is treated as described in **section CZ 9(2)(a)**; or
    - (ii) an issue of a share before 1 April 1988 is treated as described in **section CZ 9(2)(b)**.

*Meaning of related person*

- (15) In **subsections (11) and (12)**, **related person** means a person related to a company (the **first company**) because 1 of the following applies to the person and the company: 20
- (a) the person owns, can control, directly or indirectly, or has the right to acquire 20% or more of the first company's ordinary shares; or 25
  - (b) the person owns, can control, directly or indirectly, or has the right to acquire 20% or more of the voting rights of shareholders in the first company; or
  - (c) the person is a company and the first company owns, can control, directly or indirectly, or has the right to acquire 20% or more of the ordinary shares in the person; or 30
  - (d) the person is a company and the first company owns, can control, directly or indirectly, or has the right to acquire 20% or more of the voting rights of shareholders in the company; or 35
  - (e) the person is a company and 20% or more of the shares or voting rights in the person are owned or controlled by persons that also own, control, or have the right to

- acquire 20% or more of the shares or voting rights in the first company; or
- (f) the person is a partner or co-venturer of the first company; or
- (g) the person is the trustee of a trust and the first company, or a person who is a related person of the first company under this subsection, benefits or can benefit under the trust, directly or indirectly; or 5
- (h) the person is a partnership and 1 or more persons, that are related persons of the first company under this subsection, are entitled to 50% or more of the partnership's assets or profits or are able to control the partnership. 10
- Look-through relatives and nominees*
- (16) For the purposes of **subsection (15)**, a person is treated as holding anything held by— 15
- (a) their spouse, civil union partner, or de facto partner; or
- (b) their child; or
- (c) a child of their spouse, civil union partner, or de facto partner; or
- (d) a spouse, civil union partner, or de facto partner of their child or of a child of their spouse, civil union partner, or de facto partner. 20
- Look-through interposed companies*
- (17) For the purposes of **subsection (15)(e)**, if shares or voting rights in a company are owned or controlled by another company, a look-through approach must be applied. The look-through approach requires that— 25
- (a) the shares or voting rights are treated as if owned or controlled by the shareholders in the other company; and 30
- (b) if a shareholder in the other company is a company, that shareholder's portion of the shares or voting rights are treated as if owned or controlled by the shareholders in the shareholder company; and
- (c) the approach is applied in the same way to any chain of companies, whatever the length of the chain. 35

*Meaning of capital property*

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

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, available capital distribution amount, available subscribed capital, bonus issue, capital property, close company, company, dividend, income, liquidation, non-taxable bonus issue, ordering rule, pay, related person, relative, resident in New Zealand, revenue account property, share, shareholder, tax year, trustee

5

Compare: 2004 No 35 s CD 33

*CFC attributed repatriation calculation rules*

10

**CD 45 When does a person have attributed repatriation from a CFC?***General rule*

- (1) A person has an amount of **attributed repatriation** from a CFC if— 15
- (a) the person has an income interest under **sections EX 8 to EX 13** (which relate to the calculation of a person's income interest) in the CFC in 1 of the CFC's accounting periods; and
  - (b) the person's income interest is 10% or more for the accounting period, under **sections EX 14 to EX 16** (which relate to the 10% threshold); and 20
  - (c) at any time in the accounting period, the person is a New Zealand resident who is not a transitional resident; and 25
  - (d) the CFC has a New Zealand repatriation amount for the accounting period, under **sections CD 46 to CD 52**.

*Formula*

- (2) The amount of the person's attributed repatriation for the accounting period is calculated using the formula— 30

$$\text{income interest} \times \text{repatriation} \times \frac{\text{days}}{\text{days in accounting period}}$$

*Definition of items in formula*

- (3) In the formula,— 35
- (a) **income interest** is the income interest of the person for the period in the accounting period during which the

	person is a New Zealand resident who is not a transitional resident:	
(b)	<b>repatriation</b> is the New Zealand repatriation amount for the CFC and the accounting period:	
(c)	<b>days</b> is the number of days in the accounting period during which the person is a New Zealand resident who is not a transitional resident:	5
(d)	<b>days in accounting period</b> is the number of days in the accounting period.	
	Defined in this Act: accounting period, amount, attributed repatriation, CFC, income interest, New Zealand repatriation amount, New Zealand resident, transitional resident	10
	Compare: 2004 No 35 s CD 34	
<b>CD 46</b>	<b>New Zealand repatriation amount</b>	
	<i>Formula</i>	15
(1)	The <b>New Zealand repatriation amount</b> of a CFC for an accounting period is calculated using the formula— closing New Zealand property – opening New Zealand property.	
	<i>Definition of items in formula</i>	20
(2)	In the formula,—	
(a)	<b>closing New Zealand property</b> is the amount of New Zealand property of the CFC at the end of the accounting period calculated under the rules in <b>sections CD 47 to CD 51</b> :	25
(b)	<b>opening New Zealand property</b> is the amount of New Zealand property of the CFC at the start of the accounting period, calculated under the rules in <b>sections CD 47 to CD 51</b> .	
	<i>Positive amounts</i>	30
(3)	The New Zealand repatriation amount can never be negative.	

*CFC's unrepatriated income balance*

- (4) The New Zealand repatriation amount can never be more than the unrepatriated income balance of the CFC for the accounting period, calculated under **section CD 52**.

Defined in this Act: accounting period, amount, CFC, New Zealand, New Zealand repatriation amount

5

Compare: 2004 No 35 s CD 35

**CD 47 New Zealand property amount***Formula*

- (1) The amount of New Zealand property of a CFC at any time is calculated using the formula— 10

tangible property +  
associated party equity + associated party debt.

*Definition of items in formula*

- (2) In the formula,— 15

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

(b) **associated party equity** is the total amount of shares or options over shares, measured at cost, held by the CFC in companies that are at the time both— 20

- (i) resident in New Zealand; and  
(ii) associated with the CFC:

(c) **associated party debt** is the total amount of balances outstanding, measured under **section CD 50**, but never totalling less than zero, of all financial arrangements, to which both— 25

- (i) the CFC is a party; and  
(ii) a New Zealand resident associated with the CFC at the time is a party. 30

*Acquisitions from associates below market value*

- (3) If the CFC acquires any property from a person who is associated, at the time of acquisition, with the CFC for a cost that is less than the market value of the property at the time, the cost to the CFC of acquiring the property is treated as being equal to the market value at the time. 35

*Specific calculation rules in sections CD 48 to CD 51*

- (4) There are specific calculation rules in **sections CD 48 to CD 51**, which apply, despite anything in this section, when the amount of New Zealand property is being calculated.

*Avoidance arrangements*

5

- (5) **Section GB 8** (Arrangements involving attributed repatriation from CFCs) may apply to treat the CFC as having entered into an arrangement made in fact by another person.

Defined in this Act: amount, arrangement, associated person, CFC, company, financial arrangement, New Zealand, New Zealand resident, resident in New Zealand, share

10

Compare: 2004 No 35 s CD 36

**CD 48 Cost of tangible property***Capital expenditure*

- (1) The cost of any item of tangible property (except trading stock) includes each of the following expenditures if no deduction would have been allowed under this Act for it (except for an amount of depreciation loss) had the CFC been a New Zealand resident:
- (a) the original purchase price of the property: 20
  - (b) other expenditure incurred on purchasing the property:
  - (c) expenditure incurred before the relevant time in improving the property:
  - (d) expenditure incurred before the relevant time in establishing or improving the CFC's legal right to the property. 25

*Outstanding third party funding*

- (2) The cost of any item of tangible property is reduced, but not to less than zero, by the balance outstanding at the time of a loan to the extent to which— 30
- (a) the loan is secured over the property; and
  - (b) the lender is not associated at the time with the CFC; and
  - (c) the balance is attributable to expenditure on the property included in the cost under **subsection (1)**, including any refinancing of an amount that is attributable to such expenditure. 35

- Temporary New Zealand property*
- (3) Subject to **section CD 51(3) and (4)**, the amount of the **tangible property** item in the formula in **section CD 47(1)** excludes the cost of any property that is—
- (a) situated in New Zealand for less than 365 days in total; 5
  - or
  - (b) disposed of by the CFC—
    - (i) by the later of 364 days after its acquisition and 9 months after the end of the CFC's accounting period in which it was acquired; and 10
    - (ii) to a person that is either a New Zealand resident or is not associated with the CFC at the time of the disposal.
- CFC's business operations assets excluded*
- (4) The amount of the **tangible property** item in the formula in **section CD 47(1)** excludes the cost of any property that is acquired or used by the CFC in the course of carrying on a substantial business, unless **subsection (5)** applies. 15
- What exclusion does not apply to*
- (5) **Subsection (4)** does not apply if the business— 20
- (a) is carried on solely or mainly for the purpose of defeating the application of **section CD 21**; or
  - (b) is of the same nature as a business also carried on in New Zealand at the time of the acquisition by a person that is— 25
    - (i) a New Zealand resident; and
    - (ii) associated at the time with the CFC; and
    - (iii) not a company in which the CFC holds at the time shares that are excluded from the New Zealand repatriation amount measurement by **section CD 49(1)**. 30
- Defined in this Act: accounting period, associated person, business, CFC, company, deduction, depreciation loss, New Zealand, New Zealand repatriation amount, New Zealand resident, share, trading stock
- Compare: 2004 No 35 s CD 37 35

**CD 49 Cost of associated party equity***Shares in subsidiaries engaged in same business*

- (1) The cost of associated party equity at any time excludes the cost of shares or options over shares acquired in a company if— 5
- (a) the CFC and the company are a wholly-owned group of companies at the time; and
  - (b) the company carries on a business of the same nature as a substantial business carried on by the CFC before the acquisition; and 10
  - (c) the CFC, or another CFC associated with it at the time, has a significant involvement in managing the company's business; and
  - (d) neither the company's business nor the CFC's business is carried on solely or mainly for the purpose of defeating the application of **section CD 21**; and 15
  - (e) neither the company's business nor the CFC's business is of the same nature as a business also carried on in New Zealand at the time of the acquisition by a person that is— 20
    - (i) a New Zealand resident; and
    - (ii) associated at the time with the CFC; and
    - (iii) not a company in which the CFC holds at the time shares that are excluded from the New Zealand repatriation amount measurement by this subsection. 25

*Currency conversions*

- (2) If any shares or options are not denominated in New Zealand dollars, the cost is calculated by converting the amount in the relevant foreign currency at the rate of exchange applying on the date the shares or options were acquired. 30

Defined in this Act: associated person, business, CFC, company, New Zealand, New Zealand resident, New Zealand repatriation amount, share, wholly-owned group of companies

Compare: 2004 No 35 s CD 38 35

**CD 50 Outstanding balances of financial arrangements***Rules for attributed repatriation calculation only*

- (1) The rules in this section apply only for the purposes of calculating the amount of the **associated party debt** item in the formula in **section CD 47(1)**. 5

*Balance: amounts due*

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

*Calculation under CFC rules*

- (3) The amount due is calculated by applying **section EX 21** (Branch equivalent income or loss: calculation rules) and 1 of the spreading methods under the financial arrangements rules as if calculating the branch equivalent income or loss of the CFC. 10

*Currency conversion*

- (4) If the amount is not due in New Zealand dollars, the amount is converted by applying the exchange rate between the foreign currency and New Zealand dollars that applies on the date the financial arrangement is entered into. 15

*All arrangements with same associate*

- (5) In calculating the net outstanding balance of a financial arrangement to which the CFC and an associated person are parties, all financial arrangements entered into by those parties are treated as a single financial arrangement, with outstanding balances aggregated and netted off. 20  
25

*Short-term financial arrangements*

- (6) No account is taken of a financial arrangement that, on the date it is entered into, is reasonably expected to and does mature within 365 days of the day on which it was entered into. 30

*Aggregation of consecutive or successive arrangements*

- (7) For the purposes of **subsection (6)**, if 2 or more consecutive or successive financial arrangements may, having regard to the

tenor of this section, fairly be regarded as 1 financial arrangement, those financial arrangements are to be regarded as 1 financial arrangement.

*Accruing amounts*

- (8) For the purposes of **subsections (6) and (10)(c)(i)**, an amount accrued (including interest and discount on issue) on a financial arrangement is treated as— 5
- (a) a new financial arrangement entered into on the date of accrual; and
  - (b) having been paid only when previous accruals on the financial arrangement have been paid. 10

*Temporary adjustments*

- (9) A temporary reduction or increase in the outstanding balance, at the end of an accounting period of the CFC, of any financial arrangement is disregarded if it has a purpose or effect of defeating the application of **section CD 21**. 15

*When financial arrangement matures within 5 years or is remitted*

- (10) **Subsections (11) and (12)** apply if— 20
- (a) a CFC is party to a financial arrangement; and
  - (b) the outstanding balance of the financial arrangement has been or, but for **subsection (11)**, would be taken into account in calculating the New Zealand repatriation amount of the CFC for an accounting period; and
  - (c) either— 25
    - (i) the financial arrangement matures within 5 years of the date on which it was entered into; or
    - (ii) an amount owing under the financial arrangement is remitted or released and, as a result, a person derives a dividend; and 30
  - (d) **section CZ 10(4)** (Transitional relief for calculation of attributed repatriation dividends: 2 July 1992) does not apply to the financial arrangement.

*Retrospective exclusion of amounts*

- (11) If a person with an income interest in the CFC notifies the Commissioner in writing of the maturity or dividend, for the 35

purposes of calculating the dividend amount which the person has derived under **section CD 21** from the CFC,—

- (a) the financial arrangement is disregarded, if **subsection (10)(c)(i)** applies; or
- (b) the amount remitted or released is disregarded, if **subsection (10)(c)(ii)** applies. 5

*Amendment of assessments and refunds*

- (12) In order to give effect to **subsection (11)**, the Commissioner must—
  - (a) amend any relevant assessment under section 113C of the Tax Administration Act 1994; and 10
  - (b) refund any income tax, FDP, FDP penalty tax, or late payment penalty, despite **sections RM 2 to RM 6** (which relate to refunds of excess tax) but otherwise subject to this Act. 15

*Substitution of financial arrangements*

- (13) For the purposes of **subsection (10)(c)(i)**, a financial arrangement (the **first financial arrangement**) to which a CFC is a party is not treated as maturing within 5 years of the date on which it was entered into if— 20
  - (a) on or after the date of maturity, another financial arrangement (the **second financial arrangement**) is entered into by the CFC or a CFC associated with the first CFC at any time during the term of the second financial arrangement; and 25
  - (b) the second financial arrangement is a substitute, in whole or part, for the first financial arrangement; and
  - (c) the second financial arrangement was entered into with a purpose of ensuring that **subsections (11) and (12)** apply. 30

Defined in this Act: accounting period, amount, associated person, attributed repatriation, branch equivalent income, CFC, Commissioner, dividend, FDP, FDP penalty tax, financial arrangement, financial arrangements rules, income interest, income tax, interest, loss, maturity, New Zealand, New Zealand repatriation amount, pay, year 30

Compare: 2004 No 35 s CD 39 35

## CD 51 Property transfers between associated persons

*Transfers between associated CFCs*

- (1) **Subsection (2)** applies if—
  - (a) a CFC disposes of any property to another CFC; and

- (b) the first CFC held the property at the start of the accounting period in which the disposal occurs; and
- (c) the 2 CFCs are associated persons at the time of the disposal.

*Calculation as if property held by second CFC for whole period* 5

- (2) A person can choose to calculate their attributed repatriation from both CFCs as if the disposal had occurred at the start of each CFC's accounting period in which the disposal in fact occurs. The election is made by the person preparing their return of income accordingly. 10

*Transfers to non-residents with mismatching accounting periods*

- (3) **Subsection (4)** applies if—
  - (a) a CFC disposes of property to an associated person who is not a New Zealand resident during an accounting period (the **transfer period**); and 15
  - (b) the CFC did not own the property at the end of the previous accounting period; and
  - (c) the associated person has an accounting period that ends on a later date than the CFC's transfer period ends; and 20
  - (d) the associated person holds the property at the end of the CFC's transfer period; and
  - (e) the associated person does not hold the property at the end of its own accounting period in which the disposal occurs. 25

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

- (4) For the purposes of calculating the CFC's New Zealand repatriation amount, it is treated as if it still held the property at the end of the transfer period. 30

Defined in this Act: accounting period, associated person, attributed repatriation, CFC, New Zealand repatriation amount, New Zealand resident, return of income

Compare: 2004 No 35 s CD 40

**CD 52 Unrepatriated income balance***Formula*

- (1) The unrepatriated income balance of a CFC for an accounting period is calculated using the formula—
- |  |   |
|--|---|
| shareholders' funds – available subscribed capital | 5 |
| – previous New Zealand repatriation amounts.       |   |

*Definition of items in formula*

- (2) In the formula,—
- (a) **shareholders' funds** is the total shareholders' funds of the CFC at the end of the accounting period, measured under generally accepted accounting practice: 10
- (b) **available subscribed capital** is the CFC's available subscribed capital at the end of the accounting period, excluding any amount resulting from—
- |  |    |
|--|----|
| (i) a bonus issue by the CFC derived by a person who is not a resident of New Zealand; or                                    | 15 |
| (ii) direct or indirect reinvestment of a distribution by the CFC after 2 July 1992 to a person not resident in New Zealand: |    |
- (c) **previous New Zealand repatriation amounts** is the total of any— 20
- |  |    |
|--|----|
| (i) New Zealand repatriation amount of the CFC for a previous accounting period, reduced under any amended assessment under <b>section CD 50(12)</b> or section CD 39(12) of the Income Tax Act 2004; and  | 25 |
| (ii) specified repatriation amount of the CFC for a previous accounting period ending after 2 July 1992 and before the 2003–04 tax year calculated under section CG 8 of the Income Tax Act 1994 as it applied before the 2003–04 tax year and reduced under any amended assessment under section CF 2(17) of the Income Tax Act 1994 as it similarly applied. | 30 |

*Positive amounts*

- (3) The unrepatriated income balance can never be negative.

Defined in this Act: accounting period, assessment, available subscribed capital, bonus issue, CFC, generally accepted accounting practice, New Zealand repatriation amount, resident in New Zealand, tax year

5

Compare: 2004 No 35 s CD 41

*Prevention of double taxation***CD 53 Prevention of double taxation of share cancellation dividends***When this section applies*

10

- (1) This section applies when—

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

(b) the amount is income of the person under 1 of the following provisions (the **other rules**):

15

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

(ii) **section CB 3** (Profit-making undertaking or scheme); or

(iii) **section CB 4** (Personal property acquired for purpose of disposal); or

20

(iv) **section CB 5** (Business of dealing in personal property); or

(v) any other provision of this Act outside this subpart.

*Treatment of amount*

25

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

30

*Non-taxable dividends*

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

(a) the dividend is exempt income of the person under **sections CW 9 to CW 11** (which relate to income from equity); and

35

(b) **section RG 3** (Obligation to pay FDP) does not require the person to withhold FDP from the dividend.

*Subsection (3)(b): formula*

- (4) For the purposes of **subsection (3)(b)**, the extent to which a person is required to withhold FDP is calculated using the formula—

$$\text{FDP withheld} \times \frac{1}{\text{tax rate.}} \quad 5$$

*Definition of items in formula*

- (5) In the formula,—
- (a) **FDP withheld** is any FDP that must be withheld from the dividend under **section RG 4** (Calculating amount of FDP): 10
- (b) **tax rate** is the basic rate of income tax for companies set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits), that applies for the tax year in which the dividend is paid. 15

*Relationship of dividend exclusions to other provisions*

- (6) Subject to **subsection (2)**, the amount derived by the person from the company may be income of the person despite the fact that the amount is excluded from being a dividend by any of **sections CD 22 to CD 27**. 20

*Relationship with section FA 3*

- (7) This section is overridden by **section FA 3** (Recharacterisation of certain dividends: recovery of cost of shares held on revenue account). 25

Defined in this Act: amount, cancellation, company, dividend, exempt income, FDP, FDP credit, imputation credit, income, income tax, share, tax year

Compare: 2004 No 35 s CD 42

***Returning share transfers*** 30**CD 54 Replacement payments**

The amount of a replacement payment derived by a person under a returning share transfer is income of the person when it is paid to the person.

Defined in this Act: income, pay, replacement payment, returning share transfer 35

Compare: 2004 No 35 s CD 43

## Subpart CE—Employee or contractor income

## Contents

*Employment income*

CE 1	Amounts derived in connection with employment	
CE 2	Value and timing of benefits under share purchase agreements	5
CE 3	Restrictions on disposal of shares under share purchase agreements	
CE 4	Adjustments to value of benefits under share purchase agreements	10

*Definitions*

CE 5	Meaning of expenditure on account of an employee	
CE 6	Meaning of share	
CE 7	Meaning of share purchase agreement	
	<i>Attributed income</i>	15

CE 8	Attributed income from personal services	
------	--	--

*Restrictive covenants and exit inducement payments*

CE 9	Restrictive covenants	
CE 10	Exit inducements	
	<i>Income protection insurance</i>	20

CE 11	Proceeds from claims under policies of income protection insurance	
-------	--	--

*Tax credits*

CE 12	Tax credits added to caregiver's income	
-------	---	--

*Employment income* 25**CE 1 Amounts derived in connection with employment**

The following amounts derived by a person in connection with their employment or service are income of the person:

- |     |  |    |
|-----|--|----|
| (a) | salary or wages or an allowance, bonus, extra pay, or gratuity:                                    | 30 |
| (b) | expenditure on account of an employee that is expenditure on account of the person:                |    |
| (c) | the market value of board that the person receives in connection with their employment or service: |    |
| (d) | a benefit received under a share purchase agreement:   | 35 |
| (e) | directors' fees:   |    |
| (f) | compensation for loss of employment or service:  |    |

(g) any other benefit in money.

Defined in this Act: amount, expenditure on account of an employee, extra pay, income, salary or wages, share purchase agreement

Compare: 2004 No 35 s CE 1

## **CE 2 Value and timing of benefits under share purchase agreements** 5

*What this section does*

- (1) This section determines the value of a benefit that an employee receives under a share purchase agreement and the allocation of the benefit to a particular tax year. If restrictions apply to the disposal of shares received under a share purchase agreement, **section CE 3** applies. 10

*If employees acquire shares*

- (2) If an employee acquires shares under a share purchase agreement, the value of the benefit to the employee is the amount by which the value of the shares when they were acquired is more than the amount paid or payable for them. The employee receives the benefit in the tax year in which they acquire the shares. 15

*If employees dispose of rights to non-associates*

- (3) If an employee disposes of their rights under a share purchase agreement to a person who is not associated with them, the value of the benefit is the consideration for the disposal of the rights. The employee receives the benefit in the tax year in which they dispose of the rights. 20

*If associates acquire shares*

- (4) If, following 1 or more transactions between associated persons, an associated person acquires the shares under a share purchase agreement, the value of the benefit is the difference between the value of the shares on the date of acquisition by the associated person and the amount paid or payable for them. If the difference is negative, the value is zero. The employee receives the benefit in the tax year in which the associated person acquires the shares. 25

*If associates dispose of rights to non-associates*

- (5) If, following 1 or more transactions between associated persons, a person who is not an associated person acquires the rights under a share purchase agreement, the value of the benefit is the consideration paid for that disposal. The employee receives the benefit in the tax year in which the last associated person disposes of the rights. 5

*If shares transferred when employees end employment or die*

- (6) The value of the benefit is zero if a share purchase agreement provides unconditionally that, when the employee ends their employment or service or dies, the shares must be transferred to the employer or to the person from whom they were acquired, either without consideration or for a consideration no more than that paid by the employee. 10  
15

*If benefits arise under approved schemes*

- (7) The value of the benefit is zero if the benefit arises under a share purchase scheme.

*Disposal of rights under share purchase option*

- (8) For the purposes of **subsection (3)**, a disposal of rights under a share purchase agreement includes the cancellation of a share option in return for a cash payment. 20

*Reduction of value of benefit in circumstances relating to non-resident*

- (9) The value of a benefit arising from a period of employment is reduced, from the value that the benefit would have in the absence of this subsection,— 25
- (a) if, when the employee acquires the shares under the share purchase agreement or disposes of the rights under the share purchase agreement, the employee is a transitional resident; and 30
- (b) by an amount calculated using the formula—
- $$\text{value before reduction} \times \frac{\text{period employed as non-resident}}{\text{period employed.}} \quad 35$$

Defined in this Act: amount, associated person, employee, employer, non-resident, pay, share, share purchase agreement, share purchase scheme, tax year, transitional resident

Compare: 2004 No 35 s CE 2

### CE 3 Restrictions on disposal of shares under share purchase agreements

#### *Effect of restrictions*

- (1) When the benefit to an employee under a share purchase agreement is being valued, a restriction in the agreement on the disposal of the shares is taken into account only if the restriction is of a kind described in **subsection (2) or (3)**. 5

#### *First restriction*

- (2) The first restriction is one that applies for a period that ends— 10
- (a) at least 8 years after the end of the tax year in which the employee receives the benefit; or
  - (b) with the date of the employee's death.

#### *Second restriction*

- (3) The second restriction is one that— 15
- (a) applies for a period that ends— 15
    - (i) at least 8 years after the end of the tax year in which the employee receives the benefit; or
    - (ii) with the date of the employee's death; and
  - (b) provides that an employee who ends their employment or service before the end of the period must unconditionally transfer some or all of the shares to the employer or to the person from whom the employee acquired them, either without consideration or for a consideration that is no more than that paid by the employee. 20 25

#### *Transfers of shares under relationship agreements*

- (4) If a share purchase agreement does not restrict an employee from transferring the shares under a relationship agreement, but the disposal of the shares by the person to whom the shares are transferred is restricted for a period that ends at least 8 years after the end of the tax year in which the employee would otherwise have received the benefit or after the death of the employee, then the restriction is treated as applying to the employee. 30

Defined in this Act: employee, employer, pay, relationship agreement, share, share purchase agreement, tax year, year 35

Compare: 2004 No 35 s CE 3

#### **CE 4 Adjustments to value of benefits under share purchase agreements**

The Commissioner may at any time adjust the previously determined value of a benefit under a share purchase agreement if the value is reduced because—

- (a) a restriction on disposal exists when the employee disposes of the shares that was not taken into account in valuing the benefit; or
- (b) further consideration is required for the shares; or
- (c) the shares are reacquired either without consideration or for a consideration no more than that paid by the employee.

Defined in this Act: Commissioner, employee, pay, share, share purchase agreement

Compare: 2004 No 35 s CE 4

#### *Definitions*

#### **CE 5 Meaning of expenditure on account of an employee**

##### *Meaning*

- (1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee.

##### *Inclusion*

- (2) **Expenditure on account of an employee** includes a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child. This subsection is overridden by **subsection (3)(f) to (i)**.

##### *Exclusions*

- (3) **Expenditure on account of an employee** does not include—
- (a) expenditure for the benefit of an employee, or a payment made to reimburse an employee, under **section CW 17** (Expenditure on account, and reimbursement, of employees):
  - (b) an allowance for additional transport costs under **section CW 18** (Allowance for additional transport costs):
  - (c) expenses that an employee pays in connection with their employment or service to the extent to which the expenditure is their employer's liability, if the

- employee undertakes to discharge the liability in consideration of the making of the payment by the employer:
- (d) expenditure on an employment-related loan to which the FBT rules apply:
  - (e) an employer's superannuation contribution: 5
  - (f) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, if—
    - (i) the premium cannot be refunded to, or converted to cash by, the employee or an associated person; and 10
    - (ii) the only benefits that are payable under the policy are those payable on the death of the employee, or their spouse, civil union partner, de facto partner, or their child, or those payable because of accident, disease, or sickness of the employee, or their spouse, civil union partner, de facto partner, or their child: 15
  - (g) a premium that an employer that is a close company pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, to the extent to which the expenditure is treated as a dividend under **subpart CD** (Income from equity): 20 25
  - (h) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, if the policy is, or is included in, a superannuation category 1 scheme, a superannuation category 2 scheme, or a superannuation category 3 scheme: 30
  - (i) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, if the policy is held by or for the trustees of a superannuation category 3 scheme: 35
  - (j) a premium for income protection insurance that an employer is liable to pay or make a contribution towards for the benefit of an employee. 40
- Defined in this Act: additional transport costs, associated person, close company, contribution, dividend, employee, employer, employer's superannuation contribution, employment-related loan, expenditure on account of an employee, FBT rules,

life insurance policy, pay, premium, superannuation category 1 scheme, superannuation category 2 scheme, superannuation category 3 scheme, trustee

Compare: 2004 No 35 s CE 5

## CE 6 Meaning of share

### *Meaning*

5

- (1) In **sections CE 2 to CE 4 and CE 7**, **share** includes a convertible note.

### *Use in sections CE 2 to CE 4 and CE 7*

- (2) For the purposes of **sections CE 2 to CE 4 and CE 7**,—
- (a) shares are treated as having been acquired on the date on which the right or option to buy them is exercised; and 10
- (b) if shares or rights are acquired or transferred under an agreement by a trustee for the benefit of an employee to whom **section CE 2** applies, the employee is treated as having acquired or transferred the shares or rights. 15

Defined in this Act: convertible note, employee, share, trustee

Compare: 2004 No 35 s CE 6

## CE 7 Meaning of share purchase agreement

In **sections CE 1 to CE 4**, **share purchase agreement** means an agreement to sell or issue shares in a company to an employee that is entered into in connection with the employee's employment or service, whether or not an employment relationship exists when the employee receives a benefit under the agreement. 20

Defined in this Act: company, employee, share, share purchase agreement

Compare: 2004 No 35 s CE 7

## *Attributed income*

## CE 8 Attributed income from personal services

### *When this section applies*

30

- (1) This section applies when, under **sections GB 27 to GB 29** (which relate to the attribution rule), a person is required to attribute an amount to another person.

*Income*

- (2) The amount attributed is income of the person to whom it is attributed.

*Timing of income*

- (3) The amount is allocated to the income year in which it is attributed. 5

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s CE 8

***Restrictive covenants and exit inducement payments*****CE 9 Restrictive covenants** 10*When this section applies*

- (1) This section applies when—
- (a) a person (**person A**) gives an undertaking that restricts, or is intended to restrict, their ability to perform services as an employee, office holder, or independent contractor, whether or not the undertaking is legally enforceable; and 15
  - (b) a person, whether or not person A, derives an amount for the undertaking.

*Income*

- (2) The amount is income of person A. 20

*Exclusion*

- (3) **Subsection (2)** does not apply if—
- (a) person A derives the amount because person A or an associated person sells a business to another person (**person B**); and 25
  - (b) person A or the associated person and person B agree in writing that the transaction is the sale of a business; and
  - (c) person A derives the amount as consideration for an undertaking by person A not to provide goods or services in competition with the goods or services that person B provides from the business; and 30
  - (d) person A does not provide services to person B after the sale of the business, other than temporarily providing services incidental to the sale. 35

*Sale of all shares in company*

- (4) For the purposes of **subsection (3)**,—
- (a) the sale of a business includes the sale of shares in a company, but only if the sale is of all the shares in the company and the company—
- (i) carries on a business; or
- (ii) directly or indirectly wholly owns another company that carries on a business; and
- (b) in that case, the words “person B” in **subsection (3)(c) and (d)** mean the company that carries on the business, whether the company referred to in **paragraph (a)(i)** or the company referred to in **paragraph (a)(ii)**.

*Sale of part of business*

- (5) For the purposes of **subsection (3)**, the sale of a business includes the sale of part of a business, if the part can be operated separately.

*Avoidance arrangements*

- (6) **Section GB 30** (Arrangements to avoid taxation of restrictive covenant payments) may apply to treat an amount as income under this section.

Defined in this Act: amount, arrangement, associated person, business, company, employee, income, share

Compare: 2004 No 35 s CE 9

**CE 10 Exit inducements**

- An amount is income of a person if they derive it for—
- (a) the loss of a vocation; or
- (b) the loss of a position; or
- (c) leaving a position; or
- (d) loss of status.

Defined in this Act: amount, income

Compare: 2004 No 35 s CE 10

### *Income protection insurance*

#### **CE 11 Proceeds from claims under policies of income protection insurance**

*When this section applies*

- (1) This section applies when an employer is liable to pay, or contribute to the payment of, a premium under a policy of income protection insurance for the benefit of a person who is their employee. 5

*Income*

- (2) An amount that is or would be derived under the policy is income of the person. 10

Defined in this Act: amount, employee, employer, income, pay

Compare: 2004 No 35 s CE 11

### *Tax credits*

#### **CE 12 Tax credits added to caregiver's income** 15

*When this section applies*

- (1) This section applies when a person has under **section LB 6** (Tax credits for caregivers) a tax credit for an accident compensation payment for attendant care, as described in **paragraph (g)** of the definition of **accident compensation payment** in **section CF 1(2)** (Benefits, pensions, compensation, and government grants) for a period in an income year. 20

*Income*

- (2) An amount equal to the tax credit is income of the person in the income year. 25

Defined in this Act: accident compensation payment, income, income year, pay

Compare: 2004 No 35 s CE 12

#### Subpart CF—Income from living allowances, compensation, and government grants

##### **Contents**

- CF 1 Benefits, pensions, compensation, and government grants  
CF 2 Remission of specified suspensory loans

30

## CF 1 Benefits, pensions, compensation, and government grants

### *Income*

- (1) The following amounts are income:
- (a) an accident compensation payment: 5
  - (b) an education grant:
  - (c) an income-tested benefit:
  - (d) a living alone payment:
  - (e) a New Zealand superannuation payment:
  - (f) a parental leave payment paid under Part 7A of the Parental Leave and Employment Protection Act 1987: 10
  - (g) a pension:
  - (h) a veteran's pension.

### *Some definitions*

- (2) In this section,— 15
- accident compensation payment** means—
- (a) a payment under the Accident Compensation Act 1982 of earnings-related compensation that is not recovered or recoverable by, or refunded to, to the chief executive of the administering department: 20
  - (b) a payment under section 80(4) of the Accident Compensation Act 1982 that is not recovered or recoverable by, or refunded to, to the chief executive of the administering department:
  - (c) a payment of any of the following kinds under the Accident Rehabilitation and Compensation Insurance Act 1992, none of which is recovered or recoverable: 25
    - (i) a vocational rehabilitation allowance under section 25; or
    - (ii) compensation for loss of earnings under any of sections 38, 39, and 43; or 30
    - (iii) compensation for loss of potential earning capacity under section 45 or 46; or
    - (iv) weekly compensation under any of sections 58, 59, and 60; or 35
    - (v) continued compensation under section 138:
  - (d) a payment under the Accident Insurance Act 1998 of weekly compensation that is not recovered or recoverable:

- (e) a payment under a policy of personal accident or sickness insurance under section 188(1)(a) of the Accident Insurance Act 1998, as it was immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000, of compensation for loss of earnings or loss of potential earning capacity as it relates to work-related personal injury: 5
- (f) a payment under the Injury Prevention, Rehabilitation, and Compensation Act 2001 by the Corporation of weekly compensation that is not recovered or recoverable under section 248 of that Act: 10
- (g) a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation, as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act 15

**education grant** means a basic grant or an independent circumstances grant under regulations made under section 303 of the Education Act 1989

**pension—**

- (a) includes a gratuitous payment made to a person in return for services that the person, or their parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant, provided to the payer when the payment would not have been made if the services had not been provided; and 20 25
- (b) does not include a payment made to the person because of, and within 1 year after, the death of that parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant. 30

Defined in this Act: accident compensation payment, amount, chief executive of the administering department, education grant, income, income-tested benefit, living alone payment, New Zealand superannuation, pay, pension, veteran's pension, year

Compare: 2004 No 35 s CF 1 35

## CF 2 Remission of specified suspensory loans

*When this section applies*

- (1) This section applies when a public authority—
- (a) grants a loan to a person for a business that the person carries on; and 40

(b) designates the loan as a specified suspensory loan.

*Income*

- (2) An amount remitted on the specified suspensory loan is income of the person.

*Timing of income*

- (3) The amount is allocated in equal parts to the income year of remission and the following 2 income years. However, the person may choose to allocate some or all of the amount in the following 2 income years to a previous income year that is 1 of the 3 income years. 5  
10

*Business ceasing*

- (4) If the person stops carrying on the business for which the specified suspensory loan was granted, an amount remitted that is allocated to a later income year is allocated to the income year in which the person stops carrying on the business. 15

Defined in this Act: amount, business, income, income year, public authority

Compare: 2004 No 35 s CF 2

## Subpart CG—Recoveries

### Contents

CG 1	Amount of depreciation recovery income	
CG 2	Remitted amounts	
CG 3	Bad debt repayment	
CG 4	Recovered expenditure or loss	
CG 5	Recoveries or receipts by employers from superannuation schemes	25
CG 6	Receipts from insurance, indemnity, or compensation for trading stock	
CG 7	Recoveries after deduction of payments under lease	

<b>CG 1</b>	<b>Amount of depreciation recovery income</b>	<b>30</b>
	An amount of depreciation recovery income that a person has is income of the person.	

Defined in this Act: amount, depreciation recovery income, income

Compare: 2004 No 35 s CG 1

**CG 2 Remitted amounts***When this section applies*

- (1) This section applies when—
- (a) a person is allowed a deduction in an income year of an amount that the person is liable to pay; and 5
  - (b) the person's liability for the amount is later remitted or cancelled, wholly or partly; and
  - (c) the remission or cancellation is not a dividend; and
  - (d) the person is not required to calculate a base price adjustment by **section EW 29** (When calculation of base price adjustment required). 10

*Income*

- (2) The amount to which the remission or cancellation applies is income of the person.

*Timing of income*

- (3) The income is allocated to the income year in which the remission or cancellation occurs. 15

*How remission or cancellation occurs*

- (4) Remission or cancellation occurs, for the purposes of this section, in 1 of the following ways: 20
- (a) a liability is remitted to the extent to which the person is discharged from it without fully adequate consideration in money or money's worth:
  - (b) a liability is cancelled to the extent to which the person is released from it under the Insolvency Act 1967 or the Companies Act 1993 or the laws of a country or territory other than New Zealand: 25
  - (c) a liability is cancelled to the extent to which the person is released from it by a deed or agreement of composition with the person's creditors: 30
  - (d) a liability is cancelled to the extent to which it is irrecoverable or unenforceable through lapse of time.

Defined in this Act: amount, deduction, dividend, income, income year, New Zealand, pay

Compare: 2004 No 35 s CG 2 35

**CG 3 Bad debt repayment**

An amount received by a person for a bad debt for which the person has been allowed a deduction is income of the person.

Defined in this Act: amount, deduction, income

Compare: 2004 No 35 s CG 3

5

**CG 4 Recovered expenditure or loss**

*When this section applies*

- (1) This section applies when—
- (a) a person is allowed a deduction for expenditure or loss; and 10
  - (b) the person recovers some or all of the expenditure or loss, whether through insurance, indemnity, or otherwise; and
  - (c) the amount recovered, to the extent of the deduction, is not income of the person under any other provision of this Act. 15

*Income*

- (2) The amount recovered is, to the extent of the deduction, income of the person.

*Timing of income*

20

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

Defined in this Act: amount, deduction, income year, loss

Compare: 2004 No 35 s CG 4

**CG 5 Recoveries or receipts by employers from superannuation schemes**

25

*When this section applies*

- (1) This section applies when—
- (a) an employer makes an employer's superannuation contribution to a superannuation scheme for their employee's benefit; and 30
  - (b) the employer is allowed a deduction for the contribution; and
  - (c) the employer—
    - (i) recovers the contribution from the superannuation scheme; or 35

- (ii) receives a benefit in money or money's worth from the superannuation scheme, other than an amount paid to the employer under the scheme in return for contributions made by or for the employer in a personal capacity. 5

*Income*

- (2) The amount recovered or received is, to the extent of the deduction, income of the employer.

*Timing of income*

- (3) The income is allocated to the income year in which the amount is recovered or received. 10

Defined in this Act: amount, deduction, employee, employer, employer's superannuation contribution, income, income year, pay, superannuation scheme

Compare: 2004 No 35 s CG 5

**CG 6 Receipts from insurance, indemnity, or compensation for trading stock** 15

*When this section applies*

- (1) This section applies when a person receives an amount of insurance, indemnity, or compensation for the loss or destruction of, or damage to,— 20
- (a) trading stock:
- (b) anything acquired, manufactured, or produced for a purpose ancillary to a business of manufacturing or producing goods for sale or exchange.

*Income*

- (2) The part of the insurance, indemnity, or compensation that is attributable to the asset is income if— 25
- (a) the person is allowed a deduction in a tax year for the cost of the asset; and
- (b) the deduction is not for an amount of depreciation loss. 30

*Timing of income*

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

Defined in this Act: amount, business, deduction, depreciation loss, income, income year, tax year, trading stock 35

Compare: 2004 No 35 s CG 6

**CG 7 Recoveries after deduction of payments under lease***When this section applies*

- (1) This section applies, for the purposes of **section FA 5** (Assets acquired and disposed of after deduction of payments under lease) when— 5
- (a) a person leases, rents, or hires an asset that is—
    - (i) plant, machinery, or other equipment; or
    - (ii) a motor vehicle; or
    - (iii) a temporary building; and
  - (b) they are allowed a deduction for the rental payments; 10  
and
  - (c) they acquire the asset and later dispose of it for an amount that is more than the amount paid to acquire the asset.

*Income*

- (2) The amount described in **subsection (3)** is income of the person. 15

*Consideration less payments or total deductions*

- (3) The amount is the lesser of the amount by which the consideration on disposal is more than— 20
- (a) the sum of the payments made; or
  - (b) the total amount of the deductions referred to in **subsection (1)(b)**.

*Timing of income*

- (4) The income is allocated to the tax year of the disposal of the asset. 25

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

Compare: 2004 No 35 s FC 5(1)

**Subpart CH—Adjustments****Contents**

30

*Matching rules: revenue account property, prepayments, and deferred payments*

- CH 1 Adjustment for closing values of trading stock, livestock, and excepted financial arrangements
- CH 2 Adjustment for prepayments 35
- CH 3 Adjustment for deferred payment of employment income

	<i>Change to accounting practice</i>	
CH 4	Adjustment for change to accounting practice	
	<i>GST</i>	
CH 5	Adjustment for GST	
	<i>Finance leases</i>	
CH 6	Adjustments under consecutive or successive finance leases	5
	<i>Avoidance and non-market transactions</i>	
CH 7	Adjustment for avoidance arrangements	
CH 8	Market value substituted	10
CH 9	Interest apportionment	

*Matching rules: revenue account property, prepayments,  
and deferred payments*

<b>CH 1</b>	<b>Adjustment for closing values of trading stock, livestock, and excepted financial arrangements</b>	<b>15</b>
	<i>When this section applies</i>	
(1)	This section applies when a person has some or all of the following at the end of an income year:	
	(a) trading stock valued under <b>subpart EB</b> (Valuation of trading stock (including dealer's livestock)):	20
	(b) livestock valued under <b>subpart EC</b> (Valuation of livestock):	
	(c) excepted financial arrangements that are revenue account property valued under <b>subpart ED</b> (Valuation of excepted financial arrangements):	25
	(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in <b>paragraph (c)</b> .	
	<i>Income: closing value of trading stock</i>	
(2)	The value of the trading stock, calculated under <b>section EB 3</b> (Valuation of trading stock), is income of the person in the income year.	30
	<i>Income: closing value of livestock</i>	
(3)	The value of the livestock, calculated under <b>section EC 2</b> (Valuation of livestock), is income of the person in the income year.	35

*Income: closing value of excepted financial arrangements*

- (4) The value of the excepted financial arrangements or share-lending right, calculated under **section ED 1** (Valuation of excepted financial arrangements), is income of the person in the income year. 5

Defined in this Act: excepted financial arrangement, income, income year, original share, revenue account property, share-lending right, share supplier, trading stock

Compare: 2004 No 35 s CH 1

**CH 2 Adjustment for prepayments***When this section applies* 10

- (1) This section applies when a person has, under **section EA 3** (Prepayments), an unexpired amount of expenditure at the end of an income year.

*Income*

- (2) The unexpired amount is income of the person in the income year. 15

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s CH 2

**CH 3 Adjustment for deferred payment of employment income** 20*When this section applies*

- (1) This section applies when a person has, under **section EA 4** (Deferred payment of employment income), an unpaid amount of expenditure on employment income that is to be treated as income in an income year. 25

*Income*

- (2) The unpaid amount is income of the person in the income year.

Defined in this Act: amount, employment income, income, income year, pay

Compare: 2004 No 35 s CH 3 30

### *Change to accounting practice*

#### **CH 4 Adjustment for change to accounting practice**

##### *When this section applies*

- (1) This section applies when a person has, under **section EG 2(2)(a) or (3)(a)** (Adjustment for changes to accounting practice), an amount owing to them or an amount owed by them as quantified in those paragraphs. 5

##### *Income*

- (2) An amount quantified and allocated under **section EG 2(2)(a) or (3)(a)** is income of the person. 10

Defined in this Act: amount, income

Compare: 2004 No 35 s CH 4

### *GST*

#### **CH 5 Adjustment for GST**

##### *Income*

- (1) An amount calculated under sections 21F and 21G of the Goods and Services Tax Act 1985 relating to the application of goods and services is income of a person. 15

##### *Exclusion*

- (2) This section does not apply to an amount that relates to the application of a capital asset— 20
- (a) for the principal purpose of making taxable supplies, when the asset was acquired or produced other than for the principal purpose of making taxable supplies:
  - (b) other than for the principal purpose of making taxable supplies, when the asset was acquired or produced for the principal purpose of making taxable supplies: 25
  - (c) other than for the purpose of deriving income.

##### *Timing of income*

- (3) The income is allocated to the income year in which the amount is calculated. 30

Defined in this Act: amount, income, income year, taxable supply

Compare: 2004 No 35 s CH 5

### *Finance leases*

#### **CH 6 Adjustments under consecutive or successive finance leases**

*When this section applies*

- (1) This section applies when an adjustment is made under **section FA 11** (Consecutive or successive finance leases). 5

*Income*

- (2) The amount of the adjustment is income of the lessor or the lessee, as applicable, in the tax year in which the adjustment is made. 10

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

Compare: 2004 No 35 ss FC 8H(2), FC 8I(3)(a)

### *Avoidance and non-market transactions*

#### **CH 7 Adjustment for avoidance arrangements** 15

An amount treated as income of a person under any of the following sections is income of the person:

- (a) **section GA 1** (Commissioner's power to adjust):  
 (b) **section GB 23** (Excessive remuneration to relatives):  
 (c) **section GB 26** (Arrangements involving repatriation of commercial bills): 20  
 (d) **section GB 29** (Attribution rule: calculation):  
 (e) **section GB 46** (Deferral of surplus deductions from arrangements).

Defined in this Act: amount, arrangement, Commissioner, income, relative 25

#### **CH 8 Market value substituted**

*Transfer pricing arrangements*

- (1) An amount treated as income of a person under **section GB 7** (Arrangements involving CFC control interests) is income of the person. 30

*Disposal at below market value*

- (2) A person may be treated as deriving an amount—  
 (a) on disposal of trading stock under **section GC 1** (Disposals of trading stock at below market value):

- (b) on the lease of a property under **section GC 5** (Leases for inadequate rent).

Defined in this Act: amount, income, lease, trading stock

## CH 9 Interest apportionment

*When this section applies*

5

- (1) This section applies when a reporting bank is required under **section FE 7** (Apportionment of interest by reporting bank) to apportion its interest expenditure.

*Income*

- (2) The amount calculated under **section FE 7(2)** is treated as income of the reporting bank for the income year in which the measurement period falls.

10

Defined in this Act: amount, income, income year, interest, measurement period, reporting bank

Compare: 2004 No 35 s FG 8B(1)

15

## Subpart CQ—Attributed income from foreign equity

### Contents

#### *Attributed controlled foreign company income*

- CQ 1 Attributed controlled foreign company income  
 CQ 2 When attributed CFC income arises  
 CQ 3 Calculation of attributed CFC income

20

#### *Foreign investment fund income*

- CQ 4 Foreign investment fund income  
 CQ 5 When FIF income arises  
 CQ 6 Calculation of FIF income

25

#### *Attributed controlled foreign company income*

### **CQ 1 Attributed controlled foreign company income**

Attributed CFC income of a person is income.

Defined in this Act: attributed CFC income, income

Compare: 2004 No 35 s CQ 1

30

**CQ 2 When attributed CFC income arises***General rule*

- (1) A person has **attributed CFC income** from a foreign company in an income year if—
- (a) the foreign company is a CFC at any time during 1 of its accounting periods, under **sections EX 1 to EX 7** (which relate to the definition of a controlled foreign company); and 5
  - (b) the accounting period ends during the income year; and
  - (c) the person has an income interest in the foreign company for the accounting period, under **sections EX 8 to EX 13** (which relate to calculating a person's income interest); and 10
  - (d) at any time in the accounting period, the person is a New Zealand resident who is not a transitional resident; and 15
  - (e) the person's income interest is 10% or more for the part of the accounting period during which the person is a New Zealand resident who is not a transitional resident, under **sections EX 14 to EX 17** (which relate to the 10% threshold); and 20
  - (f) either—
    - (i) the CFC has branch equivalent income for the accounting period under **section EX 21** (Branch equivalent income or loss: calculation rules); or 25
    - (ii) the special rule in **section EX 19** (Taxable distribution from non-complying trust) applies because the CFC gets a distribution from a non-complying trust; and
  - (g) the CFC is not an unqualified grey list CFC for the accounting period, under **section EX 22** (Unqualified grey list CFCs). 30

*Special rule: branch equivalent FIF with taxable distribution*

- (2) A person also has **attributed CFC income** if **section EX 43(5)** (Branch equivalent method) applies because— 35
- (a) the person has an attributing interest in a FIF; and
  - (b) the person is using the branch equivalent method to calculate FIF income; and

- (c) the FIF receives a taxable distribution from a non-complying trust.

*Treated as derived while person New Zealand resident*

- (3) Attributed CFC income of a person who has stopped being a New Zealand resident is treated as being derived while the person was a New Zealand resident. 5

*Dividend income can arise*

- (4) A person with an income interest of 10% or more in a CFC can also have dividend income under **section CD 21** (Attributed repatriations from controlled foreign companies) to the extent to which any attributed repatriation is calculated for the person and the CFC under **sections CD 45 to CD 52** (which relate to CFC attributed repatriation calculation rules). 10

Defined in this Act: accounting period, attributed CFC income, attributed repatriation, attributing interest, branch equivalent income, branch equivalent method, CFC, distribution, dividend, FIF, FIF income, foreign company, grey list, income, income interest, income year, New Zealand resident, non-complying trust, taxable distribution, transitional resident 15

Compare: 2004 No 35 s CQ 2

**CQ 3 Calculation of attributed CFC income** 20

The amount of attributed CFC income is calculated under the rules in **sections EX 18 to EX 20** (which relate to the calculation of attributed CFC income or loss).

Defined in this Act: amount, attributed CFC income

Compare: 2004 No 35 s CQ 3 25

*Foreign investment fund income*

**CQ 4 Foreign investment fund income**

FIF income of a person is income.

Defined in this Act: FIF income, income

Compare: 2004 No 35 s CQ 4 30

**CQ 5 When FIF income arises**

*General rule*

- (1) A person has **FIF income** in an income year if—  
 (a) at any time in the year, the person has—

- 
- (i) rights in a foreign company, or a foreign superannuation scheme, or an entity listed in **schedule 25, part A** (Foreign investment funds); or
  - (ii) rights under a life insurance policy issued by a non-resident; and 5
  - (b) at that time, the rights are an attributing interest in a FIF under **sections EX 30** (Attributing interests in FIFs) and **EX 31** (Direct income interests in FIFs); and
  - (c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of— 10
    - (i) the CFC rules exemption in **section EX 32** (CFC rules exemption):
    - (ii) the grey list exemption in **section EX 33** (Grey list exemption):
    - (iii) the foreign exchange control exemption in **section EX 34** (Foreign exchange control exemption): 15
    - (iv) the exemption for a non-resident or transitional resident in **section EX 35** (Income interest of non-resident or transitional resident):
    - (v) the immigrant's accrued superannuation entitlement exemption in **section EX 36** (New resident's accrued superannuation entitlement exemption): 20
    - (vi) the non-resident's annuity or pension exemption in **section EX 37** (Non-resident's pension or annuity exemption); and 25
  - (d) if the person is a natural person and not acting as a trustee, the total cost (calculated under **section EX 55** (Measurement of cost)) of attributing interests in FIFs that the person holds at any time during the year when the person is a New Zealand resident is more than \$50,000; and 30
  - (e) at any time in the year, the person is a New Zealand resident who is not a transitional resident and holds the attributing interest; and
  - (f) under the relevant calculation method chosen by the person, an income amount is calculated for the year under **sections EX 38 to EX 45** (which relate to the calculation of FIF income or loss), **EX 48** (Top-up FIF income: deemed rate of return method), or **EX 49** (Top-up FIF income: 1 April 1993 uplift interests). 35 40

*Look-through calculation methods*

- (2) Despite **subsection (1)**, if the calculation method is the accounting profits method or branch equivalent method,—
- (a) FIF income arises in the income year only if the relevant accounting period of the FIF ends during the year; and 5
- (b) the tests in **subsection (1)(a), (b), (c), and (e)** are applied on the basis that references in **subsection (1)(a), (b), (c), and (e)** to any time in the year are read as references to any time in the relevant accounting period. 10

*Special rule: CFC with FIF interest*

- (3) A person with an income interest of 10% or more in a CFC can also have **FIF income** in an income year under the special rule in **section EX 46** (Additional FIF income or loss if CFC owns FIF), which applies when the CFC has an attributing interest in a FIF, whether or not the CFC is an unqualified grey list CFC under **section EX 22** (Unqualified grey list CFCs). 15

*Treated as derived while person New Zealand resident*

- (4) FIF income of a person who has stopped being a New Zealand resident is treated as being derived while the person was a New Zealand resident. 20

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, CFC, FIF, FIF income, foreign company, foreign superannuation scheme, grey list, income, income interest, income year, life insurance policy, New Zealand resident, non-resident, transitional resident, trustee 25

Compare: 2004 No 35 s CQ 5

**CQ 6 Calculation of FIF income**

The amount of any FIF income is calculated, using the relevant calculation method, under **sections EX 38 to EX 49** (which relate to the calculation of FIF income or loss). 30

Defined in this Act: amount, calculation method, FIF income

Compare: 2004 No 35 s CQ 6

**Subpart CR—Income from life insurance****Contents**

35

- CR 1 Income of life insurer  
 CR 2 Amount of income of life insurer  
 CR 3 Income of non-resident general insurer

**CR 1 Income of life insurer***Income: premium loading*

- (1) The premium loading that a life insurer has in an income year is income of the life insurer in the income year.

*Income: mortality profit*

- (2) The mortality profit that a life insurer has in an income year is income of the life insurer in the income year.

*Income: discontinuance profit*

- (3) The discontinuance profit that a life insurer has in an income year is income of the life insurer in the income year.

*Income: policyholder income*

- (4) The policyholder income that a life insurer has in an income year is income of the life insurer in the income year.

*Income: disposal amount*

- (5) An amount that a life insurer derives from disposing of any property of their life insurance business is income of the life insurer.

*Disposals at below market value*

- (6) **Section GC 3** (Disposals by life insurers) may apply to treat a life insurer as receiving an amount on disposal of property.

Defined in this Act: amount, business, discontinuance profit, income, income year, life insurance, life insurer, mortality profit, policyholder income, premium loading, property

Compare: 2004 No 35 s CR 1

**CR 2 Amount of income of life insurer***Premium loading*

- (1) The premium loading that a life insurer has in an income year is quantified under **sections EY 15 to EY 24** (which relate to premium loading).

- Mortality profit*
- (2) The mortality profit that a life insurer has in an income year is quantified under **sections EY 25 to EY 34** (which relate to mortality profit). 5
- Discontinuance profit*
- (3) The discontinuance profit that a life insurer has in an income year is quantified under **sections EY 35 to EY 41** (which relate to discontinuance profit). 5
- Policyholder income*
- (4) The policyholder income that a life insurer has in an income year is quantified under **sections EY 42 to EY 45** (which relate to policyholder income). 10
- Disposal of property*
- (5) The amount of income that a life insurer derives from disposing of any property of their life insurance business is quantified under **section EY 46** (Income from disposal of property). 15
- Defined in this Act: amount, business, discontinuance profit, income, income year, life insurance, life insurer, mortality profit, policyholder income, premium loading, property
- Compare: 2004 No 35 s CR 2 20

### CR 3 Income of non-resident general insurer

*What this section applies to*

- (1) This section applies to a premium that is treated as derived from New Zealand under **section YD 8** (Apportionment of premiums derived by non-resident general insurers) if— 25
- (a) an insured person pays the premium to an insurer for insurance of any of the kinds described in **subsection (3)**; and
- (b) the premium meets all 3 conditions in **subsection (4)**; and
- (c) the premium is not excluded from the application of this section by **section YD 8(6)**. 30

*Amount of income*

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

*Kinds of insurance*

- (3) The kinds of insurance referred to in **subsection (1)(a)** are—
- (a) general insurance:
  - (b) a guarantee against risk given by an insurer to an insured person if— 5
    - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
    - (ii) the insured person is associated with the insurer:
  - (c) a guarantee against risk given by an insurer to an insured person if— 10
    - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
    - (ii) the risk arises from money lent to the insured person
    - (iii) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and 15
    - (iv) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee. 20

*Conditions for premium*

- (4) The premium referred to in **subsection (1)(b)** is—
- (a) a premium derived by an insurer who is not resident in New Zealand when they derive it: 25
  - (b) a premium that is not attributable to a fixed establishment of the insurer in New Zealand through which they carry on business in New Zealand:
  - (c) a premium to which at least 1 of the following applies: 30
    - (i) the insured person from whom the premium is derived is resident in New Zealand; or
    - (ii) the insurance contract from which the premium is derived is offered or entered into in New Zealand; or 35
    - (iii) the insurance contract from which the premium is derived is entered into for the purposes of a business carried on by the insured person in New

Zealand through a fixed establishment in New Zealand.

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

5

Compare: 2004 No 35 ss FC 13, FC 14(2)

## Subpart CS—Superannuation funds Contents

	<b><i>Withdrawals</i></b>	10
CS 1	Withdrawals	
	<b><i>Exclusions</i></b>	
CS 2	Exclusions of withdrawals of various kinds	
CS 3	Exclusion of withdrawal on grounds of hardship	
CS 4	Exclusion of withdrawal to settle division of relationship property	15
CS 5	Exclusion of withdrawal paid as annuity or pension	
CS 6	Exclusion of withdrawal on partial retirement	
CS 7	Exclusion of withdrawal when member ends employment	20
CS 8	Exclusion of withdrawal when member ends employment: lock-in rule	
CS 9	Exclusion of withdrawal from defined benefit fund when member ends employment	
CS 10	When member treated as not ending employment	25
	<b><i>Transfers to or from superannuation funds and superannuation schemes</i></b>	
CS 11	Transfer by superannuation fund to another superannuation fund	
CS 12	Transfer from superannuation scheme to superannuation fund	30
CS 13	Investment by superannuation fund in another superannuation fund	
	<b><i>Treatment of amounts when superannuation fund becomes superannuation scheme or vice versa</i></b>	35
CS 14	Superannuation fund becomes superannuation scheme	
CS 15	Superannuation fund becomes foreign superannuation scheme	
CS 16	Superannuation scheme becomes superannuation fund	

*Treatment of distributions when superannuation fund  
wound up*

CS 17 Superannuation fund wound up

*Treatment of loans to members*

CS 18 Value of loan treated as fund income 5

**Withdrawals**

**CS 1 Withdrawals**

*When this section applies*

- (1) This section applies when a withdrawal is made from a superannuation fund if— 10
- (a) the fund is—
- (i) a fund to which the member's employer has made employer's superannuation contributions for the member's benefit; or
- (ii) a fund that has received a transfer from another superannuation fund for the member; and 15
- (b) the withdrawal is related to the member's membership of the fund; and
- (c) the application of this section to the withdrawal is not excluded by any of **sections CS 2 to CS 9**. 20

*Income of superannuation fund from withdrawal*

- (2) The superannuation fund derives from the withdrawal an amount of income calculated using the formula— 25
- $$\frac{0.05}{\text{tax rate}} \times (\text{withdrawn} - \text{other contributions}).$$

*Definition of items in formula*

- (3) The items in the formula are defined in **subsections (4) to (6)**.

*Withdrawn*

- (4) **Withdrawn** is the total of— 30
- (a) the amount of money that is withdrawn from the superannuation fund;
- (b) the market value of the part of the withdrawal that is not an amount of money, on the date of the withdrawal.

	<i>Other contributions</i>	
(5)	<b>Other contributions</b> is the part of the withdrawal that the trustee of the superannuation fund establishes is not employer-sourced superannuation savings.	
	<i>Tax rate</i>	5
(6)	<b>Tax rate</b> is the basic rate of income tax set out in <b>schedule 1, part A, clause 3</b> (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits).	
	<i>Reduction of income</i>	
(7)	The superannuation fund may reduce the income by 25% for each tax year to which both the following apply:	10
	(a) the tax year is 1 of the 4 tax years before the tax year in which the withdrawal is made; and	
	(b) in the tax year, the total of the member's taxable income and the employer's superannuation contributions to the fund for the member's benefit is less than \$60,000.	15
	<i>Timing of income</i>	
(8)	The income is allocated as follows:	
	(a) if the superannuation fund is wound up or becomes a foreign superannuation scheme, the income is allocated to the tax year in which the withdrawal is made:	20
	(b) in any other case, the income is allocated to the tax year following the tax year in which the withdrawal is made.	
	<i>Application of Tax Administration Act 1994</i>	
(9)	Sections 32A to 32C of the Tax Administration Act 1994 apply when this section applies.	25
	Defined in this Act: amount, employer, employer-sourced superannuation savings, employer's superannuation contribution, foreign superannuation scheme, income, income tax, member, superannuation fund, tax year, taxable income, trustee, withdrawal	30
	Compare: 2004 No 35 s CS 1	

## *Exclusions*

### CS 2 Exclusions of withdrawals of various kinds

#### *Withdrawal of member's contributions*

- (1) **Section CS 1** does not apply to a withdrawal of a member's contributions. 5

#### *Withdrawal of employer's contributions*

- (2) **Section CS 1** applies to a withdrawal of the employer-sourced superannuation savings for a member's benefit only if—
- (a) the employer increases the level of the employer's superannuation contributions on and after 1 April 2000, as compared with the level in the last pay period ending before 1 April 2000; and 10
  - (b) the employer does not come within any of **subsection (3)(a) to (c)**.

#### *Increase not treated as such* 15

- (3) An employer who increases the level of employer's superannuation contributions is treated as not doing so—
- (a) to the extent to which the employer increases the level by making additional employer's superannuation contributions for the member's benefit to compensate for underpaying employer's superannuation contributions for the member's benefit; or 20
  - (b) if the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract, and the requirement existed before 1 April 2000; or 25
  - (c) if the level of employer's superannuation contributions does not change as a percentage of salary as between the level on and after 1 April 2000 and the level in the last pay period ending before 1 April 2000.

#### *Superannuation fund administration costs* 30

- (4) **Section CS 1** does not apply to a withdrawal for fees and expenses associated with the management and marketing of the superannuation fund.

- Withdrawals from KiwiSaver schemes to buy first home*
- (5) **Section CS 1** does not apply to a withdrawal from a KiwiSaver scheme under clause 8 of the KiwiSaver scheme rules in the KiwiSaver Act 2006.
- Life, health, sickness, or accident insurance* 5
- (6) **Section CS 1** does not apply to—
- (a) a withdrawal for the payment of premiums for life insurance, health insurance, sickness insurance, or accident insurance held by or for a member of the superannuation fund, whether the insurance is group insurance or individual insurance; or 10
- (b) a withdrawal to pay an amount claimed under insurance described in **paragraph (a)**.
- Transfer between funds*
- (7) **Section CS 1** does not apply to a withdrawal that takes the form of a direct transfer of an amount from a superannuation fund to another superannuation fund. 15
- Transfer from wound-up fund*
- (8) **Section CS 1** does not apply to a withdrawal that takes the form of a direct transfer to another superannuation fund of an amount from a superannuation fund that is wound up. 20
- Amount in fund on certain dates*
- (9) **Section CS 1** does not apply to a withdrawal of an amount, or earnings on it, that is in the superannuation fund—
- (a) on the fund's balance date that precedes 1 April 2000, if a trustee of the fund calculates the amount in the fund on the balance date; or 25
- (b) at the close of business on 31 March 2000, in any other case.
- Interpretation of subsection (9)* 30
- (10) For the purposes of **subsection (9)**,—
- (a) the amount that is in the superannuation fund is calculated according to market value;
- (b) an amount in a superannuation fund includes employer's superannuation contributions received after the fund's balance date that precedes 1 April 2000 or 35

31 March 2000, as applicable, if the contributions relate to a pay period ending on or before the fund's balance date or 31 March 2000, as applicable.

