

## Part E

### Timing and quantifying rules

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

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#### **EA 1 Trading stock, livestock, and excepted financial arrangements**

##### *Property subject to matching rules*

- |     |   |    |
|-----|---|----|
| (1) | The matching rules described in this section apply to each of the following kinds of property:  | 15 |
|     | (a) trading stock valued under <b>subpart EB</b> (Valuation of trading stock (including dealer's livestock)):   |    |
|     | (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):                | 20 |
|     | (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> . | 25 |

##### *Application of section CH 1*

- |     |   |    |
|-----|---|----|
| (2) | When a person has any of those kinds of property at the end of an income year, its value is income of the person in the income year under <b>section CH 1</b> (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements). | 30 |
|-----|---|----|

##### *Application of section DB 50*

- |     |   |    |
|-----|---|----|
| (3) | When a person has any of those kinds of property at the start of an income year, they are allowed a deduction for its value in the income year under <b>section DB 50</b> (Adjustment for opening | 35 |
|-----|---|----|

values of trading stock, livestock, and excepted financial arrangements).

*Determination of values*

- (4) The values are determined under—
- (a) **section EB 3** (Valuation of trading stock); and 5
  - (b) **section EC 2** (Valuation of livestock); and
  - (c) **section ED 1** (Valuation of excepted financial arrangements).

Defined in this Act: deduction, excepted financial arrangement, income, income year, original share, pay, revenue account property, share-lending right, share supplier, trading stock 10

Compare: 2004 No 35 s EA 1

## EA 2 Other revenue account property

*When this section applies*

- (1) This section applies to revenue account property that is not— 15
- (a) trading stock valued under **subpart EB** (Valuation of trading stock (including dealer's livestock));
  - (b) livestock valued under **subpart EC** (Valuation of livestock);
  - (c) an excepted financial arrangement valued under **subpart ED** (Valuation of excepted financial arrangements): 20
  - (d) a film or a film right to which **sections EJ 4 to EJ 8** (which relate to films) apply;
  - (e) a specified lease or a lease to which **section EJ 10** (Personal property lease payments) applies: 25
  - (f) property that arises as a result of petroleum development expenditure or petroleum exploration expenditure to which **sections EJ 12 to EJ 20** (which relate to petroleum mining) apply;
  - (g) a financial arrangement valued under **subpart EW** (Financial arrangements rules). 30

*Timing of deduction*

- (2) A deduction for the cost of revenue account property of a person is allocated to the earlier of—
- (a) the income year in which the person disposes of the property; and 35

- (b) the income year in which the property ceases to exist.

Defined in this Act: deduction, excepted financial arrangement, film, film right, financial arrangement, income year, lease, pay, petroleum development expenditure, petroleum exploration expenditure, revenue account property, specified lease, trading stock

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Compare: 2004 No 35 s EA 2

### EA 3 Prepayments

*When this section applies*

- (1) This section applies when—
- (a) a person has been allowed a deduction for expenditure under this Act or an earlier Act; and 10
  - (b) the expenditure was not incurred on the items described in **subsection (2)**; and
  - (c) some or all of the expenditure is unexpired under **subsections (4) to (7)** at the end of the person's income year. 15

*Exclusions*

- (2) This section does not apply to expenditure incurred on—
- (a) revenue account property to which **section EA 2** applies;
  - (b) trading stock valued under **subpart EB** (Valuation of trading stock (including dealer's livestock)); 20
  - (c) livestock valued under **subpart EC** (Valuation of livestock);
  - (d) an excepted financial arrangement valued under **subpart ED** (Valuation of excepted financial arrangements);
  - (e) a film or a film right to which **sections EJ 4 to EJ 8** (which relate to films) apply; 25
  - (f) a specified lease or a lease to which **section EJ 10** (Personal property lease payments) applies;
  - (g) property that arises as a result of petroleum development expenditure or petroleum exploration expenditure to which **sections EJ 12 to EJ 20** (which relate to petroleum mining) apply; 30
  - (h) a financial arrangement valued under **subpart EW** (Financial arrangements rules).

*Unexpired portion* 35

- (3) The unexpired portion of a person's expenditure at the end of an income year—
- (a) is income of the person in the income year under **section CH 2** (Adjustment for prepayments); and

- (b) is an amount for which the person is allowed a deduction in the following income year under **section DB 51** (Adjustment for prepayments).

*Determination of values*

- (4) An amount of expenditure on goods is unexpired at the end of an income year if, by the end of the income year,— 5
- (a) the person has not used up the goods in deriving income; and
- (b) the goods are not destroyed or rendered useless for the purpose of deriving income. 10

*Unexpired portion: expenditure on services*

- (5) An amount of expenditure on services is unexpired at the end of an income year if the services have not been performed by the end of the income year.

*Unexpired portion: expenditure on choses in action*

- (6) An amount of expenditure on a chose in action is unexpired at the end of an income year if the amount relates to a period of enforceability of the chose in action falling after the income year. 15

*Allowances reimbursing employees*

- (7) In the case of expenditure subject to **sections CW 17** (Expenditure on account, and reimbursement, of employees) and **CW 18** (Allowance for additional transport costs), this section applies on the basis that the relevant services were performed in the income year in which the employee's expenditure is expected to occur. 20 25

*Commissioner's discretionary relief*

- (8) The Commissioner may excuse a person from complying with this section under section 91AAC of the Tax Administration Act 1994. 30

Defined in this Act: amount, Commissioner, deduction, employee, film, film right, goods, income, income year, pay, revenue account property, services

Compare: 2004 No 35 s EA 3

**EA 4 Deferred payment of employment income***When this section applies*

- (1) This section applies when—
- (a) a person is allowed a deduction in an income year for an amount of expenditure on employment income; and 5
  - (b) the person has not paid the amount at the end of—
    - (i) the 63rd day after the end of the income year; or
    - (ii) the period described in **subsection (3)**, for employment income paid to a shareholder-employee.

*Unpaid amount* 10

- (2) The unpaid amount is—
- (a) income of the person in the income year under **section CH 3** (Adjustment for deferred payment of employment income); and
  - (b) an amount for which the person is allowed a deduction in the following income year under **section DB 52** (Adjustment for deferred payment of employment income). 15

*Extension of payment period for shareholder-employee*

- (3) For employment income paid to a shareholder-employee, the 63 day period for payment in **subsection (1)(b)(i)** is extended until the last date by which the person could file a return of income for the income year if the time for filing were extended to its maximum under section 37(5) of the Tax Administration Act 1994. 20  
25

*Sale of business: obligations transferred to non-associates*

- (4) For the purposes of this section, a person (the **seller**) who sells a business, or a part of a business, to another person (the **buyer**) is treated as paying, at the time of the sale, an amount of employment income of an employee working in the business if— 30
- (a) the seller and the buyer are not associated persons at the time of the sale; and
  - (b) the seller has incurred the obligation to pay the amount in the course of their business; and 35
  - (c) the employee becomes an employee of the buyer under the sale arrangements; and

- (d) the seller and the buyer agree in writing, under the sale arrangements, that—
- (i) the buyer assumes the obligation to pay an amount of employment income to the employee; and 5
  - (ii) the consideration payable by the buyer for the business, or the part of the business, reflects the buyer's assumption of the obligation.
- Sale of business: obligations transferred to associates*
- (5) If **subsection (4)** would have applied but for the fact that the seller and the buyer are associated at the time of the sale,— 10
- (a) the amount of employment income is not treated as income of the seller in any income year following the sale, despite **subsection (2)(a)** and **section CH 3**; and
  - (b) the seller is denied a deduction for the amount of employment income in any income year following the sale, despite **subsection (2)(b)** and **section DB 52**; and 15
  - (c) the buyer may be allowed a deduction under **section DC 10(3)** (Sale of business: transferred employment income obligations). 20
- No sale: obligations transferred to associates*
- (6) If **section DC 11** (Transfers of employment income obligations to associates) applies,—
- (a) the amount of employment income is not treated as income of the transferor (**person A**) in any income year following the sale, despite **subsection (2)(a)** and **section CH 3**; and 25
  - (b) the transferor is denied a deduction for the amount of employment income in any income year following the sale, despite **subsection (2)(b)** and **section DB 52**; and 30
  - (c) the transferee (**person B**) may be allowed a deduction under **section DC 11**.
- Accounting treatment of transferred obligations*
- (7) For the purposes of this section, the buyer of a business, or a part of a business, who assumes at the time of the sale an obligation to pay an amount of employment income— 35
- (a) may account for the amount in a way that treats the relevant employee individually or treats the buyer's employees as a group; and

- (b) must account for the amount in the same way in each relevant income year.

Defined in this Act: amount, arrangement, associated person, business, deduction, employee, employment income, income, income year, pay, return of income, shareholder-employee, time of the sale

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Compare: 2004 No 35 s EA 4

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

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*Disposal of business assets*

- EB 24 Apportionment on disposal of business assets that include trading stock

*Introductory provisions*

- EB 1 When this subpart applies** 5
- This subpart applies when a person who owns or carries on a business has trading stock for the purpose of selling or exchanging it in the ordinary course of the business.
- Defined in this Act: business, trading stock
- Compare: 2004 No 35 s EB 1 10
- EB 2 Meaning of trading stock**
- Meaning*
- (1) **Trading stock** means property that a person who owns or carries on a business has for the purpose of selling or exchanging in the ordinary course of the business. 15
- Inclusions*
- (2) **Trading stock** includes—
- (a) work of the following kinds that would be trading stock under **subsection (1)** if it were completed:
- (i) partly completed work: 20
- (ii) work in progress:
- (b) materials that the person has for use in producing trading stock:
- (c) property on which the person has incurred expenditure, when the property would, if they had it, be trading stock under **subsection (1)** or **paragraph (a) or (b)**: 25
- (d) property leased under a hire purchase agreement when the property—
- (i) is treated as having been acquired by the lessor under **section FA 15** (Treatment when agreement ends: seller acquiring property); and 30
- (ii) is an asset of a business that the lessor carries on.
- Exclusions*
- (3) **Trading stock** does not include—



- (a) land:
- (b) depreciable property:
- (c) a financial arrangement to which the financial arrangements rules or the old financial arrangements rules apply: 5
- (d) an excepted financial arrangement that a life insurer has:
- (e) livestock not used in a dealing business:
- (f) consumable aids to be used in the process of producing trading stock: 10
- (g) a spare part not held for sale or exchange.

Defined in this Act: business, depreciable property, excepted financial arrangement, financial arrangement, hire purchase agreement, land, lessor, life insurer, trading stock

Compare: 2004 No 35 s EB 2 15

### EB 3 Valuation of trading stock

#### *Valuation method*

- (1) A person who carries on a business must determine the value of their trading stock at the end of each income year by a method that is available under this subpart for them to use. 20

#### *Use of value*

- (2) The value determined under **subsection (1)** is—
  - (a) the closing value of the trading stock for the income year for the purposes of **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and 25
  - (b) the opening value of the trading stock for the next income year for the purposes of **section DB 50** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements). 30

#### *Excepted financial arrangements valued at cost*

- (3) Despite anything in this subpart, the value of any trading stock that is an excepted financial arrangement must be determined under **subpart ED** (Valuation of excepted financial arrangements). 35

Defined in this Act: business, excepted financial arrangement, income year, trading stock

Compare: 2004 No 35 s EB 3

**EB 4 Trading stock valuation methods***Standard valuation*

- (1) The standard valuation methods for trading stock are—
- (a) cost:
  - (b) discounted selling price: 5
  - (c) replacement price:
  - (d) market selling value.

*Low-turnover valuation*

- (2) A person who is a low-turnover trader may value closing stock by a method described in **section EB 14**. 10

*Low value trading stock*

- (3) In certain circumstances, a person may value closing stock under **section EB 23**.

Defined in this Act: closing stock, cost, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 4 15

**EB 5 Transfers of trading stock within wholly-owned groups***When this section applies*

- (1) This section applies in an income year to trading stock held by a company that is part of a wholly-owned group of companies, when— 20
- (a) a group company (**company A**) originally acquires and holds the trading stock; and
  - (b) from the time it is acquired to the end of the income year, the trading stock is held within the group by a company or companies that are resident in New Zealand; and 25
  - (c) through transfers within the group, another group company (**company B**) holds the trading stock at the end of the income year; and
  - (d) company A and company B remain part of the group at the end of the income year; and 30
  - (e) either—
    - (i) the income years of company A and company B end on the same date; or
    - (ii) they end on different dates, and the Commissioner has approved both dates as corresponding to the end of a business cycle and as necessary to 35

avoid material distortion of net income that would occur if the income years ended on the same date.

*Choice of treatment*

- (2) Company B may choose to value the closing stock at the cost of the trading stock to company A. 5

*When company stops being part of group*

- (3) If the companies stop being part of the same wholly-owned group, company B is treated as disposing of and reacquiring the trading stock for its market value at the time. If the market value of the trading stock cannot be determined separately from other property, its market value at the time company B acquired it is treated as its value. 10

Defined in this Act: business, closing stock, Commissioner, company, cost, income year, market value, net income, resident in New Zealand, trading stock, wholly-owned group of companies 15

Compare: 2004 No 35 s EB 5

*Standard valuation*

**EB 6 Cost**

*Valuation at cost* 20

- (1) A person may determine the value of their closing stock at cost. If the person chooses this method, they must include and allocate costs under generally accepted accounting practice.

*Whether valuation correct*

- (2) For the purposes of **subsection (1)**, the person has not complied with generally accepted accounting practice if the value of closing stock is materially different from the value obtained by applying, to the closing stock, Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place. 25  
30

Defined in this Act: closing stock, cost, generally accepted accounting practice

Compare: 2004 No 35 s EB 6

**EB 7 Cost allocation: cost-flow method***When this section applies: first case*

- (1) This section applies when a person who determines the value of their closing stock at cost has items of trading stock that are not separately identifiable. 5

*Compulsory use of cost-flow method*

- (2) The person must use 1 of the cost-flow methods described in **subsection (5)** to identify the items of trading stock included in closing stock and to determine the cost of the items.

*When this section applies: second case*

- (3) This section also applies when a person who determines the value of their closing stock at cost has items of trading stock that are separately identifiable. 10

*Discretionary use of cost-flow method*

- (4) The person may use 1 of the cost-flow methods described in **subsection (5)** to determine the cost of the items of trading stock. 15

*Cost-flow methods*

- (5) The cost-flow methods of allocating costs are— 20
- (a) the first-in first-out cost method; and
  - (b) the weighted average cost method.

*Consistent use*

- (6) A person who determines the value of their closing stock at cost must use the same cost-flow method of allocating costs as they use in their financial statements for the income year. 25

Defined in this Act: closing stock, cost, financial statements, income year, trading stock

Compare: 2004 No 35 s EB 7

**EB 8 Cost allocation: budgeted method or standard cost method** 30*When this section applies*

- (1) This section applies when a person—
- (a) has a business of manufacturing or producing trading stock; and

- (b) determines the value of their closing stock at cost; and
- (c) allocates costs by—
  - (i) a budgeted method; or
  - (ii) a standard cost method; and
- (d) is not a low-turnover trader to whom **section EB 17(3)** applies. 5

*Apportionment of difference required*

- (2) If any difference arises between the estimated costs of production included in the financial statements of the business for the income year and the actual costs of production, the person must apportion the difference between the cost of trading stock sold during the income year and the closing stock. 10

Defined in this Act: business, closing stock, cost, financial statements, income year, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 8 15

## **EB 9 Discounted selling price**

*Valuation at discounted selling price*

- (1) A person may determine the value of their closing stock at its discounted selling price if they use discounted selling price for their trading stock in their financial statements. 20

*Retailers*

- (2) If the person is a retailer, the discounted selling price for each department or category of goods is the total of the retail selling prices of the goods minus the normal gross profit margin for the department or category of goods. This subsection is overridden by **subsection (4)**. 25

*Normal gross profit margin for purposes of subsection (2)*

- (3) For the purposes of **subsection (2)**, the person must—
  - (a) calculate the normal gross profit margin for the department or category of goods under Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place; and 30
  - (b) calculate the normal gross profit margin for each income year for each department or category of goods; and 35

- (c) include all costs that **sections EB 6 to EB 8** require to be included.

*Retailers with turnover of \$1,000,000 or less*

- (4) A trader who is a retailer whose turnover is \$1,000,000 or less may determine the discounted selling price of all closing stock valued under this method in an income year by discounting the total of the retail selling prices of the stock by the average gross profit margin for all closing stock valued under this method in the income year. 5

*Increase in specified sum*

- (5) The Governor-General may make an Order in Council increasing the sum specified in **subsection (4)**. 10

*Not retailers*

- (6) If the person is not a retailer, the discounted selling price for each category of goods is the total market selling value of the goods minus the normal gross profit margin for the category of goods. 15

*Normal gross profit margin for purposes of subsection (6)*

- (7) For the purposes of **subsection (6)**, the person must—  
 (a) calculate the normal gross profit margin for each income year for each category of goods; and 20  
 (b) include all costs that **sections EB 6 to EB 8** require to be included.

Defined in this Act: closing stock, cost, financial statements, income year, trading stock, turnover 25

Compare: 2004 No 35 s EB 9

## **EB 10 Replacement price**

*Valuation at replacement price*

- (1) A person may determine the value of their closing stock at its replacement price if they use replacement price for their trading stock in their financial statements. 30

*Establishing replacement price*

- (2) The replacement price—  
 (a) is—

- (i) the market value of the trading stock on the last day of the income year; or
- (ii) if there is no such market value, the last price that the person paid during the income year to acquire equivalent trading stock; and 5
- (b) does not include an amount of input tax for the supply of the replacement trading stock to the person.

Defined in this Act: closing stock, financial statements, income year, input tax, trading stock

Compare: 2004 No 35 s EB 10 10

## EB 11 Market selling value

### *Valuation at market selling value*

- (1) A person may determine the value of their closing stock at its market selling value if the market selling value is less than the cost of the stock. 15

### *Establishing market selling value*

- (2) The market selling value of closing stock is found by taking the amount that the person would normally expect to receive in the ordinary course of business from the sale of the trading stock and subtracting the following costs: 20
  - (a) the estimated costs of completion; and
  - (b) the expected costs of selling it.

### *Expected costs of selling*

- (3) For the purposes of **subsection (2)(b)**, the expected costs of selling the stock are the costs that the person usually incurs for the following: 25
  - (a) transport;
  - (b) insurance;
  - (c) sales commissions;
  - (d) discounts to buyers. 30

### *Expected costs of selling: financial statements*

- (4) For the purposes of **subsection (3)**, if the person prepares financial statements, the costs must have been taken into account in the statements in calculating net realisable value.

*Substantiating market selling value*

- (5) If the person uses market selling value to value closing stock, they must be able to substantiate that value. If they cannot, they must use 1 of the following to value their closing stock:
- (a) cost, as described in **sections EB 6 to EB 8 or EB 15 to EB 18;** 5  
or
  - (b) discounted selling price, as described in **section EB 9 or EB 19;** or
  - (c) replacement price, as described in **section EB 10 or EB 20.** 10
- Defined in this Act: amount, business, closing stock, cost, financial statements, trading stock 10
- Compare: 2004 No 35 s EB 11

**EB 12 Valuing closing stock consistently**

- In determining the value of closing stock at cost, discounted selling price, or replacement price, a person must comply with the consistency and disclosure requirements of Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place. 15
- Defined in this Act: closing stock, cost 20
- Compare: 2004 No 35 s EB 12

*Low-turnover valuation***EB 13 Low-turnover valuation***Options*

- (1) A person who is a low-turnover trader may value closing stock— 25
- (a) by a standard valuation method, as described in **sections EB 6 to EB 12;** or
  - (b) by a low-turnover valuation method, as described in **sections EB 14 to EB 22;** or 30
  - (c) as low value trading stock, in the circumstances described in **section EB 23.**

*Meaning of low-turnover trader*

- (2) In this subpart, **low-turnover trader** means a person who carries on a business when, in an income year, the total of the 35



turnover of the business and the turnover of associated persons, as defined in **sections YB 2 and YB 8** (which contain definitions of associated persons), is no more than the greater of—

- (a) \$3,000,000; and
- (b) the sum specified by the Governor-General by Order in Council. 5

*Increase in specified sum*

- (3) The Governor-General may make an Order in Council increasing the sum specified in **subsection (2)(a)**. 10

Defined in this Act: associated person, business, closing stock, income year, low-turnover trader, turnover 10

Compare: 2004 No 35 s EB 13

#### **EB 14 Low-turnover valuation methods**

The low-turnover valuation methods are—

- (a) cost for low-turnover traders; and 15
- (b) discounted selling price for low-turnover traders; and
- (c) replacement price for low-turnover traders; and
- (d) market selling value for low-turnover traders.

Defined in this Act: cost, low-turnover trader

Compare: 2004 No 35 s EB 14 20

#### **EB 15 Cost for low-turnover traders**

A low-turnover trader may determine the value of their closing stock at cost. If the low-turnover trader chooses this method, they must include and allocate costs under—

- (a) generally accepted accounting practice; or 25
- (b) **section EB 16**; or
- (c) **section EB 17**; or
- (d) **section EB 18**.

Defined in this Act: closing stock, cost, generally accepted accounting practice, low-turnover trader 30

Compare: 2004 No 35 s EB 15

#### **EB 16 Cost allocation: cost-flow method for low-turnover traders**

**Section EB 7(1) to (5)** applies to a low-turnover trader.

Defined in this Act: cost, low-turnover trader 35

Compare: 2004 No 35 s EB 16

**EB 17 Costs: manufactured or produced stock of low-turnover traders***When this section applies*

- (1) This section applies when a low-turnover trader—
- (a) has a business of manufacturing or producing trading stock; and 5
  - (b) determines the value of their closing stock at cost.

*Costs to be included*

- (2) In determining the value of their closing stock, the low-turnover trader must include the following costs of production: 10
- (a) direct and indirect material costs:
  - (b) direct and indirect labour costs:
  - (c) utilities costs:
  - (d) costs of repairing and maintaining factory plant:
  - (e) costs of rent of factory plant: 15
  - (f) amounts of depreciation loss on factory plant:
  - (g) costs additional to those described in **paragraphs (a) to (f)**, if—
    - (i) they are costs of production; and
    - (ii) the low-turnover trader includes them in the financial statements for the income year. 20

*Apportionment of difference not required*

- (3) If the low-turnover trader allocates costs by a budgeted method or a standard cost method, and if any difference arises between the estimated costs of production included in the financial statements of the business for the income year and the actual costs of production, the low-turnover trader is not required to apportion the difference between the cost of trading stock sold during the income year and the closing stock. 25

Defined in this Act: amount, business, closing stock, cost, depreciation loss, financial statements, income year, low-turnover trader, trading stock 30

Compare: 2004 No 35 s EB 17

**EB 18 Costs: other stock of low-turnover traders***When this section applies*

- (1) This section applies when a low-turnover trader— 35
- (a) acquires trading stock other than by manufacture or production; and
  - (b) determines the value of their closing stock at cost.

*Costs to be included*

- (2) In determining the value of their closing stock, the low-turnover trader must include the following costs:
- (a) the purchase price; and
  - (b) any direct transport and insurance costs that they incur in bringing the stock to the place and condition in which they have it. 5

Defined in this Act: closing stock, cost, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 18

**EB 19 Discounted selling price for low-turnover traders** 10*Financial statements prepared*

- (1) A low-turnover trader who prepares financial statements may determine the value of their closing stock at its discounted selling price if they use discounted selling price for their trading stock in their financial statements. 15

*Financial statements not prepared*

- (2) A low-turnover trader who does not prepare financial statements may determine the value of their closing stock at its discounted selling price.

*Retailers with turnover of more than \$1,000,000* 20

- (3) If the low-turnover trader is a retailer whose turnover is more than \$1,000,000, the discounted selling price for each department or category of goods is the total of the retail selling prices of the goods minus the normal gross profit margin for the department or category of goods. 25

*Normal gross profit margin for purposes of subsection (3)*

- (4) For the purposes of **subsection (3)**, the low-turnover trader must—
- (a) calculate the normal gross profit margin for the department or category of goods under Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place; and 30
  - (b) calculate the normal gross profit margin for each income year for each department or category of goods; and 35

- (c) include all costs that **sections EB 16 to EB 18** require to be included.

*Not retailers*

- (5) If the low-turnover trader is not a retailer, the discounted selling price for each category of goods is the total market selling value of the goods minus the normal gross profit margin for the category of goods. 5

*Normal gross profit margin for purposes of subsection (5)*

- (6) For the purposes of **subsection (5)**, the low-turnover trader must— 10
- (a) calculate the normal gross profit margin for each income year for each category of goods; and
- (b) include all costs that **sections EB 16 to EB 18** require to be included.

Defined in this Act: closing stock, cost, financial statements, income year, low-turnover trader, trading stock, turnover 15

Compare: 2004 No 35 s EB 19

## **EB 20 Replacement price for low-turnover traders**

*Financial statements prepared*

- (1) A low-turnover trader who prepares financial statements may determine the value of their closing stock at its replacement price if they use replacement price for their trading stock in their financial statements. 20

*Financial statements not prepared*

- (2) A low-turnover trader who does not prepare financial statements may determine the value of their closing stock at its replacement price. 25

*Establishing replacement price*

- (3) The replacement price is— 30
- (a) the market value of the trading stock on the last day of the income year; or
- (b) the last price that the low-turnover trader paid during the income year to acquire equivalent trading stock.

Defined in this Act: financial statements, income year, low-turnover trader, trading stock 35

Compare: 2004 No 35 s EB 20

**EB 21 Market selling value for low-turnover traders***Valuation at market selling value*

- (1) A low-turnover trader may determine the value of their closing stock at its market selling value, whether that value is higher or lower than cost. However, if the value is higher than cost, the trader must be consistent from 1 income year to the next in their use of market selling value to determine the value of closing stock. 5

*Establishing market selling value*

- (2) **Section EB 11(2) to (4)** applies to a low-turnover trader. 10  
 Defined in this Act: closing stock, cost, income year, low-turnover trader  
 Compare: 2004 No 35 s EB 21

**EB 22 Valuing closing stock consistently for low-turnover traders***Traders complying with generally accepted accounting practice* 15

- (1) In determining the value of closing stock at cost, discounted selling price, or replacement price, a low-turnover trader who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1983 or an equivalent standard issued in its place. 20

*Other traders*

- (2) A low-turnover trader who does not comply with generally accepted accounting practice must be consistent from 1 income year to the next in— 25
- (a) their choice of valuing closing stock at cost, discounted selling price, or replacement price; and
  - (b) their use of market selling value, if it is greater than cost; and 30
  - (c) their use of a cost-flow method of allocating costs under **section EB 7(1) to (5)**; and
  - (d) the extent to which they include indirect costs in the cost of trading stock that they manufacture or produce; 35  
and
  - (e) their method of calculating discounted selling price.

*When changes allowed*

- (3) A low-turnover trader to whom **subsection (2)** applies may make changes in relation to the matters described in the subsection if—
- (a) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or 5
  - (b) the change is required by another provision in this subpart. 10

*Records*

- (4) A low-turnover trader who makes a change as described in **subsection (3)** must keep sufficient details of the change, and the reasons for the change, under section 22 of the Tax Administration Act 1994. 15

Defined in this Act: closing stock, cost, generally accepted accounting practice, income tax liability, income year, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 22

*Low value trading stock***EB 23 Valuing closing stock under \$5,000** 20*When this section applies*

- (1) This section applies when a person, including a low-turnover trader,—
- (a) has a turnover of \$1,300,000 or less in an income year; and 25
  - (b) reasonably estimates that the value of their closing stock for the income year is less than \$5,000.

*Closing value*

- (2) The person may use the opening value of their trading stock as the value of their closing stock for the income year. 30

Defined in this Act: closing stock, income year, low-turnover trader, trading stock, turnover

Compare: 2004 No 35 s EB 23

### *Disposal of business assets*

#### **EB 24 Apportionment on disposal of business assets that include trading stock**

##### *When this section applies*

- (1) This section applies when a person disposes of trading stock together with other assets of a business to another person. This section applies also if a person disposes of an interest in trading stock together with other assets of a business or an interest in those other assets. 5

##### *Apportionment*

- (2) The total amount received on disposal must be apportioned between the trading stock and the other assets in a way that reflects their respective market values. 10

##### *Purchase price*

- (3) The amount apportioned to the trading stock under **subsection (2)** is treated as the price paid for it by the buyer. 15

##### *Disposals of trading stock*

- (4) For the purposes of this section, a disposal of timber is treated as—
- (a) including the creation or grant of a right to take timber: 20
  - (b) including a disposal of land with standing timber except to the extent to which the timber is any of the following:
    - (i) trees that are ornamental or incidental, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994; or 25
    - (ii) timber subject to a forestry right, as defined in section 2 of the Forestry Rights Registration Act 1983, registered under the Land Transfer Act 1952; or
    - (iii) timber subject to a profit a prendre granted before 1 January 1984. 30

*Transfers under settlement of relationship property*

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

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

5

Compare: 2004 No 35 ss FB 4, FF 13(1)

## Subpart EC—Valuation of livestock

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### *Introductory provisions*

<b>EC 1</b>	<b>Application of this subpart</b>	
	<i>What this subpart does</i>	35
(1)	This subpart sets out the rules for valuing livestock not used in a dealing business.	

*Groups of livestock*

- (2) For the purposes of this subpart, livestock is divided into—
- (a) specified livestock:
  - (b) non-specified livestock:
  - (c) high-priced livestock: 5
  - (d) bloodstock.

Defined in this Act: bloodstock, business, high-priced livestock, non-specified livestock, specified livestock

Compare: 2004 No 35 s EC 1

**EC 2 Valuation of livestock** 10*Valuation method*

- (1) A person must determine the value of their livestock at the end of each income year by a method that is available under this subpart for them to use.

*Use of value* 15

- (2) The value determined under **subsection (1)** is—
- (a) the closing value of the livestock for the income year for the purposes of **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and 20
  - (b) the opening value of the livestock for the next income year for the purposes of **section DB 50** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: income year 25

Compare: 2004 No 35 s EC 2

**EC 3 Livestock valuation methods***Specified livestock*

- (1) The value of specified livestock is determined under **sections EC 6 to EC 27**. 30

*Non-specified livestock*

- (2) The value of non-specified livestock is determined under **sections EC 28 to EC 31**.

*High-priced livestock*

- (3) The value of high-priced livestock is determined under **sections EC 32 to EC 37**.

*Bloodstock*

- (4) The value of bloodstock is determined under **sections EC 38 to EC 48**. 5

Defined in this Act: bloodstock, high-priced livestock, non-specified livestock, specified livestock

Compare: 2004 No 35 s EC 3

**EC 4 Transfers of livestock within wholly-owned groups** 10

*When this section applies*

- (1) This section applies in an income year to livestock held by a company that is part of a wholly-owned group of companies, when—
- (a) a group company (**company A**) originally acquires and holds the livestock; and 15
  - (b) from the time it is acquired to the end of the income year, the livestock is held within the group by a company or companies that are resident in New Zealand; and 20
  - (c) through transfers within the group, another group company (**company B**) holds the livestock at the end of the income year; and
  - (d) company A and company B remain part of the group at the end of the income year; and 25
  - (e) either—
    - (i) the income years of company A and company B end on the same date; or
    - (ii) they end on different dates, and the Commissioner has approved both dates as corresponding to the end of a business cycle and as necessary to avoid material distortion of net income that would occur if the income years ended on the same date. 30

*Choice of treatment* 35

- (2) Company B may choose to value the livestock at the cost of the livestock to company A.

*When company stops being part of group*

- (3) If the companies stop being part of the same wholly-owned group, company B is treated as disposing of and reacquiring the livestock for its market value at the time. If the market value of the livestock cannot be determined separately from other property, its market value at the time company B acquired it is treated as its value. 5

Defined in this Act: business, Commissioner, company, income year, net income, resident in New Zealand, wholly-owned group of companies

Compare: 2004 No 35 s EC 5 10

### **EC 5 Transfer of livestock because of self-assessed adverse event**

*When this section applies*

- (1) This section applies to livestock that is donated, or supplied for consideration with a value that is less than the market value of the livestock, to a recipient— 15
- (a) for use in a farming or agricultural business that is affected by a self-assessed adverse event; and
  - (b) by a donor or supplier who is not associated with the recipient. 20

*Treatment by donor or supplier*

- (2) The donor or supplier must treat the livestock as having, on the day of the transfer of the livestock,—
- (a) no value, if the livestock is donated to the recipient:
  - (b) the value of the consideration provided by the recipient. 25

*Treatment by recipient*

- (3) The recipient must treat the livestock as having, on the day of the transfer of the livestock,—
- (a) no value, if the livestock is donated to the recipient:
  - (b) the value of the consideration provided by the recipient. 30

Defined in this Act: market value, self-assessed adverse event

Compare: 2004 No 35 s EC 5B

### *Valuation of specified livestock*

#### **EC 6 Application of sections EC 7 to EC 27**

**Sections EC 7 to EC 27** set out the rules for valuing specified livestock.

Defined in this Act: specified livestock

5

Compare: 2004 No 35 s EC 6

#### **EC 7 Valuation methods**

##### *Methods*

- (1) The methods available for valuing specified livestock are—
- (a) the herd scheme described in **sections EC 14 to EC 21:** 10
  - (b) the national standard cost scheme described in **sections EC 22 to EC 24:**
  - (c) 1 of the cost price, replacement price, or market value methods described in **section EC 25:**
  - (d) the method described in **section EC 26.** 15

##### *Person chooses*

- (2) A person must choose which method to use, making their election by using the method chosen in their return of income for the income year.

##### *Election continues*

20

- (3) When a person chooses a valuation method, that method continues to apply in the following income years unless they choose another method that is available to them.

##### *Commissioner's determination*

- (4) If a person chooses a valuation method that is not available to them and they later make no effective election, the Commissioner must determine the method to be used. In doing so, the Commissioner must consult the person. 25

##### *Restrictions*

- (5) Restrictions apply to the use of valuation methods, as described in **sections EC 8 to EC 10**, and the making of elections, as described in **section EC 11.** 30

Defined in this Act: Commissioner, cost price, herd scheme, income year, national standard cost scheme, return of income, specified livestock

Compare: 2004 No 35 s EC 7

35

**EC 8 Restrictions on use of herd scheme***Herd scheme: first restriction on use of other method*

- (1) A valuation method other than the herd scheme is not available to a person, in an income year, for animals of a class for which they use the herd scheme if the animals remaining to be valued under the herd scheme would be reduced to a number smaller than the number of any animals of the class that the person valued under the herd scheme at the end of the previous income year. 5

*Herd scheme: second restriction on use of other method* 10

- (2) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income year, they also value any livestock of that type under the national standard cost scheme or under the cost price method. 15

Defined in this Act: class, cost price, herd scheme, income year, national standard cost scheme, type

Compare: 2004 No 35 s EC 8

**EC 9 Restrictions on use of national standard cost scheme***National standard cost scheme: first restriction on use of scheme* 20

- (1) The national standard cost scheme is not available to a person to value specified livestock in an income year if they value any specified livestock in the income year under the cost price method. 25

*National standard cost scheme: second restriction on use of scheme*

- (2) The national standard cost scheme is not available to a person to value specified livestock if, in the income year before the income year in which their election under **section EC 7(2)** is to apply, they have valued specified livestock under the cost price method, and have not given at least 2 income years' notice in the way described in **section EC 11** to the Commissioner of their election to value specified livestock under the national standard cost scheme. 30  
35

*National standard cost scheme: third restriction on use of scheme*

- (3) The national standard cost scheme is not available to a person to value a type of specified livestock in an income year if they have made specified livestock available to another person under a profit-sharing arrangement and, in the income year, the other person, or another person has also made livestock of the type available under the profit-sharing arrangement, values any livestock of the type under the cost price method. 5

*National standard cost scheme: fourth restriction on use of scheme* 10

- (4) The national standard cost scheme is not available to a person to value specified livestock in an income year if—
- (a) they have bailed the livestock to another person under a long-term bailment not made under a profit-sharing arrangement; or 15
  - (b) they have leased the livestock to another person under a long-term bailment not made under a profit-sharing arrangement.

*National standard cost scheme: fifth restriction on use of scheme* 20

- (5) The national standard cost scheme is not available to a person to value specified livestock in an income year if a determination made under **section EC 24** precludes the use of the national standard cost scheme for the livestock. 25

Defined in this Act: Commissioner, cost price, income year, lease, long-term bailment, national standard cost scheme, profit-sharing arrangement, specified livestock, type

Compare: 2004 No 35 s EC 9

**EC 10 Restrictions on use of cost price method** 30

*Cost price method: first restriction on use of method*

- (1) The cost price method is not available to a person to value specified livestock in an income year if the person values other specified livestock in the income year under the national standard cost scheme. 35

- Cost price method: second restriction on use of method*
- (2) The cost price method is not available to a person to value specified livestock if, in the income year before the income year in which their election under **section EC 7(2)** is to apply, they have valued specified livestock under the national standard cost scheme and have not given 2 income years' notice in the way described in **section EC 11** to the Commissioner of their election to value specified livestock under the cost price method. 5
- Cost price method: third restriction on use of method* 10
- (3) The cost price method is not available to a person to value specified livestock in an income year if they have bailed or leased their specified livestock to another person, unless the livestock is bailed or leased under a profit-sharing arrangement. 15
- Cost price method: fourth restriction on use of method*
- (4) The cost price method is not available to a person to value specified livestock in an income year if they have bailed or leased their specified livestock to another person— 20
- (a) under a long-term bailment; or
  - (b) under a short-term bailment made between associated persons in which the consideration paid to the bailee is not a fair market value.
- Cost price method: fifth restriction on use of method*
- (5) The cost price method is not available to a person to value a type of specified livestock in an income year if they have made specified livestock available to another person under a profit-sharing arrangement and, in the income year, the other person, or another person has also made livestock of the type available under the profit-sharing arrangement, values any livestock of the type under the national standard cost scheme. 25 30
- Defined in this Act: associated person, Commissioner, cost price, income year, lease, long-term bailment, national standard cost scheme, profit-sharing arrangement, short-term bailment, specified livestock, type
- Compare: 2004 No 35 s EC 10 35



**EC 11 Restrictions on making of elections***Forms of notice*

- (1) This section specifies the 2 forms of notice that a person must give to the Commissioner and when each must be used. When a person notifies the Commissioner of an election under this section, the election is irrevocable in the first income year in which it applies. 5

*When notice in same year required*

- (2) For the elections described in this subsection, a person must give notice by the date of filing their return of income for the income year in which the election is first to apply. The elections are— 10
- (a) an election to value livestock of a particular type under the herd scheme, as described in **section EC 14**; and
  - (b) an election to adopt a herd value ratio or the Chatham Islands adjustment to the herd value ratio for livestock of any type when the income year is the first income year in which the particular livestock is valued under the herd scheme, as described in **sections EC 17 to EC 19**. 15

*When 2 years' notice required*

- (3) For the elections described in this subsection, a person must give notice by the date of filing their return of income for an income year that is at least 2 income years before the income year in which the election is first to apply. The elections are— 20
- (a) an election to stop valuing specified livestock of a particular type under the herd scheme, except when the person continues to value some livestock of that type under the herd scheme or when another valuation method is available, as described in **section EC 14(2)**; and 25
  - (b) an election, after the herd scheme has been adopted, to adopt a herd value ratio or recalculated herd value ratio or the Chatham Islands adjustment for any livestock type, as described in **sections EC 17 to EC 19**; and 30
  - (c) an election to value specified livestock under the national standard cost scheme when the person has, in the income year before the application of the new election, valued the same livestock under the cost price method; and 35

- (d) an election to value specified livestock under the cost price method when the person has, in the year before the application of the new election, valued the same livestock under the national standard cost scheme.

*Information for notices of election* 5

- (4) A notice of election must state—
- (a) the income year in which the election is first to apply; and
  - (b) the type, class, or other description of the applicable livestock; and 10
  - (c) the existing and proposed methods of valuing the applicable livestock; and
  - (d) for an election to use a herd value ratio or recalculated herd value ratio under **section EC 17**,—
    - (i) the value assessed under **section EC 17(4)** of an average animal of each applicable class of livestock; and 15
    - (ii) the date on which the valuation of each animal was made; and
    - (iii) the name and address of the valuer. 20

Defined in this Act: class, Commissioner, cost price, herd scheme, herd value ratio, income year, national standard cost scheme, notice, notify, return of income, specified livestock, type

Compare: 2004 No 35 s EC 11

**EC 12 Interests in livestock** 25

*Joint election of valuation method*

- (1) When specified livestock is owned jointly by 2 or more persons, the owners must choose a valuation method. For the election to be effective, it must be made jointly by all the owners. 30

*Ineffective election*

- (2) If there is no effective election, specified livestock owned jointly is valued as follows:
- (a) if the owners bail or lease the livestock to another person during the income year, under the market value method; or 35
  - (b) if the owners enter into a profit-sharing arrangement for the livestock, under the market value method; or

- (c) in any other case, under the national standard cost scheme.

*Profit-sharing arrangements*

- (3) If the method used in an income year to calculate the value of livestock under a profit-sharing arrangement is the national standard cost scheme or the cost price method, all the following are treated as the single owner of the livestock: 5
- (a) the person who owns the livestock; and
  - (b) the person who has the use of the livestock; and
  - (c) any other person who has made livestock of the same type available to the person referred to in **paragraph (b)** under a profit-sharing arrangement. 10

*Partnerships interests*

- (4) For the purpose of an election under this section, a person's interest in a partnership that owns livestock is treated separately from any other interest that the person has in livestock. Separate elections are required for the person's partnership interest and for their other livestock interests. The person is not required to choose the same valuation method in both cases. 15  
20

Defined in this Act: cost price, income year, lease, national standard cost scheme, profit-sharing arrangement, specified livestock, type

Compare: 2004 No 35 s EC 12

**EC 13 Changes in partnership interests**

*When this section applies* 25

- (1) This section applies when—
- (a) a partnership owns specified livestock (the **old partnership**); and
  - (b) a new partnership is formed (the **new partnership**); and 30
  - (c) at the end of the income year in which the new partnership is formed, more than 50% of the property of the new partnership is owned by persons who, during that income year or in the previous income year,—
    - (i) owned all the property of the old partnership; and 35
    - (ii) derived income in either income year from specified livestock of the same type as that owned by the new partnership.

*Valuation*

- (2) The value of specified livestock owned by the new partnership must be taken into account in the way the old partnership determines the value of livestock of the particular type at the end of the income year in which the new partnership is formed. If the old partnership has no specified livestock of the type on hand at the end of the income year, the value is taken into account as the old partnership would have determined it, had it owned specified livestock of that type. 5
- Defined in this Act: income, income year, specified livestock, type 10
- Compare: 2004 No 35 s EC 13

*Herd scheme***EC 14 Herd scheme***Election to use herd scheme*

- (1) A person may choose to value specified livestock of any type and class under the herd scheme. 15

*Election of other method*

- (2) A person who has chosen to value livestock of a particular type under the herd scheme may nevertheless value livestock of that type by another method, subject to the restrictions described in **section EC 8**. 20

*Election to leave herd scheme*

- (3) A person who wishes to stop valuing livestock of a particular type under the herd scheme must give 2 income years' notice to the Commissioner in the way described in **section EC 11**. However, notice is not required if the person values livestock of that type by another method that is available for use in conjunction with the herd scheme. 25

Defined in this Act: class, Commissioner, herd scheme, income year, notice, specified livestock, type 30

Compare: 2004 No 35 s EC 14

**EC 15 Determining national average market values***Determined by Commissioner*

- (1) The Commissioner must determine a **national average market value** for an income year for each class of specified 35

livestock set out in **schedule 17, column 2** (Types and classes of livestock).

*Application to income year*

- (2) The value applies to the income year for which it is determined, whether the income year started before, on, or after the date on which the determination is made. 5

Defined in this Act: class, Commissioner, income year, national average market value, specified livestock

Compare: 2004 No 35 s EC 15

**EC 16 Valuation under herd scheme** 10

*Closing value of herd livestock*

- (1) The closing value of herd livestock in an income year is either its herd value for the income year or, if a herd value ratio is adopted, its herd value multiplied by its herd value ratio.

*Opening value of herd livestock* 15

- (2) The opening value of herd livestock in an income year is determined under **subsection (3)** if a person—
- (a) has valued the livestock under the herd scheme in the previous income year; and
  - (b) has the livestock on hand at the start of the income year; 20  
and
  - (c) has not chosen to value the livestock by a different method for the income year.

*Determining opening value*

- (3) The opening value of herd livestock in an income year is either its herd value for the income year or, if the person has adopted a herd value ratio, its herd value for the income year multiplied by its herd value ratio for the previous income year. This subsection overrides **section DB 50(5)** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements). 25 30

Defined in this Act: herd livestock, herd scheme, herd value, herd value ratio, income year

Compare: 2004 No 35 s EC 16

**EC 17 Herd value ratio***Adoption of herd value ratio*

- (1) A herd value ratio is available for a person to use in determining the value of specified livestock in the herd scheme. A person may adopt a herd value ratio for herd livestock of a particular type by giving notice in the way described in **section EC 11**. A person may also adopt a recalculated ratio by giving notice in the same way. 5

*Chatham Islands livestock*

- (2) Herd value ratios calculated under **subsection (5)** do not apply to livestock on the Chatham Islands. The Chatham Islands adjustment to the herd value ratio is dealt with in **section EC 19**. 10

*When herd value ratio applies*

- (3) When a person adopts a herd value ratio for livestock of a particular type, the ratio applies in the income year specified in the notice and in later income years until— 15
- (a) the income year in which it is superseded by a recalculation of the ratio; or
  - (b) the income year in which the person stops valuing, under an election, livestock of that type under the herd scheme; or 20
  - (c) the income year following 2 consecutive income years in which the person has not valued livestock of that type under the herd scheme.

*Assessment of average value*

- (4) For the purpose of calculating a herd value ratio, a person must obtain from a recognised livestock valuer an assessment of the value of an average animal of that person in each applicable class of livestock. The value is determined as at the 30 April that is closest to the day on which the national average market values are set. 25 30

*Calculation of herd value ratio*

- (5) The herd value ratio for livestock of a particular type is calculated by using the formula in **subsection (6)** and rounding the result of the calculation to the nearest of the following figures: 35  
0.9, 1.0, 1.1, 1.2, 1.3.

*Formula*

$$\frac{\Sigma(\text{average value} \times \text{number})}{\Sigma(\text{herd value} \times \text{number})}$$

*Definition of items in formula*

- (7) In the formula,— 5
- (a)  $\Sigma$  is the total of the individual calculations for all applicable classes of livestock type valued under the herd scheme:
- (b) **average value** is the average value of an animal in a class as described in **subsection (4)**: 10
- (c) **number** is the number of all livestock of that class on hand at the end of the income year, including livestock that are not in the herd scheme, but not including high-priced livestock:
- (d) **herd value** is the herd value of livestock for a class. 15

Defined in this Act: class, herd livestock, herd scheme, herd value, herd value ratio, high-priced livestock, income year, livestock on the Chatham Islands, national average market value, notice, specified livestock, type

Compare: 2004 No 35 s EC 17

**EC 18 Inaccurate herd value ratio** 20

The Commissioner may require a person who is using an inaccurate herd value ratio for a type of livestock in an income year to recalculate the herd value ratio. If the recalculation differs from the existing ratio for the income year, the Commissioner may amend the assessment of income tax for the income year and any later income year and may substitute the recalculated herd value ratio for that previously applied by the person. 25

Defined in this Act: assessment, Commissioner, herd value ratio, income tax, income year, type 30

Compare: 2004 No 35 s EC 18

**EC 19 Chatham Islands adjustment to herd value***Adjustment for herd livestock on Chatham Islands*

- (1) A person may adopt an adjustment for herd livestock on the Chatham Islands by giving notice in the way described in **section EC 11**. 35

*When adjustment applies*

- (2) When a person adopts a Chatham Islands adjustment as a herd value ratio, it applies as a herd value ratio to a particular type of livestock on the Chatham Islands at the end of the income year specified in the notice and in later income years until— 5
- (a) the income year in which the person stops valuing, under an election, livestock of that type in the herd scheme; or
  - (b) the income year following 2 consecutive income years in which the person has not valued livestock of that type on the Chatham Islands under the herd scheme. 10

*Setting adjustment*

- (3) The Commissioner must set and may vary from time to time the level of Chatham Islands adjustment to the herd value ratio that applies in an income year. 15

Defined in this Act: Commissioner, herd livestock, herd scheme, herd value, herd value ratio, income year, livestock on the Chatham Islands, notice, type

Compare: 2004 No 35 s EC 19

**EC 20 Herd livestock disposed of before values determined***When this section applies* 20

- (1) This section applies when, in an income year, a person—
- (a) stops deriving income from specified livestock; and
  - (b) disposes of herd livestock before the 1 February that precedes the determination of the national average market values for the income year; and 25
  - (c) gives notice to the Commissioner before that 1 February that they choose that this section applies to the valuation of the herd livestock.

*Value of herd livestock*

- (2) The value of herd livestock that is disposed of is either the herd value of the livestock for the previous income year or, if the person has adopted a herd value ratio, the herd value multiplied by the herd value ratio applying in the previous income year. 30

Defined in this Act: Commissioner, herd livestock, herd value, herd value ratio, income, income year, national average market value, notice, specified livestock 35

Compare: 2004 No 35 s EC 20



**EC 21 Herd livestock on death before values determined***When this section applies*

- (1) This section applies when—
- (a) a person dies; and
  - (b) herd livestock owned by the person is disposed of before the 1 February that precedes the determination of the national average market values for the income year in which the person dies; and
  - (c) the person's return of income to the date of death is filed before the national average market values for the income year are determined.

*Value of herd livestock*

- (2) The value of herd livestock that is disposed of is either the herd value of the livestock for the previous income year or, if the person has adopted a herd value ratio, the herd value multiplied by the ratio applying in the previous income year.

Defined in this Act: herd livestock, herd value, herd value ratio, income year, national average market value, return of income

Compare: 2004 No 35 s EC 21

*National standard cost scheme* 20**EC 22 National standard cost scheme***Election to use national standard cost scheme*

- (1) A person may choose to value specified livestock under the **national standard cost scheme**, subject to the restrictions described in **section EC 9**.

*Closing value*

- (2) The closing value of the livestock is the cost of the livestock calculated under the determination made by the Commissioner under **section EC 24**.

Defined in this Act: Commissioner, national standard cost scheme, specified livestock

Compare: 2004 No 35 s EC 22

**EC 23 Determining national standard costs***Determination of costs*

- (1) The Commissioner must determine national standard costs for each category of specified livestock in **schedule 18** (Categories

of livestock for which national standard costs to be declared).

The determination must take into account, as applicable,—

- (a) the average breeding, rearing, and growing costs for animals in the category; and
- (b) the average rearing and growing costs for animals in the category. 5

*Application to income year*

- (2) The national standard costs apply to the income year for which they are determined, whether the income year started before, on, or after the date on which the determination is made. 10

Defined in this Act: Commissioner, income year, specified livestock

Compare: 2004 No 35 s EC 23

**EC 24 Methods for determining costs using national standard cost scheme** 15

*Determination of methods for calculation of cost*

- (1) The Commissioner must determine the methods for calculating the cost of livestock listed in **schedule 18, column 2** (Categories of livestock for which national standard costs to be declared). 20

*Average cost*

- (2) For the purposes of **subsection (1)**, the determination must establish a process for finding an average cost to be applied to all specified livestock valued under the national standard cost scheme. The process must take into account— 25
  - (a) the number of homebred livestock that a person has on hand at any time in an income year, applying to the number the relevant national standard costs determined under **section EC 23**;
  - (b) in addition to **paragraph (a)**, the number in each category of livestock listed in **schedule 18, column 2** that a person has on hand at any time in an income year, applying to the number the relevant national standard costs determined under **section EC 23**; 30
  - (c) the number of livestock bought, applying to the number the purchase costs associated with the livestock. 35

*Content of determination*

- (3) The matters that may be included in the determination are set out in section 91AAD of the Tax Administration Act 1994.

Defined in this Act: Commissioner, income year, national standard cost scheme, specified livestock

5

Compare: 2004 No 35 s EC 24

*Other methods***EC 25 Cost price, replacement price, or market value***Election*

- (1) A person may choose to value specified livestock under the cost price method, subject to the restrictions described in **section EC 10**, or under the replacement price method, or under the market value method. 10

*Changing to cost price method*

- (2) If a person chooses in an income year to change to the cost price method from another valuation method, the opening value of the affected livestock is the closing value of the livestock at the end of the previous income year determined under the method used in that previous income year. 15

Defined in this Act: cost price, income year, specified livestock

20

Compare: 2004 No 35 s EC 25

**EC 26 Bailee's treatment of livestock***When this section applies*

- (1) This section applies when, under a bailment, lease, or other agreement,— 25
- (a) a person (**person A**) has the use of specified livestock; and
- (b) person A is required—
- (i) to return the livestock to the person who made it available; or 30
- (ii) to pay the person full compensation for it.

*Closing livestock numbers*

- (2) Person A is treated as owning, and must take into account at the end of an income year, the total number for all classes calculated using the formula— 35

total livestock – bailed livestock.

*Definition of items in formula*

- (3) In the formula,—
- (a) **total livestock** is all the livestock that person A has on hand in a class at the end of the income year, including— 5
- (i) the livestock that they own; and
- (ii) the livestock that they have the use of under the bailment, lease, or other agreement:
- (b) **bailed livestock** is all the livestock in a class that person A has been given the use of under a bailment, lease, or other agreement that remains in force at the end of the income year. 10

*Result of applying formula*

- (4) If the result of applying the formula in **subsection (2)** is positive, person A is treated as the owner of any surplus livestock. If the result is negative, person A must adjust the total number described in **subsection (2)** by treating it as a negative number. 15
- Defined in this Act: class, income year, lease, pay, specified livestock
- Compare: 2004 No 35 s EC 26 20

*Definitions*

**EC 27 Some definitions**

In this subpart,—

**long-term bailment** is a bailment or lease under which, at the time a person delivers livestock, the person does not expect to have the same livestock delivered back to them 25

**short-term bailment** is a bailment or lease under which,—

(a) at the time a person delivers livestock, the person expects to have the same livestock delivered back to them; and 30

(b) the bailee or lessee did not provide consideration to the person for the delivery of the livestock; and

(c) the term of the bailment or lease ends on or before the end of the income year following the income year in which the arrangement is made. 35

Defined in this Act: arrangement, income year, lease, long-term bailment, short-term bailment

Compare: 2004 No 35 s EC 27

### *Valuation of non-specified livestock*

#### **EC 28 Application of sections EC 29 to EC 31**

**Sections EC 29 to EC 31** set out the rules for valuing non-specified livestock.

Defined in this Act: non-specified livestock

5

Compare: 2004 No 35 s EC 28

#### **EC 29 Determining standard values**

*Determined by Commissioner*

- (1) The Commissioner may determine a **standard value** for an income year for a type or category of non-specified livestock. 10

*Application to income year*

- (2) A standard value applies to the income year for which it is determined, whether the income year started before, on, or after the date on which the standard value is determined.

Defined in this Act: Commissioner, income year, non-specified livestock, standard value, type

15

Compare: 2004 No 35 s EC 29

#### **EC 30 Closing value methods**

A person may choose 1 of the following methods to value non-specified livestock on hand at the end of an income year: 20

- (a) its cost price:
- (b) its replacement price:
- (c) its market value:
- (d) if the Commissioner agrees, its standard value.

Defined in this Act: Commissioner, cost price, income year, non-specified livestock, standard value

25

Compare: 2004 No 35 s EC 30

#### **EC 31 Enhanced production**

*When this section applies*

- (1) This section applies when a person who derives income from non-specified livestock— 30
- (a) enhances production in an income year by—
    - (i) starting, or restarting, to derive income from non-specified livestock; or

- (ii) bringing land into production, or substantially increased production, for the purpose of deriving income from non-specified livestock; or
  - (iii) acquiring additional land for the purpose of deriving income from non-specified livestock; and 5
  - (b) as a result, in an income year or over the following 3 income years, buys more non-specified livestock that is not replacement livestock and that is valued at its standard value. 10
- Closing value*
- (2) The closing value of the livestock bought is,—
    - (a) for the income year in which the livestock was bought, its standard value plus two-thirds of the difference between the cost price of the livestock and the standard value: 15
    - (b) for the following income year, its standard value plus one-third of the difference between the cost price of the livestock and the standard value:
    - (c) for other income years, its standard value. 20

Defined in this Act: cost price, income, income year, non-specified livestock, standard value

Compare: 2004 No 35 s EC 31

### ***Valuation of high-priced livestock***

#### **EC 32 Application of sections EC 33 to EC 37** 25

##### *Sections EC 33 to EC 37*

- (1) **Sections EC 33 to EC 37** set out the rules for valuing high-priced livestock.

##### *Person chooses valuation method*

- (2) A person may choose to use either the straight-line method or the diminishing value method to value high-priced livestock. 30

##### *Diminishing value method*

- (3) If the person chooses to use the diminishing value method, they must give notice to the Commissioner that they are using the method at the time of filing their return of income for the 35

first income year in which the value of the high-priced livestock is determined under **section EC 34**. The person cannot revoke their election to use the diminishing value method for the livestock.

Defined in this Act: Commissioner, high-priced livestock, income year, notice, return of income

5

Compare: 2004 No 35 s EC 32

### **EC 33 Determining depreciation percentages**

*Determined by Commissioner*

- (1) The Commissioner must determine a **depreciation percentage** for an income year for each type, class, or category of high-priced livestock. 10

*Purpose*

- (2) The percentage represents the average percentage decline in the value of livestock of the type, class, or category. 15

*Factors*

- (3) The Commissioner must take into account—
- (a) the average cost of livestock of the type, class, or category; and
  - (b) the estimated useful life of the livestock; and 20
  - (c) the average estimated residual market value of the livestock.

Defined in this Act: class, Commissioner, depreciation percentage, estimated residual market value, estimated useful life, high-priced livestock, income year, type

25

Compare: 2004 No 35 s EC 33

### **EC 34 General rule**

*Value in income year of purchase and later income years*

- (1) The closing value of high-priced livestock at the end of the income year in which it is bought is its cost price minus the reduction applying in the income year. In a later income year, the value is its opening value minus the reduction applying in the income year until the value reaches or falls below the national average market value for the class to which the livestock belongs. 30  
35

*Straight-line method*

- (2) When a person has chosen to use the straight-line method, the reduction is calculated using the formula—  

$$\text{cost price} \times \text{depreciation percentage}.$$

*Diminishing value method*

- (3) When a person has chosen to use the diminishing value method, the reduction is calculated as follows:
- (a) in the first income year in which the election applies, the cost price multiplied by the diminishing value equivalent of the depreciation percentage for the income year: 10
  - (b) in later income years, the opening value of the livestock multiplied by the diminishing value equivalent of the depreciation percentage for the income year.

*Meaning of diminishing value equivalent*

- (4) In this section, **diminishing value equivalent**, for a depreciation percentage, means the diminishing value depreciation rate in **schedule 12, column 1** (Old banded rates of depreciation) to which the amount in **column 2** equal to the depreciation percentage is the straight-line equivalent. Two qualifications are— 20
- (a) if no amount in **column 2** is equal to the depreciation percentage, the amount closest to it is taken; and
  - (b) if 2 amounts in **column 2** are equidistant from the depreciation percentage, the depreciation percentage is rounded down. 25

*Exclusions*

- (5) This section does not apply in the cases described in **sections EC 35 and EC 36.** 30
- Defined in this Act: amount, class, cost price, depreciation percentage, diminishing value equivalent, high-priced livestock, income year, national average market value
- Compare: 2004 No 35 s EC 34

**EC 35 Livestock reaching national average market value and livestock no longer used for breeding**

*Livestock at or less than national average market value* 35

- (1) This section applies to a person's high-priced livestock whose value at the end of an income year is equal to or less than the



national average market value for the class to which the livestock belongs.

*Livestock no longer used for breeding*

- (2) This section also applies to high-priced livestock that, in an income year, a person— 5
- (a) does not expect to use for breeding for that or any later income year; and
  - (b) does not intend to dispose of to any other person to use for breeding.

*Closing value* 10

- (3) The closing value of the high-priced livestock at the end of the income year is determined as follows:
- (a) when the person values any specified livestock of that type under the herd scheme for the income year, the value of the animal under the herd scheme; and 15
  - (b) when the person values all specified livestock of that type that is older than 1 year under the national standard cost scheme or the cost price method, the national average market value for the income year of livestock of the class to which the animal belongs; and 20
  - (c) when the person values all specified livestock of that type that is older than 1 year under the market value method or the replacement price method, the market value or replacement price of the animal at the end of the income year. 25

*Valuation in later income years*

- (4) In later income years, the animal that was high-priced livestock is treated as the person's specified livestock and is valued under the valuation method the person chooses for specified livestock of the type to which the animal belongs. 30

*Entry into herd scheme in later income years*

- (5) This subsection applies if, in a later income year (**year A**), the person values any specified livestock of the same type as the animal under the herd scheme and, in the next year, values the

animal under the herd scheme. The animal is treated as if it were valued under the herd scheme at the end of year A.