*Application of Tax Administration Act 1994*

- (11) Section 32C of the Tax Administration Act 1994 applies when this section applies. 5

Defined in this Act: amount, employer, employer-sourced superannuation savings, employer's superannuation contribution, KiwiSaver scheme, life insurance, member, member's contribution, pay, pay period, premium, superannuation fund, trustee, withdrawal 10

Compare: 2004 No 35 s CS 2

**CS 3 Exclusion of withdrawal on grounds of hardship**

*Significant financial hardship*

- (1) **Section CS 1** does not apply to a withdrawal to the extent to which the withdrawal is necessary to alleviate significant financial hardship. 15

*Meaning of significant financial hardship*

- (2) In this section, **significant financial hardship** includes significant financial difficulties that arise because of—
- (a) a member's inability to meet minimum living expenses; 20  
or
  - (b) a member's inability to carry out their usual occupation because of their temporary or permanent illness, injury, or disability; or
  - (c) a member's inability to meet mortgage repayments on their principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or 25
  - (d) the cost of modifying a residence to meet special needs arising from a disability of a member or a member's dependant; or 30
  - (e) the cost of medical treatment for an illness or injury of a member or a member's dependant; or
  - (f) the cost of palliative care for a member or a member's dependant; or
  - (g) the cost of a funeral for a deceased member or a member's deceased dependant. 35

Defined in this Act: member, mortgage, significant financial hardship, pay, withdrawal

Compare: 2004 No 35 s CS 3

#### **CS 4 Exclusion of withdrawal to settle division of relationship property**

**Section CS 1** does not apply to a withdrawal to the extent to which the withdrawal is necessary to settle the division of relationship property under the Property (Relationships) Act 1976 upon the ending of a marriage, civil union, or de facto relationship for the purpose of whichever is applicable of sections 2A(2), 2AB(2) and 2D(4) of that Act.

5

Defined in this Act: withdrawal

Compare: 2004 No 35 s CS 4

10

#### **CS 5 Exclusion of withdrawal paid as annuity or pension**

**Section CS 1** does not apply to a withdrawal if the amount withdrawn is—

- (a) used to buy an annuity that is payable for life or over 10 or more years; or
- (b) payable as an annuity for life or over 10 or more years; or
- (c) payable as a pension for life or over 10 or more years.

15

Defined in this Act: amount, withdrawal, year

Compare: 2004 No 35 s CS 5

20

#### **CS 6 Exclusion of withdrawal on partial retirement**

*Partial retirement*

- (1) **Section CS 1** does not apply to a withdrawal made on or after the date on which a member partially retires, if, on the date the withdrawal is made,—

25

- (a) the member is employed for 30 hours per week or less; and
- (b) the member has reduced their working hours because they are nearing full retirement; and
- (c) the member stops contributing to the superannuation fund; and
- (d) the member's employer stops making employer's superannuation contributions to the superannuation fund for the member's benefit; and
- (e) the member gives a notice as described in **subsection (2)** to the trustees of the superannuation fund.

30

35

*Notice*

- (2) The member's notice to the trustees of the superannuation fund must—
- (a) state that the member does not intend to increase their hours in paid employment in the future; and 5
  - (b) state that the member's employer understands that the member's hours in paid employment will not increase in the future; and
  - (c) be signed by the employer to acknowledge that the employer's understanding is as described in **paragraph (b)**. 10

*Later withdrawals*

- (3) A member who makes a withdrawal after giving notice as required by **subsection (2)** is not required to give notice for each later withdrawal if their intention has not changed. 15

Defined in this Act: employer, employer's superannuation contribution, member, notice, pay, superannuation fund, trustee, withdrawal

Compare: 2004 No 35 s CS 6

**CS 7 Exclusion of withdrawal when member ends employment** 20

*Ending employment because of injury, disability, or death*

- (1) **Section CS 1** does not apply to a withdrawal made on or after the date on which a member ends their employment with an employer if the member ends their employment because the member is injured or disabled or dies. 25

*Ending employment after period of employer's superannuation contributions*

- (2) **Section CS 1** does not apply to a withdrawal from a superannuation fund of employer's superannuation contributions that have been made for the member by the employer, or another employer, if— 30
- (a) the member has been in employment throughout the period that—
    - (i) starts on the 1st day of the tax year that starts 2 tax years before the start of the tax year in which the member ends their employment; and 35
    - (ii) ends on the day on which the member ends their employment; and

- (b) the employer's superannuation contributions are made to the superannuation fund or to a superannuation fund that has transferred, whether directly or indirectly, the funds relating to its members to the superannuation fund; and 5
- (c) the employer's superannuation contributions have not been part of a withdrawal, other than a transfer between superannuation funds that is referred to in **paragraph (b)**; and
- (d) the withdrawal— 10
- (i) meets the requirements of **subsections (3) and (4)**;
- (ii) meets the requirements of **subsection (5)**;
- (iii) does not include employer-sourced superannuation savings of more than the amount found by multiplying \$5,000 by the number of income years for which the employer's superannuation contributions were made on behalf of the member; and 15
- (e) the withdrawal is made at the time described in **subsection (6)**. 20
- Limited increase in employer contributions between income years*
- (3) A withdrawal meets the requirements of this subsection if, at the time of the withdrawal, employer's superannuation contributions have been made for the member by the employer, or another employer, such that— 25
- (a) the contributions relate to some or all of a period of employment that—
- (i) starts on the 1st day of the tax year that starts 2 tax years before the tax year in which the member ends their employment; and 30
- (ii) ends on the day on which the member ends their employment; and
- (b) in each of the first 2 tax years in the period referred to in **paragraph (a)**, the contributions— 35
- (i) are in total less than 150% of the total of employer's superannuation contributions made for the member in the previous tax year:
- (ii) meet the requirements of **subparagraph (i)** after the application of **subsection (4)**; and 40

- (c) in the tax year in which the member ends their employment, the contributions—
- (i) have an annualised value that is less than 150% of the employer's superannuation contributions made for the member in the previous tax year: 5
  - (ii) meet the requirements of **subparagraph (i)** after the application of **subsection (4)**.
- Increases disregarded under subsection (3)(b)(i) or (c)(i)*
- (4) For the purposes of **subsection (3)**, employer's superannuation contributions to a superannuation fund that are 150% or more of the employer's superannuation contributions made in the previous tax year are treated as not being so— 10
- (a) to the extent to which the employer increases the level by making additional employer's superannuation contributions for the member's benefit to compensate for underpaying employer's superannuation contributions for the member's benefit; or 15
  - (b) if the increase occurs before 1 April 2000; or
  - (c) if the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract, and the requirement existed before 1 April 2000; or 20
  - (d) if the employer starts making employer's superannuation contributions for a member's benefit under a contract, or an amendment to a contract, that was signed before 1 April 2000; or 25
  - (e) if the level of employer's superannuation contributions does not change as a percentage of salary as between the level on and after 1 April 2000 and the level in the last pay period ending before 1 April 2000.
- Increases in employer contributions considered consistent by Commissioner* 30
- (5) A withdrawal meets the requirements of this subsection if, at the time of the withdrawal, employer's superannuation contributions have been made for the member by the employer, or another employer, such that— 35
- (a) the contributions relate to some or all of the period that—
    - (i) starts on the 1st day of the tax year that starts 2 tax years before the tax year in which the member ends their employment; and 40

- (ii) ends on the day on which the member ends their employment; and
- (b) the Commissioner considers that the contributions are consistent in size and frequency with the employer's superannuation contributions for other employees in comparable positions; and 5
- (c) the Commissioner considers that the contributions are consistent in size and frequency during the period or periods to which the employer's superannuation contributions for the member relate. 10
- Time for purposes of subsection (2)*
- (6) For the purposes of **subsection (2)**, the times are—
- (a) on or after the date on which a member ends their employment with an employer; or
- (b) shortly before the date on which the member ends their employment, in anticipation of the member's ending their employment. 15
- Ending employment in any other case*
- (7) If a withdrawal is made on or after the date on which a member ends their employment with an employer and the application of **section CS 1** is not excluded by **subsection (1) or (2)**, **section CS 1** applies only to the withdrawal of an amount equal to the employer-sourced superannuation savings calculated for the period starting on the first day of the tax year that starts 2 tax years before the date on which the member ends their employment and ending on the date of withdrawal. 20 25
- What is not ending employment*
- (8) **Section CS 10** describes a case in which a member is treated as not ending their employment for the purposes of this section. 30
- Defined in this Act: amount, employer, employer's superannuation contribution, employer-sourced superannuation savings, member, pay, pay period, superannuation fund, tax year, withdrawal
- Compare: 2004 No 35 s CS 7

- CS 8 Exclusion of withdrawal when member ends employment: lock-in rule**
- Deferral of withdrawal*
- (1) **Section CS 1** does not apply to a withdrawal of an amount made 2 years after the date on which a member ends their employment with an employer if, when the member ends their employment, the member defers the withdrawal for 2 years after the date of ending their employment. 5
- What is not ending employment*
- (2) **Section CS 10** describes a case in which a member is treated as not ending their employment for the purposes of this section. 10  
 Defined in this Act: amount, employer, member, withdrawal, year  
 Compare: 2004 No 35 s CS 8
- CS 9 Exclusion of withdrawal from defined benefit fund when member ends employment** 15
- Defined benefit fund*
- (1) **Section CS 1** does not apply to a withdrawal made from a defined benefit fund—
- (a) on or after the date on which a member ends their employment with an employer, irrespective of the member's length of service; or 20
- (b) shortly before the date on which a member ends their employment with an employer, in anticipation of the member's ending their employment, irrespective of the member's length of service. 25
- What is not ending employment*
- (2) **Section CS 10** describes a case in which a member is treated as not ending their employment for the purposes of this section. 30  
 Defined in this Act: defined benefit fund, employer, member, withdrawal  
 Compare: 2004 No 35 s CS 9
- CS 10 When member treated as not ending employment**
- When this section applies*
- (1) This section applies for the purposes of **sections CS 7 to CS 9**.

*Transfer to related employer*

- (2) A member is treated as not ending their employment with an employer (**employer A**) if the member transfers from employer A to another employer (**employer B**) and employer B is a related employer of employer A. 5

*Related employer*

- (3) Employer B is a related employer of employer A if employer B— 10
- (a) is treated as a separate employer from employer A; and
  - (b) is—
    - (i) a branch or division of employer A; or
    - (ii) associated with employer A.

Defined in this Act: associated person, employer, member

Compare: 2004 No 35 s CS 10

***Transfers to or from superannuation funds and  
superannuation schemes*** 15

**CS 11 Transfer by superannuation fund to another  
superannuation fund**

*Notification of nature of amount transferred*

- (1) An amount transferred by a superannuation fund (the **transferor fund**) to another superannuation fund (the **transferee fund**) retains its nature in the transferee fund if— 20
- (a) the transferee fund is not a defined benefit fund; and
  - (b) the trustees of the transferor fund, the member's past employer, or the member's present employer give 25  
notice to the transferee fund of the nature of the amount transferred.

*No notification of nature of amount transferred*

- (2) If the trustees of the transferor fund, the member's past employer, or the member's present employer do not give 30  
notice to the transferee fund of the nature of the amount transferred, the amount transferred is treated as being, in the transferee fund, the employer-sourced superannuation savings.

*Notification of nature of amounts transferred to defined benefit fund*

- (3) Amounts to which **section CS 2(1) or (8)** apply that are transferred by a superannuation fund to a defined benefit fund retain their nature in the defined benefit fund if the trustees of the superannuation fund give notice to the defined benefit fund of the nature of the amounts. 5

*No notification of nature of amounts transferred to defined benefit fund*

- (4) If the trustees of the superannuation fund do not give notice to the defined benefit fund of the nature of the amounts to which **section CS 2(1) or (8)** apply, **section CS 1** applies to the amount transferred when it is withdrawn from the defined benefit fund unless the application of **section CS 1** is excluded by any of **sections CS 2 to CS 9**. 10  
15

Defined in this Act: amount, defined benefit fund, employer, employer-sourced superannuation savings, member, notice, notify, superannuation fund, trustee

Compare: 2004 No 35 s CS 11

**CS 12 Transfer from superannuation scheme to superannuation fund** 20

An amount transferred directly from a superannuation scheme to a superannuation fund is treated as being, in the superannuation fund, the member's contribution.

Defined in this Act: amount, member's contribution, superannuation fund, superannuation scheme 25

Compare: 2004 No 35 s CS 12

**CS 13 Investment by superannuation fund in another superannuation fund**

*Superannuation fund investing in another superannuation fund* 30

- (1) If a superannuation fund (**superannuation fund A**) is a member of another superannuation fund (**superannuation fund B**),— 35
- (a) superannuation fund A's investment in superannuation fund B is not a transfer; and
- (b) a withdrawal of an amount related to superannuation fund A's investment in superannuation fund B is not a transfer; and

- (c) a withdrawal of an amount related to superannuation fund A's investment in superannuation fund B is not a withdrawal to which **section CS 2** applies.

*Superannuation fund investing in superannuation scheme*

- (2) If a superannuation fund is a member of a superannuation scheme,— 5
- (a) the fund's investment in the scheme is not a transfer; and
- (b) a withdrawal by the fund related to the investment is not a transfer. 10

Defined in this Act: amount, member, superannuation fund, superannuation scheme, withdrawal

Compare: 2004 No 35 s CS 13

***Treatment of amounts when superannuation fund becomes superannuation scheme or vice versa*** 15

**CS 14 Superannuation fund becomes superannuation scheme**

*Effect of change*

- (1) If a superannuation fund becomes a superannuation scheme, other than a foreign superannuation scheme,— 20
- (a) an amount in the fund at the time it becomes a superannuation scheme retains its nature; and
- (b) the following sections apply to a withdrawal from the superannuation scheme as if the scheme were a superannuation fund: 25
- (i) **sections CS 1 to CS 17 and RD 72** (Recovery of tax paid by superannuation funds); and
- (ii) sections 32A, 32B, and 32C of the Tax Administration Act 1994.

*Market value of amounts*

- (2) The amount in the superannuation fund at the time it becomes a superannuation scheme is calculated according to market value. 30

Defined in this Act: amount, foreign superannuation scheme, superannuation fund, superannuation scheme, withdrawal

Compare: 2004 No 35 s CS 14 35

- CS 15 Superannuation fund becomes foreign superannuation scheme** 5
- If a superannuation fund becomes a foreign superannuation scheme, every amount in the superannuation fund is treated as if it had been withdrawn immediately before the fund became a foreign superannuation scheme.
- Defined in this Act: amount, foreign superannuation scheme, superannuation fund  
Compare: 2004 No 35 s CS 15
- CS 16 Superannuation scheme becomes superannuation fund** 10
- If a superannuation scheme becomes a superannuation fund, every amount in the superannuation scheme at the time it becomes a superannuation fund is treated as being a member's contribution to the superannuation fund.
- Defined in this Act: amount, member's contribution, superannuation fund, superannuation scheme 15  
Compare: 2004 No 35 s CS 16
- Treatment of distributions when superannuation fund wound up***
- CS 17 Superannuation fund wound up** 20
- When a superannuation fund is wound up, a distribution related to a member's membership is treated as being a withdrawal.
- Defined in this Act: member, superannuation fund, withdrawal  
Compare: 2004 No 35 s CS 17
- Treatment of loans to members*** 25
- CS 18 Value of loan treated as fund income**
- When this section applies*
- (1) This section applies when both of the following tests are met:
- (a) a superannuation fund provides a loan in an income year to a member of the fund, directly or indirectly and whether by one transaction or a series of transactions: 30
- (b) the interest, if any, accruing on the loan is less than the prescribed rate of interest which applies for fringe benefit tax purposes.

*Interest shortfall*

- (2) The fund is treated as deriving income in the income year equal to the amount, if any, by which the interest that would have accrued on the loan for the income year at the prescribed rate of interest is more than the actual interest, if any, that arises on the loan for the income year. 5

Defined in this Act: fringe benefit tax, income year, interest, member, prescribed rate of interest, superannuation fund

Compare: 2004 No 35 s GD 6(1), (2)

## Subpart CT—Income from petroleum mining 10

### Contents

- CT 1 Disposal of exploratory material or petroleum mining asset
- CT 2 Damage to assets
- CT 3 Exploratory well used for commercial production 15
- CT 4 Partnership interests and disposal of part of asset
- CT 5 Petroleum mining operations outside New Zealand

### Definitions

- CT 6 Meaning of petroleum miner
- CT 7 Meaning of petroleum mining asset 20

## CT 1 Disposal of exploratory material or petroleum mining asset

### *Income: disposal of exploratory material*

- (1) The consideration that a petroleum miner derives from disposing of exploratory material is income of the petroleum miner. 25

### *Income: disposal of petroleum mining asset*

- (2) The consideration that a petroleum miner derives from disposing of a petroleum mining asset is income of the petroleum miner.

### *Relationship with section CX 43* 30

- (3) This section is overridden by **section CX 43** (Farm-out arrangements for petroleum mining).

Defined in this Act: consideration, dispose, exploratory material, income, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s CT 1 35

**CT 2 Damage to assets**

The consideration that a petroleum miner derives for damage to an asset of the kind described in **section CT 7(1)(b) or (c)** is income of the petroleum miner.

Defined in this Act: consideration, income, petroleum miner

5

Compare: 2004 No 35 s CT 2

**CT 3 Exploratory well used for commercial production**

*When this section applies*

- (1) This section applies when a petroleum miner uses an exploratory well for commercial production of petroleum, whether or not the well has been sealed and abandoned previously. 10

*Income*

- (2) An amount equal to the amount of expenditure described in **subsection (3)** is treated as income of the petroleum miner.

*Exploratory well expenditure*

15

- (3) The expenditure is exploratory well expenditure to which all the following apply:
- (a) it is directly attributable to drilling or acquiring the exploratory well; and
  - (b) the petroleum miner or a holder of a previous interest in the well is or has been allowed a deduction for it as petroleum exploration expenditure; and 20
  - (c) it is incurred in relation to the permit held currently by the petroleum miner, or a previous permit surrendered in exchange for the permit currently held under section 32(3) of the Crown Minerals Act 1991. 25

*Timing of income*

- (4) The amount is allocated to the income year in which commercial production from the well starts.

*Part interest*

30

- (5) If the petroleum miner has a part interest in the exploratory well when that well is first used for commercial production, the amount of expenditure treated as income under this section

must bear the same proportion to the exploratory well expenditure specified in **subsection (3)** as that part interest bears to all interests in the well.

Defined in this Act: amount, commercial production, deduction, exploratory well, exploratory well expenditure, income, income year, permit, petroleum, petroleum exploration expenditure, petroleum miner, seal and abandonment

5

Compare: 2004 No 35 s CT 3

#### **CT 4 Partnership interests and disposal of part of asset**

In this subpart, and in **sections CX 42** (Disposal of ownership interests in controlled petroleum mining entities) and **CX 43** (Farm-out arrangements for petroleum mining), unless the context requires otherwise,—

10

(a) a partner is treated as having a share or interest in a petroleum mining permit or other property of a partnership to the extent of their interest in the income of the partnership:

15

(b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: income, petroleum mining permit

Compare: 2004 No 35 s CT 4

20

#### **CT 5 Petroleum mining operations outside New Zealand**

This subpart, and **sections CX 42** (Disposal of ownership interests in controlled petroleum mining entities) and **CX 43** (Farm-out arrangements for petroleum mining), apply, with any necessary modifications, to a petroleum miner who undertakes petroleum mining operations that are—

25

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by this subpart and **sections CX 42 and CX 43**.

30

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s CT 5

## *Definitions*

### **CT 6 Meaning of petroleum miner**

#### *Meaning*

- (1) **Petroleum miner** means a person who undertakes an activity described in **subsection (3)** in a permit area for which the person has a petroleum mining permit. 5

#### *Exclusion*

- (2) **Petroleum miner** does not include a person who undertakes an activity described in **subsection (3)** for consideration that is not in the form of, or contingent on,— 10
- (a) the production of petroleum from the permit area; or
  - (b) profits from the production of petroleum from the permit area; or
  - (c) an interest or a right to an interest in the petroleum mining permit. 15

#### *Activities: inclusions*

- (3) The activities are those carried out in connection with— 20
- (a) prospecting or exploring for petroleum:
  - (b) developing a permit area for producing petroleum:
  - (c) producing petroleum:
  - (d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:
  - (e) removal or restoration operations.

#### *Activities: exclusions*

- (4) The activities do not include further treatment to which all the following apply: 25
- (a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and
  - (b) it is done— 30
    - (i) by liquefaction or compression; or
    - (ii) for the extraction of constituent products; or
    - (iii) for the production of derivative products; and
  - (c) it is not treatment at the production facilities.

Defined in this Act: consideration, permit area, petroleum, petroleum miner, petroleum mining permit, removal or restoration operations 35

Compare: 2004 No 35 s CT 6

**CT 7 Meaning of petroleum mining asset***Meaning*

- (1) **Petroleum mining asset** means—
- (a) a petroleum mining permit:
  - (b) an asset that— 5
    - (i) is acquired by a petroleum miner for the purpose of carrying on an activity described in subsection (3) in a permit area or areas; and
    - (ii) has an estimated useful life that depends on, and is no longer than, the remaining life of the petroleum mining permit for the area or areas: 10
  - (c) a share or partial interest in an asset described in **paragraph (a) or (b)**.

*Exclusion*

- (2) **Petroleum mining asset** does not include land. 15

*Activities: inclusions*

- (3) The activities are those carried out in connection with—
- (a) developing a permit area for producing petroleum:
  - (b) producing petroleum:
  - (c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user: 20
  - (d) removal or restoration operations.

*Activities: exclusions*

- (4) The activities do not include further treatment to which all the following apply: 25
- (a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and
  - (b) it is done— 30
    - (i) by liquefaction or compression; or
    - (ii) for the extraction of constituent products; or
    - (iii) for the production of derivative products; and
  - (c) it is not treatment at the production facilities.

Defined in this Act: land, permit area, petroleum, petroleum miner, petroleum mining asset, petroleum mining permit, removal or restoration operations 35

Compare: 2004 No 35 s CT 7

**Subpart CU—Income from mineral mining**

---

**Contents**
*Introductory provision*

CU 1 Mining company's 2 kinds of income

*Income from mining*

CU 2	Mining company that processes or manufactures	5
CU 3	Disposal of assets	
CU 4	Compensation for lost, destroyed, or damaged assets	
CU 5	Compensation and scrap payment: income from mining	
CU 6	Compensation and scrap payment: use to replace or repair asset	10
CU 7	Compensation and scrap payment: not income from mining	
CU 8	Compensation and scrap payment: more than expenditure	
CU 9	Previous deduction for income appropriated	15
CU 10	Mining asset used to derive income other than income from mining	
CU 11	Meaning of asset for sections CU 3 to CU 10	
CU 12	Application of sections to resident mining operators	
CU 13	Application of sections to non-resident mining operators	20
CU 14	Recovery of reinvestment profit on disposal of mining shares	
CU 15	Recovery of reinvestment profit not used for mining purposes	
CU 16	Recovery of reinvestment profit on repayment of loans	25
CU 17	Repayment by mining company of amount written off	
CU 18	Amount treated as repayment for purposes of section CU 17: excess	
CU 19	Amount treated as repayment for purposes of section CU 17: net income	30
CU 20	Mining company or mining holding company liquidated	
<i>Definitions</i>		
CU 21	Meaning of income from mining	
CU 22	Meaning of mining company	
CU 23	Meaning of mining development expenditure	35
CU 24	Meaning of mining exploration expenditure	
CU 25	Meaning of mining operations	
CU 26	Meaning of mining venture	
CU 27	Meaning of resident mining operator	
CU 28	Meaning of specified mineral	40
CU 29	Other definitions	

---

### *Introductory provision*

#### **CU 1 Mining company's 2 kinds of income**

Income derived by a mining company is either income from mining or income other than income from mining.

Defined in this Act: income, income from mining, mining company

5

Compare: 2004 No 35 s CU 1

### *Income from mining*

#### **CU 2 Mining company that processes or manufactures**

*When this section applies*

- (1) This section applies when— 10
- (a) a mining company—
- (i) obtains specified minerals from its mining operations; or
- (ii) through a combination of its mining operations and its associated mining operations, brings specified minerals to the stage at which they are ready to be processed or used in a manufacturing operation; and 15
- (b) the company produces products by processing the specified minerals or using them in a manufacturing operation; and 20
- (c) the company disposes of the products.

*Income classified*

- (2) For the income year in which the mining company disposes of the products, the Commissioner must classify the mining company's income from the disposal as income from mining or income other than income from mining. The Commissioner must classify the income by apportioning it under **subsection (3)** or by making a decision under **subsection (4)**. 25

*Apportionment*

30

- (3) In apportioning the income, the Commissioner must make an appropriate apportionment of the value of the stock of products on hand at the start and end of the income year and must take into account the matters the Commissioner considers relevant and appropriate, including— 35

- (a) the capital employed, or the expenditure or losses incurred, in the mining operations, associated mining operations, and processing of the specified minerals or the use of the specified minerals in a manufacturing operation: 5
- (b) the extent of the steps involved in the mining operations, associated mining operations, and processing of the specified minerals or the use of the specified minerals in a manufacturing operation.
- Decision* 10
- (4) In making a decision, the Commissioner must take into account the amount that would have been—
- (a) the value received or receivable for the specified minerals if they had been disposed of in the income year to a wholly independent person in the state in which they resulted from the mining operations or the combination of mining operations and associated mining operations; and 15
- (b) the value of the products on hand at the end of the income year if the specified minerals from which they came had been valued for the purposes of **subpart EB** (Valuation of trading stock (including dealer's live-stock)) in the state in which they resulted from the mining operations or the combination of mining operations and associated mining operations. 20 25
- Defined in this Act: amount, associated mining operations, Commissioner, income, income from mining, income year, mining company, mining operations, specified mineral
- Compare: 2004 No 35 s CU 2
- CU 3 Disposal of assets** 30
- When this section applies*
- (1) This section applies when—
- (a) a mining company acquires an asset, including mining prospecting information or a mining or prospecting right, by incurring mining exploration expenditure or mining development expenditure; and 35
- (b) the company, whether or not still a mining company, disposes of the asset.

*Exclusion*

- (2) This section does not apply when—
- (a) a mining company acquires an asset, including mining prospecting information or a mining or prospecting right, by incurring mining exploration expenditure or mining development expenditure; and 5
  - (b) the company, whether or not still a mining company, passes the ownership of the asset to another person; and
  - (c) the passing of ownership is not because the asset is sold to the other person; and 10
  - (d) the company does not receive, and is not entitled to receive, consideration for the passing of ownership; and
  - (e) the company and the other person deal with each other over the passing of ownership at arm's length, even if they are associated persons at a time relevant to the passing of ownership. 15

*Income*

- (3) The following are income from mining of the mining company:
- (a) the consideration that the company derives from the disposal of the asset, unless **paragraph (b)** applies: 20
  - (b) in the cases described in **subsections (4) to (7)**, the consideration specified in **subsection (4) or (5) or (7)**.

*Consideration other than in cash*

- (4) If some or all of the consideration for the disposal is other than in cash, and the disposal is not to an associated person, the consideration that is not in cash has the value agreed between the company and the person to whom the asset is disposed of. If the company and the person do not agree, or if the Commissioner considers that the value agreed is unreasonable, the consideration that is not in cash has the value that the Commissioner decides. 25 30

*Disposal to associated person*

- (5) If the disposal is to an associated person, the consideration for the disposal is the market value that the asset has on the date of the disposal. 35

*When subsection (7) applies*

- (6) **Subsection (7)** applies when—
- (a) the company disposes of the asset to a person acquiring it for use in carrying on their mining operations or associated mining operations or a mining venture; and 5
  - (b) the company and the person give notice to the Commissioner that they have agreed to apply **subsection (7)**; and
  - (c) the notice is given to the Commissioner within 1 of the following times:
    - (i) the time in which the company is required to file a return of income for the income year in which it disposes of the asset: 10
    - (ii) a further time allowed by the Commissioner; and
  - (d) the notice specifies an amount that—
    - (i) is no more than the market value that the asset has at the date of the disposal; and 15
    - (ii) is not less than the amount of any part of the consideration that is in cash.

*Amount specified by parties to disposal*

- (7) The consideration for the disposal is the amount that the company and the person specify in the notice. 20

Defined in this Act: amount, asset, associated mining operations, associated person, Commissioner, company, income year, mining company, mining development expenditure, mining exploration expenditure, mining operations, mining or prospecting right, mining prospecting information, mining venture, notice, return of income 25

Compare: 2004 No 35 s CU 3

**CU 4 Compensation for lost, destroyed, or damaged assets***When sections CU 5 to CU 8 apply*

- (1) **Sections CU 5 to CU 8** apply when— 30
- (a) a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure; and
  - (b) the company is allowed a deduction for the expenditure under— 35
    - (i) **section DU 1** (Mining exploration expenditure and mining development expenditure); or
    - (ii) **section DZ 12(1)(a)** (Mineral mining: 1954 to 2005); and
  - (c) the asset is lost, destroyed, or damaged; and 40

- (d) the company, whether or not still a mining company,—
- (i) is paid insurance, indemnity, or compensation for the loss, destruction, or damage; or
  - (ii) is entitled to receive payment for any scrap of the asset that it disposes of. 5

*What sections CU 5 to CU 8 apply to*

- (2) **Sections CU 5 to CU 8** apply to any asset (**asset A**) that a mining company acquires by incurring mining exploration expenditure or mining development expenditure, except for an asset (**asset B**) used to derive income other than income from mining to which **section CU 10** is applied. **Sections CU 5 to CU 8** apply to asset B only if it is later used to derive income from mining and **section DU 5** (Non-mining asset used to derive income from mining) is applied to it. 10

Defined in this Act: asset, company, deduction, income, income from mining, mining company, mining development expenditure, mining exploration expenditure, pay 15

Compare: 2004 No 35 s CU 4

## **CU 5 Compensation and scrap payment: income from mining**

*Income* 20

- (1) When, under **section CU 4**, this section applies, the total of the following amounts is income from mining of the mining company:
- (a) the amount of insurance, indemnity, or compensation paid; and 25
  - (b) the amount, if any, payable to the company for the disposal of any scrap of the asset.

*Timing of income*

- (2) The income from mining is allocated to the income year in which the insurance, indemnity, or compensation is paid. 30

*Relationship with sections CU 6 to CU 8*

- (3) This section is overridden by **sections CU 6 to CU 8**.

Defined in this Act: amount, asset, income from mining, income year, mining company, pay

Compare: 2004 No 35 s CU 5 35

- CU 6 Compensation and scrap payment: use to replace or repair asset**
- Choice between section CU 5 and sections CU 7 and CU 8*
- (1) If the mining company wants **sections CU 7 and CU 8** to apply instead of **section CU 5**, it must comply with **subsection (2)**. 5
- Choice of sections CU 7 and CU 8*
- (2) The company must—
- (a) give notice to the Commissioner that the insurance, indemnity, or compensation will be used to replace or repair the asset; and 10
- (b) give the notice within the time in which the company must file a return of income for the income year in which the loss, destruction, or damage occurred; and
- (c) start the replacement or repair by the end of the second income year after the income year in which the loss, destruction, or damage occurred. 15
- Defined in this Act: asset, Commissioner, income year, mining company, notice, return of income
- Compare: 2004 No 35 s CU 6
- CU 7 Compensation and scrap payment: not income from mining** 20
- When, under **sections CU 4 and CU 6**, this section applies, neither of the following amounts is income from mining of the mining company:
- (a) the amount of insurance, indemnity, or compensation paid; or 25
- (b) the amount, if any, payable to the company for the disposal of any scrap of the asset.
- Defined in this Act: amount, asset, income from mining, mining company, pay
- Compare: 2004 No 35 s CU 7 30
- CU 8 Compensation and scrap payment: more than expenditure**
- When this section applies*
- (1) This section applies when—
- (a) the mining company complies with **section CU 6(2)**; and 35
- (b) the company incurs expenditure in replacing or repairing the asset; and

- (c) the company has an excess amount because the expenditure is less than the total of the following:
  - (i) the amount of insurance, indemnity, or compensation paid; and
  - (ii) the amount, if any, payable to the company for the disposal of any scrap of the asset. 5

*Income*

- (2) The excess amount is income from mining of the company, whether or not the company is still a mining company when the excess amount is determined. 10

*Timing of income*

- (3) The income from mining is allocated to the income year in which the replacement or repair of the asset is completed or is treated as completed.

*When replacement or repair treated as completed*

- (4) The replacement or repair, even if not completed, is treated as completed— 15
  - (a) on the last day of the period, if any, considered by the Commissioner to be a reasonable period in which to complete the replacement or repair; or 20
  - (b) on the day on which work on the replacement or repair stops; or
  - (c) on the day on which the asset is transferred from the company's mining operations and used, wholly or mainly, to derive income other than income from mining; or 25
  - (d) on the day on which the company disposes of the asset other than for scrap; or
  - (e) on the day on which the company stops being a mining company. 30

*Limitation on calculation of excess amount*

- (5) Expenditure incurred after the day on which the work is treated as completed is not taken into account to determine the existence or amount of an excess amount for the purposes of **subsection (1)(c)**. 35

Defined in this Act: amount, asset, Commissioner, company, income, income from mining, income year, mining company, mining operations, pay

Compare: 2004 No 35 s CU 8

**CU 9 Previous deduction for income appropriated***Income*

- (1) An amount equal to the amount for which a mining company is allowed a deduction under **section DU 4** (Income appropriated to expenditure) is income from mining of the mining company. 5

*Timing of income*

- (2) The income is allocated to the income year following the income year in which the mining company is allowed the deduction. 10

*Company stops mining*

- (3) A mining company that stops being a mining company before the end of the income year to which the income is allocated is treated as if it were still a mining company in the income year. 15

Defined in this Act: amount, deduction, income from mining, income year, mining company

Compare: 2004 No 35 s CU 9

**CU 10 Mining asset used to derive income other than income from mining***When this section applies* 20

- (1) This section applies when—
- (a) a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure; and
  - (b) the company uses the asset, wholly or mainly, to derive income other than income from mining. 25

*Income*

- (2) An amount equal to the market value that the asset has on the first day of each period in which it is used, wholly or mainly, to derive income other than income from mining is income from mining of the mining company. 30

*Timing of income*

- (3) The income is allocated to the income year in which each first day falls.

*Company stops mining*

- (4) A mining company that stops being a mining company before the end of the income year to which the income is allocated is treated as if it were still a mining company in the income year.

Defined in this Act: asset, income, income from mining, income year, mining company, mining development expenditure, mining exploration expenditure

5

Compare: 2004 No 35 s CU 10

**CU 11 Meaning of asset for sections CU 3 to CU 10***Mining company's share or interest in asset*

- (1) **Sections CU 3 to CU 10** apply to a share or interest that a mining company has in an asset—
- (a) to the extent to which the mining company acquired the share or interest by incurring—
- (i) mining exploration expenditure or mining development expenditure; or
- (ii) the exploration expenditure or development expenditure referred to in **section DZ 12(2)(a)** (Mineral mining: 1954–2005); and
- (b) to the extent to which the mining company uses the share or interest for the purpose of deriving income from mining.

10

15

20

*Partner's share or interest in asset*

- (2) For the purposes of **sections CU 3 to CU 10**, a partner's share or interest in each asset of the partnership is the same as the partner's interest in the totality of the assets of the partnership.

25

*Replaced or repaired asset*

- (3) For the purposes of **sections CU 3 to CU 10**,—
- (a) an asset that a mining company acquires by incurring expenditure in replacing or repairing the asset is the same asset as the one that was lost, destroyed, or damaged:
- (b) part of an asset that a mining company acquires by incurring expenditure in repairing the asset is part of the asset that was damaged.

30

Defined in this Act: asset, income from mining, mining company, mining development expenditure, mining exploration expenditure

35

Compare: 2004 No 35 s CU 11

**CU 12 Application of sections to resident mining operators**

*Sections in this subpart applying to resident mining operators*

- (1) **Sections CU 1 to CU 8, CU 10, and CU 11** apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies. 5

*Additional modification of sections CU 4 and CU 11*

- (2) For the purposes of **subsection (1)**,—
- (a) **section CU 4(1)(b)(ii)** applies as described in **section DZ 12(1)(b)** (Mineral mining: 1954–2005); and 10
- (b) **section CU 11(1)(a)(ii)** applies as described in **section DZ 12(2)(b)**.

Defined in this Act: mining company, resident mining operator

Compare: 2004 No 35 s CU 12

**CU 13 Application of sections to non-resident mining operators** 15

*Sections in this subpart applying to non-resident mining operators*

- (1) **Sections CU 3 to CU 11** apply, with any necessary modifications, to non-resident mining operators as if non-resident mining operators were mining companies, income from mining were income from a mining venture, mining operations were mining ventures, and associated mining operations were mining ventures. 20

*Additional modification of sections CU 4 and CU 11* 25

- (2) For the purposes of **subsection (1)**,—
- (a) **section CU 4(1)(b)(ii)** applies as described in **section DZ 12(1)(b)** (Mineral mining: 1954–2005); and
- (b) **section CU 11(1)(a)(ii)** applies as described in **section DZ 12(2)(b)**. 30

Defined in this Act: associated mining operations, income from mining, mining company, mining operations, mining venture, non-resident mining operator

Compare: 2004 No 35 s CU 13

## CU 14 Recovery of reinvestment profit on disposal of mining shares

### *When this section applies*

- (1) This section applies when—
- (a) a company derives an amount from disposing of a mining share, including a disposal described in **section CU 20**; and 5
  - (b) an amount of the company's reinvestment profit is used in calculating the deduction for the cost of the mining share under **section DU 11(2)(b)** (Disposal of mining shares by company). 10

### *Income*

- (2) The lesser of the following amounts is income of the company:
- (a) the amount derived from the disposal of the mining share minus the deduction for the cost of the mining share; and 15
  - (b) the amount of reinvestment profit used in calculating the deduction for the cost of the mining share. 20

### *Timing of income*

- (3) The income is allocated to the income year in which the mining share is disposed of.

### *Relationship with sections CX 44 and CX 45*

- (4) This section is overridden by **sections CX 44** (Disposal of mining shares) and **CX 45** (Disposal of mining shares acquired with reinvestment profit). 25

Defined in this Act: amount, company, deduction, income, income year, mining share, reinvestment profit

Compare: 2004 No 35 s CU 14

## CU 15 Recovery of reinvestment profit not used for mining purposes 30

### *When subsections (2) and (3) apply*

- (1) **Subsections (2) and (3)** apply when some or all of a company's reinvestment profit—
- (a) is used for purposes other than mining purposes in the prescribed period; and 35

- (b) will not be used for mining purposes in the prescribed period.

*Income*

- (2) The amount of reinvestment profit described by **subsection (1)** is income of the company. 5

*Timing of income*

- (3) The income is allocated to the income year in which the amount is used for purposes other than mining purposes.

*When subsections (5) and (6) apply*

- (4) **Subsections (5) and (6)** apply when some or all of a company's reinvestment profit is not used for mining purposes in the prescribed period. 10

*Income*

- (5) The reinvestment profit is income of the company.

*Timing of income*

- (6) The income is allocated to the last income year of the prescribed period. 15

*No longer reinvestment profit*

- (7) The amount referred to in **subsection (2)** and the reinvestment profit referred to in **subsection (5)** cease to be reinvestment profit. 20

Defined in this Act: amount, company, income, income year, mining purposes, prescribed period, reinvestment profit

Compare: 2004 No 35 s CU 15

**CU 16 Recovery of reinvestment profit on repayment of loans** 25

*When this section applies*

- (1) This section applies when—
- (a) a company (the **lender company**) makes a loan to a mining company or a mining holding company; and
  - (b) the loan is made wholly or partly out of the lender company's reinvestment profit; and 30
  - (c) the loan is wholly or partly repaid.

*Income*

- (2) The amount calculated using the formula in **subsection (3)** is income of the lender company.

*Formula*

- (3) The formula is— 5
- $$\frac{\text{reinvestment profit amount}}{\text{loan amount}} \times \text{repayment.}$$

*Definition of items in formula*

- (4) In the formula,— 10
- (a) **reinvestment profit amount** is the amount of the loan made out of the lender company's reinvestment profit:
- (b) **loan amount** is the amount of the loan:
- (c) **repayment** is the amount repaid.

*Timing of income*

- (5) The income is allocated to the income year in which the repayment is made. 15

*Relationship with section CX 46*

- (6) This section is overridden by **section CX 46** (Repayment of loans made from reinvestment profit). 20

Defined in this Act: amount, company, income, income year, mining company, mining holding company, pay, reinvestment profit

Compare: 2004 No 35 s CU 16

**CU 17 Repayment by mining company of amount written off***When this section applies* 25

- (1) This section applies when—
- (a) a holding company of a mining company is allowed, under **section DU 12** (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and 30
- (b) the mining company—
- (i) repays, to the holding company or any other person, some or all of the amount written off; or
- (ii) is treated, under **section CU 18 or CU 19**, as having repaid to the holding company some or all of the amount written off. 35

*Income*

- (2) The amount repaid, to the extent of the deduction, is income of the holding company.

*Timing of income*

- (3) The income is allocated to the income year in which the mining company repays the amount or is treated as repaying the amount. 5

Defined in this Act: amount, deduction, holding company, income, income year, loan, mining company, pay

Compare: 2004 No 35 s CU 17 10

**CU 18 Amount treated as repayment for purposes of section CU 17: excess**

*When this section applies*

- (1) This section applies when,—
- (a) in a tax year, a holding company of a mining company is allowed, under **section DU 12** (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and 15
- (b) in a later tax year, the holding company disposes of shares in the mining company or an interest in shares in the mining company; and 20
- (c) the holding company has an excess amount because the amount it derives from the disposal is more than the amount paid up in cash on the shares. 25

*Repayment amount*

- (2) For the purposes of **section CU 17**, the excess amount is treated as repayment by the mining company of the amount written off. 30

Defined in this Act: amount, deduction, holding company, loan, mining company, pay, share, tax year

Compare: 2004 No 35 s CU 18

**CU 19 Amount treated as repayment for purposes of section CU 17: net income**

*When this section applies* 35

- (1) This section applies when—

- (a) a holding company of a mining company is allowed, under **section DU 12** (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and
- (b) the deduction is allocated to an income year; and 5
- (c) the mining company would have had net income in a later tax year if—
- (i) the situation described in **subsection (2)** had existed; and
- (ii) the situation described in **subsection (3)** had existed. 10
- First situation*
- (2) The first situation is that in the later tax year no person is allowed a deduction for the mining company's mining exploration expenditure or mining development expenditure. 15
- Second situation*
- (3) The second situation is that in the later tax year the mining company disposes of an asset in circumstances to which **section CU 3 or CZ 2(1)(b)** (Mining company's 1970–71 tax year) applies and the amount received or receivable for the asset is the amount determined under **subsection (4) or (5)**. 20
- Amount for which asset disposed of: most cases*
- (4) If any of **section CU 3(3)(a), (4), or (5)** applies to the disposal of the asset, the amount is the consideration determined under whichever one of the provisions applies. 25
- Amount for which asset disposed of: election of section CU 3(7)*
- (5) If **section CU 3(7)** applies to the disposal of the asset, the amount is the greater of the following up to the limit of the market value that the asset has on the date of disposal: 30
- (a) the part of the amount specified in the notice under **section CU 3(7)** that is in cash, which may be zero; and
- (b) the total amount of loans made on or before the date of disposal by all holding companies of the mining company to the mining company to the extent to which the loans— 35

<ul style="list-style-type: none"> <li>(i) relate to the asset, including a part not disposed of; and</li> <li>(ii) have been written off and allowed as a deduction under <b>section DU 12</b> (Amount written off by holding company) or an earlier Act; and</li> <li>(iii) have not been repaid, and have not been treated as repaid under this section or <b>section CU 18</b> or an earlier Act, on or before the date of disposal.</li> </ul>	5	
<i>Asset</i>		
<ul style="list-style-type: none"> <li>(6) For the purposes of <b>subsections (3) to (5)</b>,—</li> <li style="padding-left: 20px;">(a) a reference to an asset means the part of the asset that is disposed of, which may be some of it or all of it, and a reference to an amount received or receivable for an asset means the amount for the part that is disposed of:</li> <li style="padding-left: 20px;">(b) a reference to an asset includes a reference to a share or interest in the asset:</li> <li style="padding-left: 20px;">(c) a partner's share or interest in each asset of the partnership is the same as the partner's interest in the totality of the assets of the partnership:</li> <li style="padding-left: 20px;">(d) every member of any other association of persons who receive income jointly or carry on activities jointly has a share or interest in each asset of the association that is the same as the member's interest in the totality of the assets of the association.</li> </ul>	10 15 20	
<i>Amount of net income</i>		
<ul style="list-style-type: none"> <li>(7) For the purposes of <b>section CU 17</b>, the prescribed proportion of the amount that would have been the net income of the mining company is treated as repayment by the mining company of the amount written off. The repayment is treated as having been made on the day following the end of the tax year in which the mining company would have had net income.</li> </ul>	25 30	
<small>Defined in this Act: amount, deduction, holding company, income, income year, loan, mining company, mining development expenditure, mining exploration expenditure, net income, notice, pay, prescribed proportion, tax year</small>		35
<small>Compare: 2004 No 35 s CU 19</small>		35

## CU 20 Mining company or mining holding company liquidated

### *Treatment of shares*

- (1) If a mining company or a mining holding company is liquidated,— 5
- (a) a mining share held in the company is treated as disposed of to the company; and
- (b) a distribution received for the share on the liquidation is treated as an amount received for the disposal.

### *Relationship with section CU 14* 10

- (2) **Section CU 14** deals with the recovery of reinvestment profit on the disposal of mining shares.

Defined in this Act: amount, liquidation, mining company, mining holding company, mining share, reinvestment profit

Compare: 2004 No 35 s CU 20 15

## *Definitions*

## CU 21 Meaning of income from mining

### *Meaning*

- (1) **Income from mining** means the part of the income of a mining company that is derived in a tax year from the company's mining operations or associated mining operations in the tax year. 20

### *Resident mining operators and non-resident mining operators*

- (2) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures. 25

Defined in this Act: associated mining operations, income, income from mining, mining company, mining operations, mining venture, non-resident mining operator, resident mining operator, tax year 30

Compare: 2004 No 35 s CU 21

**CU 22 Meaning of mining company***Meaning*

- (1) **Mining company** means a New Zealand company to which 1 of the following applies:
- (a) the company's only source of income is the business described in **subsection (2)**; or 5
  - (b) the company's main source of income is the business described in **subsection (2)**; or
  - (c) the company's only activity is 1 of the activities described in **subsection (3)**; or 10
  - (d) the company's main activity is 1 of the activities described in **subsection (3)**; or
  - (e) the company proposes that its only activity or its main activity be 1 of the activities described in **subsection (3)**.

*Business*

15

- (2) The business referred to in **subsection (1)(a) and (b)** is the business of mining a specified mineral in New Zealand.

*Activities*

- (3) The activities referred to in **subsection (1)(c), (d), and (e)** are—
- (a) exploring, searching, or mining for a specified mineral in New Zealand; or 20
  - (b) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

*Service for reward*

- (4) An activity described in **subsection (3)** does not include an activity done or to be done as a service to another person for reward unless the reward— 25
- (a) is wholly or mainly related to and dependent on the production of the specified mineral; or
  - (b) arises wholly or mainly through participation in profits from the production of the specified mineral. 30

Defined in this Act: business, income, mining company, New Zealand, New Zealand company, specified mineral

Compare: 2004 No 35 s CU 22

**CU 23 Meaning of mining development expenditure***Meaning*

- (1) **Mining development expenditure** means development expenditure that a mining company incurs in its mining operations or associated mining operations. 5

*Inclusions*

- (2) **Mining development expenditure** includes expenditure that the company incurs—
- (a) on acquiring land as a site for its mining operations or associated mining operations: 10
  - (b) on preparing the site for its mining operations or associated mining operations:
  - (c) on restoring the site during or after its mining operations or associated mining operations:
  - (d) on any of the following for its mining operations or associated mining operations: 15
    - (i) buildings, mineshafts, platforms, tunnels, wells, or other improvements:
    - (ii) plant or machinery, including vehicles:
    - (iii) production equipment or facilities: 20
    - (iv) storage facilities:
  - (e) on vessels or aircraft for use wholly or mainly in its mining operations or associated mining operations:
  - (f) on providing, or contributing to the cost of providing, communication equipment, fuel, light, power, or water for the site of its mining operations or associated mining operations: 25
  - (g) on buildings or facilities that—
    - (i) are situated at, or adjacent to, the site of any of its mining operations or associated mining operations; and 30
    - (ii) are for use in the education, housing, or welfare of, or the supply of meals to, its employees in or connected with its mining operations or associated mining operations or in the education, housing, or welfare of, or the supply of meals to, the employees' dependants: 35
  - (h) on providing, or contributing to the cost of providing, communication equipment, fuel, light, power, or water for the buildings or facilities described in **paragraph (g)**. 40

*Exclusions*

- (3) **Mining development expenditure** does not include expenditure that the company incurs—
- (a) on a building or facility provided for the purpose of deriving income; or
  - (b) on or in relation to an office building that is not situated at, or adjacent to, the site of any of its mining operations or associated mining operations.

5

*Resident mining operators and non-resident mining operators*

- (4) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

10

15

Defined in this Act: associated mining operations, employee, income, mining company, mining development expenditure, mining operations, mining venture, non-resident mining operator, resident mining operator

Compare: 2004 No 35 s CU 23

**CU 24 Meaning of mining exploration expenditure**

20

*Meaning*

- (1) **Mining exploration expenditure** means expenditure that a mining company incurs in exploring or searching in New Zealand for a specified mineral.

*Inclusions*

25

- (2) **Mining exploration expenditure** includes expenditure that the company incurs—
- (a) on acquiring mining prospecting information:
  - (b) on acquiring a mining or prospecting right:
  - (c) on geological mapping and geophysical surveys:
  - (d) on systematic searches for areas containing specified minerals:
  - (e) on searching by drilling in areas containing specified minerals:
  - (f) on searching for ore containing a specified mineral within or in the vicinity of an ore body by crosscuts, drilling, drives, rises, shafts, or winzes.

30

35

*Exclusions*

- (3) **Mining exploration expenditure** does not include—
- (a) mining development expenditure:
  - (b) expenditure on operations in the course of working a mining property. 5

*Resident mining operators and non-resident mining operators*

- (4) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures. 10

Defined in this Act: associated mining operations, mining company, mining development expenditure, mining exploration expenditure, mining operations, mining or prospecting right, mining prospecting information, mining venture, New Zealand, non-resident mining operator, resident mining operator, specified mineral 15

Compare: 2004 No 35 s CU 24

**CU 25 Meaning of mining operations***Meaning*

- (1) **Mining operations** means operations that— 20
- (a) are carried on by a mining company on a mining property in New Zealand for the purpose of deriving income; and
  - (b) consist of—
    - (i) exploring, searching, or mining for 1 or more specified minerals; or 25
    - (ii) performing development work for exploring, searching, or mining for 1 or more specified minerals.

*Resident mining operators and non-resident mining operators* 30

- (2) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were

mining ventures, and associated mining operations were mining ventures.

Defined in this Act: associated mining operations, income, mining company, mining operations, mining venture, New Zealand, non-resident mining operator, resident mining operator, specified mineral

5

Compare: 2004 No 35 s CU 25

## CU 26 Meaning of mining venture

### *Meaning*

- (1) **Mining venture** means a venture that—
- (a) is carried on, or is proposed to be carried on,—
    - (i) in New Zealand; and
    - (ii) as a business; and
    - (iii) under an exploration permit, prospecting permit, or mining permit granted under the Crown Minerals Act 1991 or under an existing privilege as defined in section 106 of the Act; and
  - (b) consists, or is proposed to consist, wholly or mainly of—
    - (i) exploring, searching, or mining for a specified mineral in New Zealand; or
    - (ii) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

10

15

20

### *Service for reward*

- (2) An activity described in **subsection (1)(b)** does not include an activity done or to be done as a service to another person for reward unless the reward—
- (a) is wholly or mainly related to and dependent on the production of the specified mineral; or
  - (b) arises wholly or mainly through participation in profits from the production of the specified mineral.

25

30

### *Activities not carried on jointly*

- (3) If 2 or more persons carry on, or propose to carry on, a joint mining venture, but 1 or more of them carries on an activity of the kind described in **subsection (1)(b)** outside the joint mining

35

venture, the carrying on of the activity is not part of the joint mining venture.

Defined in this Act: business, mining venture, New Zealand, specified mineral

Compare: 2004 No 35 s CU 26

## CU 27 Meaning of resident mining operator 5

### *Meaning*

- (1) **Resident mining operator** means a person who—
- (a) is resident in New Zealand; and
  - (b) is not a mining company or a petroleum mining company; and 10
  - (c) carries on, or proposes to carry on, the activities of—
    - (i) exploring, searching, or mining for a specified mineral in New Zealand; or
    - (ii) performing development work for exploring, searching, or mining for a specified mineral in New Zealand. 15

### *How activities carried on*

- (2) The person must carry on the activities described in **subsection (1)(c)**, or propose to carry them on,—
- (a) personally and actively in the field; and 20
  - (b) as a business; and
  - (c) under an exploration permit, prospecting permit, or mining permit granted under the Crown Minerals Act 1991 or under an existing privilege as defined in section 106 of the Act. 25

### *Service for reward*

- (3) An activity described in **subsection (1)(c)** does not include an activity done or to be done as a service to another person for reward unless the reward—
- (a) is wholly or mainly related to and dependent on the production of the specified mineral; or 30
  - (b) arises wholly or mainly through participation in profits from the production of the specified mineral.

Defined in this Act: business, mining company, New Zealand, petroleum mining company, resident in New Zealand, specified mineral 35

Compare: 2004 No 35 s CU 27

**CU 28 Meaning of specified mineral***Meaning*

- (1) **Specified mineral**—
- (a) means alumina minerals (for example, bauxite, corundum, diaspore, and gibbsite), aluminous refractory clays containing over 30% alumina in the fired state, aluminous refractory fireclays containing over 30% alumina in the fired state, andalusite, antimony, asbestos, barite, bentonite (except bentonite mined in the area formerly known as Malvern County), bituminous shale, chromite, copper, diatomite, dolomite, feldspar, fluorite, gold, halloysite, kaolin, kyanite, lead, magnesite, manganese, mercury, mica, molybdenite, nickel, perlite, phosphate, platinum group, pyrite, silica in lump form used only in producing silicon carbide or silicon metal or ferro silicon, silica in sand form used only in producing silicon carbide, sillimanite, silver, sodium chloride, sulphur, talc, tin, titanium, titanomagnetite, tungsten, uranium, wollastonite, zeolite, zinc, and zircon: 5  
10  
15  
20
- (b) includes a mineral that is declared to be a specified mineral in a *Gazette* notice given by the Minister.

*Minister to consider*

- (2) Before giving a *Gazette* notice about a particular mineral, the Minister must consider whether the mineral is or is likely to be of importance— 25
- (a) in the industrial development of New Zealand:
- (b) as a means of reducing the quantity of industrial minerals or industrial rock required to be imported into New Zealand: 30
- (c) as an item of export from New Zealand.

Defined in this Act: mineral, Minister, New Zealand

Compare: 2004 No 35 s CU 28

**CU 29 Other definitions**

In this Act,— 35

**associated mining operations** means operations that—

- (a) are carried on in New Zealand in association with mining operations; and

- (b) consist of the accumulation, initial treatment, and transport of specified minerals, up to the stage at which the minerals—
- (i) are in a saleable form and in a location suitable for a person to acquire them; or 5
  - (ii) are ready to be processed beyond the initial treatment or to be used in a manufacturing operation
- holding company**, for a mining company, means a New Zealand company that holds shares, or for which shares are held, in the mining company 10
- initial treatment**, for a specified mineral,—
- (a) means—
    - (i) breaking, cleaning, crushing, grading, grinding, leaching, screening, or sizing; or
    - (ii) a treatment that is applied before concentration or, for a specified mineral not requiring concentration, that would have been applied before concentration if the specified mineral had required concentration; or 15
    - (iii) concentration; and 20
  - (b) does not include—
    - (i) calcining or sintering; or
    - (ii) the production of, or processes carried on in connection with the production of, alumina, or pellets or other agglomerated forms of iron 25
- loan**, for a holding company and a mining company, means a loan by the holding company to the mining company made when the holding company is a holding company of the mining company
- mining holding company** means a New Zealand company that is engaged wholly or mainly in— 30
- (a) holding shares in a mining company or a petroleum mining company; or
  - (b) investing money in a mining company or a petroleum mining company; or 35
  - (c) making loans to a mining company or a petroleum mining company
- mining or prospecting right**—
- (a) means an authority, concession, easement, lease, licence, option, permit, privilege, right, or title relating 40

- to exploring, searching, or mining for, or carrying on an operation to recover, a specified mineral; and
- (b) includes a share or interest in any such authority, concession, easement, lease, licence, option, permit, privilege, right, or title 5
- mining prospecting information** means geological, geographical, or technical information—
- (a) that is about the presence, absence, extent, or volume of specified minerals in an area; or
- (b) that is likely to assist in determining the presence, absence, extent, or volume of specified minerals in an area 10
- mining purposes** means—
- (a) subscribing for shares in a mining company or in a mining holding company; or 15
- (b) paying calls on shares in a mining company or in a mining holding company; or
- (c) making loans to a mining company to enable it—
- (i) to finance its mining exploration expenditure or mining development expenditure; or 20
- (ii) to carry on its mining operations or associated mining operations; or
- (d) making, to a mining holding company, loans that are to be used—
- (i) to finance a mining company’s mining exploration expenditure or mining development expenditure; or 25
- (ii) to finance a mining company’s mining operations or associated mining operations
- mining share** means a share in a mining company or a mining holding company 30
- non-resident mining operator** means a person who—
- (a) is not resident in New Zealand; and
- (b) carries on, personally and actively in the field, a mining venture 35
- prescribed period** means,—
- (a) for an amount derived from a disposal of a mining share, the tax year in which the disposal occurs and the next 6 tax years; or

- (b) for an amount repaid for a loan made to a mining company or a mining holding company, the tax year in which the amount is repaid and the next 6 tax years
- prescribed proportion** means the proportion that an amount (**amount A**) bears to another amount (**amount B**), when— 5
- (a) amount A is the amount owing on all loans made by a holding company to a mining company; and
- (b) amount B is the amount owing on all loans by all holding companies to the mining company
- reinvestment profit** means an amount that— 10
- (a) is excluded income of a company under any of **sections CX 44 to CX 46** (which relate to mineral mining) or under a corresponding provision of an earlier Act; and
- (b) has not ceased to be reinvestment profit under **section CU 15(7)**. 15

Defined in this Act: amount, associated mining operations, company, excluded income, holding company, initial treatment, lease, loan, mining company, mining development expenditure, mining exploration expenditure, mining holding company, mining operations, mining share, mining venture, New Zealand, New Zealand company, pay, petroleum mining company, resident in New Zealand, share, specified mineral, tax year 20

Compare: 2004 No 35 s CU 29

## Subpart CV—Income specific to certain entities

### Contents

CV 1	Group companies	25
CV 2	Consolidated groups: income of company in group	
CV 3	Consolidated groups: arrangement for disposal of shares	
CV 4	Amalgamated companies: amount derived after amalgamation	
CV 5	Statutory producer boards	30
CV 6	Crown Research Institutes	
CV 7	Australian wine producer rebate	
CV 8	Regulations: Australian wine producer rebate	
CV 9	Supplementary dividend holding companies	
CV 10	FDPA companies or CTR companies	35
CV 11	Maori authorities	
CV 12	Trustees: amounts received after person's death	
CV 13	Amounts derived from trusts	
CV 14	Distributions from community trusts	
CV 15	Amounts derived from trusts while person absent from New Zealand	40
CV 16	Non-resident shippers	
CV 17	Non-resident film renters	

**CV 1 Group companies**

An amount that a company derives in an income year and that would not otherwise be income of the company is treated as its income if—

- (a) the company is for that income year part of a wholly-owned group of companies; and 5
- (b) had the group of companies been a single company, the amount would have been income of that single company. 10

Defined in this Act: amount, company, income, income year, wholly-owned group of companies 10

Compare: 2004 No 35 s CV 1

**CV 2 Consolidated groups: income of company in group**

*When this section applies*

- (1) This section applies for the purposes of **section FM 8** (Transactions between group companies: income) to an amount derived by a company that is part of a consolidated group, when the amount would be income of the group if the group were 1 company. 15

*Income* 20

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

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

Compare: 2004 No 35 s HB 2(1)(e)

**CV 3 Consolidated groups: arrangement for disposal of shares**

25

*When this section applies*

- (1) This section applies for the purposes of **section FM 23** (Arrangements for disposal of shares) when shares in company A that is part of a consolidated group are disposed of by another company for consideration that is less than would have been received in an arm's length transaction because of a reduction in the value of company A's assets. 30

*Income*

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

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

5

Compare: 2004 No 35 s FD 10(8)

#### **CV 4 Amalgamated companies: amount derived after amalgamation**

*When this section applies*

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

*Income*

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

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

Compare: 2004 No 35 s FE 4(b)

20

#### **CV 5 Statutory producer boards**

A levy received by a statutory producer board, other than a levy charged specifically for capital development, is income.

Defined in this Act: income, levy, statutory producer board

Compare: 2004 No 35 s OC 3(c)

25

#### **CV 6 Crown Research Institutes**

An amount that a Crown Research Institute derives is income of the institute if the amount is for the purpose of producing outputs relating to public good science and technology, as defined in section 2 of the Foundation for Research, Science, and Technology Act 1990.

Defined in this Act: amount, Crown Research Institute, income

Compare: 2004 No 35 s CV 2

30

**CV 7 Australian wine producer rebate**

An amount of Australian wine producer rebate derived by a New Zealand resident wine producer is income of the wine producer.

Defined in this Act: amount, Australian wine producer rebate, income, New Zealand resident 5

Compare: 2004 No 35 s CV 3

**CV 8 Regulations: Australian wine producer rebate***Order in Council*

- (1) For the purpose of enabling the Commissioner to administer the entitlement of New Zealand resident wine producers to Australian wine producer rebates for wine produced in New Zealand, the Governor-General may by Order in Council make regulations relating to— 10
- (a) the claim by a New Zealand resident wine producer for payment of an Australian wine producer rebate for wine produced in New Zealand that is sold in Australia: 15
- (b) the approval or verification of the entitlement of a New Zealand resident wine producer to a payment of an Australian wine producer rebate: 20
- (c) any matter necessary to give effect to a provision relating to Australian wine producer rebates in the agreement for the time being in force between the Government of New Zealand and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion in relation to taxes on income. 25

*Force and effect*

- (2) An Order in Council under **subsection (1)**—
- (a) has force and effect despite any provision in this Act or any other Inland Revenue Act: 30
- (b) may come into force on or after 1 July 2005:
- (c) may apply for Australian financial years commencing on or after 1 July 2005.

*Definitions*

- (3) In this section,— 35
- Australian financial year** means a year starting on and including 1 July

**wine** has the meaning given in section 31-1 of A New Tax System (Wine Equalisation Tax) Act 1999 (Aust) and regulations made under that Act.

Defined in this Act: Australian financial year, Australian wine producer rebate, Inland Revenue Acts, New Zealand resident, pay, wine

5

Compare: 2004 No 35 s CV 4

## CV 9 Supplementary dividend holding companies

*When this section applies*

- (1) This section applies to a supplementary dividend holding company that derives a dividend and related supplementary dividend in an income year when, but for **section LP 8** (Relationship with exempt income rules), both dividends would be exempt income under **section CW 10** (Dividend within New Zealand wholly-owned group). 10

*Income*

15

- (2) The amount calculated under **section LP 8(2)** is assessable income of the supplementary dividend holding company.

Defined in this Act: amount, assessable income, dividend, exempt income, income year, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(6), (8)

20

## CV 10 FDPA companies or CTR companies

*When this section applies*

- (1) This section applies when the amount of a foreign dividend of an FDPA company or a CTR company is adjusted under **section FF 7** (Surplus to foreign dividends). 25

*Income*

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

Defined in this Act: amount, CTR company, dividend, FDPA company, foreign dividend, income

30

Compare: 2004 No 35 s FH 8

**CV 11 Maori authorities***Income*

- (1) An amount that a member of a Maori authority derives as a distribution from the Maori authority is income of the member if the amount is—
- (a) a notional distribution under **section HF 5** (Notional distributions of co-operative companies) ; or
  - (b) a taxable Maori authority distribution under **section HF 7** (Taxable Maori authority distributions).

5

*When credits attached*

10

- (2) The amount of a taxable Maori authority distribution or notional distribution is increased by a credit that is attached or is treated as attached under **section RE 24** (When amount of tax treated as Maori authority credit).

Defined in this Act: amount, co-operative company, Maori authority, Maori authority credit, member, taxable Maori authority distribution

15

Compare: 2004 No 35 ss HI 5(2), (3), HI 4(3), HI 7

**CV 12 Trustees: amounts received after person's death**

To the extent to which **section HC 8** (Amounts received after person's death) applies to an amount that a trustee of an estate of a deceased person receives in an income year, the amount is income of the trustee.

20

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

Compare: 2004 No 35 s HH 8

**CV 13 Amounts derived from trusts**

25

An amount derived by a person is income of the person if it is—

- (a) beneficiary income to which **sections HC 6** (Beneficiary income) and **HC 17** (Amounts derived as beneficiary income) apply; or
- (b) a settlement on trust of property of the kind described in **section HC 7(3)** (Trustee income); or
- (c) a taxable distribution from a foreign trust to which **section HC 18** (Taxable distributions from foreign trusts) applies.

30

35

Defined in this Act: amount, beneficiary income, foreign trust, income, settlement, settlor, taxable distribution, trustee income

Compare: 2004 No 35 ss HH 1(7), HH 3(1)

**CV 14 Distributions from community trusts**

To the extent to which **section HC 21** (Distributions from community trusts) applies to treat an amount that a community trust distributes to a person as income, the amount is income of the person.

5

Defined in this Act: amount, community trust, distribution, income

Compare: 2004 No 35 s HH 3(5A)

**CV 15 Amounts derived from trusts while person absent from New Zealand**

To the extent to which **section HC 23** (Temporary absences of beneficiaries) applies to an amount of beneficiary income or taxable distribution, the amount is income of the person derived on the day on which the person becomes resident in New Zealand again.

10

Defined in this Act: amount, beneficiary income, income, resident in New Zealand, taxable distribution

15

Compare: 2004 No 35 s HH 3(3)

**CV 16 Non-resident shippers**

*When this section applies*

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

20

*Amount of income*

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

25

*Exemption*

- (3) Despite **subsection (2)**, the Commissioner may determine that some or all of an amount that would otherwise be income of a person under this section is a foreign-sourced amount.

30

*Place of shipping*

- (4) In this section, cargo, mail, or passengers shipped or embarked at a port in New Zealand for carriage outside New Zealand are treated as carried outside New Zealand from that

35

port, even though the ship may call at another port in New Zealand before finally leaving New Zealand.

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

5

Compare: 2004 No 35 ss FC 18(1), (2), FC 19

## CV 17 Non-resident film renters

### *When this section applies*

- (1) This section applies when a non-resident person derives an amount from 1 or more of the following activities: 10
- (a) renting, exhibiting, or issuing a film, or making other arrangements for its exhibition:
  - (b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film: 15
  - (c) selling or hiring advertising materials relating to a film.

### *Income and exempt income*

- (2) Ten percent of the amounts derived from New Zealand by the non-resident person is income of the person. The remainder is a foreign-sourced amount. 20

### *Insignificant proportion*

- (3) This section does not apply to a non-resident person if the amounts derived by them from activities are an insignificant proportion of the total amounts derived by them from any business carried on in New Zealand or elsewhere. 25

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

Compare: 2004 No 35 s FC 21(1), (2), (4)

## Subpart CW—Exempt income

### Contents

30

### *Income from business or trade-like activities*

- CW 1 Forestry companies established by Crown, Maori owners, and holding companies buying land with standing timber from founders
- CW 2 Forestry encouragement agreements 35
- CW 3 Forestry companies and Maori investment companies

<b><i>Income from holding property (excluding equity)</i></b>		
CW 4	Annuities under life insurance policies	
CW 5	Payments of interest: post-war credits	
CW 6	Payments of interest: farm mortgages	
CW 7	Foreign-sourced interest	5
CW 8	Money lent to government of New Zealand	
<b><i>Income from equity</i></b>		
CW 9	Dividend derived by company from overseas	
CW 10	Dividend within New Zealand wholly-owned group	
CW 11	Dividend of CTR holding company	10
CW 12	Proceeds of share disposal by qualified foreign equity investor	
CW 13	Proceeds from share or option acquired under venture investment agreement	
CW 14	Dividends derived by attributing companies	15
CW 15	Dividends paid by attributing companies	
<b><i>Employee or contractor income</i></b>		
CW 16	Income of Governor-General	
CW 17	Expenditure on account, and reimbursement, of employees	20
CW 18	Allowance for additional transport costs	
CW 19	Amounts derived during short-term visits	
CW 20	Amounts derived by visiting entertainers including sportspersons	
CW 21	Amounts derived by visiting crew of pleasure craft	25
CW 22	Amounts derived by overseas experts and trainees in New Zealand by government arrangement	
CW 23	Income for military service in operational area	
CW 24	Deferred military pay for active service	
CW 25	Value of board for religious society members	30
CW 26	Jurors' and witnesses' fees	
<b><i>Certain income of transitional resident</i></b>		
CW 27	Certain income derived by transitional resident	
<b><i>Income from living allowances, compensation, and government grants</i></b>		35
CW 28	Pensions	
CW 29	Annuities from Crown Bank Accounts	
CW 30	Services for members of Parliament	
CW 31	Maintenance payments	
CW 32	Allowances and benefits	40
CW 33	Compensation payments	
CW 34	Payment to claimant of certain accident compensation payments	

CW 35	Scholarships and bursaries	
CW 36	Film production grants	
<i>Income of certain entities</i>		
CW 37	Public authorities	
CW 38	Local authorities	5
CW 39	Local and regional promotion bodies	
CW 40	Charities: non-business income	
CW 41	Charities: business income	
CW 42	Charitable bequests	
CW 43	Friendly societies	10
CW 44	Funeral trusts	
CW 45	Bodies promoting amateur games and sports	
CW 46	TAB and racing clubs	
CW 47	Income from conducting gaming-machine gambling	
CW 48	Bodies promoting scientific or industrial research	15
CW 49	Veterinary services bodies	
CW 50	Herd improvement bodies	
CW 51	Community trusts	
CW 52	Distributions from complying trusts	
CW 53	Foreign-sourced amounts derived by trustees	20
CW 54	Maori authority distributions	
<i>Income from certain activities</i>		
CW 55	Non-resident aircraft operators	
CW 56	Non-resident company involved in exploration and development activities	25
CW 57	Disposal of companies' own shares	
CW 58	New Zealand companies operating in Niue	
CW 59	Stake money	
CW 60	Providing standard-cost household service	
CW 61	Interest paid under the KiwiSaver Act 2006	30
CW 62	Avoidance arrangements	
CW 63	Exemption under other Acts	

*Income from business or trade-like activities*

**CW 1 Forestry companies established by Crown, Maori owners, and holding companies buying land with standing timber from founders**

*When this section applies* 5

- (1) This section applies when a forestry company buys land with standing timber on it from a seller who is the Crown, the Maori owners, or a holding company of the forestry company.

*Land sold by Maori Trustee, trustee for Maori owners, or Maori incorporation* 10

- (2) For the purposes of **subsection (1)**,—
- (a) land sold to the forestry company by the Maori Trustee or by a trustee for a Maori owner is treated as if it had been sold by the beneficial owners:
- (b) land sold to the forestry company by a Maori incorporation is treated as if it had been sold by the members of the incorporation. 15

*Exempt income*

- (3) The amount described in **section CB 25(3)** (Disposal of land with standing timber) is exempt income of the seller. 20

*Relationship with section DP 9*

- (4) **Section DP 9** (Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company) deals with the cost to the forestry company of acquiring the timber. 25

Defined in this Act: amount, exempt income, forestry company, holding company, Maori incorporation, Maori owners, standing timber, trustee

Compare: 2004 No 35 s CW 1

**CW 2 Forestry encouragement agreements**

*When this section applies* 30

- (1) This section applies when a person makes a forestry encouragement agreement under the Forestry Encouragement Act 1962.

*Exempt income: advance*

- (2) An amount of income advanced to the person under the agreement is exempt income, even if the person is later relieved from some or all of their liability to repay the principal.

*Exempt income: interest*

5

- (3) The amount from which the person is relieved in the circumstances described in **subsection (4)** is exempt income.

*Circumstances for purposes of subsection (3)*

- (4) The circumstances are that—
- (a) the person is liable to pay interest on an advance made under the agreement; and
  - (b) the interest has not been paid; and
  - (c) the person has been denied a deduction for the interest; and
  - (d) the person is relieved from some or all of their liability to pay the interest.

10

15

Defined in this Act: amount, deduction, exempt income, income, interest, pay

Compare: 2004 No 35 s CW 2

**CW 3 Forestry companies and Maori investment companies***When this section applies*

20

- (1) This section applies when a forestry company or a Maori investment company issues a qualifying debenture.

*Exempt income*

- (2) Interest derived from the qualifying debenture is exempt income to the extent to which it is paid by the issue of a further qualifying debenture.

25

Defined in this Act: exempt income, forestry company, interest, Maori investment company, pay, qualifying debenture

Compare: 2004 No 35 s CW 3

***Income from holding property (excluding equity)***

30

**CW 4 Annuities under life insurance policies***When this section applies*

- (1) This section applies when—

- (a) a person is paid an annuity under a life insurance policy offered or entered into in New Zealand by a life insurer; or
- (b) a person is paid an annuity under a life insurance policy offered or entered into outside New Zealand by a life insurer resident in New Zealand. 5

*Exempt income*

- (2) The annuity is exempt income.

*Excluded annuities*

- (3) An annuity that is excluded income of a superannuation fund under **section CX 40** (Superannuation fund deriving amount from life insurance policy) is not also exempt income of the fund under this section. 10

Defined in this Act: excluded income, exempt income, life insurance policy, life insurer, New Zealand, offered or entered into in New Zealand, pay, resident in New Zealand, superannuation fund 15

Compare: 2004 No 35 s CW 4

**CW 5 Payments of interest: post-war credits**

Interest derived by a person under section 2 of the Income Tax (Repayment of Post-War Credits) Act 1959 of the United Kingdom Parliament is exempt income. 20

Defined in this Act: exempt income, interest

Compare: 2004 No 35 s CW 5

**CW 6 Payments of interest: farm mortgages**

*Exempt income* 25

- (1) Fifty percent of the interest that a person derives from a mortgage securing a loan made by a seller of a farm is exempt income, if—
  - (a) the Rural Banking and Finance Corporation of New Zealand approves the mortgage; and 30
  - (b) the Corporation gives the Commissioner notice of the approval and each variation.

*Exclusions*

- (2) This section does not apply if the person is—
  - (a) an absentee; or 35
  - (b) a company; or

- (c) a Maori authority; or
- (d) a public authority; or
- (e) a trustee liable for income tax under **subpart HC** (Trusts) and **HZ 2** (Trusts that may become complying trusts); or
- (f) an unincorporated body. 5

*Relationship with sections LZ 6 to LZ 8*

- (3) A person who derives interest that is exempt income under this section is not entitled to a tax credit for the interest under **sections LZ 6 to LZ 8** (which relate to interest on home vendor mortgages). 10

Defined in this Act: absentee, Commissioner, company, exempt income, income tax, interest, Maori authority, mortgage, notice, public authority, trustee

Compare: 2004 No 35 s CW 6

**CW 7 Foreign-sourced interest**

Interest that a person derives from a country or territory outside New Zealand is exempt income if— 15

- (a) the person was not resident in New Zealand during the period for which the interest was payable; and
- (b) the interest was exempt under the laws of the overseas country or territory from a tax that is substantially the same as income tax imposed under this Act. 20

Defined in this Act: exempt income, income tax, interest, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s CW 7

**CW 8 Money lent to government of New Zealand** 25

*What this section applies to*

- (1) This section applies to—
- (a) interest derived from money lent under a binding contract entered into on or after 29 July 1983; and
  - (b) a redemption payment made on a commercial bill to which both the following apply; **issue** is defined in section 2 of the Bills of Exchange Act 1908: 30
    - (i) it was issued on or after 29 July 1983; and
    - (ii) it was not issued under a binding contract entered into before that date. 35

*Exempt income*

- (2) Interest or a redemption payment that is payable outside New Zealand is exempt income if—
- (a) it is derived by a person who is a non-resident; and
  - (b) it is derived from or in relation to money lent to—
    - (i) the government of New Zealand; or
    - (ii) a local authority or a public authority; and
  - (c) in the case of money lent to a local or public authority,—
    - (i) it is lent for the purposes of a non-commercial activity carried on in New Zealand by the local or public authority; and
    - (ii) the government of New Zealand has approved the exempt status of the interest or redemption payment.

Defined in this Act: commercial bill, exempt income, interest, local authority, money lent, New Zealand, non-resident, pay, public authority, redemption payment

Compare: 2004 No 35 s CW 8

*Income from equity***CW 9 Dividend derived by company from overseas** 20*Exempt income*

- (1) A dividend is exempt income if derived by a company that is resident in New Zealand from a foreign company.

*FDP rules apply*

- (2) The FDP rules apply to the dividend. 25

Defined in this Act: company, dividend, exempt income, FDP rules, foreign company, resident in New Zealand

Compare: 2004 No 35 s CW 9

**CW 10 Dividend within New Zealand wholly-owned group***Exempt income* 30

- (1) A dividend is exempt income if—
- (a) it is derived by a company (the **recipient**) that is resident in New Zealand; and
  - (b) it is derived from a company (the **payer**) that is part of the same wholly-owned group of companies as the recipient at the time the dividend is derived; and

- (c) the payer is not a foreign company; and
  - (d) the payer is not a company that can derive only exempt income; and
  - (e) the requirements of **subsections (2) to (6)** are met.
- Aligned balance dates* 5
- (2) At the time the dividend is derived,—
- (a) the recipient and the payer have income years that end on the same date; or
  - (b) a difference in balance dates—
    - (i) is necessary to avoid a material distortion in the net income of 1 of them because aspects of a single business cycle would otherwise be split between 2 income years; and 10
    - (ii) is not part of a tax avoidance arrangement.
- Exclusion: dividends from council-controlled organisations* 15
- (3) The dividend must not be derived by a local authority from—
- (a) a council-controlled organisation; or
  - (b) a port company, subsidiary company of a port company, or energy company that would be a council-controlled organisation in the absence of section 6(4) of the Local Government Act 2002. 20
- Exclusion: debt release dividends*
- (4) The dividend must not be the release of an obligation to repay an amount lent, treated as a dividend under **section CD 5(2)** (What is a transfer of value?). 25
- Exclusion: certain friendly society dividends*
- (5) The dividend must not be derived by a friendly society from a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of the society.
- Exclusion: certain sickness, accident, or death benefit fund dividends* 30
- (6) The dividend must not be derived by a trustee in trust for a sickness, accident, or death benefit fund from a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of the trustee. 35
- Defined in this Act: amount, company, council-controlled organisation, deduction, dividend, exempt income, foreign company, friendly society, income year, local

authority, net income, New Zealand, resident in New Zealand, sickness, accident, or death benefit fund, tax avoidance arrangement, trustee, wholly-owned group of companies

Compare: 2004 No 35 s CW 10

- CW 11 Dividend of CTR holding company** 5
- Exempt income: credit*
- (1) If a CTR holding company derives a dividend with a CTR credit attached, the dividend is exempt income to the extent to which it is fully credited for conduit tax relief.
- Exempt income: additional dividend* 10
- (2) If a CTR holding company derives a CTR additional dividend, the CTR additional dividend is exempt income.
- Defined in this Act: CTR additional dividend, CTR credit, CTR holding company, dividend, exempt income, fully credited for conduit tax relief
- Compare: 2004 No 35 s CW 11 15
- CW 12 Proceeds of share disposal by qualified foreign equity investor**
- Exempt income: proceeds from disposal of share in resident company*
- (1) An amount that a person derives from the sale or other disposal by a qualifying foreign equity investor of a share, or option to buy a share, in a company (the **resident company**) is exempt income if— 20
- (a) the resident company is resident in New Zealand; and 25
- (b) the share or option, or an option or convertible note relating to the share, is bought on a day that is 12 months or more before the day of the sale or other disposal; and
- (c) the person who buys the share or option, or the option or convertible note relating to the share, and disposes of the share or option is a qualifying foreign equity investor from the time of the purchase to the time of the disposal; and 30
- (d) at some time in the 12-month period that starts from the time of the purchase referred to in **paragraph (b)**, the shares of the resident company are quoted on no official list of a recognised exchange; and 35

- (e) the resident company meets the requirements of either or both of **subsections (2) and (3)**.

*Requirements relating to main activity of resident company*

- (2) A resident company meets the requirements of this subsection if, throughout the period referred to in **subsection (1)(c)**, the resident company does not have as a main activity 1 or more of—
- (a) land development:
  - (b) land ownership:
  - (c) mining: 10
  - (d) provision of financial services:
  - (e) insurance:
  - (f) construction of public infrastructure assets:
  - (g) acquisition of public infrastructure assets:
  - (h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties. 15

*Requirements relating to resident company that provides capital to others*

- (3) A resident company that has a main activity of providing capital in the form of debt or equity funding to other companies meets the requirements of this subsection if—
- (a) throughout the period referred to in **subsection (1)(c)**, each other company that is resident in New Zealand—
    - (i) does not have, as a main activity, an activity that is referred to in **subsection (2)(a) to (c) and (e) to (g)**; and 25
    - (ii) does not have, as a main activity, an activity that is referred to in **subsection (2)(d) and (h)** and is not the provision of capital to other companies; and 30
    - (iii) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **subsection (2)(a) to (c) and (e) to (g)**; and
    - (iv) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **subsection (2)(d) and (h)** and is not the provision of capital to other companies; and 35

- (b) throughout the period referred to in **subsection (1)(c)**, each other company that is not resident in New Zealand does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **subsection (2)(a) to (h)**; and 5
- (c) for each other company there is a time in the period referred to in **subsection (1)(c)** at which—
- (i) the shares of the other company are quoted on no official list of a recognised exchange; and 10
  - (ii) the shares of the resident company are quoted on no official list of a recognised exchange.

*Some definitions*

- (4) In this section—
- foreign exempt entity** means a person who— 15
- (a) is established as a legal entity under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and
  - (b) has persons (the **members**) who hold interests in the capital of the legal entity and who are entitled to shares of the income of the legal entity; and 20
  - (c) is treated by the taxation laws of the territory referred to in **paragraph (a)**, or by the taxation laws of the part of the territory, as not being subject to a tax on income other than as a body that handles income of the members; and 25
  - (d) is resident in no territory that has laws that treat the legal entity as being subject to a tax on income other than as a body that handles income of the members; and
  - (e) does not have a member who— 30
    - (i) has, when treated as holding the interests of any person who is associated with the member under the 1990 version provisions, an interest of 10% or more in the capital of the legal entity; and
    - (ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and 35
  - (f) does not have a member who, when treated as holding the interests of any person who is associated with the member under the 1990 version provisions, has an 40

- interest of 10% or more in the capital of the legal entity and who—
- (i) would be entitled to receive an amount derived from a disposal to which this section would apply; and 5
  - (ii) would receive an amount referred to in **subparagraph (i)** that, in the absence of this section, would have been reduced by a tax imposed by the Act on the amount or on the proceeds of the disposal in the hands of the legal entity; and 10
  - (iii) would in any circumstances, under the taxation laws of the territory in which the member is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for the reduction referred to in **subparagraph (ii)** 15
- foreign exempt partnership** means an unincorporated body that— 20
- (a) is established under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and
  - (b) consists of persons (the **partners**); and 25
  - (c) is treated by the taxation laws of the territory, or by the taxation laws of the part of the territory, as not being subject to a tax on income other than as a body that handles income of the partners; and
  - (d) has at least 1 partner (the **general partner**) who is liable for all debts of the unincorporated body and who has significant involvement in, and control of, the business activities of the unincorporated body; and 30
  - (e) has at least 1 partner (the **special partner**) whose liability for debts of the unincorporated body is limited and who has limited involvement in, and control of, the business activities of the unincorporated body; and 35
  - (f) does not have a general partner who is resident in no territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and 40
  - (g) does not have a partner who—

- (i) has, when treated as holding the interests of any person who is associated with the partner under the 1990 version provisions, an interest of 10% or more in the capital of the unincorporated body; and 5
- (ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and
- (h) does not have a partner who, when treated as holding the interests of any person who is associated with the partner under the 1990 version provisions, has an interest of 10% or more in the capital of the unincorporated body and who— 10
- (i) would, under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and 15
- (ii) would in any circumstances, under the taxation laws of the territory in which the partner is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax referred to in **subparagraph (i)** 20
- foreign exempt person** means a person who— 25
- (a) is resident in a territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and 30
- (b) is not part of an unincorporated body that meets the requirements of **paragraphs (a) to (c)** of the definition of **foreign exempt partnership**; and
- (c) is not a legal entity that meets the requirements of **paragraphs (a) to (c)** of the definition of **foreign exempt entity**; and 35
- (d) is treated by the taxation laws of the territory, or by the taxation laws of a part of the territory, as the person who derives the proceeds from a disposal of shares or options that are held by the person; and 40
- (e) is not a person who—

- (i) would, under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and
- (ii) would in any circumstances, under the taxation laws of the territory in which the person is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax referred to in **subparagraph (i)** 5
- qualifying foreign equity investor** means a person who is not resident in New Zealand and who is 1 or more of the following: 15
- (a) a foreign exempt entity:
- (b) a person who is part of a foreign exempt partnership:
- (c) a foreign exempt person.
- Residency of territory* 20
- (5) For the purpose of this section, whether a person is resident in a territory other than New Zealand is determined—
- (a) in the presence of a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the double tax agreement: 25
- (b) in the absence of a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the laws of the territory. 30
- Approval and withdrawal of approval for territory*
- (6) The Governor-General may by Order in Council—
- (a) approve a territory for the purpose of this section:
- (b) withdraw the approval of a territory for the purpose of this section. 35
- Defined in this Act: 1990 version provisions, amount, business, company, dividend, double tax agreement, exempt income, foreign exempt entity, foreign exempt partnership, foreign exempt person, income, insurance, interest, land, pay, personal property lease payment, qualifying foreign equity investor, recognised exchange, resident in New Zealand, royalty, share, tax 40
- Compare: 2004 No 35 s CW 11B

### **CW 13 Proceeds from share or option acquired under venture investment agreement**

*Exempt income: proceeds from share or option*

- (1) An amount of income that a non-resident derives from the sale or other disposal of a share, or option to buy a share, in a company is exempt income if the requirements of **subsections (2) to (5)** are met. 5

*Requirement relating to company at time of acquisition*

- (2) The first requirement is that, when the non-resident first acquires a share, or option to buy a share, in the company in a way that meets the requirements of **subsection (3)**, the company must have in New Zealand— 10
- (a) more than 50% in value of the company's assets; and
  - (b) more than 50% in number of the company's employees.

*Requirement relating to acquisition of first share or option* 15

- (3) The second requirement is that, when the non-resident first acquires a share or option to buy a share (the **first interest**) in the company, a person (the **venture capital manager**) must acquire, at the same time and on the same terms,— 15
- (a) the first interest, on behalf of the non-resident; and 20
  - (b) another share or option that confers the same rights and imposes the same obligations as the first interest—
    - (i) on behalf of the Venture Investment Fund or a company owned by the Venture Investment Fund; and 25
    - (ii) under a venture investment agreement.

*Continuing requirement relating to company*

- (4) The third requirement is that, while the non-resident holds the share or option, the company must not have 1 or more of the following as a main activity: 30
- (a) land development:
  - (b) land ownership:
  - (c) mining:
  - (d) provision of financial services:
  - (e) insurance: 35
  - (f) construction of public infrastructure assets:
  - (g) acquisition of public infrastructure assets:

- (h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

*Requirement relating to situation at disposition of share or option*

- (5) The fourth requirement is that, when the non-resident disposes of the share or option,—
- (a) the venture capital manager must have complied with the venture capital manager's obligations under the venture investment agreement; and
  - (b) the non-resident must have complied with the non-resident's obligations under any agreement between the non-resident and the Venture Investment Fund or a company owned by the Venture Investment Fund; and
  - (c) no person who is resident in New Zealand and no group of associated persons who are resident in New Zealand has a direct or indirect interest of more than 10% in the share or option.

*Venture investment agreement*

- (6) In this section, **venture investment agreement** means an agreement that—
- (a) is an agreement, relating to investment in companies, between parties that include—
    - (i) a venture capital manager; and
    - (ii) the Venture Investment Fund or a company owned by the Venture Investment Fund; and
  - (b) provides for investments under the agreement to be managed by the venture capital manager; and
  - (c) provides that an investment under the agreement must be in a company that, when the first investment in the company under the agreement is made, has in New Zealand—
    - (i) more than 50% in value of the company's assets; and
    - (ii) more than 50% in number of the company's employees.

Defined in this Act: employee, income, interest, non-resident, pay, resident in New Zealand, share, venture investment agreement, Venture Investment Fund

Compare: 2004 No 35 s CW 11C

**CW 14 Dividends derived by attributing companies**

**Sections CW 10 and CW 11** (which relate to dividends) do not apply to treat as exempt income a dividend derived by a company that has been an attributing company at some time before the date on which it derives the dividend, except to the extent to which the dividend is a dividend to which **section CW 9** (Dividend derived by company from overseas) applies.

5

Defined in this Act: attributing company, company, dividend, exempt income

Compare: 2004 No 35 s HG 10(a)

**CW 15 Dividends paid by attributing companies**

10

*Exempt income of shareholder*

- (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 under **section HA 15** (Fully imputed distributions), the amount is exempt income of the person.

15

*Exempt income of beneficiary*

- (2) If a dividend paid by an attributing company to a trustee shareholder is, or becomes, beneficiary income of a beneficiary resident in New Zealand, the dividend is exempt income of the beneficiary.

20

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

Compare: 2004 No 35 s HG 13(1)(a), (1A)

*Employee or contractor income*

25

**CW 16 Income of Governor-General**

The following are exempt income:

- (a) the salary and allowance of the Governor-General paid under section 3 of the Civil List Act 1979:
- (b) the salary of a person acting as the Administrator of the Government paid under section 8 of the Civil List Act 1979.

30

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 12

## CW 17 Expenditure on account, and reimbursement, of employees

### *Exempt income: expenditure on account*

- (1) Expenditure on account of an employee incurred by an employer in connection with the employee's employment or service is exempt income of the employee to the extent to which the expenditure is expenditure for which the employee would be allowed a deduction if they incurred the expenditure and if the employment limitation did not exist. 5

### *Exempt income: reimbursement*

- (2) An amount that an employer pays to an employee in connection with the employee's employment or service is exempt income of the employee to the extent to which it reimburses the employee for expenditure for which the employee would be allowed a deduction if the employment limitation did not exist. 10  
15

### *Estimated expenditure of employees*

- (3) For the purposes of **subsection (2)**,—
- (a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and 20
- (b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates. 25

Defined in this Act: amount, deduction, employee, employer, employment limitation, exempt income, expenditure on account of an employee, pay 25

Compare: 2004 No 35 s CW 13

## CW 18 Allowance for additional transport costs

### *Exempt income*

- (1) An allowance that an employee receives from an employer to reimburse the employee's additional transport costs is exempt income to the extent to which the employee incurs the costs in connection with their employment and for the employer's benefit or convenience. 30

### *Estimated expenditure of employees*

- (2) For the purposes of **subsection (1)**,— 35

- (a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and
- (b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates. 5

*Meaning of additional transport costs*

- (3) In this section, **additional transport costs** means the costs to an employee of travelling between their home and place of work that are more than would ordinarily be expected. The costs must be attributable to 1 or more of the following factors: 10
  - (a) the day or time of day when the work duties are performed:
  - (b) the need to transport any goods or material for use or disposal in the course of the employee's work: 15
  - (c) the requirement to fulfil a statutory obligation:
  - (d) a temporary change in the employee's place of work while in the same employment:
  - (e) any other condition of the employee's work: 20
  - (f) the absence of an adequate public passenger transport service that operates fixed routes and a regular timetable for the employee's place of work.

*Quantifying additional transport costs*

- (4) Additional transport costs are quantified as follows: 25
  - (a) when the additional transport costs are attributed to a factor described in any of **subsection (3)(a) to (e)**, the amount by which the costs are more than the employee's ordinarily expected travel costs without reference to that factor: 30
  - (b) when the additional transport costs are attributed to the factor described in **subsection (3)(f)**, the amount by which the costs are more than \$5 for each day on which the employee attends work:
  - (c) except in special circumstances, the costs of travelling any distance over 70 kilometres in 1 day are not taken into account in calculating additional transport costs. 35

Defined in this Act: additional transport costs, amount, employee, employer, exempt income, pay

Compare: 2004 No 35 s CW 14 40

**CW 19 Amounts derived during short-term visits***Exempt income*

- (1) Income that a non-resident person derives in a tax year from performing personal or professional services in New Zealand during a visit is exempt income if— 5
- (a) the visit is for 92 or fewer days, counting the days of arrival and departure as a whole day each; and
  - (b) the total number of days on which the person is present in New Zealand in the tax year is 92 or fewer; and
  - (c) the services are performed for or on behalf of a person who is not resident in New Zealand; and 10
  - (d) the amount derived from the personal or professional services is chargeable in the country or territory in which the person is resident with a tax that is substantially the same as income tax imposed under this Act. 15

*Exclusion*

- (2) This section does not apply to the income of a public entertainer.

*Meaning of public entertainer*

- (3) In this section, **public entertainer** includes— 20
- (a) circus performers, dancers, lecturers, motion picture artists, musicians, radio artists, singers, television artists, and theatre artists; and
  - (b) athletes, boxers, wrestlers, and other professional sportspersons. 25

Defined in this Act: amount, exempt income, income, income tax, New Zealand, non-resident, public entertainer, resident in New Zealand, tax year

Compare: 2004 No 35 s CW 15

**CW 20 Amounts derived by visiting entertainers including sportspersons** 30*Exempt income: cultural activities*

- (1) Income that a non-resident entertainer derives from carrying out their activity or performance in New Zealand during a visit is exempt income if— 35
- (a) the activity or performance occurs under a cultural programme of the New Zealand government or an overseas government; or

- (b) the activity or performance occurs under a cultural programme wholly or partly sponsored by the New Zealand government or an overseas government; or
- (c) the activity or performance occurs as part of a programme of an overseas foundation, trust, or other organisation that— 5
- (i) exists wholly or partly to promote cultural activity; and
- (ii) is not carried on for the private pecuniary profit of any member, proprietor, or shareholder. 10
- Exempt income: sporting activities*
- (2) Income that a non-resident entertainer derives from carrying out an activity or performance that relates to a game or sport in New Zealand during a visit is exempt income if the participants are the official representatives of a body that administers the game or sport in an overseas country. 15
- Exempt income: employer of non-resident entertainer*
- (3) If income derived from an activity or performance of a non-resident entertainer would be exempt income under this section if derived by the non-resident entertainer, that amount is exempt income if derived by a person who— 20
- (a) provides the services of the non-resident entertainer during the visit to New Zealand; and
- (b) is 1 of the following: 25
- (i) the entertainer's employer; or
- (ii) a company of which the entertainer is an officer; or
- (iii) a firm of which the entertainer is a principal.
- Meaning of non-resident entertainer*
- (4) In this section, **non-resident entertainer** means a non-resident person, as defined in **subpart YD** (Residence and source in New Zealand), who carries out an activity or performance in connection with— 30
- (a) a solo or group performance by actors, comperes, dancers, entertainers, musicians, singers, or other artists, whether for cultural, educational, entertainment, religious, or other purposes; or 35
- (b) lectures, speeches, or talks for any purpose; or

- (c) a sporting event or sporting competition of any nature.

Defined in this Act: amount, company, employer, exempt income, income, New Zealand, non-resident, non-resident entertainer

Compare: 2004 No 35 s CW 16

## CW 21 Amounts derived by visiting crew of pleasure craft 5

### *Exempt income*

- (1) Income that a non-resident crew member derives from performing services in New Zealand relating to a pleasure craft while it is in New Zealand is exempt income if—
- (a) the services are performed for a person who is not resident in New Zealand; and 10
  - (b) the pleasure craft is the subject of a security given under section 116 of the Customs and Excise Act 1996; and
  - (c) the pleasure craft is not owned, wholly or partly or directly or indirectly, by— 15
    - (i) a resident of New Zealand; or
    - (ii) a controlled foreign company.

### *Some definitions*

- (2) In this section,—
- non-resident crew member** means a person who— 20
- (a) is a crew member of a pleasure craft; and
  - (b) is a non-resident, a matter determined without applying **section YD 1(3)** (Residence of natural persons); and
  - (c) is not present in New Zealand on more than 365 days in any 2 year period that starts on or after 28 May 2002; 25  
and
  - (d) is not in New Zealand unlawfully under the Immigration Act 1987
- pleasure craft** is defined in section 2 of the Maritime Transport Act 1994. 30

Defined in this Act: amount, controlled foreign company, exempt income, income, New Zealand, non-resident, non-resident crew member, pleasure craft, resident in New Zealand, year

Compare: 2004 No 35 s CW 17

**CW 22 Amounts derived by overseas experts and trainees in New Zealand by government arrangement**

*Exempt income: personal services*

- (1) Income that a non-resident person derives from performing personal services, including professional services, in New Zealand during a visit is exempt income if— 5
- (a) the services are performed for or on behalf of a non-resident employer; and
  - (b) the purpose of the visit is all or any of the following: 10
    - (i) providing professional or expert advice or assistance:
    - (ii) teaching or lecturing:
    - (iii) making investigations:
    - (iv) receiving education, training, or experience; and
  - (c) the visit occurs under an arrangement for assistance entered into by the government of New Zealand. 15

*Exempt income: maintenance or bursaries*

- (2) An amount of income that a non-resident person derives from a payment of maintenance or of an allowance, or from a bursary or scholarship, provided for or paid to the person during or in relation to their presence in New Zealand during a visit, is exempt income if— 20
- (a) the purpose of the visit is all or any of the following: 25
    - (i) providing professional or expert advice or assistance:
    - (ii) teaching or lecturing:
    - (iii) making investigations:
    - (iv) receiving education, training, or experience; and
  - (b) the visit occurs under an arrangement for assistance entered into by the government of New Zealand. 30

*Some definitions*

- (3) In this section,—
- arrangement for assistance entered into by the government of New Zealand** means an arrangement entered into by the government of New Zealand— 35
- (a) in relation to or under—
    - (i) the Commonwealth Education Scheme; or

- (ii) a programme of the United Nations, or any specialised agency of the United Nations, for cultural, economic, educational, expert, professional, or technical assistance; or
- (b) for the purpose of providing education, training, or experience for officers of the Samoan, Cook Islands, Niuean, or Tokelauan public services, or for persons resident in Samoa, the Cook Islands, Niue, or Tokelau; or 5
- (c) with the government of any other country or with any international organisation, if it is an arrangement that— 10
- (i) is for the purpose of providing cultural, economic, educational, expert, professional, or technical assistance, or administrative or other training, or the means or facilities for making investigations, whether upon a bilateral, co-operative, multilateral, mutual, or unilateral basis; and 15
- (ii) is in principle similar to any arrangement to which **paragraph (a) or (b)** applies 20
- international organisation** means an organisation whose members are sovereign powers, whether countries of the Commonwealth or foreign sovereign powers, or the governments of those countries or powers 20
- non-resident person** means a person who would not be resident in New Zealand if they were not present in New Zealand under an arrangement for assistance entered into by the government of New Zealand. The residence of the person is determined without applying **section YD 1(3)** (Residence of natural persons). 25
- Defined in this Act: amount, arrangement, arrangement for assistance entered into by the government of New Zealand, Commonwealth, employer, exempt income, income, international organisation, New Zealand, non-resident person, pay, resident in New Zealand 30

Compare: 2004 No 35 s CW 18

## **CW 23 Income for military service in operational area** 35

### *Exempt income*

- (1) The pay and allowances that a person derives from the government of New Zealand are exempt income if, and to the extent to which,—

- (a) the person is engaged in an air, military, or naval force raised in New Zealand or in another part of the Commonwealth; and
- (b) the pay and allowances relate to a period of service in an operational area. 5

*Sickness, injury, or disability*

- (2) A person's service in an operational area continues even if they are sick, injured, or disabled during their service, unless the sickness, injury, or disability is caused by their negligence or misconduct. The service continues until the person is certified as fit for further service, whether in an operational area or elsewhere, or discharged from the force. 10

*Ministerial committee*

- (3) For the purposes of this section, there is a committee consisting of the Prime Minister, the Minister of Defence, and the Minister of Finance to which the following apply: 15
  - (a) the committee may—
    - (i) define an area as an operational area; and
    - (ii) prescribe the rules for computing a person's period of service in an operational area; and 20
  - (b) the committee's decisions under **paragraph (a)** are set out in orders issued by the Service Board concerned.

*Some definitions*

- (4) In this section,—
  - operational area** means an area that the committee described in **subsection (3)** defines as an operational area 25
  - pay and allowances** does not include—
    - (a) a regular force gratuity; or
    - (b) a bonus or bounty for re-engagement in a regular force. 30

Defined in this Act: Commonwealth, exempt income, New Zealand, operational area, pay and allowances 30

Compare: 2004 No 35 s CW 19

## **CW 24 Deferred military pay for active service**

*Exempt income*

- (1) Deferred military pay that is granted or paid under the Defence Act 1990 to a person for service in the New Zealand armed forces in an active service area is exempt income. 35

*Some definitions*

(2) In this section,—

**active service area** means an area outside New Zealand that is designated as an active service area by the Minister of Defence, with the agreement of the Minister of Finance

5

**deferred military pay** means pay declared to be deferred by the Minister of Defence, with the agreement of the Minister of Finance.

Defined in this Act: active service area, deferred military pay, exempt income, New Zealand, pay

10

Compare: 2004 No 35 s CW 20

**CW 25 Value of board for religious society members**

The value of personal board and lodging and other basic personal necessities received by a member of a religious society or order is exempt income if—

15

(a) the member's sole occupation is service in a religious society or order; and

(b) it is in the nature of the service that members are not paid for their work and do not receive a reward for it, other than those necessities.

20

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 21

**CW 26 Jurors' and witnesses' fees**

Fees paid by the Crown to jurors and to witnesses, other than expert witnesses, are exempt income.

25

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 22

*Certain income of transitional resident***CW 27 Certain income derived by transitional resident**

Income derived by a person who is a transitional resident is exempt income if the income is a foreign-sourced amount that is none of the following:

30

(a) employment income of a type described in **section CE 1** (Amounts derived in connection with employment) in connection with employment or service performed while the person is a transitional resident:

35

(b) income from a supply of services.

Defined in this Act: employment income, exempt income, foreign-sourced amount, income, transitional resident

Compare: 2004 No 35 s CW 22B

***Income from living allowances, compensation, and government grants*** 5

**CW 28 Pensions**

*Exempt income*

- (1) The following are exempt income:
- (a) a pension or allowance under the War Pensions Act 1954, other than a veteran's pension: 10
  - (b) a pension or allowance of any other kind granted in New Zealand or overseas by any government relating to any war or to disability attributable to or aggravated by service in the armed forces or the police: 15
  - (c) a payment of portable New Zealand superannuation:
  - (d) a payment of portable veteran's pension:
  - (e) an overseas pension.

*Meaning of overseas pension*

- (2) In this section, **overseas pension** means— 20
- (a) an overseas pension, to the extent of sums subtracted under section 70 of the Social Security Act 1964, by the department currently responsible for administering the Act, from—
    - (i) a monetary benefit paid under Part 1 of the Act; 25
    - or
    - (ii) a monetary benefit, other than New Zealand superannuation or a veteran's pension, paid under the Social Welfare (Transitional Provisions) Act 1990: 30
  - (b) an overseas pension to the extent to which it is subject to an arrangement under section 70(3) of the Social Security Act 1964 but not to the extent of the equivalent

amount of New Zealand superannuation, veteran's pension, or income-tested benefit paid under section 70(3)(b) of the Act.

Defined in this Act: amount, exempt income, income-tested benefit, New Zealand superannuation, overseas pension, pay, portable New Zealand superannuation, portable veteran's pension, veteran's pension

5

Compare: 2004 No 35 s CW 23

### **CW 29 Annuities from Crown Bank Accounts**

An annuity is exempt income if—

- (a) it is granted by the Executive Council of New Zealand; and 10
- and
- (b) it is paid from the Crown Bank Account; and
- (c) it is not designated as being subject to tax.

Defined in this Act: exempt income, New Zealand, pay, tax

Compare: 2004 No 35 s CW 24

15

### **CW 30 Services for members of Parliament**

Travel, accommodation, attendance, and communication services, as defined in section 20A(7) of the Civil List Act 1979, are exempt income if they—

- (a) are— 20
  - (i) referred to in section 20A of the Act;
  - (ii) paid under section 25 of the Act; and
- (b) are provided to—
  - (i) a person to whom any of section 25(1)(b) to (e) of the Act applies: 25
  - (ii) a member of the family of a person described in **subparagraph (i)**.

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 25

### **CW 31 Maintenance payments**

30

The following are exempt income:

- (a) child support or spousal maintenance under the Child Support Act 1991:
- (b) a payment in the nature of maintenance out of money belonging to a person's spouse, civil union partner or de 35

facto partner, or former spouse, former civil union partner, or former de facto partner.

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 26

<b>CW 32 Allowances and benefits</b>	<b>5</b>
<i>Exempt income</i>	
(1) The following are exempt income:	
(a) a monetary benefit under the Social Security Act 1964, except an income-tested benefit:	
(b) a payment under Part 5 or 13 of the Accident Insurance Act 1998, or under Part 11 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, of any of the following kinds:	10
(i) a payment to an insured person for treatment or rehabilitation:	15
(ii) an independence allowance:	
(iii) a funeral grant:	
(iv) a survivor's grant:	
(v) a childcare payment:	
(c) a participation allowance under regulations made under the Social Security Act 1964:	20
(d) a disabled workshop payment:	
(e) an amount derived by a trustee of a trust created for the benefit of persons harmed by thalidomide, or a distribution to a beneficiary from the trust:	25
(f) an amount derived by a trustee of the New Zealand Agent Orange Trust that represents the settlement fund and income attributable to the fund, or a distribution to a beneficiary from the trust.	
<i>Meaning of disabled workshop payment</i>	30
(2) In this section, <b>disabled workshop payment</b> means a payment to a disabled person for undertaking therapeutic activities in a sheltered workshop, as defined in the Disabled Persons Employment Promotion Act 1960, or in a similar workshop, if the average amount paid in a tax year is \$50 or less per week.	35
Defined in this Act: amount, disabled workshop payment, exempt income, income, income-tested benefit, pay, tax year, trustee	
Compare: 2004 No 35 s CW 27	

**CW 33 Compensation payments***Exempt income*

- (1) An amount of income from the following payments is exempt income:
- (a) a payment relating to incapacity for work: 5
  - (b) a payment under the Workers Compensation Act 1956:
  - (c) a payment under the Criminal Injuries Compensation Act 1963:
  - (d) a distribution from funds approved by the Minister in charge of War Pensions to ex-prisoners of war held in German concentration camps in World War 2: 10
  - (e) a payment under the laws of a State of the Federal Republic of Germany or the Republic of Austria to the victims of National Socialist persecution:
  - (f) payments under schedule 1 of the Crown Forest Assets Act 1989 (except clause 3(b)): 15
  - (g) payments of compensation, solatium payments, or payments to lessors for the purchase of leases under the Maori Reserved Land Amendment Act 1997 (but not interest paid under section 23 of the Act). 20

*Some definitions*

- (2) In this section,—
- accident insurance contract** is defined in section 13 of the Accident Insurance Act 1998
- payment relating to incapacity for work** means a payment of 1 of the following kinds made to a person because they are, or another person is, incapacitated for work: 25
- (a) a payment under section 25 of the National Provident Fund Act 1950:
  - (b) a payment by a friendly society, but not a payment referred to in **paragraph (d) or (e)** of the definition of **accident compensation payment** in **section CF 1(2)** (Benefits, pensions, compensation, and government grants): 30
  - (c) a payment from a sickness, accident, or death benefit fund to which the person was a contributor when the period of incapacity began, but not a payment referred to in **paragraph (d) or (e)** of the definition of **accident compensation payment** in **section CF 1(2)**: 35
  - (d) a payment under a policy of personal sickness or accident insurance, or an accident insurance contract, but 40

neither a payment referred to in **paragraph (d) or (e) or (f)** of the definition of **accident compensation payment** in **section CF 1(2)** nor a payment calculated according to loss of earnings or profits.

Defined in this Act: accident insurance contract, exempt income, friendly society, interest, lease, pay, payment relating to incapacity for work, sickness, accident, or death benefit fund

5

Compare: 2004 No 35 s CW 28

### **CW 34 Payment to claimant of certain accident compensation payments**

10

*When this section applies*

- (1) This section applies when a person receives a payment referred to in **paragraph (g)** of the definition of the term **accident compensation payment** in **section CF 1(2)** (Benefits, pensions, compensation, and government grants).

15

*Exempt income*

- (2) The payment is exempt income of the person if the total amount of payments referred to in **subsection (1)** paid for the income year to the person is equal to or less than the total amount of payments paid for the income year by the person for attendant care, as defined in schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

20

Defined in this Act: accident compensation payment, exempt income, income year, pay

25

Compare: 2004 No 35 s CW 28B

### **CW 35 Scholarships and bursaries**

A basic grant or an independent circumstances grant under regulations made under section 303 of the Education Act 1989 is not exempt income, but any other scholarship or bursary for attendance at an educational institution is exempt income.

30

Defined in this Act: exempt income

Compare: 2004 No 35 s CW 29

**CW 36 Film production grants**

An amount derived by a company as a large budget screen production grant is exempt income.

Defined in this Act: company, exempt income, large budget screen production grant

Compare: 2004 No 35 s CW 30

5

*Income of certain entities***CW 37 Public authorities***Exempt income*

- (1) An amount of income derived from sinking funds relating to the debt of a public authority is exempt income. 10

*Exempt income*

- (2) Any other amount of income derived by a public authority is exempt income.

*Exclusion: amounts received in trust*

- (3) **Subsection (2)** does not apply to an amount of income that a public authority derives as a trustee. 15

*Exclusion: superannuation schemes*

- (4) **Subsection (2)** does not apply to a public authority to the extent to which it is a superannuation scheme.

*Exclusion: certain public authorities*

- (5) **Subsection (2)** does not apply to an amount of income derived by the following public authorities: 20
- (a) Public Trust:
  - (b) State enterprises:
  - (c) Crown Research Institutes: 25
  - (d) the department or ministry that is currently responsible for administering the Marketing Act 1936, if the amount is derived for a function that the department or ministry exercises under the Act.

*Meaning of public authority*

- (6) In this section, **public authority** includes the Reserve Bank of New Zealand.

Defined in this Act: amount, Crown Research Institute, exempt income, income, public authority, State enterprise, superannuation scheme, trustee

5

Compare: 2004 No 35 s CW 31

**CW 38 Local authorities***Exempt income*

- (1) An amount of income derived from sinking funds relating to the debt of a local authority is exempt income. 10

*Exempt income*

- (2) Any other amount of income derived by a local authority is exempt income.

*Exclusion: amounts received in trust*

- (3) **Subsection (2)** does not apply to an amount of income that a local authority derives as a trustee. 15

*Exclusion: certain amounts from commercial undertakings*

- (4) **Subsection (2)** does not apply to an amount of income that—
- (a) is derived by a local authority; and
  - (b) is not rates; and 20
  - (c) is derived from—
    - (i) a council-controlled organisation; or
    - (ii) an organisation that is a port company, a subsidiary of a port company, or an energy company and that would be a council-controlled organisation in the absence of section 6(4) of the Local Government Act 2002. 25

*Exclusion: local authority as port operator*

- (5) **Subsection (2)** does not apply to an amount of income derived by a local authority in its capacity as a port operator from a port-related commercial undertaking. **Port operator** and **port-related commercial undertaking** are defined in section 38(4) of the Port Companies Act 1988. 30

Defined in this Act: amount, council-controlled organisation, exempt income, income, local authority, trustee

35

Compare: 2004 No 35 s CW 32

**CW 39 Local and regional promotion bodies***Exempt income: beautification societies*

- (1) An amount of income derived by an association or society is exempt income if—
- (a) the association or society is established mainly to— 5
    - (i) advertise, beautify, or develop a city or other district so as to attract population, tourists, trade, or visitors:
    - (ii) create, develop, or increase amenities for the general public in a city or other district; and 10
  - (b) none of the funds of the association or society is used, or is or may become available to be used, for any other purpose that is not a charitable purpose.

*Exclusion: council-controlled organisation*

- (2) **Subsection (1)** does not apply to an amount of income derived— 15
- (a) by a council-controlled organisation:
  - (b) by a local authority from a council-controlled organisation.

*Exempt income: trustees of Cornwall Park* 20

- (3) An amount of income that the trustees of Cornwall Park, Auckland, derive from the property of the trust is exempt income.

Defined in this Act: amount, associated person, charitable purpose, council-controlled organisation, exempt income, income, local authority, trustee 25

Compare: 2004 No 35 s CW 33

**CW 40 Charities: non-business income***Exempt income*

- (1) The following are exempt income:
- (a) an amount of income derived by a trustee in trust for charitable purposes: 30
  - (b) an amount of income derived by a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual. 35

*Exclusion: trustees, society, or institution not registered*

- (2) This section does not apply to an amount of income if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, **registered as a charitable entity**. 5

*Exclusion: business income*

- (3) This section does not apply to an amount of income derived from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in **subsection (1)**. 10

*Exclusion: council-controlled organisation income*

- (4) This section does not apply to income derived by—  
 (a) a council-controlled organisation; or  
 (b) a local authority from a council-controlled organisation. 15
- Defined in this Act: amount, business, charitable purpose, council-controlled organisation, exempt income, income, local authority, registered as a charitable entity, trustee

Compare: 2004 No 35 s CW 34

**CW 41 Charities: business income***Exempt income* 20

- (1) Income derived directly or indirectly from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in **section CW 40(1)** is exempt income if—  
 (a) the trust, society, or institution carries out its charitable purposes in New Zealand; and 25  
 (b) the trustee or trustees of the trust, the society, or the institution is or are, at the time that the income is derived, registered as a charitable entity; and  
 (c) no person with some control over the business is able to direct or divert, to their own benefit or advantage, an amount derived from the business. 30

**Subsections (3) to (8)** expand on this subsection.

*Exclusion*

- (2) This section does not apply to income derived by—  
 (a) a council-controlled organisation; or 35  
 (b) a local authority from a council-controlled organisation.

*Carrying on a business: trustee*

- (3) For the purposes of **subsection (1)**, a trustee is treated as carrying on a business if—
- (a) the trustee derives rents, fines, premiums, or other revenues from an asset of the trust; and 5
  - (b) the asset was disposed of to the trust by a person of a kind described in **subsection (5)(b)**; and
  - (c) either—
    - (i) the person retains or reserves an interest in the asset; or 10
    - (ii) the asset will revert to the person.

*Charitable purposes in New Zealand and overseas*

- (4) For the purposes of **subsection (1)(a)**, if the charitable purposes of the trust, society, or institution are not limited to New Zealand, income derived from the business in a tax year is apportioned reasonably between those purposes in New Zealand and those outside New Zealand. Only the part apportioned to the New Zealand purposes is exempt income. 15

*Control over business*

- (5) For the purposes of **subsection (1)(b)** for a tax year, a person is treated as having some control over the business, and as being able to direct or divert amounts from the business to their own benefit or advantage if, in the tax year,— 20
- (a) they are, in any way, whether directly or indirectly, able to determine, or materially influence the determination of,— 25
    - (i) the nature or extent of a relevant benefit or advantage; or
    - (ii) the circumstances in which a relevant benefit or advantage is, or is to be, given or received; and 30
  - (b) their ability to determine or influence the benefit or advantage arises because they are—
    - (i) a settlor or trustee of the trust by which the business is carried on; or
    - (ii) a shareholder or director of the company by which the business is carried on; or 35
    - (iii) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or

- (iv) a person associated with a settlor, trustee, shareholder, or director referred to in any of **subparagraphs (i) to (iii)**.

*Control: settlor asset disposed of to trust*

- (6) For the purposes of **subsection (5)**, a person is treated as a settlor of a trust, and as gaining a benefit or advantage in the carrying on of a business of the trust, if—
  - (a) they have disposed of an asset to the trust, and the asset is used by the trust in the carrying on of the business; and
  - (b) they retain or reserve an interest in the asset, or the asset will revert to them.

*No control*

- (7) For the purposes of **subsection (1)(b)**, a person is not treated as having some control over the business merely because—
  - (a) they provide professional services to the trust or company by which the business is carried on; and
  - (b) their ability to determine, or materially influence the determination of, the nature or extent of a relevant benefit or advantage arises because they—
    - (i) provide the services in the course of and as part of carrying on, as a business, a professional public practice; or
    - (ii) are a trustee company; or
    - (iii) are Public Trust; or
    - (iv) are the Maori Trustee.

*Benefit or advantage*

- (8) For the purposes of **subsection (1)(b)**, a benefit or advantage to a person—
  - (a) may or may not be something that is convertible into money;
  - (b) unless excluded under **paragraph (d)**, includes deriving an amount that would be income of the person under 1 or more of the following provisions:
    - (i) **section CA 1(2)** (Amounts that are income):
    - (ii) **sections CB 1 to CB 23** (which relate to income from business or trade-like activities):
    - (iii) **section CB 31** (Property obtained by theft):

- (iv) **sections CC 1** (Land), **CC 3 to CC 8** (which relate to income from financial instruments), and **CC 9** (Royalties):
- (v) **section CD 1** (Dividend):
- (vi) **sections CE 1** (Amounts derived in connection with employment) and **CE 8** (Attributed income from personal services): 5
- (vii) **section CF 1** (Benefits, pensions, compensation, and government grants):
- (viii) **section CG 3** (Bad debt repayment): 10
- (ix) **sections CQ 1** (Attributed controlled foreign company income) and **CQ 4** (Foreign investment fund income):
- (c) includes retaining or reserving an interest in an asset in the case described in **subsection (3)**, if the person has disposed of the asset to the trust or the asset will revert to them: 15
- (d) does not include earning interest on money lent, if the interest is payable at no more than the current commercial rate, given the nature and term of the loan. 20

*Non-exempt business income*

- (9) If an amount derived from the carrying on of a business by or for a trust is not exempt income because of a failure to comply with **subsection (1)(b)**, the amount is trustee income.

Defined in this Act: amount, associated person, business, charitable purpose, company, council-controlled organisation, director, exempt income, income, interest, local authority, money lent, New Zealand, pay, shareholder, tax year, trustee, trustee company, trustee income

Compare: 2004 No 35 s CW 35

**CW 42 Charitable bequests** 30

*Exempt income*

- (1) An amount of income derived by a deceased's executor or administrator is exempt income to the extent to which the requirements of **subsections (2) and (3)** are met, having regard to all relevant matters including— 35
- (a) the terms of the deceased's will, including the rights of annuitants, legatees, and other beneficiaries; and
  - (b) the nature and extent of the debts and liabilities of, and other charges against, the estate and their likely effect

- on the income and assets available for distribution to the beneficiaries; and
- (c) the shares and prospective shares of the beneficiaries in the income and assets of the estate.
- Gift to charity* 5
- (2) The first requirement is that the amount arises from or is attributable to assets of the estate that have been left to a trust, society, or institution of a kind referred to in **section CW 40(1)**.
- Exempt in hands of charity*
- (3) The second requirement is that the amount, if derived by the trust, society, or institution or by a business carried on by, or for, or for the benefit of it, would be exempt income under **section CW 40 or CW 41**. 10
- Timing of registration as charitable entity*
- (4) An amount of income derived by a deceased's executor or administrator that is derived during the period beginning on the deceased's date of death and ending at the end of the income year that follows the income year in which the deceased died is not prevented from being exempt income under this section merely because the trustee or trustees of the trust, the society, or the institution is not, or are not, registered as a charitable entity. 15  
20
- Requirements of sections CW 40 and CW 41 disregarded*
- (5) For the purposes of **subsection (4)**, until the end of the income year that follows the income year in which the deceased died, the requirements of **sections CW 40 and CW 41** for the trustee or trustees of the trust, the society, or the institution to be registered as a charitable entity must be disregarded when applying those sections for the purposes of this section. 25
- Amounts derived after end of certain period* 30
- (6) This section does not apply to an amount of income derived after the end of the income year that follows the income year in which the deceased died if, at the time that the amount of income is derived, the trustee or trustees of the trust, the

society, or the institution is not, or are not, registered as a charitable entity.

Defined in this Act: amount, business, distribution, exempt income, income, New Zealand, registered as a charitable entity

Compare: 2004 No 35 s CW 36

5

#### **CW 43 Friendly societies**

An amount of income derived by a friendly society is exempt income, except to the extent to which the amount is derived from—

- (a) a business carried on beyond the membership of the friendly society; or 10
- (b) a company registered as an insurer under the Accident Insurance Act 1998.

Defined in this Act: amount, business, company, exempt income, friendly society, income

15

Compare: 2004 No 35 s CW 37

#### **CW 44 Funeral trusts**

Interest or a dividend derived by a trustee in trust for a fund is exempt income if, when the interest or dividend is derived by the trustee,— 20

- (a) the sole purpose of the fund is the payment of the expenses associated with the funerals of—
  - (i) employees of an employer:
  - (ii) spouses, civil union partners, de facto partners, and dependants of employees of the employer: 25
  - (iii) surviving spouses, civil union partners, de facto partners, and surviving dependants of deceased employees of the employer; and
- (b) the employer has at least 10 employees; and
- (c) all persons eligible for benefits from the fund are eligible equally for benefits from the fund; and 30
- (d) no contributions to the fund are made by a person who is not the employer or an employee of the employer; and
- (e) the fund is approved by the Commissioner. 35

Defined in this Act: Commissioner, dividend, employee, employer, exempt income, interest, pay, trustee

Compare: 2004 No 35 s CW 38

**CW 45 Bodies promoting amateur games and sports**

An amount of income derived by a club, society, or association is exempt income if—

- (a) the club, society, or association is established mainly to promote an amateur game or sport; and 5
- (b) the game or sport is conducted for the recreation or entertainment of the general public; and
- (c) no part of the funds of the club, society, or association is used or is available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them. 10

Defined in this Act: amount, associated person, exempt income, income

Compare: 2004 No 35 s CW 39

**CW 46 TAB and racing clubs**

*Exempt income: racing organisations* 15

- (1) An amount of income derived by any of the following bodies is exempt income:
  - (a) the New Zealand Racing Board;
  - (b) New Zealand Thoroughbred Racing;
  - (c) Harness Racing New Zealand; 20
  - (d) the New Zealand Greyhound Racing Association (Incorporated).

*Exempt income: racing clubs*

- (2) An amount of income derived by a racing club, as defined in section 5 of the Racing Act 2003, is exempt income, if none of the club's funds is used or is available to be used for the private pecuniary profit of a member of the club or an associate of a member. 25

Defined in this Act: amount, associated person, exempt income, income

Compare: 2004 No 35 s CW 40 30

**CW 47 Income from conducting gaming-machine gambling**

An amount of income derived by a person that is gross gambling proceeds from gaming-machine gambling is exempt income if—

- (a) the person is authorised to conduct the gaming-machine gambling under the Gambling Act 2003 by a gaming- 35

machine operator's licence and a gaming-machine venue licence; and	
(b) the person complies with the Gambling Act 2003 in applying and distributing the net gambling proceeds from the gaming-machine gambling.	5
Defined in this Act: exempt income, gaming-machine gambling, gaming-machine operator's licence, gaming-machine venue licence, gross gambling proceeds, net gambling proceeds	
Compare: 2004 No 35 s CW 40B	
<b>CW 48 Bodies promoting scientific or industrial research</b>	10
<i>Exempt income</i>	
(1) An amount of income derived by a society or association established mainly to promote or encourage scientific or industrial research is exempt income if—	
(a) the society or association is approved by the Royal Society of New Zealand; and	15
(b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.	
<i>Exclusion</i>	
(2) This section does not apply to a Crown Research Institute.	20
Defined in this Act: amount, associated person, Crown Research Institute, exempt income, income	
Compare: 2004 No 35 s CW 41	
<b>CW 49 Veterinary services bodies</b>	25
<i>Exempt income: veterinary clubs</i>	
(1) An amount of income derived by a veterinary association, club, or society is exempt income if—	
(a) the association, club, or society was established mainly to promote efficient veterinary services in New Zealand; and	30
(b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.	

*Exempt income: Veterinary Council*

- (2) An amount of income derived by the Veterinary Council of New Zealand is exempt income.

Defined in this Act: amount, associated person, exempt income, income, New Zealand

5

Compare: 2004 No 35 s CW 42

**CW 50 Herd improvement bodies**

An amount of income derived by a herd improvement association or society is exempt income if—

- (a) the association or society was established mainly to promote the improvement of the standard of dairy cattle in New Zealand; and 10
- (b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them. 15

Defined in this Act: amount, associated person, exempt income, income, New Zealand

Compare: 2004 No 35 s CW 43

**CW 51 Community trusts**

An amount of income derived by the trustee of a community trust is exempt income. 20

Defined in this Act: amount, community trust, exempt income, income, trustee

Compare: 2004 No 35 s CW 44

**CW 52 Distributions from complying trusts**

To the extent to which **section HC 20** (Distributions from complying trusts) applies to an amount that a person derives as a beneficiary of a trust, the amount is exempt income. 25

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

Compare: 2004 No 35 s HH 3(5)

**CW 53 Foreign-sourced amounts derived by trustees**

To the extent to which **section HC 26** (Foreign-sourced amounts: resident trustees) applies to a foreign-sourced amount that a trustee who is resident in New Zealand derives in an income year, the amount is exempt income. 30

Defined in this Act: exempt income, foreign-sourced amount, income year, non-resident, resident in New Zealand, trustee 35

Compare: 2004 No 35 s HH 4(3B)

**CW 54 Maori authority distributions**

A distribution from a Maori authority to a member, to the extent to which it is not income under **section CV 11** (Maori authorities) is exempt income.

Defined in this Act: exempt income, income, Maori authority, member

5

Compare: 2004 No 35 s HI 5(1)

*Income from certain activities***CW 55 Non-resident aircraft operators***Exempt income*

- (1) An amount of income derived by a non-resident aircraft operator from air transport from New Zealand is exempt income to the extent to which the Commissioner determines that an aircraft operator resident in New Zealand is, in circumstances corresponding to the circumstances of the non-resident aircraft operator, exempt from, or not liable to, income tax imposed by the laws of the country or territory in which the non-resident aircraft operator is resident.

10  
15*Determination*

- (2) A determination by the Commissioner for the purposes of **subsection (1)** may relate to a class of non-resident aircraft operators or a class of resident aircraft operators.

20

*Some definitions*

- (3) In this section,—
- air transport from New Zealand—**
- (a) means the carriage outside New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in New Zealand; and
- (b) if the aircraft calls at another airport in New Zealand before leaving New Zealand on the flight for which the emplaning or embarking occurred, includes that New Zealand portion of the flight
- non-resident aircraft operator** means a person who—
- (a) is engaged in the business of operating an aircraft for air transport from an airport; and

25

30

- (b) is resident in a country or territory outside New Zealand and is not resident in New Zealand.