Defined in this Act: class, cost price, herd scheme, high-priced livestock, income year, national average market value, national standard cost scheme, specified livestock, type, year

5

Compare: 2004 No 35 s EC 35

### **EC 36 Immature livestock and recently bought livestock**

#### *Immature livestock*

- (1) This section applies to high-priced livestock that is less than 1 year old at the end of the income year in which it is bought. 10

#### *Recently bought livestock*

- (2) This section also applies to high-priced livestock that is bought within 6 months of the end of an income year and, during that time,—
- (a) is not used for insemination, in the case of male livestock; and
- (b) is not used for the collection of semen; and
- (c) does not give birth; and
- (d) does not have ova removed. 15

#### *Closing value*

20

- (3) The closing value of the high-priced livestock at the end of the income year is its cost price.

Defined in this Act: cost price, high-priced livestock, income year, year

Compare: 2004 No 35 s EC 36

### **EC 37 Bailment**

25

In **section EC 26**, references to specified livestock include high-priced livestock.

Defined in this Act: high-priced livestock, specified livestock

Compare: 2004 No 35 s EC 37

### *Valuation of bloodstock*

30

### **EC 38 Application of sections EC 39 to EC 48**

**Sections EC 39 to EC 48** set out the rules for valuing bloodstock.

Defined in this Act: bloodstock

Compare: 2004 No 35 s EC 38

**EC 39 First income year in breeding business***Bloodstock to which this section applies*

- (1) This section applies to bloodstock that is 2 years of age or older at the end of the first income year in which a person—
- (a) uses the bloodstock for breeding in their breeding business; or 5
  - (b) forms the intention of using the bloodstock for breeding in their breeding business; or
  - (c) buys the bloodstock, with the intention of using it for breeding in their breeding business. 10

*Special group of broodmares to which this section applies*

- (2) This section also applies to a broodmare that is 2 years of age or older at the end of a person's first income year after 1 April 2001 in which the person—
- (a) first uses the broodmare for breeding in their breeding business; or 15
  - (b) first forms the intention of using the broodmare for breeding in their breeding business; or
  - (c) buys the broodmare, with the intention of using it for breeding in their breeding business. 20

*Closing value*

- (3) The closing value of the bloodstock at the end of the first income year is its cost price minus the reduction applying in that income year.

*Determination of reduction*

- (4) The reduction that applies is determined under **section EC 41, EC 42, EZ 5, or EZ 6** (which relate to bloodstock). 25

Defined in this Act: bloodstock, broodmare, business, cost price, income year, year  
Compare: 2004 No 35 s EC 39

**EC 40 Later income years in breeding business**

30

*What this section applies to*

- (1) This section applies to the income years that follow the first income year described in **section EC 39**.

*Closing value*

- (2) The closing value of the bloodstock is its opening value minus the reduction applying in that income year.

*Closing value not previously taken into account*

- (3) If the person has not taken the closing value of the bloodstock into account in the previous income year, the closing value is the cost price of the bloodstock minus the reduction applying in the income year in which the person makes the calculation. 5

*Determination of reduction*

- (4) The reduction that applies is determined under **section EC 41, EC 42, EZ 5, or EZ 6** (which relate to bloodstock). 10

Defined in this Act: bloodstock, cost price, income year

Compare: 2004 No 35 s EC 40

**EC 41 Reduction: bloodstock not previously used for breeding in New Zealand** 15

*Bloodstock to which this section applies*

- (1) This section applies to bloodstock that—
- (a) was not used for breeding in New Zealand before 16 December 1991; and
  - (b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person, unless—
    - (i) the other person transferred the bloodstock to person A under a matrimonial agreement to which **section FB 18** (Bloodstock) applies; or
    - (ii) the other person and person A were companies in the same wholly-owned group at the time person A acquired the bloodstock from the other person. 20 25

*Stallion*

- (2) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a stallion is 50% of the cost price of the stallion unless person A chooses to value the stallion by the reducing value method. 30

*Stallion valued by reducing value method*

- (3) When person A chooses to value the stallion by the reducing value method, the reduction applying to the value of the 35

stallion is 75% of its cost price in the first income year and 75% of its opening value in each later income year. Person A must give notice to the Commissioner of their election in their return of income for the first income year.

*Broodmare when first used on or after 1 April 2001* 5

- (4) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which section EC 39(2) applies is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{9 - \text{age of broodmare.}} \quad 10$$

*Definition of item in formula*

- (5) In the formula, **age of broodmare** is—  
 (a) 8 years of age; or  
 (b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year. 15

*Relationship with section EZ 5*

- (6) This section is overridden by **section EZ 5** (Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006).

Defined in this Act: bloodstock, broodmare, Commissioner, company, cost price, income year, matrimonial agreement, New Zealand, notice, return of income, stallion, wholly-owned group, year 20

Compare: 2004 No 35 s EC 41

## **EC 42 Reduction: bloodstock previously used for breeding in New Zealand** 25

*Stallion*

- (1) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a stallion to which **section EC 41** does not apply is 20% of its cost price.

*Broodmare when first used on or after 1 April 2001* 30

- (2) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which section EC 39(2) applies and section EC 41 does not apply is calculated using the formula—

$$\frac{\text{cost price of broodmare}}{9 - \text{age of broodmare.}} \quad 35$$

*Definition of item in formula*

- (3) In the formula, **age of broodmare** is—
- (a) 8 years of age; or
  - (b) the actual age in years, for a broodmare that is 7 years of age or less at the end of the income year. 5

*Relationship with section EZ 6*

- (4) This section is overridden by **section EZ 6** (Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006). 10
- Defined in this Act: bloodstock, broodmare, cost price, income year, stallion, year
- Compare: 2004 No 35 s EC 42

**EC 43 Accident, birth deformity, or infertility***When this section applies*

- (1) This section applies when a person has bloodstock on hand at the end of an income year whose market value is, because of accident, birth deformity, or infertility, less than 50% of what its market value would have been if the accident, birth deformity, or infertility had not occurred. 15

*Value*

- (2) The person may value the bloodstock at its market value. 20

*Later income years*

- (3) If the person applies **subsection (2)**, the closing value of the bloodstock in later income years is its market value in the applicable income year. 25
- Defined in this Act: bloodstock, income year
- Compare: 2004 No 35 s EC 43

**EC 44 Other bloodstock**

If **sections EC 39 to EC 43** do not apply, the closing value of the bloodstock is its cost price.

- Defined in this Act: bloodstock, cost price 30
- Compare: 2004 No 35 s EC 44

**EC 45 Residual value of bloodstock**

If the closing value of any bloodstock would be less than \$1 in the absence of this section, the closing value is \$1.

Defined in this Act: bloodstock

Compare: 2004 No 35 s EC 45

5

**EC 46 Use of bloodstock for racing***General treatment*

- (1) If in an income year a bloodstock owner uses bloodstock for racing, and they are in the business of breeding bloodstock for sale, the use of the bloodstock for racing is treated as use in the course of the business. 10

*Bloodstock not used in business*

- (2) If bloodstock used in an income year for racing is not actually used in the course of a business of breeding bloodstock for sale, the bloodstock owner may apply to the Commissioner to have the use of the bloodstock treated other than under **subsection (1)**. 15

*Non-breeding bloodstock*

- (3) If a bloodstock owner expects that bloodstock will not be able to be used for future breeding, the use in an income year of the bloodstock for racing is not treated as use in the course of a business of breeding bloodstock for sale. However, if the bloodstock owner uses the bloodstock in the course of their business of breeding bloodstock for sale, they may apply to the Commissioner to have the use of the bloodstock treated as use in the course of the business. 20  
25

*Application to Commissioner*

- (4) The application must be made in writing with the supporting information that the Commissioner requires within 1 month after the day on which the bloodstock is first prepared for racing by the bloodstock owner or the day on which it is first raced by the bloodstock owner, whichever is earlier. 30

Defined in this Act: bloodstock, business, Commissioner, income year

Compare: 2004 No 35 s EC 46

**EC 47 Change of use of bloodstock in course of business***Use outside business*

- (1) If a bloodstock owner who is in the business of breeding bloodstock for sale starts to use bloodstock other than in the course of the business, they are treated as having disposed of the bloodstock. The disposal is treated as having occurred at market value on the day on which they changed the use of the bloodstock. 5

*Use in business*

- (2) If a bloodstock owner who is in the business of breeding bloodstock for sale has been using bloodstock for other purposes, and they start to use the bloodstock in the course of the business, the bloodstock is treated as having been bought by the bloodstock owner. The purchase is treated as having occurred at market value on the day on which the bloodstock owner changed the use of the bloodstock. 10  
15

Defined in this Act: bloodstock, business

Compare: 2004 No 35 s EC 47

**EC 48 Replacement breeding stock***When this section applies* 20

- (1) This section applies when—
- (a) a bloodstock owner—
    - (i) disposes of bloodstock (the **breeding stock**) that they had previously used for breeding in the course of a business of breeding bloodstock for sale; and 25
    - (ii) buys replacement bloodstock (the **replacement breeding stock**) within the time limits set out in **subsections (6) and (7)**; or
  - (b) a bloodstock owner— 30
    - (i) receives a payment of insurance, indemnity, or compensation for the loss or death of, or permanent injury to, breeding stock that they had previously used for breeding in the course of a business of breeding bloodstock for sale or that they had bought for use in the business; and 35
    - (ii) buys replacement breeding stock within the time limits set out in **subsections (6) and (7)**.



- Amount determined*
- (2) The bloodstock owner may apply to the Commissioner to determine the amount that the bloodstock owner has applied in buying replacement breeding stock. 5
- Maximum amount*
- (3) The amount must not be more than the net gain calculated using the formula—  
     gross proceeds – value of breeding stock.
- Definition of items in formula*
- (4) In the formula,— 10
- (a) **gross proceeds** is—
- (i) the amount of the proceeds of disposing of the breeding stock; or
- (ii) the amount paid by way of insurance, indemnity, or compensation for the breeding stock: 15
- (b) **value of breeding stock** is the closing value of the breeding stock in the income year before the breeding stock was disposed of or was lost or died or was permanently injured.
- Reduction in income* 20
- (5) The bloodstock owner may reduce their income by the amount determined under **subsection (2)**. If they reduce their income in this way, they must also reduce the cost of the replacement breeding stock by the same amount.
- Time limit* 25
- (6) Replacement breeding stock must be acquired within 6 months after the end of the income year in which the amount determined under **subsection (2)** would otherwise be income or, if the Commissioner approves in a case or in a class of cases, a longer period. 30
- Delay in replacing breeding stock*
- (7) In the case of lost, dead, or permanently injured breeding stock, the Commissioner may extend the time limit under **subsection (6)**. However, valid commercial reasons must exist for the delay in replacing the breeding stock and the replacement breeding stock must have been acquired before the end 35

of the second income year following the income year in which the loss, death, or permanent injury occurred.

*Application to Commissioner*

- (8) An application under **subsection (2)** must be made in writing within the relevant time limits described in **subsections (6) and (7)**. The application must relate only to replacement breeding stock bought before the application is made. 5

Defined in this Act: amount, bloodstock, business, Commissioner, income, income year, pay

Compare: 2004 No 35 s EC 48 10

Subpart ED—Valuation of excepted financial arrangements

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**ED 1 Valuation of excepted financial arrangements**

*Valuation methods for excepted financial arrangements*

- (1) A person who has revenue account property that is an excepted financial arrangement must determine the value of the arrangement at the end of each income year at cost. 20

*Valuation method for right to acquire share under share-lending arrangement*

- (2) Despite **subsection (1)**, a share supplier's share-lending right has the value at the end of each income year that is equal to the amount described in **subsection (4)**. 25

*Valuation method for share acquired by share supplier under share-lending arrangement*

- (3) Despite **subsection (1)**, the original share or an identical share acquired by a share supplier from a share user under a share-lending arrangement has the value at the end of each income year that is equal to the amount described in **subsection (4)**. 30

- Amount*
- (4) For **subsections (2) and (3)**, the amount is the value of the original share at cost, determined by applying this section to the share immediately before the share supplier's disposal of the share under the relevant share-lending arrangement. 5
- Cost-flow methods*
- (5) The person must use 1 of the following cost-flow methods to allocate costs: 10
- (a) the first-in first-out cost method; or
- (b) the weighted average cost method.
- Persons complying with generally accepted accounting practice*
- (6) A person who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place. 15
- Other persons*
- (7) A person who does not comply with generally accepted accounting practice— 20
- (a) must be consistent from 1 income year to the next in their choice of 1 of the cost-flow methods described in **subsection (5)**; and
- (b) may change their cost-flow method if— 25
- (i) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or
- (ii) the change is required by another provision in this subpart; and 30
- (c) must keep sufficient details of any such change, and the reasons for it, under section 22 of the Tax Administration Act 1994.

*Worthless arrangements*

- (8) If an excepted financial arrangement has no present or likely future market value and has been written off as worthless, its closing value is zero.

*Use of value*

5

- (9) The value determined under this section is—
- (a) the closing value of the excepted financial arrangement for the purposes of **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and 10
  - (b) the opening value of the excepted financial arrangement for the next income year for the purposes of **section DB 50** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: excepted financial arrangement, generally accepted accounting practice, identical share, income tax liability, income year, original share, revenue account property, share-lending arrangement, share-lending right, share supplier, share user 15

Compare: 2004 No 35 s ED 1

## **ED 2 Transfers of certain excepted financial arrangements within wholly-owned groups** 20

*When this section applies*

- (1) This section applies when—
- (a) a company that is part of a wholly-owned group of companies (**company A**) transfers to another company in the same group (**company B**) an excepted financial arrangement that is revenue account property of company A; and 25
  - (b) the transfer of the excepted financial arrangement is not made under a share-lending arrangement; and 30
  - (c) both companies are resident in New Zealand on the date of the transfer; and
  - (d) the market value of the excepted financial arrangement on the date of the transfer is less than its cost to company A. 35

*Transfer at cost*

- (2) The consideration for the transfer is treated as being equal to the cost of the excepted financial arrangement to company A.

- Company stops being part of group*
- (3) If company B stops being part of the wholly-owned group, the company is treated as disposing of and reacquiring the excepted financial arrangement at its market value at the time the company stops being part of the group. 5
- Not dividend*
- (4) A transfer of an excepted financial arrangement to which this section applies does not give rise to a dividend. 10
- Defined in this Act: company, dividend, excepted financial arrangement, resident in New Zealand, revenue account property, wholly-owned group of companies
- Compare: 2004 No 35 s ED 2

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*Introductory provision*

**EE 1 What this subpart does**

*Quantifying amounts of depreciation loss and depreciation recovery income*

- (1) This subpart— 5
- (a) quantifies the amount of depreciation loss for which a person is allowed a deduction if the provisions of **Part D** (Deductions) are met; and
  - (b) quantifies the amount of depreciation recovery income that is income under **Part C** (Income). 10

*When amount of depreciation loss arises*

- (2) A person has an amount of **depreciation loss** for an item for an income year if—
- (a) the person owns an item of property, as described in **sections EE 2 to EE 5**; and 15
  - (b) the item is depreciable property, as described in **sections EE 6 to EE 8**; and
  - (c) the item is used, or is available for use, by the person in the income year; and
  - (d) the amount of depreciation loss is calculated for the person, the item, and the income year under **sections EE 9 to EE 11**. 20

*When amount of depreciation recovery income arises*

- (3) A person has an amount of **depreciation recovery income** for an item for an income year if— 25
- (a) the person owns an item of property, as described in **sections EE 2 to EE 5**; and
  - (b) the item is depreciable property, as described in **sections EE 6 to EE 8**; and
  - (c) the item is disposed of or an event of a kind described in **section EE 40** occurs; and 30
  - (d) the amount of depreciation recovery income is calculated for the person, the item, and the income year under any of **sections EE 22(5), EE 40(4), EE 50(1), EE 51(2), EE 53(3), and EE 54(3)**. 35

*Amounts of loss incurred and income derived*

- (4) To avoid doubt,—



- (a) an amount of depreciation loss is treated as being incurred in the income year for which it is calculated; and
- (b) an amount of depreciation recovery income is treated as being derived in the income year for which it is calculated. 5

*Allocation of deduction for depreciation loss*

- (5) A person who in an income year uses an item for research or development or for market development that gives rise to a deduction allocated under **section EJ 22** (Deductions for market development: product of research, development), and as a result has an amount of depreciation loss for the item for the income year, may choose to allocate all or part of the deduction for the depreciation loss— 10
  - (a) to an income year after the income year for which the person has the depreciation loss; and 15
  - (b) in the way required by **section EJ 23** (Allocation of deductions for research, development, resulting market development). 20

*Partial income-producing use* 20

- (6) **Subpart DE** (Motor vehicle expenditure) and **section EE 52** contain rules for calculating the amount of deduction available for depreciation loss in circumstances in which an item of property is only partly used or available for use in a way that satisfies the general permission. 25

Defined in this Act: amount, deduction, depreciable property, depreciation loss, depreciation recovery income, development, dispose, general permission, income, income year, own, property, research

Compare: 2004 No 35 s EE 1

*Meaning of own* 30

**EE 2 Nature of ownership of item**

*Kinds of ownership*

- (1) **Own**, for the ownership of depreciable property,— 35
  - (a) means legal or equitable ownership; and
  - (b) includes ownership of the kinds described in **sections EE 3 to EE 5**.

*Shared ownership*

- (2) When more than 1 person owns an item of depreciable property, **own** means the interest that the person has in the item.

Defined in this Act: depreciable property, own

Compare: 2004 No 35 s EE 2

5

**EE 3 Ownership of goods subject to reservation of title***When this section applies*

- (1) This section applies when—
- (a) a person (the **buyer**) enters into an unconditional contract to buy an item of depreciable property; and 10
  - (b) the contract is not a hire purchase agreement and the item is not a hire purchase asset that is the subject of a hire purchase agreement; and
  - (c) the contract is subject to the Sale of Goods Act 1908; and 15
  - (d) title to the item does not pass until the purchase price is paid in full; and
  - (e) the buyer takes possession of the item before title to it passes.

*Buyer treated as owner*

20

- (2) The buyer is treated as owning, and the seller is treated as not owning, the item from the later of the following times:
- (a) the time at which the buyer enters into the contract; and
  - (b) the time at which the buyer takes possession of the item.

*Buyer ceases to be treated as owner*

25

- (3) **Subsection (2)** ceases to apply when 1 of the following occurs:
- (a) title to the item passes to the buyer; or
  - (b) the seller repossesses the item.

Defined in this Act: depreciable property, hire purchase agreement, hire purchase asset, own

30

Compare: 2004 No 35 s EE 3

**EE 4 Ownership of lessee's improvements: lessee***When this section applies*

- (1) This section applies when—
- (a) a lessee of land incurs expenditure during the period 35  
during which the land is leased to the lessee in erecting

- a fixture on the land or making an improvement to the land; and
- (b) the lessor owns the fixture or improvement.
- Ownership of fixture or improvement*
- (2) The following apply to the ownership of the fixture or improvement: 5
- (a) in the period during which the land is leased to the lessee,—
- (i) the lessee is treated as owning the fixture or improvement; and 10
- (ii) the lessor is treated as not owning the fixture or improvement; and
- (iii) a person to whom the lessor disposes of the land during the period is treated as not owning the fixture or improvement; and 15
- (b) after the period during which the land is leased to the lessee,—
- (i) the lessor is treated as not owning the fixture or improvement, unless the lessor incurs a cost relating to it at the end of the period; and 20
- (ii) a person to whom the lessor disposes of the land during the period is treated as not owning the fixture or improvement.
- Defined in this Act: improvement, lessee, lessor, own
- Compare: 2004 No 35 s EE 4 25

### **EE 5 Ownership of lessee's improvements: other person**

*When this section applies: first case*

- (1) This section applies when—
- (a) a lessee of land incurs expenditure during the term of the lease in erecting a fixture on the land or making an improvement to the land; and 30
- (b) the lessee has been allowed a deduction for an amount of depreciation loss for the fixture or improvement; and
- (c) the lessee disposes of their interest in the lease to another person; and 35
- (d) the other person pays the lessee for the fixture or improvement.

*When this section applies: second case*

- (2) This section also applies when—
- (a) a lessee of land has been allowed a deduction for an amount of depreciation loss for a fixture on the land, or an improvement to the land, that a previous lessee erected or made; and 5
  - (b) the lessee disposes of their interest in the lease to another person; and
  - (c) the other person pays the lessee for the fixture or improvement. 10

*Other person treated as owner*

- (3) The other person is treated as owning the fixture or improvement from the time at which they pay the lessee for it.
- Defined in this Act: amount, deduction, depreciation loss, dispose, improvement, lease, lessee, own, pay, term of the lease 15
- Compare: 2004 No 35 s EE 5

*Meaning of depreciable property***EE 6 What is depreciable property?***Description*

- (1) **Depreciable property** is property that, in normal circumstances, might reasonably be expected to decline in value while it is used or available for use— 20
- (a) in deriving assessable income; or
  - (b) in carrying on a business for the purpose of deriving assessable income. 25

**Subsections (2) and (3)** expand on this subsection.

*Property: tangible*

- (2) An item of tangible property is depreciable property if—
- (a) it is described by **subsection (1)**; and
  - (b) it is not described by **section EE 7**. 30

*Property: intangible*

- (3) An item of intangible property is depreciable property if—
- (a) it is within the definition of **depreciable intangible property**; and
  - (b) it is described by **subsection (1)**; and 35

- (c) it is not described by **section EE 7**.

Defined in this Act: assessable income, business, depreciable intangible property, depreciable property, property

Compare: 2004 No 35 s EE 6

## **EE 7 What is not depreciable property?** 5

The following property is not **depreciable property**:

- (a) land, although buildings, fixtures, and the improvements listed in **schedule 13** (Depreciable land improvements) are depreciable property if they are described by **section EE 6(1)**: 10
- (b) trading stock:
- (c) livestock to which **subpart EB** (Valuation of trading stock (including dealer's livestock)) applies:
- (d) financial arrangements:
- (e) excepted financial arrangements: 15
- (f) property that will not decline in value, as far as its owner is concerned, because, when they dispose of it, they have a right to be compensated for any decline in its value:
- (g) property that its owner chooses, under **section EE 8**, to treat as not depreciable: 20
- (h) property that its owner chooses, under **section EE 40**, to deal with under that section:
- (i) property for whose cost a person other than the property's owner is allowed a deduction: 25
- (j) property for whose cost a person is allowed a deduction under a provision of this Act outside this subpart or under a provision of an earlier Act, except for an asset to which **section DU 6(4)** (Depreciation) applies.

Defined in this Act: deduction, depreciable property, dispose, excepted financial arrangement, financial arrangement, own, property, trading stock 30

Compare: 2004 No 35 s EE 7

## **EE 8 Election that property not be depreciable**

*Item acquired*

- (1) A person may choose that an item of property they acquire not be depreciable property even though, in the absence of the election, it would be depreciable property. 35

*Item changing use*

- (2) A person may choose that an item of property they own ceases to be depreciable property if—
- (a) the use of the item changes; and
  - (b) before the use changes, the person was denied a deduction for an amount of depreciation loss for the item; and
  - (c) after the use changes, in the absence of the election, the person would have been allowed a deduction for an amount of depreciation loss for the item.

*Retrospective election*

- (3) A person who has deducted none of the amounts of depreciation loss for which they were allowed a deduction for an item of property, in the income year in which they acquired it and in each later year, may retrospectively choose that the item not be depreciable property.

*How elections made*

- (4) An election under this section is made as follows:
- (a) a person makes an election under **subsection (1)** by giving the Commissioner notice of it in their return of income for the income year in which they acquire the item; and
  - (b) a person makes an election under **subsection (2)** by giving the Commissioner notice of it in their return of income for the income year in which the item's use changes; and
  - (c) a person makes an election under **subsection (3)** by giving the Commissioner notice of it in their return of income for any income year after they acquire the item, including an income year after they dispose of the item.

*Effect of election*

- (5) An election under this section has effect for the person for—
- (a) the income year for which they make the election; and
  - (b) all later income years until—
    - (i) the item is disposed of, although this reference to disposal does not include the disposal of an item of intangible property as part of an arrangement to replace it with an item of the same kind; or
    - (ii) an event described in **section EE 49** occurs involving the item.

*Retrospective effect of election*

- (6) An election made under **subsection (3)** also has retrospective effect for the person for—
- (a) the income year in which they acquire the property; and
  - (b) all intervening income years until the year in which they make the election. 5

Defined in this Act: acquire, amount, Commissioner, deduction, depreciable property, depreciation loss, dispose, income year, notice, property, return of income

Compare: 2004 No 35 s EE 8

***How amounts of depreciation loss and depreciation recovery income are calculated*** 10

**EE 9 Description of elements of calculation**

*Depreciation methods*

- (1) **Sections EE 12 to EE 24** deal with the methods of calculating an amount of depreciation loss. The methods are— 15
- (a) the straight-line method, which is dealt with in **sections EE 13 to EE 19**; and
  - (b) the diminishing value method, which is also dealt with in **sections EE 13 to EE 19**; and
  - (c) the pool method, which is dealt with in **sections EE 20 to EE 24**. 20

*Depreciation rates*

- (2) **Sections EE 25 to EE 38** deal with the rates of depreciation. The rates are—
- (a) the economic rate, which is dealt with in **section EE 25**; and 25
  - (b) the annual rate, which is dealt with in **sections EE 30 and EE 36**; and
  - (c) a special rate or a provisional rate, both of which are dealt with in **sections EE 37 and EE 38**. 30

*Improvements, low value items, and items no longer used*

- (3) **Sections EE 39 to EE 41** deal with the cases of—
- (a) an improvement made to an item of depreciable property; and
  - (b) an item of depreciable property that is of low value; and 35
  - (c) an item of depreciable property that is no longer used.

	<i>Transfers</i>	
(4)	<b>Sections EE 42 to EE 45</b> deal with the transfer of items of depreciable property in certain amalgamations and between associated persons.	
	<i>Disposals and similar events</i>	5
(5)	<b>Sections EE 46 to EE 54</b> deal with disposals of property and events that involve property and are similar to disposal.	
	<i>Interpretation provisions</i>	
(6)	<b>Sections EE 55 to EE 68</b> deal with the following interpretation matters:	10
	(a) <b>section EE 55</b> deals with the effect of GST on cost; and	
	(b) <b>sections EE 56 to EE 61</b> deal with the meaning of <b>adjusted tax value</b> ; and	
	(c) <b>sections EE 62 to EE 68</b> contain definitions.	
	<i>Relationship with sections EZ 10 to EZ 29</i>	15
(7)	<b>Sections EZ 10 to EZ 29</b> (which relate to depreciation) deal with items acquired in periods before 24 September 1997.	
	Defined in this Act: adjusted tax value, amount, annual rate, associated person, depreciable property, depreciation loss, depreciation method, diminishing value method, dispose, economic rate, GST, improvement, pool method, property, provisional rate, special rate, straight-line method	20
	Compare: 2004 No 35 s EE 9	
	<b>EE 10 Calculation rule: item temporarily not available</b>	
	An item of depreciable property is treated as being available for use while subject temporarily to repair or inspection, if it was used or available for use immediately before going for repair or inspection.	25
	Defined in this Act: depreciable property	
	Compare: 2004 No 35 s EE 10	
	<b>EE 11 Calculation rule: income year in which item disposed of</b>	30
	<i>Generally no amount of depreciation loss</i>	
(1)	A person does not have an amount of depreciation loss for an item of depreciable property for the income year in which they dispose of it.	35



*Exclusion: building or petroleum-related depreciable property*

- (2) A person has an amount of depreciation loss for an item of depreciable property for the income year in which they dispose of it, if it is— 5
- (a) a building; or
  - (b) an item of petroleum-related depreciable property.

*Exclusion: empty pool*

- (3) A person has the amount of depreciation loss calculated under **section EE 22(4)(a)** for an income year for a disposal to which the subsection applies. 10

*Exclusion: consideration less than adjusted tax value*

- (4) A person has the amount of depreciation loss calculated under **section EE 50(2)** for a disposal or event to which the subsection applies. 15

*Exclusion: item partly used for business*

- (5) A person has the amount of depreciation loss calculated under **section EE 52** for a disposal or event to which the section applies. 20

Defined in this Act: adjusted tax value, amount, business, depreciable property, depreciation loss, dispose, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 11

## **Methods**

### **EE 12 Depreciation methods**

*Meaning of depreciation method* 25

- (1) **Depreciation method** means a method that a person may use to calculate an amount of depreciation loss, and includes a rate determined by the Commissioner under section 91AAF, 91AAG, or 91AAL of the Tax Administration Act 1994.

*Methods described* 30

- (2) The depreciation methods are—
- (a) the diminishing value method, which—
    - (i) may be used for any item of depreciable property except one referred to in **subparagraph (ii) or (iii)**; and

- (ii) must not be used for an item of fixed life intangible property; and
    - (iii) must not be used for an item of property in the circumstances described in **section EZ 10** (Pool method for items accounted for by globo method for 1992–93 income year): 5
  - (b) the straight-line method, which—
    - (i) may be used for any item of depreciable property; and
    - (ii) must be used for an item of fixed life intangible property: 10
  - (c) the pool method, which—
    - (i) may be used for any item of poolable property except one referred to in **subparagraph (ii)**; and
    - (ii) must not be used for an item of fixed life intangible property; and 15
    - (iii) must be used for an item of property in the circumstances described in **section EZ 10**.
- Person chooses*
- (3) A person chooses which of the depreciation methods they will use for each item of depreciable property they own. 20
- How person chooses*
- (4) The person chooses the method by using the chosen method for the item in their return of income for the income year for which they make the election. 25
- Diminishing value or straight-line method fixed for income year*
- (5) If the person chooses the diminishing value method or the straight-line method, they must use the method for the item and the income year and must not change the election for the income year. 30
- Pool method fixed for income year and later income years*
- (6) If the person chooses the pool method, they must use the method for the item and the income year and must not change the election for— 35
    - (a) the income year; or

- (b) a later income year in which the item is still poolable property that they own.

Defined in this Act: amount, depreciable property, depreciation loss, depreciation method, diminishing value method, fixed life intangible property, income year, own, pool method, poolable property, property, return of income, straight-line method

5

Compare: 2004 No 35 s EE 12

***Amount of depreciation loss under diminishing value method or straight-line method***

**EE 13 Application of sections EE 14 to EE 19** 10

**Sections EE 14 to EE 19** apply to the calculation of the amount of depreciation loss that a person using the diminishing value method or the straight-line method has.

Defined in this Act: amount, depreciation loss, diminishing value method, straight-line method

15

Compare: 2004 No 35 s EE 13

**EE 14 Diminishing value or straight-line method: calculating amount of depreciation loss**

*Most depreciable property*

- (1) The amount of depreciation loss that the person has for an income year for an item of depreciable property is the lesser of the amounts dealt with in **sections EE 15 and EE 16**. 20

*Exclusion: petroleum-related depreciable property*

- (2) The amount of depreciation loss that the person has for an income year for an item of petroleum-related depreciable property is the lesser of the amounts dealt with in **sections EE 15 and EE 17**. 25

Defined in this Act: amount, depreciable property, depreciation loss, income year, petroleum-related depreciable property

30

Compare: 2004 No 35 s EE 14

**EE 15 Amount of adjusted tax value**

For the purposes of the comparison of amounts required by **section EE 14(1) and (2)**, the amount dealt with in this section is the item's adjusted tax value at the end of the income year

before the deduction of an amount of depreciation loss for the item for the income year.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, income year

Compare: 2004 No 35 s EE 15

5

## EE 16 Amount resulting from standard calculation

### *Amount*

- (1) For the purposes of the comparison of amounts required by **section EE 14(1)**, the amount dealt with in this section is calculated using the formula—

10

$$\text{annual rate} \times \text{value or cost} \times \frac{\text{months}}{12}.$$

### *Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (5)**.

15

### *Annual rate*

- (3) **Annual rate** is the annual rate that, in the income year, applies to the item of depreciable property under the depreciation method that the person uses for the item. It is expressed as a decimal.

20

### *Value or cost*

- (4) **Value or cost** is,—

- (a) when the person uses the diminishing value method, the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year:
- (b) when the person uses the straight-line method, the item's cost to the person, excluding expenditure for which the person is allowed a deduction under a provision of this Act outside this subpart; variations to **cost** are in **sections EE 18 and EE 19**.

25

30

### *Months: income year of normal length or shorter*

- (5) **Months**, for a person whose income year contains 365 days or fewer, or 366 days or fewer in a leap year, is the lesser of the following:

35

- (a) 12; and

- (b) the number of whole or part calendar months in the income year in which—
  - (i) the person owns the item; and
  - (ii) the person uses the item or has it available for use for any purpose. 5

*Months: income year of longer than normal length*

- (6) **Months**, for a person whose income year contains more than 365 days, or more than 366 days in a leap year, is the number of whole or part months in the income year in which—
  - (a) the person owns the item; and 10
  - (b) the person uses the item or has it available for use for any purpose.

Defined in this Act: adjusted tax value, amount, annual rate, deduction, depreciable property, depreciation loss, depreciation method, diminishing value method, income year, own, straight-line method 15

Compare: 2004 No 35 s EE 16

**EE 17 Amount resulting from petroleum-related depreciable property calculation**

*Amount*

- (1) For the purposes of the comparison of amounts required by **section EE 14(2)**, the amount dealt with in this section is calculated using the formula— 20

$$\text{annual rate} \times \text{value or cost} \times \frac{\text{days}}{365} \quad \text{25}$$

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (5)**.

*Annual rate*

- (3) **Annual rate** is the annual rate that, in the income year, applies to the item of depreciable property under the depreciation method that the person uses for the item. It is expressed as a decimal. 30

*Value or cost*

- (4) **Value or cost** is,—
  - (a) when the person uses the diminishing value method, the item’s adjusted tax value at the end of the income year 35

- before the deduction of an amount of depreciation loss for the item for the income year:
- (b) when the person uses the straight-line method, the item's cost to the person; a variation to **cost** is in **section EE 18.** 5
- Days*
- (5) **Days** is the number of whole or part days in the income year on which—
- (a) the person owns the item; and
- (b) the person uses the item or has it available for use for any purpose. 10
- Defined in this Act: adjusted tax value, amount, annual rate, deduction, depreciable property, depreciation loss, depreciation method, diminishing value method, income year, own, straight-line method
- Compare: 2004 No 35 s EE 17 15
- EE 18 Cost: change from diminishing value to straight-line method**
- When this section applies*
- (1) This section applies when a person changes from the diminishing value method to the straight-line method for an item of property for an income year. 20
- How straight-line method applies*
- (2) For the purposes of the formulas in **sections EE 16 and EE 17**, the item's cost is treated as being the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year. 25
- Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, diminishing value method, income year, property, straight-line method
- Compare: 2004 No 35 s EE 18
- EE 19 Cost: fixed life intangible property** 30
- When this section applies*
- (1) This section applies when—
- (a) a person owns an item of fixed life intangible property; and
- (b) the person incurs additional costs in an income year for the item; and 35

- (c) the person is denied a deduction for the additional costs other than a deduction for an amount of depreciation loss.

*Additional costs for fixed life intangible property*

- (2) For the purposes of the formula in **section EE 16**, the item's cost at the start of the income year is treated as being the total of— 5
- (a) the item's adjusted tax value at the start of the income year; and
- (b) the additional costs the person incurs.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, fixed life intangible property, income year, own 10

Compare: 2004 No 35 s EE 19

*Amount of depreciation loss under pool method*

**EE 20 Application of sections EE 21 to EE 24**

**Sections EE 21 to EE 24** apply to the calculation of the amount of depreciation loss that a person using the pool method has. 15

Defined in this Act: amount, depreciation loss, pool method

Compare: 2004 No 35 s EE 20

**EE 21 Pool method: calculating amount of depreciation loss**

*Amount of depreciation loss subtracted from pool's value* 20

- (1) The amount of depreciation loss that a person has for an income year for a pool of depreciable property is—
- (a) first, calculated under **subsection (2)**; and
- (b) second, subtracted from the pool's adjusted tax value at the end of the income year. 25

*Amount*

- (2) The amount of depreciation loss is calculated using the formula—
- $$\text{rate} \times \frac{\text{starting adjusted tax value} + \text{ending adjusted tax value}}{2} \times \frac{\text{months}}{12}. \quad 30$$

*Definition of items in formula*

- (3) The items in the formula are defined in **subsections (4) to (8)**.

*Rate*

- (4) **Rate** is the diminishing value rate. It is 1 of the following:
- (a) if the same rate applies to all items depreciated in the pool in the income year, that rate; or
  - (b) if different rates apply to items depreciated in the pool in the income year,—
    - (i) the lower of the rates, if there are 2 items in the pool; or
    - (ii) the lowest of the rates, if there are 3 or more items in the pool.

*Starting adjusted tax value*

- (5) **Starting adjusted tax value** is—
- (a) the pool's adjusted tax value at the start of the income year; or
  - (b) zero, if the pool did not exist at the start of the income year.

A variation to **starting adjusted tax value** is in **section EE 22(2)(b)**.

*Ending adjusted tax value*

- (6) **Ending adjusted tax value** is the pool's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the pool for the income year.

*Months: income year of normal length or shorter*

- (7) **Months**, for a person whose income year contains 365 days or fewer, or 366 days or fewer in a leap year, is the lesser of the following:
- (a) 12; and
  - (b) the number of whole or part months in the income year in which—
    - (i) the person owns the item; and
    - (ii) the person uses the item or has it available for use for any purpose.

*Months: income year of longer than normal length*

- (8) **Months**, for a person whose income year contains more than 365 days, or more than 366 days in a leap year, is the number of whole or part months in the income year in which—
- (a) the person owns the item; and



- (b) the person uses the item or has it available for use for any purpose.

Defined in this Act: adjusted tax value, amount, deduction, depreciable property, depreciation loss, diminishing value rate, income year, own, pool

Compare: 2004 No 35 s EE 21

5

## EE 22 Cases affecting pool

### *Acquired item included*

- (1) If a person chooses in an income year to include in a pool an item of poolable property that they acquire in the income year, the pool's adjusted tax value is increased by the item's cost. 10

### *Separately depreciated item included*

- (2) If a person chooses in an income year to include in a pool an item of poolable property that they depreciated separately in the previous income year,—
- (a) the pool's adjusted tax value is increased by the item's adjusted tax value on the date it is included in the pool; and 15
- (b) the item's adjusted tax value at the end of the previous income year is included in **starting adjusted tax value** in **section EE 21(5)**. 20

### *Item disposed of*

- (3) If a person disposes of an item included in a pool, any consideration they derive from the disposal is subtracted from the adjusted tax value of the pool in which the item was included on the date of the disposal. 25

### *All items disposed of*

- (4) If, on the last day of an income year, the adjusted tax value of a person's pool is positive but the person has disposed of all items that were in the pool,—
- (a) the amount of depreciation loss that the person has for the pool for the income year is the pool's adjusted tax value; and 30
- (b) on the first day of the following income year, the pool's adjusted tax value is zero.

*Negative adjusted tax value*

- (5) If, on the last day of an income year, the adjusted tax value of a person's pool is negative,—
- (a) the amount by which the adjusted tax value is negative is an amount of depreciation recovery income of the person derived in the income year; and 5
  - (b) on the first day of the following income year the pool's adjusted tax value is zero.

*Relationship with section EZ 11*

- (6) **Section EZ 11** (Pool items accounted for by globo method for 1992–93 income year) limits the amount of income arising under **subsection (5)(a)** in the circumstances described in the section. 10

Defined in this Act: acquire, adjusted tax value, amount, depreciation loss, depreciation recovery income, dispose, income, income year, pool, poolable property 15

Compare: 2004 No 35 s EE 22

**EE 23 Combined pools***Combining pools allowed*

- (1) A person using the pool method may at any time combine any number of pools to form a single pool. 20

*Consequences*

- (2) When a person combines pools,—
- (a) the new pool's adjusted tax value is the same as the sum of the adjusted tax values of the constituent pools; and
  - (b) the adjusted tax value of each of the constituent pools at the end of the income year in which the pools are combined is zero; and 25
  - (c) each of the constituent pools ceases to exist.

Defined in this Act: adjusted tax value, income year, pool, pool method

Compare: 2004 No 35 s EE 23 30

**EE 24 Property ceasing to qualify for pool**

If a person starts using an item of property included in a pool in such a way as to cause the item to cease to meet the requirements of **section EE 67(4)**, they must account for it as if, on the day they first used it in that way,— 35

- (a) they disposed of it for its market value; and

(b) they immediately reacquired it for its market value.

Defined in this Act: acquire, dispose, pool, property

Compare: 2004 No 35 s EE 24

### *Depreciation rates*

<b>EE 25 Setting of economic depreciation rate</b>	5
<i>Relevant provisions</i>	
(1) The economic depreciation rate that applies to a kind of item of depreciable property is set under—	
(a) <b>section EE 26</b> , for items that—	
(i) are not buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is set under <b>section EE 28 or EE 29</b> ; and	10
(ii) are acquired on or after 1 April 2005:	
(b) <b>section EE 27</b> , for items that are buildings and—	15
(i) are acquired on or after 19 May 2005; and	
(ii) do not have an economic depreciation rate set under <b>section EZ 24</b> (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005):	20
(c) <b>section EE 28</b> , for certain aircraft and motor vehicles acquired on or after 1 April 2005:	
(d) <b>section EE 29</b> , for items that—	
(i) have an estimated residual market value greater than 13.5% of cost:	25
(ii) would, in the absence of <b>section EE 29</b> , have an economic depreciation rate set under <b>section EE 26 or EE 27</b> :	
(e) <b>section EZ 24</b> for items that—	
(i) are not buildings, fixed life intangible property, or excluded depreciable property and are acquired before 1 April 2005:	30
(ii) are buildings acquired before 19 May 2005:	
(iii) are buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under <b>section EZ 24</b> or a corresponding provision.	35

*No rate for fixed life intangible property or excluded depreciable property*

- (2) An economic depreciation rate must not be set for a kind of item of depreciable property that is fixed life intangible property or excluded depreciable property. 5

*Overriding effect of election under section EE 31*

- (3) **Subsection (1)(a)** is subject to **section EE 31**.  
 Defined in this Act: depreciable property, economic rate, estimated residual market value, excluded depreciable property, fixed life intangible property  
 Compare: 2004 No 35 s EE 25 10

**EE 26 Economic rate for certain depreciable property**

*What this section is about*

- (1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property.

*Exclusion*

- (2) This section does not apply to buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is set under **section EE 28 or EE 29**. 15

*Rate set by Commissioner*

- (3) The Commissioner sets the rate from time to time by— 20  
 (a) following the procedure set out in this section; and  
 (b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

*Procedure for setting economic rate*

- (4) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner— 25  
 (a) obtains a figure by applying the formula in **subsection (5)** to items of that kind; and  
 (b) rounds the figure up or down to the nearest rate specified in **schedule 11, column 1** (New banded rates of depreciation); and 30  
 (c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to— 35  
 (i) the rate calculated for each kind; and

- (ii) the reduction in compliance costs that is likely to be achieved.

*Formula*

- (5) The formula is—
- $$\frac{2}{\text{estimated useful life.}}$$
- 5

*Definition of item in formula*

- (6) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.
- Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property
- 10
- Compare: 2004 No 35 s EE 25B

**EE 27 Economic rate for buildings**

*What this section is about* 15

- (1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property that is a building and for which an economic rate is not set under **section EE 29 or EZ 24** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005). 20

*Rate set by Commissioner*

- (2) The Commissioner sets the rate from time to time by—
- (a) following the procedure set out in this section; and
  - (b) issuing a determination under section 91AAF of the Tax Administration Act 1994. 25

*Procedure for setting economic rate*

- (3) To set the straight-line rate for a kind of item of depreciable property, the Commissioner—
- (a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and 30
  - (b) rounds the figure up or down to the nearest rate specified in **schedule 11, column 4** (New banded rates of depreciation); and

- (c) sets the same rate for some or all of the kinds of buildings that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—
- (i) the rate calculated for each kind; and
  - (ii) the reduction in compliance costs that is likely to be achieved. 5

*Formula*

- (4) The formula is—
- $$\frac{1}{\text{estimated useful life.}} \quad 10$$

*Definition of item in formula*

- (5) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

*Contracts existing at 19 May 2005*

- (6) Despite **subsection (1)**, a person who before 19 May 2005 enters into a binding contract for the purchase or construction of a building must apply to the building the economic rate for the kind of the building determined under **section EZ 24**. 15

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property 20

Compare: 2004 No 35 s EE 25C

**EE 28 Economic rate for certain aircraft and motor vehicles***What this section does*

- (1) This section gives the economic depreciation rate for certain aircraft and motor vehicles. 25

*Rate for certain aircraft*

- (2) The economic rate for an aircraft is a diminishing value rate of 10% or a straight-line rate of 7% if the aircraft—
- (a) is self-propelled; and 30
  - (b) has fixed wings; and
  - (c) is not an international aircraft; and
  - (d) is not a helicopter.

*Rate for certain motor vehicles*

- (3) The economic rate for a motor vehicle having seats for no more than 12 persons is a diminishing value rate of 30% or a straight-line rate of 21% if the motor vehicle—
- (a) is not available for hire: 5
  - (b) is available for hire for a hire period of more than 1 month:
  - (c) is a taxi:
  - (d) is a minibus.

Defined in this Act: diminishing value rate, economic rate, international aircraft, minibus, straight-line rate 10

Compare: 2004 No 35 s EE 25D

### **EE 29 Economic rate for plant, equipment, or building, with high residual value**

*What this section is about* 15

- (1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—
- (a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and 20
  - (b) the items are—
    - (i) plant or equipment acquired before 1 April 2005:
    - (ii) buildings acquired before 19 May 2005.

*Rate set by Commissioner*

- (2) The Commissioner sets the rate from time to time by— 25
- (a) following the procedure set out in this section; and
  - (b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

*Procedure for setting economic rate*

- (3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner— 30
- (a) obtains a figure by applying the formula in **subsection (4)** to items of that kind; and
  - (b) rounds the figure up or down to the nearest rate specified in **schedule 12, column 1** (Old banded rates of depreciation); and 35
  - (c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if

the Commissioner thinks it is appropriate to do so having regard to—

- (i) the rate calculated for each kind; and
- (ii) the reduction in compliance costs that is likely to be achieved.

5

*Formula*

- (4) The formula is—

$$1 - \left( \left( \frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

10

*Definition of items in formula*

15

- (5) In the formula,—

- (a) **residual value** is the greater of—
  - (i) estimated residual market value, which is defined in **section EE 68**;
  - (ii) 13.5% of cost:
- (b) **cost** is the cost of items of the kind to which the formula is applied;
- (c) **estimated useful life** is defined in **section EE 64**.

20

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property

25

Compare: 2004 No 35 s EE 25E

**EE 30 Annual rate for item acquired in person's 1995–96 or later income year**

*What this section is about*

30

- (1) This section is about the annual rate that applies to an item of depreciable property that a person acquires, other than under **section FL 2(2)** (Treatment of emigrating companies and their shareholders), in their 1995–96 income year or a later income year (not including fixed life intangible property or excluded depreciable property, for which rates are set in **sections EE 32 and EZ 16** (Annual rate for excluded depreciable property: 1992–93 tax year)).

35

*Rate*

- (2) The rate is 1 of the following:
- (a) the item's economic rate, for an item not described in either **paragraph (b) or (c)**:

40



- (b) the item's economic rate multiplied by 1.2, for an item that—
- (i) has not been used or held for use in New Zealand as an item of depreciable property before the date on which the person acquires it; and 5
  - (ii) is not a building; and
  - (iii) is not a used imported car; and
  - (iv) is not an international aircraft:
- (c) a diminishing value rate of 15% or a straight-line rate of 10%, for an international aircraft. 10

Defined in this Act: acquire, annual rate, depreciable property, diminishing value rate, economic rate, excluded depreciable property, fixed life intangible property, income year, international aircraft, New Zealand, straight-line rate

Compare: 2004 No 35 s EE 26

### **EE 31 Election in relation to certain depreciable property acquired on or after 1 April 2005** 15

*When this section applies*

- (1) This section applies when a person acquired an item of depreciable property that is not a building—
- (a) on or after 1 April 2005; and 20
  - (b) before the commencement of the person's income year corresponding to the 2006–07 tax year.

*Election to use economic depreciation rate determined under section EZ 24*

- (2) The person may choose to calculate the depreciation loss for the item of depreciable property for income years corresponding to the 2005–06 and later tax years in accordance with the economic depreciation rate determined for the kind of item under **section EZ 24** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005). 25 30

*Election to be made in return of income*

- (3) The person must make an election under **subsection (2)** in the person's return of income for the 2005–06 tax year. 35
- Defined in this Act: depreciable property, depreciation loss, economic depreciation rate, income year, return of income, tax year

Compare: 2004 No 35 s EE 26B

**EE 32 Annual rate for fixed life intangible property***What this section is about*

- (1) This section is about the annual rate that applies to an item of fixed life intangible property, not including—
- (a) an item of excluded depreciable property for which a rate is set in **section EZ 16** (Annual rate for excluded depreciable property: 1992–93 tax year): 5
  - (b) a patent or patent application for which a rate is set in **sections EE 33 or EE 35**:
  - (c) plant variety rights for which a rate is set in **section EE 36**. 10

*Rate*

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

$$\frac{1}{\text{legal life.}}$$

*Definition of item in formula*

- (3) In the formula, **legal life** is,—
- (a) if **section EE 19** applies, the item's remaining legal life from the start of the income year in which a person incurs the additional costs referred to in that section: 15
  - (b) if **section EE 19** does not apply, the item's remaining legal life from the time at which a person acquires it. 20

*How rate expressed*

- (4) The rate given by the formula is expressed as a decimal and rounded to 2 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down. 25

Defined in this Act: acquire, annual rate, excluded depreciable property, fixed life intangible property, income year, legal life

Compare: 2004 No 35 s EE 27

**EE 33 Annual rate for patents: applications lodged with complete specifications before 1 April 2005** 30*When this section applies*

- (1) This section applies when—
- (a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and 35

- (b) the application is lodged with the complete specification before 1 April 2005; and
- (c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year. 5
- Income years for which usual rate applies*
- (2) The rate given by **subsection (3)** applies for the patent for an income year that begins—
- (a) after the date on which the patent is granted; and
- (b) before the date that is 240 months after the patent application date. 10
- Usual rate*
- (3) The rate is calculated using the formula—
- $$\frac{\text{months}}{\text{depreciation months}}.$$
- 15
- Rate for first income year of use*
- (4) For the patent and the income year that includes the date on which the patent is granted, the rate is found by adding together the following rates:
- (a) the rate calculated using the formula— 20
- $$\frac{\text{months before grant}}{\text{depreciation months}}$$
- (b) the rate calculated for the income year under **subsection (3)**.
- Effect of change in ownership of patent application* 25
- (5) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rates calculated under **subsections (3) and (4)** for the person depend on the period between the date on which the person acquires the application and the date on which the patent is granted. 30
- Definition of items in formulas in subsections (3) and (4)*
- (6) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (7) to (9)**.

*Months*

- (7) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—
- (a) in which the patent is used or is available for use; and 5
  - (b) that include or begin after the date on which the patent is granted; and
  - (c) that end before the date that is 240 months after the patent application date.

*Depreciation months*

- (8) **Depreciation months** is,— 10
- (a) if **subsection (5)** does not apply, 240:
  - (b) if **subsection (5)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that— 15
    - (i) include or begin after the patent application date; and
    - (ii) end before the date on which the person acquires the application. 20

*Months before grant*

- (9) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that,—
- (a) if **subsection (5)** does not apply,— 25
    - (i) include or begin after the patent application date; and
    - (ii) end before the date on which the patent is granted:
  - (b) if **subsection (5)** applies— 30
    - (i) include or begin after the date on which the person acquires the application; and
    - (ii) end before the date on which the patent is granted.

Defined in this Act: amount, income year, patent application date 35

Compare: 2004 No 35 s EE 27B

### EE 34 Annual rate for patent applications lodged with complete specifications on or after 1 April 2005

*When this section applies*

- (1) This section applies when—
- (a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
  - (b) the application is lodged with the complete specification on or after 1 April 2005.

*Income years for which rate applies* 10

- (2) The rate given by **subsection (3)** applies for a patent application for an income year that—
- (a) includes or begins after the patent application date; and
  - (b) begins before the date on which—
    - (i) the patent is granted; or 15
    - (ii) the patent application is refused or withdrawn.

*Rate*

- (3) The rate is calculated using the formula—
- $$\frac{\text{months}}{\text{depreciation months.}} \quad 20$$

*Definition of items in formula*

- (4) The items in the formula are defined in **subsections (5) and (6)**.

*Months*

- (5) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—
- (a) include or begin after the patent application date; and
  - (b) end before the date on which—
    - (i) the patent is granted; or
    - (ii) the patent application is refused or withdrawn. 30

*Depreciation months*

- (6) **Depreciation months** is,—
- (a) if **subsection (6)** does not apply, 240;
  - (b) if **subsection (6)** applies, 240 reduced by the number of months, beginning on or a whole number of months 35

after the beginning of an income year of the person, that—

- (i) include or begin after the patent application date; and
- (ii) end before the date on which the person acquires the application. 5

*Effect of change in ownership of patent application*

- (7) If the person who owns the patent application when the patent is granted, or when the patent application is refused or withdrawn, is not the person who lodges the application for the patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between the patent application date and the date on which the person acquires the application. 10

Defined in this Act: amount, income year, patent application date 15

Compare: 2004 No 35 s EE 27C

**EE 35 Annual rate for patents: applications lodged with complete specifications on or after 1 April 2005**

*When this section applies*

- (1) This section applies when— 20
- (a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
  - (b) the application is lodged with the complete specification on or after 1 April 2005; and 25
  - (c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

*Income years for which rate applies*

- (2) The rate calculated under **subsection (3)** applies for a patent for an income year that— 30
- (a) includes or begins after the date on which the patent is granted; and
  - (b) begins before the date that is 240 months after the patent application date. 35

*Rate*

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

$\frac{\text{months}}{\text{depreciation months}}$ .

*Definition of items in formula*

- (4) The items in the formula are defined in **subsections (5) and (6)**.

*Months*

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- (5) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—
- (a) include or begin after the date on which the patent is granted; and
  - (b) end before the date that is 240 months after the patent application date.

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*Depreciation months*

- (6) **Depreciation months** is,—
- (a) if **subsection (7)** does not apply, 240;
  - (b) if **subsection (7)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
    - (i) include or begin after the patent application date; and
    - (ii) end before the date on which the person acquires the application.

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*Effect of change in ownership of patent application*

- (7) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between the patent application date and the date on which the person acquires the application.

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Defined in this Act: amount, income year, patent application date

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Compare: 2004 No 35 s EE 27D

**EE 36 Annual rate for plant variety rights**

*When this section applies*

- (1) This section applies when—
- (a) a plant variety right is given provisional protection; and

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- (b) the plant variety right is granted to a person in an income year that corresponds to the 2005–06 or a later tax year.
- Income years for which usual rate applies*
- (2) The rate calculated under **subsection (3)** applies for the plant variety right for an income year that begins— 5
- (a) after the date on which the plant variety right is granted; and
- (b) before the date on which the plant variety right expires.
- Usual rate* 10
- (3) The rate is calculated using the formula—
- $$\frac{\text{months}}{\text{depreciation months}}$$
- Rate for first income year of use*
- (4) For the plant variety right and the income year that includes the date on which the plant variety right is granted, the rate is found by adding together the following rates: 15
- (a) the rate calculated using the formula—
- $$\frac{\text{months before grant}}{\text{depreciation months}}$$
- 20
- (b) the rate calculated for the income year under **subsection (3)**.
- Definition of items in formulas in subsections (3) and (4)*
- (5) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (6) to (8)**. 25
- Months*
- (6) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—
- (a) in which the plant variety right is used or available for use; and 30
- (b) that end before the date on which the plant variety right expires.
- Depreciation months*
- (7) **Depreciation months** is,— 35



- (a) if **subsection (9)** does not apply, the number of months in the period for which the plant variety right is granted plus the number of months, beginning on or a whole number of months after the beginning of an income year of the person,— 5
  - (i) in which the plant variety right has provisional protection; and
  - (ii) ending before the date on which the plant variety right is granted:
- (b) if **subsection (9)** applies, the number of months referred to in **paragraph (a)** reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that— 10
  - (i) include or begin after the date on which the plant variety right is given provisional protection; and 15
  - (ii) end before the date on which the person acquires the application.

*Months before grant*

- (8) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that,— 20
  - (a) if **subsection (9)** does not apply,—
    - (i) include or begin after the date on which the plant variety right is given provisional protection; and
    - (ii) end before the date on which the plant variety right is granted: 25
  - (b) if **subsection (9)** applies,—
    - (i) include or begin after the date on which the person acquires the application; and
    - (ii) end before the date on which the plant variety right is granted. 30

*Effect of change in ownership of application for plant variety right*

- (9) If the plant variety right is granted to a person who does not lodge the application for the plant variety right, the rates calculated under **subsections (3) and (4)** for the person depend on the period between the date on which the person acquires the 35

application and the date on which the plant variety right is granted.

Defined in this Act: amount, income year, plant variety right

Compare: 2004 No 35 s EE 27E

- EE 37 Special rate or provisional rate** 5
- Rate set for item of depreciable property*
- (1) A special rate or a provisional rate is set for an item of depreciable property under sections 91AAG to 91AAJ of the Tax Administration Act 1994.
- No special rate for excluded depreciable property* 10
- (2) A special rate may not be set for an item of excluded depreciable property.
- No provisional rate for fixed life intangible property or excluded depreciable property*
- (3) A provisional rate may not be set for an item of fixed life intangible property or an item of excluded depreciable property. 15
- Defined in this Act: depreciable property, excluded depreciable property, fixed life intangible property, provisional rate, special rate
- Compare: 2004 No 35 s EE 28 20
- EE 38 Using economic rate or provisional rate instead of special rate**
- Allowed to use economic or provisional rate*
- (1) A person may depreciate an item to which a special rate applies by applying, instead, the economic rate applicable to the item or a provisional rate applicable to the item. This subsection is overridden by **subsection (2)**. 25
- Not allowed to use economic or provisional rate*
- (2) The person must not depreciate the item by applying the economic rate or the provisional rate, if— 30
- (a) a special rate applies to the item; and
  - (b) the special rate is higher than the economic rate; and
  - (c) the person applies the special rate to the item for an income year; and

- (d) in a later income year, the item's market value declines at a rate equal to or greater than the special rate; and
- (e) it is a reasonable conclusion from all the circumstances of the case that the person's purpose, or 1 of the person's purposes, in wanting to change from the special rate to the economic rate or the provisional rate for the later income year is to enable the person to defer the deduction that the person is allowed for the amount of depreciation loss for the item's decline in value. 5
- Defined in this Act: amount, deduction, depreciation loss, economic rate, income year, provisional rate, special rate 10
- Compare: 2004 No 35 s EE 29

### *Improvements, items of low value, or items no longer used*

#### **EE 39 Improvements**

*When this section applies* 15

- (1) This section applies when a person makes an improvement to an item of depreciable property.

*Income year in which improvement made*

- (2) In the income year in which the person makes the improvement, the provisions of this subpart apply to the improvement, as if it were a separate item of depreciable property, in the period that— 20
- (a) starts at the start of the month in which the person first uses the improvement or has it available for use; and
- (b) ends at the end of the income year. 25

*Following income years*

- (3) For income years following the income year in which the person makes the improvement,— 30
- (a) a person who uses the diminishing value method or the straight-line method for the item that was improved may choose to apply **subsection (4) or (5)**;
- (b) a person who uses the pool method for the item that was improved must apply **subsections (6) and (7)**.

*Improvement treated as separate item*

- (4) For the purposes of **subsection (3)(a)**, a person may choose to treat the improvement as a separate item of depreciable property.

*Improvement treated as part of item*

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- (5) For the purposes of **subsection (3)(a)**, a person may choose to treat the improvement as part of the item of depreciable property that was improved. They must do 1 of the following for the first income year, after the income year in which they made the improvement, in which they use the improvement or have it available for use: 10
- (a) if they use the diminishing value method for the item, add the improvement's adjusted tax value at the start of the income year to the item's adjusted tax value at the start of the income year: 15
- (b) if they use the straight-line method for the item,—
- (i) add the improvement's adjusted tax value at the start of the income year to the item's adjusted tax value at the start of the income year; and
- (ii) add the improvement's cost to the item's cost. 20

*Pool method*

- (6) For the purposes of **subsection (3)(b)**, a person who uses the pool method for the item that was improved must treat the improvement as a separate item of depreciable property. If its cost is equal to or less than its maximum pooling value, they must include it in a pool in the first income year, after the income year in which they made the improvement, in which they use the improvement or have it available for use. 25

*Adjustment of pool's value*

- (7) When an improvement is included in a pool under **subsection (6)**,— 30
- (a) the pool's adjusted tax value is increased by the improvement's adjusted tax value on the date it is included in the pool; and

- (b) the improvement's adjusted tax value at the end of the previous income year is included in **starting adjusted tax value in section EE 21(5)**.