Defined in this Act: air transport from New Zealand, amount, business, Commissioner, exempt income, income, income tax, New Zealand, non-resident aircraft operator, resident in New Zealand

5

Compare: 2004 No 35 s CW 45

### **CW 56 Non-resident company involved in exploration and development activities**

#### *Exempt income*

- (1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that—
- (a) starts on the beginning of the 2005–06 income year for the non-resident company; and
- (b) ends on 31 December 2009.

10

15

#### *Some definitions*

- (2) In this section,—
- exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:
- (a) operating a ship to provide seismic survey readings;
- (b) drilling an exploratory well or other well
- offshore permit area** means an area of land that is—
- (a) in New Zealand; and
- (b) on the seaward side of the mean high-water mark; and
- (c) a permit area or part of a permit area.

20

25

Defined in this Act: amount, exempt income, exploration and development activities, exploratory well, New Zealand, non-resident company, offshore permit area, permit area

30

Compare: 2004 No 35 s CW 45B

### **CW 57 Disposal of companies' own shares**

- An amount of income derived by a company from disposing of shares in the company is exempt income if—
- (a) the company acquired the shares; and

35

- (b) the acquisition was treated under section 67A(1) of the Companies Act 1993 as not resulting in the cancellation of the shares.

Defined in this Act: amount, cancellation, company, exempt income, income, share  
Compare: 2004 No 35 s CW 46

5

### CW 58 New Zealand companies operating in Niue

*Exempt income: income wholly or mainly from Niue*

- (1) An amount of income derived in a tax year by a New Zealand company that derives its income wholly or mainly from Niue is exempt income.

10

*Exclusion*

- (2) **Subsection (1)** does not apply if the company, if it were a foreign company, would at any time during the tax year be a controlled foreign company.

*Exempt income: dividends*

15

- (3) A dividend derived in a tax year from a New Zealand company that derives its income wholly or mainly from Niue is exempt income, unless the dividend is derived by—
- (a) a person who is resident in New Zealand; or
  - (b) a company that is a controlled foreign company at any time during the tax year; or
  - (c) a trustee of a trust of which a settlor or beneficiary is resident in New Zealand during the tax year.

20

*Exempt income: Niue development projects*

- (4) An amount of income derived by a New Zealand company from a business or enterprise that the company carries on in Niue is exempt income if—
- (a) the business or enterprise is declared by an Order in Council made under **subsection (7)** to be a development project for the purposes of this section; and
  - (b) the company's income is derived wholly or mainly from that business or enterprise; and
  - (c) the amount is derived from sources in Niue; and
  - (d) the amount is derived while the Order in Council is in force.

30

35

*Exclusions*

- (5) **Subsections (1), (3), and (4)** do not apply to—
- (a) an amount of income derived from sources in New Zealand; or
  - (b) a dividend, to the extent to which it constitutes distribution of an amount derived by the company from sources in New Zealand. 5

*Attributed CFC income and FIF income*

- (6) This section does not restrict the application of **section CQ 1** (Attributed controlled foreign company income), or **CQ 4** (Foreign investment fund income), or the FIF rules. For the purposes of the FIF rules, a company that derives its income wholly or mainly from Niue and has exempt income under **subsection (1)** is treated as a foreign company. 10

*Order in Council declaring Niue development project* 15

- (7) The Governor-General may make an Order in Council declaring a business or enterprise to be a development project for the purposes of this section if satisfied that the business or enterprise—
- (a) has been or will be entered upon wholly or mainly for the purpose of developing Niue; or 20
  - (b) is or will be important in the development of Niue.

Defined in this Act: amount, attributed CFC income, business, company, controlled foreign company, dividend, exempt income, FIF, FIF rules, foreign company, income, New Zealand company, resident in New Zealand, settlor, source in New Zealand, tax year, trustee 25

Compare: 2004 No 35 s CW 47

**CW 59 Stake money**

Stake or prize money for a dog race, horse race, or trotting race is exempt income if— 30

- (a) it is paid by a club that is licensed to use the totalisator under the Racing Act 2003; or
- (b) the race is held outside New Zealand.

Defined in this Act: exempt income, New Zealand, pay

Compare: 2004 No 35 s CW 48 35

**CW 60 Providing standard-cost household service***Exempt income under determination*

- (1) An amount of income derived in an income year by a natural person from providing a standard-cost household service is exempt income if the amount is exempt income under a determination made under section 91AA(2)(a) of the Tax Administration Act 1994: 5

*When amount treated as expenditure*

- (2) If **subsection (1)** does not apply, and the amount of standard-cost household service is less than the amount of income of the person, the person is treated, under a determination made under section 91AA of that Act, as incurring an amount of expenditure in providing the services. 10

*Allocation*

- (3) For the purposes of **subsection (2)**, the allocation of the amount of the expenditure occurs under **section BD 4** (Allocation of deductions to particular income years). 15

Defined in this Act: amount, deduction, exempt income, income, income tax liability, income year, standard-cost household service

Compare: 2004 No 35 s CW 49 20

**CW 61 Interest paid under the KiwiSaver Act 2006**

Interest paid by the Commissioner under section 84 of the KiwiSaver Act 2006 is exempt income.

Defined in this Act: Commissioner, exempt income, interest

Compare: 2004 No 35 s CW 49B 25

**CW 62 Avoidance arrangements**

An amount is exempt income if it is treated as exempt income under—

- (a) **section GA 1** (Commissioner's power to adjust): 30  
 (b) **section GB 23** (Excessive remuneration to relatives).

Defined in this Act: amount, exempt income

**CW 63 Exemption under other Acts**

An amount of income expressly exempted from income tax by any other Act is exempt income.

Defined in this Act: amount, exempt income, income, income tax

Compare: 2004 No 35 s CW 50

5

**Subpart CX—Excluded income****Contents***Goods and services tax*

CX 1 GST

*Fringe benefits*

10

*Introductory provisions*

CX 2 Meaning of fringe benefit

CX 3 Excluded income

CX 4 Relationship with assessable income

CX 5 Relationship with exempt income

15

*Fringe benefits*

CX 6 Private use of motor vehicle

CX 7 Employer or associated person treated as having right to use vehicle under arrangement

CX 8 Private use of motor vehicle: use by more than 1 employee

20

CX 9 Subsidised transport

CX 10 Employment-related loans

CX 11 Employment-related loans: loans by life insurers

CX 12 Services for members of Parliament

25

CX 13 Contributions to superannuation schemes

CX 14 Contributions to sickness, accident, or death benefit funds

CX 15 Contributions to funeral trusts

CX 16 Contributions to life or health insurance

30

CX 17 Benefits provided to employees who are shareholders or investors

CX 18 Benefits provided to associates of both employees and shareholders

*Exclusions and limitations*

35

CX 19 Benefits provided instead of allowances

CX 20 Benefits to enable performance of duties

CX 21 Business tools

CX 22 Benefits to non-executive directors

CX 23 Benefits provided on premises

40

CX 24	Benefits related to health or safety	
CX 25	Benefits provided by charitable organisations	
CX 26	Non-liable payments	
CX 27	Assistance with tax returns	
CX 28	Accommodation	5
CX 29	Entertainment	
CX 30	Distinctive work clothing	
CX 31	Contributions to income protection insurance	
CX 32	Services provided to superannuation fund	
CX 33	Goods provided at discount by third parties	10
	<i>Definitions</i>	
CX 34	Meaning of emergency call	
CX 35	Meaning of employee share loan	
CX 36	Meaning of private use	
CX 37	Meaning of unclassified benefit	15
CX 38	Meaning of work-related vehicle	
	<i>Insurance</i>	
CX 39	Life insurers and fully reinsured persons	
CX 40	Superannuation fund deriving amount from life insurance policy	20
CX 41	Resident insurance underwriters	
	<i>Petroleum mining</i>	
CX 42	Disposal of ownership interests in controlled petroleum mining entities	
CX 43	Farm-out arrangements for petroleum mining	25
	<i>Mineral mining</i>	
CX 44	Disposal of mining shares	
CX 45	Disposal of mining shares acquired with reinvestment profit	
CX 46	Repayment of loans made from reinvestment profit	30
	<i>Government grants</i>	
CX 47	Government grants to businesses	
CX 48	Amounts remitted as condition of new start grant	
	<i>Superannuation contributions</i>	
CX 49	Employer's superannuation contributions	35
	<i>Farming, forestry, or fishing</i>	
CX 50	Income equalisation schemes	
	<i>Environmental restoration</i>	
CX 51	Refund from environmental restoration account	
	<i>Inflation-indexed instruments</i>	40
CX 52	Credits for inflation-indexed instruments	

<i>Share-lending arrangements</i>	
CX 53	Share-lending collateral under share-lending arrangements
CX 54	Avoidance arrangements
<i>Minors' beneficiary income</i>	
CX 55	Amounts derived by minors from trusts
CX 56	Taxable distributions from non-complying trusts
<i>Transactions between companies in consolidated groups</i>	
CX 57	Intra-group transactions

### *Goods and services tax*

#### **CX 1 GST**

The following are excluded income of a registered person:

- |     |   |    |
|-----|---|----|
| (a) | output tax on goods and services they supply: |    |
| (b) | GST payable to them by the Commissioner.      | 15 |

Defined in this Act: Commissioner, excluded income, goods, GST payable, output tax, pay, registered person, services

Compare: 2004 No 35 s CX 1

### *Fringe benefits*

#### *Introductory provisions* 20

#### **CX 2 Meaning of fringe benefit**

##### *Meaning*

- |     |   |    |
|-----|---|----|
| (1) | A <b>fringe benefit</b> is a benefit that—  |    |
|     | (a) is provided by an employer to an employee in connection with their employment; and            | 25 |
|     | (b) either—   |    |
|     | (i) arises in a way described in any of <b>sections CX 6, CX 9, CX 10, or CX 12 to CX 16</b> ; or |    |
|     | (ii) is an unclassified benefit; and  |    |
|     | (c) is not a benefit excluded from being a fringe benefit by any provision of this subpart.       | 30 |

##### *Arrangement to provide benefit*

- |     |   |
|-----|---|
| (2) | A benefit that is provided to an employee through an arrangement made between their employer and another person for the |
|-----|---|

benefit to be provided is treated as having been provided by the employer.

*Past, present, or future employment*

- (3) It is not necessary to the existence of a fringe benefit that an employment relationship exists when the employee receives the benefit. 5

*Relationship with subpart RD*

- (4) **Sections RD 26 to RD 64** (which relate to fringe benefit tax) deals with the calculation of the taxable value of fringe benefits.

*Arrangements*

- (5) A benefit may be treated as being provided by an employer to an employee under— 10
- (a) **section GB 31** (FBT arrangements: general):
  - (b) **section GB 32** (Benefit provided to employee's associates). 15

Defined in this Act: arrangement, associated person, employee, employer, employment, fringe benefit, unclassified benefit

Compare: 2004 No 35 s CX 2

**CX 3 Excluded income**

A fringe benefit is excluded income of the employee. 20

Defined in this Act: employee, excluded income, fringe benefit

Compare: 2004 No 35 s CX 3

**CX 4 Relationship with assessable income**

To the extent to which a benefit that an employer provides to an employee in connection with their employment is assessable income, the benefit is not a fringe benefit. 25

Defined in this Act: assessable income, employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 4

**CX 5 Relationship with exempt income** 30

*Exempt income not fringe benefit*

- (1) To the extent to which a benefit that an employer provides to an employee in connection with their employment is exempt income, the benefit is not a fringe benefit.

*Exclusions*

- (2) **Subsection (1)** does not apply to—
- (a) a payment of a premium on a life insurance policy that is excluded from being expenditure on account of an employee under **section CE 5(3)(f) to (i)** (Meaning of expenditure on account of an employee): 5
  - (b) an allowance that is exempt income under **section CW 17** (Expenditure on account, and reimbursement, of employees) to the extent to which it is made to enable the employee to provide a benefit to another person. 10

*Exempt cash payment not fringe benefit*

- (3) To the extent to which a benefit that an employer provides to an employee in connection with their employment would have been exempt income if it had been paid in cash, the benefit is not a fringe benefit. 15

*Exclusion*

- (4) **Subsection (3)** does not apply to interest, dividends, or an allowance under **subsection (2)(b)**. 20
- Defined in this Act: dividend, employee, employer, employment, exempt income, expenditure on account of an employee, fringe benefit, interest, life insurance policy, pay, premium

Compare: 2004 No 35 s CX 5

*Fringe benefits*

**CX 6 Private use of motor vehicle** 25

*When fringe benefit arises* 25

- (1) A fringe benefit arises when—
- (a) a motor vehicle is made available to an employee for their private use; and
  - (b) the person who makes the vehicle available to the employee— 30
    - (i) owns the vehicle:
    - (ii) leases or rents the vehicle:
    - (iii) has a right to use the vehicle under an agreement or arrangement with the employee or a person associated with the employee. 35

*Exclusion: work-related vehicles*

- (2) **Subsection (1)** does not apply when the vehicle is a work-related vehicle.

*Exclusion: emergency calls*

- (3) **Subsection (1)** does not apply when the vehicle is used for an emergency call. 5

*Exclusion: absences from home*

- (4) **Subsection (1)** does not apply when the employee is absent from home, with the vehicle, for a period of at least 24 hours continuously, if the employee is required, in the performance of their duties, to use a vehicle and regularly to be absent from home. 10

*Use on part of day*

- (5) For the purposes of **subsections (3) and (4)**, the whole of the day on which a motor vehicle is used as described in the applicable subsection is treated as a day on which the vehicle is not available for private use. 15

Defined in this Act: emergency call, employee, fringe benefit, lease, motor vehicle, private use, work-related vehicle

Compare: 2004 No 35 s CX 6 20

## **CX 7 Employer or associated person treated as having right to use vehicle under arrangement**

*When this section applies*

- (1) This section applies for the application of the FBT rules to an agreement or arrangement— 25
- (a) between an employer, or a person associated with the employer, and an employee, or a person associated with the employee; and
  - (b) transferring to the employer or person associated with the employer a right to use a motor vehicle under terms agreed between the parties. 30

*Person treated as having right to use vehicle*

- (2) The employer or associated person is treated as having a right to use the motor vehicle for a period during which the employee— 35
- (a) uses the vehicle privately:

(b) has a right to use the vehicle privately.

Defined in this Act: employee, employer, FBT rules, lease, motor vehicle

Compare: 2004 No 35 s CX 6B

**CX 8 Private use of motor vehicle: use by more than 1 employee**

5

If, on any day, a motor vehicle is made available by an employer for the private use of more than 1 employee, this availability is treated as a single instance. The taxable value of the fringe benefit is reduced by the total amount of any contributions paid by an employee or employees.

10

Defined in this Act: amount, contribution, employee, employer, fringe benefit, motor vehicle, pay, private use

Compare: 2004 No 35 s CX 7

**CX 9 Subsidised transport**

A fringe benefit arises when an employer provides subsidised transport to an employee.

15

Defined in this Act: employee, employer, fringe benefit, subsidised transport

Compare: 2004 No 35 s CX 8

**CX 10 Employment-related loans**

*When fringe benefit arises*

20

- (1) A fringe benefit arises when an employer provides a loan to an employee.

*Exclusions*

- (2) **Subsection (1)** does not apply to a loan made—

(a) as an employee share loan: 25

(b) under a share purchase scheme:

(c) by a superannuation fund to the extent to which the value of the loan constitutes income of the fund under **section CS 18** (Value of loan treated as fund income):

(d) as an advance of salary and wages, if,— 30

- (i) in the period for which the employer is required to forward a return to the Commissioner under **sections RD 26 to RD 64** (which relate to fringe benefit tax), the total outstanding of such advances to the employee is no more than \$2,000; 35  
and

- (ii) the contract of employment does not require the employer to make the advance.

*Loan owing*

- (3) The employer provides a fringe benefit in a tax year in which the loan is owing. The circumstances in which a loan is owing include a case in which, under the arrangement for the loan, an amount is payable in the future, or would be payable in the future if a particular event happened, and the employee or an associated person is or would be liable to pay the amount. 5

Defined in this Act: amount, arrangement, associated person, employee, employee share loan, employer, employment-related loan, fringe benefit, income, pay, share purchase scheme, superannuation fund, tax year 10

Compare: 2004 No 35 s CX 9

**CX 11 Employment-related loans: loans by life insurers**

*When fringe benefit treated as arising* 15

- (1) A life insurer provides a benefit that is treated as an employment-related loan if—
  - (a) the life insurer makes a loan to a person who holds a life insurance policy (**person A**) or to a person associated with person A; and 20
  - (b) the life insurance policy is offered or entered into in New Zealand; and
  - (c) either—
    - (i) the loan is made because of the capacity or status of person A as a policyholder; or 25
    - (ii) the interest charged on the loan depends on the capacity or status of person A as a policyholder.

*Life insurer as employer*

- (2) For the purposes of the FBT rules, the life insurer is treated as an employer and person A or the person associated with them is treated as an employee. 30

*Meaning of life insurer*

- (3) In this section, **life insurer**—
  - (a) means a person who is the insurer under the life insurance policy: 35
  - (b) includes—
    - (i) a person associated with the life insurer:

- (ii) a person with whom the life insurer has entered into an arrangement relating to the making of the loan.

Defined in this Act: arrangement, associated person, employee, employer, employment-related loan, FBT rules, fringe benefit, interest, life insurance policy, life insurer, offered or entered into in New Zealand

5

Compare: 2004 No 35 s CX 10

### **CX 12 Services for members of Parliament**

A fringe benefit arises when travel, accommodation, attendance, and communications services are exempt income under **section CW 30** (Services for members of Parliament).

10

Defined in this Act: exempt income, fringe benefit

Compare: 2004 No 35 s CX 11

### **CX 13 Contributions to superannuation schemes**

*When fringe benefit arises*

15

- (1) A fringe benefit arises when an employer contributes to a superannuation scheme for the benefit of an employee.

*Exclusion*

- (2) This section does not apply if the contribution is an employer's superannuation contribution.

20

Defined in this Act: contribution, employee, employer, employer's superannuation contribution, fringe benefit, superannuation scheme

Compare: 2004 No 35 s CX 12

### **CX 14 Contributions to sickness, accident, or death benefit funds**

25

A fringe benefit arises when an employer makes a contribution for the benefit of an employee to a sickness, accident, or death benefit fund.

Defined in this Act: contribution, employee, employer, fringe benefit, sickness, accident, or death benefit fund

30

Compare: 2004 No 35 s CX 13

**CX 15 Contributions to funeral trusts**

A fringe benefit arises when an employer makes a contribution to a fund in the circumstances described in **section CW 44** (Funeral trusts).

Defined in this Act: contribution, employer, fringe benefit

5

Compare: 2004 No 35 s CX 14

**CX 16 Contributions to life or health insurance**

*When fringe benefit arises*

- (1) A fringe benefit arises when an employer pays a specified insurance premium or makes a contribution to the insurance fund of a friendly society for the benefit of an employee. 10

*Exclusion*

- (2) This section does not apply to a premium or contribution described in **section CZ 15** (Accident insurance contracts before 1 July 2000). 15

*Meaning of specified insurance premium*

- (3) In this section, **specified insurance premium** means a premium paid for the benefit of an employee, their spouse, civil union partner or de facto partner, or their child on a policy described in any of **subsections (4) to (6)**. 20

*Life insurance*

- (4) The first kind of policy referred to in **subsection (3)** is a policy of insurance on the life of the employee or their spouse, civil union partner or de facto partner, or on their joint lives, or on the life of their child, to which all the following apply: 25
- (a) for policies other than whole of life policies, the minimum term is—
- (i) 10 years; or
- (ii) 5 years, for a policy whose maturity date is no earlier than the date on which a life assured reaches 60 years of age; and 30
- (b) the only benefits payable earlier than 10 years from the start of the policy or its maturity date, whichever is earlier, are—
- (i) benefits payable for the death of a life assured; or 35

- (ii) additional benefits payable for an accident to a life assured or disease or sickness of a life assured; and
  - (c) the policy—
    - (i) provides for a payment on the death of a life assured of a benefit that is not a return of premiums, is substantially capital, and is not materially less than the total benefit payable under the policy otherwise than for death; or 5
    - (ii) is a policy on the life of a person who, because of ill health or physical disability, is unable to effect a policy of the kind described in **subparagraph (i)** at ordinary rates; or 10
    - (iii) is a deferred life assurance policy on the life of a child. 15
- Life insurance: pension benefit*
- (5) The second kind of policy referred to in **subsection (3)** is a policy described in **subsection (4)**, or that would be described if it met the requirements of **subsection (4)(c)(i)**, and under which the only benefits payable are for a life assured and by way of— 20
    - (a) a pension starting on or after the date on which the life assured reaches 60 years of age and continuing for the life of the employee, their spouse, civil union partner or de facto partner, or their child; or 25
    - (b) on the death of the life assured,—
      - (i) the return of the part of the premiums paid for the assurance to secure the payment of a pension dependent on the life of the employee, their spouse, civil union partner or de facto partner, or their child; and 30
      - (ii) the payment of the part of each bonus declared on the policy attributable to the part of the premiums described in **subparagraph (i)**.
- Health insurance* 35
- (6) The third kind of policy referred to in **subsection (3)** is a policy of insurance under which the benefits are payable only for—
    - (a) an accident, whether fatal or not, to the employee, their spouse, civil union partner or de facto partner, or their child; or 40

- (b) disease or sickness of the employee, their spouse, civil union partner or de facto partner, or their child.

Defined in this Act: contribution, employee, employer, friendly society, fringe benefit, life insurance, pay, specified insurance premium, year

Compare: 2004 No 35 s CX 15

5

## **CX 17 Benefits provided to employees who are shareholders or investors**

### *Benefit provided in connection with employment*

- (1) If a company or a trustee of a group investment fund provides a non-cash benefit to an employee who holds shares in the company or who is an investor in the fund, the benefit is treated as having been provided in connection with the employment. The shares or investment may be held in the employee's own right or beneficially. 10

### *Whether fringe benefit or dividend*

- (2) A company or a trustee of a group investment fund that has provided a non-cash benefit to an employee who holds shares in the company or who is an investor in the fund may choose to treat the benefit as a fringe benefit or a dividend. If the company or trustee does not make an election, the benefit is treated as a fringe benefit. If the company or trustee chooses to treat the benefit as a dividend, the FBT rules do not apply. 15  
20

### *Exclusion*

- (3) Neither **subsection (1)** nor **subsection (2)** applies to a non-cash benefit provided by a company to a non-executive director of the company. 25

### *Non-cash benefits*

- (4) **Subsection (2)** applies to non-cash benefits that would,— 30
- (a) in the absence of **section CD 32** (Employee benefits), be dividends under **section CD 4** (Transfers of value generally) if provided to a person in their capacity as a shareholder:
- (b) in the absence of **section CX 4**, be unclassified benefits if provided to a person in their capacity as an employee.

*Notice of election*

- (5) The company or trustee must give notice to the Commissioner of the election referred to in **subsection (2)** in the time allowed for filing a fringe benefit tax return for the period in which the benefit was provided. 5

Defined in this Act: Commissioner, company, dividend, employee, employment, FBT rules, fringe benefit, fringe benefit tax, group investment fund, investor, non-executive director, notice, return, share, shareholder, trustee, unclassified benefit

Compare: 2004 No 35 s CX 16

**CX 18 Benefits provided to associates of both employees and shareholders** 10

*When this section applies*

- (1) This section applies when—
- (a) a benefit provided to an associated person of an employee would be treated as a fringe benefit under **section GB 32** (Benefit provided to employee's associates) in the absence of **section CX 4**; and 15
  - (b) the employer is a company; and
  - (c) the associated person is also associated with a shareholder in the company; and 20
  - (d) the associated person is not a company; and
  - (e) the associated person is not a shareholder in the company; and
  - (f) the benefit would be a dividend if provided to the shareholder. 25

*FBT rules apply, not dividend rules*

- (2) The benefit is subject to the FBT rules and is treated as not being a dividend. 30

Defined in this Act: associated person, company, dividend, employee, employer, FBT rules, fringe benefit, shareholder

Compare: 2004 No 35 s GC 15(3), (4)

*Exclusions and limitations***CX 19 Benefits provided instead of allowances***When not fringe benefit*

- (1) A benefit that an employer provides to an employee in connection with their employment is not a fringe benefit to the extent to which it removes the need that would otherwise exist 35

for the employer to pay the employee an allowance of 1 of the following kinds:

- (a) an allowance that, if it had been paid,—
  - (i) would have been exempt income under **section CW 17** (Expenditure on account, and reimbursement, of employees); and 5
  - (ii) would have been paid for reasons other than to enable the employee to provide a benefit to another person; or
- (b) an allowance that reimburses the employee for transport costs that— 10
  - (i) would have been incurred both in connection with their employment and for the benefit of the employer in travelling between home and work; and 15
  - (ii) would have been attributable to any 1 or more of the factors set out in **section CW 18(3)** (Allowance for additional transport costs).

*Temporary change in workplace*

- (2) A benefit that an employer provides to an employee is not a fringe benefit if it— 20
  - (a) is in substitution for an allowance described in **subsection (1)(b)**; and
  - (b) is brought about because the employee has a temporary change in their place of work while in the same employment; and 25
  - (c) reimburses the employee for transport costs that would have been incurred relating to travel by one or more of the employee's spouse, civil union partner, or de facto partner, and relatives for the purpose of visiting the employee in the temporary place of work; and 30
  - (d) has a value that is no more than the amount that would be provided under the allowance described in **subsection (1)(b)**. 35

Defined in this Act: employee, employer, employment, exempt income, fringe benefit, pay, relative 35

Compare: 2004 No 35 s CX 17

**CX 20 Benefits to enable performance of duties**

The taxable value of a benefit that an employer provides to an employee by way of subsidised transport, or in the form of 40

expenditure that an employer incurs on accommodation or transport provided to an employee, is zero if the expenditure—

- (a) relates to travel by the employee in order for them to perform their employment duties; and 5
- (b) does not relate to the providing or taking of leave or a vacation; and
- (c) is not increased as a result of the benefit.

Defined in this Act: employee, employer, subsidised transport

Compare: 2004 No 35 s CX 18

10

### **CX 21 Business tools**

*When use of business tool not fringe benefit*

- (1) The private use of a business tool that an employer provides to an employee, and the availability for private use of such a business tool, is not a fringe benefit if—

15

- (a) the business tool is provided mainly for business use; and
- (b) the cost of the business tool to the employer, including the amount of any deduction for the cost of the business tool that the employer may make under section 20(3) of the Goods and Services Tax Act 1985, is no more than \$5,000. 20

*Use away from employer's premises*

- (2) For the purposes of **subsection (1)**, a business tool that is not taken to and used on the employer's premises may nevertheless be provided mainly for business use if the employee performs a significant part of the employee's employment duties away from the premises. 25

Defined in this Act: business tool, business use, employee, employer, fringe benefit

Compare: 2004 No 35 s CX 18B

30

### **CX 22 Benefits to non-executive directors**

A transfer of value to a non-executive director that is a dividend under **section CD 20(2)** (Benefits of shareholder-employees or directors) is not a fringe benefit if it is made solely because of their capacity as a non-executive director. 35

Defined in this Act: dividend, fringe benefit, non-executive director, transfer of value

Compare: 2004 No 35 s CX 19

**CX 23 Benefits provided on premises***When not fringe benefit*

- (1) A benefit, other than free, discounted, or subsidised travel, accommodation, or clothing, is not a fringe benefit if the benefit is— 5
- (a) provided to the employee by the employer of the employee and received or used by the employee on the premises of—
    - (i) the employer: 10
    - (ii) a company that is part of the same group of companies as the employer: 15
  - (b) provided to the employee by a company that is part of the same group of companies as the employer of the employee and received or used by the employee on the premises of— 15
    - (i) the employer:
    - (ii) the company that provides the benefit.

*Premises of person*

- (2) In this section, the premises of a person— 20
- (a) include premises that the person owns or leases: 20
  - (b) include premises, other than those referred to in **paragraph (a)**, on which an employee of the person is required to perform duties for the person:
  - (c) do not include premises occupied by an employee of the person for residential purposes. 25

Defined in this Act: company, employee, employer, employer's premises, fringe benefit, group of companies, lease

Compare: 2004 No 35 s CX 20

**CX 24 Benefits related to health or safety**

- A benefit that an employer provides to an employee is not a fringe benefit to the extent to which it— 30
- (a) is related to the employee's health or safety; and
  - (b) is aimed at hazard management in the workplace as contemplated in the Health and Safety in Employment Act 1992; and 35
  - (c) would be excluded by **section CX 23** from being a fringe benefit if provided on the employer's premises.

Defined in this Act: employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 20B

**CX 25 Benefits provided by charitable organisations***When not fringe benefit*

- (1) A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which— 5
- (a) the employee receives the benefit mainly in connection with their employment; and
  - (b) the employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes. 10

*When employer provides charge facilities*

- (2) **Subsection (1)** does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than 5% of the employee's salary or wages for the tax year. 15

*Meaning of short-term charge facilities*

- (3) For the purposes of the FBT rules, a **short-term charge facility** means an arrangement that— 20
- (a) enables an employee of a charitable organisation to obtain goods or services that have no connection with the organisation or its operations by buying or hiring the goods or services or charging the cost of the goods or services to an account; and 25
  - (b) places the liability for some or all of the payment for the goods or services on the organisation; and
  - (c) is not a fringe benefit under **section CX 10**. 30

Defined in this Act: business, charitable organisation, employee, employment, fringe benefit, pay, short-term charge facility 30

Compare: 2004 No 35 s CX 21

**CX 26 Non-liable payments**

A benefit received by an employee is not a fringe benefit to the extent to which it is received in a quarter or in an income year 35

in which they derive 1 or more PAYE income payments, all of which are not liable for income tax.

Defined in this Act: employee, fringe benefit, income tax, income year, PAYE income payment, quarter

Compare: 2004 No 35 s CX 22

5

### **CX 27 Assistance with tax returns**

An employer's assistance with the preparation of an employee's income statement or return of income is not a fringe benefit when the expenditure incurred in providing the assistance is expenditure for which the employee would have been allowed a deduction, if it had been incurred by the employee, under **section DB 3** (Determining tax liabilities).

10

Defined in this Act: deduction, employee, employer, fringe benefit, income statement, return of income

Compare: 2004 No 35 s CX 23

15

### **CX 28 Accommodation**

The value of board, or an allowance instead of accommodation, that an employer provides to an employee in connection with their employment or service is not a fringe benefit.

Defined in this Act: employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 24

20

### **CX 29 Entertainment**

*When not fringe benefit*

- (1) A benefit in a form of entertainment described in **section DD 2** (Limitation rule) that an employer provides to an employee is not a fringe benefit. This subsection is overridden by **subsection (2)**.

25

*When is fringe benefit*

- (2) A benefit in a form of entertainment described in **section DD 2** that an employer provides to an employee is a fringe benefit if—
- (a) the employee does not receive or use it in the course of employment; and
  - (b) the employee does not receive or use it as a necessary consequence of their employment duties; and
  - (c) either—

30

35

- (i) the employee may choose when to receive or use the benefit; or
- (ii) the entertainment is of a kind described in **section DD 7** (Entertainment outside New Zealand).

Defined in this Act: employee, employer, employment, fringe benefit

5

Compare: 2004 No 35 s CX 25

### **CX 30 Distinctive work clothing**

*When not fringe benefit*

- (1) Distinctive work clothing that an employer provides to an employee is not a fringe benefit, whether provided by sale or otherwise. 10

*Meaning of distinctive work clothing*

- (2) In this section, **distinctive work clothing** means clothing, including a single item of clothing, that—
- (a) is worn by an employee as, or as part of, a uniform that can be identified with the employer— 15
    - (i) through the permanent and prominent display of a name, logo, or other identification that the employer regularly uses in carrying on their activity or undertaking; or 20
    - (ii) because the colour scheme, pattern, or style is readily associated with the employer; and
  - (b) is worn in the course, or as an incident, of employment; and
  - (c) is not clothing that employees would normally wear for private purposes. 25

Defined in this Act: distinctive work clothing, employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 26

### **CX 31 Contributions to income protection insurance** 30

An employer who satisfies a liability to pay, or contribute to the payment of, a premium for income protection insurance for the benefit of an employee does not provide a fringe benefit to the employee if a payment of the insurance to the employee would be assessable income of the employee. 35

Defined in this Act: contribution, employee, employer, fringe benefit, pay

Compare: 2004 No 35 s CX 26B

**CX 32 Services provided to superannuation fund**

A fringe benefit does not arise if services are provided to a superannuation fund to the extent to which the superannuation fund would have been allowed a deduction for the expenditure incurred in providing the services if the expenditure had been incurred by the superannuation fund. 5

Defined in this Act: deduction, fringe benefit, superannuation fund

Compare: 2004 No 35 s CX 27

**CX 33 Goods provided at discount by third parties**

*When this section applies* 10

- (1) This section applies when an employer and a person who is not associated with the employer have an arrangement through which goods are provided by the person at a discount.

*When not fringe benefit*

- (2) A discount provided by the person to an employee in a group of employees is not a fringe benefit if— 15
- (a) the person offers a discount to a group of persons that—
- (i) negotiates the discount on an arm's-length basis; and
  - (ii) does not include the group of employees; and 20
  - (iii) is comparable in number to the group of employees; and
- (b) the discount offered to the group of employees is the same or less than the discount offered to the group described in **paragraph (a)**. 25

Defined in this Act: arrangement, associated person, employee, employer, fringe benefit

Compare: 2004 No 35 s CX 27B

*Definitions***CX 34 Meaning of emergency call** 30

**Emergency call** means a visit that an employee is required to make, to which all the following apply:

- (a) the employee makes the visit from their home in the course of their employment; and
- (b) the purpose of the visit is to provide— 35

- (i) essential services relating to the operation of the plant or machinery of the employer, or of their client or customer; or
  - (ii) essential services relating to the maintenance of services provided by a local authority or a public authority; or 5
  - (iii) essential services relating to the carrying on of a business for the supply of energy or fuel to the public; or
  - (iv) emergency services relating to the health or safety of any person; and 10
  - (c) the employer, their client or customer, or a member of the public requests the services; and
  - (d) except when **paragraph (b)(iv)** applies, the services are required to be performed between the hours of 6.00 pm and 6.00 am on days other than a Saturday, Sunday, or statutory public holiday, and at any time on other days. 15
- Defined in this Act: business, emergency call, employee, employer, employment, local authority, public authority
- Compare: 2004 No 35 s CX 28 20

### CX 35 Meaning of employee share loan

#### *Meaning*

- (1) **Employee share loan** means a loan made to an employee if—
  - (a) the loan is made for the sole purpose of enabling the employee to acquire, under a scheme of acquisition,— 25
    - (i) shares, rights, or options in the company that is their employer:
    - (ii) shares, rights, or options in a company that is associated with their employer; and
  - (b) the employee uses the loan only for the purpose of the acquisition; and 30
  - (c) the employee beneficially owns the shares, rights, or options throughout the term of the loan; and
  - (d) the employee must immediately repay the loan in full if they stop being the beneficial owner of any of the shares, rights, or options; and 35
  - (e) the company issuing the shares, rights, or options must maintain a dividend-paying policy throughout the term of the loan.

*Exclusions*

- (2) This section does not apply—
- (a) to shares, rights, or options in an attributing company:
  - (b) to a loan made under a share purchase scheme:
  - (c) to an employer and an employee who are associated persons. 5

Defined in this Act: associated person, attributing company, company, dividend, employee, employee share loan, employer, pay, share

Compare: 2004 No 35 s CX 29

**CX 36 Meaning of private use** 10

**Private use**, for a motor vehicle, includes—

- (a) the employee's use of the vehicle for travel between home and work; and
- (b) any other travel that confers a private benefit on the employee. 15

Defined in this Act: employee, motor vehicle, private use

Compare: 2004 No 35 s CX 30

**CX 37 Meaning of unclassified benefit**

**Unclassified benefit** means a fringe benefit that arises if an employer provides an employee with a benefit in connection with their employment that is— 20

- (a) not a benefit referred to in any of **sections CX 6 to CX 16**; and
- (b) not a benefit excluded under this subpart.

Defined in this Act: employee, employer, employment, fringe benefit, unclassified benefit 25

Compare: 2004 No 35 s CX 31

**CX 38 Meaning of work-related vehicle***Meaning*

- (1) **Work-related vehicle**, for an employer, means a motor vehicle that prominently and permanently displays on its exterior,— 30
- (a) if the employer owns the vehicle, the form of identification that the employer regularly uses in carrying on their undertaking or activity; or 35
  - (b) if the employer rents the vehicle, the form of identification—

- (i) that the employer regularly uses in carrying on their undertaking or activity; or
- (ii) that the person from whom it is rented regularly uses in carrying on their undertaking or activity.

*Exclusion: car*

5

- (2) **Subsection (1)** does not apply to a car.

*Exclusion: private use*

- (3) A motor vehicle is not a work-related vehicle on any day on which the vehicle is available for the employee's private use, except for private use that is—
- (a) travel to and from their home that is necessary in, and a condition of, their employment; or
  - (b) other travel in the course of their employment during which the travel arises incidentally to the business use.

10

Defined in this Act: business use, car, employee, employer, employment, motor vehicle, work-related vehicle

15

Compare: 2004 No 35 s CX 32

## *Insurance*

### **CX 39 Life insurers and fully reinsured persons**

*Persons to whom this section applies*

20

- (1) The amounts described in **subsection (2)** are excluded income of—
- (a) a life insurer:
  - (b) a person who is carrying on a business of providing life insurance but who is treated as not carrying on a business of providing life insurance because they have full reinsurance.

25

*Excluded income*

- (2) The amounts are—
- (a) a premium derived by the life insurer or the person under a life insurance policy; or
  - (b) a claim receivable by the life insurer or the person under a life reinsurance policy.

30

Defined in this Act: amount, business, claim, excluded income, full reinsurance, life insurance, life insurance policy, life insurer, life reinsurance policy, premium

35

Compare: 2004 No 35 s CX 33

### **CX 40 Superannuation fund deriving amount from life insurance policy**

*When this section applies*

- (1) This section applies when a superannuation fund invests funds in a life insurance policy offered or entered into in New Zealand. 5

*Excluded income*

- (2) An amount that the superannuation fund derives from the policy is excluded income. 10
- Defined in this Act: amount, excluded income, life insurance policy, offered or entered into in New Zealand, superannuation fund
- Compare: 2004 No 35 s CX 34

### **CX 41 Resident insurance underwriters**

*When this section applies*

- (1) This section applies when a natural person or an unincorporated body of natural persons— 15
- (a) is resident in New Zealand; and
  - (b) carries on a business of providing general insurance or guarantees against loss, damage, or risk; and
  - (c) as part of the business, is liable under an insurance contract, whether or not named in it, to pay, or to contribute towards the payment of, some or all of an amount claimable by the person insured under the contract. 20

*Excluded income* 25

- (2) Income that the natural person or persons derive from carrying on the business outside New Zealand is excluded income to the extent to which it is income not referred to in any of **section YD 4 (7) or (10) to (12)** (Classes of income treated as having New Zealand source). 30

Defined in this Act: amount, business, excluded income, general insurance, income, insurance contract, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s CX 35

### *Petroleum mining*

#### **CX 42 Disposal of ownership interests in controlled petroleum mining entities**

##### *Excluded income*

- (1) The consideration that a person derives from disposing of shares or trust interests in a controlled petroleum mining entity is excluded income of the person. 5

##### *Application of Tax Administration Act 1994*

- (2) Section 65 of the Tax Administration Act 1994 applies when this section applies. 10

Defined in this Act: consideration, controlled petroleum mining entity, dispose, excluded income, share

Compare: 2004 No 35 s CX 36

#### **CX 43 Farm-out arrangements for petroleum mining**

Farm-in expenditure under a farm-out arrangement is excluded income of a petroleum miner who is the farm-out party in the farm-out arrangement. 15

Defined in this Act: excluded income, farm-in expenditure, farm-out arrangement, farm-out party, petroleum miner

Compare: 2004 No 35 s CX 37

20

### *Mineral mining*

#### **CX 44 Disposal of mining shares**

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

- (1) **Subsection (2)** applies when— 25
- (a) a mining company derives an amount from disposing of a mining share; and
  - (b) the disposal is to a person other than a mining company or a mining holding company; and
  - (c) the company has an excess amount because the amount derived from disposing of the share is more than the cost of the share calculated under **section DU 11(2)** (Disposal of mining shares by company); and 30
  - (d) the excess amount would, in the absence of this section, be income of the company under any of **sections CB 1 to**

**CB 5** (which relate to income from business or trade-like activities).

*Excluded income*

- (2) The excess amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes in the prescribed period. 5

*When subsection (4) applies*

- (3) **Subsection (4)** applies when—
- (a) a mining company (the **seller**) derives an amount from disposing of a mining share; and 10
  - (b) the disposal is to a mining company or to a mining holding company (the **buyer**); and
  - (c) the seller has an excess amount because the amount derived from disposing of the share is more than the cost of the share calculated under **section DU 11(2)**; and 15
  - (d) the excess amount would, in the absence of this section, be income of the seller under any of **sections CB 1 to CB 5**.

*Excluded income*

- (4) The excess amount is excluded income of the seller to the extent to which it consists of mining shares issued to it in the buyer. 20

Defined in this Act: amount, excluded income, income, mining company, mining holding company, mining purposes, mining share, prescribed period

Compare: 2004 No 35 s CX 38

**CX 45 Disposal of mining shares acquired with reinvestment profit** 25

*When subsection (2) applies*

- (1) **Subsection (2)** applies when—
- (a) a company derives an amount from disposing of a mining share; and 30
  - (b) an amount of the reinvestment profit of the company is used in calculating the deduction for the cost of the mining share under **section DU 11(2)** (Disposal of mining shares by company); and
  - (c) some or all of the amount derived from the disposal would, in the absence of this section, be income of the 35

company under **section CU 14** (Recovery of reinvestment profit on disposal of mining shares).

*Excluded income*

- (2) The amount that would be income is excluded income of the company to the extent to which it is, or is to be, used for mining purposes in the prescribed period. 5

*When subsection (4) applies*

- (3) **Subsection (4)** applies when—
- (a) a company (the **seller**) derives an amount from disposing of a mining share; and 10
  - (b) the disposal is to a mining company or to a mining holding company (the **buyer**); and
  - (c) an amount of the reinvestment profit of the seller is used in calculating the deduction for the cost of the mining share under **section DU 11(2)**; and 15
  - (d) some or all of the amount derived from the disposal would, in the absence of this section, be income of the seller under **section CU 14**.

*Excluded income*

- (4) The amount that would be income is excluded income of the seller to the extent to which it consists of mining shares issued to it in the buyer. 20

*When subsection (6) applies*

- (5) **Subsection (6)** applies when—
- (a) a company derives an amount from disposing of a mining share; and 25
  - (b) the disposal is of the kind described in **section CU 20** (Mining company or mining holding company liquidated); and
  - (c) an amount of the reinvestment profit of the company is used in calculating the deduction for the cost of the mining share under **section DU 11(2)**; and 30
  - (d) some or all of the amount derived from the disposal would, in the absence of this section, be income of the company under **section CU 14**. 35

*Excluded income*

- (6) The amount that would be income is excluded income of the company to the extent to which it consists of mining shares.

Defined in this Act: amount, company, deduction, excluded income, income, mining company, mining holding company, mining purposes, mining share, prescribed period, reinvestment profit

5

Compare: 2004 No 35 s CX 39

**CX 46 Repayment of loans made from reinvestment profit***When this section applies*

- (1) This section applies when an amount would, in the absence of this section, be income of a company under **section CU 16** (Recovery of reinvestment profit on repayment of loans).

10

*Excluded income*

- (2) The amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes in the prescribed period.

15

Defined in this Act: amount, company, excluded income, income, mining purposes, prescribed period

Compare: 2004 No 35 s CX 40

***Government grants***

20

**CX 47 Government grants to businesses***When this section applies*

- (1) This section applies when—
- (a) a local authority or a public authority makes a payment to a person for a business that the person carries on; and
  - (b) the payment—
    - (i) is in the nature of a grant or subsidy; or
    - (ii) is a grant-related suspensory loan; and
  - (c) the payment is not in the nature of an advance or loan; and
  - (d) the payment is made to the person in relation to—
    - (i) expenditure that they incur and for which they are allowed a deduction; or
    - (ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they have an amount of depreciation loss.

25

30

35

*Excluded income*

- (2) The payment is excluded income of the person.

*Exclusions*

- (3) This section does not apply to—
- (a) a large budget screen production grant: 5
  - (b) a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent to which the grant relates to expenditure—
    - (i) incurred by the recipient before the grant; and 10
    - (ii) for which the recipient would be allowed a deduction in the absence of **section DF 1** (Government grants to businesses).

Defined in this Act: amount, business, deduction, depreciation loss, excluded income, grant-related suspensory loan, large budget screen production grant, local authority, pay, public authority 15

Compare: 2004 No 35 s CX 41

**CX 48 Amounts remitted as condition of new start grant***When this section applies*

- (1) This section applies when in an income year of a person— 20
- (a) the person carries on a business of—
    - (i) animal husbandry:
    - (ii) poultry-keeping:
    - (iii) beekeeping:
    - (iv) breeding horses other than bloodstock: 25
    - (v) horticulture:
    - (vi) cropping; and
  - (b) the person is paid a new start grant for the business for an event that is a qualifying event; and
  - (c) the person in carrying on the business— 30
    - (i) incurs a liability for expenditure or loss before the declaration of the state of emergency that relates to the qualifying event; and
    - (ii) before the date that is 3 months after the end of the state of emergency, takes the liability into account in calculating the person's taxable income for an income year; and 35
  - (d) the liability referred to in **paragraph (c)(i)** is forgiven or otherwise remitted—

- (i) as a prerequisite for the payment of the new start grant; and
- (ii) before the date that is 18 months after the end of the state of emergency; and
- (e) the amount of the remitted liability is income of the person under **section CG 2** (Remitted amounts). 5

*Excluded income*

- (2) The remitted liability is excluded income of the person to the extent to which it is the greater of zero and the amount calculated using the formula— 10
  - remitted amount – current loss – loss balance – other loss.

*Definition of items in formula*

- (3) In the formula,—
  - (a) **remitted amount** is the amount of the remitted liability: 15
  - (b) **current loss** is the net loss that the person would have for the income year in which the liability is remitted in the absence of this section:
  - (c) **loss balance** is the loss balance that is available to the person for offset against net income for the income year in which the liability is remitted: 20
  - (d) **other loss** is a loss that—
    - (i) is incurred by a person associated with the person who receives the new start grant; and
    - (ii) meets the requirements of **subsection (4)**. 25

*Loss incurred by associated person from business or land*

- (4) The loss referred to in **subsection (3)(d)**—
  - (a) is incurred by a person who—
    - (i) carries on or has carried on the business for which the new start grant is paid or owns or has owned an estate in fee simple or leasehold estate in land used in the business; and 30
    - (ii) in the opinion of the Commissioner, is under a substantial degree of control by the person; and
    - (iii) in the opinion of the Commissioner, has a substantial identity of interests with the person; and 35
  - (b) is incurred from—
    - (i) the business referred to in **paragraph (a)(i)**:

- (ii) land that is used in the business; and
- (c) is, for the income year in which the liability is remitted,—
- (i) a tax loss component of the associated person:
- (ii) a loss balance for the associated person; and 5
- (d) is included in the calculation in **subsection (3)** to the extent determined by the Commissioner, having regard to the interests of the associated person that are separate from those of the person.
- Notice to associated person* 10
- (5) The Commissioner must give to the associated person notice of a determination under **subsection (4)(d)**.
- Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, new start grant, notice, pay, qualifying event 15
- Compare: 2004 No 35 s CX 41B

### *Superannuation contributions*

#### **CX 49 Employer's superannuation contributions**

- An employer's superannuation contribution is excluded income of— 20
- (a) the employee for whose benefit the contribution is provided; and
- (b) the trustees of the superannuation scheme to whom the contribution is made.
- Defined in this Act: employee, employer's superannuation contribution, excluded income, superannuation scheme, trustee 25
- Compare: 2004 No 35 s CX 42

### *Farming, forestry, or fishing*

#### **CX 50 Income equalisation schemes**

- A refund under **section EH 8** (Refund of excess deposit), **EH 42** (Refund of excess deposit), or **EH 68** (Refund of excess deposit) is excluded income. 30
- Defined in this Act: excluded income
- Compare: 2004 No 35 s CX 43

### *Environmental restoration*

#### **CX 51 Refund from environmental restoration account**

A refund to a person under **section EK 9** (Refund of payment if excess, lacking details) is excluded income of the person.

Defined in this Act: excluded income

5

Compare: 2004 No 35 s CX 43B

### *Inflation-indexed instruments*

#### **CX 52 Credits for inflation-indexed instruments**

*When this section applies*

- (1) This section applies when— 10
- (a) an amount payable to a person who is a lender for money lent is determined by a fixed relationship to 1 or more indices of general price inflation in New Zealand; and
  - (b) an amount on account of an increase in the amount payable is credited to the lender's account by the borrower; and 15
  - (c) the credit represents a recovery of a decrease, previously debited in account, in the amount payable over a previous period. 20

*Excluded income*

- (2) The credit is excluded income of the lender.

Defined in this Act: amount, excluded income, money lent, New Zealand, pay

Compare: 2004 No 35 s CX 44

### *Share-lending arrangements*

25

#### **CX 53 Share-lending collateral under share-lending arrangements**

An amount of share-lending collateral derived by a person under a share-lending arrangement is excluded income of the person.

30

Defined in this Act: amount, excluded income, share-lending arrangement, share-lending collateral

Compare: 2004 No 35 s CX 44B

**CX 54 Avoidance arrangements**

An amount is excluded income if it is treated as excluded income under—

- (a) **section GA 1** (Commissioner's power to adjust):
- (b) **section GB 23** (Excessive remuneration to relatives). 5

Defined in this Act: amount, excluded income

Compare: 2004 No 35 ss GB 1, GD 3

*Minors' beneficiary income***CX 55 Amounts derived by minors from trusts**

To the extent to which **section HC 35** (Beneficiary income of minors) applies to an amount of beneficiary income, the amount is excluded income of the minor. 10

Defined in this Act: amount, beneficiary income, excluded income, minor

Compare: 2004 No 35 ss HH 3A–3F

**CX 56 Taxable distributions from non-complying trusts** 15

An amount that a person derives in a tax year as a taxable distribution from a non-complying trust under **section HC 19** (Taxable distributions from non-complying trusts) is excluded income of the person.

Defined in this Act: amount, exempt income, income year, non-complying trust, tax year, taxable distribution 20

Compare: 2004 No 35 s HH 3(1)

*Transactions between companies in consolidated groups***CX 57 Intra-group transactions**

*When this section applies* 25

- (1) This section applies for the purposes of **section FM 8** (Transactions between group companies: income) when a company that is part of a consolidated group derives an amount from a transaction or arrangement with another company that is part of the same group and the amount would not be income if the group were 1 company. 30

*Excluded income*

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

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

Compare: 2004 No 35 s HB 2(1)(a)

5

**Subpart CZ—Terminating provisions****Contents**

CZ 1	Share purchase agreement income before 19 July 1968	
CZ 2	Mining company's 1970–71 tax year	
CZ 3	Exchange variations on 8 August 1975	10
CZ 4	Mineral mining: company making loan before 1 April 1979	
CZ 5	Exempt interest: overseas money lent to government or local or public authority before 29 July 1983	
CZ 6	Commercial bills before 31 July 1986	15
CZ 7	Primary producer co-operative companies: 1987–88 income year	
CZ 8	Farm-out arrangements for petroleum mining before 16 December 1991	
CZ 9	Available capital distribution amount: 1965 and 1985 to 1992	20
CZ 10	Transitional relief for calculation of attributed repatriation dividends: 2 July 1992	
CZ 11	Recovery of deductions for software acquired before 1 April 1993	25
CZ 12	General insurance with risk period straddling 1 July 1993	
CZ 13	Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996	
CZ 14	Treatment of superannuation fund interests in group investment funds on 1 April 1999	30
CZ 15	Accident insurance contracts before 1 July 2000	
CZ 16	Interest payable to exiting company: 2001	
CZ 17	Dividend of exiting company: 2001	
CZ 18	Benefit provider approved within 6 months of 25 November 2003	35
CZ 19	Community trust receipts in 2004–05 or 2005–06 tax year	
CZ 20	Disposal of personal property lease asset under specified lease	40
CZ 21	Superannuation fund loans made to members before 1 April 1989	

**CZ 1 Share purchase agreement income before 19 July 1968**

In **sections CE 1 to CE 4** (which relate to employment income), **share purchase agreement** does not include any agreement entered into before 19 July 1968.

Defined in this Act: share purchase agreement

5

Compare: 2004 No 35 s CZ 1

**CZ 2 Mining company's 1970–71 tax year**

*When this section applies*

- (1) This section applies when—
- (a) section 152 or 153 of the Land and Income Tax Act 1954 (as in force before the commencement of section 153F of the Act) applied to a mining company for the 1970–71 tax year; and 10
  - (b) the company acquires an asset by incurring the exploration expenditure or development expenditure referred to in section 27(3)(a) of the Land and Income Tax Amendment Act 1971. 15

*Application of subpart CU*

- (2) The provisions of **subpart CU** (Income from mineral mining) apply, with any necessary modifications, as follows: 20
- (a) **section CU 3** (Disposal of assets) applies to the company as if every reference in the section to an asset included a reference to an asset of the kind described in **subsection (1)(b)** that the company disposes of in the 1971–72 tax year or a later tax year: 25
  - (b) **section CU 3** applies to a person who acquires an asset of the kind described in **subsection (1)(b)** from the company as if every reference in the section to an asset included a reference to such an asset that the person acquires in the 1971–72 tax year or a later tax year: 30
  - (c) **section CU 10** (Mining asset used to derive income other than income from mining) applies to the company as if every reference in the section to an asset included a reference to an asset of the kind described in **subsection (1)(b)** that the company uses, wholly or mainly, to derive income other than income from mining in the 1971–72 tax year or a later tax year. 35

*Resident and non-resident mining operators*

- (3) This section applies, with any necessary modifications, to an asset of the kind referred to in paragraph (i) of item “a” of the formula in section 31(3) of the Land and Income Tax Amendment Act (No 2) 1972 that a resident mining operator acquires or that a non-resident mining operator acquires. 5

Defined in this Act: income, income from mining, mining company, non-resident mining operator, resident mining operator, tax year

Compare: 2004 No 35 s CZ 2

**CZ 3 Exchange variations on 8 August 1975** 10*When this section applies*

- (1) This section applies when—
- (a) a person carrying on a business in New Zealand—
    - (i) receives a loan in 2 or more instalments for the purposes of the business; or 15
    - (ii) makes a loan in 2 or more instalments in the course of carrying on the business; and
  - (b) an exchange variation arises in relation to the whole or partial repayment of the loan; and
  - (c) the person derives an amount or incurs a loss through the exchange variation. 20

*Income or deduction*

- (2) The amount derived is income of the person and the loss incurred is a deduction that they are allowed.

*Instalments and repayments* 25

- (3) For the purposes of this section, unless the terms of the loan expressly provide otherwise,—
- (a) each instalment is treated as a separate loan; and
  - (b) repayments are applied so that the separate loans are repaid in the order in which they were received. 30

*Exclusion*

- (4) This section does not apply to a financial arrangement to which the financial arrangements rules apply.

*Some definitions*

- (5) In this section,— 35

- exchange variation**, for the repayment of some or all of the loan, excluding interest, means a variation by virtue of a fluctuation in the value of the currency or currencies of 1 or more countries other than New Zealand in relation to New Zealand currency, that occurs between— 5
- (a) the amount of the repayment expressed in New Zealand currency at the time at which the repayment was made; and
  - (b) the amount expressed in New Zealand currency that would have been required to make that repayment on or at the later of 8 August 1975 and the time at which the loan was first made 10
- loan** means,—
- (a) for money lent, to a person, on or after 1 January 1974 and on or before 22 January 1985, money that— 15
    - (i) was lent with the consent of the Minister under the Capital Issues (Overseas) Regulations 1965 or the Overseas Investment Regulations 1974 or with the consent of the Reserve Bank under the Exchange Control Regulations 1978, as applicable; and 20
    - (ii) was lent in a currency other than New Zealand currency; and
    - (iii) was expressed to be repayable in a currency other than New Zealand currency: 25
  - (b) for money lent, by a person, on or after 1 January 1974 and on or before 22 January 1985, money that—
    - (i) was lent with the consent of the Reserve Bank under the Exchange Control Regulations 1978 if required; and 30
    - (ii) was expressed to be repayable in a currency other than New Zealand currency:
  - (c) for money lent, to a person, on or after 23 January 1985, money that—
    - (i) is lent in a currency other than New Zealand currency; and 35
    - (ii) is expressed to be repayable in a currency other than New Zealand currency:

- (d) in relation to money lent, by a person, on or after 23 January 1985, money that is expressed to be repayable in a currency other than New Zealand currency.

Defined in this Act: amount, business, deduction, exchange variation, financial arrangement, financial arrangements rules, income, loan, money lent, New Zealand, pay

5

Compare: 2004 No 35 s CZ 3

#### **CZ 4 Mineral mining: company making loan before 1 April 1979**

*When this section applies*

10

- (1) This section applies when **sections CU 17 to CU 19** (which relate to the repayment by a mining company of an amount written off) would have applied to a loan by a company to another company made on or before 31 March 1979 if the Income Tax Amendment Act 1979 had not been enacted.

15

*Application of sections CU 17 to CU 19*

- (2) The sections apply, as far as applicable, to such a loan as if section 45 of the Income Tax Amendment Act 1979 were the only provision of it that had been enacted.

20

Defined in this Act: company, mineral

Compare: 2004 No 35 s CZ 4

#### **CZ 5 Exempt interest: overseas money lent to government or local or public authority before 29 July 1983**

*Exempt income*

- (1) Amounts that a non-resident derives are exempt income if they are derived from—
- (a) stock or debentures issued before 29 July 1983 by the government of New Zealand or by a local authority or a public authority, the interest on which is payable out of New Zealand; or
- (b) loans entered into before 29 July 1983, the interest on which was to be exempt from income tax in New Zealand under an agreement or arrangement made with the government of New Zealand.

25

30

*Application posted or received before 29 July 1983*

- (2) For the purposes of **subsection (1)(b)**, a loan entered into on or after 29 July 1983 is treated as having been entered into before that date if an exemption of a kind referred to in that provision was authorised as a result of an application received by or posted to the government of New Zealand before 29 July 1983. 5

Defined in this Act: amount, arrangement, debenture, exempt income, income tax, interest, local authority, money lent, New Zealand, non-resident, pay, public authority 10

Compare: 2004 No 35 s CZ 5

**CZ 6 Commercial bills before 31 July 1986***Income: redemption*

- (1) The amount that a person receives on the redemption of a commercial bill owned by the person is income of the person. 15

*Income: disposal*

- (2) The value of a commercial bill on the day its owner disposes of it is income of the owner. This subsection does not apply if the disposal is a transfer under a relationship agreement. 20

Defined in this Act: amount, commercial bill, income, relationship agreement 20

Compare: 2004 No 35 s CZ 6

**CZ 7 Primary producer co-operative companies: 1987–88 income year***Income: sale of asset*

- (1) If a primary producer co-operative company disposes of an asset for which the company was allowed a deduction under section 200 of the Income Tax Act 1976 for the 1987–88 or a previous income year, the company is treated as deriving income in the income year of disposal of an amount equal to the lesser of— 25
- (a) the total of all deductions relating to the asset that were allowed under section 200; and 30
- (b) the amount that the company derived from the disposal of the asset.

*Income: payments to shareholders*

- (2) If a primary producer co-operative company has been allowed a deduction under section 200 for the 1987–88 or a previous income year, and a payment has been made to a shareholder of the company either on the surrender of any of their shares or on the liquidation of the company, part of the payment is treated as income of the shareholder. The part that is income is determined under **subsection (3)**. 5

*Amounts attributable to deductions*

- (3) The part of the payment that is treated as income is only such part as— 10
- (a) is more than the available subscribed capital per share calculated under the slice rule of the shares surrendered or held on liquidation by the shareholder; and
  - (b) is attributable to an increase in the value of the company's assets that was caused by the company applying or appropriating a deduction allowed under section 200. 15

*Some definitions*

- (4) In this section,— 20
- primary producer co-operative company** means a company that, at the end of the 1987–88 income year,—
- (a) was a primary producer co-operative company, as defined in section 200(1) and (9); and
  - (b) could qualify for a deduction under section 200(4)
- section 200** means section 200 of the Income Tax Act 1976 as it was in force before it was repealed by section 41(1) of the Income Tax Amendment Act (No 5) 1988 (which, in general, allowed primary producer co-operative companies to claim a deduction for profits that were reinvested in certain defined primary produce activities and assets). 25 30

Defined in this Act: amount, available subscribed capital, income, income year, liquidation, pay, primary producer co-operative company, section 200, share, shareholder, slice rule

Compare: 2004 No 35 s CZ 7

### **CZ 8 Farm-out arrangements for petroleum mining before 16 December 1991**

#### *Excluded income*

- (1) Excess expenditure under a farm-out arrangement entered into before 16 December 1991 is excluded income of the transferor. 5

#### *Some definitions*

- (2) In **subsection (1)**, **excess expenditure**, **farm-out arrangement**, and **transferor** have the same meanings as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992. 10

Defined in this Act: excess expenditure, excluded income, farm-out arrangement, transferor

Compare: 2004 No 35 s CZ 8

### **CZ 9 Available capital distribution amount: 1965 and 1985 to 1992** 15

#### *Section CD 44(7)(e)*

- (1) For the purposes of **section CD 44(7)(e)** (Available capital distribution amount), a company derives a capital gain amount if—
- (a) before 1 April 1988, a net profit or gain was derived by the company to which section 4(5) of the Income Tax Act 1976, and not section 4(5A) of the Income Tax Act 1976, applied immediately before those provisions were repealed by section 31(1) of the Income Tax Amendment Act (No 5) 1988; or 20 25
- (b) an amount is derived by the company that is attributable to—
- (i) a deduction allowed in the 1985–86 or 1986–87 tax year for livestock under section 86E of the Income Tax Act 1976; or 30
- (ii) a revaluation of livestock in any of the 1986–87 to 1991–92 tax years under section 86A of the Income Tax Act 1976; or
- (iii) a deduction allowed in the 1988–89 tax year for the revaluation of trading stock of wine, brandy, and whisky under section 87A of the Income Tax Act 1976. 35

*Section CD 44(14)(b)*

- (2) For the purposes of **section CD 44(14)(b)**,—
- (a) the amount has been excluded by section 4(3) of the Land and Income Tax Act 1954 from treatment as a dividend; or
- (b) the issue has been excluded by section 3(3) of the Income Tax Act 1976 from treatment as a bonus issue.

5

Defined in this Act: amount, bonus issue, company, dividend, trading stock

Compare: 2004 No 35 s CZ 9

**CZ 10 Transitional relief for calculation of attributed repatriation dividends: 2 July 1992** 10

*Loans made by CFC to intermediary before 2 July 1992*

- (1) **Subsection (2)** applies for the purposes of calculating attributed repatriation from a CFC to the extent to which—
- (a) the CFC made a loan before 8.00 pm New Zealand standard time on 2 July 1992; and
- (b) the loan enabled another person (the **intermediary**) to make a loan to a New Zealand resident associated with the CFC; and
- (c) the loan is not a loan that is an arrangement subject to **section GB 8** (Arrangements involving attributed repatriation from CFCs); and
- (d) the New Zealand resident associated person repays the intermediary and the intermediary repays the CFC; and
- (e) the CFC uses the proceeds to make a loan directly to the New Zealand resident associated person.

15

20

25

*Loan to associate: treated as existing for whole accounting period*

- (2) The loan to the New Zealand resident associated person is treated as if it were in existence at the start of the accounting period of the CFC in which it is in fact made.

30

*Property acquired under contract binding before 2 July 1992*

- (3) Subsection (4) applies for the purposes of calculating attributed repatriation from a CFC if the CFC—
- (a) acquires any property (including an amount accruing on a financial arrangement) under a binding contract

35

- entered into before 8.00 pm New Zealand standard time on 2 July 1992; and
- (b) the acquisition is not as a result of any voluntary action taken by the CFC after that time.
- Acquired property: treated as existing for whole accounting period* 5
- (4) The property is treated as if it were held by the CFC at the start of the accounting period of the CFC in which it is in fact acquired.
- Defined in this Act: accounting period, arrangement, associated person, attributed repatriation, CFC, financial arrangement, New Zealand, New Zealand resident, pay 10
- Compare: 2004 No 35 s CZ 10
- CZ 11 Recovery of deductions for software acquired before 1 April 1993**
- What this section applies to* 15
- (1) This section applies to any of the following items for the acquisition of which a person was allowed a deduction before 1 April 1993:
- (a) the copyright in software:
- (b) the right to use the copyright in software: 20
- (c) the right to use software.
- Income*
- (2) An amount derived from the disposal of the item is income.
- Relationship with sections EE 46 to EE 54 and EZ 21*
- (3) **Sections EE 46 to EE 54** (which relate to disposals and similar events) apply to the item. **Section EZ 21** (Adjusted tax value for software acquired before 1 April 1993) deals with the adjusted tax value of the item. 25
- Defined in this Act: adjusted tax value, amount, income
- Compare: 2004 No 35 s CZ 11 30
- CZ 12 General insurance with risk period straddling 1 July 1993**
- When this section applies*
- (1) This section applies when—

- (a) a company carries on a business of providing general insurance or guarantees against loss, damage, or risk, immediately before and on 1 July 1993; and
- (b) the company holds a reinsurance contract for the general insurance that covers a period of risk starting before 1 July 1993 and ending after 1 July 1993; and 5
- (c) the company pays the premiums under the contract outside New Zealand.

*Income*

- (2) An amount derived by the company from a claim under the reinsurance contract is income of the company if the event giving rise to the claim occurs on or after 1 July 1993. 10

*Timing*

- (3) The income is allocated to the income year in which the event giving rise to the claim occurs. 15

Defined in this Act: amount, business, company, general insurance, income, income year, New Zealand, pay, reinsurance contract

Compare: 2004 No 35 s CZ 12

### **CZ 13 Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996** 20

#### *Units and interests in unit trusts and group investment funds*

- (1) All units in a unit trust and interests in a group investment fund on issue on 1 April 1996 are treated, on and from that date, as not having been issued on terms that their redemption would be subject to the slice rule. 25

*Election made for units or interests*

- (2) All units or interests to which **subsection (1)** applies and for which an election has been made relying on **paragraph (c)** of the definition of the term **shares of the same class** in **section YA 1** (Definitions) are treated on and from 1 April 1996 as if the election made in reliance upon **paragraph (c)** had never been made. 30

*Exclusion*

- (3) This section does not apply to a unit or interest if the manager or trustee of the unit trust or group investment fund so 35

chooses, by giving notice to the Commissioner before 1 April 1996, in which case the relevant unit or interest is treated, on and from 1 April 1996, as having been issued on terms that its redemption would be subject to the slice rule.

Defined in this Act: Commissioner, group investment fund, notice, shares of the same class, slice rule, trustee, unit trust

5

Compare: 2004 No 35 s CZ 13

#### **CZ 14 Treatment of superannuation fund interests in group investment funds on 1 April 1999**

*When this section applies*

10

- (1) This section applies when a superannuation fund has an interest in a group investment fund on 1 April 1999.

*Exclusions from dividends*

- (2) **Section CD 22(4)** (Returns of capital: off-market share cancellations) does not apply to the interest.

15

*Trustee's election*

- (3) If a trustee of a group investment fund chose on or before 31 March 1999 to treat a superannuation fund interest in a group investment fund as subject to **section CD 22(4)**,—
- (a) **subsection (2)** does not apply to the interest:
- (b) **section CD 22(2)** applies to the interest on and after 1 April 1999.

20

Defined in this Act: dividend, group investment fund, interest, superannuation fund, trustee

Compare: 2004 No 35 s CZ 14

25

#### **CZ 15 Accident insurance contracts before 1 July 2000**

A premium or contribution referred to in **section CX 16(2)** (Contributions to life or health insurance) is—

- (a) a premium or contribution paid for an accident insurance contract, as defined in section 13 of the Accident Insurance Act 1998, that was in force before 1 July 2000; or
- (b) a premium or contribution paid for a contract to which section 188(1)(a) of the Act applied, to the extent to which it related to cover and entitlements for work-

30

35

related personal injury, that was in force before 1 July 2000.

Defined in this Act: contribution, pay

Compare: 2004 No 35 s CZ 15

- CZ 16 Interest payable to exiting company: 2001** 5
- Interest payable under schedule 4, clause 12 of the Dairy Industry Restructuring Act 2001 to an exiting company, as defined in section 5 of the Act, as a result of a buy-out of the company's interests in the New Zealand Dairy Board is exempt income. 10
- Defined in this Act: exempt income, interest, pay
- Compare: 2004 No 35 s CZ 16
- CZ 17 Dividend of exiting company: 2001**
- If an exiting company, as defined in section 5 of the Dairy Industry Restructuring Act 2001, derives a dividend as a result of a buy-out of the company's interests in the New Zealand Dairy Board under schedule 4 of the Act, the dividend is exempt income. 15
- Defined in this Act: dividend, exempt income
- Compare: 2004 No 35 s CZ 17 20
- CZ 18 Benefit provider approved within 6 months of 25 November 2003**
- When this section applies*
- (1) This section applies when a person (the **provider**)— 25
- (a) is— 25
- (i) an incorporated body; or
- (ii) a trustee; and
- (b) provides accident insurance, health insurance, life insurance, or other health and welfare benefits to natural persons (the **recipients**); and 30
- (c) either—
- (i) was approved as a sickness, accident, or death benefit fund by the Commissioner on or before 24 November 2003; or
- (ii) administers a fund that was approved as a sickness, accident, or death benefit fund by the Commissioner on or before 24 November 2003; and 35

- (d) has been approved by the Commissioner as an organisation that the Commissioner considers operates on the principles of mutuality for recipients
  - (i) within the 6 months starting on 25 November 2003; or 5
  - (ii) in a further period allowed by the Commissioner, if the provider satisfies the Commissioner that the provider was not aware of the requirement for the Commissioner's approval in sufficient time to obtain the approval under **subparagraph (i)**. 10

*Exempt income*

- (2) An amount derived by a provider is exempt income if—
  - (a) the amount is not derived from a business carried on by the provider beyond the circle of the recipients; and
  - (b) each of the recipients is— 15
    - (i) a beneficiary of the trust for which the provider is the trustee:
    - (ii) a member of the provider:
    - (iii) a member of an organisation that directly or indirectly controls the provider: 20
    - (iv) a relative of a person described in any of **subparagraphs (i) to (iii)**.

Defined in this Act: amount, business, Commissioner, exempt income, life insurance, relative, sickness, accident, or death benefit fund, trustee

Compare: 2004 No 35 s CZ 18 25

### **CZ 19 Community trust receipts in 2004–05 or 2005–06 tax year**

An amount of income derived by a trustee or company is exempt income if—

- (a) the amount would be exempt income under **section CW 40** (Charities: non-business income) or **CW 41** (Charities: business income) but for the trustee or company making a dividend, distribution, or settlement to a community trust in the 2004–05 or 2005–06 tax year on the winding up of the trust or company; and 30 35
- (b) either—
  - (i) the corpus of the trust was provided by the community trust; or

- (ii) the company is wholly owned by the community trust.

Defined in this Act: amount, community trust, company, corpus, dividend, exempt income, income, tax year, trustee

Compare: 2004 No 35 s CZ 19

5

## **CZ 20 Disposal of personal property lease asset under specified lease**

*When this section applies*

- (1) This section applies for the purposes of **section FZ 2** (Effect of specified lease on lessor and lessee) when a personal property lease asset that is leased under a specified lease is sold, assigned or leased on or after the term of the lease. 10

*Income of lessor: when lease ends before term*

- (2) The amount of the excess described in **section FZ 2(5)(c)** is treated as income derived by the lessor in the income year in which the lease is terminated. 15

*Income of lessor: when lease ends*

- (3) The amount of the excess described in **section FZ 2(7)** is treated as income derived by the lessor in the income year in which the term of the lease ends. 20

*Income of lessee*

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

Defined in this Act: amount, income year, lessee, lessor, personal property lease asset, specified lease, term of the lease 25

Compare: 2004 No 35 s FC 6(7), (8)

## **CZ 21 Superannuation fund loans made to members before 1 April 1989**

*When this section applies*

30

- (1) This section applies for the purposes of **section CS 18** (Value of loan treated as fund income) in the case of a loan made by a superannuation fund to a member if—
- (a) it was made before 1 April 1989; and

- (b) the rate of interest payable on the loan cannot be reviewed.

*Prescribed rate of interest varied*

- (2) The prescribed rate of interest is treated as being—
  - (a) the non-concessionary rate of interest for the tax year in which the loan agreement was signed or, if not in writing, agreed to by all parties, in the case of a loan made before 1 April 1985: 5
  - (b) the prescribed rate of interest for the quarter in which the loan agreement was signed or, if not in writing, agreed to by all parties, in any other case. 10

Defined in this Act: interest, member, non-concessionary rate of interest, pay, prescribed rate of interest, quarter, superannuation fund, tax year

Compare: 2004 No 35 s GD 6(3)

## Part D Deductions

### Subpart DA—General rules

#### Contents

DA 1	General permission	5
DA 2	General limitations	
DA 3	Effect of specific rules on general rules	
DA 4	Treatment of amount of depreciation loss	

#### DA 1 General permission

*Nexus with income* 10

- (1) A person is allowed a deduction for an amount of expenditure or loss, including an amount of depreciation loss, to the extent to which the expenditure or loss is—
- (a) incurred by them in deriving—
    - (i) their assessable income; or 15
    - (ii) their excluded income; or
    - (iii) a combination of their assessable income and excluded income; or
  - (b) incurred by them in the course of carrying on a business for the purpose of deriving— 20
    - (i) their assessable income; or
    - (ii) their excluded income; or
    - (iii) a combination of their assessable income and excluded income.

*General permission* 25

- (2) **Subsection (1)** is called the **general permission**.

*Avoidance arrangements*

- (3) **Section GB 33** (Arrangements involving depreciation loss) may apply to override the general permission in relation to an amount of depreciation loss. 30

Defined in this Act: amount, assessable income, business, deduction, depreciation loss, excluded income, general permission, loss

Compare: 2004 No 35 s DA 1

**DA 2 General limitations***Capital limitation*

- (1) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is of a capital nature. This rule is called the **capital limitation**. 5

*Private limitation*

- (2) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is of a private or domestic nature. This rule is called the **private limitation**.

*Exempt income limitation*

- (3) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving exempt income. This rule is called the **exempt income limitation**. 10

*Employment limitation*

- (4) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving income from employment. This rule is called the **employment limitation**. 15

*Withholding tax limitation*

- (5) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving non-resident passive income of the kind referred to in **section RF 2(3)** (Non-resident passive income). This rule is called the **withholding tax limitation**. 20

*Non-residents' foreign-sourced income limitation*

- (6) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving non-residents' foreign-sourced income. This rule is called the **non-residents' foreign-sourced income limitation**. 25

*Relationship of general limitations to general permission*

- (7) Each of the general limitations in this section overrides the general permission. 30

Defined in this Act: amount, capital limitation, deduction, employment limitation, exempt income, exempt income limitation, general limitation, general permission, income from employment, loss, non-residents' foreign-sourced income, non- 35

residents' foreign-sourced income limitation, private limitation, withholding tax limitation

Compare: 2004 No 35 s DA 2

### DA 3 Effect of specific rules on general rules

- |     |   |    |
|-----|---|----|
|     | <i>Supplements to general permission</i>  | 5  |
| (1) | A provision in any of <b>subparts DB to DZ</b> may supplement the general permission. In that case, a person to whom the provision applies does not have to satisfy the general permission to be allowed a deduction. |    |
|     | <i>Express reference needed to supplement</i>   | 10 |
| (2) | A provision in any of <b>subparts DB to DZ</b> takes effect to supplement the general permission only if it expressly states that it supplements the general permission.  |    |
|     | <i>Relationship of general limitations to supplements to general permission</i>   | 15 |
| (3) | Each of the general limitations overrides a supplement to the general permission in any of <b>subparts DB to DZ</b> , unless the provision creating the supplement expressly states otherwise.                        |    |
|     | <i>Relationship between other specific provisions and general permission or general limitations</i>   | 20 |
| (4) | A provision in any of <b>subparts DB to DZ</b> may override any 1 or more of the general permission and the general limitations.  |    |
|     | <i>Express reference needed to override</i>   |    |
| (5) | A provision in any of <b>subparts DB to DZ</b> takes effect to override the general permission or a general limitation only if it expressly states that—  | 25 |
|     | (a) it overrides the general permission or the relevant limitation; or  |    |
|     | (b) the general permission or the relevant limitation does not apply.   | 30 |

*Part E*

- (6) No provision in **Part E** (Timing and quantifying rules) supplements the general permission or overrides the general permission or a general limitation.

Defined in this Act: deduction, general limitation, general permission, supplement

5

Compare: 2004 No 35 s DA 3

**DA 4 Treatment of amount of depreciation loss**

The capital limitation does not apply to an amount of depreciation loss merely because the item of property is itself of a capital nature.

10

Defined in this Act: amount, capital limitation, depreciation loss

Compare: 2004 No 35 s DA 4

**Subpart DB—Specific rules for expenditure types****Contents***Taxes*

15

- DB 1 Taxes, other than GST, and penalties  
 DB 2 GST  
 DB 3 Determining tax liabilities  
 DB 4 Chatham Islands dues

*Financing costs*

20

- DB 5 Transaction costs: borrowing money for use as capital  
 DB 6 Interest: not capital expenditure  
 DB 7 Interest: most companies need no nexus with income  
 DB 8 Interest: money borrowed to acquire shares in group companies  
 DB 9 Interest incurred on money borrowed to acquire shares in attributing companies  
 DB 10 Interest expenditure by excess debt entity  
 DB 11 Interest or expenditure connected to profit-related or substituting debentures

25

30

*Financial arrangements adjustments*

- DB 12 Negative base price adjustment  
 DB 13 Base price adjustment under old financial arrangements rules  
 DB 14 Repayment of debt sold at discount to associate of debtor  
 DB 15 Security payment  
 DB 16 Sureties

35

<b><i>Share-lending arrangements</i></b>		
DB 17	Share-lending collateral under share-lending arrangements	
DB 18	Replacement payments and imputation credits under share-lending arrangements	5
<b><i>Premises or land costs</i></b>		
DB 19	Transaction costs: leases	
DB 20	Expenses of failed or withdrawn application for resource consent	
DB 21	Destruction of temporary building	10
DB 22	Amounts paid for non-compliance with covenant for repair	
DB 23	Amounts paid for non-compliance and change in use	
<b><i>Revenue account property</i></b>		
DB 24	Cost of revenue account property	15
DB 25	Share losses	
DB 26	Cancellation of shares held as revenue account property	
DB 27	Amount from profit-making undertaking or scheme and not already in income	
DB 28	Amount from major development or division and not already in income	20
DB 29	Amount from land affected by change and not already in income	
DB 30	Apportionment when land acquired with other property	
DB 31	Cost of non-specified mineral	25
<b><i>Bad debts</i></b>		
DB 32	Bad debts	
DB 33	Bad debts owed to estates	
<b><i>Research and development</i></b>		
DB 34	Scientific research	30
DB 35	Research or development	
DB 36	Some definitions	
DB 37	Patent expenses	
DB 38	Expenses of failed or withdrawn patent application	
DB 39	Patent rights: devising patented inventions	35
DB 40	Patent rights acquired before 1 April 1993	
DB 41	Patent applications or patent rights acquired on or after 1 April 1993	
<b><i>Marketing</i></b>		
DB 42	Public benefit gifts by company	40

<b><i>Theft and bribery</i></b>		
DB 43	Property misappropriated by employees or service providers	
DB 44	Making good loss from misappropriation by partners	
DB 45	Restitution of stolen property	5
DB 46	Bribes paid to public officials	
<b><i>Pollution control</i></b>		
DB 47	Avoiding, remedying, or mitigating effects of discharge of contaminant	
<b><i>Repayments</i></b>		10
DB 48	Payments for remitted amounts	
DB 49	Restrictive covenant breached	
<b><i>Matching rules: revenue account property, prepayments, and deferred payments</i></b>		
DB 50	Adjustment for opening values of trading stock, live-stock, and excepted financial arrangements	15
DB 51	Adjustment for prepayments	
DB 52	Adjustment for deferred payment of employment income	
<b><i>Change to accounting practice</i></b>		
DB 53	Adjustment for change to accounting practice	20
<b><i>Exempt income</i></b>		
DB 54	Expenditure incurred in deriving exempt dividend	
<b><i>Use of motor vehicle under certain arrangements</i></b>		
DB 55	Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 7	25
<b><i>Payments to spouses, civil union partners, or de facto partners</i></b>		
DB 56	Payments to spouses, civil union partners, or de facto partners other than for services	
<b><i>Avoidance and non-market transactions</i></b>		30
DB 57	Adjustment for avoidance arrangements	
DB 58	Market value substituted	

---

## ***Taxes***

<b>DB 1</b>	<b>Taxes, other than GST, and penalties</b>	
	<i>No deduction</i>	35
(1)	A person is denied a deduction for the following:	
	(a) income tax:	

- (b) a civil penalty under Part 9 of the Tax Administration Act 1994:
- (c) a tax, a penalty, or interest on unpaid tax that is—
- (i) payable under the laws of a country or territory outside New Zealand; and 5
  - (ii) substantially the same as a civil penalty as defined in section 3(1) of the Tax Administration Act 1994, or a criminal penalty under Part 9 of the Act, or interest imposed under Part 7 of the Act. 10
- Meaning of income tax*
- (2) In this section, **income tax**—
- (a) includes—
    - (i) further income tax:
    - (ii) a tax imposed in a country or territory outside New Zealand that is substantially the same as income tax: 15
    - (iii) imputation penalty tax:
    - (iv) FDP, further FDP, and FDP penalty tax:
    - (v) attributing company election tax: 20
  - (b) does not include—
    - (i) FBT:
    - (ii) ESCT.
- Link with subpart DA*
- (3) This section overrides the general permission. 25
- Defined in this Act: attributing company election tax, deduction, ESCT, FBT, FDP, FDP penalty tax, further FDP, further income tax, general permission, GST, imputation penalty tax, income tax, New Zealand, pay, tax
- Compare: 2004 No 35 s DB 1
- DB 2 GST** 30
- No deduction*
- (1) A registered person is denied a deduction for the following:
- (a) input tax on a supply of goods or services to them:
  - (b) GST payable by them to the Commissioner.
- Deduction* 35
- (2) A registered person is allowed a deduction for output tax on a supply of goods or services that section 21 or 21I(1) to 21I(3)

of the Goods and Services Tax Act 1985 treats them as making, but only to the extent to which—

- (a) they are allowed a deduction for expenditure that they incur in acquiring or producing the goods or services; or
- (b) they are allowed a deduction for an amount of depreciation loss for the goods or services. 5

*Exclusion*

- (3) **Subsection (2)** does not apply to an amount that relates to the application of a capital asset—
  - (a) for the principal purpose of making taxable supplies, when the asset was acquired or produced other than for the principal purpose of making taxable supplies; or 10
  - (b) other than for the principal purpose of making taxable supplies, when the asset was acquired or produced for the principal purpose of making taxable supplies; or 15
  - (c) other than for the purpose of deriving income.

*Depreciable property*

- (4) The provisions that apply when an amount of depreciation loss is quantified by reference to the cost of an item of depreciable property to a person are in **section EE 55** (Cost: GST). 20

*Link with subpart DA*

- (5) The link between this section and **subpart DA** (General rules) is as follows:
  - (a) **subsection (1)** overrides the general permission:
  - (b) **subsection (2)** supplements the general permission; the general limitations still apply. 25

Defined in this Act: amount, Commissioner, deduction, depreciable property, depreciation loss, general limitation, general permission, goods, GST, GST payable, income, input tax, output tax, pay, registered person, services, supplement, taxable supply 30

Compare: 2004 No 35 s DB 2

### **DB 3 Determining tax liabilities**

*Deduction*

- (1) A person is allowed a deduction for expenditure that they incur in connection with the following matters: 35
  - (a) calculating or determining their income tax liability for a tax year:

- 
- (b) calculating or determining the GST payable by them in a taxable period:
  - (c) preparing, instituting, or presenting an objection or challenge to, or an appeal following, a determination or assessment made under this Act or an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985: 5
  - (d) making a contribution towards the expenditure incurred by another person if—
    - (i) the other person is allowed a deduction for that expenditure; and 10
    - (ii) the expenditure relates to a matter affecting the determination of the first person's liability for income tax or GST; and
    - (iii) the first person has objected to, challenged, or appealed against an assessment or determination made in relation to the matter under this Act or an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985. 15
- Exclusions* 20
- (2) This section does not apply to expenditure that a person incurs in connection with the following matters:
    - (a) a matter arising from a return of income or a return under the Goods and Services Tax Act 1985 that was fraudulent or wilfully misleading: 25
    - (b) an offence under any of the Inland Revenue Acts:
    - (c) a shortfall penalty assessed under this Act or an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985 (but not an assessment that is later cancelled): 30
    - (d) an objection, challenge, or appeal that is inconsequential or frivolous:
    - (e) a matter arising under the Goods and Services Tax Act 1985 to the extent to which it relates to a taxable activity that does not constitute a business for the purposes of this Act. 35
- Taxable activity*
- (3) In this section, **taxable activity** is defined in section 6 of the Goods and Services Tax Act 1985.

*Link with subpart DA*

- (4) This section supplements the general permission and overrides the private limitation and the employment limitation. The other general limitations still apply.

Defined in this Act: amount, assessment, business, deduction, employment limitation, general limitation, general permission, GST, GST payable, income tax liability, Inland Revenue Acts, pay, private limitation, return of income, supplement, tax year, taxable activity, taxable period

5

Compare: 2004 No 35 s DB 3

**DB 4 Chatham Islands dues**

10

*Deduction*

- (1) A person is allowed a deduction for expenditure incurred on dues levied under the Chatham Islands Council Act 1995 that relate to goods that the person uses in connection with carrying on a business.

15

*Timing of deduction*

- (2) The deduction is allocated to the income year in which the dues are paid.

*Exclusion of expenditure: other deductions*

- (3) Expenditure to which **subsection (1)** applies must not be taken into account in calculating the cost of the goods for the purpose of a deduction relating to the goods under any other provision of this Act.

20

*Link with subpart DA*

- (4) The link between this section and **subpart DA** (General rules) is as follows:

25

(a) **subsection (1)** supplements the general permission and overrides the capital limitation; the other general limitations still apply:

(b) **subsection (3)** overrides the general permission.

30

Defined in this Act: business, capital limitation, deduction, general permission, general limitation, income year, pay, supplement

Compare: 2004 No 35 s DB 4

### *Financing costs*

#### **DB 5 Transaction costs: borrowing money for use as capital**

##### *Deduction*

- (1) A person is allowed a deduction for expenditure incurred in borrowing money that is used as capital in deriving their income. 5

##### *Link with subpart DA*

- (2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 10

Defined in this Act: capital limitation, deduction, general limitation, general permission, income

Compare: 2004 No 35 s DB 5

#### **DB 6 Interest: not capital expenditure**

##### *Deduction*

- (1) A person is allowed a deduction for interest incurred. 15

##### *Exclusion*

- (2) **Subsection (1)** does not apply to interest for which a person is denied a deduction under **section DB 1**.

##### *Conduit financing arrangements*

- (3) **Section LL 7** (Conduit financing arrangements) may apply to limit a deduction under this section. 20

##### *Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 25

Defined in this Act: capital limitation, deduction, general limitation, general permission, interest

Compare: 2004 No 35 s DB 6

#### **DB 7 Interest: most companies need no nexus with income** 30

##### *Deduction*

- (1) A company is allowed a deduction for interest incurred.

- Exclusion: attributing company*
- (2) **Subsection (1)** does not apply to an attributing company.
- Exclusion: exempt income*
- (3) If a company (**company A**) derives exempt income or another company (**company B**) that is part of the same wholly-owned group of companies derives exempt income, **subsection (1)** applies to company A only if all the exempt income is 1 or more of the following: 5
- (a) dividends; or
  - (b) income exempted under **section CW 57** (Disposal of companies' own shares); or 10
  - (c) income exempted under **section CW 59** (Stake money) and ancillary to the company's business of breeding.
- Exclusion: non-resident company*
- (4) If a company is a non-resident company, **subsection (1)** applies only to the extent to which the company incurs interest in the course of carrying on a business through a fixed establishment in New Zealand. 15
- Exclusion: interest related to tax*
- (5) **Subsection (1)** does not apply to interest for which a person is denied a deduction under **section DB 1**. 20
- Consolidated groups*
- (6) **Section FM 12** (Expenditure: interest on money borrowed) may apply to allow a deduction under this section to a company that is part of a consolidated group. 25
- Conduit financing arrangements*
- (7) **Section LL 7** (Conduit financing arrangements) may apply to limit a deduction under this section.
- Link with subpart DA*
- (8) This section supplements the general permission and overrides the capital limitation, the exempt income limitation, and the withholding tax limitation. The other general limitations still apply. 30
- Defined in this Act: attributing company, business, capital limitation, company, consolidated group, deduction, dividend, exempt income, exempt income limitation, fixed establishment, general limitation, general permission, income, interest, 35

New Zealand, non-resident company, supplement, wholly-owned group of companies, withholding tax limitation

Compare: 2004 No 35 s DB 7

- DB 8 Interest: money borrowed to acquire shares in group companies** 5
- Deduction: borrowing to acquire group company shares*
- (1) A company is allowed a deduction for interest incurred on money borrowed to acquire shares in another company that is part of the same group of companies.
- Exclusion: group not in existence at tax year end* 10
- (2) **Subsection (1)** does not apply if the 2 companies are not part of the same group of companies at the end of the tax year for which the deduction is claimed.
- Deduction: interest after resident's restricted amalgamation*
- (3) A company is allowed a deduction for interest incurred on money borrowed to acquire shares in another company that has ended its existence on a resident's restricted amalgamation. 15
- Exclusion: group not in existence immediately before resident's restricted amalgamation* 20
- (4) **Subsection (3)** does not apply if the 2 companies were not part of the same group of companies immediately before the resident's restricted amalgamation.
- Application from tax year of resident's restricted amalgamation* 25
- (5) **Subsection (3)** applies in the tax year in which the resident's restricted amalgamation occurs and in later tax years.
- Consolidated groups*
- (6) **Section FM 12** (Expenditure: interest on money borrowed) may apply to allow a deduction under this section to a company that is part of a consolidated group. 30
- Conduit financing arrangements*
- (7) **Section LL 7** (Conduit financing arrangements) may apply to limit a deduction under this section.

*Link with subpart DA*

- (8) This section supplements the general permission and overrides the capital limitation, the exempt income limitation, and the withholding tax limitation. The other general limitations still apply. 5
- Defined in this Act: company, consolidated group, deduction, exempt income limitation, general limitation, general permission, group of companies, interest, resident's restricted amalgamation, share, supplement, tax year, withholding tax limitation
- Compare: 2004 No 35 s DB 8 10

**DB 9 Interest incurred on money borrowed to acquire shares in attributing companies***Deduction for interest incurred*

- (1) The deduction that a shareholder in an attributing company has for interest in an income year is reduced by the amount of non-cash dividends, other than taxable bonus issues, derived by them or an associated person from the company in the income year. 15

*Exempt income*

- (2) In determining the amount of the deduction that the shareholder has for the interest, **section CW 15(1)** (Dividends paid by attributing companies) does not apply to treat as exempt income a distribution from the attributing company to the shareholder, and the distribution is excluded from the definition of **dividend**. 20  
25

*Associated persons*

- (3) If the associated person referred to in **subsection (1)** is associated with more than 1 shareholder in the company, the amount of non-cash dividends is apportioned among the associated shareholders according to their effective interests in the company in the income year. 30

*Allocation of dividend*

- (4) If **section CD 39** (Calculation of amount of dividend when property made available) applies to a dividend derived by a shareholder of an attributing company, the dividend is treated as having been paid and derived at the end of the quarter in which the amount is calculated. 35

*Link with subpart DA*

- (5) This section overrides—
- (a) the general permission; and
  - (b) the exempt income limitation.

Defined in this Act: amount, associated person, attributing company, bonus issue, deduction, dividend, effective interest, exempt income, exempt income limitation, general permission, income year, interest, non-cash dividend, pay, share, shareholder, taxable bonus issue

5

Compare: 2004 No 35 s HG 9(3)–(5)

**DB 10 Interest expenditure by excess debt entity**

10

*No deduction for excess debt entity (with qualification)*

- (1) An excess debt entity is denied a deduction for interest incurred to the extent of the amount calculated under **section FE 6(3)** (Apportionment of interest by excess debt entity).

*Link with subpart DA*

15

- (2) This section overrides the general permission.

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

Compare: 2004 No 35 s FG 8(1)

**DB 11 Interest or expenditure connected to profit-related or substituting debentures**

20

*When this section applies*

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

*No deduction*

25

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

30

*Relationship with sections DB 5 to DB 8*

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

*Link with subpart DA*

- (4) This section overrides the general permission.

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

Compare: 2004 No 35 ss FC 1(1), FC 2(2)

5

***Financial arrangements adjustments*****DB 12 Negative base price adjustment***Deduction*

- (1) A person who has a negative base price adjustment under **section EW 31(4)** (Base price adjustment formula) is allowed a deduction for the expenditure to the extent to which it arises from assessable income, under **section CC 3** (Financial arrangements), derived by the person under the financial arrangement in previous income years. 10

*Link with subpart DA*

15

- (2) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: assessable income, deduction, financial arrangement, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DB 9

20

**DB 13 Base price adjustment under old financial arrangements rules**

A person is allowed a deduction for an amount that is a deduction under **section EZ 37(6)** (Cash basis holder) or **EZ 38(3) or (4)** (Income and expenditure where financial arrangement redeemed or disposed of). 25

Defined in this Act: amount, deduction

Compare: 2004 No 35 s DB 9B

**DB 14 Repayment of debt sold at discount to associate of debtor**

30

*Deduction*

- (1) When **section EW 49(6)(b)** (Income and deduction when debt sold at discount to associate of debtor) applies, the debtor is allowed a deduction for the amount quantified in that subsection. 35

*Link with subpart DA*

- (2) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: amount, associated person, deduction, general limitation, general permission, supplement

5

Compare: 2004 No 35 s DB 10

**DB 15 Security payment***When subsection (2) applies*

- (1) **Subsection (2)** applies when—
- (a) a person receives a security payment for a loss; and 10
  - (b) no other provision of this Act allows the person a deduction for the loss.

*Deduction: loss*

- (2) The person is allowed a deduction for the loss quantified in **section EW 51(2)** (Deduction for security payment). 15

*When subsection (4) applies*

- (3) **Subsection (4)** applies when—
- (a) a person receives a security payment for a share loss as described in **section DB 25**; and
  - (b) the requirements of **section DB 25** are met; and 20
  - (c) no other provision of this Act allows the person a deduction for the loss.

*Deduction: share loss*

- (4) The person is allowed a deduction for the share loss quantified in **section EW 51(4)**. 25

*Link with subpart DA*

- (5) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: deduction, general limitation, general permission, loss, pay, security payment, supplement

30

Compare: 2004 No 35 s DB 11

**DB 16 Sureties***When this section applies*

- (1) This section applies when a surety incurs expenditure or loss under a security arrangement.

*No deduction (with exceptions)*

5

- (2) Neither the surety nor a person with whom the surety was an associated person over the security arrangement's term is allowed a deduction for the expenditure or loss to the extent to which the expenditure or loss is due to—

(a) the actions of the surety or a person with whom the surety was an associated person over the arrangement's term; or 10

(b) the occurrence of an event, if the occurrence could have been influenced by the surety or a person with whom the surety was an associated person over the arrangement's term; or 15

(c) the non-occurrence of an event, if the non-occurrence could have been influenced by the surety or a person with whom the surety was an associated person over the arrangement's term. 20

*Link with subpart DA*

- (3) This section overrides the general permission.

Defined in this Act: associated person, deduction, general permission, loss, security arrangement

Compare: 2004 No 35 s DB 12

25

***Share-lending arrangements*****DB 17 Share-lending collateral under share-lending arrangements***No deduction*

- (1) A person is denied a deduction for the amount of expenditure incurred as share-lending collateral under a share-lending arrangement. 30

*Link with subpart DA and other subject matter*

- (2) This section overrides—  
(a) the general permission: 35

**(b) sections DB 24 to DB 27.**

Defined in this Act: amount, deduction, general permission, share-lending arrangement, share-lending collateral

Compare: 2004 No 35 s DB 12B

**DB 18 Replacement payments and imputation credits under share-lending arrangements** 5

A person is allowed a deduction for—

- (a) the amount of expenditure incurred as a replacement payment under a share-lending arrangement:
- (b) the amount of imputation credit attached under **sections OB 64 and RE 25** (which relate to imputation credits) to the replacement payment. 10

Defined in this Act: amount, deduction, imputation credit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s DB 12C 15

*Premises or land costs***DB 19 Transaction costs: leases***Deduction*

- (1) A person is allowed a deduction for expenditure that they incur for the preparation and registration, or the renewal, of a lease of property. 20

*Link with subpart DA*

- (2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 25

Defined in this Act: capital limitation, deduction, general limitation, general permission, lease

Compare: 2004 No 35 s DB 13

**DB 20 Expenses of failed or withdrawn application for resource consent** 30*Deduction*

- (1) A person who applies for the grant of a resource consent under the Resource Management Act 1991 and is refused the grant or withdraws the application is allowed a deduction for expenditure— 35

- (a) that the person incurs in relation to the application; and
- (b) that would have been part of the cost of depreciable property, or otherwise a deduction, if the application had been granted; and
- (c) for which the person is not allowed a deduction under another provision. 5

*Timing of deduction*

- (2) The deduction is allocated to the income year in which the grant is refused or the application is withdrawn.

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission and other general limitations still apply. 10

Defined in this Act: accounting year, capital limitation, deduction, general limitation, general permission, income year

Compare: 2004 No 35 s DB 13B 15

## **DB 21 Destruction of temporary building**

*Deduction*

- (1) A person is allowed a deduction for a loss that they incur through the destruction of a temporary building.

*Link with subpart DA*

- (2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 20

Defined in this Act: capital limitation, deduction, general limitation, general permission, loss, supplement, temporary building

Compare: 2004 No 35 s DB 14 25

## **DB 22 Amounts paid for non-compliance with covenant for repair**

*When this section applies*

- (1) This section applies when— 30
  - (a) a person who is a lessee of land uses it to derive income; and
  - (b) the lease contains a covenant requiring the lessee to maintain the land or to make repairs to improvements on the land; and 35

- (c) the lessee does not comply with the covenant; and
- (d) the lessee is, consequently, liable to pay an amount to the lessor; and
- (e) either—
  - (i) the lessee, during the term of the lease or after it ends, pays the amount to the lessor; or
  - (ii) the lessor recovers the amount from the lessee during the term of the lease or after it ends.

*Deduction*

- (2) The lessee is allowed a deduction for the amount paid to the extent to which it relates to maintenance or repairs and to the extent to which the lessee would have been allowed a deduction for the expenditure had the lessee incurred it during the term of the lease. 10

*Timing of deduction*

- (3) The deduction is allocated to the income year in which the lessee pays the amount or the lessor recovers the amount. 15

*Relationship with section EJ 11*

- (4) This section is overridden by **section EJ 11** (Amount paid by lessee for non-compliance with covenant for repair). 20

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income, income year, lease, pay, repairs, supplement, term of the lease 25

Compare: 2004 No 35 s DB 15

**DB 23 Amounts paid for non-compliance and change in use***When this section applies*

- (1) This section applies when— 30
  - (a) a person who is a lessor receives an amount for non-compliance with a covenant for repair that is assessable income under **section CC 2** (Non-compliance with covenant for repair); and
  - (b) in the tax year in which the lessor receives the amount or in any of the following 4 tax years,— 35

- (i) the lessor does not use the land to which the amount relates to derive assessable income, but continues to own the land; and
  - (ii) the lessor incurs expenditure in maintaining the land or in making repairs to improvements on the land, including painting and general maintenance; and 5
  - (iii) the lessor would have been allowed a deduction if the land had been used for the purpose of deriving assessable income; and 10
  - (iv) in the absence of **section DB 47** (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the lessor a deduction for the expenditure.
- Deduction* 15
- (2) The lessor is allowed a deduction for the expenditure.
- Amount of deduction*
- (3) The amount of the deduction is the lesser of—
- (a) the amount of the expenditure; and
  - (b) the part of the amount that is assessable income derived by the lessor in the tax year in which the expenditure is incurred through the operation of— 20
    - (i) **section CC 2**; or
    - (ii) **section EI 4** (Amount paid to lessor for non-compliance with covenant for repair); or 25
    - (iii) **section EI 5** (Amount paid for non-compliance: when lessor ceases to own land).
- Link with subpart DA*
- (4) This section supplements the general permission. The general limitations still apply. 30

Defined in this Act: amount, assessable income, deduction, general limitation, general permission, own, supplement, tax year

Compare: 2004 No 35 s DB 16

### *Revenue account property*

#### **DB 24 Cost of revenue account property**

##### *Deduction*

- (1) A person is allowed a deduction for expenditure that they incur as the cost of revenue account property. 5

##### *Link with subpart DA*

- (2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, revenue account property 10

Compare: 2004 No 35 s DB 17

#### **DB 25 Share losses**

##### *When this section applies*

- (1) This section applies when— 15
- (a) a company (**company A**) acquires a share in another company (**company B**); and
  - (b) the share declines in value; and
  - (c) because of the decline in value, company A incurs a loss (the **share loss**), whether on a disposal of the share or a valuation of it under **subpart ED** (Valuation of excepted financial arrangements) or in any other way; and 20
  - (d) company B— 25
    - (i) itself uses the amount subscribed for the share; or
    - (ii) uses it to fund directly or indirectly another company (**company C**); and
  - (e) company B or company C has a tax loss, in the calculation of which the amount used is taken into account; and
  - (f) company A, or a company that is part of the same group of companies as company A at any time in the income year in which company B or company C has the tax loss, offsets an amount for the tax loss under **section IC 1** (Company A making tax loss available to company B); and 30
  - (g) the offset is in a tax year before the tax year that corresponds to the income year in which company A incurs the share loss. 35

*No deduction (with exception)*

- (2) Company A is denied a deduction for the share loss, except to the extent to which the share loss, as adjusted under **subsection (3)**, is more than the amount offset under **section IC 1**, as adjusted under **subsection (4)**. 5

*Other denied deductions added*

- (3) When **subsection (2)** applies, the share loss is adjusted by adding every loss to which all the following apply:
- (a) company A incurs it as a result of the share's decline in value or the decline in value of another share if the use of the amount subscribed for the other share is taken into account in calculating the tax loss; and 10
  - (b) company A incurs it in a tax year before the tax year in which company A incurs the share loss; and
  - (c) company A has been denied a deduction for it by the operation of **subsection (2)**. 15

*Other offsets added*

- (4) The amount offset under **section IC 1** includes every amount that company A, or a company that is part of the same group of companies as company A at any time in the income year in which company A has the tax loss, has offset for the tax loss under that section in a tax year before the tax year that corresponds to the income year in which the share loss is incurred. 20

*Link with subpart DA*

- (5) This section overrides the general permission. 25

Defined in this Act: amount, company, deduction, general permission, group of companies, loss, share, tax loss, tax year

Compare: 2004 No 35 s DB 18

## **DB 26 Cancellation of shares held as revenue account property** 30

*When this section applies*

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

*No deduction*

- (2) A shareholder is denied a deduction for the amount added to the cost of their remaining shares of the same class as that of the share cancelled, unless the share is trading stock of the shareholder. 5

*Link with subpart DA*

- (3) This section overrides the general permission. 10  
 Defined in this Act: deduction, general permission, interest, profit-related debenture, substituting debenture  
 Compare: 2004 No 35 s FC 4(f)(iv)

**DB 27 Amount from profit-making undertaking or scheme and not already in income***When this section applies*

- (1) This section applies when a person derives income under **section CB 3** (Profit-making undertaking or scheme) that is not their income under any other provision of this Act. 15

*Deduction*

- (2) The person is allowed a deduction for the value of the property, as determined under **subsection (3)**.

*Determining amount of deduction*

- (3) For the purpose of determining the amount of the deduction, the person is treated as— 20  
 (a) having disposed of the property to an unrelated third party immediately before the start of the undertaking or scheme; and 25  
 (b) having reacquired the property immediately after the start of the undertaking or scheme at the market value of the property at the time.

*Link with subpart DA*

- (4) This section supplements the general permission. The general limitations still apply. 30

Defined in this Act: amount, deduction, general limitation, general permission, income, supplement

Compare: 2004 No 35 s DB 19

### **DB 28 Amount from major development or division and not already in income**

*When this section applies*

- (1) This section applies when a person derives income under **section CB 13** (Disposal: amount from major development or division and not already in income) that is not their income under any other provision of this Act. 5

*Deduction*

- (2) The person is allowed a deduction for the value of the land, as determined under **subsection (3)**. 10

*Determining amount of deduction*

- (3) For the purpose of determining the amount of the deduction, the person is treated as—
- (a) having disposed of the land to an unrelated third party immediately before the start of the undertaking or scheme; and 15
  - (b) having reacquired it immediately after the start of the undertaking or scheme at the market value of the land at the time.

*Link with subpart DA*

- (4) This section supplements the general permission. The general limitations still apply. 20

Defined in this Act: amount, deduction, general limitation, general permission, income, land, supplement

Compare: 2004 No 35 s DB 20 25

### **DB 29 Amount from land affected by change and not already in income**

*When this section applies*

- (1) This section applies when a person derives income under **section CB 14** (Disposal: amount from land affected by change and not already in income) that is not their income under any other provision of this Act. 30

*Deduction*

- (2) The person is allowed—

- (a) a deduction allowed under any other provision of this Act; and
- (b) a deduction to the extent described in **subsection (3)**.

*Calculation of deduction*

- (3) The maximum amount of the deduction is the greater of \$1,000 and an amount calculated using the formula in **subsection (4)**. However, the amount must not be more than the profit obtained from the disposal of the land. 5

*Formula*

- (4) The formula is— 10
  - percentage of profit × years.

*Definition of items in formula*

- (5) In the formula,—
  - (a) **percentage of profit** is 10% of the profit on the disposal of the land: 15
  - (b) **years** is the number, up to and including 10, of consecutive years between the date on which the person acquired the land and the date on which they disposed of it, with the first year starting on the date on which the person acquired the land. 20

*Meaning of profit*

- (6) In this section, **profit** means the excess of the amount derived over the cost of the land.

*Link with subpart DA*

- (7) This section supplements the general permission. The general limitations still apply. 25

Defined in this Act: amount, deduction, general limitation, general permission, income, land, profit, supplement, year

Compare: 2004 No 35 s DB 21

**DB 30 Apportionment when land acquired with other property** 30

If a person derives income under **sections CB 6 to CB 14** (which relate to the disposal of land) from the disposal of land, and the land is acquired together with other property, the cost of

acquisition must be apportioned between the land and the other property.

Defined in this Act: income, land, property

Compare: 2004 No 35 s FB 4A

- DB 31 Cost of non-specified mineral** 5
- When this section applies*
- (1) This section applies when—
- (a) an amount of cost of a mineral is treated by a person under generally accepted accounting practice as a cost of the mineral for the person and reported accordingly for financial reporting purposes; and 10
- (b) the mineral is not a specified mineral; and
- (c) no other provision of this Act allows the person a deduction for the amount; and
- (d) an amount derived by the person from disposing of the mineral would be income of the person under **section CB 28** (Disposal of minerals). 15
- Deduction*
- (2) The person is allowed a deduction for the amount.
- Timing of deduction: trading stock* 20
- (3) If the amount is a cost of trading stock, the deduction is allocated to the income year in which the mineral first becomes trading stock of the person.
- Timing of deduction: not trading stock*
- (4) If the amount is not a cost of trading stock, the deduction is allocated by **section EA 2** (Other revenue account property). 25
- Link with subpart DA*
- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 30
- Defined in this Act: amount, capital limitation, deduction, dispose, general limitation, general permission, generally accepted accounting practice, income, income year, mineral, specified mineral, trading stock
- Compare: 2004 No 35 s DB 22

***Bad debts*****DB 32 Bad debts***No deduction (with exception)*

- (1) A person is denied a deduction in an income year for a bad debt, except to the extent to which— 5
- (a) the debt is written off as bad in the income year; and
  - (b) in the case of the bad debts described in **subsections (2) to (5)**, the requirements of the relevant subsection are met.

*Deduction: financial arrangement debt: amount of income*

- (2) A person who derives assessable income from a financial arrangement to which the financial arrangements rules apply is allowed a deduction for an amount owing under the financial arrangement, but only to the extent to which— 10
- (a) the amount is a bad debt and the requirement of **subsection (1)(a)** is met; and 15
  - (b) the amount is attributable to the income; and
  - (c) **subsection (5)** does not limit the deduction.

*Deduction: financial arrangement debt: dealers in arrangements*

- (3) A person is allowed a deduction for an amount owing under a financial arrangement to which the financial arrangements rules apply, but only to the extent to which— 20
- (a) the amount is a bad debt and the requirement of **subsection (1)(a)** is met; and
  - (b) the person carries on a business for the purpose of deriving assessable income that includes dealing in or holding financial arrangements that are the same as, or similar to, the financial arrangement; and 25
  - (c) the person is not associated with the person owing the amount written off; and 30
  - (d) **subsection (5)** does not limit the deduction.

*Deduction: financial arrangement debt: dealers in property or services sold*

- (4) A person is allowed a deduction for an amount owing under a financial arrangement to which the financial arrangements rules apply, but only to the extent to which— 35

- (a) the amount is a bad debt and the requirement of **subsection (1)(a)** is met; and
- (b) the financial arrangement is an agreement for the sale and purchase of property or services; and
- (c) the person carries on a business of dealing in the property or services that are the subject of the agreement; and 5
- (d) the person carries on the business for the purpose of deriving assessable income; and
- (e) **subsection (5)** does not limit the deduction. 10
- Deduction: bad debt representing loss already offset*
- (5) A person is allowed a deduction for a bad debt only to the extent to which it is more than the total of the amounts offset under **section IC 1** (Company A making tax loss available to company B) that are described in **paragraphs (e) and (f)** if— 15
- (a) the person writing off the amount of debt is a company (**company A**); and
- (b) the debt is owed to it by another company (**company B**); and
- (c) company B— 20
- (i) itself uses the amount giving rise to the debt; or
- (ii) uses it to fund directly or indirectly another company (**company C**) that uses the amount; and
- (d) company B or company C has a tax loss, in the calculation of which the amount used is taken into account; and 25
- (e) company A, or a company that is part of the same group of companies as company A at any time in the income year in which company B or company C has the tax loss, offsets an amount for the tax loss under **section IC 1**; and 30
- (f) the offset is in a tax year before the tax year that corresponds to the income year in which company A writes off the amount of debt, but not before the 1993–94 tax year.
- Link with subpart DA* 35
- (6) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (1)** overrides the general permission; and
- (b) for **subsections (2) to (5)**,—

- (i) they supplement the general permission, to the extent to which they allow a deduction that is denied under the general permission; and
- (ii) they override the general permission, to the extent to which they deny a deduction that is allowed under the general permission; and 5
- (iii) the other general limitations still apply.

Defined in this Act: agreement for the sale and purchase of property or services, amount, assessable income, associated person, business, company, deduction, financial arrangement, financial arrangements rules, general limitation, general permission, group of companies, income year, supplement, tax loss, tax year 10

Compare: 2004 No 35 s DB 23

### **DB 33 Bad debts owed to estates**

*When this section applies*

- (1) This section applies when— 15
  - (a) a debt owing to a person at the date of their death is, in a tax year,—
    - (i) assessable income of the person; or
    - (ii) assessable income of the trustee of their estate; and 20
  - (b) the trustee writes off some or all of the debt as bad because it is not recoverable.

*Deduction*

- (2) The following persons, in the following order, are allowed a deduction for the amount of the debt written off: 25
  - (a) first, the trustee, to the extent of assessable income derived as trustee income in the tax year; and
  - (b) second, any beneficiary who has a vested interest in the capital of the estate, to the extent of assessable income derived in the tax year by or in trust for the beneficiary, and to the extent to which the amount is chargeable against the capital of the beneficiary; and 30
  - (c) third, the trustee or a beneficiary denied a deduction for the balance in the tax year; each is allowed a deduction, as described in **paragraph (a) or (b)**, in the next tax year, and so on. 35

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, assessable income, deduction, general limitation, general permission, supplement, tax year, trustee, trustee income

5

Compare: 2004 No 35 s DB 24

***Research and development*****DB 34 Scientific research***Deduction: scientific research*

- (1) A person is allowed a deduction for expenditure they incur in connection with scientific research that they carry on for the purpose of deriving their assessable income. 10

*Exclusion*

- (2) **Subsection (1)** does not apply to expenditure that the person incurs on an asset that— 15
- (a) is not created from the scientific research; and
  - (b) is an asset for which they have an amount of depreciation loss for which—
    - (i) they are allowed a deduction; or
    - (ii) they would have been allowed a deduction but for the Commissioner's considering that incomplete and unsatisfactory accounts were kept by or for them. 20

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 25

Defined in this Act: amount, assessable income, capital limitation, Commissioner, deduction, depreciation loss, general limitation, general permission, supplement

Compare: 2004 No 35 s DB 25

30

**DB 35 Research or development***Deduction*

- (1) A person is allowed a deduction for expenditure they incur on research or development. This subsection applies only to a

person described in any of **subsections (2) to (5)** and does not apply to the expenditure described in **subsection (6)**.

*Person recognising expenditure as expense*

- (2) **Subsection (1)** applies to a person who recognises the expenditure as an expense for financial reporting purposes under paragraph 5.1 or 5.2 of the reporting standard. 5

*Person not recognising expenditure as asset*

- (3) **Subsection (1)** also applies to a person who does not recognise the expenditure as an asset for financial reporting purposes because of paragraph 5.4 of the reporting standard. 10

*Person recognising expenditure otherwise*

- (4) **Subsection (1)** also applies to a person who—
- (a) recognises the expenditure as an expense for financial reporting purposes because of paragraph 2.3 of the reporting standard; and 15
  - (b) would be required to recognise the expenditure as an expense for financial reporting purposes under paragraph 5.1 or 5.2, or because of paragraph 5.4, of the standard if—
    - (i) any 1 of those paragraphs were applied to the expenditure; and 20
    - (ii) the expenditure were material.

*Person with minor expenditure*

- (5) **Subsection (1)** also applies to a person who—
- (a) incurs expenditure of \$10,000 or less, in total, on research and development in an income year; and 25
  - (b) has not treated the expenditure as material, as described in paragraph 2.3 of the reporting standard; and
  - (c) has recognised the expenditure as an expense for financial reporting purposes. 30

*Exclusion*

- (6) **Subsection (1)** does not apply to expenditure that the person incurs on property to which all the following apply:
- (a) the property is used in carrying out research or development; and 35
  - (b) it is not created from the research or development; and

- (c) it is 1 of the following kinds:
- (i) property for which the person is allowed a deduction for an amount of depreciation loss; or
  - (ii) property the cost of which is allowed as a deduction by way of amortisation under a provision of this Act outside **subpart EE** (Depreciation); or 5
  - (iii) land; or
  - (iv) intangible property, other than depreciable intangible property; or
  - (v) property that its owner chooses, under **section EE 8** (Election that property not be depreciable) to treat as not depreciable. 10
- Choice for allocation of deduction*
- (7) A person who is allowed a deduction under this section for expenditure that is not interest may choose to allocate all or part of the deduction— 15
- (a) to an income year after the income year in which the person incurs the expenditure; and
  - (b) in the way required by **section EJ 23** (Allocation of deductions for research, development, resulting market development). 20
- Section need not be applied*
- (8) A person may return income and expenditure in their return of income on the basis that this section does not apply to expenditure incurred on research or development in the income year to which the return relates. 25
- Relationship with section EA 2*
- (9) If expenditure to which this section applies is incurred in devising an invention that is patented, the expenditure is not treated as part of the cost of revenue account property for the purposes of **section EA 2** (Other revenue account property). 30
- Link with subpart DA*
- (10) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 35
- Defined in this Act: amount, capital limitation, deduction, depreciable intangible property, depreciation loss, development, general limitation, general permission,

income, income year, reporting standard, research, return of income, revenue account property

Compare: 2004 No 35 s DB 26

## DB 36 Some definitions

### *Definitions*

5

- (1) In this section, and in **sections DB 35, EE 1, EJ 22, and EJ 23** (which relate to expenditure on research and development),—

**development** is defined in paragraphs 4.1 and 4.2 of the reporting standard as interpreted by paragraphs 4.3 to 4.7

**Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)** means the standard approved under the Financial Reporting Act 1993, or an equivalent standard issued in its place, that applies in the tax year in which the expenditure is incurred

10

**reporting standard** means Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)

15

**research** is defined in paragraphs 4.1 and 4.2 of the reporting standard, as interpreted by paragraphs 4.3 to 4.7.

### *Meaning of research or development: modification by Order in Council*

20

- (2) The Governor-General may make an Order in Council specifying—

- (a) a kind of expenditure that is not expenditure on research or development for the purposes of **section DB 35:**
- (b) an activity that is neither research nor development for the purposes of **section DB 35:**
- (c) the date from which the expenditure or the activity is excluded from being research or development.

25

Defined in this Act: development, Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities), reporting standard, research, tax year

30

Compare: 2004 No 35 s DB 27

**DB 37 Patent expenses***Deduction*

- (1) A person is allowed a deduction for expenditure that they incur in connection with the grant, maintenance, or extension of a patent if they— 5
- (a) acquired the patent before 23 September 1997; and
  - (b) use the patent in deriving income in the tax year in which they incur the expenditure.

*Link with subpart DA*

- (2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 10

Defined in this Act: capital limitation, deduction, general limitation, general permission, income, tax year

Compare: 2004 No 35 s DB 28 15

**DB 38 Expenses of failed or withdrawn patent application***Deduction*

- (1) A person who applies for the grant of a patent and is refused the grant or withdraws the application is allowed a deduction for expenditure— 20
- (a) that the person incurs in relation to the application; and
  - (b) that would have been part of the cost of fixed life intangible property if the application had been granted; and
  - (c) for which the person is not allowed a deduction under another provision. 25

*Timing of deduction*

- (2) The deduction is allocated to the income year in which the grant is refused or the application is withdrawn.

*Link with subpart DA* 30

- (3) This section overrides the capital limitation. The general permission and other general limitations still apply.

Defined in this Act: capital limitation, deduction, fixed life intangible property, general limitation, general permission, income year

Compare: 2004 No 35 s DB 28B 35

**DB 39 Patent rights: devising patented inventions***When this section applies*

- (1) This section applies when a person incurs expenditure in devising an invention for which a patent has been granted. The section applies whether the person devised the invention alone or in conjunction with another person. 5

*Deduction: expenditure before 1 April 1993*

- (2) When the person uses the patent in deriving income in a tax year, they are allowed a deduction for expenditure incurred before 1 April 1993, but not if a deduction has been allowed for the expenditure under any other provision of this Act or an earlier Act. 10

*Deduction: devising invention*

- (3) If the person sells all the patent rights relating to the invention, they are allowed a deduction for the expenditure that they have incurred, whenever it is incurred, in connection with devising the invention to the extent to which a deduction has not already been allowed under **subsection (2)**. 15

*Deduction: devising invention: proportion of expenditure*

- (4) If the person sells some of the patent rights relating to the invention, they are allowed a deduction for part of the expenditure described in **subsection (3)**. The part is calculated by dividing the amount derived from the sale by the market value of the whole of the patent rights on the date of the sale. 20

*Link with subpart DA*

- (5) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 25

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income, patent rights, tax year 30

Compare: 2004 No 35 s DB 29

**DB 40 Patent rights acquired before 1 April 1993***When this section applies*

- (1) This section applies when a person sells patent rights that they acquired before 1 April 1993. 35

- Deduction*
- (2) The person is allowed a deduction on the sale of the patent rights.
- Amount of deduction*
- (3) The amount is calculated using the formula— 5
- $$\frac{\text{unexpired term of the patent rights at the date of sale}}{\text{unexpired term of the patent rights at the date of acquisition}} \times \text{cost.}$$
- 10
- Link with subpart DA*
- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.
- Defined in this Act: amount, capital limitation, general limitation, general permission, patent rights 15
- Compare: 2004 No 35 s DB 30
- DB 41 Patent applications or patent rights acquired on or after 1 April 1993**
- When this section applies* 20
- (1) This section applies when a person sells a patent application with a complete specification or patent rights that they acquired on or after 1 April 1993.
- Deduction*
- (2) The person is allowed a deduction on the sale of the patent application with a complete specification or patent rights. 25
- Amount of deduction*
- (3) The amount is calculated using the formula—
- total cost – total amounts of depreciation loss.
- Definition of items in formula* 30
- (4) In the formula,—
- (a) **total cost** is the total cost to the person of the patent application with a complete specification or patent rights:

- (b) **total amounts of depreciation loss** is the total of the amounts of depreciation loss for the patent application with a complete specification or patent rights for which the person is allowed a deduction.

*Link with subpart DA*

5

- (5) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, depreciation loss, general limitation, general permission, patent rights

10

Compare: 2004 No 35 s DB 31

### *Marketing*

#### **DB 42 Public benefit gifts by company**

*Who this section applies to*

- (1) This section applies to—
- (a) a company that is not a close company:
  - (b) a close company that has its shares quoted on the official list of a recognised exchange.

15

*Deduction*

- (2) The company is allowed a deduction for a public benefit gift that it makes to a society, institution, association, organisation, trust, or fund of any of the kinds set out in **schedule 32** (Recipients of public benefit gifts).

20

*Amount of deduction*

- (3) The deduction for the total of all gifts made in a tax year is limited to 5% of the amount that would be the company's net income in the tax year in the absence of this section.

25

*Link with subpart DA*

- (4) This section supplements the general permission. The general limitations still apply.

30

Defined in this Act: amount, close company, company, deduction, general limitation, general permission, net income, public benefit gift, recognised exchange, share, supplement, tax year

Compare: 2004 No 35 s DB 32

### *Theft and bribery*

#### **DB 43 Property misappropriated by employees or service providers**

##### *When this section applies*

- |     |  |    |
|-----|--|----|
| (1) | This section applies when—   | 5  |
|     | (a) a person carries on a business; and  |    |
|     | (b) an employee of the business, or a person who provides services to the business, misappropriates property; and                              |    |
|     | (c) no other provision of this Act allows the person who carries on the business a deduction for the loss resulting from the misappropriation. | 10 |

##### *Exclusions*

- |     |  |    |
|-----|--|----|
| (2) | This section does not apply when—  |    |
|     | (a) the person who misappropriates the property is a relative of the person who carries on the business; or  | 15 |
|     | (b) the business is carried on by a company, and—  |    |
|     | (i) the company and the person who misappropriates the property are associated persons; or   |    |
|     | (ii) the company and a relative of the person who misappropriates the property are associated persons; or  | 20 |
|     | (c) the person who carries on the business is a trustee of a trust, and the person who misappropriates the property either created the trust, settled property on the trust, or is a beneficiary of the trust. | 25 |

##### *Deduction*

- |     |   |  |
|-----|---|--|
| (3) | The person is allowed a deduction for the loss that they incur in the course of the business as a result of the misappropriation of the property. |  |
|-----|---|--|

##### *Timing of deduction*

- |     |  |    |
|-----|--|----|
| (4) | The deduction is allocated to the income year in which the loss is ascertained, or in 1 or more earlier years if, in the circumstances, the Commissioner considers it would be fair. | 30 |
|-----|--|----|

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: associated person, business, capital limitation, Commissioner, company, deduction, employee, general limitation, general permission, income year, relative, supplement, trustee

5

Compare: 2004 No 35 s DB 33

**DB 44 Making good loss from misappropriation by partners***When this section applies*

10

- (1) This section applies when a person carrying on a business in partnership pays an amount to make good a loss that arises from a partner, other than the person or the person's spouse, civil union partner, or de facto partner, misappropriating property that—

15

- (a) belongs to another person who is neither a partner in the partnership nor the spouse, civil union partner, or de facto partner of a partner; and
- (b) is received in the course of the business either by the partnership or 1 or more of its partners.

20

*Deduction*

- (2) The person is allowed a deduction for the amount if the person is under a legal liability to make good the loss.

*Timing of deduction*

- (3) The deduction is allocated to the income year in which the amount is paid.

25

*Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

30

Defined in this Act: amount, business, capital limitation, deduction, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DB 34

**DB 45 Restitution of stolen property***Deduction*

- (1) A person who derives income under **section CB 31** (Property obtained by theft) is allowed a deduction for the amount of restitution that they make to a person who is beneficially entitled to property to which **section CB 31** applies. 5

*Timing of deduction*

- (2) The deduction is allocated to the income year in which the person makes restitution.

*Meaning of restitution*

- (3) In this section, **restitution** includes restitution made to a person claiming through the person beneficially entitled to the property. 10

*Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation and the private limitation. The other general limitations still apply. 15

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income, income year, private limitation, property, restitution, supplement 20

Compare: 2004 No 35 s DB 35

**DB 46 Bribes paid to public officials***When subsection (2) applies: official in New Zealand*

- (1) **Subsection (2)** applies when— 25
- (a) a person (**person A**) corruptly gives a bribe to another person; and
  - (b) person A gives the bribe intending to influence a New Zealand public official to act, or to fail to act, in their official capacity in order to— 30
    - (i) obtain or retain business for person A; or
    - (ii) obtain an improper advantage for person A in the conduct of business; and
  - (c) the official either has or does not have the authority to act or to fail to act.

*No deduction*

- (2) Person A is denied a deduction for the amount of the bribe. 35

*When subsection (4) applies: official overseas*

- (3) **Subsection (4)** applies when—
- (a) a person (**person A**) corruptly gives a bribe to another person; and
  - (b) person A gives the bribe intending to influence a foreign public official to act, or to fail to act, in their official capacity in order to—
    - (i) obtain or retain business for person A; or
    - (ii) obtain an improper advantage for person A in the conduct of business; and
  - (c) person A's giving the bribe was, at the time the bribe was given, an offence under the laws of the foreign country that is the site of the main office of the person, organisation, or other body by whom the foreign public official is employed or for whom they provide services; and
  - (d) the official either has or does not have the authority to act or to fail to act.

*No deduction (with exception)*

- (4) Person A is denied a deduction for the amount of the bribe, unless it was paid wholly or mainly to ensure or expedite the performance by a foreign public official of a routine government action when the value of the benefit is small.

*Some definitions*

- (5) In this section,—
- benefit, foreign country, and foreign public official** are defined in section 105C of the Crimes Act 1961
- bribe** is defined in section 99 of the Crimes Act 1961
- public official** means—
- (a) a member of Parliament or a Minister of the Crown; and
  - (b) a judicial officer, a law enforcement officer, or an official, as those terms are defined in section 99 of the Crimes Act 1961; and
  - (c) a foreign public official
- routine government action** is defined in section 105C of the Crimes Act 1961.

*Link with subpart DA*

- (6) This section overrides the general permission.

Defined in this Act: amount, benefit, bribe, business, deduction, foreign country, foreign public official, general permission, New Zealand, pay, public official, routine government action

5

Compare: 2004 No 35 s DB 36

***Pollution control*****DB 47 Avoiding, remedying, or mitigating effects of discharge of contaminant***When this section applies*

10

- (1) This section applies when a person—

- (a) carries on a business in New Zealand; and  
 (b) the person incurs, in the business or in ending the operations of the business, expenditure that is—

- (i) of a kind listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 19, part C**; and

15

- (ii) not incurred in relation to revenue account property other than land that is subject to **section CB 8** (Disposal: land used for landfill, if notice of election); and

20

- (c) no other provision allows a deduction for the expenditure.

*Amount and timing of deduction*

25

- (2) The person is allowed for an income year a deduction for the expenditure of,—

- (a) if **paragraphs (b) and (c)** do not apply, an amount that is calculated using the formula—

$$\text{rate} \times \text{value}$$

30

- (b) if the operations of the business for which the expenditure was incurred come to an end in the income year, the diminished value or adjusted tax value of the expenditure for the income year:

- (c) if an improvement on which the expenditure was incurred is destroyed, or is rendered useless for the purposes for which the expenditure was incurred, and **paragraph (b)** does not apply, the diminished value or

35

adjusted tax value of the expenditure for the income year.