Defined in this Act: adjusted tax value, depreciable property, diminishing value method, improvement, income year, maximum pooling value, pool, pool method, straight-line method

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Compare: 2004 No 35 s EE 30

## EE 40 Items of low value

*When this section applies*

- (1) This section applies for an item of property that a person acquires, in an income year, when—
- (a) the total cost for the item is equal to or less than the threshold value given for the item by **subsection (2)**; and
  - (b) the person uses the item, or has the item available for use, in the income year; and
  - (c) the item would be depreciable property if the person did not deal with it under this section; and
  - (d) the item has not been and will not become part of any other property that is depreciable property; and
  - (e) the person is denied a deduction for the cost of the item if the person does not deal with the item under this section; and
  - (f) when the item is one of a group of items, acquired at the same time and from the same supplier, to which the same depreciation rate would apply if they were all treated as items of depreciable property,—
    - (i) if **subparagraph (ii)** does not apply, the total cost for all the items in the group is equal to or less than the threshold value given for the item by **subsection (2)**;
    - (ii) if the items generally constitute the person's trading stock, the total cost for all the items in the group not treated by the person solely as trading stock is equal to or less than the threshold value given for the item by **subsection (2)**.

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*Threshold value for item*

- (2) The threshold value for an item is—
- (a) \$200, if the item is acquired before 19 May 2005;
  - (b) \$500, if the item is acquired on or after 19 May 2005.

- Amount of depreciation loss*
- (3) If the person chooses to deal with the item under this section, the amount of depreciation loss that the person has for the item for the income year is the item's cost. 5
- How election made*
- (4) The person makes the election by claiming, in their return of income for the income year for which the election is made, a deduction for the amount of depreciation loss described in **subsection (3)**. 10
- Amount of depreciation recovery income*
- (5) If the person disposes in an income year of an item for which they have been allowed a deduction on a claim under **subsection (3)**, the consideration they derive from the disposal is an amount of depreciation recovery income for the income year. 15
- Change of use treated as disposal*
- (6) **Subsection (7)** applies when—
- (a) a person has been allowed a deduction on a claim under **subsection (3)** for an item; and
  - (b) at a later time, the person stops using the item, or having the item available for use, mainly in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and
  - (c) the use to which the item is put at the later time is not subject to fringe benefit tax. 20
- Disposal*
- (7) The person is treated as having disposed of the item for its market value at the later time. 25
- Increase in specified sum*
- (8) The Governor-General may make an Order in Council increasing the sum specified in **subsection (1)(a) and (f)**. 30
- Defined in this Act: acquire, amount, assessable income, business, deduction, depreciable property, depreciation loss, depreciation recovery income, dispose, fringe benefit tax, income year, property, return of income, trading stock
- Compare: 2004 No 35 s EE 31 35

**EE 41 Items no longer used***When this section applies*

- (1) This section applies when a person in an income year has an item of depreciable property that—
- (a) is no longer used; and 5
  - (b) is not a building, unless the item meets the requirements of **subsection (2)**; and
  - (c) has not been depreciated using the pool method.

*Buildings*

- (2) This section applies to a building that meets the requirements of **subsection (1)(a) and (c)** if— 10
- (a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and
  - (b) the damage occurs—
    - (i) in the 2005–06 or a subsequent income year: 15
    - (ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:
    - (iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; 20
  - (c) 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.

*Amount of depreciation loss under this section* 25

- (3) The person has an amount of depreciation loss under this section and under no other provision of this subpart.

*Circumstances*

- (4) The person has an amount of depreciation loss if— 30
- (a) they no longer use the item in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and
  - (b) neither they nor a person associated with them intends to use the item in deriving assessable income or carrying on a business for the purpose of deriving assessable 35

- (c) the costs of disposing of the item would be more than any consideration they could derive from disposing of it.

*Amount*

- (5) The amount of depreciation loss is the item's adjusted tax value at the start of the income year. 5

*Adjusted tax value at end of year*

- (6) The item's adjusted tax value at the end of the income year is zero.

Defined in this Act: adjusted tax value, amount, assessable income, associated person, business, depreciable property, depreciation loss, dispose, income year, pool method 10

Compare: 2004 No 35 s EE 32

***Transfers of depreciable property: first, certain amalgamations and, second, associated persons*** 15

**EE 42 Transfer of depreciable property in certain amalgamations on or after 14 May 2002**

*When this section applies*

- (1) This section applies when, on or after 14 May 2002, a person acquires, directly or indirectly, an item of property from an amalgamating company as part of an amalgamation that is not a resident's restricted amalgamation. 20

*Cost of item to person*

- (2) For the purposes of determining the amount of depreciation loss that the person has, the cost of the item to them is treated as 1 of the following: 25
- (a) if **section EE 59** applies for the amalgamating company and the item, the lesser of— 30
- (i) the value given by **section F0 15** (Financial arrangements: amalgamation other than a resident's restricted amalgamation); and
- (ii) the item's market value at the time at which a person was first allowed a deduction for it after the amalgamating company acquired it; or
- (b) if **section EE 59** does not apply for the amalgamating company and the item, the lesser of— 35



- (i) the value given by **section FO 15**; and
- (ii) the cost of the item to the amalgamating company.

*Exclusions*

- (3) **Subsection (2)** does not apply— 5
  - (a) if—
    - (i) the item is not depreciable intangible property; and
    - (ii) the Commissioner decides that it is appropriate to use the cost of the item to the person for the purposes of determining the amount of depreciation loss that the person has for the item; or 10
  - (b) if the cost to the person is income of the amalgamating company, other than under **section EE 50(1)**; or
  - (c) if the person acquires the item under a relationship agreement in circumstances to which **section FB 21** (Depreciable property) applies. 15

*Rate*

- (4) The annual rate that the person applies to the item must be 1 of the following, not including an item of fixed life intangible property, for which the rate is set in **section EE 32**: 20
  - (a) if the person uses the same depreciation method for the item as that used by the amalgamating company for it, the annual rate that the person applies to it must not be more than the annual rate that the amalgamating company applied to it; or 25
  - (b) if the person uses a depreciation method for the item different from the method that the amalgamating company used for it, the annual rate that the person applies to it must not be more than a rate equivalent to the rate that the amalgamated company applied to it, as determined by **schedule 10** (Straight-line equivalents of diminishing value rates of depreciation). 30

Defined in this Act: acquire, amalgamation, amalgamating company, amount, annual rate, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, property, relationship agreement, resident’s restricted amalgamation 35

Compare: 2004 No 35 s EE 33

### **EE 43 Transfer of depreciable property on or after 24 September 1997**

*When this section applies*

- (1) This section applies when, on or after 24 September 1997, a person (**person A**) acquires, directly or indirectly, an item of property from an associated person to whom 1 of the paragraphs in **subsection (2)** applies. The income year referred to in the paragraphs is the income year of the associated person. 5

*Associated person* 10

- (2) The associated person must be a person to whom 1 of the following paragraphs applies:
- (a) the associated person is allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquires it: 15
  - (b) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if **section EE 11(1)** had not applied:
  - (c) the associated person was allowed a deduction for an amount of depreciation loss for the item for the income year before the income year in which person A acquired it: 20
  - (d) the associated person has been allowed a deduction for the item under **section DZ 9** (Premium paid on land leased before 1 April 1993) for the income year in which person A acquired it: 25
  - (e) the associated person has been allowed a deduction for the item under **section DZ 9** for the income year before the income year in which person A acquired it: 30
  - (f) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction and if **section EE 11(1)** had not applied: 35
  - (g) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the year before the income year in which person A acquired it, if the associated person had incurred 40

- a cost for the item for which the person was denied any other deduction:
- (h) the associated person would have been allowed a deduction for the item under **section DZ 9** for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction: 5
  - (i) the associated person would have been allowed a deduction for the item under **section DZ 9** for the income year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction: 10
  - (j) the associated person would have been a person to whom any of **paragraphs (a) to (i)** applied, if the associated person had not made an election under **section EE 8**. 15
- Cost of item to person A*
- (3) For the purpose of determining the amount of depreciation loss that person A has, the cost of the item to person A is treated as 1 of the following: 20
    - (a) if **section EE 59** applies for the associated person and the item, the lesser of—
      - (i) the cost of the item to person A; and
      - (ii) the item's market value at the time at which a person was first allowed a deduction for it after the associated person acquired it; or 25
    - (b) if **section EE 59** does not apply for the associated person and the item, the lesser of—
      - (i) the cost of the item to person A; and
      - (ii) the cost of the item to the associated person. 30
- Exclusions*
- (4) **Subsection (3)** does not apply—
    - (a) if—
      - (i) the item is not depreciable intangible property; and
      - (ii) the Commissioner decides that it is appropriate to use the cost of the item to person A for the purposes of determining the amount of depreciation loss that person A has for the item: 35

- (b) if the cost to person A is income of the associated person, other than under **section EE 50(1)**;
- (c) if person A acquires the item under a relationship agreement to which **section FB 21** (Depreciable property) applies. 5

*Rate*

- (5) The annual rate that person A applies to the item must be 1 of the following, not including an item of fixed life intangible property, for which the rate is set in **section EE 32**:
  - (a) if person A uses the same depreciation method for the item as that used by the associated person for it, the annual rate that person A applies to it must not be more than the annual rate that the associated person applied to it: 10
  - (b) if person A uses a depreciation method for the item different from the method that the associated person used for it, the annual rate that person A applies to it must not be more than a rate equivalent to the rate that the associated person applied to it, as determined by **schedule 10** (Straight-line equivalents of diminishing value rates of depreciation). 15 20

*Link with subpart FC*

- (6) If a disposal of property to which **subpart FC** (Distribution, transmission, and gifts of property) applies is at market value, this section does not apply to the bequest of property. 25

Defined in this Act: acquire, amount, annual rate, associated person, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, property, relationship agreement

Compare: 2004 No 35 s EE 34 30

#### **EE 44 Transfer of radiocommunications licence right on or after 24 September 1997**

*When this section applies*

- (1) This section applies when, on or after 24 September 1997, the holder of management rights created under the Radiocommunications Act 1989 grants a licence right under that Act to an associated person. 35

*Exclusion*

- (2) This section does not apply when the Crown acting by and through the Secretary of Commerce is named as the manager under section 11(1) of the Radiocommunications Act 1989.

*Cost of licence right*

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- (3) For the purposes of determining the amount of depreciation loss that the associated person has, the cost of the licence right to the associated person is treated as zero.

Defined in this Act: amount, associated person, depreciation loss

Compare: 2004 No 35 s EE 35

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**EE 45 Transfer of depreciable intangible property on or after 1 July 1997**

*When this section applies*

- (1) This section applies when, on or after 1 July 1997, a person (**person A**) acquires, directly or indirectly, from an associated person an item of depreciable intangible property that—
- (a) was not depreciable property of the associated person because it was not of a kind listed in **schedule 14** (Depreciable intangible property) at the time the associated person acquired it; and
- (b) was not an item for whose cost the associated person was allowed a deduction, other than a deduction for an amount of depreciation loss, under a provision of this Act outside this subpart.

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*No amount of depreciation loss*

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- (2) Person A does not have an amount of depreciation loss for the item.

Defined in this Act: acquire, amount, associated person, deduction, depreciable intangible property, depreciable property, depreciation loss

Compare: 2004 No 35 s EE 36

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### *Disposals and similar events*

#### **EE 46 Application of sections EE 50 to EE 54**

*When sections apply*

- (1) **Sections EE 50 to EE 54** apply when a person derives consideration from the disposal of an item or from an event involving an item, if— 5
- (a) the consideration is consideration of a kind described in **section EE 47**; and
- (b) either— 10
- (i) the item is an item of a kind described in **section EE 48**; or
- (ii) the event is an event of a kind described in **section EE 49**.

*Exclusion*

- (2) **Sections EE 50 to EE 54** do not apply when a person disposes of an item of intangible property as part of an arrangement to replace it with an item of the same kind. 15

Defined in this Act: arrangement, consideration, dispose, property

Compare: 2004 No 35 s EE 37

#### **EE 47 Consideration for purposes of section EE 46** 20

*General rule: amount derived*

- (1) For the purposes of **section EE 46**, the **consideration** is the amount that the person derives, minus any amount that they incur in deriving it. Two qualifications are— 25
- (a) if the person is a registered person, “the amount that the person derives” does not include any GST charged on a taxable supply they make: 25
- (b) “any amount that they incur” does not include an amount for which the person is allowed a deduction, other than a deduction for an amount of depreciation loss, under a provision of this Act outside this subpart. 30
- This subsection is overridden by **subsections (3) to (9)**.

*Amount derived may be zero or negative*

- (2) For the purposes of **section EE 46**, an amount that a person derives as consideration may be zero or a negative amount. 35

*Other than market value*

- (3) If the person derives a consideration that is not the item's market value, the consideration for the purposes of **section EE 46** is the item's market value. Three qualifications are— 5
- (a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply;
  - (b) this subsection does not apply to a transfer under a relationship agreement; and 10
  - (c) this subsection does not apply in a case described in any of **subsections (5) to (9)**.

*Relationship with subpart FC*

- (4) **Subsection (3)** does not apply to a disposal of property to which any of **sections FC 3 and FC 4** (which relate to the distribution or transmission of property) applies. 15

*Change of use or location of use*

- (5) The consideration that a person derives from the event described in **section EE 49(2)** is the item's market value. Two qualifications are— 20
- (a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply;
  - (b) this subsection does not apply to a transfer under a relationship agreement. 25

*Loss or theft*

- (6) The consideration that a person derives from the event described in **section EE 49(3)** is the amount of insurance, indemnity, or compensation they receive for the loss or theft (**amount A**). If the person is a registered person, amount A does not include the amount, if any, of GST charged on amount A to the extent to which amount A is treated as being consideration received for a supply of services by the registered person under section 5(13) of the Goods and Services Tax Act 1985. 30  
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*Irreparable damage*

- (7) The consideration that a person derives from the event described in **section EE 49(4)** is the amount of insurance, indemnity, or compensation they receive for the irreparable damage (**amount A**). If the person is a registered person, amount A does not include the amount, if any, of GST charged on amount A to the extent to which amount A is treated as being consideration received for a supply of services by the registered person under section 5(13) of the Goods and Services Tax Act 1985. 5  
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*Repossession*

- (8) The consideration that a person derives from the event described in **section EE 49(5)** is the item's cost minus the net amount paid. Two qualifications are— 15
- (a) if the person is a registered person, the “consideration that the person derives” does not include any GST charged on a taxable supply they make:
  - (b) “net amount paid” means the amount paid by the buyer to the seller for the item under the contract minus any amount refunded by the seller to the buyer. 20

*Other items*

- (9) The consideration that a person derives from the disposal of an item along with any other item, or from the occurrence of an event involving an item that also involves other items, is the item's market value. Two qualifications are— 25
- (a) if the person makes a taxable supply, “market value” means the market value minus any GST that would be charged on the supply:
  - (b) this subsection does not apply to a transfer under a relationship agreement. 30

*Item leaving New Zealand permanently*

- (10) The consideration that a person derives from the event referred to in **section EE 49(9)** is described in **section EZ 22(1)** (Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995). 35

Defined in this Act: amount, consideration, deduction, depreciation loss, dispose, GST, GST charged, New Zealand, registered person, relationship agreement, services, taxable supply

Compare: 2004 No 35 s EE 38



**EE 48 Items for purposes of section EE 46***Items to which sections EE 50 to EE 54 apply*

- (1) For the purposes of **section EE 46**, an item of property to which **sections EE 50 to EE 54** apply is an item of depreciable property that a person owns, including— 5
- (a) an item for which the person has been allowed a deduction for an amount of depreciation loss they have had under **section EE 32**; and
  - (b) an item to which **section CZ 11** (Recovery of deductions for software acquired before 1 April 1993) applies. 10

*Exclusions*

- (2) **Sections EE 50 to EE 54** do not apply to—
- (a) an item of property that, on the date on which the disposal or the event occurs, is accounted for in a pool; or 15
  - (b) an item of petroleum-related depreciable property; or
  - (c) an item of intangible property that is excluded depreciable property, other than software; or
  - (d) a land improvement that is excluded depreciable property of a kind for which no deduction for depreciation was allowed under section 108 of the Income Tax Act 1976. 20

Defined in this Act: amount, deduction, depreciable property, depreciation loss, excluded depreciable property, own, petroleum-related depreciable property, pool, property 25

Compare: 2004 No 35 s EE 39

**EE 49 Events for purposes of section EE 46***Events to which sections EE 50 to EE 54 apply*

- (1) For the purposes of **section EE 46**, this section describes the events to which **sections EE 50 to EE 54** apply. 30

*Change of use or location of use*

- (2) The first event is the change of use, or change of location of use, of an item of property, as a result of which a person is denied a deduction for an amount of depreciation loss for the item for the next income year. The event is treated as occurring on the first day of the next income year. 35

- Loss or theft*
- (3) The second event is the loss or theft of an item of property, if the item is not recovered in the income year in which the loss or theft occurs.
- Irreparable damage* 5
- (4) The third event is the irreparable damage of an item of property.
- Repossession*
- (5) The fourth event is the seller's repossession of an item of property to which **section EE 3** applies because the buyer wholly or partly fails to pay the consideration. The event is treated as occurring on the date on which the item is repossessed. 10
- Statutory acquisition*
- (6) The fifth event is the acquisition of an item of property by a person acting under statutory authority. 15
- Cessation of ownership under section EE 4 or EE 5*
- (7) The seventh event is the cessation of ownership of a fixture or improvement—
- (a) that a lessee is treated as having under **section EE 4(2)**; or
- (b) that a person is treated as having under **section EE 5(3)**. 20
- Cessation of rights in intangible property*
- (8) The eighth event is an occurrence that has the effect that the owner of an item of intangible property is no longer able, and will never be able, to exercise the rights that constitute or are part of the item. 25
- Item leaving New Zealand permanently*
- (9) The ninth event is described in **section EZ 22(2)** (Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995). 30
- Defined in this Act: amount, deduction, depreciation loss, improvement, income year, lessee, New Zealand, own, pay, property
- Compare: 2004 No 35 s EE 40

**EE 50 Effect of disposal or event***Amount of depreciation recovery income*

- (1) For the purposes of **section EE 46**, if the consideration is more than the item's adjusted tax value on the date on which the disposal or the event occurs, the lesser of the following amounts is the amount of depreciation recovery income derived by the person for the income year in which the disposal or the event occurs: 5
- (a) the amount by which the consideration is more than the item's adjusted tax value on the date on which the disposal or the event occurs; and 10
  - (b) the total of the amounts of depreciation loss for which the person has been allowed deductions for the item including, for an item to which **section CZ 11** (Recovery of deductions for software acquired before 1 April 1993) applies, any deduction allowed for its acquisition. 15

*Amount of depreciation loss*

- (2) For the purposes of **section EE 46**, if the consideration is less than the item's adjusted tax value on the date on which the disposal or the event occurs, the person has an amount of depreciation loss, for the income year in which the disposal or the event occurs, that is the amount by which the consideration is less than the item's adjusted tax value on that date. 20

*When this section does not apply*

- (3) **Subsection (2)** does not apply if the item is a building unless— 25
- (a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and
  - (b) the damage occurs—
    - (i) in the 2005–06 or a subsequent income year: 30
    - (ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand: 35
    - (iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and

- (c) 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.

Defined in this Act: acquire, adjusted tax value, amount, consideration, deduction, depreciation loss, depreciation recovery income, dispose, income, income year

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Compare: 2004 No 35 s EE 41

### **EE 51 Amount of depreciation recovery income when item partly used for business**

*Item to which this section applies*

- (1) This section applies to an item of property that— 10
- (a) is an item to which this section applies, as described in **section EE 48**; and
- (b) is, at any time during the period the person owns it, dealt with in—
- (i) **subpart DE** (Motor vehicle expenditure); or 15
- (ii) any applicable paragraph in **section EZ 12** (Amounts of depreciation recovery income and depreciation loss for part business use in or before 1992–93 income year); or
- (iii) **section EE 52.** 20

*Depreciation recovery income*

- (2) If the consideration referred to in **section EE 46** is less than or equal to the cost of the item to the person, the amount of depreciation recovery income that the person has is an amount calculated using the formula in **subsection (3).** 25

*Formula*

- (3) The formula is—
- $$\frac{\text{all deductions}}{(\text{base value} - \text{adjusted tax value})} \times \begin{matrix} \text{amount of} \\ \text{depreciation} \\ \text{recovery income.} \end{matrix} \quad 30$$

*Definition of items in formula*

- (4) The items in the formula are defined in **subsections (5) to (8).**

*All deductions*

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- (5) **All deductions** is all amounts of depreciation loss for which the person has been allowed a deduction for the item in each of the income years in which the person has owned the item.

*Base value*

- (6) **Base value** has the applicable one of the meanings in **sections EE 58 to EE 60**.

*Adjusted tax value*

- (7) **Adjusted tax value** is the item's adjusted tax value on the date on which the disposal or the event occurs. 5

*Amount of depreciation recovery income*

- (8) **Amount of depreciation recovery income** is the amount described in **section EE 50(1)**.

Defined in this Act: adjusted tax value, amount, business, deduction, depreciation loss, depreciation recovery income, income year, own, property 10

Compare: 2004 No 35 s EE 42

**EE 52 Amount of depreciation loss when item partly used to produce income**

*When subsection (2) applies* 15

- (1) **Subsection (2)** applies when—
- (a) a person has an amount of depreciation loss for an item of depreciable property for an income year, other than an amount arising under **section EE 50(2)**; and
  - (b) at a time during the income year, the item is partly used, or partly available for use, by the person— 20
    - (i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or
    - (ii) in a way that is subject to fringe benefit tax; and 25
  - (c) at the same time, the item is partly used, or is partly available for use, by the person for a use that falls outside both **paragraph (b)(i) and (ii)**; and
  - (d) the item is not a motor vehicle to which **subpart DE** (Motor vehicle expenditure) applies. 30

*Partial use: formula*

- (2) The deduction the person is allowed for the amount of depreciation loss must not be more than the amount calculated using the formula— 35
- $$\text{depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}$$

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **depreciation loss** is the amount of depreciation loss for the income year:
  - (b) **qualifying use days** is the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within **subsection (1)(b)(i) or (ii)**: 5
  - (c) **all days** is the number of days in the income year on which the person owns the item and uses it or has it available for use. 10

*Other units of measurement*

- (4) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment. 15

*When subsection (6) applies*

- (5) **Subsection (6)** applies when—
- (a) a person has an amount of depreciation loss for an item of depreciable property arising under **section EE 50(2)**; and
  - (b) the item was, at any time during the period the person owned it, dealt with in— 20
    - (i) **subsection (2)**; or
    - (ii) any applicable paragraph in **section EZ 12** (Amounts of depreciation recovery income and depreciation loss for part business use in or before 1992–93 income year); and 25
  - (c) the item is not a motor vehicle to which **subpart DE** applies.

*Deduction for depreciation loss: formula*

- (6) The deduction the person has for the amount of depreciation loss is calculated using the formula— 30

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

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,— 35

- (a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under **section EE 50(2)**:
- (b) **all deductions** is all amounts of depreciation loss relating to the item for which the person has been allowed a deduction in each of the income years in which the person has owned the item: 5
- (c) **base value** has whichever is applicable of the meanings in **sections EE 58 to EE 60**:
- (d) **adjusted tax value at date** is the item's adjusted tax value on the date on which the disposal or event occurs. 10

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

Compare: 2004 No 35 s FB 7

### **EE 53 Amount of depreciation recovery income when lost or stolen items recovered** 15

*When this section applies*

- (1) This section applies when an item of property to which **section EE 49(3)** applies—
  - (a) is recovered in a later income year; and 20
  - (b) is still owned by the person; and
  - (c) is still used or available for use by the person.

*Person treated as acquiring item*

- (2) The person is treated as having acquired the item, on the date of recovery, for its adjusted tax value at the start of the income year in which it was lost or stolen. 25

*Person treated as deriving income: amount*

- (3) The person is treated as deriving an amount of depreciation recovery income equal to the amount of depreciation loss that the person has under **section EE 50(2)** for which they have been allowed a deduction. 30

*Person treated as deriving income: income year*

- (4) The income year in which the person derives the depreciation recovery income is—
  - (a) the income year in which the item is lost or stolen, if the person chooses that year; or 35

- (b) the income year in which the item is recovered, in any other case.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, depreciation recovery income, income year, own, property

Compare: 2004 No 35 s EE 43

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#### **EE 54 Amount of depreciation recovery income when compensation received**

*When this section applies*

- (1) This section applies when a person receives insurance, indemnity, or compensation for an item of property to which this section applies, as described in **section EE 48**, other than for an item that is lost, stolen, or irreparably damaged. 10

*Compensation subtracted*

- (2) An amount must be subtracted from the item's adjusted tax value. The amount is the amount by which the insurance, indemnity, or compensation that the person receives is more than the expenditure that the person incurs because of the event for which the person receives the insurance, indemnity, or compensation. 15

*Depreciation recovery income*

- (3) If the item's adjusted tax value becomes negative in an income year through the application of **subsection (2)**, the negative amount is an amount of depreciation recovery income derived by the person in the income year. 20

Defined in this Act: adjusted tax value, amount, depreciation recovery income, income year, property 25

Compare: 2004 No 35 s EE 44

#### ***Interpretation provisions***

#### **EE 55 Cost: GST**

*When this section applies*

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- (1) This section applies when an amount of depreciation loss or an amount of depreciation recovery income is calculated by reference to the cost of an item of depreciable property to a person.



*Cost reduced: input tax*

- (2) The item’s cost is reduced by subtracting the amount, if any, of input tax applying to the supply of the item to the person. This subsection is overridden by **subsection (3)**.

*Cost reduced: input tax*

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- (3) This subsection applies to an item that was not acquired or produced for the principal purpose of making taxable supplies but is applied in an income year principally for that purpose. The item’s cost is reduced by subtracting a proportion of the amount, if any, calculated under sections 21F and 21G, and deductible under section 20(3)(e), of the Goods and Services Tax Act 1985. The proportion is the proportion of the amount that arises from the application of the item in the income year principally for the purpose of making taxable supplies.

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*Cost increased: output tax*

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- (4) This subsection applies to an item that was acquired or produced for the principal purpose of making taxable supplies but is applied in an income year other than for that purpose. The item’s cost is increased by adding the amount, if any, of output tax charged in the income year for the supply of the item because section 21 of the Goods and Services Tax Act 1985 applies to the supply.

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Defined in this Act: amount, depreciable property, depreciation loss, depreciation recovery income, GST, income year, input tax, output tax, taxable supply

Compare: 2004 No 35 s EE 45

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*Adjusted tax value*

**EE 56 Meaning of adjusted tax value**

**Adjusted tax value** means,—

- (a) for an item of depreciable property, the amount calculated using the formula in **section EE 57**;
- (b) for a pool, the total of the adjusted tax values of the items in the pool.

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Defined in this Act: adjusted tax value, amount, depreciable property, pool

Compare: 2004 No 35 s EE 46

**EE 57 Formula***Formula*

- (1) The formula referred to in **section EE 56** is—  
base value – total deductions.

*Definition of items in formula*

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- (2) In the formula,—
- (a) **base value** has the applicable meaning in **sections EE 58, EE 59, EE 60, and EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995):
- (b) **total deductions** is defined in **section EE 61**. 10

Defined in this Act: deduction

Compare: 2004 No 35 s EE 47

**EE 58 Base value in section EE 57 when none of sections EE 59, EE 60, and EZ 23(1) applies***When this section applies*

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- (1) This section applies when none of **sections EE 59, EE 60, and EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995) applies.

*Base value*

- (2) **Base value** is the cost of the item to the person. 20

*Cost*

- (3) In this section, “cost” is qualified as follows:
- (a) expenditure is excluded from it if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under **section EE 40(2) or EE 50(2)** or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and 25
- (b) expenditure is not excluded from it if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under any other provision of this subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and 30
- (c) expenditure is excluded from it if it is expenditure for which a person has been allowed a deduction under any 35

- other subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and
- (d) expenditure—
- (i) is not excluded from it if it is described in **section EZ 23(2)(a)**; and 5
  - (ii) is excluded from it if it is described in **section EZ 23(2)(b)**.

Defined in this Act: amount, deduction, depreciation loss

Compare: 2004 No 35 s EE 48

**EE 59 Base value in section EE 57 when no previous deduction** 10

*When this section applies*

- (1) This section applies when all the following apply to the item:
- (a) it is not a building; and
  - (b) it is not an item of petroleum-related depreciable property; and 15
  - (c) it is not an item that the person—
    - (i) acquired to use or have available for use in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and 20
    - (ii) first used for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and
  - (d) it has been, since the person acquired it and first used it or had it available for use for any purpose, an item for which the person could not in any income year have been allowed a deduction for an amount of depreciation loss, whether because of the nature of the person's use of the item or the person's non-residence or for any other reason; and 25
  - (e) in relation to the 1992–93 income year,—
    - (i) it was acquired by the person after the end of that income year; or
    - (ii) it was an item described in **section EZ 23(3)** (Base value and total deductions in section EE 57: before 1 April 1995). 30 35

*Base value*

- (2) **Base value** is the item's market value at the time the person was first allowed a deduction for an amount of depreciation loss for the item.

Defined in this Act: acquire, amount, assessable income, business, deduction, depreciation loss, income year, petroleum-related depreciable property

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Compare: 2004 No 35 s EE 49

**EE 60 Base value in section EE 57 when property is petroleum-related depreciable property**

*When this section applies*

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- (1) This section applies when the item is an item of petroleum-related depreciable property to which both the following apply:

- (a) **section EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995) does not apply to it; and  
 (b) the person (**person A**) acquires it from an associated person.

15

*Base value*

- (2) **Base value** is the lesser of—
- (a) the cost of the item to person A; and  
 (b) the total of the amounts described in **subsections (3) and (4)**.

20

*First amount for purposes of subsection (2)(b)*

- (3) The amount is the cost of the item to—
- (a) the associated person, if the associated person did not acquire the item from either person A or another person associated with person A; or  
 (b) whoever owned the item, whether person A or the associated person, at the start of an unbroken chain of ownership made up of person A and 1 or more persons associated with person A.

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*Second amount for purposes of subsection (2)(b)*

- (4) The amount is all expenditure incurred for the item by person A and the associated person or associated persons before the date on which person A acquired the item.

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*Cost and expenditure*

- (5) In this section, “cost” and “expenditure” are qualified as follows:
- (a) expenditure is excluded from them if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under **section EE 40(2) or EE 50(2)** or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and 5
  - (b) expenditure is not excluded from them if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under any other provision of this subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and 10
  - (c) expenditure is excluded from them if it is expenditure for which a person is allowed a deduction under any other subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and 15
  - (d) expenditure is excluded from them if it is expenditure for which a person would have been allowed a deduction under any other subpart if this Act had applied or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994 if the Act had applied. 20

Defined in this Act: acquire, amount, associated person, deduction, depreciation loss, own, petroleum-related depreciable property

Compare: 2004 No 35 s EE 50

**EE 61 Total deductions in section EE 57***Total deductions* 30

- (1) **Total deductions** is the total, calculated as at a particular time, of—
- (a) the amount described in **subsection (2)**; and
  - (b) the amount described in **subsection (3)**.

*First amount for purposes of subsection (1)* 35

- (2) The amount is all amounts that 1 or more of the following provisions has required to be subtracted from the item’s adjusted tax value since the start of the 1993–94 income year:
- (a) **section EE 54(2)**:

- (b) section EE 44(2) of the Income Tax Act 2004:  
 (c) section EG 19(5) of the Income Tax Act 1994:  
 (d) the provision described in **section EZ 23(4)** (Base value and total deductions in section EE 57: before 1 April 1995). 5
- Second amount for purposes of subsection (1)*
- (3) The amount is all deductions for amounts of depreciation loss, calculated using the method described in **subsection (4)**, that, in the period described in **subsection (5)**,—  
 (a) the person was allowed for the item; or 10  
 (b) the person would have been allowed if they had used the item wholly in deriving assessable income or carrying on a business for the purpose of deriving assessable income.
- Method* 15
- (4) The method is—  
 (a) the depreciation method that the person used in each relevant income year; or  
 (b) the diminishing value method, if the person did not make deductions for amounts of depreciation loss for the item. 20
- Period*
- (5) The period ends with the end of the income year before the income year in which the particular time occurs, and starts with,— 25  
 (a) if **section EE 58** applies to the item, the date on which the person acquired the item; or  
 (b) if **section EE 59** applies to the item, the start of the month in which the person was first allowed a deduction for an amount of depreciation loss for the item; or 30  
 (c) if **section EE 60** applies to the item, the date on which person A or the relevant associated person acquired the item; or  
 (d) if **section EZ 23(1)** applies to the item, the end of the 1992–93 income year. 35

Defined in this Act: acquire, adjusted tax value, amount, assessable income, associated person, business, deduction, depreciation loss, depreciation method, diminishing value method, income year

Compare: 2004 No 35 s EE 51

*Definitions***EE 62 Meaning of annual rate***Meaning*

- (1) **Annual rate** means the annual depreciation rate applying to an item of depreciable property that a person owns. The rate is 1 of the rates described in **subsections (2) to (6)**. 5

*1995–96 income year or later*

- (2) The rate is the rate set by **section EE 30(2)(a) or (b)** if both the following apply to the item:
- (a) the person acquires it in their 1995–96 income year or a later income year; and 10
  - (b) the item is not dealt with in any of **subsections (3) to (6)**.

*1995–96 income year or later: international aircraft*

- (3) The rate is the rate set by **section EE 30(2)(c)** if the item is an international aircraft that the person acquires in their 1995–96 income year or a later income year. 15

*Fixed life intangible property*

- (4) The rate is the rate set by **section EE 32** if both the following apply to the item:
- (a) the item is an item of fixed life intangible property; and 20
  - (b) the item is not an item of excluded depreciable property.

*Patents, applications: complete specification before 1 April 2005*

- (5) The rate is the rate set by **section EE 33** if the item is a patent and **section EE 33** applies to the item and the person. 25

*Patent applications: lodged with complete specification on or after 1 April 2005*

- (6) The rate is the rate set by **section EE 34** if the item is a patent application and **section EE 34** applies to the item and the person. 30

*Patents: application lodged with complete specification on or after 1 April 2005*

- (7) The rate is the rate set by **section EE 35** if the item is a patent and **section EE 35** applies to the item and the person.

*Plant variety rights*

- (8) The rate is the rate set by **section EE 36** if the item is a plant variety right and **section EE 36** applies to the item and the person.

*1994–95 income year*

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- (9) The rate is the rate set by **section EZ 14** (Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year) if all the following apply to the item:
- (a) the person acquired it before the end of their 1994–95 income year; and
  - (b) the item is not an item of fixed life intangible property; and
  - (c) the item is not an item of excluded depreciable property.

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*Excluded depreciable property*

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- (10) The rate is the rate set by **section EZ 16** (Annual rate for excluded depreciable property: 1992–93 tax year) if the item is an item of excluded depreciable property.

Defined in this Act: acquire, annual rate, depreciable property, excluded depreciable property, fixed life intangible property, income year, international aircraft, own

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Compare: 2004 No 35 s EE 52

**EE 63 Meaning of depreciable intangible property***Meaning*

- (1) **Depreciable intangible property** means the property listed in **schedule 14** (Depreciable intangible property).

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*Criteria for listing in schedule 14*

- (2) For property to be listed in **schedule 14**, the criteria are as follows:
- (a) it must be intangible; and
  - (b) it must have a finite useful life that can be estimated with a reasonable degree of certainty on the date of its acquisition.

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*Schedule 14 prevails*

- (3) Property that is listed in **schedule 14** is depreciable intangible property even if the criteria are not met.

Defined in this Act: acquire, depreciable intangible property, property

Compare: 2004 No 35 s EE 53

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**EE 64 Meaning of estimated useful life***Meaning for item of depreciable property, except for copyright in sound recording*

- (1) **Estimated useful life**, for an item of depreciable property, other than a copyright in a sound recording, means the period over which the item might reasonably be expected to be useful in deriving assessable income or carrying on a business for the purpose of deriving assessable income, taking into account—
- (a) the passage of time, likely wear and tear, exhaustion, and obsolescence; and
- (b) an assumption of normal and reasonable maintenance.

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*Meaning for copyright in sound recording*

- (2) **Estimated useful life**, for a copyright in a sound recording, means the period from the time at which the copyright might reasonably be expected to be first useful in deriving assessable income until the end of the income year in which it might reasonably be expected that 90% of all the income that will be derived from it has been derived.

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Defined in this Act: assessable income, business, depreciable property, estimated useful life, income year, sound recording

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Compare: 2004 No 35 s EE 54

**EE 65 Meaning of excluded depreciable property***Meaning*

- (1) **Excluded depreciable property** means, for a person,—
- (a) depreciable property for whose purchase or construction the person entered into a binding contract before 16 December 1991; or
- (b) depreciable property that the person used or had available for use for any purpose whatever within New Zealand, other than as trading stock, before 1 April 1993; or

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- (c) depreciable property that is an intangible item that the person used or had available for use before 1 April 1993; or
- (d) depreciable property that is or has been a qualifying asset for the person; or 5
- (e) depreciable property to the extent to which it is or has been a qualifying improvement for the person.

*Exclusion*

- (2) **Excluded depreciable property** does not include property to which both the following apply: 10
  - (a) it existed at the end of the 1992–93 income year; and
  - (b) the Commissioner allowed it to be accounted for in that income year using the standard value method, the replacement value method, or the annual revaluation method. 15

Defined in this Act: Commissioner, depreciable property, excluded depreciable property, income year, New Zealand, property, qualifying improvement, qualifying asset, trading stock

Compare: 2004 No 35 s EE 55

**EE 66 Meaning of maximum pooling value** 20

*Meaning*

- (1) **Maximum pooling value**, for an item of depreciable property, means the greater of—
  - (a) \$2,000; and
  - (b) the value set in a determination issued under section 91AAL of the Tax Administration Act 1994 applying to the item. 25

*Increase in specified sum*

- (2) The Governor-General may make an Order in Council increasing the sum specified in **subsection (1)(a)**. 30

Defined in this Act: depreciable property, maximum pooling value

Compare: 2004 No 35 s EE 56

**EE 67 Meaning of poolable property***Meaning*

- (1) **Poolable property**, for an income year, means an item of depreciable property that a person owns to which **subsections (2) to (4)** apply. 5

*Not a building*

- (2) The item is not a building.

*Maximum pooling value or globo method*

- (3) The item—
- (a) is acquired in the income year for a cost equal to or less than its maximum pooling value; or 10
  - (b) was previously accounted for separately but has, as at the start of the income year, an adjusted tax value equal to or less than its maximum pooling value; or
  - (c) was accounted for at the end of the 1992–93 income year using, with the Commissioner’s permission, the globo accounting method. 15

*Wholly used or subject to fringe benefit tax*

- (4) The item—
- (a) is wholly used or available for use by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or 20
  - (b) to the extent to which it is not wholly used or available for use by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income, is used in a way that is subject to fringe benefit tax. 25

Defined in this Act: acquire, adjusted tax value, assessable income, business, Commissioner, depreciable property, fringe benefit tax, income year, maximum pooling value, own, poolable property 30

Compare: 2004 No 35 s EE 57

**EE 68 Other definitions**

In this Act,—

**depreciation method** means a method described in **section EE 12** 35

**diminishing value method** means the method of calculating an amount of depreciation loss for an item of depreciable

- property by subtracting, in each income year, a constant percentage of the item's adjusted tax value from the item's adjusted tax value
- diminishing value rate** means the rate that a person using the diminishing value method applies to an item of depreciable property 5
- economic rate** means the economic depreciation rate of an item of depreciable property, set under **sections EE 26 to EE 29**
- estimated residual market value** means, for an item of depreciable property, its market value at the end of its estimated useful life, estimated reasonably as at the date of acquisition and based on an assumption of normal and reasonable maintenance over its estimated useful life 10
- fixed life intangible property** means property that— 15
- (a) is depreciable intangible property; and
  - (b) has a legal life that could reasonably be expected, on the date of the property's acquisition, to be the same length as the property's remaining estimated useful life
- improvement** means an alteration, extension, or repair of an item of depreciable property that increases its capital value 20
- international aircraft** means a jet-engined aircraft that a person uses in an income year mainly in regular commercial service to transport passengers between New Zealand and any other place
- legal life** means the number of years, months, and days for which an owner's interest in an item of intangible property exists under the contract or statute that creates the owner's interest, assuming that the owner exercises any rights of renewal or extension that are either essentially unconditional or conditional on the payment of predetermined fees 25 30
- petroleum-related depreciable property** means depreciable property that is— 35
- (a) petroleum drilling rigs; or
  - (b) support vessels for offshore petroleum drilling rigs; or
  - (c) support vessels for offshore petroleum production platforms
- pool** means items of depreciable property that a person chooses under **section EE 12** to depreciate as a pool using the pool method

<b>pool method</b> means the method of calculating an amount of depreciation loss set out in <b>section EE 21</b>	
<b>provisional rate</b> means a provisional rate as described in <b>section EE 37</b>	
<b>special rate</b> means a special rate as described in <b>section EE 37</b>	5
<b>straight-line method</b> means the method of calculating an amount of depreciation loss for an item of depreciable property by subtracting, in each income year, a constant percentage of the item's cost, to its owner, from the item's adjusted tax value	10
<b>straight-line rate</b> means the rate that a person using the straight-line method applies to an item of depreciable property.	
Defined in this Act: acquire, adjusted tax value, amount, depreciable intangible property, depreciable property, depreciation loss, depreciation method, diminishing value method, diminishing value rate, economic rate, estimated residual market value, estimated useful life, fixed life intangible property, improvement, income year, international aircraft, legal life, New Zealand, own, pay, petroleum, petroleum-related depreciable property, pool, pool method, property, provisional rate, special rate, straight-line method, straight-line rate	15 20
Compare: 2004 No 35 s EE 58	

## Subpart EF—Taxes and levies

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EF 1	Fringe benefit tax	
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EF 3	ACC levies and premiums	
EF 4	Use of money interest payable by Commissioner	
EF 5	Use of money interest payable by person	
EF 6	Different tax years	
<hr/>		
<b>EF 1</b>	<b>Fringe benefit tax</b>	30
	Fringe benefit tax for which a deduction is allowed may be deducted only in the income year in which the relevant fringe benefits are provided or granted, whether or not the tax actually becomes due and payable in the income year.	
	Defined in this Act: deduction, fringe benefit tax, income year, pay	35
	Compare: 2004 No 35 s EF 1	
<b>EF 2</b>	<b>ESCT</b>	
	An amount of ESCT for which a deduction is allowed may be deducted only in the income year in which the employer's	

superannuation contributions to which the tax relates are made, whether or not the tax actually becomes due and payable in the income year.

Defined in this Act: deduction, employer's superannuation contribution, ESCT, income year, pay

5

Compare: 2004 No 35 s EF 2

### EF 3 ACC levies and premiums

#### *Timing of deduction*

- (1) A deduction that an employer or self-employed person is allowed for an ACC levy or premium is allocated to the income year in which it becomes due and payable, except as provided in **subsection (2) or (3)**. 10

#### *Earlier income year*

- (2) If a deduction for an ACC levy or premium has been allocated to an income year earlier than the income year in which the levy or premium becomes due and payable and, because of the time bar or for another reason, the Commissioner cannot lawfully amend the assessment for the income year, the deduction is allocated to the income year in which it was allowed. 15  
20

#### *Balance dates between 1 October and 6 April*

- (3) If a person's income year ends on a balance date falling between 1 October and 6 April (both dates inclusive), an ACC levy or premium that is due on a date in **schedule 3, part A, column H** (Payment of provisional tax and terminal tax) is treated as if it were due and payable on the relevant date in **schedule 3, part A, column G** for the person's corresponding income year. 25

#### *References to dates in schedule 3*

- (4) For the purposes of **subsection (3)**, references to the date in **schedule 3, part A, columns G and H** (which refer to months only and not days) are references to the day in the relevant month that is fixed by the following: 30
- (a) the definition of **instalment date** in **section YA 1** (Definitions); and 35

- (b) **sections RA 3** (Terminal tax obligations), **RC 1(2)**, and **RC 20 to RC 24** (which relate to provisional tax instalments in transitional years).

*Meaning of ACC levy or premium*

- (5) In this section, **ACC levy or premium** means any of the following levies, premiums, or penalties: 5
- (a) the following levy or premium:
- (i) a levy to fund the Employers' Account under section 168 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or 10
- (ii) an employer's premium to fund the Employers' Account under section 281B of the Accident Insurance Act 1998:
- (b) a Residual Claims levy under—
- (i) section 193 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or 15
- (ii) section 304 of the Accident Insurance Act 1998:
- (c) the following levy or premium:
- (i) a levy to fund the Self-employed Work Account under section 202 or 211 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or 20
- (ii) a premium to fund the Self-Employed Work Account under section 300 of the Accident Insurance Act 1998:
- (d) the following levy or premium: 25
- (i) a levy to fund the Earners' Account under section 219(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
- (ii) a premium to fund the Earners' Account under section 283(1) of the Accident Insurance Act 1998: 30
- (e) the following levy:
- (i) an Earners' Account Residual levy under section 219(2) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or 35
- (ii) an Earners' Account levy under section 283(2) of the Accident Insurance Act 1998:
- (f) a levy to meet the costs of the Regulator under section 236 of the Accident Insurance Act 1998:
- (g) a contribution to the Insolvent Insurers Fund under section 246 or 247 of the Accident Insurance Act 1998: 40

- (h) a levy or penalty payable to the Non-Compliers Fund under section 263 of the Accident Insurance Act 1998:
- (i) a base premium under sections 466 to 470 of the Accident Insurance Act 1998.

Defined in this Act: ACC levy or premium, Commissioner, deduction, employer, income year, pay, time bar

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Compare: 2004 No 35 s EF 3

#### EF 4 Use of money interest payable by Commissioner

##### *Timing of income*

- (1) Income that is interest payable by the Commissioner to a person under Part 7 of the Tax Administration Act 1994 is allocated to the income year in which the Commissioner pays the interest. This subsection is overridden by **subsections (2) and (3)**. 10

##### *Interest paid in same year as liability arises*

15

- (2) If the Commissioner pays the interest in the same tax year as that to which the original assessment relates, the income that is interest is allocated to the following income year.

##### *Effect of amended assessment*

- (3) If the Commissioner amends the person's assessment, income that is interest payable, or overpaid interest repayable, by the Commissioner as a result of the amended assessment is allocated to the income year following the income year in which the Commissioner issues the notice of amended assessment. 20

##### *Amended assessment in same year*

25

- (4) For the purposes of **subsection (3)**, if the Commissioner amends the person's assessment more than once in a tax year, only the last amended assessment is taken into account.

Defined in this Act: assessment, Commissioner, income, income year, interest, notice, pay, tax year

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Compare: 2004 No 35 s EF 4

#### EF 5 Use of money interest payable by person

##### *Timing of deduction*

- (1) A deduction for interest payable by a person to the Commissioner under Part 7 of the Tax Administration Act 1994 is 35



allocated to the income year in which the person's original assessment is made. This subsection is overridden by **subsection (2)**.

*Assessment made in same year as liability arises*

- (2) If the original assessment is made in the same tax year as that to which the income tax liability relates, the deduction is allocated to the following income year. 5

*Effect of amended assessment*

- (3) If the Commissioner amends the person's assessment, a deduction for interest payable, or overpaid interest repayable, to the Commissioner as a result of the amended assessment is allocated to the income year following the income year in which the Commissioner issues the notice of amended assessment. This subsection does not apply in the circumstances described in **subsection (4)**. 10  
15

*Terminal amended assessment*

- (4) If the Commissioner amends the person's assessment, a deduction for interest payable, or overpaid interest repayable, to the Commissioner as a result of the amended assessment is allocated to the income year in which the Commissioner issues the notice of amended assessment, in the following circumstances: 20
- (a) the person dies, goes into liquidation, or otherwise ceases to exist before the income year following that in which the Commissioner issues the notice of amended assessment; and 25
  - (b) the person would have been allowed a deduction for the interest payable or repayable if it had been incurred in the income year in which the Commissioner issues the notice of amended assessment; and 30
  - (c) the person's executor or other representative asks the Commissioner.

*Amended assessment in same year*

- (5) For the purposes of **subsection (4)**, if the Commissioner amends the person's assessment more than once in a tax year, only the last amended assessment is taken into account.

Defined in this Act: assessment, Commissioner, deduction, income tax liability, interest, income year, liquidation, notice, pay, tax year

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Compare: 2004 No 35 s EF 5

**EF 6 Different tax years**

**Sections EF 4 and EF 5** apply even though the income tax liability giving rise to the obligation to pay interest, and the period for the interest payment, may fall wholly or partly in a different tax year from that in which the obligation to pay interest arises under those sections.

10

Defined in this Act: income tax liability, interest, pay, tax year

Compare: 2004 No 35 s EF 6

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## Subpart EG—Recognition of accounting treatment

**Contents**

EG 1 Election to use balance date used in foreign country

EG 2 Adjustment for changes to accounting practice

**EG 1 Election to use balance date used in foreign country**

20

*When this section applies*

- (1) This section applies when—

(a) a person has foreign source income or foreign expenditure that is taken into account in determining the income tax, not merely the withholding tax, payable by them in a foreign country or territory; and

25

(b) the foreign source income or foreign expenditure has been included in 1 of their income tax returns in the country or territory; and

(c) the annual income tax balance date that is relevant for them for the income tax return in the country or territory falls in a period that is an income year for them; and

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(d) if the person did not make an election under this section,—

(i) the foreign source income would be allocated to their previous income year; or

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- (ii) the foreign expenditure would be a deduction allocated to the previous income year if the only income of the person were foreign source income to which this section applies.

*Election to allocate*

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- (2) If the person has not already included the foreign source income or foreign expenditure in their return of income for the previous tax year, they may choose to allocate the foreign source income or the foreign expenditure to the income year referred to in **subsection (1)(c)**.

10

*How election made*

- (3) The person makes the election by including the foreign source income or foreign expenditure in their return of income for the income year referred to in **subsection (1)(c)**.

*What election applies to*

15

- (4) The election applies to all the person's foreign source income and foreign expenditure to which **subsection (1)** applies, except for—
- (a) income or expenditure under the financial arrangements rules, unless the Commissioner agrees in writing; or
  - (b) dividends, unless the Commissioner agrees in writing and the person is not a company; or
  - (c) attributed CFC income; or
  - (d) FIF income or income derived from an attributing interest; or
  - (e) in the case of foreign expenditure, foreign expenditure that would be allowed as a deduction if the only income of the person were income to which **paragraphs (a) to (d)** apply.

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*Timing of income*

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- (5) The foreign source income and foreign expenditure to which the election applies is allocated to the income year referred to in **subsection (1)(c)**.

*Election treated as continuing*

- (6) A person who has made an election is treated as making the same election for all later income years, unless—

35

- (a) the Commissioner agrees in writing to allow the person to revoke the election; or
- (b) the person's net income for the relevant income year would be more than \$100,000 if their only income in the income year were foreign source income. 5
- Net income of more than \$100,000*
- (7) If **subsection (6)(b)** applies,—
- (a) foreign source income and foreign expenditure is allocated to the income year referred to in **subsection (1)(c)** only if it was derived or incurred in that year; and 10
- (b) foreign source income and foreign expenditure to which the election would have applied if **subsection (6)(b)** had not existed is allocated to the previous income year; and
- (c) if necessary, the previous tax year's return is amended.
- Factors considered* 15
- (8) In deciding whether to agree to an election applying to income or expenditure under the financial arrangements rules or dividends, the Commissioner must consider—
- (a) whether the person is likely to incur significant compliance costs if the Commissioner does not agree to the election; and 20
- (b) the risk to the revenue if the Commissioner agrees to the election; and
- (c) any other factors the Commissioner considers relevant.
- Person ceasing to be, or becoming, resident* 25
- (9) If the person ceases to be, or becomes, resident in New Zealand, this section applies in the same way as for other persons except that—
- (a) it does not apply to income or expenditure that is allocated, other than under this section, to a period when the person is not resident in New Zealand; and 30
- (b) if it allocates foreign source income derived or foreign expenditure incurred while the person is resident in New Zealand to a period after the person has ceased to be resident in New Zealand,— 35
- (i) the foreign source income is assessable income in the income year in which the foreign source income is allocated under this section, despite **section BD 1(5)(c)** (Income, exempt income,

- excluded income, non-residents' foreign-sourced income, and assessable income); and
- (ii) the foreign expenditure is allowed as a deduction in the income year to which the foreign expenditure is allocated under this section. 5

*Some definitions*

- (10) In this section,—
- annual income tax balance date** includes a date that is substantially equivalent to an annual income tax balance date
- foreign expenditure** means expenditure that is incurred in deriving foreign source income 10
- foreign source income** means income that is not derived from New Zealand and that is not exempt income.
- Defined in this Act: annual income tax balance date, assessable income, attributed CFC income, attributing interest, Commissioner, company, deduction, derived from New Zealand, dividend, exempt income, FIF income, financial arrangements rules, foreign expenditure, foreign source income, income, income year, net income, pay, resident in New Zealand, return of income, tax year 15

Compare: 2004 No 35 s EG 1

**EG 2 Adjustment for changes to accounting practice** 20

*When this section applies*

- (1) This section applies in an income year (the **year of change**) when a person changes from—
- (a) a cash accounting method to an accrual accounting method of calculating their income tax liability; or 25
- (b) an accrual accounting method to a cash accounting method of calculating their income tax liability.

*From cash to accrual accounting method*

- (2) If **subsection (1)(a)** applies,—
- (a) an amount owed to the person on the last day of the income year before the year of change is income of the person in the year of change; and 30
- (b) an amount owed by the person on the last day of the income year before the year of change is allowed as a deduction in the year of change. 35

*From accrual to cash accounting method*

- (3) If **subsection (1)(b)** applies,—

- (a) an amount equal to the total of all amounts owing by the person in the year of change that have been allowed as a deduction in previous income years is income of the person in the year of change; and
- (b) an amount equal to the total of all amounts owing to the person in the year of change that have been treated as income of the person in previous income years is allowed as a deduction in the year of change. 5

*Some definitions*

- (4) In this section,— 10

**accrual accounting method** means a method of accounting that is regarded as accrual accounting under generally accepted accounting practice

**cash accounting method** means a method of accounting by which the income tax liability of a person is calculated by reference to cash receipts or outgoings. 15

Defined in this Act: accrual accounting method, amount, cash accounting method, deduction, generally accepted accounting practice, income, income tax liability, income year

Compare: 2004 No 35 s EG 2 20

## Subpart EH—Income equalisation schemes

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### ***Introductory provisions***

#### **EH 1 Income equalisation schemes**

##### *Description*

- (1) An income equalisation scheme allows a person to reduce their income for a tax year by making a deposit with the Commissioner. 35

*Three schemes*

- (2) The 3 income equalisation schemes are—
- (a) the **main income equalisation scheme**, described in **sections EH 3 to EH 36:**
  - (b) the **adverse event income equalisation scheme**, described in **sections EH 37 to EH 62:** 5
  - (c) the **thinning operations income equalisation scheme**, described in **sections EH 63 to EH 79.**

*Meaning of terms*

- (3) Terms used in the 3 schemes are defined as follows: 10
- (a) terms used specifically in the main income equalisation scheme are defined in **sections EH 34 to EH 36:**
  - (b) terms used specifically in the adverse event income equalisation scheme are defined in **sections EH 61 and EH 62:** 15
  - (c) terms used specifically in the thinning operations income equalisation scheme are defined in **sections EH 78 and EH 79.**

Defined in this Act: adverse event income equalisation scheme, Commissioner, deposit, income, main income equalisation scheme, person, tax year, thinning operations income equalisation scheme 20

Compare: 2004 No 35 s EH 1

**EH 2 Income Equalisation Reserve Account***Account*

- (1) There is a Crown Bank Account called the Income Equalisation Reserve Account that is operated under the Public Finance Act 1989. 25

*Deposits paid into account*

- (2) Every deposit a person makes with the Commissioner under a scheme referred to in **section EH 1(2)**— 30
- (a) is public money; and
  - (b) must be paid into the Income Equalisation Reserve Account.

Defined in this Act: Commissioner, deposit, person

Compare: 2004 No 35 s EH 2 35

## *Main income equalisation scheme*

### *Application*

#### **EH 3 Persons to whom main income equalisation scheme applies**

*Meaning of farmer, fisher, and forester for main income equalisation scheme* 5

- (1) The main income equalisation scheme applies to—
- (a) a **farmer**, which means a person carrying on a farming or agricultural business on land in New Zealand; or
  - (b) a **fisher**, which means a person carrying on a fishing business; or 10
  - (c) a **forester**, which means a person who—
    - (i) derives income from forestry; and
    - (ii) is not a company, a public authority, a Maori authority, or an unincorporated body. 15

*Meaning of person for main income equalisation scheme*

- (2) In the main income equalisation scheme, **person** means a farmer, fisher, or forester.

Defined in this Act: business, company, farmer, fisher, fishing business, forester, income from forestry, main income equalisation scheme, Maori authority, New Zealand, person, public authority 20

Compare: 2004 No 35 s EH 3

### *Deposits and accounts*

#### **EH 4 Main deposit**

*Deposit for business or forestry* 25

- (1) A person may make a payment to the Commissioner for entry in their main income equalisation account for a tax year as follows:
- (a) a farmer may make a payment for the farmer's farming or agricultural business: 30
  - (b) a fisher may make a payment for the fisher's fishing business:
  - (c) a forester may make a payment for the forester's income from forestry.

*Upper limit of deposit*

- (2) A person must not make, for a tax year, deposits that in total are more than their main maximum deposit for the tax year.

*Lower limit of deposit*

- (3) A person must not make, for a tax year, a deposit less than the lesser of— 5
- (a) \$200; and
  - (b) the difference between—
    - (i) the total of the deposits the person has previously made for the tax year; and 10
    - (ii) the person's main maximum deposit for the tax year.

*Time of making deposit*

- (4) A person makes a deposit for a tax year by—
- (a) making the deposit during the tax year; or 15
  - (b) doing both the following:
    - (i) making the deposit during the specified period for the tax year; and
    - (ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year; or 20
  - (c) doing both the following:
    - (i) making the deposit within a time that is after the end of the specified period for the tax year but that is allowed by the Commissioner in a case or class of cases; and 25
    - (ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year.

*Limit on making deposit*

- (5) If a refund has been made to a person for a tax year under **section EH 13 or EH 15**, the person may later make a deposit for that tax year only if the Commissioner is satisfied, before the deposit is made, that all the refund has been used to develop or expand a farmer's business, if the person is a farmer, or a fishing business, if the person is a fisher, or the means by 30

which a forester derives income from forestry, if the person is a forester.

Defined in this Act: business, Commissioner, deposit, farmer, fisher, fishing business, forester, income from forestry, main deposit, main income equalisation account, main maximum deposit, notice, pay, person, specified period, tax year

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Compare: 2004 No 35 s EH 4

## **EH 5 Main income equalisation account**

### *Person's account*

- (1) The Commissioner must keep a main income equalisation account in the name of every person who makes a deposit with the Commissioner. 10

### *Deposits in account*

- (2) Every deposit a person makes with the Commissioner must be entered in the person's main income equalisation account.

### *Amounts in accounts*

15

- (3) The only amounts that may be entered in a person's main income equalisation account are—
- (a) deposits made by the person with the Commissioner; and
  - (b) interest paid under **section EH 6**. 20

### *Amounts not available to others*

- (4) Despite **section FC 2** (Transfer at market value), amounts entered in a person's main income equalisation account must not, while they are in the account,—
- (a) be assigned or charged in any way; or 25
  - (b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation; or
  - (c) be assets for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation; or 30
  - (d) be assets for the payment of the debts or liabilities of a dead person's estate.

*Amounts available only for refunds*

- (5) The only payments that may be made from a person's main income equalisation account are refunds under any of **sections EH 8, EH 10, EH 13, EH 15, EH 17, EH 19, EH 23, and EH 25.**

Defined in this Act: amount, Commissioner, deposit, interest, liquidation, main income equalisation account, pay, person

5

Compare: 2004 No 35 s EH 5

*Interest***EH 6 Interest on deposits in main income equalisation account**

10

*No interest payable*

- (1) No interest is payable on a deposit in a main income equalisation account that is refunded within 1 year of the date of deposit.