*Definition of items in formula*

- (3) The items in the formula in **subsection (2)(a)** are defined in **subsections (4) and (5)**. 5

*Rate*

- (4) **Rate** is—
- (a) 100%, if the expenditure is of a kind listed in **schedule 19, part A, item 1, or part B** and neither **paragraph (b) nor (c)** applies: 10
  - (b) the appropriate rate under subsection (5) if—
    - (i) the expenditure is of a kind listed in **schedule 19, part A, items 2 to 5**; and
    - (ii) **paragraph (c)** does not apply:
  - (c) the rate for the kind of expenditure, the income year, the valuation method adopted under **subsection (6)**, and the person, determined by the Commissioner under section 91AAN of the Tax Administration Act 1994, if such a rate is determined. 15

*Banded straight-line rate or corresponding diminishing value rate* 20

- (5) The rate for expenditure if the requirements of **subsection (4)(b)** are met is—
- (a) the straight-line rate set out in **schedule 12, column 2** (Old banded rates of depreciation) that is nearest to the rate calculated for the expenditure using the formula in **subsection (7)**, if the person chooses to use the straight-line method: 25
  - (b) the diminishing value rate set out in **schedule 12, column 1** that corresponds to the straight-line rate under **paragraph (a)**, if the person chooses to use the diminishing value method. 30

*Value*

- (6) **Value** is—
- (a) the adjusted tax value of the expenditure, if the person chooses to use the straight-line method: 35

- (b) the diminished value of the expenditure for the income year, if the person chooses to use the diminishing value method.
- Formula for rate for expenditure with assumed life*
- (7) The formula for the straight-line rate for a kind of expenditure to which **subsection (4)(b)** applies is— 5
- $$\frac{100\%}{\text{assumed life.}}$$
- Definition of item in formula*
- (8) In the formula in **subsection (7)**, **assumed life** for expenditure and an income year is,— 10
- (a) for expenditure associated with a business activity that does not require a resource consent, 35:
- (b) for expenditure associated with a business activity that requires a resource consent, the lesser of 35 and the number of the years in the period of the resource consent that include or follow the time at which the expenditure is incurred. 15
- Link with subpart DA*
- (9) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 20
- Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand
- Compare: 2004 No 35 s DB 37 25

## *Repayments*

### **DB 48 Payments for remitted amounts**

#### *When this section applies*

- (1) This section applies when— 30
- (a) a person is allowed a deduction in an income year of an amount that the person is liable to pay; and
- (b) the person's liability for the amount is later remitted or cancelled, wholly or partly; and
- (c) the remission or cancellation is not a dividend; and

- (d) the person is not required to calculate a base price adjustment by **section EW 29** (When calculation of base price adjustment required); and
- (e) the amount to which the remission or cancellation applies is assessable income of the person under **section CG 2** (Remitted amounts); and 5
- (f) the person makes a payment for the amount to which the remission or cancellation applies.

*Amount, and timing, of deduction*

- (2) The person is allowed a deduction for the amount of the payment in the income year in which it is made. 10

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, assessable income, deduction, dividend, general limitation, general permission, income year, pay, supplement 15

Compare: 2004 No 35 s DB 38

## **DB 49 Restrictive covenant breached**

*When this section applies*

- (1) This section applies when an employee (**person A**) makes a payment to another person (**person B**) in the following circumstances: 20
  - (a) person A derives assessable income under **section CE 9** (Restrictive covenants); and
  - (b) person A breaches a term of the undertaking they gave to person B; and 25
  - (c) person A is, consequently, required to make the payment to person B.

*Deduction*

- (2) Person A is allowed a deduction for the payment. 30

*Amount of deduction*

- (3) The amount of the deduction is the lesser of the following:
  - (a) the assessable income that person A derives under **section CE 9**; and

- (b) the payment that person A makes to person B, excluding interest, punitive damages, exemplary damages, and person B's legal costs and other expenses.

*Timing of deduction*

- (4) The deduction is allocated to the income year in which person A makes the payment to person B. 5

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the employment limitation. The other general limitations still apply. 10

Defined in this Act: amount, assessable income, deduction, employee, employment limitation, general limitation, general permission, income year, interest, pay, supplement

Compare: 2004 No 35 s DB 39

***Matching rules: revenue account property, prepayments, and deferred payments*** 15

**DB 50 Adjustment for opening values of trading stock, livestock, and excepted financial arrangements**

*When this section applies*

- (1) This section applies when a person has some or all of the following at the start of an income year: 20
- (a) trading stock valued under **subpart EB** (Valuation of trading stock (including dealer's livestock)): 25
  - (b) livestock valued under **subpart EC** (Valuation of livestock): 25
  - (c) excepted financial arrangements that are revenue account property valued under **subpart ED** (Valuation of excepted financial arrangements):
  - (d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in **paragraph (c)**. 30

*Deduction: opening value of trading stock*

- (2) The person is allowed a deduction in the income year for the value that the trading stock had at the end of the previous income year, as calculated under **section EB 3** (Valuation of trading stock). 35

- Deduction: opening value of livestock*
- (3) The person is allowed a deduction in the income year for the value that the livestock had at the end of the previous income year, as calculated under **section EC 2** (Valuation of livestock).
- Deduction: opening value of excepted financial arrangements* 5
- (4) The person is allowed a deduction in the income year for the value that the excepted financial arrangements or share-lending right had at the end of the previous income year, as calculated under **section ED 1** (Valuation of excepted financial arrangements). 10
- Link with subpart DA*
- (5) This section supplements the general permission. The general limitations still apply. 15
- Defined in this Act: deduction, excepted financial arrangement, general limitation, general permission, income year, original share, revenue account property, share-lending right, share supplier, supplement, trading stock
- Compare: 2004 No 35 s DB 40
- DB 51 Adjustment for prepayments**
- When this section applies* 20
- (1) This section applies when a person has, under **section EA 3** (Prepayments), an unexpired amount of expenditure at the end of an income year.
- Deduction*
- (2) The person is allowed a deduction for the unexpired amount for the following income year. 25
- Link with subpart DA*
- (3) This section supplements the general permission. The general limitations still apply, but not to the extent to which any relevant general limitation was overridden by a provision that initially allowed a deduction for the expenditure, whether in this Act or an earlier Act. 30
- Defined in this Act: amount, deduction, general limitation, general permission, income year, supplement
- Compare: 2004 No 35 s DB 41 35

**DB 52 Adjustment for deferred payment of employment income***When this section applies*

- (1) This section applies when a person has, under **section EA 4** (Deferred payment of employment income), an unpaid amount of expenditure on employment income in an income year for which the person is to be allowed a deduction in the following income year. 5

*Deduction*

- (2) The person is allowed a deduction for the unpaid amount for the following income year. 10

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply, but not to the extent to which any relevant general limitation was overridden by a provision that initially allowed a deduction for the expenditure, whether in this Act or an earlier Act. 15

Defined in this Act: amount, deduction, employment income, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DB 42 20

***Change to accounting practice*****DB 53 Adjustment for change to accounting practice***When this section applies*

- (1) This section applies when a person has, under **section EG 2(2) or (3)** (Adjustment for changes to accounting practice), an amount owed by them or an amount owing to them as quantified in those subsections. 25

*Amount, and timing, of deduction*

- (2) The person is allowed a deduction of the amount as quantified and allocated under **section EG 2**. 30

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, supplement

5

Compare: 2004 No 35 s DB 43

*Exempt income***DB 54 Expenditure incurred in deriving exempt dividend***Deduction*

- (1) A company that derives a dividend that is exempt income of the company under **section CW 9** (Dividend derived by company from overseas) is allowed a deduction of—
- (a) the amount of the expenditure incurred by the company in deriving the dividend, if the company is not a CTR company: 15
- (b) the amount calculated using the following formula, if the company is a CTR company:  
expenditure × (1 – non-resident shareholding).

*Definition of items in formula*

- (2) In the formula,—
- (a) **expenditure** is the amount of the expenditure incurred by the company in deriving the dividend: 20
- (b) **non-resident shareholding** is the fraction of the company's shareholders that are non-residents, calculated under **section RG 7(3) and (4)** (Reduction of payments for conduit tax relief). 25

*Link with subpart DA*

- (3) This section overrides the exempt income limitation. The general permission must still be satisfied and the other general limitations still apply. 30

Defined in this Act: company, CTR company, deduction, dividend, exempt income, exempt income limitation, general limitation, general permission, non-resident, shareholder

Compare: 2004 No 35 s DB 44

*Use of motor vehicle under certain arrangements*

**DB 55 Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 7**

*Deduction*

- (1) A party to an agreement or arrangement referred to in **section CX 7** (Employer or associated person treated as having right to use vehicle under arrangement) is allowed a deduction for expenditure incurred in operating a motor vehicle during a period for which an employer or associated person is treated under that section as having a right to use the vehicle. 5  
10

*Link with subpart DA*

- (2) This section overrides the private limitation and exempt income limitation. The general permission must still be satisfied and the other general limitations still apply. 15

Defined in this Act: arrangement, deduction, exempt income limitation, FBT rules, general limitation, general permission, lease, motor vehicle

Compare: 2004 No 35 s DB 45

*Payments to spouses, civil union partners, or de facto partners*

**DB 56 Payments to spouses, civil union partners, or de facto partners other than for services** 20

*No deduction without approval*

- (1) A person is denied a deduction for a payment to their spouse, civil union partner, or de facto partner for something other than services, without the Commissioner's approval. 25

*Commissioner's approval*

- (2) The Commissioner may approve the deduction only if— 30
- (a) the Commissioner considers that the payment is genuine; and
  - (b) the payment is incurred by the person exclusively in deriving their assessable income; and
  - (c) the approval is granted before the deduction is claimed.

*Link with subpart DA*

- (3) This section overrides the general permission.

Defined in this Act: assessable income, Commissioner, deduction, general permission, pay

Compare: 2004 No 35 s GD 4

5

*Avoidance and non-market transactions***DB 57 Adjustment for avoidance arrangements***Deduction denied*

- (1) An amount is not a deduction of a person if the deduction is denied under— 10
- (a) **section GA 1** (Commissioner's power to adjust):
  - (b) **section GB 17** (Excessive amounts for film rights or production expenditure):
  - (c) **section GB 18** (Arrangements to acquire film rights or incur production expenditure): 15
  - (d) **section GB 23** (Excessive remuneration to relatives):
  - (e) **section GB 25** (Close company remuneration to shareholders, directors or relatives).

*Deduction*

- (2) An amount treated as a deduction of a person under any of the following sections is a deduction of the person: 20
- (a) **section GA 1**:
  - (b) **section GB 23**:
  - (c) **section GB 29** (Attribution rule: calculation):
  - (d) **section GB 46** (Deferral of surplus deductions from arrangement). 25

*Link with subpart DA*

- (3)
- Subsection (1)**
- overrides, and
- subsection (2)**
- supplements, the general permission. The general limitations still apply.

Defined in this Act: amount, arrangement, close company, Commissioner, deduction, depreciation loss, director, film production expenditure, film rights, general limitation, general permission, relative, shareholder

Compare: 2004 No 35 ss GB 1, GC 11A, GC 31, GD 3(1), (2), GD 5, GD 12, GD 12A

30

**DB 58 Market value substituted***Transfer pricing arrangements*

- (1) A person may be denied a deduction under **section GC 7** (Excess amount payable by person).

*Acquisition for below market value*

- (2) A person may be treated as providing an amount—
- (a) for acquisition of trading stock, under **section GC 1** (Disposals of trading stock at below market value):
  - (b) for lease of a property, under **section GC 5** (Leases for inadequate rent).

*Link with subpart DA*

- (3) **Subsection (1)** overrides, and **subsection (2)** supplements, the general permission. The general limitations still apply.

Defined in this Act: deduction, general limitations, general permission, lease, trading stock

Compare: 2004 No 35 ss GD 7, GD 10

**Subpart DC—Employee or contractor expenditure****Contents**

DC 1	Lump sum payments on retirement	
DC 2	Pension payments to former employees	20
DC 3	Pension payments to former partners	
DC 4	Payments to working partners	
DC 5	Payments to spouses, civil union partners, or de facto partners: services	
DC 6	Contributions to employees' benefit funds	25
DC 7	Contributions to employees' superannuation schemes	
DC 8	Attribution of personal services	
DC 9	Restrictive covenants or exit inducements	
DC 10	Sale of business: transferred employment income obligations	30
DC 11	Transfers of employment income obligations to associates	
DC 12	Loans to employees under share purchase schemes	
DC 13	Criteria for approval of share purchase schemes: before period of restriction ends	35
DC 14	Criteria for approval of share purchase schemes: when period of restriction ends	
DC 15	Some definitions	

**DC 1 Lump sum payments on retirement***Deduction*

- (1) A person who carries on a business is allowed a deduction for a lump sum paid as a bonus, gratuity, or retiring allowance to an employee on retirement. 5

*Inclusions*

- (2) For the purposes of **subsection (1)**, a lump sum paid on retirement includes a lump sum paid to—
- (a) an employee when they end their employment or service through redundancy, loss of office, or similar circumstances: 10
- (b) a former employee when they are unable to be re-employed in seasonal work in circumstances that would be considered the loss of employment or service through redundancy if they resulted in ending the seasonal work. 15

*Exclusion*

- (3) This section does not apply to the extent to which the person has accepted a liability, as described in **section DC 10(1)(c)**, to pay an amount of employment income. 20

*Timing of deduction*

- (4) The deduction is allocated to the income year in which the lump sum is paid.

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 25

Defined in this Act: amount, business, capital limitation, deduction, employee, employment income, general limitation, general permission, income year, pay, supplement 30

Compare: 2004 No 35 s DC 1

**DC 2 Pension payments to former employees***When subsection (2) applies*

- (1) **Subsection (2)** applies when—
- (a) a person, other than a close company, carries on a business; and 35

- (b) a former employee has retired from their employment in the business or their employment has ended through redundancy or similar circumstances; and
- (c) they are paid a pension in consideration of their past services in the business; and 5
- (d) they or their spouse, civil union partner, or de facto partner has a right to receive the pension under a deed for a fixed period or for life or, in the case of the spouse, civil union partner, or de facto partner, until the spouse, civil union partner, or de facto partner enters a new marriage, civil union, or de facto relationship. 10
- Deduction: not close company*
- (2) The person is allowed a deduction for a reasonable amount paid as the pension to the former employee or their surviving spouse, civil union partner, or de facto partner. 15
- When subsection (4) applies*
- (3) **Subsection (4)** applies when—
- (a) a close company carries on a business; and
- (b) a former employee of the company is or has been a shareholder in it or has a relative who is or has been a shareholder in it; and 20
- (c) the former employee's employment in the company was genuine; and
- (d) they have retired from the employment or their employment has ended through redundancy or similar circumstances; and 25
- (e) they are paid a pension in consideration of their past services in the business; and
- (f) they or their spouse, civil union partner, or de facto partner has a right to receive the pension under a deed for a fixed period or for life or, in the case of the spouse, civil union partner, or de facto partner, until the spouse, civil union partner, or de facto partner enters a new marriage, civil union, or de facto relationship. 30
- Deduction: close company* 35
- (4) The close company is allowed a deduction for the amount paid as the pension to the former employee or their surviving spouse, civil union partner, or de facto partner.

	<i>Amount of deduction under subsection (4)</i>	
(5)	The amount of the deduction allowed under <b>subsection (4)</b> is the amount that the company would have paid if the former employee or their relative were not, or had not been, a shareholder in the company.	5
	<i>Timing of deductions</i>	
(6)	A deduction under this section is allocated to the income year in which the amount is paid.	
	<i>Relationship with section FB 11</i>	
(7)	<b>Section FB 11</b> (Pension payments to former employees) expands on this section.	10
	<i>Link with subpart DA</i>	
(8)	This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.	15
	<small>Defined in this Act: amount, business, capital limitation, close company, deduction, employee, general limitation, general permission, income year, pay, relative, shareholder, supplement</small>	
	<small>Compare: 2004 No 35 s DC 2</small>	
<b>DC 3</b>	<b>Pension payments to former partners</b>	20
	<i>When this section applies</i>	
(1)	This section applies when—	
	(a) a person is a partner in a partnership; or	
	(b) a person who was a partner in a partnership is in business on their own account.	25
	<i>Exclusion</i>	
(2)	This section does not apply to a partnership or a business that is engaged wholly or mainly in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land.	30
	<i>Deduction</i>	
(3)	The person is allowed a deduction for their share of an amount, to the extent to which the amount is reasonable, paid as a pension to a former partner, or to the spouse, civil union partner, or de facto partner of a deceased former partner, if—	35

- (a) the partnership in which the former partner was a partner (the **old partnership**) carried on the same business as that now carried on either by the partnership that is paying the pension or by the person in business who is paying the pension; and 5
- (b) the former partner retired from the old partnership or their employment ended through retirement; and
- (c) the former partner or their spouse, civil union partner, or de facto partner has a right to receive the pension under a deed for a fixed period or for life or, in the case of the spouse, civil union partner, or de facto partner, until the spouse, civil union partner, or de facto partner enters a new marriage, civil union, or de facto relationship; and 10
- (d) the pension is paid for the former partner's services in the old partnership. 15

*Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 20

Defined in this Act: amount, business, capital limitation, deduction, estate, general limitation, general permission, interest, land, pay, share, supplement

Compare: 2004 No 35 s DC 3

#### **DC 4 Payments to working partners**

*Deduction* 25

- (1) A person who is a partner in a partnership is allowed a deduction for their share of a payment made under a contract of service to a partner who personally and actively performs duties that—
  - (a) are required to be performed in carrying on the business of the partnership; and 30
  - (b) are performed by the partner during the currency of the contract of service.

*Exclusion*

- (2) This section does not apply to a partnership that is engaged wholly or mainly in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land. 35

*Amount of deduction*

- (3) The amount of the deduction is limited to the amount of the payment authorised by the contract of service and any bonus, whether or not the payment of a bonus is authorised by the contract. 5

*Relationship with sections GB 23*

- (4) This section is overridden by **sections GB 23** (Excessive remuneration to relatives).

*Meaning of contract of service*

- (5) In this section, **contract of service**, for a partner and a partnership, means an agreement that— 10
- (a) specifies the terms and conditions of the services to be performed by the partner; and
  - (b) specifies the amount payable to the partner for the performance of the services; and 15
  - (c) is entered into by all the partners in the partnership; and
  - (d) is in writing.

*Link with subpart DA*

- (6) This section supplements the general permission. The general limitations still apply. 20

Defined in this Act: amount, business, contract of service, deduction, estate, general limitation, general permission, interest, land, pay, share, supplement

Compare: 2004 No 35 s DC 4

**DC 5 Payments to spouses, civil union partners, or de facto partners: services** 25

*No deduction without approval*

- (1) A person is denied a deduction for a payment to their spouse, civil union partner, or de facto partner for services without the Commissioner's approval.

*When Commissioner can give consent* 30

- (2) The Commissioner may approve the deduction only if—
- (a) the Commissioner considers that the payment is for services rendered; and
  - (b) the services are not domestic services or otherwise services connected with the home; and 35

- (c) the payment is incurred by the person exclusively in deriving their assessable income; and
- (d) the approval is granted before the deduction is claimed.

*Relationship with section GB 23*

- (3) This section is overridden by **section GB 23** (Excessive remuneration to relatives). 5

*Link with subpart DA*

- (4) This section overrides the general permission.

Defined in this Act: assessable income, Commissioner, deduction, general permission, pay 10

Compare: 2004 No 35 s GD 4

## DC 6 Contributions to employees' benefit funds

*Deduction*

- (1) An employer is allowed a deduction for an amount that they pay to, or set aside as, a fund to provide individual personal benefits to their employees if— 15
- (a) the fund is not a superannuation scheme; and
  - (b) the employees' rights to receive benefits from the fund are fully secured.

*Link with subpart DA* 20

- (2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, employee, employer, general limitation, general permission, pay, superannuation scheme, supplement 25

Compare: 2004 No 35 s DC 5

## DC 7 Contributions to employees' superannuation schemes

*Deduction*

- (1) An employer is allowed a deduction for a contribution to an employees' superannuation scheme. 30

*Timing of deduction*

- (2) The deduction is allocated to the income year in which the employer makes the contribution.

*Relationship with section EJ 21*

- (3) **Subsection (2)** is overridden by **section EJ 21** (Contributions to employees' superannuation schemes).

*Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 5

Defined in this Act: capital limitation, deduction, employee, employer, general limitation, general permission, income year, superannuation scheme

Compare: 2004 No 35 s DC 6 10

**DC 8 Attribution of personal services***When this section applies*

- (1) This section applies when, under **sections GB 27 to GB 29** (which relate to the attribution rule for income from personal services), an amount of income of a person (the **associated entity**) is attributed to another person (the **working person**). 15

*Deduction*

- (2) The associated entity is allowed a deduction for the amount attributed.

*Timing of deduction*

- (3) The deduction is allocated to the income year in which the amount is attributed to the working person. 20

*Link with subpart DA*

- (4) This section supplements the general permission and overrides all the general limitations. 25

Defined in this Act: amount, deduction, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DC 7

**DC 9 Restrictive covenants or exit inducements***Deduction*

- (1) A person is allowed a deduction for expenditure that they incur that is income of another person under **section CE 9** (Restrictive covenants) or **CE 10** (Exit inducements). 30

*Exclusion*

- (2) This section does not apply if—
- (a) the other person performs services for the person; and
  - (b) expenditure that the person would have incurred for the services, if the other person had not derived an amount that is income under **section CE 9 or CE 10**, would have been of a capital nature. 5

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 10

Defined in this Act: amount, capital limitation, general limitation, general permission, income

Compare: 2004 No 35 s DC 8

## **DC 10 Sale of business: transferred employment income obligations** 15

*When this section applies*

- (1) This section applies when—
- (a) a person (the **seller**) sells a business, or a part of a business, to another person (the **buyer**); and 20
  - (b) an employee of the seller working in the business, or the part of the business, becomes an employee of the buyer under the sale arrangements; and
  - (c) the seller and the buyer agree in writing, under the sale arrangements, that the buyer assumes the obligation to pay an amount of employment income to the employee. 25

*Deduction: parties not associated*

- (2) If the seller and the buyer are not associated persons at the time of the sale,—
- (a) the seller is allowed a deduction, in the income year of the sale, for any part of the amount that remains contingent on the employee continuing in employment or any similar factor; and 30
  - (b) the seller is treated under **section EA 4(4)** (Deferred payment of employment income) as having paid the amount at the time of sale. 35

*Deduction: parties associated*

- (3) If the seller and the buyer are associated persons at the time of the sale, the buyer is allowed a deduction for the amount of employment income if the seller would have been allowed a deduction for the amount if the business, or the part of the business, had not been sold. 5

*Link with subpart DA*

- (4) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (2)(a)** supplements the general permission; the general limitations still apply: 10
- (b) **subsection (3)** overrides the capital limitation; the general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, arrangement, associated person, business, capital limitation, deduction, employee, employment income, general limitation, general permission, income year, pay, supplement, time of the sale 15

Compare: 2004 No 35 s DC 9

## **DC 11 Transfers of employment income obligations to associates** 20

*When this section applies*

- (1) This section applies when—
- (a) an employee of a person (**person A**) becomes an employee of another person (**person B**); and
- (b) person A and person B are associated persons at the time; and 25
- (c) person B assumes person A's obligation to pay an amount of employment income to the employee; and
- (d) the employee's becoming an employee of person B does not result from the sale by person A of a business, or a part of a business, to person B. 30

*Deduction*

- (2) Person B is allowed a deduction for the amount of employment income if person A would have been allowed a deduction for the amount if the transfer had not occurred. 35

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, associated person, business, capital limitation, deduction, employee, employment income, general limitation, general permission, pay

5

Compare: 2004 No 35 s DC 10

**DC 12 Loans to employees under share purchase schemes***Deduction*

- (1) An employing company that provides financial assistance to an employee by way of an interest-free loan under a share purchase scheme is allowed a deduction for providing the assistance, under the following conditions: 10
- (a) the scheme must have the Commissioner's approval, which must be given if the scheme meets all the criteria set out in **sections DC 13 and DC 14**; and 15
- (b) the deduction is allowed only for the 5 years after the date of the loan.

*Amount, and timing, of deduction*

- (2) The amount of the deduction in each income year is equal to the interest that would have been payable by the employing company for the income year if the amount of the loan had been borrowed by the company at an interest rate of 10% annually with interest calculated with monthly rests, and as if repayments by the employee under the scheme were repayments of the notional loan by the company. 20 25

*Group of companies*

- (3) If the employing company is part of a group of companies, and the share purchase scheme involves shares issued by another company in the group, the shares are treated as if they were issued by the employing company. 30

*Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 35

Defined in this Act: amount, capital limitation, Commissioner, company, deduction, employee, employing company, general limitation, general permission, group of

companies, income year, interest, pay, share, share purchase scheme, supplement, year

Compare: 2004 No 35 s DC 11

<b>DC 13 Criteria for approval of share purchase schemes: before period of restriction ends</b>	5
<i>What this section does</i>	
(1) This section sets out the criteria, relating to the provisions of a share purchase scheme on the period of restriction, that the Commissioner applies in determining whether or not to approve the scheme.	10
<i>Purchase of shares</i>	
(2) The scheme must provide for—	
(a) the shares to be available for no more than their market value at the date of purchase or subscription; and	
(b) the amount that an employee spends on buying shares under the scheme or any similar scheme to be \$2,340 or less in a 3 year period.	15
<i>Eligibility</i>	
(3) The scheme must provide for—	
(a) employees to be eligible to participate equally in the scheme, that is,—	20
(i) every full-time permanent employee on an equal basis with every other full-time permanent employee; and	
(ii) if the scheme applies to part-time employees and seasonal employees, every part-time employee on an equal basis with every other part-time employee and every seasonal employee on an equal basis with every other seasonal employee; and	25
(b) any minimum period of employment or service before employees are eligible to participate,—	30
(i) for full-time employees, to be no more than 3 years' full-time work; and	
(ii) for other employees, an accumulated period that is the equivalent of 3 years' full-time work.	35

*Loans to employees*

- (4) The scheme must provide for—
- (a) a loan to an employee to buy shares to be free of interest and other charges; and
  - (b) any minimum amount of loan to be \$624 or less; and 5
  - (c) employees to be able to repay the loan by regular equal instalments at intervals of 1 month or less over a period of between 3 years and 5 years from the date of the loan; and
  - (d) employees to be able to choose to repay some or all of 10  
the loan before the due date for repayment.

*Shares held on trust*

- (5) The scheme must provide for—
- (a) the trustee of the scheme to hold the shares in trust for the employee; and 15
  - (b) the trustee to pay any dividends directly to the employee; and
  - (c) the dividends to be treated as having been derived by the employee; and
  - (d) the employee to be prohibited from putting any dividends towards the repayment of any sum that the employee owes to the company or to the trustee; and 20
  - (e) the employee to be prohibited from charging or disposing of their rights or interests in the shares.

*Hardship*

- (6) The scheme must provide for a trustee who is satisfied that the employee's continued participation in the scheme has resulted or would result in serious hardship,— 25
- (a) with the employee's agreement, to vary the terms of the repayment of a loan under the scheme; or 30
  - (b) with the employee's agreement, to allow the employee to withdraw from the scheme as if they had ended their employment in the circumstances described in **section DC 14(4)**.

*Withdrawal from scheme*

- (7) The scheme must provide for— 35
- (a) an employee to be able to withdraw from the scheme on giving 3 months' notice to the trustee; and

- (b) the employee to be treated for the purposes of the scheme as if they ended their employment with the company on the date the notice takes effect, with the effect that **section DC 14(4) and (5)** then apply.

Defined in this Act: amount, Commissioner, company, dividend, employee, interest, notice, pay, period of restriction, share, share purchase scheme, trustee, year

5

Compare: 2004 No 35 s DC 12

#### **DC 14 Criteria for approval of share purchase schemes: when period of restriction ends**

10

*What this section does*

- (1) This section sets out the criteria, relating to the provisions of a share purchase scheme on the period when the period of restriction ends, that the Commissioner applies in determining whether or not to approve the scheme.

15

*General rule*

- (2) The scheme must provide for—
- (a) the trustee—
- (i) to transfer the shares to the employee if the employee is still employed by the company; or
- (ii) at the option of the employee, to buy the shares at their market value on the date of purchase; or
- (b) the trustee to apply **subsection (3) or (4)**, if either applies, in priority to **paragraph (a)**.

20

*Death, accident, sickness, redundancy, or retirement at normal retiring age*

25

- (3) If the period of restriction ends because the employee ends their employment through death, accident, sickness, redundancy, or retirement at normal retiring age, the scheme must provide for—
- (a) the trustee to transfer the shares to the legal representative of the employee's estate or to the former employee; or
- (b) at the option of the legal representative or former employee, the trustee to buy the shares at their market value on the date of purchase, subject to the repayment of any outstanding loan under the scheme for the shares.

30

35

*Employment ends for other reason*

- (4) If the period of restriction ends because the employee ends their employment for any reason other than one described in **subsection (3)**, the scheme must provide for the trustee to buy the shares at their market value on the date on which the employee ends their employment, subject to the repayment of any outstanding loan under the scheme for the shares. 5

*Purchase price when trustee buys shares*

- (5) If the trustee buys the shares when the period of restriction ends, the scheme must provide for the purchase price to be no more than the price paid for the shares by the employee. 10

Defined in this Act: Commissioner, company, employee, normal retiring age, pay, period of restriction, share, share purchase scheme, trustee

Compare: 2004 No 35 s DC 13

**DC 15 Some definitions** 15*Definitions*

- (1) In this section, and in **sections DC 12 to DC 14**,—  
**employee**—
- (a) means a person employed by a company:
  - (b) does not include— 20
    - (i) a director of the company; or
    - (ii) a person who, with any associated person, holds 10% or more of the issued capital of the company; or
    - (iii) a company, a local authority, a public authority, or an unincorporated body of persons 25
- employing company**, for an employee, means the company that employs the employee
- normal retiring age** means,—
- (a) for an employee other than one to whom **paragraph (b)** applies, no less than 60 years of age: 30
  - (b) for a female employee who is entitled under a contract of employment entered into before 1 April 1978 with the employing company to retire before 60 years of age, no less than 55 years of age: 35
  - (c) for any employee, an age that is earlier than the age referred to in **paragraph (a) or (b)** and that the Commissioner considers reasonable given the nature of the

employment or the general terms of employment in the business or occupation of the employee

**share**, for a company whose shares are made available under a share purchase scheme, means a fully paid ordinary share that ranks equally with, and has the same designation as, an existing ordinary voting share in the company 5

**trustee** means a person or group of persons appointed to administer a share purchase scheme of an employing company, and to hold shares under that scheme on trust for an employee during the period of restriction. 10

*Meaning of period of restriction*

(2) In this section, and in **sections DC 13 and DC 14**,—

- (a) **period of restriction** is defined in **subsections (3) and (4)**; and
- (b) for the purposes of this definition, if an employing company is part of a group of companies, and an employee is transferred to another company in the group, the employee is treated as continuing in their employment. 15

*Shorter of 2 periods* 20

(3) **Period of restriction** means the shorter of—

- (a) a period of 3 years starting on the date the employee buys or subscribes for the shares, or the period of repayment of a loan made to them under the scheme for this purpose, whichever is longer; and 25
- (b) a period starting on the date the employee buys or subscribes for the shares and ending on the date the employee ends their employment with the employing company.

This subsection is overridden by **subsection (4)**. 30

*Different period*

(4) If the employee buys or subscribes for the shares at market value, and the rules of the scheme provide a period of restriction, that period applies, but it must be no shorter than the period of repayment of a loan made under the scheme for the purpose, and must be no longer than the period described in 35

**subsection (3)** that would apply in the absence of this subsection.

Defined in this Act: associated person, company, director, employee, employing company, group of companies, group of persons, local authority, normal retiring age, pay, period of restriction, public authority, share, share purchase scheme, trustee, year

5

Compare: 2004 No 35 s DC 14

## Subpart DD—Entertainment expenditure

### Contents

DD 1	Entertainment expenditure generally	10
DD 2	Limitation rule	
DD 3	When limitation rule does not apply	
DD 4	Employment-related activities	
DD 5	Promoting businesses, goods, or services	
DD 6	Entertainment as business or for charitable purpose	15
DD 7	Entertainment outside New Zealand	
DD 8	Entertainment that is income or fringe benefit	
DD 9	Relationship with FBT rules	
DD 10	Interpretation: reimbursement and apportionment	
DD 11	Some definitions	20

### DD 1 Entertainment expenditure generally

*When this subpart applies*

- (1) This subpart applies when, in deriving income, a person incurs expenditure on entertainment that provides both a private and a business benefit. 25

*No deduction (with exception)*

- (2) The person is denied a deduction for expenditure that they incur on the forms of entertainment set out in **section DD 2**, except for 50% of the amount that they would have been allowed in the absence of this subsection. 30

*Meaning of limitation rule*

- (3) **Limitation rule** means the rule described in **subsection (2)**.

*Link with subpart DA*

- (4) This section overrides the general permission. 35
- Defined in this Act: amount, business, deduction, general permission, income, limitation rule

Compare: 2004 No 35 s DD 1

**DD 2 Limitation rule***What rule applies to*

- (1) The expenditure to which the limitation rule applies is expenditure on the forms of entertainment described in **subsections (2) to (6)**. 5

*Corporate boxes*

- (2) The limitation rule—
- (a) applies to deductions for expenditure on corporate boxes, corporate marquees or tents, or other exclusive areas, whether temporary or permanent, at— 10
    - (i) cultural, sporting, or other recreational events:
    - (ii) activities taking place off the person's business premises; and
  - (b) applies to the cost of tickets or other rights of entry to the areas; and 15
  - (c) applies to the cost of food and drink incidental to this form of entertainment.

*Holiday accommodation*

- (3) The limitation rule—
- (a) applies to deductions for expenditure on accommodation in a holiday home, time-share apartment, or similar leisure venue; and 20
  - (b) does not apply to accommodation that is merely incidental to business activities or employment duties; and
  - (c) applies to the cost of food and drink incidental to this form of entertainment. 25

*Pleasure craft*

- (4) The limitation rule—
- (a) applies to deductions for expenditure on yachts or other pleasure craft; and 30
  - (b) applies to the cost of food and drink incidental to this form of entertainment.

*Entertainment off premises*

- (5) The limitation rule applies to deductions for expenditure on food and drink that a person provides off their business premises. 35

*Entertainment on premises*

- (6) The limitation rule applies to deductions for expenditure on food and drink that a person provides, other than light refreshments such as a morning tea and whether or not guests are present,— 5
- (a) on their business premises at a celebration meal, party, reception, or other similar social function:
- (b) in an area of the premises that at the time is reserved for senior employees to use and is not open to all the person's employees working in the premises. 10

*Meaning of expenditure*

- (7) **Expenditure** includes,—
- (a) in **subsections (2) to (4)**,—
- (i) an amount of depreciation loss; and
- (ii) expenditure or loss on running costs and maintenance and similar matters; and 15
- (iii) a deduction for a lease premium under **section DZ 9** (Premium paid on land leased before 1 April 1993); and
- (b) in **subsections (2) to (6)**, any incidental expenditure on matters such as hireage of crockery, glassware, or utensils, waiting staff, and music or other entertainment provided in association with the specified kind of entertainment. 20

Defined in this Act: amount, business, business premises, deduction, depreciation loss, expenditure, limitation rule, pay 25

Compare: 2004 No 35 s DD 2

**DD 3 When limitation rule does not apply**

The limitation rule is either restricted in its application or does not apply to deductions for the expenditure described in **sections DD 4 to DD 8**. 30

Defined in this Act: deduction, limitation rule

Compare: 2004 No 35 s DD 3

**DD 4 Employment-related activities***Business travel expenditure* 35

- (1) The limitation rule does not apply to a deduction for expenditure on food or drink consumed by a person while travelling in

the course of business or for their employment duties. However, the limitation rule applies if—

- (a) the travel is mainly for the purpose of enjoying entertainment; or
- (b) the food or drink is consumed at a meal or function involving an existing or potential business contact as a guest; or
- (c) the food or drink is consumed at a celebration meal, party, reception, or other similar social function.

*Conference expenditure* 10

- (2) The limitation rule does not apply to a deduction for expenditure on light refreshments at a conference or educational course or similar event, nor to food or drink consumed at such an event lasting for at least 4 consecutive hours, excluding meal times. However, the limitation rule applies if the event is mainly for the purpose of entertainment. 15

*Expenditure on employees' meals*

- (3) The limitation rule does not apply to a deduction for expenditure on—
- (a) a reasonable amount of food or drink provided as a meal allowance, or the reimbursement of the cost of the food and drink, when an employee works overtime, if the allowance or reimbursement is exempt income under **section CW 17** (Expenditure on account, and reimbursement, of employees): 20
  - (b) a light meal consumed as part of the employee's employment duties in an area of the person's business premises that at the time is reserved for senior employees and their guests to use and is not open to all the person's employees working in the premises. 30

Defined in this Act: business, business contacts, business premises, deduction, employee, exempt income, limitation rule

Compare: 2004 No 35 s DD 4

## **DD 5 Promoting businesses, goods, or services**

*Sponsored promotions* 35

- (1) The limitation rule does not apply to a deduction for expenditure on entertainment if—

- (a) the entertainment is sponsored mainly to advertise or promote a person's business, goods, or services to the public; and
- (b) none of the following has a greater opportunity to enjoy the entertainment than the public generally: 5
- (i) existing business contacts of the person or the person whose business, goods, or services are being advertised or promoted:
- (ii) employees of the person or the person whose business, goods, or services are being advertised or promoted: 10
- (iii) anyone associated with the person or the person whose business, goods, or services are being advertised or promoted.
- Incidental costs of promotion* 15
- (2) The limitation rule does not apply to a deduction for expenditure on entertainment that is merely an incidental part of—
- (a) a trade display mainly held to advertise or promote a business, goods, or services:
- (b) a function open to the public and mainly held to advertise or promote a business, goods, or services. 20
- Samples*
- (3) The limitation rule does not apply to a deduction for expenditure on samples that a person provides for promotion or advertising purposes to anyone who is not an employee of or associated with the person. 25
- Entertainment for review*
- (4) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides to a person who is reviewing the entertainment for a book, magazine, paper, or other medium of communication. 30

Defined in this Act: associated person, business, business contacts, deduction, employee, limitation rule

Compare: 2004 No 35 s DD 5

**DD 6 Entertainment as business or for charitable purpose***Entertainment as business*

- (1) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides for market value or in an arm's length transaction in the ordinary course of their business, if that business is to provide 1 or more of the forms of entertainment referred to in **section DD 2**. 5

*Entertainment for charitable purposes*

- (2) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides to members of the public for charitable purposes. 10

Defined in this Act: business, charitable purpose, deduction, limitation rule

Compare: 2004 No 35 s DD 6

**DD 7 Entertainment outside New Zealand**

The limitation rule does not apply to a deduction for expenditure on entertainment that is enjoyed or consumed outside New Zealand. 15

Defined in this Act: deduction, limitation rule, New Zealand

Compare: 2004 No 35 s DD 7

**DD 8 Entertainment that is income or fringe benefit** 20

The limitation rule does not apply to a deduction for expenditure on entertainment that is—

- (a) income of the person who consumes it; or  
 (b) a fringe benefit to which fringe benefit tax applies.

Defined in this Act: deduction, fringe benefit, fringe benefit tax, income, limitation rule 25

Compare: 2004 No 35 s DD 8

**DD 9 Relationship with FBT rules**

**Sections DD 2 to DD 8** override the FBT rules. However, the FBT rules, as applied by **section CX 29** (Entertainment), override **sections DD 2 to DD 8** if an employee of the person providing the benefit— 30

- (a) may choose when to receive or use the benefit:

- (b) does not receive or use the benefit in the course of their employment duties.

Defined in this Act: employee, FBT rules

Compare: 2004 No 35 s DD 9

## **DD 10 Interpretation: reimbursement and apportionment** 5

In **sections DD 2 to DD 8**,—

- (a) a person is treated as having incurred expenditure on entertainment described in **section DD 2** if they pay an allowance for, or reimburse an employee's expenditure on, the entertainment, and the allowance or reimbursement is exempt income under **section CW 17** (Expenditure on account, and reimbursement, of employees): 10
- (b) if a person incurs expenditure that relates only partly to the entertainment, the expenditure must be apportioned appropriately. 15

Defined in this Act: employee, exempt income, pay

Compare: 2004 No 35 s DD 10

## **DD 11 Some definitions**

In this subpart,—

**business** includes any recurring income-earning activity 20

**business contacts**—

- (a) includes, for a person,—
- (i) their clients, customers, shareholders, other financiers, and suppliers:
- (ii) the clients, customers, shareholders, other financiers, and suppliers of an associated person: 25
- (b) if the person is in partnership, does not include other partners in the partnership

**business premises**—

- (a) means the normal business premises or a temporary workplace of the person (or an associate): 30
- (b) does not include premises or a workplace established mainly for the purpose of enjoying entertainment.

Defined in this Act: associated person, business, business contacts, business premises, shareholder 35

Compare: 2004 No 35 s DD 11

## Subpart DE—Motor vehicle expenditure

## Contents

### *Introductory provisions*

DE 1	What this subpart does	
DE 2	Deductions for business use	
DE 3	Methods for calculating proportion of business use	5
DE 4	Default method for calculating proportion of business use	

### *Actual records*

DE 5	Actual records	
------	----------------	--

### *Logbook*

		10
DE 6	Using logbook for test period	
DE 7	Logbook requirements	
DE 8	Logbook term	
DE 9	Inadequate logbook	
DE 10	Variance during logbook term	15
DE 11	Replacement vehicles	

### *Mileage rates*

DE 12	Mileage rate method	
-------	---------------------	--

## *Introductory provisions*

<b>DE 1</b>	<b>What this subpart does</b>	<b>20</b>
-------------	-------------------------------	-----------

### *Apportions motor vehicle expenditure*

(1)	This subpart sets out the rules for determining the proportion of business use of a motor vehicle to its total use when a person uses a motor vehicle partly for business purposes and partly for other purposes.	25
-----	---	----

### *Exclusions*

(2)	This subpart does not apply—	
	(a) to a company:	
	(b) to a person whose only income is income from employment:	30
	(c) to a motor vehicle that is used only—	
	(i) for the purpose of deriving income; or	
	(ii) for a purpose that constitutes a fringe benefit.	

	Defined in this Act: business use, company, fringe benefit, income, income from employment, motor vehicle	35
--	---	----

Compare: 2004 No 35 s DE 1

**DE 2 Deductions for business use***Deduction*

- (1) A person is allowed a deduction for—
- (a) expenditure that they incur for the business use of a motor vehicle: 5
  - (b) an amount of depreciation loss for the business use of a motor vehicle.

*Amount, and timing, of deduction: expenditure*

- (2) The amount of the deduction allowed in an income year for the expenditure for the business use of the vehicle is calculated using the formula— 10
- expenditure × business proportion.

*Definition of item in formula*

- (3) In the formula in **subsection (2)**, **business proportion** is the proportion of business use of the motor vehicle for the income year, expressed as a decimal, calculated under **sections DE 3 to DE 12**. 15

*Amount, and timing, of deduction: depreciation loss*

- (4) The amount of the deduction allowed in an income year for the amount of depreciation loss for the business use of the vehicle is calculated— 20
- (a) using the formula in **subsection (5)**, except in a case to which **paragraph (b)** applies; or
  - (b) using the formula in **subsection (7)**, if the amount of depreciation loss arises under **section EE 50(2)** (Effect of disposal or event). 25

*Calculation of deduction: depreciation loss generally*

- (5) The formula referred to in **subsection (4)(a)** is—
- standard calculation × business proportion.

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,— 30
- (a) **standard calculation** is the amount resulting from a calculation made for the motor vehicle under **section EE 16** (Amount resulting from standard calculation): 35

- (b) **business proportion** is the proportion of business use of the motor vehicle for the income year (expressed as a decimal) calculated under **sections DE 3 to DE 12**.

*Calculation of deduction: depreciation loss on disposal*

- (7) The formula referred to in subsection (4)(b) is— 5

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

*Definition of items in formula*

- (8) In the formula in **subsection (7)**,— 10
- (a) **disposal depreciation loss** is the amount resulting from a calculation made for the vehicle under **section EE 50(2)** (Effect of disposal or event):
- (b) **all deductions** is all amounts of depreciation loss relating to the vehicle for which the person has been allowed a deduction in each of the income years in which the person has owned the vehicle: 15
- (c) **base value** has the applicable one of the meanings in **sections EE 58 to EE 61** (which relate to base value):
- (d) **adjusted tax value** is the vehicle's adjusted tax value on the date on which the disposal or event occurs. 20

*Link with subpart DA*

- (9) This section supplements the general permission and overrides the private limitation. The other general limitations still apply. 25

Defined in this Act: adjusted tax value, amount, business use, deduction, depreciation loss, general limitation, general permission, income year, motor vehicle, own, private limitation, supplement

Compare: 2004 No 35 s DE 2

**DE 3 Methods for calculating proportion of business use** 30

The 3 methods that may be used to calculate the proportion of business use of a motor vehicle are—

- (a) actual records, *see* **section DE 5**:
- (b) a logbook, *see* **sections DE 6 to DE 11**:
- (c) mileage rates, *see* **section DE 12**. 35

Defined in this Act: business use, motor vehicle

Compare: 2004 No 35 s DE 3

#### **DE 4 Default method for calculating proportion of business use**

*When this section applies*

- (1) This section applies when—
- (a) a person has not maintained actual records to show the proportion of business use of a motor vehicle; or 5
  - (b) a period is not a term to which a proportion of business use of a motor vehicle established by a logbook applies; or
  - (c) a person cannot use the mileage rate method. 10

*Amount of deduction*

- (2) The deduction under **section DE 2** for expenditure or loss incurred is limited to the lesser of—
- (a) the proportion of actual business use of the vehicle; and
  - (b) 25% of the total use of the vehicle. 15

Defined in this Act: amount, business use, deduction, motor vehicle

Compare: 2004 No 35 s DE 4

#### ***Actual records***

#### **DE 5 Actual records**

To determine the proportion of business use of a motor vehicle, a person may use actual records showing the reasons for and the distance of journeys by a motor vehicle for business purposes. However, when the period covered falls within a logbook term, actual records may be used only if the person and the Commissioner agree. 20  
25

Defined in this Act: business use, Commissioner, logbook term, motor vehicle

Compare: 2004 No 35 s DE 5

#### ***Logbook***

#### **DE 6 Using logbook for test period**

A person may keep a logbook for a test period for the purpose of establishing the proportion of the business use of a motor vehicle for an income year, or part of an income year, that falls within a logbook term. If a person uses a logbook as a method of establishing the proportion of business use, they must also 30

record the total distance travelled in each income year, or part of an income year, that falls within a logbook term.

Defined in this Act: business use, income year, logbook term, motor vehicle

Compare: 2004 No 35 s DE 6

## DE 7 Logbook requirements 5

### *Test period*

- (1) When a logbook is used to establish the proportion of business use of a motor vehicle, a person must select a start date, and keep the logbook for at least 90 consecutive days at a time that represents, or is likely to represent, the average proportion of travel by the vehicle for business purposes during the logbook term. 10

### *Record of reasons for, and distance of, journeys*

- (2) The logbook must record— 15
- (a) the start and end of the 90 day test period; and
  - (b) the vehicle's odometer readings at the start and end of the test period; and
  - (c) the distance of each business journey; and
  - (d) the date of each business journey; and
  - (e) the reason for each business journey; and 20
  - (f) any other detail that the Commissioner may require.

Defined in this Act: business, business use, Commissioner, logbook term, motor vehicle

Compare: 2004 No 35 s DE 7

## DE 8 Logbook term 25

### *Meaning of logbook term*

- (1) A **logbook term** is a period to which the proportion of business use of a motor vehicle established by the logbook applies. The term lasts up to 3 years and starts and ends as described in **subsections (2) and (3)**. 30

### *Start of term*

- (2) A logbook term starts on the date that is the latest of the following days: 35
- (a) the first day of the income year in which a person starts to keep a logbook:

- (b) the day that a person acquires the motor vehicle, unless the vehicle is a replacement vehicle, which is dealt with in **section DE 11**:
- (c) the day immediately after the last day of the previous logbook term: 5
- (d) a day that a person specifies.

*End of term*

- (3) The logbook term ends on the date that is the earliest of the following days:
  - (a) the day that a person disposes of the motor vehicle without replacing it: 10
  - (b) the day that is 3 years after the first day of the income year in which the logbook term started:
  - (c) a day that the Commissioner specifies under **section DE 9**:
  - (d) a day that a person specifies. 15

Defined in this Act: business use, Commissioner, income year, logbook term, motor vehicle, year

Compare: 2004 No 35 s DE 8

**DE 9 Inadequate logbook***Non-representative logbook proportion* 20

- (1) If the Commissioner considers that the proportion of business use recorded in a logbook does not, or does no longer, represent the average use of a motor vehicle for business purposes during an income year that falls within a logbook term, the Commissioner may,— 25
  - (a) within the logbook term, direct a person to keep a further logbook and specify another 90 day period in the logbook term for keeping the logbook; or
  - (b) treat a person as not having kept a logbook that applies to the logbook term. 30

*Further logbook*

- (2) If the Commissioner directs a person to keep a further logbook, and the proportion of business use calculated under that logbook is less by at least 20% than the proportion under the first logbook, the Commissioner may find that the first logbook— 35
  - (a) represented the average use of the motor vehicle for business purposes for only part of the logbook term; or

(b) did not represent that use at all.

*Partly representative logbook*

- (3) If **subsection (2)(a)** applies, the Commissioner may determine a date on which the application of the first logbook ended, and the further logbook applies to a new logbook term that starts on the day after that date. 5

*Non-representative logbook*

- (4) If **subsection (2)(b)** applies, the Commissioner may direct that the further logbook applies for the logbook term to which the first logbook applied. 10

Defined in this Act: business use, Commissioner, income year, logbook term, motor vehicle

Compare: 2004 No 35 s DE 9

**DE 10 Variance during logbook term**

If, in any month during a logbook term, the proportion of business use in that month is less by at least 20% than the proportion established by the logbook, and the proportion of business use recorded in the logbook no longer represents the average use of the motor vehicle for business purposes, the logbook term must end on the last day of that month. 15  
20

Defined in this Act: business use, logbook term, motor vehicle

Compare: 2004 No 35 s DE 10

**DE 11 Replacement vehicles**

For the purpose of establishing the proportion of business use of a motor vehicle, a replacement vehicle is treated in the same way as the vehicle it replaces if— 25

- (a) the logbook is likely to be representative of the average travel for business purposes for the remainder of the logbook term; and  
(b) from the date of replacement, a person keeps a record of the total distance travelled by the replacement vehicle for each income year, or part of an income year, of the remaining logbook term. 30

Defined in this Act: business use, income year, logbook term, motor vehicle

Compare: 2004 No 35 s DE 11 35

### *Mileage rates*

#### **DE 12 Mileage rate method**

##### *Using mileage rates*

- (1) If a person's business travel is 5,000 kilometres or less in an income year, they may use the mileage rate method to calculate the expenditure or loss on a motor vehicle that represents the proportion of business use of the vehicle. 5

##### *Amount of deduction*

- (2) Under the mileage rate method, the person must keep details of the business use of the motor vehicle and calculate the mileage travelled for business purposes for the income year. The amount of the deduction under this method is found by multiplying the mileage rate by the distance that reflects the proportion of business use of the vehicle for the income year. 10

##### *Setting mileage rates*

- (3) For the purposes of this section, the Commissioner must from time to time set and publish a mileage rate. 15

Defined in this Act: amount, business, business use, Commissioner, deduction, income year, motor vehicle

Compare: 2004 No 35 s DE 12 20

#### Subpart DF—Government grants and compensation

##### **Contents**

- DF 1 Government grants to businesses
- DF 2 Repayment of grant-related suspensory loans
- DF 3 Identifying expenditure for purposes of sections DF 1 and DF 2 25
- DF 4 Accident compensation payment for attendant care

#### **DF 1 Government grants to businesses**

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

- (1) **Subsection (2)** applies when— 30
- (a) a payment is granted by a local authority or a public authority to a person for a business carried on by the person; and

- (b) the payment is in the nature of a grant or subsidy, or is a grant-related suspensory loan, but is not otherwise a payment in the nature of an advance or loan; and
- (c) the payment is made to the person for expenditure that they incur, other than in a way described in **subsection (3)**; and 5
- (d) the person would be allowed a deduction for the expenditure in the absence of this section; and
- (e) the payment is excluded income under **section CX 47** (Government grants to businesses). 10
- No deduction (with exception)*
- (2) The person is denied, to the extent of the amount of the payment, the deduction that they would have been allowed in the absence of this section.
- When subsection (4) applies* 15
- (3) **Subsection (4)** applies when—
- (a) a payment is granted by a local authority or a public authority to a person for a business carried on by the person; and
- (b) the payment is in the nature of a grant or subsidy, or is a grant-related suspensory loan, but is not otherwise a payment in the nature of an advance or loan; and 20
- (c) the payment is made to the person for expenditure that they incur in acquiring, constructing, installing, or extending an item of depreciable property; and 25
- (d) the person owns the item; and
- (e) the person is allowed a deduction for an amount of depreciation loss for the item.
- Amount of depreciation loss*
- (4) For the purpose of quantifying the amount of depreciation loss, the amount of the expenditure is reduced by the amount of the payment. 30
- Amendment of assessment*
- (5) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section. 35

*Exclusion*

- (6) This section does not apply to a large budget screen production grant.

*Link with subpart DA*

- (7) This section overrides the general permission. 5

Defined in this Act: amount, assessment, business, Commissioner, deduction, depreciable property, depreciation loss, general permission, grant-related suspensory loan, large budget screen production grant, local authority, pay, public authority, time bar

Compare: 2004 No 35 s DF 1 10

**DF 2 Repayment of grant-related suspensory loans***Deduction*

- (1) A person is allowed a deduction for the amount of a repayment that they are required to make of some or all of a grant-related suspensory loan to the extent to which the amount relates to a payment to which **section DF 1(2)** applies. 15

*Timing of deduction*

- (2) The deduction is allocated to the income year in which repayment is first required.

*Amount of depreciation loss* 20

- (3) If a person is required to repay some or all of a grant-related suspensory loan, then, to the extent to which **section DF 1(3) and (4)** apply to the loan,—

- (a) the person is allowed a deduction for an amount of depreciation loss for the item; and 25
- (b) the amount of depreciation loss is the total of the amounts of depreciation loss for the item for which the person would have been allowed a deduction if **section DF 1(3) and (4)** had not applied.

*Quantifying amount of depreciation loss* 30

- (4) For the purpose of quantifying the amount of depreciation loss for the item in the income year and in later income years, the following matters must be taken into account:

- (a) the amount of the deduction under **subsection (3)**; and
- (b) the total of the amounts of depreciation loss for the item for which the person has been allowed a deduction; and 35

- (c) the person's expenditure on acquiring, constructing, installing, or extending the item.

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation for the amount described in **sub-section (1)**. The other general limitations still apply. 5

Defined in this Act: amount, capital limitation, deduction, depreciation loss, general limitation, general permission, grant-related suspensory loan, income year, pay, supplement

Compare: 2004 No 35 s DF 2 10

**DF 3 Identifying expenditure for purposes of sections DF 1 and DF 2**

For the purposes of **sections DF 1 and DF 2**, a statement by a person making a grant-related suspensory loan as to the expenditure that relates to the loan or to the repayment of the loan provides conclusive evidence on the questions. 15

Defined in this Act: grant-related suspensory loan, pay

Compare: 2004 No 35 s DF 3

**DF 4 Accident compensation payment for attendant care**

*When this section applies* 20

- (1) This section applies when a person receives an accident compensation payment for attendant care as described in **paragraph (g)** of the definition of that term in **section CF 1(2)** (Benefits, pensions, compensation, and government grants) that is assessable income of the person. 25

*Deduction*

- (2) The person is allowed a deduction for the amount paid to a caregiver for attendant care.

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation and private limitation for the 30

amount described in **subsection (2)**. The other general limitations still apply.

Defined in this Act: accident compensation payment, assessable income, capital limitation, general limitation, general permission, income year, pay, private limitation

5

Compare: 2004 No 35 s DF 4

## Subpart DN—Attributed losses from foreign equity Contents

### *Attributed controlled foreign company loss*

DN 1	Attributed controlled foreign company loss	10
DN 2	When attributed CFC loss arises	
DN 3	Calculation of attributed CFC loss	
DN 4	Ring-fencing cap on deduction	

### *Foreign investment fund loss*

DN 5	Foreign investment fund loss	15
DN 6	When FIF loss arises	
DN 7	Calculation of FIF loss	
DN 8	Ring-fencing cap on deduction: not branch equivalent method	
DN 9	Ring-fencing cap on deduction: branch equivalent method	20

---

### *Attributed controlled foreign company loss*

#### **DN 1 Attributed controlled foreign company loss**

##### *Deduction*

(1)	A person is allowed a deduction for an attributed CFC loss, subject to the jurisdictional ring-fencing rule in <b>section DN 4</b> .	25
-----	--	----

##### *Link with subpart DA*

(2)	This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.	30
-----	--	----

Defined in this Act: attributed CFC loss, capital limitation, deduction, general limitation, general permission, supplement

Compare: 2004 No 35 s DN 1

**DN 2 When attributed CFC loss arises**

A person has an **attributed CFC loss** from a foreign company in an income year if—

- (a) the foreign company is a CFC at any time during 1 of its accounting periods, under **sections EX 1 to EX 7** (which relate to the definition of a controlled foreign company); and 5
- (b) the accounting period ends during the income year; and
- (c) the person has an income interest in the foreign company for the accounting period, under **sections EX 8 to EX 13** (which relate to calculating a person's income interest); and 10
- (d) at any time in the accounting period, the person is a New Zealand resident who is not a transitional resident; and 15
- (e) the person's income interest is 10% or more for the accounting period, under **sections EX 14 to EX 17** (which relate to the 10% threshold); and
- (f) the CFC has a branch equivalent loss for the accounting period, under **section EX 21** (Branch equivalent income or loss: calculation rules); and 20
- (g) the CFC is not an unqualified grey list CFC for the accounting period, under **section EX 22** (Unqualified grey list CFCs). 25

Defined in this Act: accounting period, attributed CFC loss, branch equivalent loss, CFC, foreign company, grey list, income interest, income year, New Zealand resident, transitional resident 25

Compare: 2004 No 35 s DN 2

**DN 3 Calculation of attributed CFC loss**

The amount of an attributed CFC loss is calculated under **sections EX 18 to EX 20** (which relate to the calculation of attributed CFC income or loss). 30

Defined in this Act: amount, attributed CFC loss

Compare: 2004 No 35 s DN 3

**DN 4 Ring-fencing cap on deduction**

*Amount of deduction*

- (1) The deduction that a person is allowed for an attributed CFC loss from a CFC in an income year is no more than the total of— 35

- (a) any attributed CFC income of the person for the income year from another CFC that is resident in the same country as the first CFC for the relevant accounting period; and
- (b) any FIF income of the person for the income year calculated under the branch equivalent method from a FIF that is resident in the same country. 5

*Income only once*

- (2) When **subsection (1)** is applied to an attributed CFC loss, an amount of attributed CFC income or FIF income may be used only to the extent to which the income is not used when— 10
  - (a) **subsection (1)** is applied to another attributed CFC loss; or
  - (b) **section DN 9** is applied to a FIF loss.

*Relationship with subpart IQ*

- (3) Any excess not able to be deducted because of **subsection (1)** is an attributed CFC net loss able to be used under **sections IQ 2, IQ 4, and IQ 9** (which relate to the use of attributed CFC net losses). 15

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, attributed CFC net loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, income year 20

Compare: 2004 No 35 s DN 4

***Foreign investment fund loss***

**DN 5 Foreign investment fund loss** 25

*Deduction*

- (1) A person is allowed a deduction for a FIF loss. However,—
  - (a) the deduction for a FIF loss calculated under any calculation method other than the branch equivalent method is subject to the ring-fencing rule in **section DN 8**; and 30
  - (b) the deduction for a FIF loss calculated under the branch equivalent method is subject to the jurisdictional ring-fencing rule in **section DN 9**.

*Link with subpart DA*

- (2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: branch equivalent method, calculation method, capital limitation, deduction, FIF loss, general limitation, general permission, supplement

5

Compare: 2004 No 35 s DN 5

**DN 6 When FIF loss arises***General rule*

- (1) A person has a **FIF loss** in an income year if,— 10
- (a) at any time in the year, the person has—
- (i) rights in a foreign company, or a foreign superannuation scheme, or an entity listed in **schedule 25, part A** (Foreign investment funds); or
- (ii) rights under a life insurance policy issued by a non-resident: 15
- (b) at that time, the rights are an attributing interest in a FIF under **sections EX 30** (Attributing interests in FIFs) and **EX 31** (Direct income interests in FIFs):
- (c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of— 20
- (i) the CFC regime exemption in **section EX 32** (CFC rules exemption):
- (ii) the grey list exemption in **section EX 33** (Grey list exemption): 25
- (iii) the foreign exchange control exemption in **section EX 34** (Foreign exchange control exemption):
- (iv) the exemption for a non-resident or transitional resident, in **section EX 35** (Income interest of non-resident or transitional resident): 30
- (v) the immigrant's accrued superannuation entitlement exemption in **section EX 36** (New resident's accrued superannuation entitlement exemption):
- (vi) the annuity or pension exemption in **section EX 37** (Non-resident's pension or annuity exemption): 35
- (d) if the person is a natural person and not acting as a trustee, the total cost (calculated under **section EX 55** (Measurement of cost)) of attributing interests in FIFs that the person holds at any time during the income year

- when the person is a New Zealand resident is more than \$50,000:
- (e) at any time in the year, the person is a New Zealand resident who is not a transitional resident and holds the attributing interest: 5
  - (f) under the relevant calculation method chosen by the person, a loss amount is calculated for the income year or relevant accounting period under **sections EX 38 to EX 45** (which relate to the calculation of FIF income or loss).
- Look-through calculation methods* 10
- (2) Despite **subsection (1)**, if the calculation method is the accounting profits method or branch equivalent method,—
    - (a) FIF loss arises in the income year only if the relevant accounting period of the FIF ends during the year; and
    - (b) the tests in **subsection (1)(a), (b), (c), and (e)** are applied on the basis that references in **subsection (1)(a), (b), (c), and (e)** to any time in the income year are read as references to any time in the relevant accounting period. 15
- Special rule: CFC with FIF interest*
- (3) A person with an income interest of 10% or more in a CFC can also have a FIF loss in an income year under the special rule in **section EX 46** (Additional FIF income or loss if CFC owns FIF), which applies when a CFC has an attributing interest in a FIF, whether or not the CFC is an unqualified grey list CFC under **section EX 22** (Unqualified grey list CFCs). 20
- Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, CFC, FIF, FIF loss, foreign company, foreign superannuation scheme, grey list, income interest, income year, life insurance policy, New Zealand resident, non-resident, transitional resident, trustee 25
- Compare: 2004 No 35 s DN 6 30

### DN 7 Calculation of FIF loss

The amount of a FIF loss is calculated, using the relevant calculation method, under **sections EX 38 to EX 49** (which relate to the calculation of FIF income or loss). 35

Defined in this Act: amount, calculation method, FIF loss

Compare: 2004 No 35 s DN 7

## DN 8 Ring-fencing cap on deduction: not branch equivalent method

### *Amount of deduction*

- (1) If a person has a FIF loss that is calculated under any calculation method other than the branch equivalent method, the deduction the person is allowed for the loss in an income year is no more than the total of— 5
- (a) any FIF income of the person for the income year that is calculated under any method other than the branch equivalent method; and 10
  - (b) any FIF income of the person for previous income years that is calculated under any method other than the branch equivalent method.