*Interest payable*

15

- (2) Interest is payable on every other deposit in a main income equalisation account.

*Period*

- (3) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

20

*Date to which accrues*

- (4) Interest on a deposit accrues until the earlier of—  
 (a) 31 March in each year; and  
 (b) the date the deposit is refunded.

25

*Added to deposit*

- (5) Accrued interest on a deposit is added to the deposit.

*Rate*

- (6) The interest rate is 3% a year.

Defined in this Act: deposit, interest, main income equalisation account, pay, year

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Compare: 2004 No 35 s EH 6

*Deduction***EH 7 Deduction of deposit***When this section applies*

- (1) This section applies when a person is allowed a deduction under **section DQ 1** (Main income equalisation scheme). 5

*Amount of deduction*

- (2) The amount of the deduction is the lesser of—  
 (a) the total of the person's deposits for the tax year; and  
 (b) their main maximum deposit for the tax year.

*Timing of deduction*

- (3) The person is allowed the deduction in the tax year. 10

Defined in this Act: amount, deduction, deposit, main maximum deposit, person, tax year

Compare: 2004 No 35 s EH 7

*Refunds: automatic* 15**EH 8 Refund of excess deposit***When this section applies*

- (1) This section applies when a person's deposits for a tax year are more than their main maximum deposit for the tax year.

*Refund* 20

- (2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: Commissioner, date the deposit ends, deposit, main maximum deposit, person, tax year

Compare: 2004 No 35 s EH 8 25

**EH 9 Income does not include excess deposit**

A refund under **section EH 8** is excluded income under **section CX 50** (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 9 30

**EH 10 Refund at end of 5 years***When this section applies*

- (1) This section applies when a deposit is in a person's main income equalisation account at the end of 5 years after the end of the tax year for which the deposit was made. 5

*Refund*

- (2) The Commissioner must refund the deposit to the person. **Section EH 28** overrides this subsection.

Defined in this Act: Commissioner, deposit, main income equalisation account, person, tax year, year 10

Compare: 2004 No 35 s EH 10

**EH 11 Income when refund given at end of 5 years**

A refund under **section EH 10** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the refund is given. 15

Defined in this Act: income, person, tax year

Compare: 2004 No 35 s EH 11

*Refunds: on application***EH 12 Application for refund by person, trustee of estate, Official Assignee, or liquidator** 20*Who may apply*

- (1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's main income equalisation account:
- (a) the person may apply under **section EH 13, EH 15, or EH 17:** 25
  - (b) the trustee of the person's estate may apply under **section EH 19:**
  - (c) the Official Assignee having charge of the person's estate may apply under **section EH 23:**
  - (d) the liquidator appointed for the person may apply under **section EH 25.** 30

*Application*

- (2) An application for a refund must—
- (a) be in writing; and
  - (b) state the grounds on which it is made; and 35



- (c) state the amount applied for.

Defined in this Act: amount, Commissioner, liquidation, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 12

### **EH 13 Refund on request** 5

*When this section applies*

- (1) This section applies when a person wants a refund of some or all of the amount in their main income equalisation account, and none of **sections EH 8, EH 10, EH 15, EH 17, EH 19, EH 23, and EH 25** applies. 10

*Refund*

- (2) The Commissioner must refund to the person the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's main income equalisation account for at least 1 year before the date the deposit ends. **Section EH 28** overrides this subsection. 15

Defined in this Act: amount, Commissioner, date the deposit ends, deposit, main income equalisation account, person, year

Compare: 2004 No 35 s EH 13

### **EH 14 Income when refund given on request** 20

*Year of income*

- (1) A refund under **section EH 13** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund. 25

*When year of income may be different*

- (2) However, **subsection (3)** applies instead of **subsection (1)** if— 30
- (a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and
  - (b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates.

*Different year of income*

- (3) The refund is income, under **section CB 26**, in the tax year to which the specified period or the longer period relates.

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 14

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**EH 15 Refund for development or recovery***Refund for development: application of subsection (2)*

- (1) **Subsection (2)** applies when a person wants a refund of some or all of the amount in their main income equalisation account for either or both of the following purposes: 10
- (a) to enable them to undertake, immediately after the refund is given, planned development or maintenance work for their farming or agricultural business, fishing business, or forestry operation:
- (b) to enable them to buy, immediately after the refund is given, livestock for use in their farming business, other than livestock replacing livestock disposed of or lost as a result of a self-assessed adverse event. 15

*Refund*

- (2) If the Commissioner is satisfied that the person will use the refund for either or both of the purposes, the Commissioner must refund to them the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in their main income equalisation account for at least 6 months before the date the deposit ends. **Section EH 28** overrides this subsection. 20 25

*Refund for recovery: application of subsection (4)*

- (3) **Subsection (4)** applies when a person wants a refund of some or all of the amount in their main income equalisation account for 1 or more of the following purposes: 30
- (a) to enable them to buy, immediately after the refund is given, livestock for use in their farming business to replace livestock disposed of or lost as a result of a self-assessed adverse event:
- (b) to avoid them suffering serious hardship: 35
- (c) to do anything else that the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

*Refund*

- (4) If the Commissioner is satisfied that the person will use the refund for 1 or more of the purposes, the Commissioner must refund to them the amount applied for, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection. 5

Defined in this Act: amount, business, Commissioner, date the deposit ends, deposit, fishing business, main income equalisation account, person, self-assessed adverse event

Compare: 2004 No 35 s EH 15 10

### **EH 16 Income when refund given for development or recovery**

*Year of income*

- (1) A refund under **section EH 15** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund. 15

*When year of income may be different*

- (2) However, **subsection (3)** applies instead of **subsection (1)** if— 20
- (a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and
  - (b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates. 25

*Different year of income*

- (3) The refund is income, under **section CB 26**, in the tax year to which the specified period or the longer period relates. 30

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 16

### **EH 17 Refund on retirement**

*When this section applies*

- (1) This section applies when a farmer or a fisher— 35
- (a) has a main income equalisation account; and
  - (b) is neither a company nor a trustee; and

- (c) retires from the farming or agricultural business or the fishing business.

*Refund*

- (2) The Commissioner must refund to the person the amount that, on the date the deposit ends, is in their main income equalisation account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection. 5

Defined in this Act: amount, business, Commissioner, date the deposit ends, company, farmer, fisher, fishing business, main income equalisation account, person, trustee 10

Compare: 2004 No 35 s EH 17

**EH 18 Income when refund given on retirement, and election to allocate amount to earlier year**

*Year of income*

- (1) A refund under **section EH 17** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which they retire. 15

*When year of income may be different*

- (2) However, **subsection (3)** applies instead of **subsection (1)** if— 20
- (a) the refund includes a deposit made for a tax year earlier than the tax year in which the person retires; and
- (b) the person chooses to allocate some or all of the deposit to the earlier tax year.

*Different year of income*

- (3) The amount allocated by the person to the earlier tax year is income, under **section CB 26**, derived by them in the tax year. 25

*How election made*

- (4) A person makes an election under this section by giving the Commissioner notice within 1 of the following times: 30
- (a) the time within which the person is required to file a return of income for the tax year in which they retire:
- (b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return of income, tax year 35

Compare: 2004 No 35 s EH 18

**EH 19 Refund on death***When this section applies*

- (1) This section applies when a person—
- (a) has a main income equalisation account; and
  - (b) dies. 5

*Refund*

- (2) Despite **section FC 2** (Transfer at market value), the Commissioner must refund to the trustee of the person's estate the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection. 10

Defined in this Act: amount, Commissioner, date the deposit ends, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 19 15

**EH 20 Income when refund given on death***Year of income*

- (1) A refund under **section EH 19** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before their death. 20

*When year of income may be different*

- (2) However, **section EH 21 or EH 22** applies instead of **subsection (1)** if the circumstances described in **section EH 21(1) or EH 22(1)** apply in the person's case.

Defined in this Act: income, person 25

Compare: 2004 No 35 s EH 20

**EH 21 Income when refund given on death, and election to allocate amount to earlier year***When this section applies*

- (1) This section applies when— 30
- (a) a refund under **section EH 19** includes a deposit made for a tax year earlier than the tax year in which the person dies; and
  - (b) the trustee of the person's estate chooses to allocate some or all of the deposit to the earlier tax year. 35

*Different year of income*

- (2) The amount allocated by the trustee to the earlier tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.

*How election made*

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- (3) A trustee makes an election under this section by giving the Commissioner notice within 1 of the following times:
- (a) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death: 10
  - (b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return of income, tax year, trustee

Compare: 2004 No 35 s EH 21

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## **EH 22 Income when refund given on death, and election to allocate amount to later year or years**

*When this section applies*

- (1) This section applies when—
- (a) the trustee of the person's estate does not make an election under **section EH 21**; and 20
  - (b) the trustee chooses to allocate some or all of the amount that is in the person's main income equalisation account on the date of the person's death to a tax year or years after that date. 25

*Tax year or years referred to in subsection (1)(b)*

- (2) The tax year or years referred to in **subsection (1)(b)** must be within the earlier of—
- (a) the 3 years after the date of the person's death; and
  - (b) the 5 years after the end of the tax year for which a deposit or a part of a deposit was made, if the amount that the trustee allocates to a later tax year or years includes the deposit or part of it. 30

*Allocated amount remains in account*

- (3) An amount allocated by the trustee to a later tax year remains in the person's main income equalisation account until— 35

- (a) it is refunded to the trustee in the tax year to which it is allocated; or
  - (b) it is not refunded because of the application of **section EH 28**.
- Different year of income* 5
- (4) An amount allocated by the trustee to a later tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.
- How election made*
- (5) A trustee makes an election under this section by a notice that— 10
- (a) specifies—
    - (i) each amount allocated to a later tax year; and
    - (ii) the tax year to which each amount is allocated; and 15
  - (b) is given to the Commissioner within 1 of the following times:
    - (i) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death: 20
    - (ii) a further time allowed by the Commissioner in a case or class of cases.
- Defined in this Act: amount, Commissioner, deposit, income, main income equalisation account, notice, person, return of income, tax year, trustee, year
- Compare: 2004 No 35 s EH 22 25

## **EH 23 Refund on bankruptcy**

### *When this section applies*

- (1) This section applies when a person—
- (a) has a main income equalisation account; and
  - (b) is bankrupt. 30

### *Refund*

- (2) The Commissioner must refund to the Official Assignee having charge of the person's estate the amount that, on the date the deposit ends, is in the person's main income equalisation

account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, main income equalisation account, person

Compare: 2004 No 35 s EH 23

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#### **EH 24 Income when refund given on bankruptcy**

A refund under **section EH 23** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the bankruptcy starts.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 24

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#### **EH 25 Refund on liquidation**

*When this section applies*

(1) This section applies when a person—

- (a) has a main income equalisation account; and
- (b) is put into liquidation.

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*Refund*

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection.

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Defined in this Act: amount, Commissioner, date the deposit ends, liquidation, main income equalisation account, person

Compare: 2004 No 35 s EH 25

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#### **EH 26 Income when refund given on liquidation**

A refund under **section EH 25** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 26

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*Refunds: general provisions***EH 27 Amendment of assessment**

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to **section EH 18 or EH 21 or EH 22.**

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Defined in this Act: assessment, Commissioner, time bar

Compare: 2004 No 35 s EH 27

**EH 28 Minimum refund**

The Commissioner must not give a refund under any of **sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25** that is less than the lesser of—

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- (a) \$200; and
- (b) the balance in the person's main income equalisation account on the date the deposit ends.

Defined in this Act: Commissioner, date the deposit ends, main income equalisation account, person

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Compare: 2004 No 35 s EH 28

**EH 29 Deposits from which refunds come**

Each refund a person is given is treated as coming from the total amount of their deposits in the order in which the person made the deposits.

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Defined in this Act: amount, deposit, person

Compare: 2004 No 35 s EH 29

*Tax credit***EH 30 When person entitled to tax credit**

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A person who is given a refund is entitled to a tax credit if—

- (a) the refund is of the kind and amount described in **section EH 31**; and
- (b) the person is of the kind described in **section EH 32.**

Defined in this Act: amount, income tax, person

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Compare: 2004 No 35 s EH 30

**EH 31 Kind and amount of refund that entitles person to tax credit***Kind*

- (1) A refund that entitles a person to a tax credit is 1 to which both the following apply: 5
- (a) the refund is given under any of **sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25**; and
  - (b) the refund does not come from a deposit made for the tax year in which the refund is given; if the refund comes in part from a deposit made for the tax year in which the refund is given and in part from a deposit made for some other tax year, the refund that entitles the person to a tax credit is the part coming from the deposit for some other tax year. 10

*Amount*

- (2) Once a refund qualifies under **subsection (1)** as a refund that entitles a person to a tax credit, the amount of the refund is the lesser of the following: 15
- (a) the amount of the refund given to the person under any of **sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25**; and 20
  - (b) the total of the amounts by which the person's income was reduced in 1 or more previous tax years by subtracting the deposit or deposits or parts of deposits from which the refund comes. 25

Defined in this Act: amount, deposit, income, income tax, person, tax credit, tax year

Compare: 2004 No 35 s EH 31

**EH 32 Kind of person entitled to tax credit**

- A person in the following circumstances is entitled to a tax credit: 30
- (a) the person's income in the tax year in question includes a refund of the kind described in **section EH 31(1)** and of the amount described in **section EH 31(2)**; and
  - (b) because of the refund, the person's income tax liability for the tax year is increased; and 35
  - (c) the amount by which the person's income tax liability for the tax year is increased because of the refund (the **extra tax**) is more than the total of the amounts by

which the person's income tax liability for a previous tax year or years was decreased because of the subtraction of the deposit or deposits or parts of deposits from which the refund comes (the **tax saving**).

Defined in this Act: amount, deposit, income, income tax, income tax liability, person, tax credit, tax year 5

Compare: 2004 No 35 s EH 32

### **EH 33 Amount of tax credit**

The amount of a tax credit to which a person is entitled under **section EH 30** is the amount by which the extra tax, as described in **section EH 32(c)**, is more than the tax saving, as described in **section EH 32(c)**. 10

Defined in this Act: amount, income tax, tax credit

Compare: 2004 No 35 s EH 33

## *Definitions* 15

### **EH 34 Meaning of income from forestry**

#### *Income*

- (1) **Income from forestry** means income derived from either or both of the sales described in **subsection (2)** in the circumstances described in **subsection (3)**. 20

#### *Sales*

- (2) The sales are—
- (a) the sale of timber:
  - (b) the sale of a right to cut or remove timber.

#### *Circumstances* 25

- (3) The circumstances are—
- (a) the income is derived by a person who is the owner of land in New Zealand on which timber is grown, not including a person whose interest in the land is that of a licensee; and 30
  - (b) the timber the subject of the sale is standing or cut or fallen timber in its natural state grown on the land.

Defined in this Act: income, income from forestry, New Zealand, own, person, timber

Compare: 2004 No 35 s EH 34 35

**EH 35 Meaning of main maximum deposit***Meaning*

- (1) **Main maximum deposit** means the maximum deposit that this section says a person may make to their main income equalisation account for a tax year. 5

*Meaning of amount*

- (2) In **subsections (3) to (5)**, **amount** means an amount calculated without applying—
- (a) any provision allocating income derived or expenditure incurred to a tax year other than the tax year in which the income was in fact derived or the expenditure was in fact incurred; or 10
  - (b) any provision of any of the income equalisation schemes referred to in **section EH 1(2)**.

*Maximum deposit of farmer*

- (3) The maximum deposit that a farmer may make is— 15
- (a) the amount determined by an Order in Council made under **subsection (6)**; or
  - (b) if no order is in force, an amount equal to the net income that the farmer would have in the tax year if— 20
    - (i) the farmer derived income only from the farming or agricultural business in the tax year; and
    - (ii) the farmer did not make a payment under **section EH 38** for the farming or agricultural business for the tax year. 25

*Maximum deposit of fisher*

- (4) The maximum deposit that a fisher may make is an amount equal to the net income that the fisher would have in the tax year if the fisher derived income only from the fishing business in the tax year. 30

*Maximum deposit of forester*

- (5) The maximum deposit that a forester may make is an amount equal to the net income that the forester would have in the tax year if the forester derived only income from forestry in the tax year. 35

*Order in Council relating to farmers*

- (6) The Governor-General may make an Order in Council declaring that the maximum deposit a farmer may make for a tax year or for every tax year is—
- (a) an amount calculated in the manner specified in the order; or 5
  - (b) an unlimited amount.
- Defined in this Act: amount, business, deposit, farmer, fisher, fishing business, forester, income, main income equalisation account, main maximum deposit, net income, pay, person, tax year 10
- Compare: 2004 No 35 s EH 35

**EH 36 Other definitions**

In the main income equalisation scheme,—

**date the deposit ends** means—

- (a) the date on which the refund is calculated, when **section EH 8** applies: 15
- (b) the date that is 5 years after the end of the tax year for which the deposit was made, when **section EH 10** applies:
- (c) the date on which the Commissioner receives the application for the refund, when **section EH 13 or EH 15** applies: 20
- (d) the date of the person's retirement, when **section EH 17** applies:
- (e) the date of the person's death, when **section EH 19** applies:
- (f) the date on which the Commissioner receives notice of the adjudication, when **section EH 23** applies: 25
- (g) the date on which the Commissioner receives notice of the liquidation, when **section EH 25** applies

**deposit**—

- (a) means a main deposit; and 30
- (b) includes, for the purposes of **sections EH 6(2) to (4) and EH 10 to EH 33**, interest that is added to a main deposit under **section EH 6(5)**

**fishing business** includes a business of—

- (a) fish farming under a licence issued under the Fresh-water Fish Farming Regulations 1983: 35
- (b) mussel farming:
- (c) rock oyster farming

**main deposit** means a payment made to the Commissioner under **section EH 4(1)** 40

**main income equalisation account**, for a person, means the account that the Commissioner keeps in the person's name under **section EH 5**

**specified period**, for a person's tax year, means the shorter of—

- (a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and
- (b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year.

Defined in this Act: business, Commissioner, date the deposit ends, deposit, fishing business, interest, liquidation, main deposit, main income equalisation account, main income equalisation scheme, pay, person, return of income, specified period, tax year, year

Compare: 2004 No 35 s EH 37

### *Adverse event income equalisation scheme*

#### *Application*

#### **EH 37 Persons to whom adverse event income equalisation scheme applies**

##### *Person described*

- (1) The adverse event income equalisation scheme applies to a person who, in a tax year,—
  - (a) carries on a farming or agricultural business on land in New Zealand; and
  - (b) sells livestock and does not replace it because of a self-assessed adverse event.

##### *Meaning of person for adverse event income equalisation scheme*

- (2) In the adverse event income equalisation scheme, **person** means a person described in **subsection (1)**.

Defined in this Act: adverse event income equalisation scheme, business, New Zealand, person, self-assessed adverse event, tax year

Compare: 2004 No 35 s EH 38

*Deposits and accounts***EH 38 Adverse event deposit***Deposit for adverse event*

- (1) A person may make a payment to the Commissioner for entry in their adverse event income equalisation account for a tax year in which, because of a self-assessed adverse event, they sell and do not replace livestock. 5

*Upper limit of deposit*

- (2) A person must not make, for a tax year, deposits that in total are more than their adverse event maximum deposit for the tax year. 10

*Lower limit of deposit*

- (3) A person must not make, for a tax year, a deposit less than the lesser of— 15
- (a) \$200; and
  - (b) the difference between the total of all the deposits they have previously made for the tax year and their adverse event maximum deposit for the tax year.

*Time of making deposit*

- (4) A person makes a deposit for a tax year by— 20
- (a) making the deposit during the tax year; or
  - (b) making the deposit during the month after the end of the tax year.

Defined in this Act: adverse event deposit, adverse event income equalisation account, adverse event maximum deposit, Commissioner, deposit, pay, person, self-assessed adverse event, tax year 25

Compare: 2004 No 35 s EH 39

**EH 39 Adverse event income equalisation account***Person's account*

- (1) The Commissioner must keep an adverse event income equalisation account in the name of every person who makes a deposit with the Commissioner. 30

*Deposits in accounts*

- (2) Every deposit a person makes with the Commissioner must be entered in their adverse event income equalisation account. 35

*Amounts in accounts*

- (3) The only amounts that may be entered in a person's adverse event income equalisation account are—
- (a) deposits made by the person with the Commissioner; and
  - (b) interest paid under **section EH 40**.

5

*Amounts not available to others*

- (4) Amounts entered in a person's adverse event income equalisation account must not, while they are in the account,—
- (a) be assigned or charged in any way; or
  - (b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation; or
  - (c) be assets for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation; or
  - (d) be assets for the payment of the debts or liabilities of a dead person's estate.

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*Amounts available only for refunds*

- (5) The only payments that may be made from a person's adverse event income equalisation account are refunds under any of **sections EH 42, EH 45, EH 47, EH 49, EH 53, and EH 55**.

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Defined in this Act: adverse event income equalisation account, amount, Commissioner, deposit, interest, liquidation, pay, person

Compare: 2004 No 35 s EH 40

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*Interest***EH 40 Interest on deposits in adverse event income equalisation account***Interest payable*

- (1) Interest is payable on every deposit in an adverse event income equalisation account.

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*Period*

- (2) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

35



*Date to which accrues*

- (3) Interest on a deposit accrues until the earlier of—
- (a) 31 March in each year; and
  - (b) the date the deposit is refunded.

*Added to deposit*

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- (4) Accrued interest on a deposit is added to the deposit.

*Rate*

- (5) The interest rate is the rate set in regulations made by the Governor-General from time to time.

Defined in this Act: adverse event income equalisation account, deposit, interest, pay, year

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Compare: 2004 No 35 s EH 41

*Deduction***EH 41 Deduction of deposit***When this section applies*

15

- (1) This section applies when a person is allowed a deduction under **section DQ 2** (Adverse event income equalisation scheme).

*Amount of deduction*

- (2) The amount of the deduction is the lesser of—
- (a) the total of their deposits for the tax year; and
  - (b) their adverse event maximum deposit for the tax year.

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*Timing of deduction*

- (3) The person is allowed the deduction in the tax year.

Defined in this Act: adverse event maximum deposit, amount, deduction, deposit, person, tax year

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Compare: 2004 No 35 s EH 42

*Refunds: automatic***EH 42 Refund of excess deposit***When this section applies*

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- (1) This section applies when a person's deposits for a tax year are more than their adverse event maximum deposit for the tax year.

*Refund*

- (2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: adverse event maximum deposit, Commissioner, date the deposit ends, deposit, person, tax year

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Compare: 2004 No 35 s EH 43

**EH 43 Income does not include excess deposit**

A refund under **section EH 42** is excluded income under **section CX 50** (Income equalisation schemes).

Defined in this Act: excluded income

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Compare: 2004 No 35 s EH 44

*Refunds: on application***EH 44 Application for refund by person, trustee of estate, Official Assignee, or liquidator***Who may apply*

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- (1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's adverse event income equalisation account:

- (a) the person may apply under **section EH 45 or EH 47:**
- (b) the trustee of the person's estate may apply under **section EH 49:**
- (c) the Official Assignee having charge of the person's estate may apply under **section EH 53:**
- (d) the liquidator appointed for the person may apply under **section EH 55.**

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*Application*

- (2) An application for a refund must—
- (a) be in writing; and
  - (b) state the grounds on which it is made; and
  - (c) state the amount applied for.

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Defined in this Act: adverse event income equalisation account, amount, Commissioner, liquidation, person, trustee

Compare: 2004 No 35 s EH 45

**EH 45 Refund on request***When this section applies*

- (1) This section applies when a person wants a refund of some or all of the amount in the person's adverse event income equalisation account, and none of **sections EH 47, EH 49, EH 53, and EH 55** applies. 5

*Refund*

- (2) The Commissioner must refund to the person the amount applied for. 10
- Defined in this Act: adverse event income equalisation account, amount, Commissioner, person
- Compare: 2004 No 35 s EH 46

**EH 46 Income when refund given on request**

A refund under **section EH 45** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund. 15

Defined in this Act: Commissioner, income, person, tax year

Compare: 2004 No 35 s EH 47

**EH 47 Refund on retirement** 20*When this section applies*

- (1) This section applies when a person—
- (a) has an adverse event income equalisation account; and
  - (b) is neither a company nor a trustee; and
  - (c) retires from the farming or agricultural business. 25

*Refund*

- (2) The Commissioner must refund to the person the amount that, on the date the deposit ends, is in their adverse event income equalisation account. 30
- Defined in this Act: adverse event income equalisation account, amount, business, Commissioner, company, date the deposit ends, person, trustee
- Compare: 2004 No 35 s EH 48

### **EH 48 Income when refund given on retirement, and election to allocate amount to earlier year**

#### *Year of income*

- (1) A refund under **section EH 47** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which they retire. 5

#### *When year of income may be different*

- (2) However, **subsection (3)** applies instead of **subsection (1)** if—
- (a) the refund includes a deposit made for a tax year earlier than the tax year in which the person retires; and 10
  - (b) the person chooses to allocate some or all of the deposit to the earlier tax year.

#### *Different year of income*

- (3) The amount allocated by the person to the earlier tax year is income, under **section CB 26**, derived by them in the tax year. 15

#### *How election made*

- (4) A person makes an election under this section by giving the Commissioner notice within 1 of the following times:
- (a) the time within which the person is required to file a return of income for the tax year in which they retire: 20
  - (b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return of income, tax year

Compare: 2004 No 35 s EH 49 25

### **EH 49 Refund on death**

#### *When this section applies*

- (1) This section applies when a person—
- (a) has an adverse event income equalisation account; and
  - (b) dies. 30

#### *Refund*

- (2) Despite **section FC 2** (Transfer at market value), the Commissioner must refund to the trustee of the person's estate the

amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, person, trustee

Compare: 2004 No 35 s EH 50

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## **EH 50 Income when refund given on death**

### *Year of income*

- (1) A refund under **section EH 49** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before their death.

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### *When year of income may be different*

- (2) However, **section EH 51 or EH 52** applies instead of **subsection (1)** if the circumstances described in **section EH 51(1) or EH 52(1)** apply in the person's case.

Defined in this Act: income, person

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Compare: 2004 No 35 s EH 51

## **EH 51 Income when refund given on death, and election to allocate amount to earlier year**

### *When this section applies*

- (1) This section applies when—
- (a) a refund under **section EH 49** includes a deposit made for a tax year earlier than the tax year in which the person dies; and
  - (b) the trustee of the person's estate chooses to allocate some or all of the deposit to the earlier tax year.

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### *Different year of income*

- (2) The amount allocated by the trustee to the earlier tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.

### *How election made*

30

- (3) A trustee makes an election under this section by giving the Commissioner notice within 1 of the following times:
- (a) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

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- (b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return, tax year, trustee

Compare: 2004 No 35 s EH 52

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## **EH 52 Income when refund given on death, and election to allocate amount to later year or years**

*When this section applies*

- (1) This section applies when—
- (a) the trustee does not make an election under **section EH 51**; and 10
- (b) the trustee chooses to allocate some or all of the amount that is in the person's adverse event income equalisation account on the date of the person's death to a tax year or years after that date. 15

*Tax year or years for purposes of subsection (1)(b)*

- (2) For the purposes of **subsection (1)(b)**, the tax year or years must be within the earlier of—
- (a) the 3 years after the date of the person's death; and
- (b) the 5 years after the end of the tax year for which a deposit or a part of a deposit was made, if the amount that the trustee allocates to a later year or years includes the deposit or part of it. 20

*Amount allocated remains in account*

- (3) An amount allocated by the trustee to a later tax year remains in the person's adverse event income equalisation account until it is refunded to the trustee in the tax year to which it is allocated. 25

*Different year of income*

- (4) An amount allocated by the trustee to a later tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year. 30

*How election made*

- (5) A trustee makes an election under this section by a notice that— 35
- (a) specifies—

- (i) each amount allocated to a later tax year; and
- (ii) the tax year to which each amount is allocated; and
- (b) is given to the Commissioner within 1 of the following times: 5
  - (i) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:
  - (ii) a further time allowed by the Commissioner in a case or class of cases. 10

Defined in this Act: adverse event income equalisation account, amount, Commissioner, deposit, income, notice, person, return, tax year, trustee, year

Compare: 2004 No 35 s EH 53

### **EH 53 Refund on bankruptcy**

*When this section applies* 15

- (1) This section applies when a person—
  - (a) has an adverse event income equalisation account; and
  - (b) is bankrupt.

#### *Refund*

- (2) The Commissioner must refund to the Official Assignee having charge of the person's estate the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account. 20

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, person 25

Compare: 2004 No 35 s EH 54

### **EH 54 Income when refund given on bankruptcy**

A refund under **section EH 53** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the bankruptcy starts. 30

Defined in this Act: income, person

Compare: 2004 No 35 s EH 55

### **EH 55 Refund on liquidation**

*When this section applies*

- (1) This section applies when a person— 35
  - (a) has an adverse event income equalisation account; and

(b) is put into liquidation.

*Refund*

- (2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account. 5

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, liquidation, person

Compare: 2004 No 35 s EH 56

**EH 56 Income when refund given on liquidation**

A refund under **section EH 55** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the liquidation starts. 10

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 57

*Refunds: general provisions* 15

**EH 57 Amendment of assessment**

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to any of **sections EH 48, EH 51, and EH 52**.

Defined in this Act: assessment, Commissioner, time bar 20

Compare: 2004 No 35 s EH 58

**EH 58 Minimum refund**

The Commissioner must not give a refund under any of **sections EH 45, EH 47, EH 49, EH 53, and EH 55** that is less than the lesser of— 25

(a) \$200; and

(b) the balance in the person's adverse event income equalisation account on the date the deposit ends.

Defined in this Act: adverse event income equalisation account, Commissioner, date the deposit ends, person 30

Compare: 2004 No 35 s EH 59



**EH 59 Deposits from which refunds come**

Each refund a person is given is treated as coming from the total amount of their deposits in the order in which they made the deposits.

Defined in this Act: amount, deposit, person

5

Compare: 2004 No 35 s EH 60

*Transfers***EH 60 Transfer of deposit**

*Transfer from adverse event to main income equalisation account*

10

- (1) A deposit that is in a person's adverse event income equalisation account on the day 1 year after the date on which the deposit was made must be transferred to their main income equalisation account as soon as practicable.

*Date of deposit in main income equalisation account*

15

- (2) The date on which a transferred deposit is treated as having been deposited in the person's main income equalisation account is as follows:

- (a) the date on which it was transferred, for the purpose of computing interest payable under **section EH 6:**
- (b) the date on which it was deposited in the adverse event income equalisation account, for any other purpose.

20

*No deduction*

- (3) A transferred deposit is not an amount for which a deduction is allowed under **section DQ 1** (Main income equalisation scheme).

25

*Ceasing of deposit in adverse event income equalisation account*

- (4) A transferred deposit ceases to be a deposit in the person's adverse event income equalisation account.

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Defined in this Act: adverse event income equalisation account, amount, deduction, deposit, interest, main income equalisation account, pay, person, year

Compare: 2004 No 35 s EH 61

*Definitions***EH 61 Meaning of adverse event maximum deposit***Meaning*

- (1) **Adverse event maximum deposit** means the maximum deposit that this section says a person may make to their adverse event income equalisation account for a tax year. 5

*Maximum deposit*

- (2) The maximum deposit a person may make is an amount equal to the net income that the person would have in the tax year if, because of the self-assessed adverse event,— 10
- (a) the only income derived by the person in the tax year were income from their selling the livestock; and
- (b) the only amount for which the person was allowed a deduction in the tax year were the cost of the livestock sold. 15

*Cost of livestock sold: matters excluded*

- (3) The cost of the livestock sold is an amount determined under **subsection (4) or (5)**— 20
- (a) without applying any provision allocating income derived or expenditure incurred to a tax year other than the tax year in which the income was in fact derived or the expenditure was in fact incurred; and
- (b) applying **sections DQ 1** (Main income equalisation scheme), **EH 7 to EH 33**, and **FB 15 to FB 17** (which relate to livestock). 25

*Cost of livestock sold: person having livestock of class sold at end of previous tax year*

- (4) This subsection applies when, at the end of the tax year before the tax year in which the livestock is sold, the person had livestock of the class that is sold in which the livestock would, if unsold, have been included at the end of the tax year in which it is sold. Under this subsection, the cost of livestock sold is determined using the previous tax year's closing value for the class of livestock in which the livestock sold would have been included. 30 35

*Cost of livestock sold: other cases*

- (5) This subsection applies when **subsection (4)** does not. Under this subsection, the cost of livestock sold is calculated using the formula—

$$\frac{\text{number at start} \times \text{value} + \text{number bought} \times \text{price}}{\text{number at start} + \text{number bought.}} \quad 5$$

*Definition of items in formula*

- (6) In the formula,—
- (a) **number at start** is the number of livestock of the class sold that the person has at the start of the tax year in which the livestock is sold: 10
  - (b) **number bought** is the number of livestock of the class sold that the person buys in the tax year in which the livestock is sold, before the sale:
  - (c) **price** is the average purchase price of the number bought: 15
  - (d) **value** is the opening value of the number at the start, determined without applying **section EC 16(2)** (Valuation under herd scheme).

Defined in this Act: adverse event income equalisation account, adverse event maximum deposit, amount, deduction, deposit, income, net income, person, self-assessed adverse event, tax year 20

Compare: 2004 No 35 s EH 62

**EH 62 Other definitions**

In the adverse event income equalisation scheme,— 25

**adverse event deposit** means a payment made to the Commissioner under **section EH 38(1)**

**adverse event income equalisation account**, for a person, means the account that the Commissioner keeps in the person's name under **section EH 39** 30

**date the deposit ends** means—

- (a) the date on which the refund is calculated, when **section EH 42** applies:
- (b) the date on which the Commissioner receives the applications for the refund, when **section EH 45** applies: 35
- (c) the date of the person's retirement, when **section EH 47** applies:
- (d) the date of the person's death, when **section EH 49** applies:

- (e) the date on which the Commissioner receives notice of the adjudication, when **section EH 53** applies:
- (f) the date on which the Commissioner receives notice of the liquidation, when **section EH 55** applies:
- (g) the date on which the Commissioner transfers the deposit, when **section EH 60(1)** applies 5

**deposit—**

- (a) means an adverse event deposit; and
- (b) includes, for the purposes of **sections EH 40(2) and (3) and EH 44 to EH 60**, interest that is added to an adverse event deposit under **section EH 40(4)** 10

**specified period**, for a person's tax year, means the shorter of—

- (a) the period of 6 months after the end of the tax year; and
- (b) the period from the end of the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the tax year. 15

Defined in this Act: adverse event deposit, adverse event income equalisation account, adverse event income equalisation scheme, Commissioner, date the deposit ends, deposit, interest, liquidation, pay, person, return of income, specified period, tax year 20

Compare: 2004 No 35 s EH 64

***Thinning operations income equalisation scheme****Application* 25**EH 63 Persons to whom thinning operations income equalisation scheme applies***Person described*

- (1) The thinning operations income equalisation scheme applies to a company that, in a tax year,— 30
  - (a) carries on a forestry business on land in New Zealand; and
  - (b) derives income from carrying out thinning operations on the land.

*Meaning of person for thinning operations income equalisation scheme*

- (2) In the thinning operations income equalisation scheme, **person** means a person described in **subsection (1)**.

Defined in this Act: business, company, income, New Zealand, person, thinning operations, thinning operations income equalisation scheme, tax year

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Compare: 2004 No 35 s EH 65

*Deposits and accounts*

**EH 64 Thinning operations deposit**

*Deposit for thinning operations*

10

- (1) A person may make a payment to the Commissioner for entry in their thinning operations income equalisation account for a tax year in which they derive income from carrying out thinning operations.

*Upper limit of deposit*

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- (2) A person must not make, for a tax year, deposits that in total are more than their thinning operations maximum deposit for the tax year.

*Lower limit of deposit*

- (3) A person must not make, for a tax year, a deposit that is less than the lesser of—

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- (a) \$200; and  
(b) the difference between the total of all the deposits the person has previously made for the tax year and their thinning operations maximum deposit for the tax year.

25

*Time of making deposit*

- (4) A person makes a deposit for a tax year by—

- (a) making the deposit during the tax year; or  
(b) doing both the following:  
(i) making the deposit during the specified period for the tax year; and  
(ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year; or

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- (c) doing both the following:  
(i) making the deposit within a time that is after the end of the specified period for the tax year but

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- that is allowed by the Commissioner in a case or class of cases; and
- (ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year.

*Limit on making deposit*

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- (5) If a refund has been made to a person for a tax year under **section EH 71 or EH 73**, the person may later make a deposit for the tax year only if the Commissioner is satisfied, before the deposit is made, that all the refund has been used to expand or develop the person's business.

10

Defined in this Act: business, Commissioner, deposit, income, notice, pay, person, specified period, tax year, thinning operations, thinning operations deposit, thinning operations income equalisation account, thinning operations maximum deposit

Compare: 2004 No 35 s EH 66

**EH 65 Thinning operations income equalisation account**

15

*Person's account*

- (1) The Commissioner must keep a thinning operations income equalisation account in the name of every person that makes a deposit with the Commissioner.

*Deposits in accounts*

20

- (2) Every deposit a person makes with the Commissioner must be entered in their thinning operations income equalisation account.

*Amounts in accounts*

- (3) The only amounts that may be entered in a person's thinning operations income equalisation account are—
- (a) deposits made by the person with the Commissioner; and
- (b) interest paid under **section EH 66**.

25

*Amounts not available to others*

30

- (4) Despite **section FC 2** (Transfer at market value), amounts entered in a person's thinning operations income equalisation account must not, while they are in the account,—
- (a) be assigned or charged in any way; or

- (b) pass by operation of law to, or into the custody or control of, someone else, except when the person has been put into liquidation; or
- (c) be assets for the payment of the person's debts or liabilities, except when the person has been put into liquidation. 5

*Amounts available only for refunds*

- (5) The only payments that may be made from a person's thinning operations income equalisation account are refunds under any of **sections EH 68, EH 71, EH 73, and EH 75.** 10

Defined in this Act: amount, Commissioner, deposit, interest, liquidation, pay, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 67

*Interest*

**EH 66 Interest on deposits in thinning operations income equalisation account** 15

*No interest payable*

- (1) No interest is payable on a deposit in a thinning operations income equalisation account that is refunded within 1 year of the date of deposit. 20

*Interest payable*

- (2) Interest is payable on every other deposit in a thinning operations income equalisation account.

*Period*

- (3) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded. 25

*Date to which interest accrues*

- (4) Interest on a deposit accrues until the earlier of— 30
  - (a) 31 March in each year; and
  - (b) the date the deposit is refunded.

*Added to deposit*

- (5) Accrued interest on a deposit is added to the deposit.

*Rate*

- (6) The interest rate is 3% a year.

Defined in this Act: deposit, interest, pay, thinning operations income equalisation account, year

Compare: 2004 No 35 s EH 68

5

*Deductions***EH 67 Deduction of deposit***When this section applies*

- (1) This section applies when a person is allowed a deduction under
- section DQ 3**
- (Thinning operations income equalisation scheme). 10

*Amount of deduction*

- (2) The amount of the deduction is the lesser of—
- 
- (a) the total of the person's deposits for the tax year; and
- 
- (b) their thinning operations maximum deposit for the tax year. 15

*Timing of deduction*

- (3) The person is allowed the deduction in the tax year.

Defined in this Act: amount, deduction, deposit, person, tax year, thinning operations maximum deposit

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Compare: 2004 No 35 s EH 69

*Refunds: automatic***EH 68 Refund of excess deposit***When this section applies*

- (1) This section applies when a person's deposits for a tax year are more than their thinning operations maximum deposit for the tax year. 25

*Refund*

- (2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends. 30

Defined in this Act: Commissioner, date the deposit ends, deposit, person, tax year, thinning operations maximum deposit

Compare: 2004 No 35 s EH 70



**EH 69 Income does not include excess deposit**

A refund under **section EH 68** is excluded income under **section CX 50** (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 71

5

*Refunds: on application***EH 70 Application for refund by person or liquidator***Who may apply*

- (1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's thinning operations income equalisation account: 10
- (a) the person may apply under **section EH 71 or EH 73**;
  - (b) the liquidator appointed for the person may apply under **section EH 77**.

*Application*

15

- (2) An application for a refund must—
- (a) be in writing; and
  - (b) state the grounds on which it is made; and
  - (c) state the amount applied for.

Defined in this Act: amount, Commissioner, liquidation, person, thinning operations income equalisation account

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Compare: 2004 No 35 s EH 72

**EH 71 Refund on request***When this section applies*

- (1) This section applies when a person wants a refund of some or all of the amount in the person's thinning operations income equalisation account, and neither **section EH 73 nor EH 75** applies. 25

*Refund*

- (2) The Commissioner must refund to the person the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's thinning operations income equalisation account for at least 1 year before the date the deposit ends. 30

Defined in this Act: amount, Commissioner, date the deposit ends, deposit, person, thinning operations income equalisation account, year

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Compare: 2004 No 35 s EH 73

**EH 72 Income when refund given on request***Year of income*

- (1) A refund under **section EH 71** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund. 5

*When year of income may be different*

- (2) However, **subsection (3)** applies instead of **subsection (1)** if—
- (a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and 10
- (b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates. 15

*Different year of income*

- (3) The refund is income under **section CB 26** in the tax year to which the specified period or the longer period relates.
- Defined in this Act: Commissioner, income, person, specified period, tax year
- Compare: 2004 No 35 s EH 74 20

**EH 73 Refund for development or recovery***Refund for development: application of subsection (2)*

- (1) **Subsection (2)** applies when a person wants a refund of some or all of the amount in their thinning operations income equalisation account for the purpose of enabling them to undertake, immediately after the refund is given, planned development or maintenance work for their forestry business. 25

*Refund*

- (2) If the Commissioner is satisfied that the person will use the refund for the purpose, the Commissioner must refund to them the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's thinning operations income equalisation account for at least 6 months before the date the deposit ends. 30

*Refund for recovery: application of subsection (4)*

- (3) **Subsection (4)** applies when a person wants a refund of some or all of the amount in their thinning operations income equalisation account for either or both of the following purposes:
- (a) to avoid them suffering serious hardship: 5
  - (b) to do anything else that the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

*Refund*

- (4) If the Commissioner is satisfied that the person will use the refund for either or both of the purposes, the Commissioner must refund to them the amount applied for, regardless of the length of time it has been in the account. 10

Defined in this Act: amount, business, Commissioner, date the deposit ends, deposit, person, thinning operations income equalisation account 15

Compare: 2004 No 35 s EH 75

## **EH 74 Income when refund given for development or recovery**

*Year of income*

- (1) A refund under **section EH 73** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund. 20

*When year of income may be different*

- (2) However, **subsection (3)** applies instead of **subsection (1)** if— 25
- (a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and
  - (b) the person chooses in the application that the refund is 30  
to be income in the tax year to which the specified period or the longer period relates.

*Different year of income*

- (3) The refund is income under **section CB 26** derived in the tax year to which the specified period or the longer period relates. 35

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 76

**EH 75 Refund on liquidation***When this section applies*

- (1) This section applies when a person—
- (a) has a thinning operations income equalisation account; and 5
  - (b) is put into liquidation.

*Refund*

- (2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's thinning operations income equalisation account on the date, regardless of the length of time it has been in the account. 10

Defined in this Act: amount, Commissioner, date the deposit ends, liquidation, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 77 15

**EH 76 Income when refund given on liquidation**

A refund under **section EH 75** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person 20

Compare: 2004 No 35 s EH 78

*Refunds: general provisions, and tax credits*

- EH 77 Sections of main income equalisation scheme that apply to thinning operations income equalisation scheme Sections EH 28 to EH 33** apply, with the necessary amendments, to the thinning operations income equalisation scheme. 25

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

Compare: 2004 No 35 s EH 79

*Definitions* 30**EH 78 Meaning of thinning operations maximum deposit***Meaning*

- (1) **Thinning operations maximum deposit** means the maximum deposit that this section says a person may make to their

thinning operations income equalisation account for a tax year.

*Maximum deposit*

- (2) The maximum deposit that a person may make is an amount equal to the income derived by them during the tax year from carrying out thinning operations on the land on which they carry on their forestry business. 5

*Meaning of amount*

- (3) In **subsection (2)**, **amount** means an amount calculated without applying— 10
- (a) any provision allocating income derived or expenditure incurred to a tax year other than the tax year in which the income was in fact derived or the expenditure was in fact incurred:
- (b) any provision of any of the income equalisation schemes referred to in **section EH 1(2)**. 15

Defined in this Act: amount, business, deposit, income, person, tax year, thinning operations, thinning operations income equalisation account, thinning operations maximum deposit

Compare: 2004 No 35 s EH 80 20

**EH 79 Other definitions**

In the thinning operations income equalisation scheme,—

**date the deposit ends** means—

- (a) the date on which the refund is calculated, when **section EH 68** applies: 25
- (b) the date on which the Commissioner receives the application for the refund, when **section EH 71 or EH 73** applies:
- (c) the date on which the Commissioner receives notice of the liquidation, when **section EH 75** applies

**deposit**— 30

- (a) means a thinning operations deposit; and
- (b) includes, for the purposes of **sections EH 66(2) to (4) and EH 70 to EH 77**, interest that is added to a thinning operations deposit under **section EH 66(5)**

**specified period**, for a person's tax year, means the shorter of— 35

- (a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and

- (b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year 5
- thinning operations** means operations in which some trees in an immature stand of trees are felled for the purpose of improving the growth and form of the remaining trees and not for the purpose of permanently breaking the canopy 10
- thinning operations deposit** means a payment made to the Commissioner under **section EH 64(1)**
- thinning operations income equalisation account**, for a person, means the account that the Commissioner keeps in the person's name under **section EH 65**. 15
- Defined in this Act: Commissioner, date the deposit ends, interest, liquidation, pay, person, return of income, specified period, tax year, thinning operations, thinning operations deposit, thinning operations income equalisation account, thinning operations income equalisation scheme
- Compare: 2004 No 35 s EH 81 20

## Subpart EI—Spreading of specific income

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### *Farming and forestry*

#### **EI 1 Spreading backward of income from timber**

##### *When this section applies*

- (1) This section applies when a person derives income under **section CB 24** (Disposal of timber or right to take timber) or **CB 25** (Disposal of land with standing timber). 5

##### *Timing of income*

- (2) The person may allocate the income between the income year in which they derive it and any 1 or more of the previous 3 income years. 10

##### *Application*

- (3) A person who wants to make an allocation under **subsection (2)** must apply in writing to the Commissioner no later than 1 year after the end of the income year in which they derive the income. 15

Defined in this Act: Commissioner, income, income year, timber, year

Compare: 2004 No 35 s EI 1

### *Inflation-indexed instruments*

#### **EI 2 Interest from inflation-indexed instruments**

##### *When this section applies* 20

- (1) This section applies when—
- (a) an amount of money lent is outstanding at the end of the lender's current income year; and
  - (b) an amount is payable to the lender for the money lent, in a future income year of the lender; and 25
  - (c) the amount payable is determined by a fixed relationship to 1 or more indices of general price inflation in New Zealand; and
  - (d) the amount payable that has accrued at the end of the lender's current income year differs from any amount payable that had accrued— 30
    - (i) at the time the money was lent, if it was lent during the lender's current income year; or

- (ii) at the end of the lender's previous income year, if it was lent before the lender's current income year.

*Increase treated as credited*

- (2) If the difference is an increase, the increase is treated as having been credited in account and capitalised by the borrower for the benefit of the lender on—
- (a) the day following the day on which the level of the relevant index at the end of the lender's current income year becomes public knowledge; or 10
- (b) if the level of the relevant index is not calculated for the end of the lender's current income year, the last date before the end of the income year for which the level is calculated.
- This subsection is overridden by **subsection (3)**. 15

*Increase not treated as credited*

- (3) An increase is not treated as having been credited to the extent to which—
- (a) the money lent has been repaid;
- (b) an amount on account of the increase has already been paid to the lender: 20
- (c) the increase represents a recovery of a decrease in the amount payable over a previous income year of the lender.
- Defined in this Act: amount, income year, interest, money lent, New Zealand, pay 25  
Compare: 2004 No 35 s EI 2

***Intellectual property***

**EI 3 Assigning or granting copyright**

*When this section applies*

- (1) This section applies when a person— 30
- (a) is the author of a literary, dramatic, musical, or artistic work; and
- (b) made the work over a period of more than 1 year; and
- (c) receives consideration from—
- (i) assigning some or all of the copyright in the work; or 35



- (ii) granting an interest in the copyright by licence.

*Timing of income: lump sum payment*

- (2) If some or all of the consideration is a lump sum payment that would be income in 1 tax year, the person may allocate the income equally between the income year in which they receive it and— 5
- (a) the income year before that income year, if they made the work over a period of 2 years or less; or
- (b) the 2 income years before that income year, if they made the work over a period of more than 2 years. 10

*Timing of income: other payments*

- (3) If some or all of the consideration is not a lump sum payment, would be income in 1 tax year, and is received by the person within 2 years after the first publication of the work, the person may allocate the income equally between the income year in which they receive it and the previous income year. 15

*Self-publication*

- (4) **Subsection (3)** applies to income that the person derives from being the publisher of their work.

*Application*

- (5) The following provisions apply to an allocation for the purposes of **subsections (2) and (3)**: 20
- (a) for an allocation under **subsection (2)**, the person must apply in writing to the Commissioner no later than 6 years after the end of the income year in which they receive the payment; and 25
- (b) for an allocation under **subsection (3)**, the person must apply in writing to the Commissioner no later than 8 years after the first publication of the work.

*Some definitions*

- (6) In this section,— 30
- author** includes a joint author
- first publication** means the first occasion on which the work or a reproduction of it is published, performed, or exhibited

**lump sum payment** includes an advance on account of royalties.

Defined in this Act: author, Commissioner, first publication, income, income year, lump sum payment, pay, royalty, tax year, year

Compare: 2004 No 35 s EI 3

5

### *Land*

#### **EI 4 Amount paid to lessor for non-compliance with covenant for repair**

*When this section applies*

- (1) This section applies when a lessor receives an amount of income under **section CC 2** (Non-compliance with covenant for repair). 10

*Timing of income: if election made*

- (2) The lessor may choose to allocate the income between the income year in which they receive the amount and any 1 or more of the following 4 income years. 15

*Timing of income: if election not made*

- (3) Any part of the amount that the lessor does not allocate as described in **subsection (2)** is allocated to the fourth income year following the income year in which they receive the amount. 20

*Notice*

- (4) The following provisions apply to an allocation for the purposes of **subsection (2)**:
- (a) the lessor must give a notice to the Commissioner that specifies how the income has been allocated; and 25
  - (b) the lessor must give the notice within the time required to file a return of income for the income year to which the income is allocated or within a longer time if the Commissioner agrees; and
  - (c) the lessor must not revoke the election. 30

*Relationship with sections CC 2 and EI 5*

- (6) This section overrides **section CC 2(2)** and is overridden by **section EI 5**.

Defined in this Act: amount, Commissioner, income, income year, notice, return of income

5

Compare: 2004 No 35 s EI 4

**EI 5 Amount paid for non-compliance: when lessor ceases to own land**

*When this section applies*

- (1) This section applies when a lessor—
- (a) allocates income under **section EI 4** to more than 1 income year; and
- (b) ceases to own the land to which the income relates before the end of the third tax year following the tax year in which they receive the income.

10

15

*Timing of income*

- (2) If the lessor has not allocated a part of the income, the part is allocated to the income year in which the lessor ceases to own the land.

*Ownership of part of land ceasing*

20

- (3) If the lessor ceases to own part of the land to which the income relates,—
- (a) this section applies to the part of the land that the lessor ceases to own; and
- (b) **section EI 4** applies to the part of the land that the lessor continues to own.

25

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

Compare: 2004 No 35 s EI 5

**EI 6 Leases: income derived in anticipation**

*When this section applies*

30

- (1) This section applies when a person derives, in a tax year, income in anticipation from fines, premiums, a payment of goodwill on the grant of a lease, or in another similar way.

*Timing of income*

- (2) The Commissioner may allocate the income between the income year in which the person derives it and any 5 later income years.

*Notice*

5

- (3) The following provisions apply to an allocation for the purposes of **subsection (2)**:

- (a) the person must give a notice to the Commissioner requesting the Commissioner to make the allocation:  
 (b) the person must give the notice in the tax year following the tax year to which the income year of derivation corresponds:  
 (c) the Commissioner may cancel the allocation at any time.

10

*Cancellation of allocation*

15

- (4) If the Commissioner cancels the allocation, the income allocated to the income year in which the cancellation occurs and to future income years is allocated to the income year before the income year in which the cancellation occurs.

Defined in this Act: Commissioner, income, income year, lease, notice, pay, tax year

20

Compare: 2004 No 35 s EI 6

**EI 7 Disposal of land to Crown***When this section applies*

- (1) This section applies when a person derives income from disposing of any of their land to the Crown.

25

*Timing of income*

- (2) The person may choose to allocate the income between the income year in which they derive it and any 3 later income years.

30

*Timing of deduction*

- (3) If the person allocates income to 2 or more income years, they must allocate part of any deduction allowed for the cost of the land to the same income years. The part must bear the same proportion to the total deduction as the allocated income bears to the total amount of income.

35

*Application*

- (4) The following provisions apply to an allocation for the purposes of **subsection (2)**:
- (a) the person, or another person for them, must make a written application to the Commissioner: 5
  - (b) the application must be made within 1 year after the end of the tax year in which the person derives the income or within a longer time if the Commissioner agrees:
  - (c) the person must arrange to meet all income tax liabilities relating to the income: 10
  - (d) the Commissioner may cancel the allocation at any time.

*Cancellation of allocation*

- (5) If the Commissioner cancels the allocation,—
- (a) the whole of the income or deduction, as applicable, is allocated to the income year before the income year in which the cancellation occurs: 15
  - (b) the cancellation does not affect income or a deduction that has been allocated to a previous income year.

Defined in this Act: amount, Commissioner, deduction, income, income tax liability, income year, tax year, year 20

Compare: 2004 No 35 s EI 7

*Shareholder-employees*

**EI 8 Matching rule for employment income of shareholder-employee** 25

*Matching if company allowed deduction*

- (1) If a company is allowed a deduction for expenditure on employment income that is paid or is payable to a shareholder-employee under **section CE 1** (Amounts derived in connection with employment), the income is allocated in the way set out in **subsections (2) and (3)**. 30

*Allocation to deduction year unless unexpired*

- (2) The income is allocated to the income year to which the deduction allowed to the company is allocated, except for an amount equal to any unexpired portion for the income year of the company's expenditure under **section EA 4** (Deferred payment of employment income). 35

*Allocation when no longer treated as unexpired*

- (3) The remaining income is allocated to the income year or years in which the corresponding amount of the company's expenditure on the income is no longer treated as an unexpired portion. 5

Defined in this Act: amount, company, deduction, employment income, income year, pay, shareholder-employee

Compare: 2004 No 35 s EI 8

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*Farming and forestry*

- EJ 1 Spreading backward of deductions for costs of timber** 10
- When this section applies*
- (1) This section applies when a person derives income under **section CB 24** (Disposal of timber or right to take timber) or **CB 25** (Disposal of land with standing timber).
- Timing of deduction* 15
- (2) The person must allocate every amount allowed as a deduction for a cost of timber to the income years to which the income is allocated under **section EI 1** (Spreading backward of income from timber), and in the same proportions as it is allocated. 20
- Defined in this Act: amount, deduction, income, income year
- Compare: 2004 No 35 s EJ 1
- EJ 2 Spreading forward of deductions for repairs to fishing boats**
- When this section applies: generally* 25
- (1) This section applies when a person who carries on a fishing business in New Zealand is allowed a deduction for expenditure incurred in making repairs or alterations required by Part 10 of the Maritime Transport Act 1994 to the equipment, hull, or machinery of a fishing boat used wholly for the purposes of the business. 30

- When subsection (3) applies*
- (2) **Subsection (3)** applies when the person does not cease to carry on the business before the end of the fourth tax year following the tax year in which the expenditure is incurred.
- Business not ceasing within 4 years* 5
- (3) The person may do 1 of the following to the total amount of expenditure allowed as a deduction:
- (a) deduct it in the income year in which the expenditure is incurred; or
- (b) allocate it to any 1 of the 4 income years following the income year in which the expenditure is incurred, and deduct it in that income year; or 10
- (c) allocate parts of it over some or all of the 4 income years following the income year in which the expenditure is incurred, and deduct each part allocated in the income year to which it is allocated; or 15
- (d) deduct it, or any part of it that has not already been deducted, in the fourth income year following the income year in which the expenditure is incurred.
- When subsection (5) applies* 20
- (4) **Subsection (5)** applies when the person ceases to carry on the business before the end of the fourth tax year following the tax year in which the expenditure is incurred.
- Business ceasing within 4 years*
- (5) The person may do 1 of the following to the total amount of expenditure allowed as a deduction: 25
- (a) deduct it, or any part of it that has not already been deducted, in the income year in which the person ceases to carry on the business; or
- (b) allocate it, or any part of it that has not already been deducted, equally to the income year in which it is incurred and the following income years in which the person continues to carry on the business. 30
- Some definitions*
- (6) In this section,— 35
- fishing boat—**



- (a) means a boat registered as a fishing boat under Part 4 of the Fisheries Act 1983; and
- (b) includes a small boat belonging to any boat that is so registered

**fishing business** means a business of catching or taking fish, including crustaceans and shellfish, for the purposes of sale. 5

Defined in this Act: amount, business, deduction, fishing boat, fishing business, income year, New Zealand, tax year

Compare: 2004 No 35 s EJ 2

### **EJ 3 Spreading forward of fertiliser expenditure** 10

*When this section applies*

- (1) This section applies when—
  - (a) a person carries on a farming or agricultural business on land in New Zealand; and
  - (b) the person incurs expenditure in buying fertiliser or lime or applying fertiliser or lime to some or all of the land; and 15
  - (c) the expenditure is expenditure for which the person is allowed a deduction.

*Timing of deduction: if election made* 20

- (2) The person may choose to allocate the expenditure by allocating some or all of it, in the proportions they choose, to any 1 or more of the 4 income years following the income year in which they incur the expenditure.

*Timing of deduction: if election not made* 25

- (3) The person is allowed a deduction in the fourth income year following the income year in which they incur the expenditure for any part of the expenditure—
  - (a) for which they do not claim a deduction in the income year in which they incur the expenditure; or 30
  - (b) that they do not allocate under **subsection (2)**.

*Timing of deduction: business ceasing within 4 years*

- (4) If the person ceases to carry on the business before the end of the fourth income year following the income year in which they incurred the expenditure, they must choose 1 of the following ways to deal with any part of the expenditure that has not so far been deducted: 35

- (a) the part is to be deducted in the income year in which the person ceases to carry on the business; or
- (b) the part is to be allocated equally to the income year in which they incurred the expenditure and the following income years in which the person carried on the business. 5

*Notice*

- (5) The following provisions apply to an allocation for the purposes of **subsections (2) and (4)**:
  - (a) for **subsection (2)**, the person must give the Commissioner notice of the allocation within the time within which the person is required to file a return of income for the income year to which they allocated the expenditure: 10
  - (b) for **subsection (4)**, the person must give the Commissioner notice of the allocation within the time within which the person is required to file a return of income for the income year in which the person ceases to carry on the business: 15
  - (c) for **subsection (2) or (4)**, the Commissioner may allow a longer time in any case or class of cases: 20
  - (d) for **subsection (2)**, the person must not revoke the allocation. 20

*Personal representative*

- (6) An election under **subsection (4)** may be made by a deceased's personal representative. 25

Defined in this Act: business, Commissioner, deduction, income year, New Zealand, notice, return of income

Compare: 2004 No 35 s EJ 3

***Films*** 30

**EJ 4 Expenditure incurred in acquiring film rights in feature films**

*Feature films*

- (1) A deduction under **section DS 1** (Acquiring film rights) for expenditure that a person incurs in acquiring a film right is allocated under this section, if the film is a feature film. 35

*Timing of deduction: retention of film right*

- (2) If the person has the film right at the end of an income year, the deduction that is allocated to the income year is the lesser of—
- (a) the greater of—
    - (i) an apportioned amount of the deduction, calculated for the income year under **subsection (3)**; and
    - (ii) the amount of film income derived in the income year; and
  - (b) the remaining deduction.

*Calculation of apportioned amount*

- (3) The apportioned amount is calculated for the income year using the formula—
- $$\frac{\text{completed months}}{\text{non-completed months}} \times \text{deduction.}$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **completed months** is the number of months in the income year, including a part of a month, for which the film is completed:
  - (b) **non-completed months** is 24, reduced by the number of complete months in the period that—
    - (i) starts on the first day of the month in which the film is completed; and
    - (ii) ends on the last day of the income year before the income year referred to in **subsection (2)**:
  - (c) **deduction** is the remaining deduction.

*Timing of deduction: disposal of film right*

- (5) If the person disposes of the film right during an income year, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

*Meaning of remaining deduction*

- (6) In this section, **remaining deduction** means, for an income year, the amount of the deduction for expenditure incurred

before the end of the income year that has not been allocated to a previous income year.

Defined in this Act: amount, completed, deduction, feature film, film, film income, film right, income year, remaining deduction

Compare: 2004 No 35 s EJ 4

5

## **EJ 5 Expenditure incurred in acquiring film rights in films other than feature films**

### *Films other than feature films*

- (1) A deduction under **section DS 1** (Acquiring film rights) for expenditure that a person incurs in acquiring a film right is allocated under this section, if the film is not a feature film. 10

### *Timing of deduction: retention of film right*

- (2) If the person has the film right at the end of an income year,—
- (a) the deduction that is allocated to the income year in which the film right is acquired or the film is completed, whichever is later, is— 15
- (i) 50% of the deduction; or
- (ii) if the film income derived in the income year is more than 50% of the deduction, the lesser of the amount of film income and the total amount of the deduction; and 20
- (b) the deduction that is allocated to the next income year is the remaining deduction.

### *Timing of deduction: disposal of film right*

- (3) If the person disposes of the film right during an income year, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year. 25

### *Meaning of remaining deduction*

- (4) In this section, **remaining deduction** means, for an income year, the amount of the deduction that has not been allocated to a previous income year. 30

Defined in this Act: amount, completed, deduction, feature film, film, film income, film right, income year, remaining deduction

Compare: 2004 No 35 s EJ 5

35

**EJ 6 Certification of New Zealand films***Certification of New Zealand films*

- (1) The New Zealand Film Commission may certify that a film is a New Zealand film, if the Commission is satisfied that the film has, or will on completion have, a significant New Zealand content, as determined under section 18 of the New Zealand Film Commission Act 1978. 5

*Final and provisional certificates*

- (2) The certificate issued by the New Zealand Film Commission must be— 10
- (a) a provisional certificate, if the film is not completed:
  - (b) a final certificate, if the film is completed.

*Applications for certification of New Zealand films*

- (3) An application to the New Zealand Film Commission for a certificate that a film is a New Zealand film must be in writing and must provide the information that the Commission requires. 15

*Notice of certificate to Commissioner*

- (4) The New Zealand Film Commission must send a copy of the provisional certificate or the final certificate to the Commissioner immediately after issuing it. 20

*Revocation of certificate*

- (5) The New Zealand Film Commission may revoke a provisional certificate or a final certificate if the Commission is satisfied that the certificate should not remain in force, whether because an incorrect statement was made in the provision of information for the purpose of obtaining a certificate or for any other reason. 25

*Effect of revocation*

- (6) A revoked certificate is void from the time the certificate was issued. 30

*Notice of revocation to Commissioner*

- (7) The New Zealand Film Commission must give notice to the Commissioner immediately after revoking a provisional certificate or a final certificate.

Defined in this Act: Commissioner, completed, film, New Zealand, notice

5

Compare: 2004 No 35 s EJ 6

**EJ 7 Film production expenditure for New Zealand films***New Zealand films*

- (1) A deduction under **section DS 2** (Film production expenditure) for film production expenditure is allocated under this section, if the film has a final certificate under **section EJ 6**. 10

*Timing of deduction: up to completion of film*

- (2) A deduction for film production expenditure incurred in or before the income year in which the film is completed is allocated to the income year in which the film is completed. 15

*Timing of deduction: after completion of film*

- (3) A deduction for film production expenditure incurred after the film is completed is allocated to the income year in which it is incurred.

Defined in this Act: completed, deduction, film, film production expenditure, income year, New Zealand

20

Compare: 2004 No 35 s EJ 7

**EJ 8 Film production expenditure for films other than New Zealand films***Films other than New Zealand films*

25

- (1) A deduction under **section DS 2** (Film production expenditure) is allocated under this section, if the film does not have a final certificate under **section EJ 6**.

*Timing of deduction: up to completion of film*

- (2) If the person has a film right at the end of the income year in which the film is completed, the deduction for film production expenditure incurred in or before the income year is allocated as follows: 30

(a) to the income year in which the film is completed,—

(i) 50% of the deduction; or

35

- (ii) if the film income derived in the income year is more than 50% of the deduction, the lesser of the amount of film income and the total amount of the deduction; and
- (b) to the next income year, the remaining deduction. 5
- Timing of deduction: after completion of film*
- (3) If the person has a film right in an income year after the film is completed, a deduction for film production expenditure incurred after the film is completed is allocated to the income year in which it is incurred. 10
- Timing of deduction: disposal of film right*
- (4) If the person disposes of a film right in the income year in which the film is completed, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year. 15
- Meaning of remaining deduction*
- (5) In this section, **remaining deduction** means, for an income year, the amount of the deduction for film production expenditure that has not been allocated to a previous income year. 20
- Defined in this Act: amount, completed, deduction, film, film income, film production expenditure, film right, income year, New Zealand, remaining deduction
- Compare: 2004 No 35 s EJ 8
- EJ 9 Avoidance arrangements**
- The allocation of a deduction under any of **sections EJ 4, EJ 5, EJ 7, and EJ 8** may be subject to adjustment under— 25
- (a) **section GB 18** (Arrangements to acquire film rights or incur film production expenditure):
- (b) **section GB 19** (When film production expenditure payments delayed or contingent). 30
- Defined in this Act: deduction, film production expenditure, film right, pay
- Compare: 2004 No 35 ss GC 11B, GD 12A, GD 12B

*Leases***EJ 10 Personal property lease payments***What this section applies to*

- (1) This section applies to a lease that—
- (a) is of a personal property lease asset; and 5
  - (b) is not a finance lease; and
  - (c) is not a specified lease.

*Payments*

- (2) Personal property lease payments are treated as being paid for the term of the lease. 10

*Formula*

- (3) The expenditure that the lessee incurs is allocated to income years using the formula—
- $$\frac{\text{part of term}}{\text{term of the lease}} \times \text{total of payments.} \quad 15$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **part of term** is the part of the term of the lease that falls within the income year: 20
  - (b) **term of the lease** has the meaning given in **section YA 1** (Definitions):
  - (c) **total of payments** is the total amount of the personal property lease payments.

Defined in this Act: finance lease, income year, lease, lessee, pay, personal property lease asset, personal property lease payment, specified lease, term of the lease 25

Compare: 2004 No 35 s EJ 9

**EJ 11 Amount paid by lessee for non-compliance with covenant for repair***When this section applies* 30

- (1) This section applies when a lessee of land is allowed a deduction under **section DB 22** (Amounts paid for non-compliance with covenant for repair).



*Timing of deduction*

- (2) The lessee may choose to allocate some or all of the amount of the deduction to any 1 or more of the 3 income years before the income year in which the amount is paid or recovered. The lessee may make an allocation only to an income year in which they used the land for deriving income. 5

*Effect of allocation*

- (3) If the lessee makes an allocation,—
- (a) they are denied a deduction for the allocated amount in the income year in which the amount of the deduction is paid or recovered; and 10
  - (b) they are allowed a deduction for the allocated amount in the income year to which it is allocated.

*Notice*

- (4) The following provisions apply to an allocation for the purposes of **subsection (2)**: 15
- (a) the lessee makes the election by giving a notice to the Commissioner that specifies how the amount of the deduction has been allocated; and
  - (b) the lessee must give the notice within the time required to file a return of income for the tax year in which the amount was paid or recovered or within a longer time if the Commissioner agrees; and 20
  - (c) the lessee must not revoke the allocation. 25

Defined in this Act: amount, Commissioner, deduction, income, income year, lessee, notice, return of income, tax year

Compare: 2004 No 35 s EJ 10

***Petroleum mining*****EJ 12 Petroleum development expenditure***General rule* 30

- (1) A deduction under **section DT 5** (Petroleum development expenditure) is allocated in equal amounts over a period of 7 income years.

- Start of period for offshore development*
- (2) For petroleum development expenditure in an offshore development, the period of 7 income years starts with the income year in which the expenditure is incurred.
- Start of period for onshore development* 5
- (3) For petroleum development expenditure in an onshore development, the period of 7 income years starts with the later of—
- (a) the income year in which commercial production starts; and 10
- (b) the income year in which the expenditure is incurred.
- Relationship with other petroleum mining provisions*
- (4) **Sections EJ 13 to EJ 16** override **subsection (1)**. **Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5** (which relate to petroleum miners) override this section. 15
- Defined in this Act: amount, commercial production, deduction, income year, offshore development, onshore development, petroleum development expenditure
- Compare: 2004 No 35 s EJ 11
- EJ 13 Relinquishing petroleum mining permit**
- When this section applies* 20
- (1) This section applies when a petroleum miner relinquishes a petroleum mining permit.
- Amount of deduction*
- (2) The amount of the deduction that the miner is allowed on relinquishing the permit is the difference between— 25
- (a) the amount of the deduction allowed under **section DT 5** (Petroleum development expenditure) and attributable to—
- (i) the permit; or
- (ii) an asset of the kind described in **section CT 7(1)(b) or (c)** (Meaning of petroleum mining asset) held solely in connection with the permit; and 30
- (b) any part of the deduction allocated to earlier income years under **section EJ 12(1)**.

*Timing of deduction*

- (3) The deduction is allocated to the income year in which the miner relinquishes the permit.

Defined in this Act: amount, deduction, income year, petroleum miner, petroleum mining permit

5

Compare: 2004 No 35 s EJ 12

**EJ 14 Spreading deduction backwards***When this section applies*

- (1) This section applies when a petroleum miner has a deduction whose amount has been reduced under **section IS 5** (Petroleum miners' tax losses).

10

*Spreading backwards*

- (2) The petroleum miner may allocate the amount of the deduction to the tax year before that in which the net loss arises, or allocate parts of it to earlier tax years.

15

*Amending returns*

- (3) The petroleum miner may amend their returns of income for the relevant tax years despite the operation of the time bar.

Defined in this Act: amount, deduction, petroleum miner, return of income, tax year, time bar

20

Compare: 2004 No 35 s IH 3(1)

**EJ 15 Disposal of petroleum mining asset***When this section applies*

- (1) This section applies when a petroleum miner disposes of a petroleum mining asset.

25

*Amount, and timing, of deduction*

- (2) Part of a deduction under **section DT 5** (Petroleum development expenditure) is allocated to the income year in which the miner disposes of the asset. The part is that to which both the following apply:

30

- (a) it is attributable to the asset; and  
 (b) it has been allocated under **section EJ 12** to the income year in which the miner disposes of the asset and to 1 or more later income years.

*Allocation to more than 1 year*

- (3) If the petroleum miner's income from disposing of the asset is derived in 2 or more income years,—
- (a) the amount of the deduction is allocated among the income years in which the miner derives the income; and 5
  - (b) the amount allocated to each income year bears the same relation to the total amount of the deduction as the income that the miner derives in that income year bears to the total amount of income that the miner derives from the disposal. 10

*Relationship with section EJ 16*

- (4) This section is overridden by **section EJ 16**. 15
- Defined in this Act: amount, deduction, dispose, income, income year, petroleum miner, petroleum mining asset
- Compare: 2004 No 35 s EJ 13

**EJ 16 Disposal of petroleum mining asset to associate***When this section applies*

- (1) This section applies when, in an income year, a petroleum miner disposes of a petroleum mining asset to— 20
- (a) a person associated with the miner:
  - (b) a person who holds the asset for the miner:
  - (c) a person who holds the asset for a person associated with the miner.

*Amount of deduction* 25

- (2) The maximum amount that may be allocated under **section EJ 15** to the income year is the amount that would be the net income of the petroleum miner in the income year if their only income were from the disposal. 30
- Defined in this Act: amount, associated person, dispose, income, income year, net income, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s EJ 14

**EJ 17 Partnership interests and disposal of part of asset**

In **sections EJ 12 to EJ 16**, unless the context requires otherwise,— 35

- (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:
- (b) references to the disposal of an asset apply equally to the disposal of part of an asset. 5

Defined in this Act: dispose, income, petroleum mining permit

Compare: 2004 No 35 s EJ 15

### **EJ 18 Petroleum mining operations outside New Zealand** 10

**Sections EJ 12 to EJ 17, EJ 19, and EJ 20** 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 **sections EJ 12 to EJ 17, EJ 19, and EJ 20**. 15

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s EJ 16

### *Definitions* 20

#### **EJ 19 Meaning of offshore development**

##### *Meaning*

- (1) In **section EJ 12, offshore development** means a place to which both the following apply:
  - (a) 1 or more of the activities described in **subsection (2)** is carried out there; and 25
  - (b) the major part of the facilities for extracting, producing, treating, processing, and separating petroleum are situated in the sea or in an area of foreshore on the seaward side of the mean high-water mark. 30

##### *Activities: inclusions*

- (2) 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: 35

- (d) removal or restoration operations.

*Activities: exclusions*

- (3) The activities do not include further treatment to which all the following apply:
- (a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and 5
- (b) it is done—
- (i) by liquefaction or compression; or
- (ii) for the extraction of constituent products; or
- (iii) for the production of derivative products; and 10
- (c) it is not treatment at the production facilities.

Defined in this Act: offshore development, permit area, petroleum, removal or restoration operations

Compare: 2004 No 35 s EJ 17

**EJ 20 Meaning of onshore development** 15

*Meaning*

- (1) In **section EJ 12, onshore development** means a place to which both the following apply:
- (a) 1 or more of the activities described in **subsection (2)** is carried out there; and 20
- (b) the major part of the facilities for extracting, producing, treating, processing, and separating petroleum are situated neither in the sea nor in an area of foreshore on the seaward side of the mean high-water mark.

*Activities: inclusions* 25

- (2) 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: 30
- (d) removal or restoration operations.

*Activities: exclusions*

- (3) The activities do not include further treatment to which all the following apply: 35
- (a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and

- (b) it is done—
  - (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. 5

Defined in this Act: onshore development, permit area, petroleum, removal or restoration operations

Compare: 2004 No 35 s EJ 18

### *Superannuation contributions*

#### **EJ 21 Contributions to employees' superannuation schemes** 10

*When this section applies*

- (1) This section applies when an employer is allowed a deduction for a superannuation contribution to an employee's superannuation scheme under **section DC 7** (Contributions to employees' superannuation schemes). 15

*Timing of deduction*

- (2) The employer may choose to allocate the deduction to the income year for which the contribution was required by the superannuation scheme to be made, or for which the amount of the contribution was calculated taking into account the earnings paid to employees who were members of the scheme during the income year, if the employer makes the contribution within 63 days after the end of the income year. 20

*Election*

- (3) The employer must make the election before filing a return of income for the income year or within a longer time if the Commissioner agrees. 25

Defined in this Act: amount, Commissioner, deduction, employee, employer, income year, return of income, superannuation contribution, superannuation scheme 30

Compare: 2004 No 35 s EJ 19

***Research, development, and resulting market development*****EJ 22 Deductions for market development: product of research, development***When this section applies*

- (1) This section applies when a person is allowed a deduction for expenditure under **section DB 35** (Research or development) that is not interest and is incurred— 5
- (a) on market development for a product that has resulted from expenditure incurred by the person on research or development; and 10
  - (b) before the person begins commercial production or commercial use of the product.

*Choice for allocation of deduction*

- (2) The person may choose to allocate under **section DB 35(7)** all or part of the deduction to an income year— 15
- (a) after the income year in which the person incurs the expenditure; and
  - (b) in the way required by **section EJ 23**.
- Defined in this Act: deduction, development, income year, research 20
- Compare: 2004 No 35 s EJ 20 20

**EJ 23 Allocation of deductions for research, development, and resulting market development***When this section applies*

- (1) This section applies when a person has— 25
- (a) a deduction for expenditure incurred on research or development that the person chooses to allocate under **section DB 35(7)** (Research or development): 25
  - (b) a deduction for an amount of depreciation loss for an item used for research or development, that the person chooses to allocate under **section EE 1(5)** (What this sub-part does): 30
  - (c) a deduction for expenditure incurred on market development for a product that has resulted from expenditure incurred on research or development that the person chooses to allocate under **section EJ 20(2)**. 35



*Timing of deduction*

- (2) The person must allocate the deduction to an income year—
- (a) in which the person derives an amount of income that is assessable income that the person would not have derived but for—
    - (i) expenditure that gives rise to a deduction that may be allocated under this section: 5
    - (ii) the use or disposal of an item for which the person has an amount of depreciation loss that may be allocated under this section: 10
  - (b) to which under **Part I** (Treatment of tax losses) a loss balance is carried forward for the income year in which the expenditure or depreciation loss was incurred.

*Deduction allocated to income year*

- (3) The person must allocate to an income year an amount of deductions referred to in **subsection (1)** that is equal to or greater than the lesser of—
- (a) the amount of assessable income referred to in **subsection (2)(a)** that the person derives in the income year: 15
  - (b) the amount of the deductions that has not been allocated to earlier income years. 20

Defined in this Act: assessable income, deduction, depreciation losses, development, income year, research

Compare: 2004 No 35 s EJ 21

## Subpart EK—Environmental restoration accounts 25

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## **EK 1 Environmental Restoration Funds Account** 15

### *Account*

- (1) There is a Crown Bank Account called the Environmental Restoration Funds Account that is operated under the Public Finance Act 1989.

### *Payments from person paid into account* 20

- (2) Every payment a person makes to the Commissioner under **section EK 2**—
- (a) is public money; and
  - (b) must be paid into the Environmental Restoration Funds Account. 25

Defined in this Act: Commissioner, pay

Compare: 2004 No 35 s EK 1

## **EK 2 Persons who may make payment to environmental restoration account**

A person may make a payment to the Commissioner for entry in the person's environmental restoration account for an income year if the person—

- (a) carries on a business in New Zealand; and
- (b) expects to incur, for a later income year, expenditure that— 35
  - (i) is not on revenue account property, other than land to which **section CB 8** (Disposal: land used for landfill, if notice of election) applies; and

- (ii) is of a kind listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
- (iii) is of a kind not listed in **schedule 19, part C**; and
- (c) makes a provision for such expenditure in financial statements that are
  - (i) prepared for external reporting purposes; and
  - (ii) audited by an accountant who is a chartered accountant or has equivalent professional qualifications; and
  - (iii) given by the accountant a standard audit opinion, without qualifications on matters relating to the effect of this subpart.

5

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Defined in this Act: business, Commissioner, environmental restoration account, income year, pay, revenue account property

15

Compare: 2004 No 35 s EK 2

### **EK 3 Payments to environmental restoration account**

#### *Upper limit of payment*

- (1) A person must not make a payment for an income year of more than the person's maximum payment for the income year.

20

#### *Lower limit of payment*

- (2) A person must not make a payment for an income year of less than \$1,000.

#### *Time for making payment*

25

- (3) A payment made after the day that is 6 months after the end of an income year is not made for the income year unless—
  - (a) the Commissioner has allowed a longer period for the payment; and
  - (b) the payment is made within the period allowed by the Commissioner.

30

Defined in this Act: Commissioner, income year, maximum payment, pay

Compare: 2004 No 35 s EK 3

**EK 4 Environmental restoration account***Person's account*

- (1) The Commissioner must keep an environmental restoration account in the name of every person who makes a payment to the Commissioner under **section EK 2**. 5

*Payments in account*

- (2) Every payment under **section EK 2** that a person makes to the Commissioner must be entered in the person's environmental restoration account.

*Amounts in account*

- (3) The only amounts that may be entered in a person's environmental restoration account are— 10
- (a) payments made by the person to the Commissioner under **section EK 2**;
  - (b) transfers made to the account under **subsection (6)**: 15
  - (c) interest paid under **section EK 6**.

*Amounts not available to others*

- (4) An amount entered in a person's environmental restoration account may not, while in the account,— 20
- (a) be assigned or charged in any way: 20
  - (b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation:
  - (c) be an asset for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation: 25
  - (d) be an asset for the payment of the debts or liabilities of a dead person's estate.

*Amounts not available except for refunds or transfers*

- (5) An amount entered in a person's environmental restoration account may not be removed from the environmental restoration account except by a refund under **section EK 9 or EK 12** or by a transfer under **subsection (6)**. 30

*Transfers of amounts*

- (6) An amount may be transferred from the environmental restoration account of a person— 35

- (a) to an environmental restoration account of a person to whom the amount has been transferred under **section EK 15 or EK 16(3)(b)**:
- (b) to the department that is at the time responsible for administering the Environment Act 1986, if the amount has been transferred under **section EK 16(3)(a)**: 5
- (c) to an environmental restoration account of an amalgamated company to which the amount has been transferred under **section EK 19**.

*Commissioner may close empty account* 10

- (7) The Commissioner may close an environmental restoration account of a person if the amount in the environmental restoration account is zero.

Defined in this Act: amalgamating company, amount, Commissioner, environmental restoration account, interest, liquidation, pay 15

Compare: 2004 No 35 s EK 4

## **EK 5 Details to be provided with payment to environmental restoration account**

*Notice and details required*

- (1) A person making a payment to an environmental restoration account must provide the Commissioner with a notice, in a form prescribed by the Commissioner, giving— 20
- (a) the name of the person; and
  - (b) the income year for which the payment is made; and
  - (c) a calculation of the maximum payment for the person and the income year; and 25
  - (d) any additional information that the Commissioner requires.

*Time for providing information*

- (2) The person must provide the information required by **subsection (1)** within 2 working days from the day of the payment. 30

Defined in this Act: Commissioner, environmental restoration account, income year, maximum payment, pay

Compare: 2004 No 35 s EK 5 35

## **EK 6 Interest on payments to environmental restoration account**

### *Interest payable*

- (1) Interest is payable by the Commissioner on—
- (a) a payment under **section EK 2** to an environmental restoration account: 5
  - (b) an amount that is treated under **section EK 15 or EK 19** as being a payment to an environmental restoration account.

### *Period*

- (2) Interest is computed with daily rests from the day after the date of the payment until the day before the date on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 19**. 10

### *Date to which interest accrues*

- (3) Interest that has accrued on a payment is payable to the person who has the environmental restoration account on the earlier of— 15
- (a) 31 March in each year:
  - (b) the day on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 19**. 20

### *Rate*

- (4) The interest rate is 3% per year. 25
- Defined in this Act: Commissioner, environmental restoration account, interest, pay, year
- Compare: 2004 No 35 s EK 6

## **EK 7 Deduction for payment**

### *When this section applies*

- (1) This section applies when a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for a payment to their environmental restoration account under **section EK 2**. 30

### *Amount of deduction*

- (2) The amount of the deduction is calculated using the formula— 35

$$\frac{\text{payment}}{\text{tax rate.}}$$
*Definition of items in formula*

- (3) The items in the formula are defined in **subsections (4) and (5)**.

*Payment*

5

- (4) **Payment** is the lesser of—
- (a) the person's payment to the Commissioner under **section EK 2** for the income year; and
  - (b) the person's maximum payment for the income year.

*Tax rate*

10

- (5) **Tax rate** is the highest rate of income tax on taxable income that—
- (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

*Timing of deduction*

- (6) The person is allowed the deduction for the income year for which the payment is made.

Defined in this Act: Commissioner, deduction, environmental restoration account, income tax, income year, maximum payment, pay, tax year, taxable income 20

Compare: 2004 No 35 s EK 7

**EK 8 Deduction for transfer***When this section applies*

- (1) This section applies when a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for a transfer to their environmental restoration account under **section EK 15, EK 16, or EK 19**. 25

*Amount of deduction*

- (2) The amount of the deduction is calculated using the formula— 30
- $$\frac{\text{transfer}}{\text{tax rate.}}$$

*Definition of items in formula*

- (3) The items in the formula are defined in **subsections (4) and (5)**.

*Transfer*

- (4) **Transfer** is the amount of the transfer to the person's environmental restoration account that is treated as a payment by the person under **section EK 15(3), EK 16, or EK 19**. 5

*Tax rate*

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

*Timing of deduction*

- (6) The person is allowed the deduction for the income year for which the transfer is made. 15

Defined in this Act: deduction, environmental restoration account, income tax, income year, maximum payment, pay, tax year, taxable income

Compare: 2004 No 35 s EK 8

## **EK 9 Refund of payment if excess, lacking details** 20

*When this section applies*

- (1) This section applies when a person's payment under **section EK 2** for an income year is—
- (a) more than the person's maximum payment for the income year: 25
  - (b) made without providing the details required by **section EK 5**.

*Refund*

- (2) As soon as practicable after the date on which the payment is received, the Commissioner must refund to the person— 30
- (a) the excess, if the payment is more than the person's maximum payment for the income year:
  - (b) the payment, if the payment is described by **subsection (1)(b)**.



*No interest payable by Commissioner*

- (3) No interest is payable by the Commissioner under **section EK 6** on the amount of the payment.

Defined in this Act: Commissioner, income year, interest, maximum payment, pay  
Compare: 2004 No 35 s EK 9

5

**EK 10 Certain refunds not income**

A refund under **section EK 9** is excluded income under **section CX 51** (Refund from environmental restoration account).

Defined in this Act: excluded income  
Compare: 2004 No 35 s EK 10

10

**EK 11 Application for refund***Who may apply*

- (1) A person may apply to the Commissioner for a refund under **section EK 12** of an amount in the person's environmental restoration account if the refund—

15

- (a) corresponds to expenditure incurred by the person of a kind that is 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**;

20

- (b) represents an excess in the person's environmental restoration account over the maximum account balance for the person's environmental restoration account for the income year.

*Application*

25

- (2) An application for a refund must—

- (a) be in writing; and  
(b) state the grounds on which the application is made; and  
(c) provide evidence satisfactory to the Commissioner verifying the existence of the grounds; and  
(d) state the amount of the refund that the applicant wants.

30

Defined in this Act: Commissioner, environmental restoration account, income year  
Compare: 2004 No 35 s EK 11

**EK 12 Refund if request or excess balance***When this section applies*

- (1) This section applies when—
- (a) a person wants a refund of some or all of the amount in the person's environmental restoration account and none of **sections EK 9, EK 15, EK 16, and EK 19** applies: 5
  - (b) the amount in the person's environmental restoration account is more than the maximum account balance for an income year.

*Refund if request made*

- (2) The Commissioner must make a refund under this section to a person if— 10
- (a) the person applies for a refund and has incurred expenditure—
    - (i) of a kind that is 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) of an amount equal to or greater than the amount given by **subsection (3)** for the amount of the refund; and 20
    - (iii) after the first date on which the person made to the Commissioner a payment under **section EK 2** for entry in the person's environmental restoration account or a transfer under **section EK 15, EK 16, or EK 19** was made to the person's environmental restoration account: 25
  - (b) the maximum account balance for the latest complete income year for the person's environmental restoration account is less than the amount in the environmental restoration account at the end of that income year. 30

*Minimum amount of expenditure incurred*

- (3) The amount of expenditure incurred that corresponds to the amount of a refund is calculated using the formula— 35
- $$\frac{\text{amount}}{\text{tax rate.}}$$

*Definition of items in formula*

- (4) In the formula,—

- (a) **amount** is the amount of the refund:
- (b) **tax rate** is the highest rate of income tax on taxable income that—
- (i) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); 5  
and
- (ii) would apply to the person for the tax year if the person had sufficient taxable income.
- Amount of refund if expenditure incurred*
- (5) If a person is entitled to a refund under **subsection (2)(a)**, the amount that the Commissioner must refund to the person is the smallest of— 10
- (a) the refund for which the person applies:
- (b) the contents of the person’s environmental restoration account at the time of the refund: 15
- (c) the refund corresponding to the person’s expenditure that meets the requirements of **subsection (2)(a)(i) to (iii)**.
- Amount of refund if maximum account balance decreases*
- (6) If a person is entitled to a refund under **subsection (2)(b)**, the amount that the Commissioner must refund to the person is the lesser of— 20
- (a) the refund for which the person applies:
- (b) the difference at the end of the latest complete income year between—
- (i) the amount in the person’s environmental restoration account, after any transfer under **section EK 15, EK 16, or EK 19** for the income year: 25
- (ii) the person’s maximum account balance for that income year.
- Relationship with section EK 17* 30
- (7) **Section EK 17** overrides **subsections (5) and (6)**.
- Defined in this Act: amount, Commissioner, environmental restoration account, income tax, income year, maximum account balance, pay, tax year, taxable income
- Compare: 2004 No 35 s EK 12
- EK 13 Income when refund given on request** 35
- A refund under **section EK 12** is income, of the amount given by **section CB 27** (Environmental restoration accounts), derived by

the person in the income year in which the person receives the refund.

Defined in this Act: Commissioner, income, income year

Compare: 2004 No 35 s EK 13

<b>EK 14 Application for transfer</b>	5
<i>Who may apply</i>	
(1) A person may apply to the Commissioner for a transfer under <b>section EK 15</b> from the amount in the person's environmental restoration account.	
<i>Application</i>	
(2) An application for a transfer must—	10
(a) be in writing; and	
(b) state the grounds on which the application is made; and	
(c) state the amount of the transfer that the applicant wants.	
Defined in this Act: Commissioner, environmental restoration account	15
Compare: 2004 No 35 s EK 14	
<b>EK 15 Transfer on request</b>	
<i>When this section applies</i>	
(1) This section applies when—	
(a) a person applies under <b>section EK 14</b> for a transfer of some or all of the amount in their environmental restoration account to a person who is nominated in the application; and	20
(b) the person has transferred to the nominated person the obligations to which the amount relates; and	25
(c) none of <b>sections EK 9, EK 12, EK 16, and EK 19</b> applies.	
<i>Transfer if request made</i>	
(2) The Commissioner must make a transfer under this section to an environmental restoration account of the person nominated in the application.	30
<i>Transfer treated as payment by nominated person</i>	
(3) A transfer under <b>subsection (2)</b> is treated as being a payment by the nominated person to the nominated person's environmental restoration account if the nominated person satisfies the Commissioner that—	35

- (a) the obligations to which the transferred amount relates have been transferred to the nominated person; and
- (b) in the absence of the transfer, the nominated person would be entitled to make a payment, of the amount of the transfer, to the nominated person's environmental restoration account. 5

*Commissioner to reverse transfer if requirements of subsection (3) not met*

- (4) If the nominated person does not meet the requirements of **subsection (3)** in relation to an amount, the Commissioner must transfer the amount to the environmental restoration account of the person who made the application under **subsection (1)(a)**. 10

*Timing of reversal*

- (5) The transfer under **subsection (4)** is treated as taking place at the time of the original transfer under **subsection (2)**. 15

Defined in this Act: Commissioner, environmental restoration account, pay

Compare: 2004 No 35 s EK 15

## **EK 16 Transfer on death, bankruptcy, or liquidation**

*When this section applies*

- (1) This section applies when a person— 20
  - (a) has an environmental restoration account; and
  - (b) does 1 of the following:
    - (i) dies;
    - (ii) becomes bankrupt;
    - (iii) is put into liquidation. 25

*Transfer to other person*

- (2) **Subsection (3)** applies if the Commissioner is informed, by the administrator of the person's estate, the Official Assignee, or the person's liquidator, that the obligation to which the balance in the person's environmental restoration account relates has been transferred to another person. 30

*Transfer to Crown or other person*

- (3) The Commissioner must transfer the amount referred to in **subsection (4)** to—

- (a) the department that is at the time responsible for administering the Environment Act 1986, if the transfer is to Her Majesty the Queen in right of New Zealand; or
- (b) an environmental restoration account of the person to whom the obligation has been transferred, if **paragraph (a)** does not apply. 5

*Amount of transfer*

- (4) The Commissioner must transfer under **subsection (3)** the amount that is in the person's environmental restoration account on the date on which— 10
  - (a) the person dies, if **subsection (1)(b)(i)** applies:
  - (b) the person becomes bankrupt, if **subsection (1)(b)(ii)** applies:
  - (c) the person is put into liquidation, if **subsection (1)(b)(iii)** applies. 15

*Relationship with section EK 17*

- (5) **Section EK 17** overrides **subsection (4)**.

*Year of income*

- (6) The amount of a transfer under this section is income, under **section CB 27** (Environmental restoration accounts), derived by the person on the day before the day on which the amount of the transfer is determined under **subsection (4)**. 20

Defined in this Act: amount, Commissioner, environmental restoration account, income, liquidation

Compare: 2004 No 35 s EK 16 25

**EK 17 Minimum refund or transfer**

The Commissioner must not give a refund or make a transfer under any of **sections EK 9, EK 12, EK 15, EK 16, and EK 19** that is less than the lesser of—

- (a) \$1,000; and 30
- (b) the balance in the person's environmental restoration account on the date on which the refund or transfer is made.

Defined in this Act: Commissioner, environmental restoration account

Compare: 2004 No 35 s EK 17 35

**EK 18 Payments from which refunds come**

Each refund to a person is treated as coming from the total amount in the person's environmental restoration account in the order in which the person made the payments into the account.

5

Defined in this Act: amount, environmental restoration account, pay

Compare: 2004 No 35 s EK 18

**EK 19 Environmental restoration account of amalgamating company**

If an amalgamating company with an environmental restoration account ends its existence on an amalgamation during an income year,—

10

(a) the contents of the environmental restoration account of the amalgamating company are transferred to an environmental restoration account of the amalgamated company on the date of the amalgamation:

15

(b) the amalgamated company is treated as having—

(i) made to the amalgamated company's environmental restoration account the payments that the amalgamating company made before the amalgamation to the amalgamating company's environmental restoration account; and

20

(ii) made from the amalgamated company's environmental restoration account the transfers that the amalgamating company made before the amalgamation from the amalgamating company's environmental restoration account; and

25

(iii) received from the amalgamated company's environmental restoration account the refunds that the amalgamating company received before the amalgamation from the amalgamating company's environmental restoration account.

30

Defined in this Act: amalgamated company, amalgamating company, amalgamation, environmental restoration account, income year, pay

Compare: 2004 No 35 s EK 19

35

## **EK 20 Environmental restoration account of consolidated group company**

### *Company with environmental restoration account*

- (1) A company that is part of a consolidated group may have an environmental restoration account. 5

### *Nominated company for group acting on behalf of company*

- (2) The nominated company for the consolidated group may make payments and applications and receive refunds under this subpart on behalf of the group company.

### *Use of consolidated financial statements for group* 10

- (3) In making payments and applications under this subpart, the nominated company may rely on the audited consolidated financial statements for the consolidated group.

### *Use of consolidated figures for liabilities anticipated and expenditure incurred* 15

- (4) If the nominated company relies on the audited consolidated financial statements for the consolidated group, the consolidated figures for the anticipated liabilities and incurred expenditure of the consolidated group are attributed to the group companies on the basis of the individual obligations of the companies to incur expenditure 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**. 20

Defined in this Act: consolidated group, environmental restoration account, nominated company, pay 25

Compare: 2004 No 35 s EK 20

## **EK 21 Notices in electronic format**

The Commissioner may require a person to provide a notice under this subpart in an electronic format that the Commissioner prescribes under section 36BC of the Tax Administration Act 1994. 30

Defined in this Act: Commissioner

Compare: 2004 No 35 s EK 21



**EK 22 Meaning of maximum payment***Maximum payment*

- (1) In this subpart, **maximum payment** means the maximum payment that under **subsection (2)** a person may make to the person's environmental restoration account for an income year. 5

*Amount of maximum payment*

- (2) The maximum payment that a person may make for an income year is the lesser of—
- (a) the amount by which the maximum account balance for the income year for the environmental restoration account is more than the amount in the environmental restoration account at the end of the income year: 10
- (b) the amount, if any, calculated under **subsection (3)** for the person and the income year. 15

*Maximum payment for first 5 years of environmental restoration funds scheme*

- (3) If a person has a maximum account balance for the 2005–06 income year that is more than zero, the amount referred to in **subsection (2)(b)** for the person and for that income year, and for each of the later income years before the 2010–11 income year, is the amount calculated using the formula— 20
- $$\text{level increase} + (\text{year} \times 0.2 \times \text{initial level}) - \text{contents.}$$

*Definition of items in formula*

- (4) In the formula,— 25
- (a) **level increase** is the greater of zero and the amount by which the maximum account balance for the income year is more than the maximum account balance for the 2005–06 income year:
- (b) **year** is 1 for the 2005–06 income year and increases by 1 for each successive income year to a maximum of 5 for the 2009–10 income year: 30
- (c) **initial level** is the maximum account balance for the 2005–06 income year:

- (d) **contents** is the amount in the environmental restoration account at the end of the income year.

Defined in this Act: amount, business, environmental restoration account, income year, maximum payment, pay

Compare: 2004 No 35 s EK 22

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### EK 23 Other definitions

#### *Meaning of maximum account balance*

- (1) In this subpart, **maximum account balance** for a person and an income year means—
- (a) if the person does not meet the requirements of **section EK 2** for the income year, zero: 10
- (b) if the person meets the requirements of **section EK 2** for the income year, the amount calculated using the formula—
- provision × tax rate. 15

#### *Definition of items in formula*

- (2) In the formula,—
- (a) **provision** is the provision in the person's financial statements for future expenditure that—
- (i) is of a kind listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and 20
- (ii) is not of a kind listed in **schedule 19, part C**;
- (b) **tax rate** is the highest rate of income tax on taxable income that— 25
- (i) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); and
- (ii) would apply to the person for the tax year if the person had sufficient taxable income.

#### *Meaning of environmental restoration account* 30

- (3) In this subpart, **environmental restoration account**, for a person, means the account that the Commissioner keeps in the person's name under **section EK 4**.

Defined in this Act: business, Commissioner, environmental restoration account, income tax, income year, taxable income 35

Compare: 2004 No 35 s EK 23

### Subpart EW—Financial arrangements rules

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*Introductory provisions*

**EW 1 What this subpart does**

*Financial arrangements rules*

- (1) This subpart contains most of the financial arrangements rules. 30

*Meaning of financial arrangements rules*

- (2) **Financial arrangements rules** means—
- (a) the sections in this subpart; and
  - (b) **sections CC 3** (Financial arrangements), **DB 12 to DB 16** (which relate to financial arrangements adjustments), **EZ 51** (Transitional adjustment when changing to financial arrangements rules), **FB 9** (Financial arrangements 35

- rules), **GB 21** (Dealing that defeats intention of financial arrangements rules), **RA 11 and RA 12** (which relate to adjustments to correct errors); and
- (c) sections 90AA to 90AD of the Tax Administration Act 1994. 5

*Purposes of financial arrangements rules*

- (3) The purposes of the financial arrangements rules are—
- (a) to require the parties to a financial arrangement to accrue over the term of the arrangement a fair and reasonable amount of income derived or expenditure incurred under the arrangement, and so to prevent the deferral of income or the advancement of expenditure; and 10
- (b) to require the parties to a financial arrangement to disregard any distinction between capital and revenue amounts; and 15
- (c) to require a party to a financial arrangement to calculate a base price adjustment when the rights and obligations of the party under the arrangement cease. 20

Defined in this Act: amount, financial arrangement, financial arrangements rules, income 20

Compare: 2004 No 35 s EW 1

**EW 2 Relationship of financial arrangements rules with other provisions**

*Financial arrangements rules override other provisions* 25

- (1) The financial arrangements rules prevail over any other provision in relation to the timing and quantifying of income and expenditure under a financial arrangement to which the financial arrangements rules apply, unless the other provision expressly or by necessary implication requires otherwise. 30

*Interest excluded from certain valuations*

- (2) Expenditure under a financial arrangement to which the financial arrangements rules apply is not included in—
- (a) the cost of trading stock for low-turnover traders under **subpart EB** (Valuation of trading stock (including dealer's livestock)); 35
- (b) the cost of livestock under **subpart EC** (Valuation of livestock):

- (c) the cost of bloodstock under **subpart EC**:
- (d) the cost of revenue account property:
- (e) the cost of timber:
- (f) the cost of acquiring a film or a film right:
- (g) film production expenditure: 5
- (h) petroleum development expenditure:
- (i) petroleum exploration expenditure.

Defined in this Act: bloodstock, film, film production expenditure, film right, financial arrangement, financial arrangements rules, income, low-turnover trader, petroleum development expenditure, petroleum exploration expenditure, revenue account property, trading stock 10

Compare: 2004 No 35 s EW 2

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

#### EW 3 What is a financial arrangement? 15

##### *Meaning*

- (1) **Financial arrangement** means an arrangement described in any of **subsections (2) to (4)**.

##### *Money received for money provided*

- (2) A financial arrangement is an arrangement under which a person receives money in consideration for that person, or another person, providing money to any person— 20
- (a) at a future time; or
  - (b) on the occurrence or non-occurrence of a future event, whether or not the event occurs because notice is given or not given. 25

##### *Examples of money received for money provided*

- (3) Without limiting **subsection (2)**, each of the following is a financial arrangement:
- (a) a debt, including a debt that arises by law: 30
  - (b) a debt instrument:
  - (c) the deferral of the payment of some or all of the consideration for an absolute assignment of some or all of a person's rights under another financial arrangement or under an excepted financial arrangement: 35
  - (d) the deferral of the payment of some or all of the consideration for a legal defeasance releasing a person from some or all of their obligations under another financial

arrangement or under an excepted financial arrangement.

*Excepted financial arrangement ceasing to be excepted*

- (4) For **sections EW 7 and EW 8**,—
- (a) an excepted financial arrangement that ceases to be an excepted financial arrangement through the operation of **section EW 7** is a financial arrangement: 5
- (b) an excepted financial arrangement that ceases to be an excepted financial arrangement for a party through the operation of **section EW 8** is a financial arrangement for the party. 10

Defined in this Act: consideration, excepted financial arrangement, financial arrangement, legal defeasance, money, pay

Compare: 2004 No 35 s EW 3

**EW 4 What is not a financial arrangement?** 15

*Absolute assignment*

- (1) An absolute assignment of some or all of a person's rights under another financial arrangement or under an excepted financial arrangement is not a financial arrangement, except to the extent described in **section EW 3(3)(c)**. 20

*Legal defeasance*

- (2) A legal defeasance releasing a person from some or all of their obligations under another financial arrangement or under an excepted financial arrangement is not a financial arrangement, except to the extent described in **section EW 3(3)(d)**. 25

*Excepted financial arrangement*

- (3) An excepted financial arrangement is not a financial arrangement. The relationship between financial arrangements and excepted financial arrangements is dealt with in **section EW 6**. 30
- Defined in this Act: excepted financial arrangement, financial arrangement, legal defeasance

Compare: 2004 No 35 s EW 4



**EW 5 What is an excepted financial arrangement?***Meaning*

- (1) **Excepted financial arrangement** means an arrangement described in any of **subsections (2) to (25)**. However,—
- (a) an arrangement described in any of **subsections (18) to (20)** may cease to be an excepted financial arrangement through the operation of **section EW 7**: 5
  - (b) an arrangement described in any of **subsections (21) to (25)** may cease to be an excepted financial arrangement for a party who makes an election under **section EW 8**. 10

*Annuity*

- (2) Each of the following is an excepted financial arrangement:
- (a) an annuity for a term contingent on human life:
  - (b) an annuity for a term not contingent on human life to which **section EY 8(2)(c)** (Meaning of life insurance) applies. 15

*Bet*

- (3) A bet on any of the following is an excepted financial arrangement:
- (a) a race, as defined in section 5 of the Racing Act 2003: 20
  - (b) a sporting event under a sports betting system administered under Part 6 of the Racing Act 2003:
  - (c) gambling, including a New Zealand lottery, as those terms are defined in section 4(1) of the Gambling Act 2003. 25

*Employment contract*

- (4) An employment contract is an excepted financial arrangement.

*Farm-out arrangement*

- (5) A farm-out arrangement is an excepted financial arrangement. 30

*Group investment fund*

- (6) An interest in a group investment fund is an excepted financial arrangement.

- Hire purchase: livestock or bloodstock*
- (7) A hire purchase agreement for livestock or bloodstock is an excepted financial arrangement.
- Insurance contract*
- (8) An insurance contract is an excepted financial arrangement. 5
- Lease not finance lease*
- (9) A lease that is not a finance lease is an excepted financial arrangement.
- Loan in New Zealand currency*
- (10) A loan to which all the following apply is an excepted financial arrangement for the lender: 10
- (a) the loan is in New Zealand currency; and
  - (b) the loan is interest-free; and
  - (c) the loan is repayable on demand.
- Partnership or joint venture* 15
- (11) An interest in a partnership or a joint venture is an excepted financial arrangement.
- Share-lending arrangement*
- (12) A share-lending arrangement is an excepted financial arrangement. 20
- Share or option*
- (13) A share, or an option to acquire or to dispose of shares, is an excepted financial arrangement, if the share is acquired, or the person becomes a party to the option, on or after 20 May 1999. This subsection does not apply to a withdrawable share or to an option to acquire or to dispose of withdrawable shares. 25
- Specified preference share*
- (14) A specified preference share to which section FZ 1 (Deduction for dividends paid on certain preference shares) of the Income Tax Act 2004 applies is an excepted financial arrangement. 30
- Superannuation*
- (15) A membership of a superannuation scheme is an excepted financial arrangement.

- Warranty*
- (16) A warranty for goods or services is an excepted financial arrangement.
- Certain arrangements to which transitional resident is party* 5
- (17) An arrangement to which a transitional resident is a party is an excepted financial arrangement for the transitional resident if—
- (a) no other party to the arrangement is a New Zealand resident; and 10
- (b) the arrangement is not for a purpose of a business carried on in New Zealand by a party to the arrangement.
- Loan in foreign currency: private or domestic purpose*
- (18) A loan to which all the following apply is an excepted financial arrangement for the borrower: 15
- (a) the loan is in foreign currency; and
- (b) the borrower is a cash basis person; and
- (c) the borrower uses the loan for a private or a domestic purpose.
- Option: private or domestic purpose* 20
- (19) An option to acquire or dispose of property, other than an interest in a financial arrangement, is an excepted financial arrangement for a person who becomes a party to the option for a private or a domestic purpose.
- Private or domestic agreement for the sale and purchase of property or services* 25
- (20) An agreement for the sale and purchase of property or services entered into by a person, or a specified option granted to or by a person, is an excepted financial arrangement for the person if,— 30
- (a) first,—
- (i) the agreement is entered into by the person for a private or a domestic purpose; or
- (ii) the option is granted to or by the person for a private or a domestic purpose; and 35
- (b) second, the subject matter of the agreement or option is—

- (i) real property whose purchase price is less than \$1,000,000; or
  - (ii) any other property whose purchase price is less than \$400,000; or
  - (iii) services whose purchase price is less than \$400,000; and 5
- (c) third,—
- (i) the agreement requires settlement of the property, or performance of the services, to take place on or before the 365th day after the date on which the agreement is entered into; or 10
  - (ii) the option requires settlement of the property, or performance of the services, if an agreement is entered into as a result of the exercise of the option, to take place on or before the 365th day after the date on which the option is granted. 15
- Agreement for the sale and purchase of property or services*
- (21) An agreement for the sale and purchase of property or services is an excepted financial arrangement, except for a party who makes an election under **section EW 8**, if— 20
- (a) all a party's sales or purchases under the agreement are prepaid; and
  - (b) for all the party's agreements under which all sales and purchases are prepaid, the total value of prepayments, on every day in an income year, is \$50,000 or less. 25
- Short-term agreement for sale and purchase*
- (22) A short-term agreement for sale and purchase is an excepted financial arrangement, except for a party who makes an election under **section EW 8**. 30
- Short-term option*
- (23) A short-term option is an excepted financial arrangement, except for a party who makes an election under **section EW 8**.
- Travellers' cheques*
- (24) Travellers' cheques are excepted financial arrangements, except for a party who makes an election under **section EW 8**. 35

*Variable principal debt instrument*

- (25) A variable principal debt instrument is an excepted financial arrangement, except for a party who makes an election under **section EW 8**, if the total value on every day in an income year of all variable principal debt instruments to which a person is a party is \$50,000 or less. 5

Defined in this Act: agreement for the sale and purchase of property or services, arrangement, bloodstock, cash basis person, excepted financial arrangement, farm-out arrangement, finance lease, group investment fund, hire purchase agreement, income year, insurance contract, lease, New Zealand, New Zealand resident, non-resident, pay, property, share, share-lending arrangement, short-term agreement for sale and purchase, short-term option, superannuation scheme, transitional resident, variable principal debt instrument, withdrawable share 10

Compare: 2004 No 35 s EW 5

## **EW 6 Relationship between financial arrangements and excepted financial arrangements** 15

*Part of financial arrangement*

- (1) An excepted financial arrangement may be part of a financial arrangement.

### *Income or expenditure under specific excepted financial arrangements* 20

- (2) If an excepted financial arrangement described in any of **section EW 5(2) to (16)** is part of a financial arrangement, an amount solely attributable to the excepted financial arrangement is not an amount taken into account under the financial arrangements rules. 25

### *Income or expenditure under remaining excepted financial arrangements*

- (3) If an excepted financial arrangement described in any of **section EW 5(17) to (25)** is part of a financial arrangement, an amount solely attributable to the excepted financial arrangement is an amount taken into account under the financial arrangements rules. 30

Defined in this Act: amount, excepted financial arrangement, financial arrangement, financial arrangements rules, income 35

Compare: 2004 No 35 s EW 6

**EW 7 Change from private or domestic purpose***When this section applies*

- (1) This section applies when a person who is a party to an excepted financial arrangement described in any of **section EW 5(18) to (20)** stops using it for a private or a domestic purpose. 5

*Excepted financial arrangement becomes financial arrangement*

- (2) On and after the date on which the person stops using the excepted financial arrangement for a private or a domestic purpose,— 10
- (a) it ceases to be an excepted financial arrangement for the person; and
- (b) the person becomes a party to a financial arrangement.

Defined in this Act: excepted financial arrangement, financial arrangement 15

Compare: 2004 No 35 s EW 7

**EW 8 Election to treat certain excepted financial arrangements as financial arrangements***Election*

- (1) A person may choose to treat as financial arrangements all the excepted financial arrangements to which the person is a party that are described in any of **section EW 5(21) to (25)**. 20

*Election for class of short-term agreements*

- (2) A person may choose to treat a class of short-term agreements for sale and purchase as financial arrangements. The person must identify the class by— 25
- (a) the currency that applies to the agreements; or
- (b) the term of the agreements; or
- (c) both the currency and the term.

*How election made* 30

- (3) The person makes an election by returning income derived or expenditure incurred under the chosen arrangements under the financial arrangements rules in their return of income.

*How election revoked*

- (4) The person revokes the election by giving notice to the Commissioner with their return of income and within the time that the return must be filed under section 37 of the Tax Administration Act 1994.

5

*Effect of revocation*

- (5) The revocation applies to financial arrangements the person enters into after the income year in which the notice is given.

Defined in this Act: Commissioner, excepted financial arrangement, financial arrangement, financial arrangements rules, income, income year, notice, return of income, short-term agreement for sale and purchase

10

Compare: 2004 No 35 s EW 8

*Application of financial arrangements rules***EW 9 Persons to whom financial arrangements rules apply***Residents*

15

- (1) A person who is a party to a financial arrangement must calculate and allocate income or expenditure under the arrangement for an income year under the financial arrangements rules, if the arrangement is one to which the rules apply under **section EW 10**. This subsection is overridden by **subsection (2)**.

20

*Non-residents*

- (2) **Subsection (1)** applies to a person who is not resident in New Zealand only if **subsection (3) or (4)** applies.

*Non-resident with New Zealand fixed establishment*

25

- (3) **Subsection (1)** applies to a person who is not resident in New Zealand to the extent to which the person is a party to a financial arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand.

*Non-resident trustee for New Zealand settlor*

30

- (4) **Subsection (1)** applies to a person who is not resident in New Zealand if—
- (a) the person is a trustee for a settlor who is resident in New Zealand; and

- (b) the trustee is not a person to whom **section HC 25** (Foreign-sourced amounts: non-resident trustees) apply.

Defined in this Act: financial arrangement, financial arrangements rules, fixed establishment, income, New Zealand, resident in New Zealand, trustee

Compare: 2004 No 35 s EW 9

5

## **EW 10 Financial arrangements to which financial arrangements rules apply**

*Entered into on or after 20 May 1999*

- (1) The financial arrangements rules apply to a financial arrangement that all its parties enter into on or after 20 May 1999. 10

*Existing immediately before 20 May 1999*

- (2) The financial arrangements rules apply to a financial arrangement existing immediately before 20 May 1999 to the extent to which a person becomes a party to the arrangement on or after 20 May 1999. 15

*Rollover, extension, or advance on or after 20 May 1999*

- (3) The financial arrangements rules apply to a financial arrangement that is rolled over or extended, or under which an advance is made, on or after 20 May 1999, under a binding contract entered into before 20 May 1999. 20

*Binding contract before 20 May 1999*

- (4) However, the financial arrangements rules do not apply to a financial arrangement if—  
 (a) all its parties enter into it on or after 20 May 1999; and  
 (b) they enter into it under a binding contract entered into before 20 May 1999. 25

*Transferred under relationship agreement*

- (5) The financial arrangements rules apply to a financial arrangement to which all the following apply, to the extent to which the transferee becomes a party to it: 30  
 (a) the transferor is a party to it before 20 May 1999; and  
 (b) it is rolled over or extended, or an advance is made under it, on or after 20 May 1999, under a binding contract entered into before 20 May 1999; and  
 (c) it is transferred under a relationship agreement on or after 20 May 1999. 35



*Binding contract before 20 May 1999 and transfer under relationship agreement*

- (6) However, the financial arrangements rules do not apply to a financial arrangement if—
- (a) all its parties enter into it on or after 20 May 1999; and 5
  - (b) they enter into it under a binding contract entered into before 20 May 1999; and
  - (c) it is transferred under a relationship agreement on or after 20 May 1999.

Defined in this Act: financial arrangement, financial arrangements rules, relationship agreement 10

Compare: 2004 No 35 s EW 10

**EW 11 What financial arrangements rules do not apply to**

- The financial arrangements rules do not apply to—
- (a) the calculation of resident passive income: 15
  - (b) the calculation of non-resident passive income:
  - (c) interest paid by the Commissioner under Part 7 of the Tax Administration Act 1994 for an overpayment of income tax:
  - (d) interest payable to the Commissioner under Part 7 of the Tax Administration Act 1994 for an underpayment of income tax. 20

Defined in this Act: Commissioner, financial arrangements rules, income tax, interest, non-resident passive income, pay, resident passive income

Compare: 2004 No 35 s EW 11 25

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

**EW 12 When use of spreading method required**

- A party to a financial arrangement must use 1 of the spreading methods to calculate an amount of income or expenditure under the arrangement for each income year over the arrangement's term, and to allocate it to the income year, unless **section EW 13** applies. 30

Defined in this Act: amount, financial arrangement, income, income year, spreading method 35

Compare: 2004 No 35 s EW 12

**EW 13 When use of spreading method not required***Base price adjustment year*

- (1) A person does not use any of the spreading methods for a financial arrangement in the income year in which **section EW 29** requires them to calculate a base price adjustment for it. 5

*Trustee of personal injury compensation trust*

- (2) A trustee who holds a financial arrangement in trust to manage compensation paid for personal injury under the Accident Insurance Act 1998, any of the former Acts, as defined in section 13 of the Accident Insurance Act 1998, the Workers Compensation Act 1956, or a court order does not use any of the spreading methods for the financial arrangement if— 10
- (a) the trustee is a cash basis person; or
- (b) the trustee would be a cash basis person if the trustee were a natural person. 15

*Cash basis person*

- (3) A cash basis person is not required to use any of the spreading methods, but may choose to do so under **section EW 61**. 20
- Defined in this Act: cash basis person, financial arrangement, income year, pay, spreading method, trustee

Compare: 2004 No 35 s EW 13

**EW 14 What spreading methods do***Description*

- (1) The spreading methods are methods of calculating and allocating income and expenditure under a financial arrangement over the arrangement's term. 25

*Methods*

- (2) A **spreading method** is 1 of the following: 30
- (a) the yield to maturity method or an alternative, to which **sections EW 16, EW 19, and EW 23** are relevant; or
- (b) the straight-line method, to which **sections EW 17 and EW 19** are relevant; or
- (c) a market valuation method, to which **sections EW 18, EW 19, and EW 23** are relevant; or 35

- (d) a determination method or an alternative, to which **sections EW 20 and EW 23** are relevant; or
- (e) a financial reporting method, to which **sections EW 21 and EW 23** are relevant; or
- (f) a default method, to which **section EW 22** is relevant. 5

*Result*

- (3) The amount calculated for and allocated to the income year under a spreading method is—
  - (a) income, under **section CC 3** (Financial arrangements), derived by the person in the income year; or 10
  - (b) expenditure incurred by the person in the income year.

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

Compare: 2004 No 35 s EW 14

**EW 15 What is included when spreading methods used** 15

*Consideration and amounts*

- (1) A person using a spreading method must include, for the purpose of calculating and allocating income and expenditure under the financial arrangement,—
  - (a) all consideration that has been paid, and all consideration that is or will be payable, to the person for or under the financial arrangement, ignoring non-contingent fees; and 20
  - (b) all consideration that has been paid, and all consideration that is or will be payable, by the person for or under the financial arrangement, ignoring non-contingent fees; and 25
  - (c) all amounts that have been remitted, and all amounts that are to be remitted, by the person under the financial arrangement; and 30
  - (d) all amounts that would have been payable to the person under the financial arrangement if the amounts had not been remitted by law.

*Consideration in particular cases*

- (2) If any of **sections EW 32 to EW 48** applies, the consideration referred to in **subsection (1)(a) and (b)** is adjusted under the relevant section.

Defined in this Act: amount, consideration, financial arrangement, income, non-contingent fee, pay, spreading method

5

Compare: 2004 No 35 s EW 15

**EW 16 Yield to maturity method or alternative***Who may use yield to maturity method*

- (1) A person who is a party to a financial arrangement may use the yield to maturity method. 10

*Who may use alternative*

- (2) A person who is a party to a financial arrangement may use an alternative to the yield to maturity method, but may do so only if the alternative— 15

- (a) has regard to the principles of accrual accounting; and  
 (b) conforms with commercially acceptable practice; and  
 (c) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using the yield to maturity method; 20  
 and

- (d) is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although **section EW 23** may apply if the alternative is not used in this way. 25

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

Compare: 2004 No 35 s EW 16

**EW 17 Straight-line method***Who may use straight-line method*

- (1) A person who is a party to a financial arrangement may use the straight-line method if— 30

- (a) the total value of all the financial arrangements to which the person is a party in an income year has been \$1,500,000 or less on every day in the income year; and  
 (b) the person complies with **section EW 25(1)**. 35

*Calculation of total value of financial arrangements*

- (2) When calculating total value, the person must—
- (a) include every one of their financial arrangements, whether the financial arrangements rules or the old financial arrangements rules apply to it; and 5
  - (b) use the following values:
    - (i) for a fixed principal financial arrangement, its face value:
    - (ii) for a variable principal debt instrument, the amount owing by or to the person under the financial arrangement on the relevant day: 10
    - (iii) for a financial arrangement to which the old financial arrangements rules apply, the value determined under those rules.

*Increase in specified sum* 15

- (3) The Governor-General may make an Order in Council increasing the sum specified in **subsection (1)**.

Defined in this Act: amount, financial arrangement, financial arrangements rules, fixed principal financial arrangement, income year, old financial arrangements rules, variable principal debt instrument 20

Compare: 2004 No 35 s EW 17

**EW 18 Market valuation method***Who may use market valuation method*

- (1) A person who is a party to a financial arrangement may use, for the arrangement, a market valuation method if— 25
- (a) either—
    - (i) the person's business includes dealing in financial arrangements of the class to which the arrangement belongs; or
    - (ii) the financial arrangement is an exchange-traded option, a forward contract for foreign exchange, or a futures contract; and 30
  - (b) the parties to the financial arrangement are not associated persons; and
  - (c) either— 35
    - (i) the Commissioner has approved the market, the method, and the source of information used to determine market values by a determination

- under section 90AC(1)(c) of the Tax Administration Act 1994; or
- (ii) the person can demonstrate market prices that are reliable; and
- (d) the method conforms with commercially acceptable practice; and 5
- (e) the person complies with **section EW 25(4)**; and
- (f) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although **section EW 23** may apply if the method is not used in this way. 10
- Application of Tax Administration Act 1994*
- (2) Section 22A(1) of the Tax Administration Act 1994 applies to a person to whom **subsection (1)(c)(ii)** applies. 15
- Defined in this Act: associated person, business, Commissioner, financial arrangement, forward contract, futures contract
- Compare: 2004 No 35 s EW 18
- EW 19 Choice among first 3 spreading methods**
- A person who may use the yield to maturity method or an alternative, the straight-line method, or a market valuation method for a financial arrangement may choose to use whichever of those methods the person can use for the arrangement. 20
- Defined in this Act: financial arrangement, spreading method
- Compare: 2004 No 35 s EW 19 25
- EW 20 Determination method or alternative**
- Who may use determination method*
- (1) A person who is a party to a financial arrangement may use a determination method, that is, a method in a determination made by the Commissioner under section 90AC(1)(d) of the Tax Administration Act 1994 and applying to the arrangement, if— 30
- (a) the person cannot use the yield to maturity method or an alternative; and
- (b) the person— 35
- (i) may not use the straight-line method or a market valuation method; or

- (ii) may use the straight-line method or a market valuation method but chooses not to do so.