### *Income only once*

- (2) When **subsection (1)** is applied to a FIF loss, an amount of FIF income may be used only to the extent to which the income is not used when applying **subsection (1)** to another FIF loss. 15

### *Relationship with sections IQ 3 and IQ 5*

- (3) Any excess not able to be deducted because of **subsection (1)** is a FIF net loss able to be used under **section IQ 3** (Ring-fencing cap on FIF net losses) or **IQ 5** (Group companies using FIF net losses). 20

### *Application of ring-fencing to traders*

- (4) **Subsection (1)** does not apply to a FIF loss of a person from an attributing interest if the person acquired the interest— 25
- (a) as part of a business that includes dealing in such interests; or
  - (b) for the purpose of deriving a gain when the interest is disposed of; or
  - (c) as part of an undertaking or scheme entered into or devised for the purpose of making a profit. 30

### *CTR tax credit: past income year's income*

- (5) When **subsection (1)(b)** is applied in the case of an amount of FIF income for a previous income year calculated under the accounting profits method, the amount must be reduced by the amount of any CTR tax credit calculated under **subsection (6)** 35

and allowed against that income under **sections LQ 1 and LQ 2** (which relate to tax credits of CTR companies).

*Calculation of amount of tax credit*

- (6) The amount of the CTR tax credit is calculated using the formula— 5

$$\frac{\text{FIF income} - \text{FIF losses}}{\text{foreign attributed income} - \text{foreign attributed losses}} \times \text{previous year's tax credit.}$$

*Definition of items in formula*

- (7) In the formula,— 10
- (a) **FIF income** is all FIF income of the person in the previous income year calculated under the accounting profits method: 10
- (b) **FIF losses** is all FIF losses of the person in the previous income year calculated under the accounting profits method that are offset under **subsection (1)(a)**: 15
- (c) **foreign attributed income** is all foreign attributed income of the person for the previous income year: 15
- (d) **foreign attributed losses** means all foreign attributed loss offsets for the previous income year: 20
- (e) **previous year's tax credit** is the person's CTR tax credit for the previous tax year under **sections LQ 1 and LQ 2**. 25

Defined in this Act: accounting profits method, amount, attributing interest, branch equivalent method, business, calculation method, deduction, FIF income, FIF loss, FIF net loss, foreign attributed income, foreign attributed loss offsets, income year, tax year 25

Compare: 2004 No 35 s DN 8

**DN 9 Ring-fencing cap on deduction: branch equivalent method** 30

*Amount of deduction*

- (1) If a person has a FIF loss that is calculated under the branch equivalent method, the deduction the person is allowed for the loss in an income year is no more than the total of— 35
- (a) any attributed CFC income of the person for the income year from a CFC that is resident in the same country as the FIF for the relevant accounting period of the CFC; and

- (b) any FIF income of the person for the income year that is calculated under the branch equivalent method from another FIF resident in the same country.

*Income only once*

- (2) When **subsection (1)** is applied to a FIF loss, an amount of attributed CFC income or FIF income may be used only to the extent to which the income is not used when applying—
- (a) **subsection (1)** to another FIF loss; or
- (b) **section DN 4** to an attributed CFC loss.

*Relationship with section IQ 3*

- (3) Any excess not able to be deducted because of **subsection (1)** is a FIF net loss able to be used under **section IQ 3** (Ring-fencing cap on FIF net losses).

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, FIF net loss, income year

Compare: 2004 No 35 s DN 9

**Subpart DO—Farming and aquacultural  
business expenditure**

**Contents**

*Farming*

- DO 1 Enhancements to land, except trees
- DO 2 Erosion and shelter plantings
- DO 3 Trees on farms
- DO 4 Improvements to farm land
- DO 5 Expenditure on land: planting of listed horticultural plants
- DO 6 Expenditure on land: horticultural replacement planting
- DO 7 Accounting for expenditure on listed horticultural plants under sections DO 5 and DO 6
- DO 8 Meaning of planting and plot
- DO 9 Meaning of replaced area fraction and diminished value
- DO 10 Farming or horticulture expenditure of lessor or sublessor
- DO 11 Improvement destroyed or made useless

*Aquaculture*

- DO 12 Improvements to aquacultural business
- DO 13 Improvement destroyed or made useless

## *Farming*

### **DO 1 Enhancements to land, except trees**

#### *Deduction*

- |     |   |    |
|-----|---|----|
| (1) | A person is allowed a deduction for expenditure that they incur on the following in carrying on a farming or agricultural business on land in New Zealand:                            | 5  |
|     | (a) the destruction of weeds or plants detrimental to the land:   |    |
|     | (b) the destruction of animal pests detrimental to the land:  |    |
|     | (c) the repair of flood or erosion damage to the land:  | 10 |
|     | (d) the destruction of scrub, stumps, or undergrowth on the land:   |    |
|     | (e) the clearing or removing from the land of scrub, stumps, or undergrowth:  |    |
|     | (f) the construction on the land of fences for farming or agricultural purposes, including buying wire or wire netting for the purpose of making new or existing fences rabbit-proof: | 15 |
|     | (g) the regrassing and fertilising of all kinds of pasture, if the expenditure is not incurred in the course of a significant capital activity.                                       | 20 |

#### *Link with subpart DA*

- |     |  |    |
|-----|--|----|
| (2) | This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. | 25 |
|-----|--|----|

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, New Zealand, significant capital activity

Compare: 2004 No 35 s DO 1

### **DO 2 Erosion and shelter plantings**

#### *When this section applies* 30

- |     |  |
|-----|--|
| (1) | This section applies when a person carries on a farming or agricultural business on land in New Zealand, whether or not the business is the principal business carried on on the land. |
|-----|--|

*Deduction*

- (2) The person is allowed a deduction for expenditure that they incur in planting or maintaining trees, whether or not on the land, for the purpose of—
- (a) preventing or combating erosion of the land; or 5
  - (b) providing shelter to the land.

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 10

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, New Zealand

Compare: 2004 No 35 s DO 2

**DO 3 Trees on farms***When this section applies* 15

- (1) This section applies when—
- (a) a person carries on, on land in New Zealand, a farming or agricultural business that is the principal business carried on on the land; and
  - (b) they plant or maintain trees on the land; and 20
  - (c) the trees are not—
    - (i) trees for which the person is allowed a deduction under **section DO 2**; or
    - (ii) trees planted mainly to produce fruit; or
    - (iii) trees planted under a forestry encouragement agreement under the Forestry Encouragement Act 1962. 25

*Deduction*

- (2) The person is allowed the following deductions:
- (a) in an income year in which the person incurs expenditure on planting trees on the land, they are allowed a deduction of the lesser of \$7,500 and the expenditure that they incur; and 30
  - (b) in an income year in which the person incurs expenditure on maintaining trees on the land, they are allowed a deduction of the lesser of \$7,500 and the expenditure that they incur. 35

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, income year, New Zealand

5

Compare: 2004 No 35 s DO 3

**DO 4 Improvements to farm land***When this section applies*

- (1) This section applies when— 10
- (a) a person carries on a farming or agricultural business on land in New Zealand; and
  - (b) an improvement described in **schedule 20, part A** (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made to the land; and 15
  - (c) the expenditure on the improvement is not expenditure to which **sections DO 5 to DO 7** apply.

*Deduction: expenditure: owner of land*

- (2) A person who owns the land is allowed a deduction for expenditure to which all the following apply: 20
- (a) it is incurred on making the improvement; and
  - (b) it is incurred by the person or by another person; and
  - (c) it is not incurred on anything described in any of **sections DO 1 to DO 3**; and
  - (d) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person disposes of the land, the income year being the income year of the person who owns the land; and 25
  - (e) it is incurred in developing the land; and
  - (f) it is of benefit to the business in the income year in which the person is allowed the deduction. 30

*Deduction: expenditure: non-owner of land*

- (3) A person who does not own the land is allowed a deduction for expenditure to which all the following apply:
- (a) it is incurred on making the improvement; and 35
  - (b) it is incurred by the person; and
  - (c) it is not incurred on anything described in any of **sections DO 1 to DO 3**; and

- (d) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business on the land; and
- (e) it is incurred in developing the land; and
- (f) it is of benefit to the business in the income year in which the person is allowed the deduction. 5
- Amount, and timing, of deduction*
- (4) The amount of the deduction is calculated using the formula—  
schedule 20 percentage × diminished value.
- Definition of items in formula* 10
- (5) In the formula,—
- (a) **schedule 20 percentage** is the percentage set out opposite the description of the improvement in **schedule 20, part A:**
- (b) **diminished value** is the diminished value of the improvement. 15
- Amount, and timing, for obsolete vines or trees*
- (6) When non-listed horticultural plants described in **schedule 20, part A, clause 8** have ceased to exist, or to be used in deriving income, on or after 16 December 1991,— 20
- (a) **subsection (4)** does not apply; and
- (b) the amount of the deduction is the diminished value of the vines or trees at the time they ceased to exist or to be used in deriving income; and
- (c) the deduction is allocated to the income year in which the vines or trees ceased to exist or to be used in deriving income. 25
- Link with subpart DA*
- (7) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 30

*Amendment of schedule 20 by Order in Council*

- (8) The Governor-General may by Order in Council make regulations amending **schedule 20** to vary the categories of improvements and percentages of diminished value of those improvements allowed as a deduction. 5

Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, New Zealand, non-listed horticultural plant, own

Compare: 2004 No 35 s DO 4

**DO 5 Expenditure on land: planting of listed horticultural plants** 10

*When this section applies*

- (1) This section applies when—
- (a) a person carries on a farming or agricultural business, including a horticultural business, on land in New Zealand; and 15
  - (b) the land has been developed by the planting of listed horticultural plants on the land.

*Deduction and timing*

- (2) For an income year in which the planting benefits the business and for which **subsection (3)** does not apply, the person is allowed a deduction relating to expenditure incurred by the person, or by another person, in developing the land. 20

*Income year in which no deduction*

- (3) The person is denied a deduction under **subsection (2)** for an income year in which— 25
- (a) if the person owns the land, the person disposes of the land:
  - (b) if the person does not own the land, the person ceases carrying on the business on the land. 30

*Amount of deduction other than under subsections (6) and (7)*

- (4) For expenditure to which **subsections (6) and (7)** do not apply for the income year, the amount of the deduction under **subsection (2)** is calculated using the formula— 35

$$1.2 \times \text{rate} \times \text{diminished value.}$$

*Definition of items in formula*

- (5) In the formula,—
- (a) **rate** is the percentage rate determined for the kind of listed horticultural plant by the Commissioner under section 91AAB of the Tax Administration Act 1994: 5
  - (b) **diminished value** is the diminished value of the expenditure.

*Deduction: expenditure on replaced plant if no deduction under section DO 6*

- (6) If a listed horticultural plant in a planting of the person ceases in an income year to exist or to be used in deriving assessable income and the person has no deduction under **section DO 6** for the income year for the expenditure incurred in replacing the listed horticultural plant,— 10
- (a) the person is allowed a deduction: 15
  - (b) the amount of the deduction is the diminished value of the expenditure on the listed horticultural plant at the time that the listed horticultural plant ceases to exist or to be used in deriving assessable income:
  - (c) the deduction is allocated to the income year in which the listed horticultural plant ceases to exist or to be used in deriving income. 20

*Treatment of expenditure on replaced plant if deduction under section DO 6*

- (7) If a listed horticultural plant in a planting of the person ceases in an income year to exist or to be used in deriving assessable income and the person is allowed a deduction under **section DO 6** for the income year for all or some of the expenditure incurred in replacing the listed horticultural plant,— 25
- (a) the person is not allowed a deduction under this section; and 30
  - (b) the person may add the diminished value, immediately before the replacement, of the expenditure on the listed horticultural plant to the diminished values, at the end of the income year, of the expenditure on listed horticultural plants that are in the planting at the end of the income year; and 35

- (c) the person may choose the method of making the addition by applying the method in a return of income for the income year.

*Link with subpart DA*

- (8) This section overrides the general permission and the capital limitation. The other general limitations still apply. 5

Defined in this Act: assessable income, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, listed horticultural plant, planting, return of income

Compare: 2004 No 35 s DO 4B 10

**DO 6 Expenditure on land: horticultural replacement planting**

*When this section applies*

- (1) This section applies to a person who carries on a horticultural business on land in New Zealand and who, in an income year (the **current income year**)— 15
- (a) plants, or causes to be planted, on the land a listed horticultural plant as a replacement plant:
- (b) regrafts, or causes to be regrafted, a listed horticultural plant on the land as a replacement plant. 20

*Deduction*

- (2) The person is allowed a deduction of an amount set out in 1 of **subsections (3) and (5)** if, in the current income year,— 25
- (a) the person incurs expenditure in replacing a listed horticultural plant; and
- (b) the replacement plant benefits the business; and
- (c) the person does not dispose of the land on which the listed horticultural plant is cultivated; and
- (d) the person chooses that this section apply to the expenditure by making a return of income for the current income year on that basis. 30

*Amount of deduction if no deduction in 1 or both of 2 preceding income years*

- (3) If the person is denied a deduction under this section for 1 or both of the 2 income years preceding the current income year, the amount of the deduction under **subsection (2)** is calculated using the formula— 35

$$\text{replacement expenditure} \times \frac{7.5\%}{\text{fraction.}}$$

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,— 5
- (a) **replacement expenditure** is the amount of the expenditure incurred by the person in replacing the listed horticultural plant:
- (b) **fraction** is the greater of 7.5% and the replaced area fraction for the planting for the current income year. 10

*Amount of deduction if deduction in both of 2 preceding income years*

- (5) If the person has been allowed a deduction under this section for a planting for both of the 2 income years preceding the current income year, the amount of the deduction under **subsection (2)** is the lesser of— 15
- (a) the amount that is calculated using the formula in **subsection (6)**:
- (b) the amount that is calculated using the formula in **subsection (8)**. 20

*Formula for first amount*

- (6) The first amount is calculated using the formula—
- $$\text{replacement expenditure} \times \frac{7.5\%}{\text{fraction.}}$$
- 25

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,—
- (a) **replacement expenditure** is the amount of the expenditure incurred by the person:
- (b) **fraction** is the greater of 7.5% and the replaced area fraction for the planting for the current income year. 30

*Formula for second amount*

- (8) The second amount is calculated using the formula—
- $$\text{replacement expenditure} \times \frac{15\% - \text{earlier fraction} - \text{later fraction}}{\text{replaced area fraction.}}$$
- 35

*Definition of items in formula*

- (9) In the formula in **subsection (8)**,—

- (a) **replacement expenditure** is the amount of the expenditure incurred by the person:
- (b) **earlier fraction** is the lesser of 7.5% and the replaced area fraction for the planting for the earlier of the 2 income years preceding the current income year: 5
- (c) **later fraction** is the lesser of 7.5% and the replaced area fraction for the planting for the later of the 2 income years preceding the current income year:
- (d) **replaced area fraction** is the replaced area fraction for the planting for the current income year. 10

*Timing of deduction*

- (10) The deduction is allocated to the current income year.

*Link with subpart DA*

- (11) This section overrides the general permission and the capital limitation. The other general limitations still apply. 15

Defined in this Act: assessable income, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, listed horticultural plant, planting, replaced area fraction, replacement plant, return of income

Compare: 2004 No 35 s DO 4C

**DO 7 Accounting for expenditure on listed horticultural plants under sections DO 5 and DO 6** 20

*Separate accounting for additional listed horticultural plants if deduction under section DO 6*

- (1) A person to whom **section DO 5** applies must, for an income year and for later income years for which **subsection (2)** does not apply, account separately under **sections DO 5 and DO 6** for listed horticultural plants if— 25
  - (a) the person has had a deduction under **section DO 6** for 1 or both of the 2 income years preceding the income year; and 30
  - (b) the person acquires the listed horticultural plants in the income year; and
  - (c) the listed horticultural plants benefit the business of the person in the income year; and
  - (d) the listed horticultural plants are not replacement plants. 35

*Combined accounting for listed horticultural plants if no deduction under section DO 6*

- (2) Despite **subsection (1)**, a person may account under **sections DO 5 and DO 6** for listed horticultural plants as 1 planting for an income year and later income years if the person has had no deduction under **section DO 6** for both of the 2 income years preceding the income year. 5
- Defined in this Act: deduction, income year, listed horticultural plant, planting, replacement plant
- Compare: 2004 No 35 s DO 4D 10

### **DO 8 Meaning of planting and plot**

In this section and **sections DO 5 to DO 7**,—

**planting** for a person and an income year means 1 or more listed horticultural plants—

- (a) that are involved in the business of the person during the income year; and 15
- (b) for which the person must account under **sections DO 5 and DO 6**, for the income year, separately from any other listed horticultural plants that are involved in the business of the person 20

**plot** means the land occupied by the listed horticultural plants in a planting

Defined in this Act: income year, listed horticultural plant, planting

Compare: 2004 No 35 s DO 4E

### **DO 9 Meaning of replaced area fraction and diminished value** 25

*Meaning of replaced area fraction*

- (1) In **sections DO 5 and DO 6**, **replaced area fraction** for a planting and an income year means the amount calculated using the formula— 30
- $$\frac{\text{replacement area}}{\text{plot area}} \times 100\%.$$

*Definition of items in formula*

- (2) In the formula in **subsection (1)**,— 35
- (a) **replacement area** is the area, at the end of the income year, of the part of the plot on which listed horticultural plants in the planting are planted or regrafted during the income year as replacement plants:

- (b) **plot area** is the total area, at the end of the income year, of the plot.

*Meaning of diminished value*

- (3) In **sections CB 27, CX 48, DB 47, DO 4 to DO 12, and DP 3**, (which relate to certain businesses on land) **diminished value** for an income year means the amount calculated using the formula— 5  
 expenditure on improvements + income – total deductions

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—
- (a) **expenditure on improvements** is the amount of expenditure described in **section DO 4 to DO 7, DO 12, or DP 3**: 10
- (b) **income** is the total amount of income derived under **section CB 27(8)** (Environmental restoration accounts) in relation to the expenditure:
- (b) **total deductions** is the total amount allowed as a deduction for the expenditure to any person— 15
- (i) in an earlier income year under this Act or an earlier Act:
- (ii) in the income year under this Act, except an amount allowed in the income year under **section DB 47, DO 6, DO 7, DO 12, or DP 3**. 20

Defined in this Act: income year, listed horticultural plant, planting, plot, replacement plant

Compare: 2004 No 35 ss DO 4E, OB 1 “diminished value”

**DO 10 Farming or horticulture expenditure of lessor or sublessor** 25

*When this section applies*

- (1) This section applies when a person—
- (a) is the owner of an estate in fee simple or of a leasehold estate in land in New Zealand; and 30
- (b) grants a lease or a sublease of the land to a person who carries on a farming or agricultural business on the land; and
- (c) in the term of the lease or sublease,—
- (i) incurs expenditure relating to the land for which they are allowed a deduction under any of **section DO 1, DO 2, DO 4, DO 5, or DO 6**; or 35

- (ii) is allowed a deduction under **section DO 4(2), DO 5(2), or DO 6** for expenditure incurred by another person relating to the land.

*Relationship with sections DO 1, DO 2, DO 4, DO 5, and DO 6*

5

- (2) **Sections DO 1, DO 2, DO 4, DO 5, and DO 6**, whichever is applicable to the person, applies as if the person were personally carrying on a farming or agricultural business on the land at the time they incur the expenditure or are allowed the deduction.

Defined in this Act: business, deduction, estate, lease, leasehold estate, New Zealand, own, term of the lease

10

Compare: 2004 No 35 s DO 5

## **DO 11 Improvement destroyed or made useless**

*When this section applies*

- (1) This section applies when, in an income year of a person,— 15
- (a) the person owns land, or operates a business on land, to which an improvement described in **schedule 20** (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made for the purposes of the business; and 20
- (b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income; and
- (c) the person would be entitled for the income year to a deduction under **section DO 4 or DO 5** for expenditure on the improvement if the improvement had not been destroyed or irreparably damaged and made useless; and 25
- (d) the damage occurs in an income year that corresponds to the 2005–06 or a later tax year; and 30
- (e) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

*Deduction: diminished value of expenditure*

- (2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement. 35

*Link with subpart DA*

- (3) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year

5

Compare: 2004 No 35 s DO 5B

*Aquaculture***DO 12 Improvements to aquacultural business***When this section applies*

- (1) This section applies when— 10
- (a) a person carries on an aquacultural business in New Zealand; and
  - (b) the aquacultural business is—
    - (i) fish farming under a licence issued under the Freshwater Fish Farming Regulations 1983; or 15
    - (ii) mussel farming; or
    - (iii) rock oyster farming; or
    - (iv) scallop farming; or
    - (v) sea-cage salmon farming; and
  - (c) an improvement described in any of **schedule 20, parts B to F** (Expenditure on farming, horticultural, aquacultural, and forestry improvements) is made for the purposes of the business. 20

*Deduction: expenditure: owner of improvement*

- (2) A person who owns the improvement is allowed a deduction for expenditure to which all the following apply: 25
- (a) it is incurred on making the improvement; and
  - (b) it is incurred by the person or by another person; and
  - (c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business, the income year being the income year of the person who owns the improvement; and 30
  - (d) it is incurred in developing the business; and
  - (e) it is of benefit to the business in the income year in which the person is allowed the deduction. 35

*Deduction: expenditure: non-owner of improvement*

- (3) A person who does not own the improvement is allowed a deduction for expenditure to which all the following apply:
- (a) it is incurred on making the improvement; and
  - (b) it is incurred by the person; and 5
  - (c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business; and
  - (d) it is incurred in developing the business; and
  - (e) it is of benefit to the business in the income year in which the person is allowed the deduction. 10

*Amount, and timing, of deduction*

- (4) The amount of the deduction is calculated using the formula—  
schedule 20 percentage × diminished value.

*Definition of items in formula*

- (5) In the formula,— 15
- (a) **schedule 20 percentage** is the percentage set out opposite the description of the improvement in any of **schedule 20, parts B to F**;
  - (b) **diminished value** is the diminished value of the improvement. 20

*Link with subpart DA*

- (6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 25

Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand

Compare: 2004 No 35 s DO 6

**DO 13 Improvement destroyed or made useless***When this section applies* 30

- (1) This section applies when, in an income year of a person,—
- (a) the person carries on an aquacultural business in New Zealand—
    - (i) that meets the requirements of **section DO 12(1)(b)**; and 35
    - (ii) for the purposes of which an improvement described in **schedule 20** (Expenditure on farming,

- horticultural, aquacultural, and forestry improvements) has been made; and
- (b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income; and 5
- (c) the person would be entitled for the income year to a deduction under **section DO 12** for expenditure on the improvement if the improvement had not been destroyed or irreparably damaged and made useless; and 10
- (d) the damage occurs in an income year that corresponds to the 2005–06 or a later tax year; and
- (e) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person. 15
- Deduction: diminished value of expenditure*
- (2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement. 20
- Link with subpart DA*
- (3) This section overrides the general permission and the capital limitation. The other general limitations still apply. 20
- Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year
- Compare: 2004 No 35 s DO 7 25

## Subpart DP—Forestry expenditure

### Contents

DP 1	Expenditure of forestry business	
DP 2	Plant or machinery	
DP 3	Improvements to forestry land	30
DP 4	Improvement destroyed or made useless	
DP 5	Forestry encouragement agreement: deductions	
DP 6	Forestry encouragement agreement: no deduction	
DP 7	Land contouring: no deduction	
DP 8	Forestry business on land bought from Crown, Maori owners, or holding company: no deduction	35
DP 9	Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company	

- DP 10 Cost of acquiring timber or right to take timber: other cases
- DP 11 Cost of timber

---

## DP 1 Expenditure of forestry business

- Deduction* 5
- (1) A person carrying on a forestry business on land in New Zealand is allowed a deduction for expenditure that they incur on—
- (a) administrative overheads, rates, rent, insurance premiums, or other expenses of the same kinds: 10
  - (b) interest on money borrowed for the purposes of the business and employed as capital in the business:
  - (c) planting or maintaining trees on the land:
  - (d) applying fertiliser after the planting of the trees:
  - (e) disease control, pest control, or weed control (excluding releasing): 15
  - (f) repair or maintenance of plant, machinery, or equipment used by the person mainly in—
    - (i) planting or maintaining trees on the land; or
    - (ii) preparing or otherwise developing the land for the person's forestry operations: 20
  - (g) repair or maintenance of land improvements, other than trees, effected on the land and used by the person mainly in the business:
  - (h) the construction to or on the land of access tracks that are— 25
    - (i) constructed for a specific operational purpose; and
    - (ii) used for no longer than 12 months after construction: 30
  - (i) the cost of standing timber that is lost or destroyed.
- Timing of deduction*
- (2) Although timber is revenue account property, a deduction for expenditure described in **subsection (1)** is not allocated under **section EA 2(2)** (Other revenue account property) but under **section BD 4(2)** (Allocation of deductions to particular income years). 35

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, interest, New Zealand, revenue account property, standing timber, timber

5

Compare: 2004 No 35 s DP 1

**DP 2 Plant or machinery***When this section applies: first case*

10

- (1) This section applies when—
- (a) a person incurs expenditure on acquiring, on or after 1 April 1975, plant or machinery; and
  - (b) the person first uses the plant or machinery on or after 1 April 1975; and
  - (c) the person uses the plant or machinery mainly in developing land in New Zealand for use in a forestry business to be carried on by them on the land.

15

*When this section applies: second case*

- (2) This section also applies when—
- (a) a person carrying on a forestry business on land in New Zealand incurs expenditure on acquiring, on or after 1 April 1975, plant or machinery; and
  - (b) the person first uses the plant or machinery on or after 1 April 1975; and
  - (c) the person uses the plant or machinery mainly in planting or maintaining trees on the land.

20

25

*Deduction*

- (3) The person is allowed a deduction for an amount of depreciation loss for the plant or machinery.

30

*Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: acquire, amount, business, capital limitation, deduction, depreciation loss, general limitation, general permission, New Zealand

35

Compare: 2004 No 35 s DP 2

**DP 3 Improvements to forestry land***When this section applies*

- (1) This section applies when—
- (a) a person carries on a forestry business on land in New Zealand; and 5
  - (b) an improvement described in **schedule 20, part G** (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made to the land.

*Deduction: expenditure: owner of land*

- (2) A person who owns the land is allowed a deduction for expenditure to which all the following apply: 10
- (a) it is incurred on making the improvement; and
  - (b) it is incurred by the person or by another person; and
  - (c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person disposes of the land, the income year being the income year of the person who owns the land; and 15
  - (d) it is incurred in developing the land; and
  - (e) it is of benefit to the business in the income year in which the person is allowed the deduction. 20

*Deduction: expenditure: non-owner of land*

- (3) A person who does not own the land is allowed a deduction for expenditure to which all the following apply:
- (a) it is incurred on making the improvement; and
  - (b) it is incurred by the person; and 25
  - (c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business on the land; and
  - (d) it is incurred in developing the land; and
  - (e) it is of benefit to the business in the income year in which the person is allowed the deduction. 30

*Amount, and timing, of deduction*

- (4) The amount of the deduction is calculated using the formula—  
schedule 20 percentage × diminished value.

*Definition of items in formula* 35

- (5) In the formula,—

- (a) **schedule 20 percentage** is the percentage set out opposite the description of the improvement in **schedule 20, part G**;
- (b) **diminished value** is the diminished value of the improvement. 5

*Link with subpart DA*

- (6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 10
- Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand, own
- Compare: 2004 No 35 s DP 3

#### **DP 4 Improvement destroyed or made useless**

*When this section applies*

- (1) This section applies when, in an income year of a person,— 15
  - (a) the person operates a forestry business on land, to which there has been made an improvement; and
  - (b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income— 20
    - (i) in an income year that corresponds to the 2005–06 or a later tax year; and
    - (ii) other than as a result of the action or failure to act of the person, an agent of the person, or an associated person; and
  - (c) the person would be entitled for the income year to a deduction under **section DP 3** for expenditure on the improvement if the improvement had not been destroyed or made useless. 25

*Deduction: diminished value of expenditure*

- (2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement. 30

*Link with subpart DA*

- (3) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year

5

Compare: 2004 No 35 s DP 3B

**DP 5 Forestry encouragement agreement: deductions***When this section applies*

- (1) This section applies when a person makes a forestry encouragement agreement under the Forestry Encouragement Act 1962.

10

*Deduction: forestry expenditure under agreement*

- (2) The person is allowed a deduction for expenditure that they incur if all the following apply to the expenditure:
- (a) it is expenditure incurred in planting or maintaining trees under the agreement; and 15
- (b) it is not expenditure for which an advance has been or is to be made under the agreement; and
- (c) it is not expenditure represented in a payment made to the person under the Forestry Encouragement Grants Regulations 1983 and incurred in— 20
- (i) planting or maintaining trees; or
- (ii) meeting administrative overheads, rates, rent, insurance premiums, or other expenses of the same kinds; or 25
- (iii) paying interest on money borrowed for the purpose of developing the trees and employed as capital in developing the trees.

*Deduction: advance*

- (3) The person is allowed a deduction for expenditure that they incur in— 30
- (a) making a payment of interest for an advance made under the agreement:
- (b) making a payment reducing the principal of an advance made under the agreement. 35

*Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, interest, pay

5

Compare: 2004 No 35 s DP 4

**DP 6 Forestry encouragement agreement: no deduction***No deduction*

- (1) A person who has made a forestry encouragement agreement under the Forestry Encouragement Act 1962 is denied a deduction for an amount equal to the amount from which they are relieved in the following circumstances:

10

(a) an advance is made to the person under the agreement; and

15

(b) the advance is exempt income of the person under **section CW 2** (Forestry encouragement agreements); and

(c) the person is later relieved from some or all of their liability to repay the principal.

*Link with subpart DA*

20

- (2) This section overrides the general permission.

Defined in this Act: amount, deduction, exempt income, general permission, pay

Compare: 2004 No 35 s DP 5

**DP 7 Land contouring: no deduction***No deduction*

25

- (1) A person who derives income under **section CB 24** (Disposal of timber or right to take timber) or **CB 25** (Disposal of land with standing timber) is denied a deduction for expenditure that they incur on land contouring in the course of deriving the income.

30

*Link with subpart DA*

- (2) This section overrides the general permission.

Defined in this Act: deduction, general permission, income

Compare: 2004 No 35 s DP 6

**DP 8 Forestry business on land bought from Crown, Maori owners, or holding company: no deduction**

*No deduction: forestry company*

- (1) A forestry company is denied a deduction for interest to which both the following apply: 5
- (a) it is paid by the company under a qualifying debenture issued by the company; and
  - (b) it is exempt income of the person deriving it, under **section CW 3** (Forestry companies and Maori investment companies). 10

*No deduction: Maori investment company*

- (2) A Maori investment company is denied a deduction for interest to which both the following apply: 15
- (a) it is paid by the company under a qualifying debenture issued by the company; and
  - (b) it is exempt income of the person deriving it, under **section CW 3**.

*Relationship with section FA 2*

- (3) **Section FA 2** (Recharacterisation of certain debentures) as it applies to substituting debentures, does not apply to a qualifying debenture. 20

*Link with subpart DA*

- (4) This section overrides the general permission. 25
- Defined in this Act: business, deduction, exempt income, forestry company, general permission, holding company, interest, Maori investment company, Maori owners, pay, qualifying debenture, substituting debenture
- Compare: 2004 No 35 s DP 7

**DP 9 Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company**

*When this section applies* 30

- (1) This section applies when a forestry company buys land with standing timber on it from a seller who is the Crown, the Maori owners, or a holding company of the forestry company.

*Sellers of Maori land*

- (2) For the purposes of **subsection (1)**,— 35

- (a) land sold to the forestry company by the Maori Trustee or by a trustee for a Maori owner is treated as if it had been sold by the beneficial owners:
- (b) land sold to the forestry company by a Maori incorporation is treated as if it had been sold by the members of the incorporation. 5

*Cost of acquiring timber*

- (3) The cost to the forestry company of acquiring the timber is the lesser of—
  - (a) the cost of the timber to the seller at the date of the sale; and 10
  - (b) the amount described in **section CB 25(3)** (Disposal of land with standing timber).

Defined in this Act: business, forestry company, holding company, Maori incorporation, Maori owners, standing timber, trustee 15

Compare: 2004 No 35 s DP 8

**DP 10 Cost of acquiring timber or right to take timber: other cases**

*Acquiring land with standing timber*

- (1) For a person acquiring land with standing timber on it in a disposal to which **section CB 25** (Disposal of land with standing timber) applies, the cost of acquiring the timber is the amount that is, under **section CB 25**, income of the person disposing of the land. 20

*Recharacterisation or avoidance* 25

- (2) For a person acquiring timber or a right to take timber in a disposal or distribution to which **section EB 24**, **FB 6**, **FB 7**, **GC 1**, or **GC 2** (which relate to the disposal of trading stock) applies, the cost of acquiring the timber or the cost of acquiring a right to take timber is the amount treated as—
  - (a) the price paid or realised under **section EB 24** (Apportionment on disposal of business assets that include trading stock); or 30
  - (b) the consideration under **sections FB 6 and FB 7** (which relate to the disposal of timber under a relationship agreement); or 35
  - (c) the price realised under **section GC 1** (Disposals of trading stock at below market value); or

- (d) the price realised under **section GC 2** (Disposals of timber rights or standing timber).

*Transfers between associated persons*

- (3) **Subsections (4) and (5)** apply if—
- (a) a person (the **transferor**) disposes of timber, a right to take timber, or standing timber, to an associated person (the **transferee**); and 5
- (b) as a result, the transferor has an amount of income under **section CB 24 or CB 25** (which relate to income from timber). 10

*Limit on deduction for transferor*

- (4) The deduction that the transferor is allowed for the cost of the timber, right to take timber, or standing timber must not be more than the amount of the income.

*Transferee's deduction*

- (5) The deduction that the transferee is allowed for the cost of acquiring the timber is calculated on the basis that the transferee acquired the timber of the total of— 15
- (a) the cost to the transferee of acquiring the timber; and
- (b) the amount, if any, for which the transferor is denied a deduction under **subsection (4)**. 20

Defined in this Act: amount, dispose, income, pay, right to take timber, standing timber, timber

Compare: 2004 No 35 ss DP 9, GD 15

**DP 11 Cost of timber** 25

*When this section applies*

- (1) This section applies when—
- (a) an amount of cost of some timber is treated by a person under generally accepted accounting practice as a cost of the timber for the person and reported accordingly for financial reporting purposes; and 30
- (b) in the absence of **section DB 47** (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the person a deduction for the amount; and 35
- (c) an amount derived by the person from disposing of the timber would be income of the person under **section**

**CB 24** (Disposal of timber or right to take timber) or  
**CB 25** (Disposal of land with standing timber).

*Deduction*

- (2) The person is allowed a deduction for the amount.

*Timing of deduction: trading stock*

5

- (3) If the amount is a cost of trading stock, the deduction is allocated to the income year in which the timber first becomes trading stock of the person.

*Timing of deduction: not trading stock*

- (4) If the amount is not a cost of trading stock, the deduction is allocated by **section EA 2** (Other revenue account property). 10

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 15

Defined in this Act: amount, capital limitation, cost of timber, deduction, dispose, general limitation, general permission, generally accepted accounting practice, income, income year, supplement, timber, trading stock

Compare: 2004 No 35 ss DP 10, GD 15

**Subpart DQ—Income equalisation schemes and  
 environmental restoration accounts schemes** 20

**Contents**

- DQ 1 Main income equalisation scheme  
 DQ 2 Adverse event income equalisation scheme  
 DQ 3 Thinning operations income equalisation scheme 25  
 DQ 4 Environmental restoration accounts scheme

**DQ 1 Main income equalisation scheme**

*Deduction*

- (1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in **section EH 7(2)** (Deduction of deposit). 30

*Timing of deduction*

- (2) The deduction is allocated to the tax year described in **section EH 7(3)**.

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 5

Defined in this Act: amount, capital limitation, deduction, deposit, general limitation, general permission, main income equalisation scheme, person, supplement, tax year 10

Compare: 2004 No 35 s DQ 1

**DQ 2 Adverse event income equalisation scheme***Deduction*

- (1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in **section EH 41(2)** (Deduction of deposit). 15

*Timing of deduction*

- (2) The deduction is allocated to the tax year described in **section EH 41(3)**.

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 20

Defined in this Act: adverse event income equalisation scheme, amount, capital limitation, deduction, deposit, general limitation, general permission, person, supplement, tax year 25

Compare: 2004 No 35 s DQ 2

**DQ 3 Thinning operations income equalisation scheme***Deduction*

- (1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in **section EH 67(2)** (Deduction of deposit). 30

*Timing of deduction*

- (2) The deduction is allocated to the tax year described in **section EH 67(3)**. 35

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, deposit, general limitation, general permission, person, supplement, tax year, thinning operations income equalisation scheme

5

Compare: 2004 No 35 s DQ 3

**DQ 4 Environmental restoration accounts scheme***Deduction for payment*

10

- (1) A person is allowed a deduction of the amount set out in **section EK 7** (Deduction for payment) if the person has made a payment for an income year to the Commissioner under **section EK 2** (Persons who may make payment to environmental restoration account) and the amount is not refunded under **section EK 9** (Refund of payment if excess, lacking details).

15

*Timing of deduction*

- (2) The deduction under **subsection (1)** is allocated to the income year referred to in **section EK 7**.

*Deduction for transfer*

20

- (3) A person is allowed a deduction for an income year of the amount set out in **section EK 8** (Deduction for transfer) if in an income year the person receives—

- (a) a transfer under **section EK 15** (Transfer on request) that is treated under **section EK 15(4)** as being a payment by the person: 25
- (b) a transfer under **section EK 16(3)(b)** (Transfer on death, bankruptcy, or liquidation):
- (c) a transfer under **section EK 19** (Environmental restoration account of amalgamating company). 30

*Timing of deduction*

- (4) A deduction under **subsection (3)** is allocated to the income year referred to in **section EK 8**.

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, pay, supplement

5

Compare: 2004 No 35 s DQ 4

## Subpart DR—Life insurance business expenditure

## Contents

DR 1	Mortality profit formula: negative result	10
DR 2	Disposal of property	
DR 3	Specific deductions denied to life insurers and fully reinsured persons	

**DR 1 Mortality profit formula: negative result**

*When this section applies* 15

- (1) This section applies when—
- (a) a life insurer follows the steps in **section EY 26(2)** (Mortality profit: when life insurers providing life insurance at start of income year) or **EY 27(2)** (Mortality profit: when life insurers not providing life insurance at start of income year) for an income year and gets a negative result; and 20
  - (b) the negative result is not treated as zero because 1 of the exceptions in **section EY 33(2) to (4)** (Mortality profit formula: individual result may be negative only in some cases) applies. 25

*Deduction*

- (2) The life insurer is allowed a deduction of the amount quantified in **section EY 34(2)** (Mortality profit formula: negative result). 30

*Timing of deduction*

- (3) The deduction is allocated to the income year described in **section EY 34(3)**.

*Link with subpart DA*

- (4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, income year, life insurer, mortality profit formula, supplement

5

Compare: 2004 No 35 s DR 1

**DR 2 Disposal of property***When this section applies*

- (1) This section applies when a life insurer disposes of any property of their life insurance business.

10

*Exclusions*

- (2) This section does not apply when the property is—
- (a) a share to which **section DB 25** (Share losses) applies; or
  - (b) a financial arrangement; or
  - (c) property for whose cost the life insurer has already been allowed a deduction, other than for an amount of depreciation loss.

15

*Deduction*

- (3) The life insurer is allowed a deduction of the amount quantified in **section EY 47(2)** (Deductions for disposal of property).

20

*Timing of deduction*

- (4) The deduction is allocated to the income year described in **section EY 47(3)**.

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

25

Defined in this Act: amount, business, capital limitation, deduction, depreciation loss, financial arrangement, general limitation, general permission, income year, life insurance, life insurer, property, share, supplement

30

Compare: 2004 No 35 s DR 2

### **DR 3 Specific deductions denied to life insurers and fully reinsured persons**

#### *No deduction*

- (1) A life insurer is denied a deduction for—
- (a) a claim payable by the life insurer under a life insurance policy; or 5
  - (b) expenditure or loss incurred by the life insurer in deriving policyholder income; or
  - (c) a bonus or other discretionary amount added to the actuarial reserves; or 10
  - (d) a premium payable by the life insurer under a life reinsurance policy.

#### *Inclusion*

- (2) This section applies to a person who is carrying on a business of providing life insurance but who is treated as not carrying on a business of providing life insurance because they have full reinsurance. 15

#### *Link with subpart DA*

- (3) This section overrides the general permission. 20
- Defined in this Act: actuarial reserves, amount, business, claim, deduction, full reinsurance, general permission, life insurance, life insurance policy, life insurer, life reinsurance policy, loss, pay, policyholder income, premium

Compare: 2004 No 35 s DR 3

### **Subpart DS—Film industry expenditure**

#### **Contents**

- DS 1 Acquiring film rights 25
- DS 2 Film production expenditure
- DS 3 Clawback of deductions for film reimbursement schemes
- DS 4 Meaning of film reimbursement scheme

### **DS 1 Acquiring film rights 30**

#### *Deduction*

- (1) A person is allowed a deduction for expenditure that they incur in acquiring a film right, if the film is completed, whether it is completed before, at the time, or after the film right is acquired. 35

- Exclusion*
- (2) This section does not apply to expenditure that a person incurs in acquiring a film right if—
- (a) the person operates a television station, a television network, or a cable television system, and the film right is acquired mainly to enable the film to be broadcast in New Zealand; or
  - (b) the film is intended to be shown as an advertisement; or
  - (c) the expenditure is film production expenditure.
- Timing of deduction* 10
- (3) The deduction is allocated under **section EJ 4** (Expenditure incurred in acquiring film rights in feature films) or **EJ 5** (Expenditure incurred in acquiring film rights in films other than feature films).
- No other deduction* 15
- (4) No other deduction for expenditure incurred in acquiring a film right is allowed under any other provision of this Act.
- Avoidance arrangements*
- (5) The amount of the deduction may be reduced under—
- (a) **section GB 17** (Excessive amounts for film rights or production expenditure): 20
  - (b) **section GB 18** (Arrangements to acquire film rights or incur film production expenditure).
- Link with subpart DA*
- (6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 25
- Defined in this Act: arrangement, capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, New Zealand 30
- Compare: 2004 No 35 s DS 1

## DS 2 Film production expenditure

### *Deduction*

- (1) A person is allowed a deduction for film production expenditure if— 35
- (a) the film is completed; and

- (b) the person has a film right in it—
- (i) before it is completed:
  - (ii) at the time it is completed:
  - (iii) after it is completed.
- Inclusions* 5
- (2) For the purposes of subsection (1),—
- (a) if a person (**person A**) reimburses another person (**person B**) for film production expenditure that person B incurs, and does it before the film is completed, the reimbursement is treated as film production expenditure incurred by person A; and 10
  - (b) if a person (**person A**) reimburses another person (**person B**) for expenditure on interest incurred by person B in producing the film, person A may treat the reimbursement as film production expenditure incurred by person A. 15
- Exclusion*
- (3) This section does not apply to film production expenditure if—
- (a) the film is produced mainly for broadcast in New Zealand by a person who operates a television station, a television network, or a cable television system; or 20
  - (b) the film is intended to be shown as an advertisement; or
  - (c) the film is one for which a large budget screen production grant is made. 25
- Timing of deduction*
- (4) The deduction is allocated under **section EJ 7** (Film production expenditure for New Zealand films) or **EJ 8** (Film production expenditure for films other than New Zealand films).
- No other deduction* 30
- (5) No other deduction for film production expenditure is allowed under any other provision of this Act.
- Avoidance arrangements*
- (6) The amount of the deduction may be reduced or the timing of the deduction may be delayed under— 35

- (a) **section GB 17** (Excessive amounts for film rights or production expenditure):
- (b) **section GB 18** (Arrangements to acquire film rights or incur film production expenditure):
- (c) **section GB 19** (When film production expenditure payments delayed or contingent). 5

*Link with subpart DA*

- (7) The link between this section and **subpart DA** (General rules) is as follows:
  - (a) it overrides the capital limitation; and 10
  - (b) the other general limitations still apply; and
  - (c) either—
    - (i) the general permission must be satisfied; or
    - (ii) a provision that supplements the general permission must be satisfied. 15

Defined in this Act: arrangement, capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, large budget screen production grant, New Zealand, pay, supplement

Compare: 2004 No 35 s DS 2

**DS 3 Clawback of deductions for film reimbursement schemes** 20

*Reduction of deductions*

- (1) A person who disposes of property under a film reimbursement scheme must use the formula in **subsection (3)** to reduce—
  - (a) the total deductions that they have been allowed for the disposal under the scheme under **section DS 1 or DS 2**; or 25
  - (b) the total deductions that they would be allowed for the disposal under the scheme under **section DS 1 or DS 2** in the absence of this section.

*Order of reduction*

- (2) Deductions must be reduced in the same order as they have been allowed or would be allowed. 30

*Formula*

- (3) The total deductions must be reduced to an amount equal to the greater of zero and the amount calculated using the formula— 35
  - total deductions – total consideration.

*Definition of items in formula*

- (4) In the formula,—
- (a) **total deductions** is the total amount of deductions that—
- (i) the person has been allowed under **section DS 1 or DS 2**; or 5
- (ii) the person would be allowed under **section DS 1 or DS 2** in the absence of this section:
- (b) **total consideration** is the total amount of consideration for the disposal of the property that the person derives and that is not film income. 10

*Application of Tax Administration Act 1994*

- (5) Section 44A of the Tax Administration Act 1994 applies to a person to whom this section applies.

*Amendment of assessment*

- (6) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section. 15

*Exclusion*

- (7) This section does not apply to a deduction for expenditure excluded under **section DZ 11** (Film reimbursement scheme on or before 30 June 2001). 20

Defined in this Act: amount, assessment, Commissioner, deduction, film income, film reimbursement scheme, time bar

Compare: 2004 No 35 s DS 3

**DS 4 Meaning of film reimbursement scheme** 25*Meaning*

- (1) **Film reimbursement scheme** means an arrangement to which **subsections (2) to (4)** apply.

*Deduction allowed*

- (2) The first requirement for a film reimbursement scheme is that it is a scheme under which a person may incur expenditure for which they are allowed a deduction under— 30
- (a) **section DS 1 or DS 2**, or would be allowed a deduction in the absence of **section DS 3**:
- (b) **subpart DA** (General rules), if the expenditure is for— 35
- (i) a film right:

- (ii) a right to an amount that is dependent on or calculated by reference to income from the rental, sale, use, or other exploitation of a film.

*Disposal of property*

- (3) The second requirement for a film reimbursement scheme is that 1 of the following applies: 5
- (a) it enables the person or an associated person to dispose of property; or
- (b) it gives a right to the person or an associated person to dispose of property; or 10
- (c) it gives a right, the right creates an obligation for the person or an associated person, and the person or the associated person may meet the obligation by disposing of property.

*Consideration not film income*

- (4) The third requirement for a film reimbursement scheme is that it is a scheme under which some or all of the consideration for the property would not be film income. 15

*Associated persons*

- (5) For the purposes of **subsection (3)**, a shareholder in a loss-attributing company and the company are associated persons, in addition to the associated persons described in **subpart YB** (Associated persons and nominees). 20

Defined in this Act: amount, arrangement, associated person, deduction, film income, film reimbursement scheme, film right, income, loss-attributing company, shareholder 25

Compare: 2004 No 35 s DS 4

## Subpart DT—Petroleum mining expenditure

### Contents

- Petroleum exploration expenditure* 30
- DT 1 Petroleum exploration expenditure
- DT 2 Arrangement for petroleum exploration expenditure and sale of property
- DT 3 Acquisition of privileges and permits
- DT 4 Acquisition of exploratory material 35
- Petroleum development expenditure*
- DT 5 Petroleum development expenditure

DT 6	Expenditure on petroleum mining assets	
DT 7	Exploratory well expenditure	
DT 8	Acquisition of certain petroleum mining assets	
DT 9	Disposal of petroleum mining asset to associate	
DT 10	Disposal of petroleum mining asset outside association	5
DT 11	Association ending	
<i>Other expenditure</i>		
DT 12	Damage to assets	
DT 13	Disposal of ownership interests in controlled petroleum mining entities	10
DT 14	Farm-out arrangements	
DT 15	Persons associated with petroleum miner	
DT 16	Removal or restoration operations	
<i>General provisions</i>		
DT 17	Attribution of expenditure	15
DT 18	Replacement permits	
DT 19	Partnership interests and disposal of part of asset	
DT 20	Petroleum mining operations outside New Zealand	

---

### *Petroleum exploration expenditure*

<b>DT 1</b>	<b>Petroleum exploration expenditure</b>	<b>20</b>
	<i>Deduction</i>	
(1)	A person is allowed a deduction for petroleum exploration expenditure incurred by them.	
	<i>Relationship with section DT 2</i>	
(2)	This section is overridden by <b>section DT 2</b> .	25
	<i>Link with subpart DA</i>	
(3)	This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.	
	Defined in this Act: capital limitation, deduction, general limitation, general permission, petroleum exploration expenditure, supplement	30
	Compare: 2004 No 35 s DT 1	

## **DT 2 Arrangement for petroleum exploration expenditure and sale of property**

### *What this section applies to*

- (1) This section applies to a person and an arrangement if—
- (a) the person may incur expenditure under the arrangement and would be allowed a deduction for the expenditure under **section DT 1**; and 5
  - (b) the person or a person associated with them may dispose of property—
    - (i) under the arrangement; or 10
    - (ii) under a right given by the arrangement to the person or the associated person; or
    - (iii) in meeting an obligation of the person or the associated person arising from a right given by the arrangement; and 15
  - (c) the property is not—
    - (i) exploratory material; or
    - (ii) a prospecting permit for petroleum; or
    - (iii) an exploration permit for petroleum.

### *Amount of deduction* 20

- (2) The person is allowed a deduction in an income year for the expenditure described in **subsection (1)(a)** but only to the extent of an amount equal to the greater of zero and the amount calculated using the formula—
- expenditure – (consideration – lesser amount). 25

### *Exclusion*

- (3) If consideration for the property is derived in an income year, the person's deductions in previous income years for the expenditure described in **subsection (1)(a)** are reduced so that the total of those deductions is equal to the greater of zero and the amount calculated using the formula—
- previous expenditure – consideration. 30

### *Definition of items in formulas*

- (4) In the formulas in **subsections (2) and (3)**,—
- (a) **expenditure** is the amount of expenditure for which the person would be allowed a deduction in the income year under **section DT 1(1)**: 35

- (b) **consideration** is the total consideration for the property that is derived before or during the income year:
- (c) **lesser amount** is the lesser of—
- (i) the amount of consideration; and
  - (ii) the amount of expenditure for which a person would be allowed a deduction in previous income years under **section DT 1(1)**: 5
- (d) **previous expenditure** is the amount of expenditure for which a person would be allowed a deduction in previous income years under **section DT 1(1)**. 10

*Order of reduction*

- (5) When an adjustment under **subsection (3)** is being made, deductions are treated as denied in the same order in time as they would have been allowed under **section DT 1(1)**.

*Application of Tax Administration Act 1994*

- (6) Section 44A of the Tax Administration Act 1994 applies to a person to whom this section applies. 15

*Amendment of assessment*

- (7) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section. 20

*Relationship with section DT 1*

- (8) This section overrides **section DT 1**.

*Link with subpart DA*

- (9) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 25

Defined in this Act: amount, arrangement, assessment, associated person, Commissioner, consideration, deduction, dispose, exploration permit, exploratory material, income year, petroleum, petroleum exploration expenditure, prospecting permit, supplement, time bar 30

Compare: 2004 No 35 s DT 2

**DT 3 Acquisition of privileges and permits**

The consideration that a person pays to acquire an existing privilege, a prospecting permit for petroleum, or an exploration permit for petroleum from a petroleum miner is treated as petroleum exploration expenditure incurred in the income 35

year in which the petroleum miner disposes of the privilege or permit to the person.

Defined in this Act: consideration, dispose, existing privilege, exploration permit, income year, pay, petroleum exploration expenditure, petroleum miner, prospecting permit

5

Compare: 2004 No 35 s DT 3

#### **DT 4 Acquisition of exploratory material**

The consideration that a person pays to acquire exploratory material from a petroleum miner is treated as petroleum exploration expenditure incurred in the income year in which the petroleum miner disposes of the material to the person.

10

Defined in this Act: consideration, dispose, exploratory material, income year, pay, petroleum exploration expenditure, petroleum miner

Compare: 2004 No 35 s DT 4

### ***Petroleum development expenditure***

15

#### **DT 5 Petroleum development expenditure**

##### *Deduction*

- (1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them.

##### *Timing of deduction*

20

- (2) The deduction is allocated under **section EJ 12** (Petroleum development expenditure).

##### *Relationship with section DZ 3*

- (3) This section is overridden by **section DZ 3** (Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991).

25

##### *Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

30

Defined in this Act: capital limitation, deduction, general limitation, general permission, petroleum development expenditure, petroleum miner, supplement

Compare: 2004 No 35 s DT 5

**DT 6 Expenditure on petroleum mining assets**

Expenditure that a person incurs in buying a petroleum mining asset is treated as petroleum development expenditure if, at the time the asset is bought,—

- (a) petroleum is produced in commercial quantities on a continuing basis under a petroleum mining permit that is the one being bought; or 5
- (b) petroleum is produced in commercial quantities on a continuing basis under a petroleum mining permit that applies to the permit area in which an asset of the kind described in **section CT 7(1)(b) or (c)** (Meaning of petroleum mining asset) is to be used; or 10
- (c) an application for a petroleum mining permit for the permit area has been made by a person entitled under section 32(3) of the Crown Minerals Act 1991. 15

Defined in this Act: permit area, petroleum, petroleum development expenditure, petroleum mining permit, petroleum mining asset

Compare: 2004 No 35 s DT 6

**DT 7 Exploratory well expenditure**

*When this section applies* 20

- (1) This section applies when—
  - (a) a petroleum miner incurs exploratory well expenditure; and
  - (b) the miner then uses the exploratory well for the commercial production of petroleum; and 25
  - (c) the exploratory well expenditure is then treated, under **section CT 3** (Exploratory well used for commercial production), as income of the miner.

*Treatment of expenditure*

- (2) An amount equal to the amount that is treated as income is treated as petroleum development expenditure incurred by the petroleum miner in the income year in which commercial production from the well starts. 30

Defined in this Act: amount, commercial production, exploratory well expenditure, income, income year, petroleum, petroleum development expenditure, petroleum miner 35

Compare: 2004 No 35 s DT 7

**DT 8 Acquisition of certain petroleum mining assets**

The consideration that a person pays to acquire a petroleum mining asset, other than an existing privilege, a prospecting permit for petroleum, or an exploration permit for petroleum, from a petroleum miner is treated as petroleum development expenditure incurred in the income year in which the petroleum miner disposes of the petroleum mining asset to the person. 5

Defined in this Act: consideration, dispose, existing privilege, exploration permit, income year, pay, petroleum, petroleum development expenditure, petroleum miner, petroleum mining asset, prospecting permit 10

Compare: 2004 No 35 s DT 8

**DT 9 Disposal of petroleum mining asset to associate**

*When this section applies*

- (1) This section applies when— 15
- (a) a petroleum miner disposes of a petroleum mining asset to—
    - (i) a person associated with the miner; or
    - (ii) a person who holds the asset for the miner; or
    - (iii) a person who holds the asset for a person associated with the miner; and 20
  - (b) **section EJ 16(2)** (Disposal of petroleum mining asset to associate) prevents the miner from taking the full amount of a deduction allocated under **section EJ 12** (Petroleum development expenditure) to the income year in which the miner disposes of the asset. 25

*No deduction*

- (2) The miner is denied a deduction for—
- (a) the amount that **section EJ 16(2)** prevents the miner from taking; and 30
  - (b) the amount of the deduction allocated under **section EJ 12** to income years after the income year in which the miner disposes of the asset.

*Link with subpart DA*

- (3) This section overrides the general permission. 35

Defined in this Act: amount, associated person, deduction, dispose, general permission, income year, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s DT 9

**DT 10 Disposal of petroleum mining asset outside association***When this section applies*

- (1) This section applies when—
- (a) a petroleum miner disposes of a petroleum mining asset to a person described in **subsection (2) (person A)**; and 5
  - (b) person A disposes of the asset to a person described in **subsection (3) (person B)**.

*Person A*

- (2) For the purposes of **subsection (1)(a)**, the persons are— 10
- (a) an associated person of the miner; or
  - (b) a person who holds the asset for the miner; or
  - (c) a person who holds the asset for an associated person of the miner.

*Person B*

- (3) For the purposes of **subsection (1)(b)**, the persons are— 15
- (a) a person not associated with the miner; or
  - (b) a person who does not hold the asset for the miner; or
  - (c) a person who does not hold the asset for a person associated with the miner.

*Deduction*

- (4) Person A is allowed a deduction. 20

*Amount of deduction*

- (5) The amount of the deduction is the amount for which the petroleum miner is denied a deduction under **section DT 9**.

*Timing of deduction*

- (6) The deduction is allocated to the income year in which person A disposes of the asset. 25

*Link with subpart DA*

- (7) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 30

Defined in this Act: amount, associated person, capital limitation, deduction, dispose, general limitation, general permission, income year, petroleum miner, petroleum mining asset, supplement

Compare: 2004 No 35 s DT 10 35

**DT 11 Association ending***When this section applies*

- (1) This section applies when—
- (a) a petroleum miner disposes of a petroleum mining asset to a person (**person A**) who is— 5
    - (i) an associated person of the miner; or
    - (ii) a person who holds the asset for an associated person of the miner; or
    - (iii) a person who holds the asset for the miner; and
  - (b) while person A holds the asset,— 10
    - (i) the association between the miner and the associated person ends; or
    - (ii) the association between the miner and the person who holds the asset for the miner ends.

*Exclusion*

- (2) This section does not apply when the petroleum miner and the other party to the association end their association— 15
- (a) for the purpose of the miner being allowed a deduction under this section; or
  - (b) for various purposes, 1 of which is, as a more than 20
    - merely incidental purpose, the miner being allowed a deduction under this section.

*Deduction*

- (3) The petroleum miner is allowed a deduction.

*Amount of deduction*

- (4) The amount of the deduction is the amount for which the petroleum miner is denied a deduction under **section DT 9**. 25

*Timing of deduction*

- (5) The deduction is allocated to the income year in which the association ends. 30

*Link with subpart DA*

- (6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, associated person, capital limitation, deduction, dispose, general limitation, general permission, income year, petroleum miner, petroleum mining asset, supplement

5

Compare: 2004 No 35 s DT 11

*Other expenditure***DT 12 Damage to assets** 10*Deduction*

- (1) A petroleum miner is allowed a deduction for the cost of repairing a damaged asset of the kind described in **section CT 7(1)(b) or (c)** (Meaning of petroleum mining asset).

*Link with subpart DA*

15

- (2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, petroleum miner, supplement

20

Compare: 2004 No 35 s DT 12

**DT 13 Disposal of ownership interests in controlled petroleum mining entities***No deduction*

- (1) A person who disposes of shares or trust interests in a controlled petroleum mining entity is denied a deduction for their cost.

*Application of Tax Administration Act 1994*

- (2) Section 65 of the Tax Administration Act 1994 applies when this section applies.

30

*Link with subpart DA*

- (3) This section overrides the general permission.

Defined in this Act: controlled petroleum mining entity, deduction, dispose, share

Compare: 2004 No 35 s DT 13

**DT 14 Farm-out arrangements***When this section applies*

- (1) This section applies when a farm-in party under a farm-out arrangement incurs farm-in expenditure that, if it were incurred by the farm-out party, would be petroleum development expenditure, exploratory well expenditure, or prospecting expenditure. 5

*Treatment of farm-in expenditure*

- (2) The farm-in expenditure is treated as if it were petroleum development expenditure, exploratory well expenditure, or prospecting expenditure, as applicable. 10

*Deduction*

- (3) The farm-in party is allowed a deduction for the farm-in expenditure that is incurred under the farm-out arrangement on or after 16 December 1991. 15

*Relationship with section DZ 5*

- (4) Farm-in expenditure that is incurred before 16 December 1991 is dealt with in **section DZ 5** (Farm-out arrangements for petroleum mining before 16 December 1991).

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 20

Defined in this Act: capital limitation, deduction, exploratory well expenditure, farm-in expenditure, farm-in party, farm-out arrangement, general limitation, general permission, petroleum development expenditure, prospecting expenditure, supplement 25

Compare: 2004 No 35 s DT 14

**DT 15 Persons associated with petroleum miner***When this section applies* 30

- (1) This section applies to a person associated with a petroleum miner when—
- (a) the petroleum miner has some or all of an existing privilege; and
  - (b) the associated person— 35

- (i) undertakes petroleum mining operations in the licence area of the existing privilege; and
- (ii) does so under an arrangement for reward; and
- (iii) when doing so is not a petroleum miner in relation to the petroleum mining operations. 5

*Deduction*

- (2) The associated person is allowed a deduction for expenditure or loss that they incur in the petroleum mining operations described in **subsection (1)**.

*Amount of deduction*

10

- (3) The amount of the deduction is limited to the extent of the amount of income that they derive from the petroleum mining operations.

*Link with subpart DA*

- (4) This section overrides the general permission. 15

Defined in this Act: amount, arrangement, associated person, deduction, existing privilege, general permission, income, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s DT 15

**DT 16 Removal or restoration operations** 20*Deduction*

- (1) A petroleum miner is allowed a deduction for expenditure that they incur on removal or restoration operations.

*Timing of deduction*

- (2) The deduction is allocated to the income year in which the expenditure is incurred. 25

*Relationship with section EA 2*

- (3) This section overrides **section EA 2** (Other revenue account property).

*Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, petroleum miner, removal or restoration operations, supplement

5

Compare: 2004 No 35 s DT 16

**General provisions****DT 17 Attribution of expenditure** 10*Petroleum mining permit*

- (1) A deduction for expenditure incurred to acquire a petroleum mining permit is attributable to the permit area of the petroleum mining permit.

*Other assets*

15

- (2) A deduction for expenditure incurred to acquire an asset of the kind described in **section CT 7(1)(b) or (c)** (Meaning of petroleum mining asset) is attributable to—
- (a) the asset; and
- (b) the permit area to which the asset relates.

20

*Relationship with this subpart and sections GB 20 and IS 5*

- (3) This section applies for the purposes of this subpart, **sections GB 20** (Arrangements involving petroleum mining) and **IS 5** (Petroleum miners' tax losses), and section 91 of the Tax Administration Act 1994.

25

Defined in this Act: permit area, petroleum mining permit

Compare: 2004 No 35 s DT 17

**DT 18 Replacement permits**

In this subpart, a reference to a petroleum mining permit includes a reference to a replacement permit. All expenditure incurred, deductions allowed, and petroleum mining assets that are attributable to the petroleum mining permit are attributable to the replacement permit.

30

Defined in this Act: deduction, petroleum mining asset, petroleum mining permit, replacement permit

35

Compare: 2004 No 35 s DT 18

**DT 19 Partnership interests and disposal of part of asset**

In this subpart, unless the context requires otherwise,—

- (a) a partner is treated as having a share or interest in a petroleum mining permit or other property of a partnership to the extent of their interest in the income of the partnership: 5
- (b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: dispose, income, petroleum mining permit

Compare: 2004 No 35 s DT 19 10

**DT 20 Petroleum mining operations outside New Zealand**

This subpart applies, with any necessary modifications, to a petroleum miner undertaking petroleum mining operations that are—

- (a) outside New Zealand and undertaken through a branch or a controlled foreign company; and 15
- (b) substantially the same as the petroleum mining activities governed by this subpart.

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations 20

Compare: 2004 No 35 s DT 20

**Subpart DU—Mineral mining expenditure****Contents**

DU 1	Mining exploration expenditure and mining development expenditure	25
DU 2	Mining exploration expenditure or mining development expenditure on acquisition of asset	
DU 3	Replacing or repairing asset	
DU 4	Income appropriated to expenditure	
DU 5	Non-mining asset used to derive income from mining	30
DU 6	Depreciation	
DU 7	Limit on deduction	
DU 8	Meaning of asset for sections DU 1 to DU 7	
DU 9	Application of sections to resident mining operators	
DU 10	Application of sections to non-resident mining operators	35
DU 11	Disposal of mining shares by company	
DU 12	Amount written off by holding company	

## **DU 1 Mining exploration expenditure and mining development expenditure**

### *Deduction*

- (1) A mining company is allowed a deduction for mining exploration expenditure and mining development expenditure that it incurs. 5

### *Amount of deduction*

- (2) The amount of the deduction is the amount determined under **section DU 2**.