*Who may use alternative*

- (2) A person who is a party to a financial arrangement may use an alternative to a determination method, but may do so only if— 5
  - (a) the person cannot use the yield to maturity method or an alternative; and
  - (b) the person—
    - (i) may not use the straight-line method or a market valuation method; or 10
    - (ii) may use the straight-line method or a market valuation method but chooses not to do so; and
  - (c) the alternative has regard to the principles of accrual accounting; and
  - (d) the alternative conforms with commercially acceptable practice; and 15
  - (e) the alternative results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using the determination method; and 20
  - (f) the alternative is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements. although **section EW 23** may apply if the alternative is not used in this way. 25

Defined in this Act: amount, Commissioner, financial arrangement

Compare: 2004 No 35 s EW 20

**EW 21 Financial reporting method**

- A person who is a party to a financial arrangement may use a financial reporting method if— 30
- (a) the person cannot use the yield to maturity method or an alternative; and
  - (b) the person—
    - (i) may not use the straight-line method or a market valuation method; or 35
    - (ii) may use the straight-line method or a market valuation method but chooses not to do so; and

- (c) the Commissioner has not made a determination for the financial arrangement under section 90AC(1)(d) of the Tax Administration Act 1994; and
- (d) the method conforms with commercially acceptable practice; and 5
- (e) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although **section EW 23** may apply if the method is not used in this way; and 10
- (f) the method allocates a reasonable amount to each income year over the financial arrangement's term.

Defined in this Act: amount, Commissioner, financial arrangement, income year  
Compare: 2004 No 35 s EW 21

## **EW 22 Default method** 15

A person who is a party to a financial arrangement may use a default method if—

- (a) the person cannot use the yield to maturity method or an alternative; and
- (b) the person— 20
  - (i) may not use the straight-line method or a market valuation method; or
  - (ii) may use the straight-line method or a market valuation method but chooses not to do so; and
- (c) the person may not use a determination method or an alternative, or a financial reporting method; and 25
- (d) the person—
  - (i) does not prepare financial accounts; or
  - (ii) does not report the income derived or expenditure incurred under a financial arrangement for financial reporting purposes; and 30
- (e) the method conforms with commercially acceptable practice; and
- (f) the method allocates a reasonable amount to each income year over the financial arrangement's term. 35

Defined in this Act: amount, financial arrangement, income, income year  
Compare: 2004 No 35 s EW 22



**EW 23 Failure to use method for financial reporting purposes***When this section applies*

- (1) This section applies when a person would be allowed to use a method but for the fact that the person does not comply with whichever is relevant of **sections EW 16(2)(d), EW 18(1)(f), EW 20(2)(f), and EW 21(e)**. 5

*Person treated as complying*

- (2) The person is treated as complying with whichever is relevant of **sections EW 16(2)(d), EW 18(1)(f), EW 20(2)(f), and EW 21(e)** if the method that the person uses for each financial arrangement— 10
- (a) is used for the financial arrangement, and each financial arrangement that are the same as, or similar to, the arrangements, for every income year over its term for the purposes of the financial arrangements rules; and
  - (b) appropriately reflects the dominant purpose for which the person entered into the financial arrangement; and 15
  - (c) is not used for the purpose of tax avoidance; and
  - (d) has been approved for use in circumstances applying to the person by the Commissioner, either by giving notice to the person or by making a determination under section 90AC(1)(f) of the Tax Administration Act 1994. 20

*Qualification on subsection (2)(a)*

- (3) A method complies with **subsection (2)(a)**, even if it is a change from a previous method, as long as the Commissioner approves the change in method under the circumstances or conditions specified in a determination under section 90AC(1)(g) of the Tax Administration Act 1994. 25

Defined in this Act: Commissioner, financial arrangement, financial arrangements rules, income year, notice, tax avoidance 30

Compare: 2004 No 35 s EW 23

**EW 24 Consistency of use of spreading method***Consistency required*

- (1) A person must use the same spreading method for financial arrangements that are the same as, or similar to, the arrangements for every income year. This subsection is overridden by **subsection (3)**. 35

*Straight-line method and market valuation method*

- (2) **Section EW 25** sets out particular consistency requirements for the straight-line method and a market valuation method.

*Change of spreading method*

- (3) **Section EW 26** sets out the circumstances in which a person may change their spreading method. 5

Defined in this Act: financial arrangement, income year, spreading method

Compare: 2004 No 35 s EW 24

**EW 25 Consistency of use of straight-line method and market valuation method** 10

*Straight-line method for all financial arrangements*

- (1) A person using the straight-line method in an income year for a financial arrangement must use it for all financial arrangements—
- (a) to which the person is a party at the end of the income year; and 15
- (b) for which the person can use it.

*Straight-line method for every income year of term*

- (2) A person who starts to use the straight-line method for a financial arrangement must use it over the arrangement's remaining term until **section EW 29** requires them to calculate a base price adjustment for the arrangement, unless **section EW 26(1)** applies. 20

*Total value may be over \$1,500,000*

- (3) **Subsection (2)** applies even if the total value of all the financial arrangements to which the person is a party is over \$1,500,000 at any time in the arrangement's remaining term. 25

*Market valuation method*

- (4) A person who starts to use a market valuation method for a financial arrangement must use it over the arrangement's remaining term until **section EW 29** requires them to calculate a base price adjustment for the arrangement, unless **section EW 26(1)** applies. 30

*Increase in specified sum*

- (5) The Governor-General may make an Order in Council under **section EW 17(3)** increasing the sum specified in **subsection (3)**.

Defined in this Act: financial arrangement, income year

Compare: 2004 No 35 s EW 25

5

**EW 26 Change of spreading method***Change of straight-line or market valuation method*

- (1) A person may change from the straight-line method or the market valuation method with the Commissioner's written authorisation.

10

*Change of other method*

- (2) A person may change from any other spreading method if they have a sound commercial reason for doing so. The advancement, deferral, or reduction of an income tax liability is not a sound commercial reason.

15

*Spreading method adjustment*

- (3) When a person changes their spreading method under **subsection (2)**,—
- (a) they must use the formula in **section EW 27** to calculate a spreading method adjustment for the income year in which they change the method; and
  - (b) their only income or expenditure under the financial arrangement for the income year to which the formula is applied is the spreading method adjustment.

20

*Positive or negative spreading method adjustment*

25

- (4) A spreading method adjustment calculated under **section EW 27** is,—
- (a) if positive, income, under **section CC 3** (Financial arrangements), derived by the person in the income year for which the calculation is made:
  - (b) if negative, expenditure incurred by the person in the income year for which the calculation is made.

30

*Application of Tax Administration Act 1994*

- (5) Section 22A(2) of the Tax Administration Act 1994 applies to a person to whom **subsection (2)** applies.

Defined in this Act: Commissioner, financial arrangement, income, income tax liability, income year, spreading method

5

Compare: 2004 No 35 s EW 26

**EW 27 Spreading method adjustment formula***Calculation of spreading method adjustment*

- (1) A person calculates a spreading method adjustment using the formula in **subsection (3)**. 10

*What formula applies to*

- (2) The person must apply the formula to each financial arrangement to which they—
- (a) are a party at the end of the income year in which they change their spreading method; and 15
- (b) were a party at the end of the previous income year.

*Formula*

- (3) The formula is—
- $$\begin{aligned} & \text{income (new method) – expenditure (new method)} \\ & \text{– income (old method) + expenditure (old method).} \end{aligned}$$
- 20

*Definition of items in formula*

- (4) The items in the formula are defined in **subsections (5) to (8)**.

*Income (new method)*

- (5) **Income (new method)** is the amount that would have been income derived by the person under the financial arrangement if the new method had been used for the arrangement in the period starting on the date on which the person became a party to the arrangement and ending on the last day of the income year for which the calculation is made. 25

*Expenditure (new method)*

- (6) **Expenditure (new method)** is the amount that would have been expenditure incurred by the person under the financial arrangement if the new method had been used for the arrangement in the period starting on the date on which the person 30

became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

*Income (old method)*

- (7) **Income (old method)** is income, under **section CC 3** (Financial arrangements), derived by the person under the financial arrangement in previous income years. 5

*Expenditure (old method)*

- (8) **Expenditure (old method)** is expenditure incurred by the person under the financial arrangement in previous income years. 10

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

Compare: 2004 No 35 s EW 27

***Calculation and allocation of income and expenditure when rights and obligations under financial arrangement cease*** 15

**EW 28 How base price adjustment calculated**

A party to a financial arrangement who must calculate a base price adjustment, as described in **sections EW 29 and EW 30**, calculates it using the formula in **section EW 31**. 20

Defined in this Act: financial arrangement

Compare: 2004 No 35 s EW 28

**EW 29 When calculation of base price adjustment required**

*Ceasing to be New Zealand resident*

- (1) A party to a financial arrangement who ceases to be a New Zealand resident must calculate a base price adjustment as at the date of the party's ceasing to be a New Zealand resident. This subsection is overridden by **section EW 30(1) and (2)**. 25

*Ceasing to be party for purpose of New Zealand business*

- (2) A person who is not a New Zealand resident and who is a party to a financial arrangement for the purpose of a business the party carries on through a fixed establishment in New Zealand must calculate a base price adjustment as at the date 30

of the party's ceasing to be a party to the arrangement for that purpose.

*Maturity*

- (3) A party to a financial arrangement must calculate a base price adjustment as at the date on which the arrangement matures. 5

*Treated as maturity*

- (4) A financial arrangement that has not matured because an amount has not been paid is treated as if it had matured if—  
 (a) the amount not paid is immaterial; and  
 (b) the arrangement has been structured to avoid the application of **section EW 31**. 10

*Disposal*

- (5) A party to a financial arrangement who disposes of the arrangement must calculate a base price adjustment as at the date of the disposal. 15

*Absolute assignment*

- (6) A party to a financial arrangement who makes an absolute assignment of all the party's rights under the arrangement must calculate a base price adjustment as at the date of the absolute assignment. 20

*Defeasance*

- (7) A party to a financial arrangement who makes a legal defeasance of all the party's obligations under the arrangement must calculate a base price adjustment as at the date of the legal defeasance. 25

*Sale at discount to associated person*

- (8) A party to a financial arrangement that is a debt must calculate a base price adjustment as at the date on which the creditor sells the debt to a person associated with the debtor and at a discount in the circumstances described in **section EW 43(1) to (4)**. 30

*Discharge without consideration*

- (9) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement

is discharged from making all remaining payments under the arrangement without fully adequate consideration.

*Operation of law*

- (10) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is released from making all remaining payments under the arrangement under the Insolvency Act 1967 or the Companies Act 1993 or the laws of a country or territory other than New Zealand. 5

*Composition with creditors*

- (11) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is released from making all remaining payments under the arrangement by a deed or agreement of composition with the party's creditors. 10  
15

*Lapse of time*

- (12) A party to a financial arrangement must calculate a base price adjustment as at the date on which all remaining payments under the arrangement become irrecoverable or unenforceable through the lapse of time. 20

Defined in this Act: amount, associated person, business, consideration, financial arrangement, fixed establishment, legal defeasance, maturity, New Zealand, New Zealand resident, pay

Compare: 2004 No 35 s EW 29

**EW 30 When calculation of base price adjustment not required** 25

*Cash basis person who ceases to be temporary New Zealand resident*

- (1) A cash basis person who ceases to be a New Zealand resident before the first day of the fourth income year following the income year in which they first became a New Zealand resident does not calculate a base price adjustment for a financial arrangement to which they— 30
- (a) were a party before first becoming a New Zealand resident; and 35
- (b) are a party on the date on which they cease to be a New Zealand resident.

- Other party who ceases to be New Zealand resident*
- (2) A party to a financial arrangement who ceases to be a New Zealand resident does not calculate a base price adjustment to the extent to which the arrangement relates to a business the party carries on through a fixed establishment in New Zealand. 5
- Creditor when legal defeasance occurs*
- (3) A party who has a right to receive money under a financial arrangement the obligations of which are the subject of a legal defeasance does not calculate a base price adjustment on the date of the defeasance if the defeasance requires another person to meet the remaining obligations of the arrangement. 10
- Debtor when legal defeasance occurs*
- (4) A party to a financial arrangement does not calculate a base price adjustment if— 15
- (a) their obligations under the arrangement are the subject of an absolute legal defeasance; and
  - (b) some or all of the consideration for the defeasance is deferred.
- Creditor when assignment occurs* 20
- (5) A party to a financial arrangement does not calculate a base price adjustment if—
- (a) their rights under the arrangement are the subject of an absolute assignment; and
  - (b) some or all of the consideration for the assignment is deferred. 25
- Defined in this Act: business, cash basis person, consideration, financial arrangement, fixed establishment, income year, legal defeasance, money, New Zealand, New Zealand resident
- Compare: 2004 No 35 s EW 30 30

### **EW 31 Base price adjustment formula**

#### *Calculation of base price adjustment*

- (1) A person calculates a base price adjustment using the formula in **subsection (5)**.



*When formula applies*

- (2) The person calculates the base price adjustment for the income year in which **section EW 29** applies to them.

*Positive base price adjustment*

- (3) A base price adjustment, if positive, is income, under **section CC 3** (Financial arrangements), derived by the person in the income year for which the calculation is made. However, it is not income to the extent to which it arises from expenditure incurred by the person under the financial arrangement in previous income years and for which a deduction was denied in those income years. 5 10

*Negative base price adjustment*

- (4) A base price adjustment, if negative, is expenditure incurred by the person in the income year for which the calculation is made. The person is allowed a deduction for the expenditure under **section DB 12** (Negative base price adjustment). 15

*Formula*

- (5) The formula is—  
 $\text{consideration} - \text{income} + \text{expenditure} + \text{amount remitted}.$

*Definition of items in formula*

- (6) The items in the formula are defined in **subsections (7) to (11)**. 20

*Consideration*

- (7) **Consideration** is all consideration that has been paid, and all consideration that is or will be payable, to the person for or under the financial arrangement, ignoring non-contingent fees, minus all consideration that has been paid, and all consideration that is or will be payable, by the person for or under the financial arrangement, ignoring non-contingent fees. 25

*Consideration in particular cases*

- (8) If any of **sections EW 32 to EW 48** applies, the consideration referred to in **subsection (7)** is adjusted under the relevant section. 30

*Income*

- (9) **Income** is—

- (a) income, under **section CC 3**, derived by the person under the financial arrangement in previous income years; and
- (b) dividends derived by the person from the release of the obligation to repay the amount lent; and
- (c) income derived under **section CF 2(2) and (3)** (Remission of specified suspensory loans). 5

*Expenditure*

- (10) **Expenditure** is expenditure incurred by the person under the financial arrangement in previous income years.

*Amount remitted* 10

- (11) **Amount remitted** is an amount that is not included in the consideration paid or payable to the person because it has been remitted—
- (a) by the person; or
  - (b) by law. 15

Defined in this Act: amount, consideration, deduction, dividend, financial arrangement, income, income year, non-contingent fee, pay

Compare: 2004 No 35 s EW 31

### *Consideration*

*Consideration when financial arrangement involves property or services* 20

**EW 32 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease**

*When this section applies* 25

- (1) This section applies when an original party to an agreement for the sale and purchase of property and services, a hire purchase agreement, a specified option, or a finance lease pays or is paid consideration that includes property or services.

*Value of property or services* 30

- (2) The value of the property or services is determined by applying **subsections (3) to (6)** in numerical order until a subsection applies.

- Lowest price*
- (3) The value of the property or services is the lowest price the parties would have agreed on for the property or services, on the date the agreement, option, or lease was entered into, if payment had been required in full at the time the first right in the property was transferred or the services provided. Two qualifications are— 5
- (a) this subsection does not apply to an agreement for the sale and purchase of property or services that is part of another financial arrangement: 10
- (b) **section EW 34** applies if the consideration is in a foreign currency.
- Cash price*
- (4) The value of the property or services is the cash price of the property or services to which the agreement, option, or lease relates, as determined by section 5 of the Credit Contracts and Consumer Finance Act 2003, if that Act applies to the agreement, option, or lease. 15
- Future or discounted value*
- (5) The value of the property or services is the future value, or the discounted value, or a combination of both the future and discounted values, of the amounts paid or payable on the date on which the first right in the property is transferred or the services are provided, as determined by the Commissioner under a determination under section 90AC(1)(i) of the Tax Administration Act 1994. 20 25
- Determined by Commissioner*
- (6) The value of the property or services is the amount determined by the Commissioner when either party to the arrangement applies to the Commissioner for a specific determination. Both parties must use this amount. 30
- Exclusion*
- (7) This section does not apply if the agreement, option, or lease has lapsed or does not proceed. 35
- Defined in this Act: agreement for the sale and purchase of property or services, amount, Commissioner, consideration, finance lease, financial arrangement, hire purchase agreement, pay, property, right, specified option

Compare: 2004 No 35 s EW 32

**EW 33 Consideration for hire purchase agreement or finance lease***When this section applies*

- (1) This section applies when a party to a hire purchase agreement or a finance lease pays or is paid consideration for the agreement or lease. 5

*Consideration*

- (2) The consideration for a hire purchase agreement or a finance lease includes expenditure or loss incurred by the lessor in preparing and installing the hire purchase asset or personal property lease asset for use to the extent to which it is not taken into account under **section EW 32**. 10

Defined in this Act: consideration, finance lease, hire purchase agreement, hire purchase asset, pay, personal property lease asset, lessor

Compare: 2004 No 35 s EW 33 15

**EW 34 Consideration in foreign currency***When this section applies*

- (1) This section applies when the consideration payable under a financial arrangement to which **section EW 32(3)** applies is in a foreign currency. 20

*Lowest price*

- (2) The lowest price referred to in **section EW 32(3)** is the lowest price the parties would have agreed on in the foreign currency, converted into New Zealand dollars using the rate that the original party applying **section EW 32(3)** selects from the rates in **subsection (4)**. The party may select the rate in **subsection (4)(b)** only if the period between the date on which the first right in the property is to be transferred and the date on which final payment is to be made is 5 years or less. 25

*Consistent application of rate* 30

- (3) The party must apply the selected rate to the financial arrangement for every income year over its term.

*Rates*

- (4) The rates are—

- (a) the rate, on the date on which the parties enter into the financial arrangement, available to the party from a New Zealand registered bank for the exchange of New Zealand dollars for the foreign currency for 1 of the following dates: 5
- (i) the date on which the first right in the property is to be transferred; or
- (ii) if that date is uncertain on the date on which the parties enter into the financial arrangement, the date on which the parties reasonably expect, when entering into the arrangement, that the first right in the property will be transferred; or 10
- (b) the rate, on the date on which the parties enter into the financial arrangement, available to the party from a New Zealand registered bank for the exchange of New Zealand dollars for the foreign currency for 1 of the following dates: 15
- (i) the date on which final payment is to be made; or
- (ii) if that date is uncertain on the date on which the parties enter into the financial arrangement, the date on which the parties reasonably expect, when entering into the arrangement, that final payment will be made; or 20
- (c) an exchange rate approved by the Commissioner for this subsection in the circumstances applicable to the party in a determination under section 90AC(1)(k) of the Tax Administration Act 1994. 25

Defined in this Act: Commissioner, consideration, financial arrangement, income year, New Zealand, pay, property, registered bank, right, year

Compare: 2004 No 35 s EW 34 30

### **EW 35 Value relevant for non-financial arrangements rule**

*When this section applies*

- (1) This section applies when the value of property acquired or disposed of under a financial arrangement, or the consideration for it, is relevant in determining a person's income or deductions under any provision of this Act that is not a financial arrangements rule. 35

*Value*

- (2) The person is treated as having acquired or disposed of the property for a value determined by applying **section EW 32(2)**.

Defined in this Act: consideration, deduction, financial arrangement, financial arrangements rules, income, property

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Compare: 2004 No 35 s EW 35

*Consideration treated as paid to person***EW 36 Consideration when person exits from rules: accrued entitlement***When this section applies*

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- (1) This section applies when—

- (a) a person is a party to a financial arrangement; and
- (b) 1 of the following situations arises:
- (i) the person ceases to be resident in New Zealand and is not a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or
- (ii) the person, not resident in New Zealand, ceases to be a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or
- (iii) the person starts using the arrangement for a private or domestic purpose and so it becomes an excepted financial arrangement described in any of **section EW 5(16) to (18)**; and
- (c) at the time the situation arises, the person has an accrued entitlement to be paid consideration under the arrangement.

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*Disposal and consideration*

- (2) The person is treated as having disposed of their accrued entitlement immediately before the situation arose and as having been paid the market value that the accrued entitlement had at that time.

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Defined in this Act: accrued entitlement, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, pay, resident in New Zealand

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Compare: 2004 No 35 s EW 36

### EW 37 Consideration when person enters rules: accrued obligation

*When this section applies*

- (1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued obligation to pay consideration under the arrangement, 1 or more of the following situations arise:
- (a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand: 10
  - (b) the person is a non-resident who—
    - (i) becomes a New Zealand resident who is not a transitional resident; and
    - (ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand: 15
  - (c) the person is a transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(17)**: 20
  - (d) the person is a transitional resident who becomes a New Zealand resident who is not a transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(17)**: 25
  - (e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of **section EW 5(18) to (20)**.

*Assumption and consideration* 30

- (2) The person is treated as having assumed the accrued obligation immediately after the situation arose and as having been paid the market value that a contract to assume the obligation had at that time.

Defined in this Act: accrued obligation, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, New Zealand resident, non-resident, pay, transitional resident 35

Compare: 2004 No 35 s EW 37

**EW 38 Consideration when disposal for no, or inadequate, consideration***When this section applies*

- (1) This section applies when—
- (a) a person is a party to a financial arrangement; and 5
  - (b) the person has an accrued entitlement under the arrangement; and
  - (c) the person disposes of the arrangement; and
  - (d) the disposal of the accrued entitlement—
    - (i) is not for monetary consideration; or 10
    - (ii) is for a consideration that is less than the market value of the entitlement on the date of the disposal.

*Consideration is market value*

- (2) The person is treated as having been paid the market value that the accrued entitlement had on the date of the disposal. 15

Defined in this Act: accrued entitlement, consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 38

**EW 39 Consideration affected by unfavourable factors***When this section applies* 20

- (1) This section applies when—
- (a) a person is a party to a financial arrangement; and
  - (b) the person has an accrued entitlement under the arrangement; and
  - (c) the person disposes of the arrangement; and 25
  - (d) the consideration for the disposal is affected by any of the following factors:
    - (i) a decline in the other party's creditworthiness between the date on which the arrangement was entered into and the date of the disposal; or 30
    - (ii) an increase, between the date on which the arrangement was entered into and the date of the disposal, in the possibility that the other party will not meet an obligation under the arrangement; or 35
    - (iii) the occurrence of an event reducing or cancelling the other party's obligations under the arrangement.



*Exclusion*

- (2) This section does not apply when—
- (a) the person's business includes holding or dealing in financial arrangements of the class disposed of; and
  - (b) the parties to the arrangement disposed of are not associated persons. 5

*Consideration is market value*

- (3) The person is treated as having been paid the market value that the accrued entitlement had on the date of the disposal, as if the consideration had not been affected by a factor described in **subsection (1)(d)**. 10

Defined in this Act: accrued entitlement, associated person, business, consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 40

*Consideration treated as paid by person* 15**EW 40 Consideration when person exits from rules: accrued obligation***When this section applies*

- (1) This section applies when—
- (a) a person is a party to a financial arrangement; and 20
  - (b) 1 of the following situations arises:
    - (i) the person ceases to be resident in New Zealand and is not a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or 25
    - (ii) the person, not resident in New Zealand, ceases to be a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or
    - (iii) the person starts using the arrangement for a private or domestic purpose and so it becomes an excepted financial arrangement described in any of **section EW 5(18) to (20)**; and 30
  - (c) at the time the situation arises, the person has an accrued obligation to pay consideration under the arrangement. 35

*Relief and consideration*

- (2) The person is treated as having been relieved of the accrued obligation immediately before the situation arose and as having paid the market value that a contract to assume the obligation had at that time. 5

Defined in this Act: accrued obligation, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s EW 41

**EW 41 Consideration when person enters rules: accrued entitlement** 10

*When this section applies*

- (1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued entitlement to receive consideration under the arrangement, 1 or more of the following situations arise: 15
- (a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand: 20
  - (b) the person is a non-resident who—
    - (i) becomes a New Zealand resident who is not a transitional resident; and
    - (ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand: 25
  - (c) the person is a transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(17)**: 30
  - (d) the person is a transitional resident who becomes a New Zealand resident who is not a transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(17)**: 35
  - (e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of **section EW 5(18) to (20)**.

*Acquisition and consideration*

- (2) The person is treated as having acquired the accrued entitlement immediately after the situation arose and as having paid the market value that the accrued entitlement had at that time.

Defined in this Act: accrued entitlement, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, New Zealand resident, non-resident, pay, transitional resident

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Compare: 2004 No 35 s EW 42

**EW 42 Consideration when acquisition for no, or inadequate, consideration**

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*When this section applies*

- (1) This section applies when—
- (a) a person becomes a party to a financial arrangement; and
  - (b) the person acquires an entitlement under the arrangement—
    - (i) not for monetary consideration; or
    - (ii) for a consideration that is less than the market value of the entitlement on the date of the acquisition.

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*Consideration is market value*

- (2) The person is treated as having paid the market value that the entitlement had on the date of the acquisition.

Defined in this Act: consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 43

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**EW 43 Consideration when debt sold at discount to associate of debtor**

*When this section applies*

- (1) This section applies when a creditor sells a debt on or after 20 May 1999 to a person associated under the 1988 version provisions with the debtor and at a discount.

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*At a discount*

- (2) A creditor sells a debt at a discount if the creditor sells it for 80% or less of the market value of the debt.

*Market value*

- (3) The market value of a debt affected by any of the following factors is determined as if its market value were not affected by the factor. The factors are—
- (a) the occurrence of an event reducing or cancelling the debtor's obligations under the debt; or 5
  - (b) the occurrence of 1 of the following between the date on which the debt was entered into and the date of the disposal:
    - (i) a decline in the debtor's creditworthiness; or 10
    - (ii) an increase in the possibility that the debtor will not meet an obligation under the debt.

*Consideration*

- (4) The debtor is treated as having paid the creditor the amount that the person associated with the debtor pays the creditor. 15

Defined in this Act: 1988 version provisions, amount, associated person, consideration, pay

Compare: 2004 No 35 s EW 45

**EW 44 Consideration when debt forgiven for natural love and affection** 20

*When this section applies: first case*

- (1) This section applies when—
- (a) a person is a debtor; and
  - (b) the creditor is a natural person; and
  - (c) the creditor forgives the debtor's debt because of the natural love and affection the creditor has for the debtor. 25

*When this section applies: second case*

- (2) This section also applies when—
- (a) a trust is a debtor; and 30
  - (b) the trust was established mainly to benefit 1 or both of the following:
    - (i) a natural person for whom the creditor has natural love and affection:
    - (ii) an organisation or a trust whose income is exempt under **section CW 40** (Charities: non-business income) or **CW 41** (Charities: business income); and 35

- (c) the creditor is a natural person; and
- (d) the creditor forgives the debtor's debt.

*Two points about subsections (1) and (2)*

- (3) For the purposes of **subsections (1) and (2)**,—
  - (a) the debtor's debt includes an amount accrued and unpaid at the time of the forgiveness; and 5
  - (b) the means by which the debt is forgiven, whether in a will or otherwise, is immaterial.

*Consideration*

- (4) The debtor is treated as having paid the debt on the date on which the creditor forgives it. 10

Defined in this Act: amount, consideration, income, pay

Compare: 2004 No 35 s EW 46

**EW 45 Consideration when debtor released from obligation**

*When this section applies* 15

- (1) This section applies when—
  - (a) a person is released from the obligation to pay an amount owing under a financial arrangement; and
  - (b) the release occurs under—
    - (i) section 114 of the Insolvency Act 1967; or 20
    - (ii) any of the Inland Revenue Acts; or
    - (iii) a loan described in **subsection (2)**.

*Social assistance suspensory loan*

- (2) A loan referred to in **subsection (1)(b)(iii)** is a loan that—
  - (a) is made by a department or instrument of the executive government of New Zealand; and 25
  - (b) provides for the person's liability to pay to be wholly or partly remitted if they meet conditions intended to promote a social policy objective of the government of New Zealand; and 30
  - (c) is of a class declared by the Governor-General by Order in Council to be a social assistance suspensory loan.

*Declaration as social assistance suspensory loan*

- (3) The Governor-General may make an Order in Council declaring a class of loan that meets the criteria in **subsection (2)** to be a social assistance suspensory loan. 35

*Consideration*

- (4) The person is treated as having paid the amount owing on the date on which they are released from the obligation to pay it.

Defined in this Act: amount, consideration, financial arrangement, Inland Revenue Acts, New Zealand, pay

5

Compare: 2004 No 35 s EW 47

**EW 46 Consideration when debtor released as condition of new start grant**

*When this section applies*

- (1) This section applies when, in an income year of a person,— 10
- (a) the person carries on a business of—
- (i) animal husbandry:
- (ii) poultry-keeping:
- (iii) beekeeping:
- (iv) breeding horses other than bloodstock: 15
- (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 incurs a liability to make a payment under a financial arrangement— 20
- (i) in carrying on the business; and
- (ii) before the declaration of the state of emergency that relates to the qualifying event; and
- (d) the liability referred to in **paragraph (c)(i)** is forgiven or otherwise remitted— 25
- (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 30
- (e) in the absence of this section, the amount of the remitted liability would be income of the person.

*Consideration*

- (2) The person is treated as having paid, on the date on which the liability is forgiven or remitted, the part of the amount owing that is the greater of zero and the amount calculated using the formula— 35
- 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: 5
  - (b) **current loss** is the tax loss that the person would have for the income year in which the liability is remitted in the absence of this section: 5
  - (c) **loss balance** is the amount of loss balance that the person may subtract from their net income for the income year in which the liability is remitted: 10
  - (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)**.
- Loss incurred by associated person from business or land* 15
- (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 20
    - (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 25
  - (b) is incurred in relation to—
    - (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,— 30
    - (i) a tax loss of the associated person;
    - (ii) a loss balance for the associated person; and
  - (d) is included in the calculation in **subsection (3)** to an extent to which the Commissioner determines, having regard to the interests of the associated person that are separate from those of the person. 35

*Notice to associated person*

- (5) The Commissioner must give the associated person notice of a determination under **subsection (4)(d)**.

Defined in this Act: associated person, business, Commissioner, deduction, diminished value, income, income year, loss balance, notice, pay, qualifying event, tax loss

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Compare: 2004 No 35 s EW 47B

*Consideration when legal defeasance has occurred***EW 47 Legal defeasance***When this section applies*

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- (1) This section applies when—

- (a) the obligations of a financial arrangement were the subject of a legal defeasance that required another person to meet the remaining obligations of the arrangement; and
- (b) the person who has a right to receive money under the arrangement is now required by **section EW 29** to calculate a base price adjustment for it.

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*Consideration*

- (2) The consideration received by the person who has a right to receive money under the arrangement is the total of—

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- (a) the amounts received from the original debtor; and
- (b) the amounts received from the person required to meet the remaining obligations.

Defined in this Act: amount, consideration, financial arrangement, legal defeasance, money

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Compare: 2004 No 35 s EW 48

*Consideration when anti-avoidance provision applies***EW 48 Anti-avoidance provisions***When this section applies*

- (1) This section applies when it is necessary to determine the consideration that is paid to or by a person in a case to which any of the following provisions applies:

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- (a) **section GB 21** (Dealing that defeats intention of financial arrangements rules); or
- (b) **section GC 7** (Excess amount payable by person); or
- (c) **section GC 8** (Insufficient amount receivable by person).

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*Consideration*

- (2) The consideration is the amount determined under the relevant provision.

Defined in this Act: amount, consideration, pay

Compare: 2004 No 35 s EW 49

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

**EW 49 Income and deduction when debt sold at discount to associate of debtor**

*When this section applies*

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- (1) This section applies when a creditor sells a debt on or after 20 May 1999 to a person associated under the 1988 version provisions with the debtor and at a discount.

*At a discount*

- (2) A creditor sells a debt at a discount if the creditor sells it for 80% or less of the market value of the debt.

15

*Market value*

- (3) The market value of a debt affected by any of the following factors is determined as if its market value were not affected by the factor. The factors are—

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- (a) the occurrence of an event reducing or cancelling the debtor's obligations under the debt; or
- (b) the occurrence of 1 of the following between the date on which the debt was entered into and the date of the disposal:
- (i) a decline in the debtor's creditworthiness; or
- (ii) an increase in the possibility that the debtor will not meet an obligation under the debt.

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*Original debt replaced with interest-free loan*

- (4) The associated person is treated as having provided the debtor with an interest-free loan for the amount paid for the debt.

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*Repayment: income and deduction*

- (5) If the debtor later repays the person associated with the debtor more than the amount the associated person paid for the debt, the excess amount paid by the debtor is—
- (a) income, under **section CC 3(1)** (Financial arrangements), of the person associated with the debtor; and 5
  - (b) a deduction that the debtor is allowed under **section DB 14(1)** (Repayment of debt sold at discount to associate of debtor). 10

Defined in this Act: 1988 version provisions, amount, associated person, deduction, income, pay 10

Compare: 2004 No 35 s EW 50

**EW 50 Income when debt forgiven to trustee***When this section applies*

- (1) This section applies when— 15
- (a) a trust is a debtor; and
  - (b) the trust was established mainly to benefit 1 or both of the following:
    - (i) a natural person for whom the creditor has natural love and affection; or 20
    - (ii) an organisation or a trust whose income is exempt under **section CW 40** (Charities: non-business income) or **CW 41** (Charities: business income); and
  - (c) the creditor is a natural person; and 25
  - (d) the creditor forgives the debtor's debt; and
  - (e) a trustee of the trust makes a distribution, including a distribution of beneficiary income, to a beneficiary; and
  - (f) the beneficiary is— 30
    - (i) not a natural person for whom the creditor has natural love and affection; and
    - (ii) not an organisation or a trust whose income is exempt under **section CW 40** or **CW 41**; and
  - (g) the distribution is made on or after 20 May 1999.

*Exclusion* 35

- (2) This section does not apply when—
- (a) a trust (**trust A**) is a debtor; and
  - (b) trust A was established mainly to benefit 1 or both of the following:

- (i) a natural person for whom the creditor has natural love and affection; or
- (ii) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**; and
- (c) the creditor is a natural person; and 5
- (d) the creditor forgives the debtor's debt; and
- (e) a trustee of the trust makes a distribution to another trust (**trust B**); and
- (f) at the time the distribution is made, trust B is also established mainly to benefit 1 or both of the following: 10
- (i) a natural person for whom the creditor has natural love and affection; or
- (ii) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**.
- Two points about subsections (1) and (2)* 15
- (3) For the purposes of **subsections (1) and (2)**,—
- (a) the debtor's debt includes an amount accrued and unpaid at the time of the forgiveness; and
- (b) the means by which the debt is forgiven, whether in a will or otherwise, is immaterial. 20
- Distribution is income of trustee*
- (4) The distribution is income of the trustee, under **section CC 3(2)** (Financial arrangements), to the extent to which it is less than or equal to the total amount of the debts of the trust forgiven to it by the creditor. 25
- Distribution subtracted from total amount forgiven*
- (5) The distribution is subtracted from the total amount of the debts of the trust forgiven to it by the creditor as the total amount stands at the time of the distribution.
- Timing* 30
- (6) The income is derived by the trustee in the income year in which the distribution is made.

*Application of Tax Administration Act 1994*

- (7) Section 22B of the Tax Administration Act 1994 applies to a trustee to whom this section applies.

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

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Compare: 2004 No 35 s EW 51

**EW 51 Deduction for security payment***When subsection (2) applies: loss generally*

- (1) **Subsection (2)** applies when a person is allowed a deduction under **section DB 15(2)** (Security payment).

10

*Amount of deduction*

- (2) The person is allowed a deduction no greater than the amount of the security payment.

*When subsection (4) applies: share loss*

- (3) **Subsection (4)** applies when a person is allowed a deduction under **section DB 15(4)**.

15

*Amount of deduction*

- (4) The person is allowed a deduction no greater than the amount of the security payment.

Defined in this Act: amount, deduction, pay, security payment

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Compare: 2004 No 35 s EW 52

*Treatment of original share acquired under financial arrangement***EW 52 Share supplier under share-lending arrangement***When this section applies*

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- (1) This section applies to a person who—
- (a) acquires a share under a financial arrangement (the **original financial arrangement**); and
  - (b) is the share supplier for a share-lending arrangement; and
  - (c) disposes of the share to the share user as an original share under the share-lending arrangement.

30

*Treatment of reacquisition of original share*

- (2) If the person reacquires the original share under the share-lending arrangement, for the purposes of applying the financial arrangements rules to the original financial arrangement,— 5
- (a) the person did not dispose of the original share to the share user; and
  - (b) the person continued to own the original share until the time that the person reacquired the original share.

*Treatment of acquisition of replacement share*

- (3) If the person acquires an identical share under the share-lending arrangement, for the purposes of the financial arrangements rules in relation to the original financial arrangement,— 10
- (a) the identical share is the share that the person acquired under the original financial arrangement; and 15
  - (b) the person continued to own the identical share until the time that the person acquired the replacement share.

Defined in this Act: financial arrangement, financial arrangements rules, identical share, original share, share, share-lending arrangement, share supplier, share user

Compare: 2004 No 35 s EW 52B

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***One kind of avoidance*****EW 53 Adjustment required***When this section applies*

- (1) This section applies when—
- (a) the terms of a financial arrangement give either party, both parties, or an associated person the discretion to decide on an amount payable under the arrangement; and 25
  - (b) it is not generally accepted commercial practice to make financial arrangements containing such terms; and 30
  - (c) a change in the amount brought about by the exercise of the discretion does not reflect changes in commodity, economic, financial, or industrial indices, or in banking or general commercial rates; and 35
  - (d) the effect of the financial arrangement is to defeat the intention of the financial arrangements rules.

- Parties to calculate adjustment*
- (2) Each person who is a party to the financial arrangement must calculate an adjustment for the income years specified in **subsection (3)** by following the steps in **subsections (4) to (6)**.
- Income years* 5
- (3) The adjustment must be calculated for the following income years:
- (a) until the person ceases to be a party, the fifth income year after the income year in which the parties entered into the financial arrangement and every fifth income year after that; and 10
- (b) the income year in which the person ceases to be a party.
- First step*
- (4) The first step the person takes is to calculate income or expenditure under the financial arrangement for each income year using the yield to maturity method in the manner prescribed by the Commissioner in a determination under section 90AC(1)(a) of the Tax Administration Act 1994. 15
- Consideration and amounts to be included at first step* 20
- (5) The person must include the following amounts in the calculation:
- (a) for every income year for which the calculation is made, as described in **subsection (3)**, the consideration and amounts described in **section EW 15** for the period starting on the date on which the person became a party to the financial arrangement and ending on the last day of the income year for which the calculation is made; and 25
- (b) for every fifth income year, as described in **subsection (3)(a)**,— 30
- (i) an amount equal to the financial arrangement's market value on the last day of the income year, as if the person had disposed of the arrangement for that amount; or 35
- (ii) if the financial arrangement has no market value, the amount that might reasonably be expected to be paid on a disposal at arm's length.

*Second step*

- (6) The second step the person takes is to calculate the income tax liability for each income year using the income or expenditure calculated under **subsections (4) and (5)** in substitution for the income or expenditure previously calculated for the financial arrangement for each income year. 5

Defined in this Act: amount, associated person, Commissioner, consideration, financial arrangement, financial arrangements rules, income, income tax liability, income year, pay, prescribed

Compare: 2004 No 35 s EW 53 10

***Application of financial arrangements rules to cash basis persons***

**EW 54 Meaning of cash basis person**

*Who is cash basis person*

- (1) A **cash basis person** is— 15
- (a) a natural person who meets the criteria in **section EW 56**;
  - (b) a trustee of a deceased's estate, whether or not a natural person, in the circumstances described in **section EW 60**.

*Natural persons excluded by Commissioner*

- (2) A natural person may be excluded under **section EW 59** from being a cash basis person for a class of financial arrangements. 20

Defined in this Act: cash basis person, Commissioner, financial arrangement, trustee

Compare: 2004 No 35 s EW 54

**EW 55 Effect of being cash basis person** 25

*Use of spreading method*

- (1) A cash basis person is not required to apply any of the spreading methods to any of their financial arrangements, but may choose to do so under **section EW 61**.

*Calculation of base price adjustment* 30

- (2) The fact that a cash basis person does not use any of the spreading methods for the financial arrangement does not

excuse them from the requirement to calculate a base price adjustment when any of **section EW 29(1) to (13)** applies to them.

Defined in this Act: cash basis person, financial arrangement, spreading method

Compare: 2004 No 35 s EW 55

## **EW 56 Natural person**

5

*Criteria for natural person as cash basis person*

- (1) A natural person is a cash basis person for an income year if—
- (a) 1 of the following applies in the person's case for the income year:
    - (i) **section EW 57(1)**; or
    - (ii) **section EW 57(2)**; and
  - (b) **section EW 57(3)** applies in the person's case for the income year; and
  - (c) the person is not a trustee.

10

*Financial arrangements, income, and expenditure relevant to application of criteria*

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- (2) The calculations required by **section EW 57(1) to (3)** are done for the financial arrangements, or the income and expenditure, described in **section EW 58**.

*Increase in specified sums*

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- (3) The Governor-General may make an Order in Council increasing a sum specified in any of **section EW 57(1) to (3)**.

Defined in this Act: cash basis person, financial arrangement, income, income year, trustee

Compare: 2004 No 35 s EW 56

25

## **EW 57 Thresholds**

*Income and expenditure threshold*

- (1) For the purposes of **section EW 56(1)(a)(i)**, this subsection applies if the absolute value of the person's income and expenditure in the income year under all financial arrangements to which the person is a party is \$100,000 or less.

30

*Absolute value threshold*

- (2) For the purposes of **section EW 56(1)(a)(ii)**, this subsection applies if, on every day in the income year, the absolute value of all financial arrangements to which the person is a party added

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together is \$1,000,000 or less. The value of each arrangement is,—

- (a) for a fixed principal financial arrangement, its face value: 5
- (b) for a variable principal debt instrument, the amount owing by or to the person under the financial arrangement: 5
- (c) for a financial arrangement to which the old financial arrangements rules apply, the value determined under those rules. 10

*Deferral threshold*

- (3) For the purposes of **section EW 56(1)(b)**, this subsection applies if the result of applying the formula in **subsection (4)** to each financial arrangement to which the person is a party at the end of the income year and adding the outcomes together is \$40,000 or less. 15

*Formula*

- (4) The formula is—
  - (accrual income – cash basis income)
  - + (cash basis expenditure
  - accrual expenditure). 20

*Definition of items in formula*

- (5) The items in the formula are defined in **subsections (6) to (9)**.

*Accrual income*

- (6) **Accrual income** is the amount that would have been income derived by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. It is calculated using 1 of the following methods, as chosen by the person: 25
  - (a) the yield to maturity method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or 30
  - (b) the straight-line method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or 35

- (c) an alternative method approved by the Commissioner.

*Cash basis income*

- (7) **Cash basis income** is the amount that would have been income derived by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. 5

*Cash basis expenditure*

- (8) **Cash basis expenditure** is the amount that would have been expenditure incurred by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. 10  
15

*Accrual expenditure*

- (9) **Accrual expenditure** is the amount that would have been expenditure incurred under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. It is calculated using 1 of the following methods, as chosen by the person: 20

- (a) the yield to maturity method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or 25
- (b) the straight-line method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or
- (c) an alternative method approved by the Commissioner. 30

Defined in this Act: absolute value, amount, cash basis person, Commissioner, financial arrangement, fixed principal financial arrangement, income, income year, old financial arrangements rules, spreading method, variable principal debt instrument

Compare: 2004 No 35 s EW 57 35

## EW 58 Financial arrangements, income, and expenditure relevant to criteria

### *Inclusions in and exclusions from thresholds*

- (1) The calculations required by **section EW 57(1) to (3)** are done for every financial arrangement to which the natural person is a party or, as the relevant subsection requires, to income and expenditure under such an arrangement, whether the financial arrangements rules or the old financial arrangements rules apply to the arrangement. Two qualifications are—
- (a) the calculations include an arrangement, or income and expenditure, to which **subsection (2) or (3)** applies only to the extent of the person's interest in it, as described in each subsection; and
  - (b) the calculations exclude the value of an arrangement, and income and expenditure, in which the person has the interest described in **subsection (4) or (5)**.

### *Natural person who is partner*

- (2) This subsection applies when a partnership required to make a joint return of income under section 42(1) of the Tax Administration Act 1994 is a party to a financial arrangement. A natural person who is a partner in the partnership—
- (a) is a party to the arrangement to the extent of the partner's share in the arrangement; and
  - (b) derives income or incurs expenditure under the arrangement to the extent of the partner's share in the income or expenditure of the partnership.

### *Natural person who is beneficiary of bare trust*

- (3) This subsection applies when the trustee of a bare trust is a party to a financial arrangement. A natural person who is a beneficiary of the bare trust—
- (a) is treated as a party to the arrangement to the extent of the beneficiary's share of the beneficial interest in the arrangement; and
  - (b) is treated as deriving income or incurring expenditure under the arrangement to the extent of the beneficiary's share of the beneficial interest in the arrangement.

*Natural person who is beneficiary of trust other than bare trust*

- (4) This subsection applies when a natural person is a beneficiary of a trust, other than a bare trust, whose trustee is a party to a financial arrangement. The following are excluded from the calculations required by **section EW 57(1) to (3)**: 5
- (a) the value of the arrangement, if it produces trustee income or beneficiary income under the trust rules; and
  - (b) income under the arrangement that is trustee income or beneficiary income under the trust rules. 10

*Natural person who is trustee*

- (5) This subsection applies when a natural person is a party to a financial arrangement as a trustee. The following are excluded from the calculations required by **section EW 57(1) to (3)**: 15
- (a) the value of the arrangement, if it produces trustee income or beneficiary income under the trust rules; and
  - (b) income under the arrangement that is trustee income or beneficiary income under the trust rules; and
  - (c) the value of the arrangement, if expenditure is incurred under it; and 20
  - (d) expenditure incurred under the arrangement.

Defined in this Act: beneficiary income, financial arrangement, financial arrangements rules, income, old financial arrangements rules, return of income, trust rules, trustee, trustee income

Compare: 2004 No 35 s EW 58 25

**EW 59 Exclusion by Commissioner**

The Commissioner may treat a natural person who would otherwise be a cash basis person for a class of financial arrangements as not being a cash basis person for the class if that or any other person has structured and promoted the class to defer an income tax liability. 30

Defined in this Act: cash basis person, Commissioner, financial arrangement, income tax liability

Compare: 2004 No 35 s EW 59

**EW 60 Trustee of deceased's estate** 35

*When trustee of estate is cash basis person*

- (1) A trustee of a deceased's estate is a cash basis person for financial arrangements in the estate in the circumstances

described in **subsection (2)** for the period described in **subsection (3)**.

*Circumstances*

- (2) The circumstances are that, at the time of the deceased's death,— 5
- (a) the deceased is a cash basis person; and
  - (b) the financial arrangements in the deceased's estate meet the requirements of **section EW 56(1)(a) and (b)**.

*Period*

- (3) The period is the income year in which the deceased dies and in each of the 4 following income years. However, if at any time in those 5 income years the financial arrangements in the deceased's estate cease to meet the requirements of **section EW 56(1)(a) and (b)**, the trustee ceases to be a cash basis person for financial arrangements in the estate and cannot again be a cash basis person for them. 10  
15

*Modifications to be read in*

- (4) For the purposes of this section, **sections EW 54 to EW 56** are read with the modifications necessary to make them refer to the case of a deceased estate. 20

Defined in this Act: cash basis person, financial arrangement, income year, trustee  
Compare: 2004 No 35 s EW 60

**EW 61 Election to use spreading method**

*Election of spreading method*

- (1) A cash basis person may choose to use a spreading method, unless **subsection (2)** applies. 25

*Election not allowed*

- (2) A cash basis person may not choose to use a spreading method for a financial arrangement in the income year in which **section EW 29** requires them to calculate a base price adjustment for the arrangement. 30

*How election made*

- (3) The person makes the election by calculating a cash basis adjustment under **section EW 62(1)**.

*Effect of election*

- (4) The person must use a spreading method for—
- (a) all financial arrangements to which the person is a party at the time of making the election; and
  - (b) all financial arrangements the person enters into after the income year in which they make the election. 5

*How election revoked*

- (5) The person revokes the election by giving notice to the Commissioner with a return of income and within the time that the return must be filed under section 37 of the Tax Administration Act 1994. 10

*Effect of revocation*

- (6) The revocation applies to all financial arrangements the person enters into after the income year in which the notice is given. 15

Defined in this Act: cash basis person, Commissioner, financial arrangement, income year, notice, return of income, spreading method

Compare: 2004 No 35 s EW 61

**EW 62 When and how calculation of cash basis adjustment required 20**

*Choosing spreading method*

- (1) A cash basis person who chooses to use a spreading method must calculate a cash basis adjustment for the income year in which they choose to use a spreading method as if they had ceased to be a cash basis person. 25

*Person becoming cash basis person*

- (2) A person who becomes a cash basis person in an income year must calculate a cash basis adjustment for a financial arrangement to which they—
- (a) are a party at the end of the income year; and 30
  - (b) were a party at the end of the previous income year.

*Exclusions*

- (3) However,—
- (a) a person who becomes a cash basis person in an income year and who chooses to continue using a spreading 35

- method in the income year must not calculate a cash basis adjustment; and
- (b) a person who becomes a cash basis person in an income year must not calculate a cash basis adjustment for a financial arrangement that is already being accounted for on a cash basis. 5
- Person ceasing to be cash basis person*
- (4) A person who ceases to be a cash basis person in an income year must calculate a cash basis adjustment for a financial arrangement to which they— 10
- (a) are a party at the end of the income year; and
- (b) were a party at the end of the previous income year.
- Exclusion*
- (5) However, a person who ceases to be a cash basis person must not calculate a cash basis adjustment for a financial arrangement that is already subject to a spreading method. 15
- Person not cash basis person if adjustment not made*
- (6) A person who would be a cash basis person for a financial arrangement if they calculated a cash basis adjustment for it, and who does not calculate the adjustment, is not a cash basis person for the arrangement. 20
- Cash basis adjustment*
- (7) A person calculates a cash basis adjustment using the formula in **section EW 63**.
- Adjustment is income or expenditure* 25
- (8) The only income or expenditure under the financial arrangement for the income year to which the formula is applied is the cash basis adjustment.
- Positive or negative cash basis adjustment*
- (9) A cash basis adjustment is,— 30
- (a) if positive, income, under **section CC 3(1)** (Financial arrangements), derived by the person in the income year for which the calculation is made:

- (b) if negative, expenditure incurred by the person in the income year for which the calculation is made.

Defined in this Act: cash basis person, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 62

5

### EW 63 Cash basis adjustment formula

#### *Formula*

- (1) A person calculates a cash basis adjustment using the formula—

$$\begin{aligned} &\text{adjusted income} - \text{adjusted expenditure} - \text{previous income} && 10 \\ &+ \text{previous expenditure.} \end{aligned}$$

#### *Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (6)**.

#### *Adjusted income*

- (3) **Adjusted income** is,— 15

- (a) for a person who becomes a cash basis person, the amount that would have been income derived by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made; and 20
- (b) for a person who ceases to be a cash basis person, the amount that would have been income derived by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. 25

#### *Adjusted expenditure* 30

- (4) **Adjusted expenditure** is,—

- (a) for a person who becomes a cash basis person, the amount that would have been expenditure incurred by the person under the financial arrangement if they had been a cash basis person in the period starting on the date on which they became a party to the arrangement 35



	and ending on the last day of the income year for which the calculation is made; and	
(b)	for a person who ceases to be a cash basis person, the amount that would have been expenditure incurred by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.	5
	<i>Previous income</i>	10
(5)	<b>Previous income</b> is income derived by the person under the financial arrangement in previous income years.	
	<i>Previous expenditure</i>	
(6)	<b>Previous expenditure</b> is expenditure incurred by the person under the financial arrangement in previous income years.	15
	Defined in this Act: amount, cash basis person, financial arrangement, income, income year, spreading method	
	Compare: 2004 No 35 s EW 63	
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### *Controlled foreign company rules*

*When is a company a controlled foreign company?*

#### **EX 1 Meaning of CFC**

*Tests of control*

- |     |  |    |
|-----|--|----|
| (1) | A foreign company is a <b>CFC</b> if any of the following tests is met:  | 5  |
|     | (a) there is a group of 5 or fewer New Zealand residents whose total control interests in the company are more than 50% in any one of the control interest categories:                           |    |
|     | (b) a single New Zealand resident holds a control interest of 40% or more unless at the same time—   | 10 |
|     | (i) another person also holds a 40% or more control interest in the same control interest category; and  |    |
|     | (ii) the other person is not a New Zealand resident; and   | 15 |
|     | (iii) the other person is not associated with the New Zealand resident:  |    |
|     | (c) there is a group of 5 or fewer New Zealand residents who can control the exercise of the shareholder decision-making rights for the company and, as a result, control the company's affairs. | 20 |

*Status applies for whole accounting period*

- |     |  |    |
|-----|--|----|
| (2) | If any of the tests is met at any time in a foreign company's accounting period, the company is treated as a CFC for the whole of the accounting period. | 25 |
|-----|--|----|

Defined in this Act: accounting period, associated person, CFC, company, control, control interest, control interest category, foreign company, New Zealand resident, shareholder decision-making right

Compare: 2004 No 35 s EX 1

*Calculation of person's control interest* 30

#### **EX 2 Four categories for calculating control interests**

*Separate categories*

- |     |  |  |
|-----|--|--|
| (1) | Under <b>section EX 5(1)</b> , a direct <b>control interest</b> in a foreign company can arise in each of 4 separate categories of rights. |  |
|-----|--|--|

*List of categories* 35

- |     |                       |  |
|-----|-----------------------|--|
| (2) | The 4 categories are— |  |
|-----|-----------------------|--|

- (a) shareholding in the foreign company:
- (b) shareholder decision-making rights for the foreign company:
- (c) rights to receive income from the foreign company:
- (d) rights to receive distributions of the company's net assets. 5

*Detailed calculation rules*

- (3) In each category, more detailed calculation rules appear in **section EX 5**.

*Four categories of control interests* 10

- (4) Accordingly, the rules in **section EX 3** for calculating control interests by totalling various direct and indirect control interests and associated parties' interests are applied on a category by category basis, by reference to those categories of direct control interest. 15

Defined in this Act: associated person, control interest, direct control interest, foreign company, income, shareholder decision-making right

Compare: 2004 No 35 s EX 2

**EX 3 Control interest: total of direct, indirect, and associated person interests** 20

*Calculation of control interest*

- (1) A New Zealand resident's control interest in a foreign company at any time is the total of the following for the relevant control interest category:
- (a) any direct control interest that the New Zealand resident holds in the company: 25
  - (b) any direct control interests in the company held by persons associated with the New Zealand resident:
  - (c) any indirect control interests that the New Zealand resident holds in the company: 30
  - (d) any indirect control interests in the company held by persons associated with the New Zealand resident.

*Avoidance arrangements: first kind*

- (2) **Section GB 7** (Arrangements involving CFC control interests) may apply to treat a control interest as being held by a group of New Zealand residents in equal proportions. 35

*Avoidance arrangements: other kinds*

- (3) Any of the following sections may apply to the calculation of a person's control interest:
- (a) **section GB 9** (Temporary disposals of direct control or income interests): 5
  - (b) **section GB 10** (Temporary acquisitions of direct control or income interests):
  - (c) **section GB 11** (Temporary increases in control interest category totals):
  - (d) **section GB 12** (Temporary reductions in control interest category totals): 10
  - (e) **section GB 13** (When combination of changes reduces income):
  - (f) **section GB 14** (When combination of changes increases loss). 15

Defined in this Act: associated person, control interest, direct control interest, foreign company, New Zealand resident

Compare: 2004 No 35 s GC 9

#### **EX 4 Limits to requirement to include associated person interests** 20

*Non-resident relatives*

- (1) For the purposes of **section EX 3**, a New Zealand resident is associated with a non-resident relative only if the New Zealand resident holds a direct control interest or indirect control interest in the foreign company. 25

*No double counting*

- (2) Despite **section EX 3(1)(b) and (d)**, for the purposes of determining whether a foreign company is a CFC, a direct control interest or indirect control interest may be counted only once. 30

Defined in this Act: associated person, CFC, control interest, direct control interest, foreign company, New Zealand resident, non-resident, relative

Compare: 2004 No 35 s EX 4

#### **EX 5 Direct control interests**

*Categories of direct control interests*

- (1) A person has a **direct control interest** in a foreign company at any time if they hold— 35
- (a) any of the shares in the foreign company:

- (b) any of the shareholder decision-making rights for the company:
- (c) a right to receive, or to control the application of, any of the income of the company for the accounting period in which the time falls: 5
- (d) a right to receive, or to control the application of, any of the value of the net assets of the company, if they are distributed.
- Percentage of total is counted*
- (2) The direct control interest in each control interest category is the percentage of the total that the person holds. 10
- Measurement of available subscribed capital*
- (3) When the direct control interest in the category in **subsection (1)(a)** is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company. 15
- Varying decision-making rights*
- (4) When the direct control interest in the category in **subsection (1)(b)** is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in **section YA 1** (Definitions), the highest percentage is taken. 20
- Income distribution rights: assumptions* 25
- (5) When the direct control interest in the category in **subsection (1)(c)** is calculated, it is assumed that—
- (a) the income is distributed on the last day of the accounting period; and
- (b) the person's entitlement is unchanged during the period; and 30
- (c) a payment of interest on a debenture subject to **section FA 2** (Recharacterisation of certain debentures) or **FZ 1**

(Treatment of interest payable under debentures issued before certain date) is a distribution of income.

Defined in this Act: accounting period, available subscribed capital, control interest category, direct control interest, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

5

Compare: 2004 No 35 s EX 5

## **EX 6 Direct control interests include options and similar rights**

### *Entitlement to acquire or extinguish*

- (1) For the purposes of **section EX 5**, a person is treated as holding something if they are entitled to acquire it or extinguish it. 10

### *Entitlement arises in various ways*

- (2) A person is entitled to acquire or extinguish something if the entitlement is absolute or contingent and whether the entitlement— 15
- (a) arises under a company's constitution; or
  - (b) arises under the terms of an option; or
  - (c) arises under the terms of a convertible note; or
  - (d) arises under the terms of any arrangement substantially similar to any of those described in **paragraphs (a) to (c)**; or 20
  - (e) arises in some other way.

### *Standard security arrangements*

- (3) Despite **subsections (1) and (2)**, a person is not treated as being entitled to acquire something if— 25
- (a) the entitlement arises under a security arrangement; and
  - (b) the person acquired the security arrangement in a transaction entered into on an arm's length basis; and
  - (c) the security arrangement's terms conform to generally accepted commercial practice.

### *No double counting*

- (4) Despite **subsections (1) and (2)**, for the purpose of determining whether a foreign company is a CFC, each of the percentage holdings described in **section EX 5** may be counted only once. 30

Defined in this Act: arrangement, CFC, company, convertible note, direct control interest, foreign company, security arrangement

35

Compare: 2004 No 35 s EX 6



**EX 7 Indirect control interests***How indirect control interests arise*

- (1) A person has an indirect **control interest** in a foreign company to the extent to which the rules in this section attribute to them some or all of the direct control interests held by a CFC in the foreign company. 5

*Attribution of CFC's direct interests*

- (2) A CFC's direct control interest in another foreign company is attributed under **subsections (3) to (11)**.

*Associates*

- (3) For the purposes of this section, the CFC is treated as also holding any direct control interests in the foreign company held by persons associated with the CFC. 10

*Attribution to smallest controlling group*

- (4) **Subsections (6) to (11)** apply to attribute the CFC's direct control interests to the smallest controlling group, to ensure that the attribution exercise does not dilute recognition of a factual chain of control. 15

*Attribution on basis of respective income interests*

- (5) If the CFC's direct control interests are attributed to more than 1 person, the direct control interests are divided in proportion to each group member's respective income interest in the CFC. 20

*One controlling group*

- (6) If there is only 1 group of New Zealand residents whose control interests have caused the CFC to be a CFC under **section EX 1**, the CFC's direct control interests are treated as being held by that group. 25

*More than 1 group*

- (7) If there is more than 1 group whose control interests have caused the CFC to be a CFC under **section EX 1**, the CFC's direct control interests are attributed to the smallest group. 30

*Equal smallest groups*

- (8) If there are 2 or more groups that are equally the smallest, and 1 group has the greatest total control interests in the CFC, the attribution is to that group.

*Equal smallest groups with equal greatest control interests* 5

- (9) If there are 2 or more smallest groups with equal greatest total control interests in the CFC, the attribution is made in full to each group.

*No double counting*

- (10) Despite **subsection (9)**, for the purpose of determining whether a foreign company is a CFC, a direct control interest may be counted only once. 10

*Sequential application*

- (11) If a foreign company becomes a CFC under this section, this section is then applied to attribute its direct control interests. 15

Defined in this Act: associated person, CFC, control, control interest, direct control interest, foreign company, income interest, New Zealand resident

Compare: 2004 No 35 s EX 7

*Calculation of person's income interest***EX 8 Income interests: total of direct and indirect interests** 20*Calculation of income interest*

- (1) A person's income interest in a CFC at any time is the total of the following:
- (a) any direct income interest that the person holds in the CFC: 25
  - (b) any indirect income interest that the person holds in the CFC.

*Avoidance arrangements*

- (2) Any of the following sections may apply to the calculation of a person's income interest: 30
- (a) **section GB 9** (Temporary disposals of direct control or income interests):
  - (b) **section GB 10** (Temporary acquisitions of direct control or income interests):

- (c) **section GB 11** (Temporary increases in totals for control interest category):
- (d) **section GB 12** (Temporary reductions in totals for control interest category):
- (e) **section GB 13** (When combination of changes reduces income): 5
- (f) **section GB 14** (When combination of changes increases loss).
- Defined in this Act: CFC, control interest category, direct control interest, direct income interest, income, income interest, indirect income interest 10
- Compare: 2004 No 35 s EX 8

## EX 9 Direct income interests

### *Categories of direct income interest*

- (1) A person has a **direct income interest** in a CFC at any time if they hold— 15
- (a) any of the shares in the foreign company:
- (b) any of the shareholder decision-making rights for the company:
- (c) a right to receive, or to control the application of, any of the income of the company for the accounting period in which the time falls: 20
- (d) a right to receive, or to control the application of, any of the value of the net assets of the company, if they are distributed.

### *Percentage of total is counted* 25

- (2) The person's direct income interest is the percentage of the total that the person holds.

### *Varying percentages*

- (3) However, if the percentage varies between the different categories, the person's direct income interest is the highest. 30

### *Measurement of available subscribed capital*

- (4) When the direct income interest in the category in **subsection (1)(a)** is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company. 35

*Varying decision-making rights*

- (5) When the direct income interest in the category in **subsection (1)(b)** is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in **section YA 1** (Definitions), the highest percentage is taken. 5

*Income distribution rights: assumptions*

- (6) When the direct income interest in the category in **subsection (1)(c)** is calculated, it is assumed that—
- (a) the income is distributed on the last day of the accounting period; and 10
  - (b) the person's entitlement is unchanged during the period; and
  - (c) a payment of interest on a debenture subject to **section FA 2** (Recharacterisation of certain debentures) or **FZ 1** (Treatment of interest payable under debentures issued before certain date) is a distribution of income. 15

Defined in this Act: accounting period, available subscribed capital, CFC, debentures, direct income interest, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule 20

Compare: 2004 No 35 s EX 9

**EX 10 Indirect income interests***Looking through CFCs*

- (1) If a person has a direct income interest in a CFC, and the first CFC has a direct income interest in another CFC, the person has an **indirect income interest** in the other CFC. 25

*Calculation of indirect income interest*

- (2) The indirect income interest is calculated by multiplying the person's direct income interest in the first CFC by the first CFC's direct income interest in the other CFC. 30

*Chains of CFCs*

- (3) If there are 2 or more CFCs in a chain of direct income interests between the person and a CFC, the person has an indirect income interest in the CFC at the end of the chain that

is calculated by multiplying all the direct income interests in the chain.

Defined in this Act: CFC, direct income interest, indirect income interest

Compare: 2004 No 35 s EX 10

- EX 11 Options and similar rights in certain cases** 5
- Increase in income interest*
- (1) The rules in this section apply to increase a person's income interest in a CFC (the **first CFC**) in some cases.
- Entitlement to acquire*
- (2) This section applies when the person, or some other person, such as another CFC taken into account when calculating an indirect income interest of the person in the first CFC, has at any time an entitlement (the **option**) to acquire 1 of the things listed in **section EX 9(1)** in relation to the first CFC but does not hold it. 10  
15
- Actual holder outside CFC rules attribution*
- (3) For this section to apply, the actual holder of the thing subject to the option must not be—
- (a) another CFC:
- (b) a New Zealand resident, unless they are a New Zealand resident whose income interest in the first CFC for the accounting period in question is less than 10%. 20
- Terms of option indicating economic ownership*
- (4) For this section to apply, the option must have 1 of the following features: 25
- (a) in the absence of this section, the effect of the option would be to defeat the intent and application of **subpart CQ** (Attributed income from foreign equity) or **DN** (Attributed losses from foreign equity) or this subpart, taking into account the economic benefit that the person gets as a result of the CFC deriving income: 30
- (b) the consideration payable for the exercise of the option is less than the market value of the thing acquired at the time of the acquisition:
- (c) the holder of the option (or an associated person) has directly or indirectly funded or assisted the actual holder to acquire or hold the thing subject to the option. 35

*Calculation as if option exercised*

- (5) If each requirement for this section to apply is met, the person's income interest is calculated as if the option holder had exercised the option.

Defined in this Act: accounting period, associated person, CFC, income, income interest, indirect income interest, New Zealand resident, pay

5

Compare: 2004 No 35 s EX 11

**EX 12 Reduction of total income interests***Application of this section*

- (1) This section applies when the total income interests for a CFC for an accounting period would be more than 100%, because **section EX 9(3)** requires the highest percentage to be taken if varying percentage shareholder rights are held. 10

*Proportional reduction*

- (2) Each person's income interest for the period is reduced to the amount calculated using the formula— 15

$$\text{income interest before reduction} \times \frac{100}{\text{total income interests before reduction}}$$

Defined in this Act: accounting period, amount, CFC, income interest, shareholder

20

Compare: 2004 No 35 s EX 12

**EX 13 Income interests of partners***When this section applies*

- (1) This section applies when a partnership holds rights that would be an income interest in a CFC if the partnership were an individual. 25

*Partners' proportions*

- (2) When income interests in the CFC are calculated, each partner is treated as holding a share of anything held by the partnership, in proportion to the partner's interest in the partnership. 30

Defined in this Act: CFC, income interest

Compare: 2004 No 35 s EX 13

*Ten percent threshold and variations in income interest level***EX 14 Attribution: 10% threshold**

A person has attributed CFC income or attributed CFC loss from a CFC only if the person's income interest in the CFC is 10% or more for the relevant accounting period.

5

Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, income interest

Compare: 2004 No 35 s EX 14

**EX 15 Associates and 10% threshold***Associates included*

10

- (1) Solely for the purpose of applying the 10% threshold in **section EX 14**, and the equivalent test in **section EX 46(1)(a)**, a person's income interest in a CFC is increased by each income interest in the CFC for the accounting period of a person associated with the person.

15

*Exception*

- (2) Despite **subsection (1)**, the income interest of an associate is not counted if the associate is a CFC.

Defined in this Act: accounting period, associated person, CFC, income interest

Compare: 2004 No 35 s EX 15

20

**EX 16 Income interests for certain purposes***When this section applies*

- (1) This section applies for the purposes of determining the attributed CFC income or loss of a person for a period if the person holds an income interest in the CFC on a day in the period.

25

*Zero income interest*

- (2) For the purposes of calculating the attributed CFC income or loss of a person for a period, the person has an income interest in a CFC of zero on a day in the period if, on the day, the person is—

30

- (a) a non-resident;  
(b) a transitional resident.

*Attribution not prevented*

- (3) This section does not override—

- (a) **section CD 21** (Attributed repatriations from controlled foreign companies), which treats a dividend resulting from attributed repatriation as being derived while the person deriving it is a New Zealand resident; or
- (b) **section CQ 2(3)** (When attributed CFC income arises), which treats any attributed CFC income as being derived while the person deriving it is a New Zealand resident; or
- (c) **section CQ 5(4)** (When FIF income arises), which treats any FIF income as being derived while the person deriving it is a New Zealand resident.

Defined in this Act: accounting period, attributed CFC income, attributed repatriation, CFC, dividend, FIF income, income interest, New Zealand resident, non-resident, transitional resident

Compare: 2004 No 35 s EX 16

## EX 17 Income interest if variations within period

*When this section applies*

- (1) This section applies when a person's income interest in a CFC, calculated under **sections EX 8 to EX 16**, varies between days in a period.

*Weighted average*

- (2) The person's income interest for the period is the total of the amounts for the period, each of which is calculated using the formula in **subsection (3)** for a day in the period.

*Formula*

- (3) The formula is—

$$\frac{\text{income interest for day}}{\text{days in period.}}$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **income interest for day** is—
- (i) the income interest during the day, if the income interest does not vary during the day:
- (ii) the income interest at the start of the day, if the income interest varies during the day:



(b) **days in period** is the number of days in the period.

Defined in this Act: CFC, income interest

Compare: 2004 No 35 s EX 17

*Calculation of attributed CFC income or loss*

**EX 18 Formula for calculating attributed CFC income or loss** 5

If a person has attributed CFC income under **section CQ 2** (When attributed CFC income arises) or an attributed CFC loss under **section DN 2** (When attributed CFC loss arises), the amount of a person's attributed CFC income or loss from a CFC for an accounting period is calculated using the formula— 10

$$\begin{aligned} & \text{person's income interest for accounting period} \\ & \times \text{branch equivalent income or loss of CFC} \\ & \text{for accounting period.} \end{aligned}$$

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, branch equivalent income, CFC, income interest, loss 15

Compare: 2004 No 35 s EX 18

**EX 19 Taxable distribution from non-complying trust**

*Application of this section*

(1) This section applies when— 20

- (a) a CFC derives a taxable distribution from a non-complying trust in an accounting period; and
- (b) a person has attributed CFC income or loss from the CFC for the period, or would have if the taxable distribution were included in the CFC's branch equivalent income. 25

*Additional attributed CFC income*

(2) The taxable distribution is excluded under **section EX 21(32)** when calculating the CFC's branch equivalent income or loss, and instead the person has additional attributed CFC income. 30

*Calculation of additional attributed CFC income*

(3) The amount of the additional attributed CFC income is calculated using the formula— 35

$$\begin{aligned} & \text{person's income interest in CFC for accounting period} \\ & \times \text{taxable distribution.} \end{aligned}$$

*Non-complying trust tax rate*

- (4) The person is liable for income tax on the additional attributed CFC income at the rate in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) that applies to amounts under **section HC 19** (Taxable distributions from non-complying trusts). 5

*Disclosure restrictions on grey list CFCs*

- (5) No additional attributed CFC income arises under this section to the extent to which **section EZ 32** (Disclosure restrictions on grey list CFCs before 2011–12) applies. 10

Defined in this Act: accounting period, amount, attributed CFC income, branch equivalent income, CFC, income interest, income tax, loss, non-complying trust, taxable distribution

Compare: 2004 No 35 s EX 19

**EX 20 Reduction in attributed CFC loss** 15*Application of this section: no economic loss*

- (1) This section applies when—  
 (a) a person has an amount of attributed CFC loss; and  
 (b) the person suffers no, or substantially no, corresponding economic loss, whether because of a call option, a put option, or any other reason. 20

*Application of this section: attributed CFC loss excessive*

- (2) This section also applies if—  
 (a) a person has an amount of attributed CFC loss; and  
 (b) the amount is more than any corresponding economic loss of the person, whether because of the application of the rules for calculating the person's income interest or for any other reason. 25

*Reduction to economic loss*

- (3) The attributed CFC loss is reduced to be equal to the economic loss, if any. 30

Defined in this Act: amount, attributed CFC loss, income interest

Compare: 2004 No 35 s EX 20

*Calculation of branch equivalent income or loss***EX 21 Branch equivalent income or loss: calculation rules***Rules set out in this section*

- (1) For the purpose of calculating the attributed CFC income or loss of a person (the **taxpayer**), the branch equivalent income or loss of the CFC for an accounting period is calculated under the rules in this section. 5

*CFC treated as New Zealand resident*

- (2) The rules in this Act are applied as if the CFC were always a New Zealand resident, and— 10
- (a) the CFC's branch equivalent income for the accounting period is equal to the CFC's net income for the period; and
- (b) the CFC's branch equivalent loss for the accounting period is equal to the CFC's net loss for the period. 15

*Modifications to rules*

- (3) However, the rules in the Act are modified for the purposes of the calculation by the following subsections.

*Conversion to New Zealand dollars*

- (4) The taxpayer must choose— 20
- (a) for all the calculations to be done in New Zealand dollars; or
- (b) for all the calculations to be done in the currency of the CFC's financial accounts; and if the CFC has no financial accounts, the currency used is that of the CFC's country of residence, the result being then converted into New Zealand dollars at the average of the close of trading spot exchange rates for the fifteenth day of each complete month that falls in the period. 25

*Consent for change of currency* 30

- (5) Having chosen a currency, the taxpayer must use the same currency for calculating branch equivalent income or loss for the CFC for each later consecutive accounting period, unless the Commissioner allows the taxpayer to choose again.

*Change for commercial purpose*

- (6) The Commissioner may consent to a change under **subsection (5)** only if satisfied that—
- (a) the taxpayer's main purpose in changing is a commercial one, and for this purpose, the reducing of tax is not a commercial purpose; and 5
  - (b) the change does not have an effect of defeating the intent and application of **subpart CQ** (Attributed income from foreign equity) or **DN** (Attributed losses from foreign equity) or this subpart. 10

*New Zealand currency for financial arrangements*

- (7) Despite **subsections (4) to (6)**, New Zealand currency calculations must be used to calculate that part of the branch equivalent income or loss attributable to financial arrangements if— 15
- (a) the total value of financial arrangements to which the CFC is a party is more than \$1,000,000 at any time during the relevant accounting period, applying **section EW 17(2)(b)** (Straight-line method) to measure the values; or 20
  - (b) the CFC's total net foreign exchange loss attributable to financial arrangements, calculated under **subsections (4) to (6)** for the accounting period, is more than \$100,000.

*Limit to subsection (7)*

- (8) **Subsection (7)** does not apply to a financial arrangement if— 25
- (a) it is a variable principal debt instrument; and
  - (b) all the rights and obligations of all the parties to the financial arrangement are expressed in the currency chosen under **subsection (4)(b)**; and
  - (c) no other party to the financial arrangement is associated with the CFC; and 30
  - (d) no person enters into the financial arrangement under an arrangement that has a purpose of defeating the application of **subsection (7)**.

*Opening cost base: tangible assets: first period*

- (9) If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose whether to measure the cost base at the start of an 35

accounting period of premises, plant, machinery, equipment, and trading stock of the CFC at—

- (a) historical cost minus any accumulated amounts of depreciation loss, or another value used by the CFC as the starting value for the period for income tax calculations in the country in which the CFC is resident, but only if the value is below market value; or 5
- (b) the starting value that would be used under this Act if the CFC had always been a New Zealand resident.

*Opening cost base: tangible assets: later periods* 10

- (10) If the taxpayer had attributed CFC income or loss from the CFC for the previous period, the cost base at the start of an accounting period of premises, plant, machinery, equipment, and trading stock of the CFC is the closing value at the end of the previous period used to calculate the income or loss. 15

*Opening cost base: financial arrangements: first period*

- (11) If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose to calculate the consideration under the financial arrangements rules for a financial arrangement at the start of an accounting period, at— 20
  - (a) the market value of the financial arrangement; or
  - (b) the absolute value calculated using the formula— 25
 
$$\text{consideration paid to the CFC} + \text{expenditure} \\ - \text{consideration paid by the CFC} - \text{income.}$$

*Definition of items in formula*

- (12) In the formula,—
  - (a) **consideration paid to the CFC** is the consideration paid to the CFC for all periods before the accounting period: 30
  - (b) **expenditure** is expenditure that would have been incurred under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand:
  - (c) **consideration paid by the CFC** is the consideration paid by the CFC for all periods before the accounting period: 35

- (d) **income** is income that would have been derived under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand.
- Provisions that do not apply* 5
- (13) The following provisions do not apply:
- (a) the consolidation rules:
  - (b) **section CB 26** (Income equalisation schemes) and **subparts DQ** (Income equalisation schemes and environmental restoration accounts schemes) and **EH** (Income equalisation schemes): 10
  - (c) **sections CD 45 to CD 52** (which relate to the CFC attributed repatriation calculation rules) or **subpart CQ** (Attributed income from foreign equity) or **DN** (Attributed losses from foreign equity) or this subpart to the extent to which any of the sections or subparts would result in attributed CFC income, attributed CFC loss, or attributed repatriation for the CFC: 15
  - (d) **section CW 8** (Money lent to government of New Zealand): 20
  - (e) **section CW 39(1)** (Local and regional promotion bodies):
  - (f) **sections DO 1** (Enhancements to land, except trees) and **DO 2** (Erosion and shelter plantings):
  - (g) **sections EW 9** (Persons to whom financial arrangements rules apply) and **EW 11(b)** (What financial arrangements rules do not apply to): 25
  - (h) **subpart FE** (Interest apportionment on thin capitalisation):
  - (i) **section GB 5** (Arrangements involving trust beneficiaries): 30
  - (j) **subpart IC and sections IA 2 to IA 9, IP 3 to IP 7, IZ 4, and IZ 5** (which relate to the use of tax losses).
- Business treated as if carried on in New Zealand*
- (14) The following provisions apply as if the CFC's business activities were carried on in New Zealand: 35
- (a) **sections CT 1 to CT 3, CT 5 to CT 7, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5**, which relate to petroleum mining:

- (b) **sections DO 4 to DO 7, DO 12, DP 1 to DP 3, DP 8, and DP 11**, which relate to farming, aquacultural, and forestry expenditure:
- (c) **section EZ 17** (Amount of depreciation loss for plant or machinery additional to section EZ 16 amount): 5
- (d) the definitions in **subpart YA** (General definitions) that specifically apply for the purposes of those sections.

*Transfer pricing rules*

- (15) **Sections GC 6 to GC 14** (which relate to transfer pricing arrangements between associated persons) apply only to a transaction that has a purpose or effect of defeating any of the jurisdictional ring-fencing rules for CFC losses and tax credits in—
  - (a) **section DN 4** (Ring-fencing cap on deduction):
  - (b) **section IQ 2** (Ring-fencing cap on attributed CFC net losses): 15
  - (c) **section IQ 4** (Group companies using attributed CFC net losses):
  - (d) **sections LK 1 to LK 7** (which relate to foreign tax credits and CFCs).

Also, when **sections GC 6 to GC 14** are applied, the associated persons include persons associated under the parts of **subpart YB** (Associated persons and nominees) that apply for the purposes of the whole Act, excluding the 1973, 1988, and 1990 version provisions. 20

*Dividends generally* 25

- (16) **Sections CW 9 to CW 11** (which relate to exempt income from equity) and **CZ 13** (Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996) do not apply and dividends are income that is not exempt income, unless **subsection (17)** applies. 30

*Dividends: exempt income*

- (17) Despite **subsection (16)**, dividends are exempt income of the CFC if—
  - (a) the dividends are derived by the CFC from another CFC and the taxpayer has a 10% or greater income interest under **sections EX 14 to EX 17** in the other CFC for an accounting period falling in the same relevant income year or the previous income year; or 35

- (b) the dividends are from shares that are an attributing interest in a FIF of the CFC.

*Benefits from money advanced*

- (18) When **section CC 7** (Consideration other than in money) is applied, the borrower is treated as if it carries on a business in New Zealand. 5

*No tainting by association*

- (19) **Sections CB 9 to CB 13** (which relate to the disposal of land) and **CV 1** (Group companies) do not apply to treat an amount derived by the CFC as income merely because of the activities of a person associated with the CFC if the associate is a non-resident. 10

*Crown acquisition of land*

- (20) The reference in **section EI 7(1)** (Disposal of land to Crown) to the Crown includes any relevant government outside New Zealand. 15

*Amount of depreciation loss recovered*

- (21) When **sections EE 50 to EE 54** (which relate to disposals and similar events) are applied, the CFC is treated as having had a deduction for an amount of depreciation loss, and to have an adjusted tax value accordingly, if an amount of depreciation loss has been deducted when calculating the CFC's branch equivalent income or loss for any period and the attributed CFC income or loss of any person. 20

*GST and value-added taxes*

- (22) When **sections CX 1** (GST), **DB 2** (GST), **EE 47** (Consideration for purposes of section EE 46), **EE 55** (Cost: GST), **EZ 9** (FIF interests held on 1 April 1993), and **EZ 18** (Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994) are applied, references to output tax, input tax, or GST payable include a reference to the equivalent item arising under the value-added tax or other tax rules of a country or territory outside New Zealand if the rules have a similar intent and application to the New Zealand GST rules. 25 30



*Government grants to businesses*

- (23) When **section DF 1** (Government grants to businesses) is applied, a reference to the New Zealand government includes a government outside New Zealand but, to the extent to which **section DF 1** still does not apply to a grant or subsidy to the CFC from a government, the grant or subsidy is income of the CFC. 5

*Subvention payments*

- (24) If an amount is paid as consideration for the transfer of tax losses,— 10
- (a) it is income if derived by the CFC; and
  - (b) it is a deduction if payable by the CFC but only if paid to a person resident in the same country as the CFC and if deductible under the taxation law of that country.

*Life insurers*

- (25) **Subsection (26)** applies if— 15
- (a) the CFC itself carries on the business of providing life insurance; or
  - (b) shares in the CFC are held, directly or indirectly, by a foreign company (the **parent company**, in **subsection (26)**) that carries on the business of providing life insurance and those shares have to be taken into account under **sections EX 8 to EX 13** to calculate the taxpayer's income interest in the CFC. 20

*Policyholders*

- (26) If the test in **subsection (25)** is met, the life insurance rules do not apply and the branch equivalent income or loss of the CFC is the amount actuarially determined to be the part of the CFC's net income or loss to which shareholders, and not policyholders in either the CFC or the parent company, are entitled. 25 30

*When subsection (26) does not apply*

- (27) Despite **subsection (25)**, **subsection (26)** does not apply if the Commissioner— 35
- (a) considers that the amount calculated is not a reasonable reflection of the part attributable to shareholders; or

- (b) has requested and not received sufficient information to enable the actuarial calculation to be reviewed.

*Mineral mining activities*

- (28) **Sections BC 7, CU 1 to CU 29, CX 44 to CX 46, CZ 2, CZ 4, DU 1 to DU 12, DZ 12, IS 1 to IS 4** (which relate to mineral mining) apply, with any necessary modifications, if the CFC carries on activities outside New Zealand that are substantially the same as the mineral mining activities to which those sections apply. 5

*Petroleum mining activities*

- (29) **Sections CT 1 to CT 3, CT 5, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5** (which relate to petroleum mining) apply, with any necessary modifications, if the CFC carries on petroleum mining activities outside New Zealand that are substantially the same as the petroleum mining activities to which those sections apply. 10  
15

*Finance leases and specified leases*

- (30) A lease entered into by the CFC before the start of the first accounting period in which the CFC is a CFC is neither a finance lease (subject to the financial arrangements rules and **sections FA 6 to FA 11**, which relate to finance leases), nor a specified lease, subject to **sections FZ 2 to FZ 4**, which relate to leases. 20

*When subsection (30) does not apply*

- (31) **Subsection (30)** does not apply if another party to the lease is either a CFC or a New Zealand resident. 25

*Taxable distributions from non-complying trust*

- (32) If the CFC gets a taxable distribution from a non-complying trust— 30
- (a) **section HC 22** (Use of tax losses to reduce taxable distributions from non-complying trusts) does not apply; and
  - (b) the taxable distribution is not taken into account in calculating the CFC's branch equivalent income or loss; and
  - (c) **section EX 19** applies.

*CFCs with interest in FIFs*

- (33) If the CFC has rights in a FIF,—
- (a) the rights are not prevented from being an attributing interest of the CFC in a FIF merely because the notional New Zealand residence of the CFC under **subsection (2)** causes **section EX 32** to apply; and 5
  - (b) the CFC's FIF income or loss is not taken into account in calculating the branch equivalent income; and
  - (c) **section EX 46** applies.

*Transitional treatment of cross-border reinsurance*

10

- (34) **Section CZ 12** (General insurance with risk period straddling 1 July 1993) applies as if the reference to New Zealand were a reference to the CFC's country of residence.

*Disclosure restrictions on grey list CFCs*

- (35) A CFC has no amount of branch equivalent income or loss under this section for an accounting period to the extent to which **section EZ 32** (Disclosure restrictions on grey list CFCs before 2011–12) applies. 15

Defined in this Act: absolute value, accounting period, adjusted tax value, amount, arrangement, associated person, attributed CFC income, attributed CFC loss, attributed repatriation, attributing interest, branch equivalent income, branch equivalent loss, business, CFC, close of trading spot exchange rate, Commissioner, consideration, consolidation rules, deduction, depreciation loss, dividend, exempt income, FIF, FIF income, finance lease, financial arrangement, financial arrangements rules, foreign company, GST, GST payable, income, income interest, income tax, income year, input tax, lease, life insurance, life insurance rules, loss, mineral, net income, net loss, New Zealand, New Zealand resident, non-complying trust, non-resident, output tax, pay, petroleum, resident in New Zealand, share, shareholder, specified lease, tax, taxable distribution, trading stock, variable principal debt instrument 20

Compare: 2004 No 35 s EX 21 25

30

*Grey list exemption***EX 22 Unqualified grey list CFCs***Criteria*

- (1) A CFC is an unqualified grey list CFC for an accounting period if— 35
- (a) at all times in the accounting period it is resident in a country listed in **schedule 24, part A** (International tax rules: grey list countries); and

- (b) in that country the CFC's liability for income tax has not been reduced by applying any of the concessions listed in **schedule 24, part B**.

*No attributed income or loss*

- (2) **Sections CQ 2(g)** (When attributed CFC income arises) and **DN 2(g)** (When attributed CFC loss arises) provide that no attributed CFC income or attributed CFC loss arises from an unqualified grey list CFC. 5

*CFCs with interest in FIFs: look-through approach*

- (3) This section does not prevent FIF income or loss arising under **section EX 46**, if an unqualified grey list CFC has an interest in a FIF. 10

Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, FIF, FIF income, grey list, income tax, loss

Compare: 2004 No 35 s EX 22 15

### EX 23 Tax concession grey list CFCs

*Criteria*

- (1) A CFC is a tax concession grey list CFC for an accounting period if—
- (a) at all times in the accounting period it is resident in a country listed in **schedule 24, part A** (International tax rules: grey list countries); and 20
- (b) in that country the CFC's liability for income tax has been reduced by applying any of the concessions listed in **schedule 24, part B**. 25

*Attribution using country's tax rules*

- (2) In the case of a tax concession grey list CFC,—
- (a) **section EX 21** does not apply for the accounting period; and
- (b) when **section EX 18** is applied, the amount of branch equivalent income or loss for the period is equal to the net income or net loss calculated under the income tax law of the CFC's country of residence but— 30
- (i) excluding any allowance for carrying forward prior period losses; and 35
- (ii) adjusted to exclude the benefit of concessions listed in **schedule 24, part B**; and

- (iii) converted to New Zealand dollars under **section EX 21(4)(b)**.

Defined in this Act: accounting period, amount, branch equivalent income, CFC, grey list, income tax, loss, net income, net loss, New Zealand

Compare: 2004 No 35 s EX 23

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### *Residence of companies*

#### **EX 24 Residence in grey list country**

##### *Necessary liability to income tax*

- (1) For the purposes of this subpart and **subparts CQ, DN, and LF** (which relate to attributed income and losses from foreign equity and to foreign tax credits), a CFC is resident in a country listed in **schedule 24, part A** (International tax rules: grey list countries) if—
- (a) the CFC is liable in the country to income tax on the CFC's income because the CFC—
- (i) is domiciled in the country: 15
- (ii) is resident in the country:
- (iii) is incorporated in the country:
- (iv) has its place of management in the country:
- (b) the CFC is organised under the laws of the country and the country—
- (i) imposes on persons holding income interests in the CFC the liability for income tax on the CFC's income; and
- (ii) under the laws of the country, is the source of 80% or more of the income of the CFC. 25

##### *Relationship with sections YD 2 and YD 3*

- (2) This section overrides **sections YD 2 and YD 3** (which relate to the residence of companies).

Defined in this Act: CFC, grey list, income tax

30

Compare: 2004 No 35 s EX 24

#### **EX 25 Companies moving to or from New Zealand**

##### *Companies becoming foreign*

- (1) If a company becomes a foreign company, an accounting period of the company starts on the day when the company becomes a foreign company and the former accounting period ends on the previous day. 35

*Companies ceasing to be foreign*

- (2) If a foreign company ceases to be a foreign company, an accounting period of the company starts on the day when the company ceases to be a foreign company and the former accounting period ends on the previous day. 5

*Pro-rating*

- (3) If **subsection (1) or (2)** applies to shorten an accounting period of a CFC, a person with attributed CFC income or loss from the CFC for the period may choose to calculate the branch equivalent income or loss of the CFC— 10
- (a) using the results for the shortened period only; or
- (b) by applying the pro-rating formula in **subsection (4)** to the results for the unshortened period.

*Formula*

- (4) The formula for calculating branch equivalent income or loss under **subsection (3)(b)** is— 15
- $$\frac{\text{unshortened period branch equivalent income or loss}}{\text{branch equivalent income or loss}} \times \frac{\text{days in shortened period}}{\text{days in unshortened period}}. \quad 20$$

Defined in this Act: accounting period, attributed CFC income, branch equivalent income, CFC, company, foreign company, loss, New Zealand

Compare: 2004 No 35 s EX 25

*Change of CFC's balance date* 25**EX 26 Change of CFC's balance date***Application of this section*

- (1) This section applies when a person—
- (a) has an income interest in a CFC; and
- (b) has calculated attributed CFC income or loss or attributed repatriation from the CFC on the basis of 1 accounting year (the **old accounting year**); and 30
- (c) wants to change to use a different accounting year (the **new accounting year**) for the calculations.

*Change requiring Commissioner's consent* 35

- (2) The person may make the change only if the Commissioner agrees.

*Commissioner's reasons*

- (3) The Commissioner may consider any relevant factors when making the decision, including—
- (a) whether the change is sought because ownership of the CFC has changed: 5
  - (b) whether the change is sought because of taxation or other legal requirements in a country where the CFC is resident or does business:
  - (c) whether the change is sought to achieve consistent balance dates in a group of companies: 10
  - (d) whether the change would postpone liability to income tax on attributed CFC income or on attributed repatriation or to FDP on attributed repatriation.

*No transitional deferral*

- (4) If the new accounting year ends in a later income year than the year the old accounting year ends in, and that fact would result in an amount of attributed CFC income or attributed repatriation being derived in the later income year, the amount is not deferred to the later income year and instead is treated as derived in the previous income year. However, this subsection applies only once, in the year of the transition. 15

Defined in this Act: accounting year, amount, attributed CFC income, attributed repatriation, business, CFC, Commissioner, FDP, group of companies, income interest, income tax, income year, loss 20

Compare: 2004 No 35 s EX 26 25

*Ownership measurement concession***EX 27 Use of quarterly measurement***Interests held at end of quarter*

- (1) In order to simplify the process of calculating a person's control interest or income interest in a foreign company, the person is treated as holding at all times during a quarter the same interest, including a zero interest, as the interest they hold at the end of the quarter. 30

*Anti-avoidance*

- (2) The concession in **subsection (1)** is overridden by the anti-avoidance rules in **sections GB 9 to GB 16** (which relate to arrangements involving CFCs). 35

*Ignoring concession*

- (3) A person may choose not to apply the concession in **subsection (1)** when calculating their attributed CFC income or loss from a foreign company.

*Election*

5

- (4) An election under **subsection (3)**—
- (a) must be in the form required by the Commissioner; and
  - (b) is irrevocable; and
  - (c) applies in the income year in which it is made and later.

Defined in this Act: attributed CFC income, Commissioner, control interest, foreign company, income interest, income year, loss, quarter 10

Compare: 2004 No 35 s EX 27

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

*When this section applies* 15

- (1) This section applies when—
- (a) a New Zealand resident holds rights (the **stapled rights**) that give rise to an income interest or control interest in a foreign company; and
  - (b) the rights may, or may ordinarily, be disposed of only together with rights in another company; and 20
  - (c) the other company is a New Zealand resident or a CFC.

*Stapled rights held by company*

- (2) When each of **subparts CQ** (Attributed income from foreign equity) and **DN** (Attributed losses from foreign equity) and this subpart is applied, the stapled rights are held by the other company and not by the person. 25

Defined in this Act: CFC, company, control interest, foreign company, income interest, New Zealand resident

Compare: 2004 No 35 s EX 28 30

*Foreign investment fund rules**What is a foreign investment fund?***EX 29 Meaning of FIF**

A **foreign investment fund**, or **FIF**, is any of the following:

- (a) a foreign company: 35



- (b) a foreign superannuation scheme:
  - (c) an insurer under a life insurance policy, but not if the policy is offered or entered into in New Zealand (in which case the insurer must comply with the life insurance rules in relation to the policy): 5
  - (d) an entity described in **schedule 25, part A** (Foreign investment funds).
- Defined in this Act: FIF, foreign company, foreign investment fund, foreign superannuation scheme, life insurance policy, life insurance rules, offered or entered into in New Zealand 10
- Compare: 2004 No 35 s EX 29

### *Attributing interests in FIFs*

#### **EX 30 Attributing interests in FIFs**

##### *Three categories*

- (1) A person has an **attributing interest** in a FIF if— 15
  - (a) the person holds rights in 1 of the categories of rights described in **subsections (2) to (4)**; and
  - (b) none of the exemptions in **sections EX 32 to EX 37** applies to those rights.

##### *Category 1: direct income interest in foreign company* 20

- (2) The first category is a direct income interest in a foreign company, as defined in **section EX 31**, or in an entity described in **schedule 25, part A** (Foreign investment funds).

##### *Category 2: foreign superannuation scheme entitlement*

- (3) The second category is rights to benefit from a foreign superannuation scheme, as a beneficiary or a member. 25

##### *Category 3: foreign life policy entitlement*

- (4) The third category is rights to benefit from a life insurance policy in relation to which a FIF is the insurer.

##### *Contingent rights* 30

- (5) The second and third categories include rights that are contingent or discretionary.

Defined in this Act: attributing interest, direct income interest, FIF, foreign company, foreign superannuation scheme, life insurance policy

Compare: 2004 No 35 s EX 30 35

**EX 31 Direct income interests in FIFs***Categories of direct income interest*

- (1) A person has a direct income interest in a foreign company at any time if they hold—
- (a) any of the shares in the foreign company: 5
  - (b) any of the shareholder decision-making rights for the company:
  - (c) a right to receive, or to apply, any of the income of the company for the accounting period in which the time falls: 10
  - (d) a right to receive, or to apply, any of the value of the net assets of the company, if they are distributed.

*Percentage of total*

- (2) The person's direct income interest is the percentage of the total that the person holds. 15

*Varying percentages*

- (3) However, if the percentage varies between the different categories, the person's direct income interest is the highest.

*Measurement of available subscribed capital*

- (4) When the direct income interest in the category in **subsection (1)(a)** is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company. 20  
25

*Varying decision-making rights*

- (5) When the direct income interest in the category in **subsection (1)(b)** is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in **section YA 1** (Definitions), the highest percentage is taken. 30

*Income distribution rights: assumptions*

- (6) When the direct income interest in the category in **subsection (1)(c)** is calculated, it is assumed that—
- (a) the income is distributed on the last day of the accounting period; and 35

- (b) the person's entitlement is unchanged during the period; and
- (c) a payment of interest on a debenture subject to **section FA 2** (Recharacterisation of certain debentures) is a distribution of income. 5

*Meaning of company*

- (7) In this section, and in defined terms referred to in this section, **company** includes an entity listed in **schedule 25, part A** (Foreign investment funds). 10

Defined in this Act: accounting period, available subscribed capital, company, debentures, direct income interest, FIF, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 31

**EX 32 CFC rules exemption**

A person's rights in a FIF at any time are not an attributing interest if— 15

- (a) the FIF is a CFC at the time; and
- (b) the person has an income interest of 10% or more in the CFC for the accounting period during which the time falls. 20

Defined in this Act: accounting period, attributing interest, CFC, FIF, income interest

Compare: 2004 No 35 s EX 32

**EX 33 Grey list exemption**

*Exemption* 25

- (1) A person's rights in a FIF in an income year are not an attributing interest if, at all times in the income year,—
- (a) the FIF is not an entity described in **schedule 25, part B** (Foreign investment funds); and
  - (b) a country listed in **schedule 24, part A** (International tax rules: grey list countries), in relation to the FIF, meets at least 1 of the grounds for exemption set out in **subsections (2) and (3)**. 30

*First ground for exemption*

- (2) The country— 35
- (a) is the residence of the FIF under **section YD 3** (Country of residence of foreign companies); and

- (b) imposes on the FIF liability for income tax on the FIF's income because the FIF—
  - (i) is domiciled in the country:
  - (ii) is resident in the country:
  - (iii) is incorporated in the country: 5
  - (iv) has its place of management in the country.

*Second ground for exemption*

- (3) The country—
  - (a) is the country under whose laws the FIF is organised; and 10
  - (b) imposes on persons holding income interests in the FIF liability for income tax on the FIF's income; and
  - (c) under the laws of the country, is the source of 80% or more of the income of the FIF.

*Exemption: categories 2 and 3* 15

- (4) **Subsection (1)** does not apply if the rights of the person are those described in **section EX 30(3) or (4)**.

Defined in this Act: attributing interest, company, FIF, grey list, income tax, income year

Compare: 2004 No 35 s EX 33 20

**EX 34 Foreign exchange control exemption**

A person's rights in a FIF are not an attributing interest if and to the extent to which—

- (a) the person is a natural person; and
- (b) the person acquired the rights— 25
  - (i) before first becoming a New Zealand resident; or
  - (ii) before exchange controls applying to the person and the interest were imposed by a foreign country; or
  - (iii) before 8.00 pm New Zealand Standard Time on 2 July 1992; and 30
- (c) the exchange controls prevent the person from deriving amounts from the rights, or from disposing of the rights, in New Zealand dollars, or consideration that is readily convertible into New Zealand dollars. 35

Defined in this Act: amount, attributing interest, FIF, New Zealand, New Zealand resident

Compare: 2004 No 35 s EX 34

**EX 35 Income interest of non-resident or transitional resident***Categories 2 and 3*

- (1) **Subsection (2)** applies only to rights described in **section EX 30(3) or (4)**.

*Exemption for non-resident or transitional resident*

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- (2) A person's rights in a FIF at any time are not an attributing interest if—
- (a) the person is a natural person; and
  - (b) the person acquires the rights when a non-resident or transitional resident; and
  - (c) at the time, the person is a non-resident or transitional resident.

10

Defined in this Act: attributing interest, FIF, income year, New Zealand resident, non-resident, transitional resident

Compare: 2004 No 35 s EX 35

15

**EX 36 New resident's accrued superannuation entitlement exemption***Exemption*

- (1) The rights of a natural person to benefit, as a beneficiary or a member, from a foreign superannuation scheme at any time are not an attributing interest in a FIF to the extent to which the requirements of **subsections (2) to (9)** are met at the time.

20

*Rights accruing before or after becoming resident*

- (2) The rights must have accrued during a period—
- (a) for which the person is not a New Zealand resident: 25
  - (b) for which the person is a New Zealand resident and that—
    - (i) begins when the person becomes a New Zealand resident; and
    - (ii) ends before the first day of the fifth income year following the income year in which the person becomes a New Zealand resident. 30

*Calculation of rights accruing*

- (3) The extent to which the rights have accrued during a period referred to in **subsection (2)** is calculated using the formula— 35
- closing value – opening value.

*Definition of items in formula*

- (4) In the formula,—
- (a) **closing value** is the market value of the rights on the day that ends the period:
  - (b) **opening value** is the market value of the rights on the day that begins the period. 5

*Employee scheme or self-employed*

- (5) Either—
- (a) the scheme must be one where the person's rights can be acquired only through the person's employment; or 10
  - (b) the person must be wholly or mainly self-employed, either when the person first acquired the rights or at the relevant time for applying this section.

*Contributions or benefits: link to income*

- (6) The amount contributed to the scheme by or for the person must be calculated— 15
- (a) by some fixed relationship to the person's income from employment or self-employment; or
  - (b) to provide benefits that bear a fixed relationship to the person's income from employment or self-employment, except to the extent to which the benefits are adjusted by reference to an objective measure of inflation. 20

*Contributions by person, employer, or other scheme*

- (7) Contributions to the scheme for the person's benefit must be made only by or for— 25
- (a) the person; or
  - (b) the person's employer, or a person associated with the employer; or
  - (c) the representatives of another superannuation scheme— 30
    - (i) as a transfer of the person's benefit rights in the other scheme; and
    - (ii) if those benefit rights would have qualified for the exemption in this section. 35

*Restricted rights to assign or cash in*

- (8) The person's future benefits under the scheme must not be able to be assigned, or exchanged for a current receipt of cash, or other property, except—
- (a) if the person becomes physically incapacitated; or 5
  - (b) if the person is transferring the benefit rights into another, similar, scheme; or
  - (c) when or after the person retires at normal retiring age; or
  - (d) if the person is assigning the benefit rights to a spouse under a relationship agreement; or 10
  - (e) at the cost of a substantial decrease in the present value of the benefits.

*Relationship property assignment*

- (9) When the person has obtained the rights by their being assigned under a relationship agreement, the exemption in this section applies if the assignor spouse would have been entitled to it. 15

Defined in this Act: amount, associated person, attributing interest, employer, FIF, foreign superannuation scheme, income, income from employment, market value, New Zealand resident, relationship agreement, superannuation scheme 20

Compare: 2004 No 35 s EX 36

**EX 37 Non-resident's pension or annuity exemption***Exemption*

- (1) The rights of a natural person to benefit from a pension or annuity provided by a FIF are not an attributing interest if the requirements of **subsections (2) and (3)** are met. 25

*Relevant period of non-residence*

- (2) The person must have provided the consideration for acquiring the rights— 30
- (a) when the person was not resident in New Zealand; or
  - (b) when the person was resident in New Zealand but in the period ending 3 years after the end of the income year in which they last became a New Zealand resident; or
  - (c) when the person was resident in New Zealand but as a result of commuting or transferring their interest in a superannuation fund in anticipation of their ceasing to be a New Zealand resident. 35

*Restricted rights to assign or cash in*

- (3) The person's future benefits must not be able to be assigned, or exchanged for a current receipt of cash, or other property, except—
- (a) if the person is assigning the benefit rights to a spouse under a relationship agreement; or
  - (b) at the cost of a substantial decrease in the present value of the benefits.

*Elective exclusion of pre-1996–97 rights*

- (4) **Subsection (1)** does not apply if—
- (a) the rights were acquired before the 1996–97 income year; and
  - (b) the person chose to treat the rights as an interest in a foreign investment fund for the 1996–97 and later income years by complying with the requirements of section CG 15(4) of the Income Tax Act 1994.

Defined in this Act: attributing interest, FIF, foreign investment fund, income year, matrimonial agreement, New Zealand resident, non-resident, relationship agreement, resident in New Zealand, superannuation fund, year

Compare: 2004 No 35 s EX 37

*Calculation of FIF income or loss***EX 38 Four calculation methods***Use of 1 method*

- (1) If the tests in **section CQ 5** (When FIF income arises) or **DN 6** (When FIF loss arises) are met, the amount of a person's FIF income or loss is calculated under—
- (a) the accounting profits method; or
  - (b) the branch equivalent method; or
  - (c) the comparative value method; or
  - (d) the deemed rate of return method.

*Choosing method*

- (2) The person must choose which calculation method applies by completing their return of income accordingly, but the choice is limited by **sections EX 40, EX 41, and EX 50**.
- Defined in this Act: accounting profits method, amount, branch equivalent method, calculation method, comparative value method, deemed rate of return method, FIF income, loss, return of income

Compare: 2004 No 35 s EX 38



**EX 39 Exclusion of amounts of death benefit***No FIF income*

- (1) When this section applies, a person is treated as not deriving FIF income to the extent to which the income arises solely from receiving a death benefit under a life insurance policy. 5

*Application of this section: contract before becoming resident*

- (2) This section applies if—
- (a) the person or the deceased (the **contracting party**), when not a New Zealand resident, entered into a binding contract that gave rise to the benefit; and 10
  - (b) at the time the contract was entered into, the contracting party either had not previously been a New Zealand resident or had not been a resident for at least the previous 10 years; and 15
  - (c) the benefit was not increased by a voluntary action taken after the contracting party became a resident.

*Application of this section: pre-1992 contracts*

- (3) This section also applies if—
- (a) before 2 July 1992 the person or the contracting party entered into a binding contract giving rise to the benefit; and 20
  - (b) the benefit was not increased by a voluntary action taken on or after 2 July 1992.

Defined in this Act: amount, FIF income, life insurance policy, New Zealand resident, year 25

Compare: 2004 No 35 s EX 39

**EX 40 Limits on choice of calculation methods***Same method for same FIF*

- (1) If a person has 2 or more attributing interests in the same FIF for the same period, the person must use the same calculation method for calculating FIF income or loss from each interest in that period, except to the extent to which— 30
- (a) the interests are of different classes; and
  - (b) this section prevents the same method being used. 35

*Accounting profits method*

- (2) A person may use the accounting profits method for an accounting period to calculate FIF income or loss from an attributing interest in a FIF only if—
- (a) the FIF is a company; and 5
  - (b) at all times during the accounting period when the FIF exists, interests in the FIF similar to the person's attributing interest were—
    - (i) quoted on the official list of a recognised exchange; or 10
    - (ii) offered widely by or for the FIF to the public in 1 or more countries; and
  - (c) the net after-tax accounting profits or losses of the FIF for the accounting period are calculated under generally accepted accounting practice, or an equivalent standard for consistent and undistorted reporting of net profits, of the country in which the FIF is resident; and 15
  - (d) the net after-tax accounting profits or losses are detailed in financial statements—
    - (i) sent or made available to shareholders in the FIF; and 20
    - (ii) readily available to interested members of the public; and
    - (iii) audited by a chartered accountant, or accountant of equivalent professional standard in the country in which the FIF is resident; and 25
    - (iv) for which such an accountant has given a standard audit opinion, without qualifications, to the effect that the financial statements represent the income and financial position of the FIF to the degree of validity normally required in the country in which the FIF is resident; and 30
  - (e) the net after-tax accounting profits or losses are calculated, in any case in which the FIF has 1 or more subsidiaries, on a consolidated basis; and 35
  - (f) the net after-tax accounting profits or losses include any extraordinary items; and
  - (g) the person has no reason to believe that the net after-tax accounting profits or losses do not fairly represent the net after-tax profits or losses of the FIF for the accounting period; and 40

- (h) the FIF is not an entity described in **schedule 25, part C** (Foreign investment funds); and
- (i) the Commissioner has not concluded that the net after-tax accounting profits or losses do not fairly represent the net after-tax profits or losses of the FIF for the accounting period. 5

*Branch equivalent method*

- (3) A person may use the branch equivalent method to calculate FIF income or loss from an attributing interest in a FIF for an accounting period only if— 10
  - (a) the FIF is a company; and
  - (b) the person can provide to the Commissioner, if requested, sufficient information to enable the Commissioner to check the calculations required by **section EX 43**.

*Deemed rate of return method* 15

- (4) A person may use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF for an income year only if any of the following apply:
  - (a) it is not reasonably practicable for the person to use— 20
    - (i) the comparative value method, because the person cannot determine the market value of the attributing interest at the end of the income year; or
    - (ii) the accounting profits method for any accounting period that falls wholly or partly in the year; or 25
  - (b) the person is a natural person and at all times during the income year the total value of attributing interests in FIFs held by the person is \$250,000 or less, the value of each interest being—
    - (i) its book value, calculated under **section EX 45(7)**, at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year: 30
    - (ii) its market value, in any other case; or 35
  - (c) **section EX 41** requires the person to use that method; or
  - (d) **section EX 50** requires the person to continue using that method.

Defined in this Act: accounting period, accounting profits method, attributing interest, branch equivalent method, calculation method, Commissioner, company, 40

comparative value method, deemed rate of return method, FIF, FIF income, generally accepted accounting practice, income year, loss, market value, recognised exchange, shareholder, tax

Compare: 2004 No 35 s EX 40

## EX 41 Default calculation method 5

*When this section applies*

- (1) This section applies when—
- (a) a person does not choose a calculation method to calculate FIF income or loss from an attributing interest for a period; and 10
  - (b) **sections EX 40 and EX 50** do not have the effect of requiring a particular calculation method to be used.

*Default choice*

- (2) The person is treated as having chosen to use, for the interest and the period,— 15
- (a) if **section EX 40(2)** allows the use of the accounting profits method and it is practical to use that method, that method; and
  - (b) if use of that method is not allowed or not practical,— 20
    - (i) the comparative value method if it is practical to use it; and
    - (ii) the deemed rate of return method if it is not practical to use the comparative value method.

Defined in this Act: accounting profits method, attributing interest, calculation method, comparative value method, deemed rate of return method, FIF income, loss 25

Compare: 2004 No 35 s EX 41

## EX 42 Accounting profits method

*Formula*

- (1) If a person is using the **accounting profits method** to calculate FIF income or loss from an attributing interest in a FIF, the total FIF income or loss from all their attributing interests in the FIF for the relevant accounting period is calculated using the formula— 30
- $$\begin{aligned} & (\text{accounting profits or losses} - \text{foreign tax}) \\ & \quad \times \text{income interest.} \end{aligned} \quad 35$$

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (5)**.

- Accounting profits or losses*
- (3) **Accounting profits or losses** is the net after-tax accounting profits or losses of the FIF for the accounting period.
- Foreign tax*
- (4) **Foreign tax** is the total for the accounting period of income tax on the income of the FIF— 5
- (a) for which the person is liable under the laws of a country or territory outside New Zealand; and
- (b) paid by the person in the accounting period.
- Income interest* 10
- (5) **Income interest** is the person's income interest in the FIF for the accounting period. The income interest is calculated under all the following CFC rules, applying as if the FIF were a CFC:
- (a) **sections EX 8 to EX 11 and EX 13:** 15
- (b) **sections EX 16 and EX 17:**
- (c) **section EX 27**, unless the person chooses to apply **subsection (6)**.
- Election to measure on 31 March only*
- (6) In order to simplify the process of calculating the person's income interest, the person may choose to be treated as holding, at all times during a tax year, the same interest, including a zero one, that they held at the end of the tax year. The person makes the election by completing their return of income accordingly for the relevant income year. 20  
25
- Election irrevocable*
- (7) An election under **subsection (6)** is—
- (a) irrevocable and applies to the person and all their attributing interests in the FIF in later years; and
- (b) overridden by the anti-avoidance rules in **sections GB 9 to GB 16** (which relate to CFCs). 30
- Conversion to New Zealand dollars*
- (8) The person must choose—
- (a) for all the calculations to be done in the currency of the FIF's financial accounts, with the result then converted into New Zealand dollars at the average of the close of 35

- trading spot exchange rates for the fifteenth day of each complete month that falls in the accounting period; or
- (b) for all the calculations of the net after-tax accounting profits or losses of the FIF to be done in New Zealand dollars. 5

*Reduction in FIF loss to economic loss*

- (9) In the cases described in **subsections (10) and (11)**, the amount of any FIF loss calculated under **subsection (1)** is reduced to be equal to the person's corresponding economic loss, if any.

*Application of subsection (9): no economic loss* 10

- (10) **Subsection (9)** applies if the person suffers no, or substantially no, economic loss corresponding to the FIF loss, whether because of a call option, a put option, or any other reason.

*Application of subsection (9): FIF loss excessive*

- (11) **Subsection (9)** also applies if the amount of FIF loss is more than any corresponding economic loss suffered by the person, whether because of the application of the rules for calculating the person's income interest or any other reason. 15

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, CFC, close of trading spot exchange rate, FIF, FIF income, FIF loss, income interest, income year, loss, New Zealand, non-resident, pay, quarter, return of income, tax, tax year 20

Compare: 2004 No 35 s EX 42

### EX 43 Branch equivalent method

*Formula* 25

- (1) If a person is using the **branch equivalent method** to calculate FIF income or loss from an attributing interest in a FIF, the total FIF income or loss from all their attributing interests in the FIF for the relevant accounting period is calculated using the formula— 30
- branch equivalent income or loss × income interest.

*Definition of items in formula*

- (2) The items in the formula in **subsection (1)** are defined in **subsections (3) and (4)**.

*Branch equivalent income or loss*

- (3) **Branch equivalent income or loss** is the branch equivalent income or loss of the FIF for the accounting period. This is calculated by applying **section EX 21** of the CFC rules—
- (a) as if the FIF were a CFC and the person were calculating their attributed CFC income or loss; and 5
  - (b) applying **subsections (5) and (6)**.

*Income interest*

- (4) **Income interest** is the person's income interest in the FIF for the accounting period. The income interest is calculated under all the following CFC rules, applying as if the FIF were a CFC: 10
- (a) **sections EX 8 to EX 11 and EX 13:**
  - (b) **sections EX 16 and EX 17:**
  - (c) **section EX 27.** 15

*Taxable distributions*

- (5) If the FIF derives a taxable distribution from a non-complying trust in the accounting period,—
- (a) the taxable distribution is excluded when calculating the FIF's branch equivalent income or loss, due to the combined effect of **subsection (1)** and **section EX 21(32)**; and 20
  - (b) the person has additional attributed CFC income calculated by multiplying the taxable distribution by the person's income interest in the FIF; and
  - (c) the person is liable for income tax on the additional attributed CFC income at the rate in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) that applies to amounts under **section HC 22** (Use of tax losses to reduce taxable distribution from non-complying trusts). 25 30

*Calculation of additional FIF income or loss*

- (6) If the FIF itself has an income interest, calculated under **subsection (4)**, in a foreign company for the accounting period, the person has additional FIF income or loss calculated using the formula— 35
- $$\text{interest} \times \text{FIF's FIF income or loss.}$$

*Definition of items in formula*

- (7) In the formula in **subsection (6)**,—
- (a) **interest** is the person's income interest in the FIF for the period:
  - (b) **FIF's FIF income or loss** is the FIF's FIF income or loss calculated under the rules in **section EX 46(4) and (5)**, as if—
    - (i) the FIF were the CFC referred to; and
    - (ii) the FIF's interest in the foreign company were an attributing interest, despite any application of **section EX 32**. 10

*Application of CFC rules tax credit rules*

- (8) The rules in **sections LK 1 to LK 7** (which relate to tax credits for attributed CFC income) apply to allow the person to claim foreign tax credits but on the basis of the assumptions made in **subsection (9)**. The rules in those sections allow foreign tax credits relating to attributed CFC income but apply a jurisdictional ring-fencing approach to the use of tax credits. 15

*Assumptions in reading tax credit rules*

- (9) **Sections LK 1 to LK 7** are applied as if— 20
- (a) the FIF were a CFC; and
  - (b) the FIF income of the person from the FIF were attributed CFC income; and
  - (c) the person's income interest, calculated under **subsection (4)** were their relevant income interest for the purposes of those sections; and 25
  - (d) any relevant person's FIF income calculated under the branch equivalent method from a FIF that is resident in the relevant country were attributed CFC income.

*Reduction in FIF loss to economic loss* 30

- (10) In the cases described in **subsections (11) and (12)**, the amount of any FIF loss calculated under **subsections (1) and (6)** is reduced to be equal to the person's corresponding economic loss, if any.

*Application of subsection (10): no economic loss*

- (11) **Subsection (10)** applies if the person suffers no, or substantially no, economic loss corresponding to the FIF loss, whether because of a call option, a put option, or any other reason. 35



*Application of subsection (10): FIF loss excessive*

- (12) **Subsection (10)** also applies if the amount of FIF loss is more than any corresponding economic loss suffered by the person, whether because of the application of the rules for calculating the person's income interest or any other reason. 5
- Defined in this Act: accounting period, amount, attributed CFC income, attributing interest, branch equivalent income, branch equivalent method, CFC, FIF, FIF income, FIF loss, foreign company, income interest, income tax, loss, non-complying trust, non-resident, quarter, tax, taxable distribution
- Compare: 2004 No 35 s EX 43 10

**EX 44 Comparative value method***Formula*

- (1) If a person is using the **comparative value method** to calculate FIF income or loss from an attributing interest in a FIF, the FIF income or loss from that interest for the relevant income year is calculated using the formula— 15
- $$(\text{closing value} + \text{gains}) - (\text{opening value} + \text{costs}).$$

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (6)**.

*Closing value*

- (3) **Closing value** is the market value of the person's interest in the FIF at the end of the income year. The value is zero if the person has disposed of the interest or is then applying another calculation method to it. 20

*Gains*

- (4) **Gains** is the total of all amounts that the person derives during the income year from holding or disposing of the interest. The amounts include any foreign withholding tax or other tax that the person is allowed as a credit under **section LJ 2** (Tax credits for foreign income tax). 25 30

*Opening value*

- (5) **Opening value** is the market value of the person's interest in the FIF at the end of the previous income year. The value is zero if the person did not hold the interest then or was then applying another calculation method to it. 35

*Costs*

- (6) **Costs** is the total for the income year of—
- (a) all expenditure, if any, that the person incurs in acquiring or increasing the interest:
  - (b) income tax on the income of the FIF— 5
    - (i) for which the person is liable under the laws of a country or territory outside New Zealand; and
    - (ii) paid by the person in the income year.

*Conversion of foreign currency amounts*

- (7) If an amount is derived from, or incurred on, the interest in a foreign currency during the year, the person must choose— 10
- (a) for each such foreign currency amount in the income year to be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or 15
  - (b) for all such foreign currency amounts in the income year to be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the fifteenth day of each month that falls in the year. 20

Defined in this Act: amount, attributing interest, calculation method, close of trading spot exchange rate, comparative value method, FIF, FIF income, foreign withholding tax, income year, loss, market value, New Zealand, pay, tax 20

Compare: 2004 No 35 s EX 44

**EX 45 Deemed rate of return method***Formula changes if interest changes* 25

- (1) If a person is using the **deemed rate of return method** to calculate FIF income or loss from an attributing interest in a FIF for an income year, the FIF income or loss is calculated—
- (a) by the formula in **subsection (3)** (the **standard formula**) if the person has held the interest unchanged throughout the income year; and 30
  - (b) by totalling the amounts calculated by the formula in **subsection (5)** (the **part-year formula**) for each part of the income year during which the interest is unchanged, in any other case. 35

*When interest changes*

- (2) A person's attributing interest in a FIF changes during an income year if the person—

- (a) acquires or increases the interest; or  
 (b) disposes of or reduces the interest, but merely receiving an annuity payment from the interest is not a disposal or reduction.
- Standard formula* 5
- (3) The standard formula is—  
       opening book value × deemed rate.
- Definition of items in standard formula*
- (4) In the standard formula,—
- (a) **opening book value** is the book value of the interest at the end of the previous income year, calculated under **subsection (7)**: 10
- (b) **deemed rate** is the rate set by the Governor-General by Order in Council for this section for the relevant income year. 15
- Part-year formula*
- (5) The part-year formula is—  
       
$$\frac{(\text{opening book value} + \text{costs}) \times (\text{deemed rate} \times \text{days})}{365}$$
- Definition of items in part-year formula* 20
- (6) In the part-year formula,—
- (a) **opening book value** is the book value, if any, of the interest at the end of the period before the part of the income year, calculated under **subsection (7)**:
- (b) **costs** is the total for the part of the income year of— 25
- (i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:
- (ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the part of the income year: 30
- (c) **deemed rate** is the rate set by the Governor-General by Order in Council for this section for the relevant income year:
- (d) **days** is the number of days in the part of the income year; and for this purpose, an acquisition or increase is 35

treated as occurring at the start of a day, and a disposition or reduction is treated as occurring at the end of a day.

*Closing book value formula*

- (7) The book value, at the end of an income year or, in a case in which **subsection (5)** applies, a part of an income year, of an attributing interest of a person in a FIF under the deemed rate of return method is, unless **subsection (9)** applies, calculated using the formula (the **closing book value formula**)—
- $$\begin{aligned} & \text{(opening book value + costs} && 10 \\ & \text{+ deemed income + top-up amounts) – gains.} \end{aligned}$$

*Definition of items in closing book value formula*

- (8) In the closing book value formula,—
- (a) **opening book value** is the book value, if any, of the interest at the end of the previous income year or the part of the income year, calculated under **subsection (7)**: 15
- (b) **costs** is the total for the income year or part of the income year of—
- (i) all expenditure, if any, that the person incurs in acquiring or increasing the interest: 20
- (ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the income year or part of the income year: 25
- (c) **deemed income** is the FIF income from the interest for the year or the part of the income year calculated under **subsection (3) or (5)**:
- (d) **top-up amounts** is amounts, gains from holding or disposing of the interest, that are top-up FIF income in the year under **section EX 48 or EX 49**: 30
- (e) **gains** is the total of all amounts that the person derives during the year or the part of the income year from holding or disposing of the interest; the amounts including any foreign withholding tax or other tax that the person is allowed as a credit under **section LJ 2** (Tax credits for foreign income tax). 35

*Closing book value zero if changing method*

- (9) The closing book value is always zero if the person is using a calculation method for the interest different from the deemed rate of return method at the end of the income year or, in a case to which **subsection (5)** applies, the part of the income year. 5

*Top-up income if deemed rate inadequate*

- (10) If the closing book value of a person's attributing interest in a FIF at the end of an income year or a part of an income year is below zero, the person has additional FIF income equal to the deficit for the relevant income year. 10

*When subsection (10) does not apply*

- (11) **Subsection (10)** does not apply if—
- (a) the person is a natural person; and
  - (b) at all times during the income year the total value of the person's attributing interests in FIFs is \$250,000 or less, the value of each interest being—
    - (i) its book value, calculated under **subsection (7)**, at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year: 20
    - (ii) its market value, in any other case; and
  - (c) the deficit in closing book value arises only because the person disposed of some or all of the interest; and
  - (d) the gain that the person derived from disposing of the interest or part-interest is not income, or is income only to the extent to which it gives rise to FIF income. 25

*Top-up income if gains more than deemed income*

- (12) A person calculating FIF income under the deemed rate of return method can also have additional FIF income under **section EX 48**. 30

*FIF income reduced on disposal if deemed rate excessive*

- (13) If a person has disposed of the whole of an attributing interest in a FIF and the closing book value for the relevant income year or the part of the income year is more than zero, the excess is subtracted when the person's FIF income under the 35

deemed rate of return method for the income year is calculated.

*When subsection (13) does not apply*

- (14) **Subsection (13)** does not apply if—
- (a) the person is a natural person; and 5
  - (b) at all times during the income year the total value of attributing interests in FIFs held by the person is \$250,000 or less, the value of each interest being—
    - (i) its book value, calculated under **subsection (7)**, at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year: 10
    - (ii) its market value, in any other case; and
  - (c) the gain that the person derived from disposing of the interest or part-interest is not income, or is income only to the extent to which it gives rise to FIF income. 15

*Conversion of foreign currency amounts*

- (15) If an amount is derived from, or incurred on, the interest in a foreign currency during the income year, the person must choose— 20
- (a) for each such foreign currency amount in the income year to be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or 25
  - (b) for all such foreign currency amounts in the year to be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the income year.

Defined in this Act: amount, attributing interest, calculation method, close of trading spot exchange rate, deemed rate of return method, FIF, FIF income, foreign withholding tax, income, income year, loss, market value, New Zealand, pay, tax 30

Compare: 2004 No 35 s EX 45

*Additional FIF income or loss if CFC owns FIF*

**EX 46 Additional FIF income or loss if CFC owns FIF** 35

*Application of this section*

- (1) This section applies when—

- (a) a person has an income interest of 10% or more in a CFC for an accounting period under **sections EX 8 to EX 17**; and
- (b) because **section EX 21(33)** applies, FIF income and FIF loss is not taken into account in calculating the branch equivalent income or loss of the CFC for the period for the person. 5

*Calculation of FIF income or loss*

- (2) The person instead has FIF income or loss, for the income year in which the period ends, calculated using the formula— 10  

$$\text{income interest} \times \text{CFC's FIF income or loss.}$$

*Definition of items in formula*

- (3) In the formula,—
  - (a) **income interest** is the person's income interest in the CFC for the period under **sections EX 8 to EX 13**: 15
  - (b) **CFC's FIF income or loss** is the CFC's FIF income or loss for the period calculated under **subsections (4) and (5)**.

*Application of FIF rules to choice of method*

- (4) The person must—
  - (a) choose, under **sections EX 38 to EX 41**, the calculation method for calculating the CFC's FIF income or loss; and 20
  - (b) otherwise apply the calculation rules in **sections EX 38 to EX 49** as if the person directly held the attributing interest; and 25
  - (c) apply the FIF loss ring-fencing rules in **sections DN 8** (Ring-fencing cap on deduction: not branch equivalent method) and **DN 9** (Ring-fencing cap on deduction: branch equivalent method) as if the person directly held the attributing interest. 30

*Exclusion of policyholders' entitlements*

- (5) Despite **subsection (4)**, the CFC's FIF income or loss does not include any amount actuarially determined to be attributable to policyholders in the CFC or another company as a result of applying **section EX 21(25) and (26)** to the CFC. 35

*Unqualified grey list CFCs*

- (6) This section applies whether or not the CFC is an unqualified grey list CFC under **section EX 22** for the period.

*Disclosure restrictions on grey list CFCs*

- (7) No FIF income or loss arises under this section to the extent to which **section EZ 32** (Disclosure restrictions on grey list CFCs before 2011–12) applies. 5

Defined in this Act: accounting period, amount, attributing interest, branch equivalent income, calculation method, CFC, company, FIF, FIF income, FIF loss, FIF rules, grey list, income interest, income year, loss 10

Compare: 2004 No 35 s EX 46

*Relationship with other provisions in Act***EX 47 Codes: comparative value and deemed rate methods***When this section applies*

- (1) This section applies when a person has an attributing interest in a FIF and calculates their FIF income or loss from the interest for a period using the comparative value method or the deemed rate of return method. 15

*No income other than FIF income*

- (2) The person is treated as not having any income from the interest for the period other than FIF income and, in particular, any dividends derived in the period from the interest and any income gained from disposing of the interest in the period are disregarded. 20

*No deductions other than FIF loss*

- (3) The person is denied a deduction for any amount incurred in the period on acquiring some or all of the interest, except to the extent to which the amount is taken into account under the relevant calculation method in calculating FIF income or loss for the period. 25  
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*Application of trading stock rules*

- (4) The interest is not trading stock in the period and accordingly **subpart EB** (Valuation of trading stock (including dealer's live-stock)) does not apply.

Defined in this Act: amount, attributing interest, calculation method, comparative value method, deduction, deemed rate of return method, dividend, FIF, FIF income, FIF loss, income, loss, trading stock

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Compare: 2004 No 35 s EX 47

**EX 48 Top-up FIF income: deemed rate of return method***When this section applies*

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- (1) This section applies at any time when a person—
- (a) has an attributing interest in a FIF for a period; and
  - (b) is calculating the FIF income or loss from the interest using the deemed rate of return method; and
  - (c) derives in the period, from holding or disposing of the interest, an amount that would have been income if **section EX 47(2)** had not applied.

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*Formula*

- (2) The gain is FIF income to the extent to which the amount calculated using the following formula is positive:
- $$\text{total income gains} - \text{total FIF income.}$$

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*Definition of items in formula*

- (3) In the formula,—
- (a) **total income gains** is the total of amounts, including the amount in question, derived by the person until that time from holding or disposing of the interest that would have been income if **section EX 47(2)** had not applied;
  - (b) **total FIF income** is the total of FIF income, reduced by the total of any FIF losses, derived by the person from the interest until, and including, the relevant period.

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*Consequence of partial sales*

- (4) If the person disposes of part of the interest, this section applies to the part disposed of and the part retained as if they were separate interests. If this means that an apportionment is

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necessary, it must be done on the basis of the respective market values at the time the part interest is disposed of.

Defined in this Act: amount, attributing interest, deemed rate of return method, FIF, FIF income, FIF loss, income, loss, market value

Compare: 2004 No 35 s EX 48

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### EX 49 Top-up FIF income: 1 April 1993 uplift interests

*When this section applies*

- (1) This section applies at any time if a person—
- (a) has an attributing interest in a FIF for a period; and 10
  - (b) held the interest on 2 July 1992; and
  - (c) calculated their FIF income from the interest in the period starting on 1 April 1993 under the comparative value method or the deemed rate of return method; and
  - (d) was treated as having reacquired the interest on 1 April 1993 for an uplifted cost under section CG 23(1)(d) of the Income Tax Act 1994 or EZ 7 of the Income Tax Act 2004; and 15
  - (e) derives in the period, from holding or disposing of the interest, an amount that would have been income if **section EX 47(2)** had not applied. 20

*Formula*

- (2) The gain is FIF income to the extent to which the amount calculated using the following formula is positive:
- $$\text{total income gains} - \text{total FIF income.}$$

*Definition of items in formula*

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- (3) In the formula,—
- (a) **total income gains** is the total of amounts, including the amount in question, that the person derived until that time from holding or disposing of the interest that would have been income if **section EX 47(2)** had not applied: 30
  - (b) **total FIF income** is the total of FIF income, reduced by the total of any FIF losses, that the person derived from the interest until, and including, the relevant period.

*Consequence of partial sales*

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- (4) If the person disposes of part of the interest, this section applies to the part disposed of and the part retained as if they

were separate interests. If this means that an apportionment is necessary, it must be done on the basis of the respective market values at the time the part interest is disposed of.

Defined in this Act: amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, FIF loss, income, market value

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Compare: 2004 No 35 s EX 49

### *Changing calculation method*

#### **EX 50 Limits on changes of method**

##### *No change unless allowed*

- (1) Once a person uses a particular calculation method to calculate FIF income or loss for an attributing interest in a FIF for a particular period, they must use the same method for interests in the FIF for the next period unless they are allowed to change under **subsections (2) to (7)**. 10

##### *Change on practical grounds*

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- (2) The person may change if it is not practical to continue with the same method because—
- (a) in the case of the accounting profits method, **section EX 40(2)** prevents its continued use or it is impossible to obtain enough information to continue to use it: 20
  - (b) in the case of the branch equivalent method, it is impossible to obtain enough information to continue to use it:
  - (c) in the case of the comparative value method, it is impossible to find out the end-of-year market value of the interest: 25
  - (d) in the case of the deemed rate of return method, if the person was entitled to use that method only by falling under the \$250,000 threshold in **section EX 40(4)(b)**, the threshold is exceeded:
  - (e) in the case of the deemed rate of return method, if it was the default method under **section EX 41**, it ceases to be the default method. 30

##### *Choosing to change*

- (3) The person may also change by notice to the Commissioner if— 35
- (a) the notice complies with **subsection (4)**; and
  - (b) either—

- (i) the person is a natural person and the \$250,000 threshold in **subsection (5)** is not exceeded; or
- (ii) the change is to, or from, the branch equivalent method and within **subsections (6) and (7)**.

*Notice of election*

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- (4) The notice of an election to change under **subsection (3)** must—
- (a) give the reasons for the change; and
  - (b) comply with the Commissioner’s notice requirements; and
  - (c) be given before the end of the first income year or accounting period for which the change is to take effect, unless the Commissioner agrees to a retrospective notice; and 10
  - (d) in the case of a natural person relying on the \$250,000 threshold test in **subsection (3)(b)(i)**, be given before the end of the year or period that is before the one from the end of which the change takes effect. 15

*Natural person: \$250,000 threshold*

- (5) A natural person may make an election under **subsection (3)** if the total market value of their attributing interests in FIFs is \$250,000 or less at the end of the income year or accounting period before the year or period from the end of which the change takes effect. 20

*Changing to or from branch equivalent method*

- (6) A person may make an election under **subsection (3)** to change— 25
- (a) to the branch equivalent method if—
    - (i) this is the first time they have chosen to change to the branch equivalent method for an attributing interest in the FIF; or 30
    - (ii) **subsection (7)** allows them to make another election:
  - (b) from the branch equivalent method if—
    - (i) they are changing back to a calculation method that they used for attributing interests in the fund before they used the branch equivalent method; and 35

- (ii) this is the first time they have chosen to change from the branch equivalent method, unless **subsection (7)** allows them to make another election.

*Repeated changes to or from branch equivalent method*

- (7) A person may change more than once to, or from, the branch equivalent method if— 5
- (a) there has been a change in circumstances, such as a significant change in shareholding, that significantly changes their ability to obtain enough information to use the branch equivalent method; and 10
- (b) altering their income tax liability is not the principal purpose or effect of the change.

Defined in this Act: accounting period, accounting profits method, attributing interest, branch equivalent method, calculation method, Commissioner, comparative value method, deemed rate of return method, FIF, FIF income, income tax liability, income year, loss, market value, notice 15

Compare: 2004 No 35 s EX 50

**EX 51 Consequences of changes in method**

*Changes between cost-based methods and look-through methods* 20

- (1) **Subsection (2)** applies if a person holding an attributing interest in a FIF changes the calculation method for calculating FIF income or loss from the interest—
- (a) from either of the cost-based calculation methods (the comparative value method and the deemed rate of return method) to either of the look-through calculation methods (the accounting profits method and the branch equivalent method); or 25
- (b) from either of the look-through methods to either of the cost-based methods. 30

*Treatment as sale for market value*

- (2) The person is treated as having—
- (a) disposed of the interest to an unrelated person immediately before the start of the first accounting period to which the new method applies; and 35
- (b) reacquired it immediately after the start of the period; and

- (c) received for the disposal and paid for the reacquisition an amount equal to the interest's market value at the time.

*Changes from comparative value method to deemed rate of return method*

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- (3) If a person holding an attributing interest in a FIF changes from the comparative value method to the deemed rate of return method for calculating FIF income or loss from the interest, the person is treated as having—

- (a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and
- (b) reacquired it immediately after the start of the year; and
- (c) received for the disposal and paid for the reacquisition an amount equal to the interest's market value at the time.

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*Changes from deemed rate of return method to comparative value method*

- (4) If a person holding an attributing interest in a FIF changes from the deemed rate of return method to the comparative value method for calculating FIF income or loss from the interest, the person is treated as having—

- (a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and
- (b) reacquired it immediately after the start of the year; and
- (c) received for the disposal and paid for the reacquisition an amount equal to the interest's closing book value, calculated under **section EX 45(7)**, at the end of the previous income year.

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Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, comparative value method, deemed rate of return method, FIF, FIF income, income year, loss, market value, pay

Compare: 2004 No 35 s EX 51

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*Cases of entry into and exit from FIF rules***EX 52 Migration of persons holding FIF interests***Leaving New Zealand*

- (1) **Subsection (2)** applies if a person—
- (a) ceases to be resident in New Zealand; and 5
  - (b) holds an attributing interest in a FIF at the time; and
  - (c) for the period before the change of residence, uses the comparative value method or the deemed rate of return method to calculate FIF income or loss from the interest. 10

*Treatment as sale at market value*

- (2) The person is treated as—
- (a) having sold the interest immediately before the change of residence for an amount equal to its market value at the time; and 15
  - (b) not holding the interest when not resident in New Zealand, unless they become resident again and **subsections (3) and (4)** apply.

*Coming to New Zealand*

- (3) **Subsection (4)** applies if a person— 20
- (a) is a non-resident or a transitional resident; and
  - (b) becomes a New Zealand resident who is not a transitional resident; and
  - (c) holds an attributing interest in a FIF at the time; and
  - (d) for the period after the change of residence or status, uses the comparative value method or the deemed rate of return method to calculate FIF income or loss from the interest. 25

*Treatment as purchase at market value*

- (4) The person is treated as— 30
- (a) having bought the interest immediately after the change of residence for an amount equal to its market value at the time; and
  - (b) not holding it when not resident in New Zealand, unless they had previously ceased being resident and **subsections (1) and (2)** applied. 35

*Look-through calculation method: relevance of income interest rules*

- (5) **Subsection (6)** applies if a person—
- (a) ceases to be—
    - (i) a New Zealand resident who is not a transitional resident, and becomes a non-resident: 5
    - (ii) a non-resident, and becomes a New Zealand resident who is not a transitional resident:
    - (iii) a transitional resident, and becomes a New Zealand resident who is not a transitional resident; and 10
  - (b) holds an attributing interest in a FIF at the time; and
  - (c) for the accounting period in which the change occurs, uses the accounting profits method or deemed rate of return method to calculate FIF income or loss from the interest. 15

*Income interest rules*

- (6) The income interest rule in **section EX 16** is relevant to the calculation of the amount of FIF income or loss for the period. 20
- Defined in this Act: accounting period, accounting profits method, amount, attributing interest, calculation method, comparative value method, deemed rate of return method, FIF, FIF income, income interest, loss, market value, New Zealand, New Zealand resident, non-resident, resident in New Zealand, transitional resident

Compare: 2004 No 35 s EX 52

**EX 53 Changes in application of FIF exemptions** 25

*Exemptions ceasing to apply*

- (1) **Subsections (2) and (3)** apply if a person—
- (a) holds rights in 1 of the categories of rights described in **section EX 30(2) to (4)**; and
  - (b) either— 30
    - (i) the rights become an attributing interest in a FIF because 1 of the exemptions in **sections EX 32 to EX 37** ceases to apply; or
    - (ii) the person starts having FIF income or loss from the rights because they incur a cost on an attributing interest in a FIF and exceed the \$50,000 threshold in **sections CQ 5(1)(d)** (When FIF income arises) and **DN 6(1)(d)** (When FIF loss arises). 35



*Market value for cost-based methods*

- (2) If the person uses the comparative value method or deemed rate of return method to calculate FIF income or loss from the rights for the period following the change, the person is treated as having— 5
- (a) disposed of the rights to an unrelated person immediately before the change; and
  - (b) reacquired them immediately after the change; and
  - (c) received for the sale and paid for the repurchase an amount equal to their market value at the time. 10

*Calculation of reduction in FIF income or loss*

- (3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or the deemed rate of return method to calculate FIF income or loss from the rights for that period, the FIF income or loss is reduced by subtracting the amount calculated using the formula— 15

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period}} \quad 20$$

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—
- (a) **FIF income or loss** is the FIF income or loss of the person from the rights for the period before allowing for the reduction: 25
  - (b) **days before change** is the number of complete days in the period before the change occurs:
  - (c) **days in period** is the number of days in the period.

*Exemptions applying*

- (5) **Subsections (2) to (4)** apply if a person— 30
- (a) holds an attributing interest in a FIF; and
  - (b) either—
    - (i) the interest ceases to be an attributing interest in a FIF because 1 of the exemptions in **sections EX 32 to EX 37** starts to apply; or 35
    - (ii) the person ceases having FIF income or loss from the interest because they dispose of an attributing interest in a FIF and fall below the \$50,000 threshold in **sections CQ 5(1)(d)** and **DN 6(1)(d)**.

*Market value for cost-based methods*

- (6) If the person uses the comparative value method or the deemed rate of return method to calculate FIF income or loss from the interest for the period before the change, the person is treated as having— 5
- (a) disposed of the interest to an unrelated person immediately before the change; and
  - (b) repurchased it immediately after the change; and
  - (c) received for the sale and paid for the repurchase an amount equal to its market value at the time. 10

*Calculation of reduction in FIF income or loss*

- (7) If the change occurs during an accounting period of the FIF and the person uses the accounting profits methods or the deemed rate of return method to calculate FIF income or loss from the interest for that period, the FIF income or loss is reduced by subtracting the amount calculated using the formula— 15

$$\text{FIF income or loss} \times \frac{\text{days after change}}{\text{days in period}} \quad 20$$

*Definition of items in formula*

- (8) In the formula in **subsection (7)**,—
- (a) **FIF income or loss** is the FIF income or loss of the person from the interest for the period before allowing for the reduction: 25
  - (b) **days after change** is the number of complete days in the period after the change occurs:
  - (c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, loss, market value, pay 30

Compare: 2004 No 35 s EX 53

**EX 54 FIFs migrating from New Zealand***When this section applies*

- (1) This section applies when a person holds rights that become an attributing interest in a FIF because an entity becomes a FIF. 35

*Treatment as sale and repurchase*

- (2) The person is treated as having—
- (a) disposed of the interest immediately before the change to an unrelated person; and
  - (b) repurchased it immediately after the change; and 5
  - (c) received for the sale and paid for the repurchase an amount equal to the market value of the interest at the end of the business day on which the change occurred.

*Calculation of reduction in FIF income or loss*

- (3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or branch equivalent method to calculate FIF income or loss from the rights for that period, **section EX 25** does not apply and the FIF income or loss is reduced by subtracting the amount calculated using the formula— 10

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period.}} \quad 15$$

*Definition of items in formula*

- (4) In the formula,— 20
- (a) **FIF income or loss** is the FIF income or loss of the person from the rights for the period before allowing for the reduction:
  - (b) **days before change** is the number of complete days in the period before the change occurs: 25
  - (c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, business, FIF, FIF income, loss, market value, New Zealand, pay

Compare: 2004 No 35 s EX 54 30

*Measurement of cost***EX 55 Measurement of cost***When this section applies*

- (1) This section applies when the cost of a person's attributing interest in a FIF is being measured for the purposes of— 35
- (a) the natural person \$50,000 exemption in **sections CQ 5(1)(d)** (When FIF income arises) and **DN 6(1)(d)** (When FIF loss arises); and
  - (b) the comparative value method; and

- (c) the deemed rate of return method.
- FIFO cost flow identification*
- (2) If it is not possible to specifically identify the cost of the interest, because of multiple acquisitions or dispositions or both by the person, the first-in-first-out (FIFO) method of identifying cost flows is applied. 5
- Share splits or similar*
- (3) If the person acquires the interest as the result of a share split, non-taxable bonus issue, or similar event, and the acquisition is not income for the person, **subsections (4) and (5)** apply. 10
- Allocation of original cost*
- (4) The cost of the interest is a fair allocation, based on market values at the time of the split, of the cost of the original property that is split.
- Allocation replacing original cost* 15
- (5) For the income year in which the split occurs and later,—
- (a) the cost allocated to the interest is no longer the cost of the original property that was split; and
- (b) the person is treated as having incurred the allocated cost amount on acquiring the interest when the original property was acquired; and 20
- (c) the person is treated as not incurring any other cost on the interest merely because the original property ceases to exist.
- Non-monetary cost* 25
- (6) If any cost is incurred in kind and not in money, the amount of the cost is equal to the market value of the cost incurred in kind, measured as at the time incurred.
- Exclusion of term life insurance element of premiums*
- (7) If the interest is rights to benefit under a life insurance policy, the cost of the interest excludes a premium incurred in a previous income year, or accounting period, to the extent to which the premium relates only to term life insurance for the previous period and does not increase the policy's surrender value. 30 35

*Exclusion of holding costs*

- (8) The cost of the interest does not include any expenditure under the financial arrangements rules or interest on money borrowed to acquire it, or other holding costs, incurred after its acquisition. 5
- Defined in this Act: accounting period, attributing interest, amount, comparative value method, deemed rate of return method, FIF, financial arrangements rules, income, income year, interest, life insurance, life insurance policy, market value, non-taxable bonus issue, premium, share
- Compare: 2004 No 35 s EX 56 10

*Change of FIF's balance date***EX 56 Change of FIF's balance date***When this section applies*

- (1) This section applies when a person—
- (a) has an attributing interest in a FIF; and 15
  - (b) calculates their FIF income or loss from the FIF using the accounting profits method or the branch equivalent method; and
  - (c) has calculated FIF income or loss from the FIF on the basis of 1 accounting year (the **old accounting year**); and 20
  - (d) wants to change to use a different accounting year (the **new accounting year**) for the calculations.

*Commissioner's consent*

- (2) The person may make the change only if the Commissioner agrees. 25

*Commissioner's reasons*

- (3) The Commissioner may take into account any relevant factors when making the decision, including—
- (a) whether the change is sought because ownership of the FIF has changed; and 30
  - (b) whether the change is sought because of taxation or other legal requirements in a country where the FIF is resident or does business; and
  - (c) whether the change would postpone liability to income tax on FIF income. 35

*New accounting year*

- (4) If the change is approved, the person may use the new accounting year.

*Limit on transitional deferral*

- (5) If, in order to make the transition, the transitional accounting period is more than 1 year and ends in a later income year than the old accounting year ends in, and that would result in an amount of FIF income being derived in the later income year, **subsection (6)** applies and **section CQ 5(1)(f)** (When FIF income arises) does not. 5  
10

*Income pro-rated over whole period*

- (6) For the transitional accounting period, the FIF income is divided by the number of days in the period and the resulting amount is FIF income of the person derived on each day in the period. 15

Defined in this Act: accounting period, accounting profits method, accounting year, amount, attributing interest, branch equivalent method, business, Commissioner, FIF, FIF income, income tax, income year, loss, year

Compare: 2004 No 35 s EX 57

*Market value rules* 20**EX 57 Market value of life policy and superannuation entitlements***When this section applies*

- (1) This section applies when, in order to calculate a person's FIF income or loss, it is necessary to calculate the market value of a person's rights to benefit under a life insurance policy or as a beneficiary under a superannuation scheme. 25

*Value of life insurance policy*

- (2) The **market value** of rights to benefit under a life insurance policy is equal to their surrender value. 30

*Limit to subsection (2)*

- (3) **Subsection (2)** applies only for the purpose of calculating the cost of a person's rights to benefit from a life insurance policy under— 35
- (a) **section EX 52(4)**; and
  - (b) **section EX 53(2)**; and

- (c) **section EZ 9** (FIF interests held on 1 April 1993).

*Value of superannuation scheme entitlement*

- (4) The **market value** at any time of a person's rights to benefit under a superannuation scheme is equal to the total of costs incurred up to that time by or for the person on acquiring the rights if— 5
- (a) it is not reasonably practicable to calculate the actual market value; and
- (b) they have not derived any material gain from the rights up to that time. 10

Defined in this Act: FIF income, life insurance policy, loss, market value, superannuation scheme

Compare: 2004 No 35 s EX 58

**EX 58 Non-market transactions in FIF interests**

**Section GC 4** (Disposals and acquisitions of FIF attributing interests) applies to acquisitions and dispositions of attributing interests in FIFs when the comparative value method or the deemed rate of return method is used. 15

Defined in this Act: attributing interest, comparative value method, deemed rate of return method, FIF 20

Compare: 2004 No 35 s EX 59

*Commissioner's default assessment power*

**EX 59 Commissioner's default assessment power**

*When this section applies*

- (1) This section applies when— 25
- (a) a person has failed to disclose their control interest or income interest in a CFC or attributing interest in a FIF, under section 61 of the Tax Administration Act 1994:
- (b) a person has failed to disclose information regarding their control interest or income interest in a CFC or attributing interest in a FIF, requested under section 17 of that Act: 30
- (c) a person cannot obtain enough information to calculate their attributed CFC income or loss, FIF income or loss, or attributed repatriation for a period. 35

*Commissioner's power*

- (2) The Commissioner may make an assessment of the amount of attributed CFC income or loss, FIF income or loss, or attributed repatriation for the relevant period.

*Examples of methods*

- (3) Without limiting the Commissioner's discretion, the assessment may be based on any of the following:
- (a) the accounts of the CFC or FIF for the relevant period prepared for tax authorities, creditors, shareholders, or others: 10
  - (b) the application of a rate of presumed increase of 10% or more, compounding annually, to the CFC's or FIF's branch equivalent income calculated under **section EX 21** for a previous period:
  - (c) the application of a rate of presumed increase of 10% or more, compounding annually, to the CFC's or FIF's accounting profits as shown in its accounts for a previous period: 15
  - (d) an imputed rate of return on the market value of the interest at the start of the period: 20
  - (e) the actual gains or losses of the person in the period from holding or disposing of the interest:
  - (f) the change in the market value of the interest over the period. 25

Defined in this Act: amount, assessment, attributed CFC income, attributed repatriation, attributing interest, branch equivalent income, CFC, Commissioner, control interest, FIF, FIF income, income interest, loss, market value, shareholder

Compare: 2004 No 35 s EX 60

## Subpart EY—Life insurance rules

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### *Introductory provisions*

#### **EY 1 What this subpart does**

##### *Life insurance rules*

- (1) This subpart contains most of the life insurance rules. 25

##### *Meaning of life insurance rules*

- (2) **Life insurance rules** means—
- (a) the sections in this subpart; and
  - (b) **subpart CR** (Income from life insurance); and
  - (c) **section CX 39** (Life insurers and fully reinsured persons); and
  - (d) **subpart DR** (Life insurance business expenditure); and
  - (e) **section DZ 2** (Life insurers acquiring property before 1 April 1988); and
  - (f) **section EZ 1** (Life insurers acquiring property before 1 April 1988); and
  - (g) **section GC 3** (Disposals by life insurers); and
- 30
- 35

- (h) **section IT 1** (Life insurers' policyholder net losses).

Defined in this Act: life insurance rules

Compare: 2004 No 35 s EY 1

## **EY 2 Matters to which this subpart relates**

- The matters to which this subpart relates are— 5
- (a) the meaning of **actuarial reserves, claim, life insurance, life insurance policy, life insurer, life reinsurance, life reinsurer, and life reinsurance policy**, *see sections EY 3 to EY 14:*
- (b) life insurers' premium loading, *see sections EY 15 to EY 24:* 10
- (c) life insurers' mortality profit, *see sections EY 25 to EY 34:*
- (d) life insurers' discontinuance profit, *see sections EY 35 to EY 41:*
- (e) life insurers' policyholder income, *see sections EY 42 to EY 45:* 15
- (f) life insurers' income and deductions when disposing of property, *see sections EY 46 and EY 47:*
- (g) non-resident life insurers, *see sections EY 48 and EY 49.*

Defined in this Act: actuarial reserves, claim, deduction, discontinuance profit, income, life insurance, life insurance policy, life insurer, life reinsurance, life reinsurance policy, life reinsurer, mortality profit, non-resident, premium loading, property 20

Compare: 2004 No 35 s EY 2

## **EY 3 Meaning of actuarial reserves**

*Meaning* 25

- (1) **Actuarial reserves** means a life insurer's reserves as calculated under **section EY 4.**

*Link between actuarial reserves and life insurer*

- (2) Actuarial reserves, for a life insurer at any time, means the life insurer's actuarial reserves at that time. 30

Defined in this Act: actuarial reserves, life insurer

Compare: 2004 No 35 s EY 3

## **EY 4 Actuarial reserves: calculation**

*Calculation by actuary*

- (1) The life insurer's actuarial reserves must be calculated by an actuary. 35

- All reserves or 1 or more amounts*
- (2) The actuary may calculate—
- (a) the actuarial reserves for all the life insurance policies for which the life insurer is the insurer; or
  - (b) the amount in the life insurer’s actuarial reserves for 1 or more life insurance policies for which the life insurer is the insurer. 5
- Interest, mortality, and other assumptions and bases of calculation*
- (3) The actuary must do the calculation using interest, mortality, and other assumptions and bases of calculation that— 10
- (a) are based on the same principles as those used in the actuarial advice on which the following are calculated:
    - (i) the level of surplus funds available to the life insurer for allotment or payment to shareholders or policyholders; or 15
    - (ii) the level of surplus funds available to the life insurer, if a superannuation scheme, for allotment to objects of the scheme other than the object of providing for members’ benefits; and 20
  - (b) are likely to produce a reasonable estimation of the future experience of the life insurer in relation to life insurance policies of which the life insurer is the insurer, having regard to the past experience of the life insurer in relation to life insurance policies of which the life insurer was the insurer; and 25
  - (c) conform with commercially acceptable practice.
- Reserves for policy never negative*
- (4) The amount in the actuarial reserves for a life insurance policy must never be negative. 30
- Reserves for all policies never less than total of surrender values*
- (5) The actuarial reserves at any time must not be less than the total of the surrender values of all the life insurance policies they cover at that time. 35

*Reserves for policies same at end of one, and start of next, income year*

- (6) The amount in the actuarial reserves for life insurance policies at the start of an income year is the same as the amount in the actuarial reserves for the life insurance policies at the end of the previous income year. 5

*Effect of partial reinsurance*

- (7) The actuarial reserves of a life insurer who has partial reinsurance must be reduced by an amount that the actuary responsible for actuarial control of the life insurer considers appropriate having regard to the nature of the life reinsurance policies. 10

Defined in this Act: actuarial reserves, actuary, amount, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, pay, shareholder, superannuation scheme

Compare: 2004 No 35 s EY 4 15

## **EY 5 Actuarial reserves: actuary's declaration**

*Content*

- (1) The actuary responsible for actuarial control of a life insurer must provide, with the life insurer's return of income, a declaration that— 20
- (a) states that the actuary is the actuary responsible for actuarial control of the life insurer; and
  - (b) states the specific interest, mortality, and other assumptions and bases of calculation applied in calculating the life insurer's premium loading, mortality profit, discontinuance profit, and policyholder income or policyholder net loss for the income year of the return; and 25
  - (c) states that the assumptions and bases of calculation comply with **section EY 4**.

*Form* 30

- (2) The declaration must be in the form, if any, required by the Commissioner.

Defined in this Act: actuarial reserves, actuary, Commissioner, discontinuance profit, income year, life insurer, mortality profit, policyholder income, policyholder net loss, premium loading, return of income 35

Compare: 2004 No 35 s EY 5

**EY 6 Actuarial reserves: powers of Commissioner***Seeking advice from Government Actuary or other actuary*

- (1) The Commissioner may seek the advice of the Government Actuary or any other actuary on the interest, mortality, and other assumptions and bases of calculation used by the actuary who did the calculation under **section EY 4(3)**. 5

*Assessment on different basis*

- (2) Whether or not the Commissioner seeks or obtains any such advice, the Commissioner may make an assessment for a life insurer and an income year on the basis of interest, mortality, and other assumptions and bases of calculation different from those used by the actuary who did the calculation under **section EY 4(3)**. 10

Defined in this Act: actuarial reserves, actuary, assessment, Commissioner, income year, life insurer 15

Compare: 2004 No 35 s EY 6

**EY 7 Meaning of claim***Meaning in life insurance rules*

- (1) In the life insurance rules, **claim**— 20
- (a) means the amount that a life insurer is liable to pay under a life insurance policy because the contingency against which the life insured is covered under the policy has occurred; **subsections (2) to (5)** expand on “the amount that a life insurer is liable to pay”:
- (b) includes a payment made by a life insurer on the transfer of some or all of its life insurance business: 25
- (c) in the expression “claim arising”, does not have the meaning given to the word “claim” in **paragraph (a) or (b)**.

*Cash and non-cash benefits*

- (2) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay includes— 30
- (a) a payment on the death of a life insured:
- (b) a payment on maturity:
- (c) a payment of a cash bonus:
- (d) a payment on the surrender of a policy: 35
- (e) an annuity payment:
- (f) a benefit other than in cash.

*Advance or amount in actuarial reserves*

- (3) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay does not include—
- (a) an advance against the security of the policy; or
  - (b) a bonus or other discretionary amount added to the actuarial reserves. 5

*Amount before certain subtractions*

- (4) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay means the amount before the subtraction of the following amounts payable to the life insurer: 10
- (a) an advance against the security of the policy; and
  - (b) an unpaid premium for the policy; and
  - (c) interest on an amount referred to in **paragraph (a) or (b)**.

*Amount zero*

- (5) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay may be zero. 15

Defined in this Act: actuarial reserves, amount, business, claim, interest, life insurance, life insurance policy, life insurance rules, life insured, life insurer, pay, premium

Compare: 2004 No 35 s EY 7 20

**EY 8 Meaning of life insurance***Meaning*

- (1) **Life insurance** means insurance under which—
- (a) person A (the **life insurer**) is liable to provide person B (the **policyholder**) with a benefit described in **subsection (2)**; and 25
  - (b) the life insurer is entitled to receive consideration in return, either from the policyholder or from some other person.

*Benefits* 30

- (2) The benefits are—
- (a) a benefit whose payment is contingent on the death of 1 or more human beings, including an annuity whose term is contingent on human life; or
  - (b) a benefit whose payment is contingent on the survival of 1 or more human beings to a date, or an age, specified as 35

- part of the insurance, including an annuity whose term is contingent on human life; or
- (c) a benefit that is an annuity whose term is not contingent on human life, if the life insurer enters into the arrangement to provide the annuity as part of their business of providing life insurance. 5
- Exclusion: death benefits provided under accident or medical insurance*
- (3) **Life insurance** does not include accident or medical insurance under which— 10
- (a) 1 or more benefits are payable for the death of the person whose life is insured; and
- (b) all the benefits referred to in **paragraph (a)** are—
- (i) payable incidentally to the provision of accident or medical benefits; or 15
- (ii) payable if the death is caused by a specified cause named in the policy.
- Exclusion: death benefits provided by superannuation funds*
- (4) **Life insurance** does not include an arrangement in which— 20
- (a) a superannuation fund is liable to pay, as a benefit to a beneficiary of the fund, a lump sum on—
- (i) the death of 1 or more human beings specified in the trust deed; or
- (ii) the survival of 1 or more human beings specified in the trust deed to a date, or an age, specified in the trust deed; and 25
- (b) the lump sum is made up of—
- (i) superannuation contributions made by or for the beneficiary; and
- (ii) allocated investment earnings attributable to contributions made by or for the beneficiary; and 30
- (iii) any other allocation from the profits of the superannuation fund attributable to contributions made by or for the beneficiary.
- Defined in this Act: arrangement, business, life insurance, life insurer, pay, superannuation contribution, superannuation fund 35
- Compare: 2004 No 35 s EY 8



**EY 9 Meaning of life insurance policy**

**Life insurance policy** means a policy to the extent to which it states the terms under which life insurance is covered.

Defined in this Act: life insurance, life insurance policy

Compare: 2004 No 35 s EY 9

5

**EY 10 Meaning of life insurer***Meaning*

- (1) **Life insurer** means a person carrying on a business of providing life insurance.

*Exclusion*

- (2) A person carrying on a business of providing life insurance in an income year is treated as not carrying on a business of providing life insurance while the person has full reinsurance.

10

*Inclusion*

- (3) An association of persons, a body of persons, or a trustee is treated as carrying on a business of providing life insurance to the extent to which—

15

- (a) the association, body, or trustee provides life insurance; and  
 (b) the consideration for the provision is something other than natural love and affection.

20

*Parties to policies treated as being unrelated*

- (4) Every life insurance policy entered into by the association, body, or trustee as insurer is treated as entered into with an unrelated party, even if the life insurer and the policyholder are, for example,—

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- (a) an association and a member of the association; or  
 (b) a trustee and a beneficiary of the trust.

*Relationship with subpart HE*

- (5) **Subpart HE** (Mutual associations) does not apply to the business of providing life insurance of the association, body, or trustee.

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Defined in this Act: business, full reinsurance, income year, life insurance, life insurance policy, life insurer, trustee

Compare: 2004 No 35 s EY 10

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**EY 11 Superannuation schemes providing life insurance***Benefits treated as life insurance*

- (1) The provision by a trustee of a superannuation scheme of a benefit to a member or beneficiary of the scheme is treated as the provision of life insurance if the trustee provides life insurance to any member or beneficiary, unless **subsection (2)** applies. 5

*Exemption for certain schemes*

- (2) A trustee of a superannuation fund is treated as not carrying on the business of life insurance for an income year if the fund meets all the requirements of **subsections (3) to (9)** for the income year. 10

*Fund must be registered*

- (3) At all times in the income year, the fund must be registered by the Government Actuary under the Superannuation Schemes Act 1989. 15

*Trustee cannot be a life insurance company*

- (4) At all times in the income year, no trustee of the fund is a company carrying on the business of providing life insurance to which the Life Insurance Act 1908 applies. 20

*Fund must be for employees or related parties*

- (5) At all times in the income year, the fund must be 1 of the following kinds:
- (a) a fund established by an employer, or group of employers who are associated, to provide benefits only to persons who are employees of or related by employment to such an employer, or to another associated employer who agrees after the fund's establishment to make contributions to it: 25
  - (b) a fund constituted under the National Provident Fund Restructuring Act 1990, the National Provident Fund Act 1950 or the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of or related by employment to an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund: 30  
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- (c) a fund different from the kind described in **paragraph (b)** and constituted under—
- (i) the National Provident Fund Restructuring Act 1990 to provide benefits to persons, and relatives and dependants of persons, who, before 1 April 1991, were members of a superannuation fund that met the requirements of **paragraph (b)**: 5
  - (ii) the National Provident Fund Act 1950 and which, but for the fact that a small number of the total employers to which the fund relates do not agree to or are not required to make contributions to the fund, would be a superannuation fund that met the requirements of **paragraph (b)**: 10
  - (iii) the National Provident Fund Restructuring Amendment Act 1997 to provide benefits to persons, and relatives, dependants, and nominated beneficiaries of persons, who immediately before becoming members of the superannuation fund, were members of a superannuation fund that met the requirements of either **paragraph (b)** or **subparagraph (ii)**. 20

*Only certain fund beneficiaries allowed*

- (6) At all times in the income year, each beneficiary of the fund must be—
- (a) a natural person that is an employee of or related by employment to an employer of the kind referred to in **subsection (5)(a) or (b)**: 25
  - (b) a natural person that is a beneficiary of the fund, in the case of a fund referred to in **subsection (5)(c)** (which refers to funds related to the National Provident Fund): 30
  - (c) an employer of members of the fund, to the extent of the employer's contingent interest in a fund surplus.

*Significant employer contributions required*

- (7) At all times in the income year, each employer is required by the trust deed or Act constituting the fund to make or is making, or having made on their behalf, contributions to provide to a significant extent the fund benefits, except to the extent to which **subsection (10)** applies. 35

- No avoidance effect*
- (8) The fund must not have been established, and must not be being used at any time in the income year, in a way that has the effect of defeating the intent and application of the life insurance rules. 5
- Government Actuary approval required*
- (9) The trustee of the fund must have made a written application to the Government Actuary for, and the Government Actuary must have granted, approval that the fund is for the income year one that complies with **subsections (3) to (8)**. 10
- Exemptions to requirements of subsection (7)*
- (10) **Subsection (7)** does not apply if—
- (a) the Government Actuary is satisfied that, for the income year, **subsection (7)** would have been complied with but for the fund assets exceeding the accrued benefits from the fund: 15
  - (b) the fund is one referred to in **subsection (5)(c)** (which refers to funds related to the National Provident Fund).
- Limited contributions disregarded for subsection (7)*
- (11) For the purposes of **subsection (7)**, contributions that are merely nominal or that only meet the costs of administration and investment management are disregarded. 20
- Notice by Government Actuary*
- (12) The Government Actuary must notify the trustee of a superannuation fund as soon as practicable after determining that— 25
- (a) the fund complies with **subsections (3) to (8)** for an income year:
  - (b) the fund ceases to comply with the subsections for an income year.
- Objection under Superannuation Schemes Act* 30
- (13) A person dissatisfied with the Government Actuary's decision can object under section 23 of the Superannuation Schemes Act 1989 and has no right of objection under the Tax Administration Act 1994.

*Meaning of related by employment*

- (14) In this section, a person is **related by employment** to an employer if the person is—
- (a) a former employee, in the case of deferred benefits relating to prior employment: 5
  - (b) a relative or dependent of an employee, in the case of benefits arising from the employees or former employee’s membership in the fund.

Defined in this Act: associated, company, employee, employer, income year, life insurance, life insurance rules, related by employment, relative, superannuation fund, superannuation scheme, trustee 10

Compare: 2004 No 35 s GD 8(1), (3)–(8)

**EY 12 Meaning of life reinsurance***Meaning*

- (1) **Life reinsurance** means insurance provided to a life insurer by another person (**person C**), under which person C secures the life insurer, fully or partially, against the life insurer’s liability under a life insurance policy. The words “fully” and “partially” describe the extent to which the life insurer is secured against the life insurer’s liability under the life insurance policy; they do not describe the term for which the reinsurance is provided. 15 20

*Full reinsurance*

- (2) The life insurer has **full reinsurance** if all the following apply: 25
- (a) the life insurer offered or was offered or entered into a life insurance policy or policies,—
    - (i) in the case of a life insurer resident in New Zealand, as part of their business of providing life insurance; or 30
    - (ii) in the case of a life insurer not resident in New Zealand, as part of their New Zealand business; and
  - (b) the life insurer holds a life reinsurance policy or policies covering every life insurance policy described in **paragraph (a)**; and 35
  - (c) the life insurer is fully secured against liability under the life insurance policy or policies by the life reinsurance policy or policies; and

- (d) the life insurer offered or was offered or entered into the life reinsurance policy or policies in New Zealand.

*Partial reinsurance*

- (3) The life insurer has **partial reinsurance** if all the following apply: 5
- (a) the life insurer—
- (i) holds a life reinsurance policy or policies fully securing them against liability for 1 or some, but not all, of the life insurance policies described in **paragraph (b)**; or 10
- (ii) holds a life reinsurance policy or policies for all the life insurance policies described in **paragraph (b)** but only partially securing them against liability; or
- (iii) holds a life reinsurance policy or policies partially securing them against liability for 1 or some, but not all, of the life insurance policies described in **paragraph (b)**; and 15
- (b) the life insurer offered or was offered or entered into the life insurance policy or policies covered by the life reinsurance policy or policies,— 20
- (i) in the case of a life insurer resident in New Zealand, as part of their business of providing life insurance; or
- (ii) in the case of a life insurer not resident in New Zealand, as part of their New Zealand business; 25
- and
- (c) the life insurer offered or was offered or entered into the life reinsurance policy or policies in New Zealand.

*Life reinsurer* 30

- (4) **Life reinsurer** means a person in the position of person C.

Defined in this Act: business, full reinsurance, life insurance, life insurance policy, life insurer, life reinsurance, life reinsurance policy, life reinsurer, New Zealand business, offered or was offered or entered into, partial reinsurance, resident in New Zealand 35

Compare: 2004 No 35 s EY 11

**EY 13 Meaning of life reinsurance policy**

**Life reinsurance policy** means a policy to the extent to which it states the terms under which life reinsurance is covered.

Defined in this Act: life reinsurance, life reinsurance policy

Compare: 2004 No 35 s EY 12

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**EY 14 Life insurance and life reinsurance: how sections relate***Life insurance definitions*

- (1) **Sections EY 8 to EY 11** define terms relating to life insurance.

*Life reinsurance definitions*

- (2) **Sections EY 12 and EY 13** define terms relating to life reinsurance. 10

*Life insurance term usually includes life reinsurance term*

- (3) A reference in this Act to any of the terms defined in **sections EY 8 to EY 11** includes the equivalent term in **sections EY 12 and EY 13**—for example, **life insurer** includes **life reinsurer**—unless the context requires otherwise. 15

Defined in this Act: life insurance, life insurer, life reinsurance, life reinsurer

Compare: 2004 No 35 s EY 13

***Premium loading*****EY 15 How premium loading is calculated** 20*Life insurer providing life insurance at start of income year*

- (1) **Section EY 16** sets out the steps that a life insurer follows to calculate the life insurer's premium loading for an income year if the life insurer is in the business of providing life insurance at the start of the income year. 25

*Life insurer not providing life insurance at start of income year*

- (2) **Section EY 17** sets out the steps that a life insurer follows to calculate the life insurer's premium loading for an income year if the life insurer starts the business of providing life insurance in the income year. 30

*Premium loading formula (life)*

- (3) **Section EY 18(1)** sets out the premium loading formula (life). This is the formula a life insurer uses, as the first step in calculating the life insurer's premium loading for an income year, to calculate an amount for a life insured under a life insurance policy, except to the extent to which an annuity is being paid under the policy at some time in the income year. 5

*Premium loading formula (active annuities)*

- (4) **Section EY 18(2)** sets out the premium loading formula (active annuities). This is the formula a life insurer uses, as the first step in calculating the life insurer's premium loading for an income year, to calculate an amount for a life insured under a life insurance policy, to the extent to which an annuity is being paid under the policy at some time in the income year. 10

Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, pay, premium loading, premium loading formula 15

Compare: 2004 No 35 s EY 14

### **EY 16 Premium loading: when life insurers providing life insurance at start of income year**

*Calculation of premium loading* 20

- (1) If a life insurer is in the business of providing life insurance at the start of an income year, the life insurer calculates their **premium loading** for the income year by following the steps in **subsection (2)**.

*Steps* 25

- (2) The steps are,—
- (a) first, use the relevant premium loading formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year:
  - (b) second, for each such life insurance policy, add together the amounts for the lives insured under it: 30
  - (c) third, add together the totals reached under **paragraph (b)**.

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, premium loading, premium loading formula

Compare: 2004 No 35 s EY 15 35



## EY 17 Premium loading: when life insurers not providing life insurance at start of income year

### *Calculation of premium loading*

- (1) If a life insurer has started to carry on a business of providing life insurance in an income year, the life insurer calculates the life insurer's **premium loading** for the income year by following the steps in **subsection (2)**. 5

### *Steps*

- (2) The steps are,—
- (a) first, use the relevant premium loading formula, adjusted as described in **section EY 19**, to calculate an amount for each life insured under each life insurance policy existing at some time in the income year: 10
- (b) second, for each such life insurance policy, add together the amounts for the lives insured under it: 15
- (c) third, add together the totals reached under **paragraph (b)**.

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, premium loading, premium loading formula

Compare: 2004 No 35 s EY 16

## EY 18 Premium loading formulas 20

### *Premium loading formula (life)*

- (1) The **premium loading formula** (life) is—
- $$0.2 \times \text{claim probability} \times (\text{opening sum assured} - \text{opening actuarial reserves}).$$

### *Premium loading formula (active annuities)*

- (2) The **premium loading formula** (active annuities) is—
- $$0.01 \times \text{claim probability} \times \text{opening actuarial reserves}.$$

### *Definition of items in formulas*

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

### *Claim probability*

- (4) **Claim probability** is the probability of a claim arising under the policy for the life insured's death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer's actuarial reserves at the start of the income year. It is 30 35

expressed as a decimal. Variations to **claim probability** are in **sections EY 19(2) and EY 20(2)**.

*Opening sum assured*

- (5) **Opening sum assured** is the claim that would be payable under the policy for the life insured's death in the income year or, if no such claim would be payable, the claim that would be payable under the policy for the life insured's survival to the relevant date or age specified in the policy. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in **sections EY 19(3), EY 21(2), EY 22(3), and EY 23(2)**.

*Opening actuarial reserves*

- (6) **Opening actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insured under the policy. It is determined at the start of the income year. A variation to **opening actuarial reserves** is in **section EY 19(4)**.

Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, pay, premium loading formula

Compare: 2004 No 35 s EY 17

**EY 19 Premium loading formulas: when life insurers not providing life insurance at start of income year** 20

*When this section applies*

- (1) This section applies when a life insurer has started to carry on a business of providing life insurance in an income year.

*Claim probability*

- (2) In using the relevant premium loading formula, the life insurer treats the reference in **claim probability** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured.

*Opening sum assured*

- (3) In using the premium loading formula (life), the life insurer treats the reference in **opening sum assured** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured.

*Opening actuarial reserves*

- (4) In using the relevant premium loading formula, the life insurer treats the reference in **opening actuarial reserves** to the start of the income year as a reference to the end of the income year. 5

Defined in this Act: business, income year, life insurance, life insurance policy, life insurer, premium loading formula

Compare: 2004 No 35 s EY 18

**EY 20 Premium loading formulas: option when more than 1 life insured** 10

*When this section applies*

- (1) This section applies when a life insurance policy covers more than 1 life insured.

*Claim probability*

- (2) In using the relevant premium loading formula, the life insurer may use as **claim probability** a common factor for all the lives insured under the policy. 15

*Features of common factor*

- (3) The common factor must be a reasonable approximation of the average probability of a claim arising under the policy for each life insured's death in the income year. It must be weighted as necessary to take account of— 20
- (a) differing claims for individual lives insured under the policy; and
- (b) differing amounts in the life insurer's actuarial reserves 25  
for individual lives insured under the policy.

Defined in this Act: actuarial reserves, amount, claim, income year, life insurance policy, life insured, life insurer, premium loading formula

Compare: 2004 No 35 s EY 19

**EY 21 Premium loading formula (life): when annuity payable on death** 30

*When this section applies*

- (1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's death. 35

*Opening sum assured*

- (2) In using the premium loading formula (life), the life insurer uses as **opening sum assured** the net present value of the annuity. The net present value is determined—
- (a) at the start of the income year; and 5
  - (b) on the assumption that the life insured died at the start of the income year; and
  - (c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year. 10

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, premium loading formula

Compare: 2004 No 35 s EY 20

**EY 22 Premium loading formulas: when annuity payable on survival to date or age specified in policy** 15

*When this section applies*

- (1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's survival to the relevant date or age specified in the policy. 20

*Claim probability*

- (2) In using the relevant premium loading formula, the life insurer must use **claim probability** as defined in **section EY 18(4)**, without regard to the fact that the payment of the annuity is not contingent on the life insured's death. 25

*Opening sum assured*

- (3) In using the premium loading formula (life), the life insurer must use as **opening sum assured** the net present value of the annuity. The net present value is determined—
- (a) at the relevant date or age specified in the policy; and 30
  - (b) on the assumption that the life insured survived to the date or age; and
  - (c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year. 35

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, premium loading formula

Compare: 2004 No 35 s EY 21

<b>EY 23 Premium loading formula (life): when partial reinsurance exists</b>	
<i>When this section applies</i>	
(1) This section applies when a life insurer has partial reinsurance.	5
<i>Opening sum assured</i>	
(2) In using the premium loading formula (life), the life insurer must reduce <b>opening sum assured</b> by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy.	10
Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, partial reinsurance, premium loading formula	
Compare: 2004 No 35 s EY 22	
<b>EY 24 Premium loading formulas: individual result may never be negative</b>	15
If a life insurer gets a negative result from using a premium loading formula to calculate an amount for a life insured under a life insurance policy for an income year, the result is treated as zero.	20
Defined in this Act: income year, life insurance policy, life insured, life insurer, premium loading formula	
Compare: 2004 No 35 s EY 23	
<b><i>Mortality profit</i></b>	
<b>EY 25 How mortality profit is calculated</b>	25
<i>Life insurer providing life insurance at start of income year</i>	
(1) <b>Section EY 26</b> sets out the steps that a life insurer follows to calculate their mortality profit for an income year if they are in the business of providing life insurance at the start of the income year.	30
<i>Life insurer not providing life insurance at start of income year</i>	
(2) <b>Section EY 27</b> sets out the steps that a life insurer follows to calculate their mortality profit for an income year if they start the business of providing life insurance in the income year.	35

*Mortality profit formula*

- (3) **Section EY 28** sets out the mortality profit formula that a life insurer uses, as the first step in calculating the life insurer's mortality profit for an income year, to calculate an amount for a life insured under a life insurance policy. 5

Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, mortality profit, mortality profit formula

Compare: 2004 No 35 s EY 24

**EY 26 Mortality profit: when life insurers providing life insurance at start of income year** 10

*Calculation of mortality profit*

- (1) If a life insurer is in the business of providing life insurance at the start of an income year, the life insurer calculates the life insurer's **mortality profit** for the income year by following the steps in **subsection (2)**. 15

*Steps*

- (2) The steps are,—
- (a) first, use the mortality profit formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year: 20
  - (b) second, for each such life insurance policy, add together the amounts for the lives insured under it:
  - (c) third, add together the totals reached under **paragraph (b)**:
  - (d) fourth, if the result is positive, take it as the mortality profit. If the result is negative, **sections EY 33 and EY 34** apply. 25

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, mortality profit, mortality profit formula

Compare: 2004 No 35 s EY 25

**EY 27 Mortality profit: when life insurers not providing life insurance at start of income year** 30

*Calculation of mortality profit*

- (1) If a life insurer has started to carry on a business of providing life insurance in an income year, the life insurer calculates the life insurer's **mortality profit** for the income year by following the steps in **subsection (2)**. 35

*Steps*

- (2) The steps are,—
- (a) first, use the mortality profit formula, adjusted as described in **section EY 29**, to calculate an amount for each life insured under each life insurance policy existing at some time in the income year: 5
  - (b) second, for each such life insurance policy, add together the amounts for the lives insured under it:
  - (c) third, add together the totals reached under **paragraph (b)**:
  - (d) fourth, if the result is positive, take it as the mortality profit. If the result is negative, **sections EY 33 and EY 34** apply. 10

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, mortality profit, mortality profit formula

Compare: 2004 No 35 s EY 26 15

**EY 28 Mortality profit formula***Formula*

- (1) The **mortality profit formula** is—
- $$\begin{aligned} & \text{claim probability} \\ & \times (\text{opening sum assured} - \text{opening actuarial reserves}) \\ & - (\text{closing sum assured} - \text{opening actuarial reserves}). \end{aligned} \quad 20$$

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (8)**.

*Claim probability*

- (3) **Claim probability** is the probability of a claim arising under the policy for the life insured's death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer's actuarial reserves at the start of the income year. It is expressed as a decimal. Variations to **claim probability** are in **sections EY 29(2) and EY 30(2)**. 25 30

*Opening sum assured*

- (4) **Opening sum assured** is the claim that would be payable under the policy for the life insured's death in the income year. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in **sections EY 29(3), EY 31(2), and EY 32(2)**. 35

*Opening actuarial reserves*

- (5) **Opening actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insured under the policy. It is determined at the start of the income year. A variation to **opening actuarial reserves** is in **section EY 29(4)**. 5

*Closing sum assured if life insured dies in current income year*

- (6) If a life insured dies in the income year to which the formula is being applied, **closing sum assured** is the claim payable under the policy for the death. It may be zero. A variation to **closing sum assured** is in **section EY 32(3)**. 10

*Closing sum assured if life insured dies in 1990–91 income year or year up to current income year*

- (7) If a life insured dies in the 1990–91 income year or a later income year before the income year to which the formula is being applied, and the claim has not already been included in **closing sum assured** for an income year, **closing sum assured** is the claim payable under the policy for the death. It may be zero. A variation to **closing sum assured** is in **section EY 32(3)**. 15  
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*Closing sum assured if subsections (6) and (7) do not apply*

- (8) If **subsections (6) and (7)** do not apply, **closing sum assured** is the same as **opening actuarial reserves**.

Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, mortality profit formula, pay 25

Compare: 2004 No 35 s EY 27

**EY 29 Mortality profit formula: when life insurers not providing life insurance at start of income year***When this section applies*

- (1) This section applies when a life insurer starts to carry on a business of providing life insurance in an income year. 30

*Claim probability*

- (2) In using the mortality profit formula, the life insurer treats the reference in **claim probability** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured. 35



*Opening sum assured*

- (3) In using the mortality profit formula, the life insurer treats the reference in **opening sum assured** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured. 5

*Opening actuarial reserves*

- (4) In using the mortality profit formula, the life insurer treats the reference in **opening actuarial reserves** to the start of the income year as a reference to the end of the income year. 10
- Defined in this Act: business, income year, life insurance, life insurance policy, life insurer, mortality profit formula
- Compare: 2004 No 35 s EY 28

**EY 30 Mortality profit formula: option when more than 1 life insured***When this section applies* 15

- (1) This section applies when a life insurance policy covers more than 1 life insured.

*Claim probability*

- (2) In using the mortality profit formula, the life insurer may use as **claim probability** a common factor for all the lives insured under the policy. 20

*Features of common factor*

- (3) The common factor must be a reasonable approximation of the average probability of a claim arising under the policy for each life insured's death in the income year. It must be weighted as necessary to take account of— 25
- (a) differing claims for individual lives insured under the policy; and
- (b) differing amounts in the life insurer's actuarial reserves for individual lives insured under the policy. 30

Defined in this Act: actuarial reserves, amount, claim, income year, life insurance policy, life insured, life insurer, mortality profit formula

Compare: 2004 No 35 s EY 29

**EY 31 Mortality profit formula: when annuity payable on death***When this section applies*

- (1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's death. 5

*Opening sum assured*

- (2) In using the mortality profit formula, the life insurer uses as **opening sum assured** the net present value of the annuity. The net present value is determined— 10
- (a) at the start of the income year; and
  - (b) on the assumption that the life insured died at the start of the income year; and
  - (c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year. 15

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, mortality profit formula, pay

Compare: 2004 No 35 s EY 30

**EY 32 Mortality profit formula: when partial reinsurance exists** 20*When this section applies*

- (1) This section applies when a life insurer has partial reinsurance.

*Opening sum assured* 25

- (2) In using the mortality profit formula, the life insurer must reduce **opening sum assured** by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy. 30

*Closing sum assured*

- (3) In using the mortality profit formula, the life insurer must reduce **closing sum assured** by the claim receivable by the

life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy.

Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, mortality profit formula, partial reinsurance

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Compare: 2004 No 35 s EY 31

### **EY 33 Mortality profit formula: individual result may be negative only in some cases**

*Rule: not negative*

- (1) If a life insurer gets a negative result from using the mortality profit formula to calculate an amount for a life insured under a life insurance policy for an income year, the result is treated as zero. However, a negative result is not treated as zero if 1 of the exclusions in **subsections (2) to (4)** applies. 10

*Exclusion