### *Mining expenditure*

- (3) The amount of the expenditure for which the company is allowed a deduction must be taken into account in the **mining expenditure** item of the formula in **section DU 7(5)**. 10

### *Link with subpart DA*

- (4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 15

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, mining company, mining development expenditure, mining exploration expenditure, supplement 20

Compare: 2004 No 35 s DU 1

## **DU 2 Mining exploration expenditure or mining development expenditure on acquisition of asset**

### *What this section does*

- (1) This section applies when a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure. It describes the consideration that the mining company is treated as giving for the asset and the consideration that the person who disposes of the asset to the mining company is treated as receiving for it. 25  
30

### *Consideration in various cases*

- (2) The consideration is,—  
(a) in a case other than one described in any of **subsections (3) to (6)**, the consideration that the company incurs for the acquisition of the asset: 35

- (b) in the case described in **subsection (3)**, the consideration specified in the subsection for the acquisition of the asset:
- (c) in the case described in **subsection (4)**, the consideration specified in the subsection for the acquisition of the asset: 5
- (d) in the case described in **subsection (5)**, the consideration specified in subsection (6) for the acquisition of the asset.
- Consideration other than in cash* 10
- (3) If some or all of the consideration for the acquisition is other than in cash, and the acquisition is not from an associated person, the consideration that is not in cash has the value agreed between the mining company and the person from whom the asset is acquired. If the mining company and the person do not agree, or if the Commissioner considers that the value agreed is unreasonable, the consideration that is not in cash has the value that the Commissioner decides. 15
- Acquisition from associated person*
- (4) If the acquisition is from an associated person, the consideration for the acquisition is the market value that the asset has on the date of the acquisition. 20
- Amount specified by parties to acquisition*
- (5) **Subsection (6)** applies when—
- (a) the mining company acquires the asset for use in carrying on their mining operations or associated mining operations; and 25
- (b) the mining company and the person from whom the asset is acquired give notice to the Commissioner that they have agreed to apply **subsection (6)**; and 30
- (c) the notice is given to the Commissioner within 1 of the following times:
- (i) the time in which the mining company is required to file a return of income for the income year in which it acquires the asset; or 35
- (ii) a longer time allowed by the Commissioner; and
- (d) the notice specifies an amount that—
- (i) is no more than the market value that the asset has at the date of the acquisition; and

- (ii) is no less than the amount of any part of the consideration that is in cash.

*Amount specified in notice*

- (6) The consideration for the acquisition is the amount that the mining company and the person specify in the notice. 5

Defined in this Act: amount, associated mining operations, associated person, Commissioner, income year, mining company, mining development expenditure, mining exploration expenditure, mining operations, notice, return of income

Compare: 2004 No 35 s DU 2

**DU 3 Replacing or repairing asset** 10

*When subsections (2) to (4) apply*

- (1) **Subsections (2) to (4)** apply when—
- (a) a mining company complies with **section CU 6(2)** (Compensation and scrap payment: use to replace or repair asset); and 15
  - (b) the company incurs expenditure in replacing or repairing the asset; and
  - (c) the company has an excess amount because the expenditure is more than the total of—
    - (i) the amount of insurance, indemnity, or compensation paid; and 20
    - (ii) the amount, if any, payable to the company for the disposal of any scrap of the asset.

*Deduction*

- (2) The company is allowed a deduction for the excess. 25

*Mining expenditure*

- (3) The excess amount must be taken into account in the **mining expenditure** item of the formula in **section DU 7(5)**.

*No other deduction*

- (4) No other deduction for expenditure incurred in the circumstances described in **subsection (1)** is allowed under any other provision of this Act. 30

*When subsections (7) and (8) apply*

- (5) **Subsections (7) and (8)** apply when—
- (a) a mining company complies with **section CU 6(2)**; and 35

- (b) the Commissioner considers a period to be a reasonable period within which to complete the replacement or repair; and
- (c) the company incurs expenditure in replacing or repairing the asset after the last day of the period; and 5
- (d) the company has an excess amount because the expenditure is more than the total of the following:
  - (i) the amount of compensation paid; and
  - (ii) the amount, if any, payable to the company for the disposal of any scrap of the asset. 10

*Deduction*

- (6) The company is allowed a deduction for the excess.

*Limitation on calculation of excess amount*

- (7) The expenditure incurred after the last day of the period must not be taken into account to determine the existence or amount of an excess amount for the purposes of **subsection (1)(c)**. 15

*Mining expenditure*

- (8) The expenditure incurred after the last day of the period must be taken into account in the **mining expenditure** item of the formula in **section DU 7(5)**. 20

*Link with subpart DA*

- (9) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, Commissioner, deduction, general limitation, general permission, mining company, pay, supplement 25

Compare: 2004 No 35 s DU 3

**DU 4 Income appropriated to expenditure***When this section applies*

- (1) This section applies when— 30
  - (a) a mining company appropriates an amount of income to mining exploration expenditure or mining development expenditure; and
  - (b) the company makes the appropriation within 2 months after the end of an income year or in a longer time allowed by the Commissioner; and 35

- (c) the amount that the company appropriates is no more than its net income in the income year, calculated as if this section did not exist.

*Deduction*

- (2) The company is allowed a deduction for the part of the amount to which both the following apply: 5
- (a) it is not spent in the income year to which the appropriation relates; and
- (b) it will be, or is likely to be, used as mining exploration expenditure or mining development expenditure before the end of the second income year following the income year to which the appropriation relates. 10

*Timing of deduction*

- (3) The deduction for the part of the amount is allocated to the income year to which the appropriation relates. 15

*Mining expenditure*

- (4) The part of the amount to which **subsection (2)(a) and (b)** apply must be taken into account in the **mining expenditure** item of the formula in **section DU 7(5)**.

*Link with subpart DA*

- (5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 20

Defined in this Act: amount, capital limitation, Commissioner, deduction, general limitation, general permission, income, income year, mining company, mining development expenditure, mining exploration expenditure, net income, supplement 25

Compare: 2004 No 35 s DU 4

**DU 5 Non-mining asset used to derive income from mining**

*When this section applies*

- (1) This section applies when— 30
- (a) a mining company starts to use, or starts again to use, an asset to derive income from mining; and
- (b) immediately before that, the company used the asset to derive income other than income from mining.

*Adjustment*

- (2) The Commissioner may make an adjustment to any deduction of the mining company for the asset for the income year, as between the part of the income year in which the company used the asset to derive income from mining and the part of the income year in which the company did not use the asset to derive income from mining. 5

*Commissioner to consider*

- (3) The adjustment must be of a kind that the Commissioner considers equitable, having regard to— 10
- (a) any deduction for an amount of depreciation loss that the company has been allowed; and
  - (b) any other deduction that the company has been allowed for the cost of the asset; and
  - (c) any other matters that the Commissioner considers relevant. 15

Defined in this Act: amount, Commissioner, deduction, depreciation loss, income, income from mining, income year, mining company

Compare: 2004 No 35 s DU 5

## **DU 6 Depreciation** 20

*When this section applies: first case*

- (1) This section applies when—
- (a) a mining company acquires an asset by incurring—
    - (i) mining exploration expenditure or mining development expenditure; or 25
    - (ii) the exploration expenditure or development expenditure referred to in **section DZ 12(2)(a)** (Mineral mining: 1954–2005); and
  - (b) the company is allowed a deduction for the expenditure; and 30
  - (c) the company uses the asset, wholly or mainly, to derive income from mining.

*When this section applies: second case*

- (2) This section also applies when—
- (a) a mining company complies with **section CU 6(2)** (Compensation and scrap payment: use to replace or repair asset); and 35

- (b) the company incurs expenditure in replacing or repairing the asset; and
- (c) the company is allowed a deduction for the expenditure; and
- (d) the company uses the asset, wholly or mainly, to derive income from mining. 5
- No deduction (with exception)*
- (3) The company is denied a deduction for an amount of depreciation loss for the asset from the time when it uses the asset wholly or mainly to derive income from mining until the time, if any, when it uses the asset wholly or mainly to derive income other than income from mining. 10
- Amount of depreciation loss*
- (4) The asset has the value described in **section CU 10(2)** (Mining asset used to derive income other than income from mining) for the purpose of calculating the amount of depreciation loss that the company has for its use of the asset wholly or mainly to derive income other than income from mining. 15
- Link with subpart DA*
- (5) **Subsections (1) to (3)** override the general permission. 20
- Defined in this Act: acquire, amount, deduction, depreciation loss, general permission, income, income from mining, mining company, mining development expenditure, mining exploration expenditure, pay
- Compare: 2004 No 35 s DU 6
- DU 7 Limit on deduction** 25
- Limit*
- (1) When a mining company has a mining outgoing excess, there is a limit on the deduction that it is allowed in the income year for the amount taken into account in the **mining expenditure** item of the formula in **subsection (5)**. 30
- Amount of deduction*
- (2) The limit is the lesser of—
- (a) two-thirds of the mining outgoing excess; and
- (b) the greater of zero and the amount calculated using the formula— 35
- non-mining income – non-mining expenditure.

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **non-mining income** is the income other than income from mining of the mining company allocated to the income year: 5
- (b) **non-mining expenditure** is all the expenditure or loss that the mining company incurs in the income year relating to deriving non-mining income and for which it is allowed a deduction that is allocated to the income year. 10

*Meaning of mining outgoing excess*

- (4) **Mining outgoing excess** means the greater of zero and the amount that a mining company calculates for an income year using the formula— 15
- mining expenditure – income from mining.

*Definition of items in formula*

- (5) In the formula in **subsection (4)**,—
- (a) **mining expenditure** is an amount consisting of—
- (i) all the expenditure or loss that the mining company incurs in the income year relating to deriving income from mining and for which it would be allowed a deduction that would be allocated to the income year; and 20
- (ii) any part of an amount described in **section DU 4(4)**;
- (b) **income from mining** is the income from mining of the mining company allocated to the income year. 25

Defined in this Act: amount, deduction, income, income from mining, income year, mining company, mining outgoing excess

Compare: 2004 No 35 s DU 7

**DU 8 Meaning of asset for sections DU 1 to DU 7** 30*Mining company's share or interest in asset*

- (1) **Sections DU 1 to DU 7** apply to a share or interest that a mining company has in an asset—
- (a) to the extent to which the mining company acquired the share or interest by incurring— 35
- (i) mining exploration expenditure or mining development expenditure:

- (ii) the exploration expenditure or development expenditure referred to in **section DZ 12(2)(a)** (Mineral mining: 1954–2005); and
- (b) to the extent to which the mining company uses the share or interest for the purpose of deriving income from mining. 5

*Partner's share or interest in asset*

- (2) For the purposes of **sections DU 1 to DU 7**, a partner's share or interest in each asset of the partnership is the same as the partner's interest in the totality of the assets of the partnership. 10

*Replaced or repaired asset*

- (3) For the purposes of **sections DU 1 to DU 7**,—
  - (a) an asset that a mining company acquires by incurring expenditure in replacing or repairing the asset is the same asset as the one that was lost, destroyed, or damaged; and 15
  - (b) part of an asset that a mining company acquires by incurring expenditure in repairing the asset is part of the asset that was damaged.

Defined in this Act: asset, income from mining, mining company, mining development expenditure, mining exploration expenditure 20

Compare: 2004 No 35 s DU 8

## **DU 9 Application of sections to resident mining operators**

*Sections of this subpart applying to resident mining operators* 25

- (1) **Sections DU 1 to DU 3, and DU 5 to DU 7** apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies.

*Additional modification of section DU 6*

- (2) For the purposes of **subsection (1), section DU 6(1)(a)(ii)** applies as described in **section DZ 12(2)(b)** (Mineral mining: 1954–2005). 30

*Application of section DU 7*

- (3) When a resident mining operator has a mining outgoing excess, the total of deductions that it is allowed in the income year for expenditure or loss taken into account in the **mining** 35

**expenditure** item of the formula in **section DU 7(5)** is no more than the lesser of—

- (a) the total amount of the expenditure and loss; and
- (b) the prescribed amount for the income year.

*Meaning of prescribed amount*

5

- (4) **Prescribed amount** means 50% of the amount by which the income that the resident mining operator derives in a tax year, other than from its mining operations or associated mining operations, is more than the total of the expenditure and losses, for which it is allowed deductions, that it incurs in the tax year in deriving the income. 10

*Relationship with sections IA 2 to IA 5 and IS 21*

- (5) Expenditure or loss of a resident mining operator for which it would be allowed a deduction in an income year in the absence of **subsection (3)** is a tax loss component of the operator in the income year for the purposes of **sections IA 2 to IA 5** (which relate to the use of tax losses), and **IS 2** (Treatment of tax losses resulting from certain expenditure). 15

Defined in this Act: amount, associated mining operations, deduction, income, income year, loss, mining company, mining operations, mining outgoing excess, prescribed amount, resident mining operator, tax loss component 20

Compare: 2004 No 35 s DU 9

## **DU 10 Application of sections to non-resident mining operators**

*Sections of this subpart and subpart IS applying to non-resident mining operators*

25

- (1) **Sections DU 1 to DU 6 and IS 1, IS 3, and IS 4** (which relate to the use of tax losses by mining companies) apply, with any necessary modifications, to non-resident mining operators as if non-resident mining operators were mining companies, income from mining were income from a mining venture, mining operations were mining ventures, and associated mining operations were mining ventures. 30

*Application of section DU 1*

- (2) **Section DU 1** applies with the additional modification that **subsection (2)** is omitted. 35

*Application of section DU 3*

- (3) **Section DU 3** applies with the additional modification that **sub-sections (3) and (6)** are omitted.

*Application of section DU 4*

- (4) **Section DU 4** applies with the additional modification that **sub-section (4)** is omitted. 5

*Additional modification of section DU 6*

- (5) For the purposes of **subsection (1)**, **section DU 6(1)(a)(ii)** applies as described in **section DZ 12(2)(b)** (Mineral mining: 1954–2005). 10
- Defined in this Act: associated mining operations, income, income from mining, mining company, mining operations, mining venture, non-resident mining operator
- Compare: 2004 No 35 s DU 10

**DU 11 Disposal of mining shares by company***Deduction*

- (1) When a company disposes of a mining share, the company is allowed a deduction for the cost of the share to it. 15

*Amount of deduction*

- (2) The cost of the share to the company is the difference between the following 2 sums:
- (a) the total of— 20
- (i) the consideration that the company gave to acquire the share; and
- (ii) any capital the company contributed later for the share:
- (b) the total of— 25
- (i) any reinvestment profit of the company included in the consideration that the company gave; and
- (ii) any reinvestment profit of the company included in the capital that the company contributed.

*Link with subpart DA*

- (3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 30

Defined in this Act: capital limitation, company, deduction, general limitation, general permission, mining share, reinvestment profit 35

Compare: 2004 No 35 s DU 11

**DU 12 Amount written off by holding company***Deduction*

- (1) A holding company of a mining company is allowed a deduction for an amount written off a loan it made to the mining company. 5

*Exclusions*

- (2) The following are not included within the words “an amount written off a loan it made to the mining company” in **subsection (1)**:
- (a) an amount of interest that the holding company writes off; or 10
  - (b) an amount of a loan to the extent to which a mining holding company makes the loan from its reinvestment profit; or
  - (c) an amount of a loan made on or after 1 October 1978 to the extent to which the loan— 15
    - (i) is made to obtain an unfair advantage for tax purposes; and
    - (ii) is excessive, having regard to previous loans made by the holding company and any other circumstances. 20

*Amount of deduction*

- (3) The deduction is no more than the lesser of—
- (a) 50% of the amount that, in the absence of this section, would be the net income of the holding company in the tax year in which the amount is written off; and 25
  - (b) the prescribed proportion of all the mining exploration expenditure and mining development expenditure incurred by the mining company in the tax year in which the amount is written off, reduced by all the deductions the holding company is allowed under this section in all tax years before the tax year in which the amount is written off. 30

*Timing of deduction*

- (4) The deduction for the amount written off is allocated to the tax year in which the amount is written off. 35

*Reduction of amount*

- (5) The amount calculated under **subsection (3)** is reduced in the circumstances described in **section DZ 12(4)** (Mineral mining: 1954–2005).

*Link with subpart DA*

- (6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, holding company, interest, loan, mining company, mining development expenditure, mining exploration expenditure, net income, prescribed proportion, reinvestment profit, supplement, tax, tax year

Compare: 2004 No 35 s DU 12

## Subpart DV—Expenditure specific to certain entities

**Contents**

		5
		10
		15
	<i>Superannuation funds</i>	
DV 1	Publicising superannuation funds	
DV 2	Transfer of expenditure to master fund	
DV 3	Formula for calculating maximum deduction	
DV 4	Carry forward of expenditure	20
	<i>Other entities</i>	
DV 5	Investment funds: transfer of expenditure to master funds	
DV 6	Formula for calculating maximum deduction	
DV 7	Carry forward of expenditure	
DV 8	Non-profit organisations	25
DV 9	Trusts	
DV 10	Building societies	
DV 11	Distribution to member of co-operative company, excluded from being dividend	
DV 12	Maori authorities: donations	30
DV 13	Group companies	
DV 14	Amalgamated company: expenditure on improvements for farming, horticultural, aquacultural, and forestry businesses	
DV 15	Amalgamated companies: property passing on resident's restricted amalgamation	35
DV 16	Consolidated groups: intra-group transactions	
DV 17	Consolidated groups: expenditure or loss incurred by group companies	
DV 18	Statutory producer boards and co-operative companies	40
DV 19	Association rebates	

---

### *Superannuation funds*

**DV 1 Publicising superannuation funds***When this section applies*

- (1) This section applies when a superannuation fund incurs expenditure to which all the following apply: 5
- (a) it is incurred in developing, marketing, selling, promoting, or advertising the fund; and
  - (b) it is not incurred in acquiring a building, equipment, land, machinery, or plant; and
  - (c) it is assessable income of the recipient. 10

*Deduction*

- (2) The superannuation fund is allowed a deduction for the expenditure.

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation and the exempt income limitation. The other general limitations still apply. 15

Defined in this Act: assessable income, capital limitation, deduction, exempt income limitation, general limitation, general permission, superannuation fund, supplement 20

Compare: 2004 No 35 s DV 1

**DV 2 Transfer of expenditure to master fund***When this section applies*

- (1) This section applies when—
- (a) a superannuation fund (the **member superannuation fund**) invests some or all of its funds in another superannuation fund (the **master superannuation fund**); and 25
  - (b) while the member superannuation fund has funds invested in the master superannuation fund, the member superannuation fund incurs expenditure of a kind described in **subsection (2)**. 30

- Expenditure on publicising or managing*
- (2) The expenditure is expenditure to which all the following apply:
- (a) it is incurred—
    - (i) in developing, marketing, selling, promoting, or advertising the fund; or 5
    - (ii) in managing the fund; and
  - (b) it is not incurred in acquiring a building, equipment, land, machinery, or plant; and
  - (c) it is assessable income of the recipient. 10
- When expenditure becomes master superannuation fund's*
- (3) The member superannuation fund may choose to treat some or all of the expenditure as expenditure incurred by the master superannuation fund in deriving assessable income.
- How election made* 15
- (4) The member superannuation fund makes the election by giving notice to the Commissioner within 1 of the following times:
- (a) the time in which its return of income must be filed under section 37 of the Tax Administration Act 1994; or 20
  - (b) a longer time allowed by the Commissioner.
- Effect of election*
- (5) When the member superannuation fund makes an election, **subsections (6) to (9)** apply to the part or the whole, as chosen, of the expenditure. 25
- When expenditure incurred*
- (6) The expenditure is treated as being incurred by the master superannuation fund in the same income year as that in which it was incurred by the member superannuation fund.
- Deduction allowed to master superannuation fund* 30
- (7) The master superannuation fund is allowed a deduction for the expenditure. The amount of the deduction is limited by **subsection (8)**.

*Amount of deduction*

- (8) The formula in **section DV 3** is used to calculate the maximum deduction that the master superannuation fund is allowed for expenditure of the member superannuation fund treated as being incurred by the master superannuation fund. 5

*Deducted expenditure not incurred by member superannuation fund*

- (9) The expenditure for which the master superannuation fund is allowed a deduction is treated as not being incurred by the member superannuation fund. 10

*Link with subpart DA*

- (10) The link between this section and **subpart DA** (General rules) is as follows:
- (a) for **subsection (7)**,—
- (i) it supplements the general permission: 15
- (ii) it overrides the capital limitation and the exempt income limitation:
- (iii) the other general limitations still apply:
- (b) **subsection (9)** overrides the general permission. 20

Defined in this Act: amount, assessable income, capital limitation, Commissioner, deduction, exempt income limitation, general limitation, general permission, income year, notice, return of income, superannuation fund, supplement 20

Compare: 2004 No 35 s DV 2

**DV 3 Formula for calculating maximum deduction***Formula* 25

- (1) The formula referred to in **section DV 2(8)** is—  
taxable income – non-resident passive income.

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) and (4)**.

*Taxable income* 30

- (3) **Taxable income** is the amount that would be the master superannuation fund's taxable income in the tax year in which the expenditure is incurred in the absence of **sections DV 2 to DV 4**.

*Non-resident passive income*

- (4) **Non-resident passive income** is the total of any amounts of non-resident passive income of any of the kinds to which **section RF 2(5)** (Non-resident passive income) applies derived by the master superannuation fund in the tax year in which the expenditure is incurred. 5

Defined in this Act: amount, deduction, non-resident passive income, superannuation fund, tax year, taxable income

Compare: 2004 No 35 s DV 3

**DV 4 Carry forward of expenditure** 10*When this section applies*

- (1) This section applies when—
- (a) the expenditure treated as being incurred by the master superannuation fund, under **section DV 2(3)**, is more than the maximum amount for which it is allowed a deduction, as calculated under **section DV 3**, so there is surplus expenditure; and 15
  - (b) the member superannuation fund chooses to deal with the surplus expenditure under this section, rather than deducting it itself; and 20
  - (c) the member superannuation fund has funds invested in the master superannuation fund at the time referred to in **section DV 2(1)(b)** and while its election under **section DV 2(3)** continues and while it deals with the surplus expenditure under this section. 25

*KiwiSaver schemes*

- (2) For the avoidance of doubt, section 144 of the KiwiSaver Act 2006 applies to a registered superannuation scheme that converts to a KiwiSaver scheme for the purpose of determining if **subsection (1)(c)** applies. 30

*Surplus carried forward*

- (3) The member superannuation fund carries the surplus expenditure forward to the next tax year and takes the following steps:
- (a) it gets the combined expenditure by adding the surplus expenditure to the expenditure, if any, incurred by it in the tax year that it chooses to treat as being incurred by the master superannuation fund: 35

- (b) it calculates the maximum deduction for the tax year, using the formula in **section DV 3**:
- (c) if the combined expenditure is the same as or less than the maximum deduction, it—
- (i) treats the surplus expenditure as expenditure incurred by the master superannuation fund in deriving assessable income in the tax year; and 5
- (ii) applies **subsections (5) to (8)**:
- (d) if the combined expenditure is more than the maximum deduction, it— 10
- (i) carries forward the new surplus expenditure to the next tax year; and
- (ii) applies **subsection (4)**.
- Surplus dealt with until gone*
- (4) The member superannuation fund repeats the steps in **subsection (3)** for the following tax years until all surplus expenditure is deducted. 15
- Deduction allowed to master superannuation fund*
- (5) Expenditure treated under **subsection (3)(c)(i)** as incurred by the master superannuation fund in deriving income is allowed as a deduction in the tax year in which it is so treated. The amount of the deduction is limited by **subsection (6)**. 20
- Amount of deduction*
- (6) The maximum amount of a deduction under **subsection (5)** is the maximum deduction for the tax year, calculated using the formula in **section DV 3**. 25
- Deducted expenditure not incurred by member superannuation fund*
- (7) Expenditure for which the master superannuation fund is allowed a deduction is treated as not being incurred by the member superannuation fund. 30
- Sequential deductions*
- (8) Expenditure for which the master superannuation fund is allowed a deduction must be deducted in sequence according to the tax year in which the member superannuation fund incurred it. 35

*Link with subpart DA*

(9) The link between this section and **subpart DA** (General rules) is as follows:

(a) **subsection (5)** supplements the general permission and overrides the capital limitation; the other general limitations still apply: 5

(b) **subsection (7)** overrides the general permission.

Defined in this Act: amount, assessable income, capital limitation, deduction, general limitation, general permission, income, KiwiSaver scheme, superannuation fund, superannuation scheme, supplement, tax year 10

Compare: 2004 No 35 s DV 4

*Other entities***DV 5 Investment funds: transfer of expenditure to master funds**

*When this section applies* 15

(1) This section applies when—

(a) a group investment fund that derives category A income, a public unit trust, or a superannuation fund (the **member fund**) invests some or all of its funds in a master fund; and 20

(b) while the member fund has funds invested in the master fund, the member fund incurs expenditure of a kind described in **subsection (2)**; and

(c) the member fund has some or all of its funds invested in the master fund throughout the period starting at the time at which the member fund incurs the expenditure and ending with the close of the last day of the tax year in which the expenditure is deducted by the master fund under this section. 25

*Expenditure described* 30

(2) The expenditure is expenditure for which the member fund is allowed a deduction,—

(a) including expenditure on a financial arrangement that is denominated in New Zealand dollars and for which expenditure is allocated using the yield to maturity method set out in **subpart EW** (Financial arrangements rules); and 35

(b) not including—

- (i) expenditure on any other financial arrangement;  
or
- (ii) expenditure on revenue account property.

*When expenditure becomes master fund's*

- (3) The expenditure incurred by the member fund may be transferred to the master fund, subject to the following conditions: 5
- (a) the member fund and the master fund must agree to the transfer of the expenditure; and
  - (b) the member fund may transfer expenditure only to the extent to which it has a tax loss in the tax year, with the tax loss calculated as if this section did not exist; and 10
  - (c) a member fund that is a group investment fund that derives category A income may transfer only expenditure that relates to the category A income.

*Tax year in which investment stops*

- (4) In the tax year in which the member fund stops investing in the master fund,— 15
- (a) neither the master fund nor the member fund is allowed a deduction for expenditure that would otherwise be transferable; and 20
  - (b) the member fund must treat the expenditure as a loss balance.

*When expenditure incurred*

- (5) The expenditure is treated as being incurred by the master fund in the tax year in which it is transferred by the member fund. 25

*Deduction allowed to master fund*

- (6) The master fund is allowed a deduction for the expenditure, subject to the following conditions: 30
- (a) a master fund that is a group investment fund that derives category A income may deduct expenditure only from its category A income; and
  - (b) the amount of the deduction is limited by **subsection (7)**.

- Amount of deduction*
- (7) The formula in **section DV 6** is used to calculate the maximum deduction that the master fund is allowed for expenditure of the member fund treated as being incurred by the master fund. 5
- Additional transfer*
- (8) If, after the date on which the master fund has filed its return of income, the master fund is able to deduct more than the amount actually deducted, the Commissioner may allow the member fund to transfer expenditure to the extent of the difference after the return of income has been filed. 10
- Deducted expenditure not incurred by member fund*
- (9) The expenditure for which the master fund is allowed a deduction is treated as not being incurred by the member fund.
- Link with subpart DA*
- (10) The link between this section and **subpart DA** (General rules) is as follows: 15
- (a) **subsection (6)** supplements the general permission and overrides the capital limitation; the other general limitations still apply:
- (b) **subsection (9)** overrides the general permission. 20
- Defined in this Act: amount, capital limitation, category A income, Commissioner, deduction, financial arrangement, general limitation, general permission, group investment fund, loss balance, master fund, public unit trust, return of income, revenue account property, superannuation fund, supplement, tax loss, tax year
- Compare: 2004 No 35 s DV 5 25
- DV 6 Formula for calculating maximum deduction**
- Formula used to calculate maximum deduction*
- (1) The formula referred to in **section DV 5(6)** is—  
taxable income – non-resident passive income.
- Definition of items in formula* 30
- (2) The items in the formula are defined in **subsections (3) and (4)**.
- Taxable income*
- (3) **Taxable income** is the amount that would be the master fund's taxable income in the tax year in which the expenditure is transferred in the absence of **sections DV 5 to DV 7**. 35

*Non-resident passive income*

- (4) **Non-resident passive income** is the total of any amounts of non-resident passive income of any of the kinds to which **section RF 2(5)** (Non-resident passive income) applies derived by the master fund in the tax year in which the expenditure is incurred. 5

Defined in this Act: amount, deduction, master fund, non-resident passive income, tax year, taxable income

Compare: 2004 No 35 s DV 6

**DV 7 Carry forward of expenditure** 10*Member fund carrying expenditure forward*

- (1) For the purposes of **section DV 5**, if a member fund incurs more expenditure than the member fund and the master fund agree can be transferred, the member fund may carry forward the expenditure for transfer in a later tax year. 15

*Expenditure as loss balance*

- (2) If the member fund carries forward expenditure in a tax year, the member fund may treat some or all of the expenditure as a loss balance. 20

Defined in this Act: loss balance, master fund, tax year

Compare: 2004 No 35 s DV 7

**DV 8 Non-profit organisations***When this section applies*

- (1) This section applies when an incorporated or unincorporated organisation— 25
- (a) does not have the purpose of making a profit for a proprietor, member, or shareholder; and
  - (b) has a constitution that prohibits a distribution of property in any form to a member, proprietor, or shareholder. 30

*Amount of deduction*

- (2) The organisation is allowed a deduction for the lesser of— 35
- (a) \$1,000; and
  - (b) the amount that would be the organisation's net income in the absence of this section.

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, net income, shareholder, supplement

5

Compare: 2004 No 35 s DV 8

**DV 9 Trusts***No deduction*

- (1) A person who derives beneficiary income is denied a deduction for expenditure or loss that a trustee incurs in deriving the income. 10

*Trustee income*

- (2) For the purpose of determining the deductions that a trustee is allowed in a tax year, beneficiary income of beneficiaries of the trust in the tax year is treated as trustee income. 15

*Link with subpart DA*

- (3) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (1)** overrides the general permission:
  - (b) **subsection (2)** supplements the general permission; the general limitations still apply. 20

Defined in this Act: beneficiary income, deduction, general limitation, general permission, supplement, tax year, trustee, trustee income

Compare: 2004 No 35 s DV 9

**DV 10 Building societies** 25*Deduction*

- (1) A building society is allowed a deduction for—
- (a) expenditure incurred on money borrowed by way of withdrawable shares:
  - (b) interest and other financial charges incurred in providing money that is used to provide an interest-free loan to a person who holds a terminating share: 30
  - (c) an amount incurred in purchasing a balloted loan right from a person who holds a terminating share.

*Timing of deduction*

- (2) The deduction for the amount referred to in **subsection (1)(c)** is allocated to the income year in which the amount is paid.

*Meaning of balloted loan right*

- (3) In this section, **balloted loan right** means a right arising from a ballot that— 5
- (a) is held by or for a building society; and
  - (b) is of terminating shares; and
  - (c) is held for the purpose of finding out which of the holders of the shares are entitled to receive an interest-free loan relating to their shares. 10

*Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and other general limitations still apply. 15

Defined in this Act: amount, balloted loan right, building society, capital limitation, deduction, general limitation, general permission, income year, pay, terminating share, withdrawable share

Compare: 2004 No 35 s DV 10

**DV 11 Distribution to member of co-operative company, excluded from being dividend** 20

*Deduction*

- (1) A co-operative company, or a company owned by a co-operative company, is allowed a deduction for a distribution made for an income year to a member of the co-operative company if an amount of the distribution is excluded by **section CD 34** (Distribution to member of co-operative company based on member's transactions) from being a dividend. 25

*Amount of deduction*

- (2) The amount of the deduction is the amount of the distribution that is excluded by **section CD 34** from being a dividend. 30

*Timing of deduction*

- (3) The deduction is allocated to the income year for which the distribution is made.

*Link with subpart DA*

- (4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: company, co-operative company, deduction, general permission, general limitation, income year, shareholder

5

Compare: 2004 No 35 s DV 10B

**DV 12 Maori authorities: donations***Deduction*

- (1) A Maori authority is allowed a deduction for—
- (a) a donation that it makes to a Maori association, as defined in the Maori Community Development Act 1962, for the purposes of the Act: 10
- (b) a public benefit gift that it makes to a society, institution, association, organisation, trust, or fund of any of the kinds listed in **schedule 32** (Recipients of public benefit gifts). 15

*Amount of deduction*

- (2) The deduction for the total of all donations and gifts made in a tax year is limited to 5% of the amount that would be the Maori authority's net income in the tax year in the absence of this section. 20

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 25

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, Maori authority, net income, public benefit gift, supplement, tax year

Compare: 2004 No 35 s DV 11

**DV 13 Group companies** 30*When this section applies*

- (1) This section applies when,—
- (a) in a tax year, a company (**company A**) that is part of a wholly-owned group of companies derives income under **section CV 1** (Group companies); and 35

- (b) no other provision of this Act allows company A a deduction for the expenditure it incurs in deriving the income; and
- (c) if the wholly-owned group of companies were a single company, the single company would be allowed a deduction for the expenditure that company A incurs in deriving the income. 5

*Amount, and timing, of deduction*

- (2) Company A is allowed a deduction for the expenditure in the tax year in which the income is derived. 10

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the exempt income limitation. The other general limitations still apply.

Defined in this Act: company, deduction, exempt income limitation, general limitation, general permission, income, supplement, tax year, wholly-owned group of companies 15

Compare: 2004 No 35 s DV 12

**DV 14 Amalgamated company: expenditure on improvements for farming, horticultural, aquacultural, and forestry businesses** 20

*When this section applies*

- (1) This section applies when—
  - (a) an amalgamating company ends its existence on a resident's restricted amalgamation; and 25
  - (b) the amalgamated company acquires land or a business from the amalgamating company; and
  - (c) the amalgamating company would have been allowed a deduction under any of **section DO 4, DO 5, DO 6, DO 12, or DP 3** (which relate to improvements and expenditure on land) for the land or business if the amalgamation had not occurred. 30

*Deduction*

- (2) While the amalgamated company holds the land or carries on the business, it is allowed the deduction that the amalgamating company would have been allowed under **section DO 4, DO 5, DO 6, DO 12, or DP 3**. 35

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amalgamated company, amalgamating company, business, deduction, general limitation, general permission, resident's restricted amalgamation, supplement

5

Compare: 2004 No 35 s DV 13

**DV 15 Amalgamated companies: property passing on resident's restricted amalgamation**

*When this section applies*

10

- (1) This section results from **sections FO 8 and FO 10** (which relate to resident's restricted amalgamations).

*Deduction for bad debts or expenditure or loss*

- (2) On a resident's restricted amalgamation, an amalgamated company is allowed a deduction for an amount written off as bad, or an amount of expenditure or loss, including an amount of depreciation loss, incurred as a result of something that the amalgamating company did or did not do in the circumstances set out in **section FO 8**.

15

*Depreciation loss for property transferred*

20

- (3) On a resident's restricted amalgamation, an amalgamating company is allowed a deduction for an amount of depreciation loss for property transferred to the amalgamated company for the period described in **section FO 10(7)**.

*Link with subpart DA*

25

- (4) This section supplements the general permission. The general limitations still apply.

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

30

Compare: 2004 No 35 ss FE 3, FE 6A

**DV 16 Consolidated groups: intra-group transactions**

*When this section applies*

- (1) This section applies in relation to a consolidated group of companies for the purposes of **section FM 10** (Expenditure: intra-group transactions).

35

*No deduction (with exception)*

- (2) A company that is a part of a consolidated group of companies is denied a deduction for expenditure or loss incurred through a payment or disposal to, or transaction or arrangement with, another group company, and a deduction would not be allowed for the expenditure or loss if the group were 1 company, to the extent to which the expenditure or loss arises—
- (a) from the company's acquisition of trading stock; or
  - (b) under **sections FM 15 to FM 23** (which relate to accounting for particular property).

*Other expenditure or loss*

- (3) A company that is part of a consolidated group is—
- (a) allowed a deduction for expenditure or loss or an amount of depreciation loss:
  - (b) denied a deduction for expenditure or loss or amount of depreciation loss except to the extent to which the expenditure or loss is interest on money that the company has borrowed outside the consolidated group.

*Link with subpart DA*

- (4) This section overrides the general permission. 20

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

Compare: 2004 No 35 s HB 2(1)(b)

**DV 17 Consolidated groups: expenditure or loss incurred by group companies** 25

*When this section applies*

- (1) This section results from **sections FM 11 and FM 12** (which relate to expenditure or loss incurred by group companies).

*Deduction allowed: nexus with income derivation*

- (2) To the extent set out in **section FM 11**, if the consolidated group would be allowed a deduction for an item of expenditure or loss as 1 company because of a nexus between the expenditure and the income or carrying on of a business by another group company, a company that is part of the consolidated group is allowed a deduction. 30  
35

*No deduction except for interest on money borrowed*

- (3) To the extent set out in **section FM 12**, if the consolidated group would be denied a deduction for an item of expenditure or loss as 1 company, a company that is part of the consolidated group is denied a deduction, except for an amount of expenditure or loss that is interest on money borrowed by the company from a group company in the circumstances described in that section. 5

*Link with subpart DA*

- (4) **Subsection (2)** supplements the general permission, and the general limitations still apply. **Subsection (3)** overrides the general permission. 10

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

Compare: 2004 No 35 s HB 2(1)(c) 15

**DV 18 Statutory producer boards and co-operative companies***When this section applies*

- (1) This section applies for the purposes of **sections OB 73 and OB 78** (which relate to imputation credits attached to cash distributions by statutory producer boards and co-operative companies) when a producer board or co-operative company chooses to treat a distribution as a dividend. 20

*No deduction*

- (2) The producer board or co-operative company making the distribution is denied a deduction for the amount of the distribution. 25

*Link with subpart DA*

- (3) This section overrides the general permission.

Defined in this Act: amount, co-operative company, deduction, general permission, imputation credit, statutory producer board 30

Compare: 2004 No 35 ss ME 30(2), ME 35(2)

**DV 19 Association rebates***When this section applies*

- (1) This section applies when an association,—

- (a) enters into a mutual transaction from which it derives income to which **section CB 32** (Amounts derived by mutual associations) applies; and
- (b) in relation to the transactions, pays association rebates to its members. 5
- Deduction*
- (2) The association is allowed a deduction for the lesser of—
- (a) the amount described in **subsection (3)**; or
- (b) the amount calculated using the formula in **subsection (4)**.
- Allocation* 10
- (3) The deduction is allowed in the income year in which the association derives the income referred to in **section CB 32**.
- Amount paid*
- (4) The amount referred to in **subsection (2)(a)** is the total amount that the association pays as association rebates to members for those mutual transactions that arise in the income year and which the association takes into account in determining its net income or net loss. In the calculation of the total amount, it is irrelevant that the amount paid may be limited or reduced because a member of the association has a share or interest in the capital of the association. 15  
20
- Amount under formula*
- (5) The amount is calculated using the formula—  
assessable income – (deductions + amount distributed).
- Definition of items in formula* 25
- (6) In the formula,—
- (a) **assessable income** is the total amount of the association's assessable income attributable to the mutual transactions:
- (b) **deductions** are the total deductions that the association is allowed, other than under this section, that are attributable to the assessable income: 30
- (c) **amount distributed** is the total amount that the association distributes to members in the income year through a cash distribution for which a determination is made 35

under **section OB 82(1)(a)** (When and how co-operative company makes election).

*Statutory producer boards: timing of deduction*

- (7) When an association is a statutory producer board that pays an association rebate to a member, the board may choose whether the rebate is a deduction in the income year in which the amount is paid, or in the income year in which the mutual transaction giving rise to the amount is made. 5

*Link with subpart DA*

- (8) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 10

Defined in this Act: amount, assessable income, association, association rebate, capital limitation, deduction, general permission, imputation credit, income, income year, member, mutual transaction, net income, net loss, pay, share, statutory producer board 15

Compare: 2004 No 35 s HF 1(2), (3)(a), (b), (4)

Subpart DW—Expenditure specific to certain industries  
**Contents**

- DW 1 Airport operators 20  
DW 2 Bloodstock racing  
DW 3 Non-resident general insurers, shippers, and film renters

**DW 1 Airport operators**

*No deduction (with exception)*

- (1) An airport operator is denied a deduction for expenditure or loss to the extent to which the expenditure or loss is, in terms of the joint venture agreement that relates to the airport operator, a charge against any part of the joint income of the parties to the agreement that has been allocated or distributed to any party. 25  
30

*Meaning of expenditure*

- (2) In **subsection (1)**, **expenditure** includes a provision that is treated as expenditure or loss in the nature of interest under **sections HR 5 and HR 6** (which relate to airport operators).

*Link with subpart DA*

- (3) This section overrides the general permission.

Defined in this Act: airport operator, deduction, expenditure, general permission, income, joint venture agreement

Compare: 2004 No 35 s DW 1

5

**DW 2 Bloodstock racing***No deduction*

- (1) A person is denied a deduction for expenditure or loss that they incur—

- (a) on the racing of bloodstock; or
- (b) in relation to the racing of bloodstock.

10

*No deduction (with exception)*

- (2) A person is denied a deduction for expenditure or loss that they incur in preparing bloodstock for racing, except, first, when—

15

- (a) the person is in the business of breeding bloodstock; and
- (b) they incur the expenditure or loss in preparing for sale bloodstock that they are preparing for racing; and
- (c) they do not race the bloodstock on which they incur the expenditure or loss.

20

*No deduction (with exception)*

- (3) A person is denied a deduction for expenditure or loss that they incur in preparing bloodstock for racing, except, second, when—

25

- (a) the person incurs the expenditure or loss in preparing the bloodstock for racing; and
- (b) they receive consideration for preparing the bloodstock for racing; and
- (c) the consideration is income of the person.

30

*Link with subpart DA*

- (4) This section overrides the general permission.

Defined in this Act: bloodstock, business, deduction, general permission, income, loss

Compare: 2004 No 35 s DW 2

35

**DW 3 Non-resident general insurers, shippers, and film renters***No deduction*

- (1) A person listed in **subsection (2)** is denied a deduction for expenditure incurred in deriving the income described in the relevant section. 5

*Persons*

- (2) The persons referred to in **subsection (1)** are—
- (a) a non-resident person who derives income under **section CR 3** (Income of non-resident general insurer): 10
  - (b) a non-resident person who derives income under **section CV 16** (Non-resident shippers) for cargo, mail, or passengers shipped outside New Zealand:
  - (c) a non-resident person who derives income under **section CV 17** (Non-resident film renters) from the activities described in that section. 15

*Non-resident shipper's expenditure on depreciation*

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

*Link with subpart DA*

- (4) This section overrides the general permission. 20

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

Compare: 2004 No 35 ss FC 15, FC 20, FC 21(3), (5)

**Subpart DX—Other expenditure** 25**Contents**

- DX 1 Testamentary annuities  
 DX 2 Tax credits: conduit financing arrangements  
 DX 3 Tax credits: supplementary dividend holding companies

**DX 1 Testamentary annuities** 30*When this section applies*

- (1) This section applies when—
- (a) property is subject to the payment of an annuity—
    - (i) because of a provision in a will; or

- 
- (ii) because of a court order under the Family Protection Act 1955; or
    - (iii) because of a deed of family arrangement; and
  - (b) the property, or property substituted for it, is transferred to a beneficiary; and 5
  - (c) the property transferred, or property that the beneficiary substitutes for it, is charged with the payment of the annuity or part of the annuity.
- Deduction*
- (2) The owner of the property, or the substituted property, is allowed a deduction for an amount that they pay on account of the annuity. 10
- Exclusion*
- (3) The owner is denied a deduction—
    - (a) if the owner is not a beneficiary but a person who has bought the property subject to the condition that they assume the liability for the annuity, or a part of it: 15
    - (b) to the extent to which the annuity is payable under a court order or under a deed of family arrangement and represents consideration for the purchase of the property, or the substituted property, by the owner. 20
- Amount of deduction*
- (4) The deduction is limited in a tax year to the amount that would be the net income of the owner for the tax year if the owner's only income in the tax year were from the property, or the substituted property. 25
- Meaning of beneficiary*
- (5) In this section, **beneficiary**—
    - (a) means—
      - (i) a person to whom a testator has left the property in their will; or 30
      - (ii) a person to whom the testator has given a right to buy the property in their will; and
    - (b) includes a person who is entitled to the property under— 35
      - (i) an order of a court under the Family Protection Act 1955; or

- (ii) a deed of family arrangement.

*Link with subpart DA*

- (6) This section supplements the general permission and overrides the private limitation. The other general limitations still apply. 5

Defined in this Act: amount, arrangement, beneficiary, deduction, general limitation, general permission, income, net income, pay, private limitation, supplement, tax year

Compare: 2004 No 35 s DX 1

**DX 2 Tax credits: conduit financing arrangements** 10

*When this section applies*

- (1) This section applies when a company derives a dividend from a foreign company, or a person resident in New Zealand and associated at the time with the company derives a dividend from a foreign company, in the circumstances set out in **section LL 7** (Conduit financing arrangements). 15

*Limited deduction*

- (2) Despite **section BD 2** (Deductions), the company is allowed a deduction for the expenditure for a tax year only to the extent set out in **section LL 7(2)**. 20

Defined in this Act: associated person, company, deduction, dividend, foreign company, resident in New Zealand, tax year

Compare: 2004 No 35 s LF 7

**DX 3 Tax credits: supplementary dividend holding companies**

*When this section applies* 25

- (1) This section applies when a supplementary dividend holding company derives a supplementary dividend in relation to which its annual total deduction is allocated as described in **section LP 10** (Limitations on deductions).

*Limited deduction* 30

- (2) Despite **section BD 4** (Allocation of deductions to particular income years), the company is allowed a deduction for the

expenditure for a tax year only to the extent set out in **section LP 10(1)**.

Defined in this Act: annual total deduction, deduction, supplementary dividend holding company, tax year

Compare: 2004 No 35 ss LE 3(10), LE 4

5

## Subpart DZ—Terminating provisions

### Contents

DZ 1	Commercial bills before 31 July 1986	
DZ 2	Life insurers acquiring property before 1 April 1988	
DZ 3	Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991	10
DZ 4	Expenditure on abandoned exploratory well before 16 December 1991	
DZ 5	Farm-out arrangements for petroleum mining before 16 December 1991	15
DZ 6	Partnership interests and disposal of part of asset before 16 December 1991	
DZ 7	Petroleum mining operations outside New Zealand before 16 December 1991	
DZ 8	Buying patent rights before 1 April 1993	20
DZ 9	Premium paid on land leased before 1 April 1993	
DZ 10	General insurance with risk period straddling 1 July 1993	
DZ 11	Film reimbursement scheme on or before 30 June 2001	
DZ 12	Mineral mining: 1954–2005	25
DZ 13	Enhancements to land unamortised at end of 2004–05 year	
DZ 14	Deductions under specified leases	

---

### DZ 1 Commercial bills before 31 July 1986

#### *Deduction* 30

- (1) A person is allowed a deduction if they acquire a commercial bill from another person, other than under a relationship agreement, and derive income under **section CZ 6** (Commercial bills before 31 July 1986) on the redemption or disposal of the commercial bill. 35

#### *Amount of deduction*

- (2) The amount of the deduction is the value of the commercial bill on the date on which the person acquired it.

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, commercial bill, deduction, general limitation, general permission, income, relationship agreement, supplement

5

Compare: 2004 No 35 s DZ 1

**DZ 2 Life insurers acquiring property before 1 April 1988***When this section applies*

- (1) This section applies when—
- (a) a life insurer started carrying on the business of providing life insurance on or before the last day of the 1988–89 income year; and 10
  - (b) on the last day of the 1987–88 income year the life insurer’s Life Insurance Fund covered some or all of the following matters: 15
    - (i) superannuation policies; and
    - (ii) pre-1983 mortgage repayment insurance policies; and
    - (iii) annuities that had been granted; and
  - (c) the life insurer, as part of the business, acquired property before 1 April 1988; and 20
  - (d) the life insurer, as part of the business, disposes of the property; and
  - (e) either— 25
    - (i) the life insurer has not already been allowed a deduction for the property, whether under **section DR 2** (Disposal of property) or any other provision; or
    - (ii) the life insurer has been allowed a deduction for the property, but only for an amount of depreciation loss or because of the application of the old financial arrangements rules or the financial arrangements rules; and 30
  - (f) **section DR 2** does not apply to the disposal.

*Deduction*

35

- (2) The life insurer is allowed a deduction for the amount quantified in **section EZ 1** (Life insurers acquiring property before 1 April 1988).

*Meaning of superannuation policy*

- (3) **Superannuation policy** means a life insurance policy—
- (a) that—
- (i) is vested in a superannuation fund that was or was treated as being a superannuation category 1 scheme on or before 17 December 1987, not including a scheme that was classified by the Government Actuary as a personal pension superannuation scheme and that admitted new members after 17 December 1987; or
- (ii) was effected for the purposes of any such superannuation fund; or
- (iii) was accepted by any such superannuation fund for the purposes of the fund; and
- (b) that has not ceased to be a policy for the purposes of the superannuation fund.

*Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, depreciation loss, financial arrangements rules, general limitation, general permission, income year, life insurance, Life Insurance Fund, life insurance policy, life insurer, old financial arrangements rules, pay, property, superannuation category 1 scheme, superannuation fund, superannuation policy, superannuation scheme

Compare: 2004 No 35 s DZ 2

### **DZ 3 Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991**

*Deduction*

- (1) A petroleum miner is allowed a deduction for petroleum mining development expenditure incurred by them on or after 1 October 1990 and before or on 15 December 1991. This subsection is overridden by **subsection (2)**.

*Relationship with section DZ 4*

- (2) The petroleum miner is denied a deduction for petroleum mining development expenditure as described in **subsection (1)** if it has been deducted under—
- (a) **section DZ 4**; or

- (b) sections 214D to 214M of the Income Tax Act 1976 as they were immediately before their repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

*Timing of deduction*

- (3) The deduction is allocated under **section EZ 3** (Petroleum development expenditure from 1 October 1990 to 15 December 1991). 5

*Meaning of petroleum mining development expenditure*

- (4) In this section, **petroleum mining development expenditure** has the same meaning as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992. 10

*Link with subpart DA*

- (5) This section supplements the general permission. The general limitations still apply. 15

Defined in this Act: deduction, general limitation, general permission, petroleum miner, petroleum mining development expenditure, supplement

Compare: 2004 No 35 s DZ 3

**DZ 4 Expenditure on abandoned exploratory well before 16 December 1991** 20

*Deduction*

- (1) A petroleum miner is allowed a deduction for expenditure that they incur before 16 December 1991 in drilling, testing, completing, and abandoning an exploratory well if—
- (a) the miner seals and abandons the well before commercial production from the well starts; and 25
- (b) the expenditure has not been deducted in any previous income year.

*Sealing and abandoning well*

- (2) To seal and abandon an exploratory well, a petroleum miner must make a declaration under the Oaths and Declarations Act 1957 that they do not intend—
- (a) to use the exploratory well in petroleum mining operations; or 30
- (b) to apply for an existing privilege over the area containing the exploratory well. 35

*Timing of deduction*

- (3) The deduction is allocated to the income year in which the well is sealed and abandoned.

*Link with subpart DA*

- (4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 5

Defined in this Act: capital limitation, commercial production, deduction, existing privilege, exploratory well, general limitation, general permission, income year, petroleum miner, petroleum mining operations, seal and abandonment 10

Compare: 2004 No 35 s DZ 4

## **DZ 5 Farm-out arrangements for petroleum mining before 16 December 1991**

### *Deduction: excess expenditure incurred before 16 December 1991*

- (1) A transferee under a farm-out arrangement is allowed a deduction of excess expenditure incurred before 16 December 1991 in a farm-out arrangement entered into before 16 December 1991, and for which a deduction has not been allowed in any previous income year. The deduction is allowed under **section DT 1** (Petroleum exploration expenditure) or **DT 5** (Petroleum development expenditure). 15 20

### *Deduction: excess expenditure incurred on or after 16 December 1991*

- (2) A transferee under a farm-out arrangement is allowed a deduction of excess expenditure incurred on or after 16 December 1991 in a farm-out arrangement entered into before 16 December 1991 if the expenditure has the character of exploratory well expenditure, petroleum exploration expenditure, or petroleum development expenditure. The deduction is allowed under **section DT 1** or **DT 5 to DT 7** (which relate to petroleum development expenditure) and quantified and allocated under whichever of **sections EJ 12 to EJ 16** (which relate to petroleum mining) applies. 25 30

*Reduction of deductions*

- (3) A transferor under a farm-out arrangement entered into before 16 December 1991 must reduce, but is denied as a deduction, 35

the deductions described in **subsection (4)** by the amount determined under **subsection (5)**.

*Deductions to which subsection (3) applies*

- (4) The deductions to which **subsection (3)** applies are deductions for expenditure incurred before, on, or after 16 December 1991 that— 5
- (a) are not deductions of a kind referred to in **subsection (5)(a) to (c)**; and
  - (b) are attributable to— 10
    - (i) the petroleum mining permit to which the farm-out arrangement relates; and
    - (ii) a licence-specific asset or permit-specific asset held for conducting petroleum mining operations under the petroleum mining permit.

*Amount of reduction* 15

- (5) The amount of the reduction under **subsection (4)**, in an income year, is the same amount as would have been determined under section 214I(2) and (3) of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992, as if references in section 214I(2) and (3) to deferred deductions were references to any deductions, deferred or not, attributable to the relevant permit or asset, except deductions for— 20
- (a) residual expenditure; and
  - (b) expenditure incurred on or before the date on which the application for an existing privilege or prospecting permit for petroleum was submitted for the relevant licence area; and 25
  - (c) expenditure that is neither petroleum exploration expenditure nor petroleum development expenditure. 30

*Some definitions*

- (6) In **subsections (2) to (5)**, **excess expenditure**, **farm-out arrangement**, **licence-specific assets**, **permit-specific asset**, **transferee**, and **transferor** have the same meanings as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992. 35

*Link with subpart DA*

- (7) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, excess expenditure, existing privilege, exploratory well expenditure, farm-out arrangement, general limitation, general permission, income year, licence-specific assets, permit-specific asset, petroleum, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operations, petroleum mining permit, prospecting permit, residual expenditure, supplement, transferee, transferor

5

10

Compare: 2004 No 35 s DZ 5

**DZ 6 Partnership interests and disposal of part of asset before 16 December 1991**

In **sections DZ 3 to DZ 5**, unless the context requires otherwise,—

- (a) a partner is treated as having a share or interest in a petroleum mining permit or other property of a partnership to the extent of their income interest in the partnership:
- (b) references to the disposal of an asset apply equally to the disposal of part of an asset.

15

20

Defined in this Act: dispose, income, petroleum mining permit

Compare: 2004 No 35 s DZ 6

**DZ 7 Petroleum mining operations outside New Zealand before 16 December 1991**

**Sections DZ 3 to DZ 6** apply, with any necessary modifications, to a petroleum miner undertaking petroleum mining operations that are—

- (a) outside New Zealand and undertaken through a branch or a controlled foreign company; and
- (b) substantially the same as the petroleum mining activities governed by this Act.

25

30

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s DZ 7

**DZ 8 Buying patent rights before 1 April 1993**

35

*When this section applies*

- (1) This section applies when a person buys patent rights before 1 April 1993 and uses them in deriving their income. In this

section, if the person dies after incurring expenditure on buying the rights, references to the person include their personal representative, a trustee of their estate, and a beneficiary of their estate.

*Deduction*

5

- (2) The person is allowed a deduction of the amount quantified in **section EZ 7(2)** (Buying patent rights before 1 April 1993).

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

10

Defined in this Act: amount, deduction, general limitation, general permission, income, patent rights, supplement, trustee

Compare: 2004 No 35 s DZ 8

**DZ 9 Premium paid on land leased before 1 April 1993**

*When this section applies*

15

- (1) This section applies when a person (**person A**) leases land that they use in deriving their income and a grant or renewal of the lease occurs before 1 April 1993.

*Deduction*

- (2) Person A is allowed a deduction of the amount quantified in **section EZ 8(2)** (Premium paid on land leased before 1 April 1993).

20

*Link with subpart DA*

- (3) This section supplements the general permission. The general limitations still apply.

25

Defined in this Act: amount, deduction, general limitation, general permission, income, lease, premium, supplement

Compare: 2004 No 35 s DZ 9

**DZ 10 General insurance with risk period straddling  
1 July 1993**

30

*When this section applies*

- (1) This section applies when—

- (a) a company carries on a business of providing general insurance or guarantees against loss, damage, or risk, immediately before and on 1 July 1993; and
- (b) the company, as insurer, enters into an insurance contract for the general insurance in the course of carrying on the business outside New Zealand; and 5
- (c) the contract covers a period of risk starting before 1 July 1993 and ending after 1 July 1993.

*No deduction (with exception)*

- (2) The company is denied a deduction for an amount payable under the contract unless the event giving rise to the payment occurs on or after 1 July 1993. 10

*Link with subpart DA*

- (3) This section overrides the general permission. 15
- Defined in this Act: amount, business, company, deduction, general insurance, general permission, insurance contract, New Zealand, pay
- Compare: 2004 No 35 s DZ 10

## **DZ 11 Film reimbursement scheme on or before 30 June 2001**

*Film reimbursement scheme*

- (1) **Section DS 3** (Clawback of deductions for film reimbursement schemes) does not apply to a deduction for expenditure that relates to a film and is incurred by a person (**person A**) under a film reimbursement scheme if— 20
  - (a) the scheme is entered into on or before 30 June 2001; and 25
  - (b) the film has, under **section EJ 6** (Certification of New Zealand films),—
    - (i) a final certificate that it is a New Zealand film; or
    - (ii) a provisional certificate, not obtained by the provision of materially incorrect information to the New Zealand Film Commission, that it is a New Zealand film; and 30
  - (c) the film had not been completed before 7 July 1999; and
  - (d) before 7 July 1999,— 35
    - (i) 1 or more contracts had been entered into for the supply of goods or services in New Zealand in relation to the film; and

- (ii) at least \$1,000,000 of expenditure had been incurred under the contract or contracts; and
- (e) on or before 1 November 1999, a person who entered into a contract referred to in **paragraph (d)(i)** gave notice to the Commissioner that the requirements of **paragraphs (c) and (d)** were met; and 5
- (f) the expenditure for which persons are allowed a deduction under **section DS 1** (Acquiring film rights) or **DS 2** (Film production expenditure) is no more than 140% of the physical cost of production of the film; and 10
- (g) without limiting the application of **section BG 1** (Tax avoidance), on the date the film reimbursement scheme is entered into, there is an expectation based on reasonable commercial assumptions that the income to be derived by person A as a result of the expenditure will be at least equal to the sum of— 15
  - (i) all expenditure incurred by person A under the scheme; and
  - (ii) a return on each amount of expenditure that is equivalent to the return on 5 year government stock measured on the date that the scheme is entered into; and 20
- (h) if the expenditure is incurred on depreciable intangible property of a kind listed in **schedule 14** (Depreciable intangible property), the expenditure is an amount paid to person B in the circumstances described in **subsection (2)**. 25

*Circumstances for purposes of subsection (1)(h)*

- (2) For the purposes of **subsection (1)(h)**, the circumstances are that— 30
  - (a) the amount paid is income of person B; or
  - (b) at all times in the tax year in which the payment is made, person B—
    - (i) is resident in a country or territory specified in **schedule 24, part A** (International tax rules: grey list countries); and 35
    - (ii) is liable to income tax in that country or territory by reason of domicile, residence, place of incorporation, or place of management in that country or territory; and 40

- (iii) has calculated its income that is liable to income tax in that country or territory without applying a feature of the taxation law of the country or territory specified in **schedule 24, part B**.

*Some definitions* 5

- (3) In this section,—

**government stock** means stock issued under Part 6 of the Public Finance Act 1989

**physical cost of production** means the expenditure incurred in producing a film, whether incurred in New Zealand or elsewhere, other than expenditure incurred— 10

- (a) in marketing or selling the film; and  
 (b) on depreciable intangible property of a kind listed in **schedule 14**.

*Link with subpart DA* 15

- (4) This section overrides the general permission.

Defined in this Act: amount, Commissioner, completed, deduction, depreciable intangible property, film, film reimbursement scheme, general permission, government stock, income, income tax, New Zealand, notice, pay, physical cost of production, tax year, year 20

Compare: 2004 No 35 s DZ 11

**DZ 12 Mineral mining: 1954–2005**

*Section CU 4(1)(b)(ii)*

- (1) For the purposes of **section CU 4(1)(b)(ii)** (Compensation for lost, destroyed, or damaged assets),— 25
- (a) for a mining company, the deduction is under—
- (i) section 153F of the Land and Income Tax Act 1954; or
- (ii) section 27 of the Land and Income Tax Amendment Act 1971; or 30
- (iii) section 216 of the Income Tax Act 1976; or
- (iv) section DN 1(5) of the Income Tax Act 1994; or
- (v) section DU 1(1) or (3) of the Income Tax Act 2004; and
- (b) for a resident mining operator or a non-resident mining operator, the deduction is under— 35
- (i) section 153J of the Land and Income Tax Act 1954; or

- (ii) section 31 of the Land and Income Tax Amendment Act (No 2) 1972; or
- (iii) section 216 of the Income Tax Act 1976; or
- (iv) section DN 1(5) of the Income Tax Act 1994; or
- (v) section DU 1(1) or (3) of the Income Tax Act 2004. 5

*Sections CU 11(1)(a)(ii) and DU 6(1)(a)(ii)*

- (2) For the purposes of **sections CU 11(1)(a)(ii)** (Meaning of asset for sections CU 3 to CU 10) and **DU 6(1)(a)(ii)** (Depreciation),—
  - (a) for a mining company, the expenditure is that referred to in section 27(3)(a) of the Land and Income Tax Amendment Act 1971; and 10
  - (b) for a resident mining operator or a non-resident mining operator,—
    - (i) the expenditure, for **section CU 11(1)(a)(ii)**, is that referred to in paragraph (i) of item “a” of the formula in section 31(3) of the Land and Income Tax Amendment Act (No 2) 1972; and 15
    - (ii) the asset, for **section DU 6(1)(a)(ii)**, is that referred to in paragraph (i) of item “a” of the formula in section 31(3) of the Land and Income Tax Amendment Act (No 2) 1972. 20

*Section DU 12*

- (3) This subsection applies if **section DU 12** (Amount written off by holding company) would have applied to a loan by a company to another company made on or before 31 March 1979 if the Income Tax Amendment Act 1979 had not been enacted. The section applies, as far as applicable, to such a loan as if section 45 of the Income Tax Amendment Act 1979 were the only provision of it that had been enacted. 25 30

*Section DU 12(5)*

- (4) For the purposes of **section DU 12(5)**, if the holding company that made the loan was a mining holding company and made the loan wholly or partly out of payments that it received and for which any person was allowed a deduction under section 159 of the Income Tax Act 1976, the part of the amount calculated 35

under **section DU 12(3)** that arises from those payments is reduced by one-third.

Defined in this Act: company, deduction, holding company, mining company, mining holding company, non-resident mining operator, pay, resident mining operator

5

Compare: 2004 No 35 s DZ 12

### **DZ 13 Enhancements to land unamortised at end of 2004–05 year**

*When this section applies*

- (1) This section applies when— 10
- (a) a person is allowed a deduction under section DO 4(1) (Improvements to farm land) of the Income Tax Act 1994, of an amount set out in section DO 4(3)(a) or (c) of that Act, for expenditure incurred in carrying on a farming or agricultural business on land in New Zealand; and 15
- (b) at the end of the 2004–05 income year, part of the expenditure (the **unamortised balance**) remains to be allowed as a deduction in later income years.

*Deduction*

20

- (2) The person is allowed a deduction for the unamortised balance of expenditure in the income year in which the expenditure is of benefit to the business.

*Link with subpart DA*

- (3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 25

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DZ 13

30

### **DZ 14 Deductions under specified leases**

*When this section applies*

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

*Lessor*

- (2) In an income year in which a lessor leases a personal property lease asset to a lessee under a specified lease, the lessor is denied a deduction for an amount of depreciation loss for the asset. 5

*Lessee*

- (3) A lessee under a specified lease is denied a deduction for expenditure incurred by them under the lease except to the extent to which the expenditure—
- (a) would be allowed as a deduction to the lessee under **section BD 2** (Deductions); and 10
  - (b) is no more than the sum of the amounts calculated under **section FZ 3(2)(a)** (Income of lessor under specified lease) for the initial period, if any, and each instalment period that ends in the income year. 15

*Link with subpart DA*

- (4) This section overrides the general permission. 20
- Defined in this Act: amount, deduction, depreciation loss, general permission, income year, initial period, instalment period, lessee, lessor, personal property lease asset, specified lease

Compare: 2004 No 35 ss FC 6(4), FC 8

Compare: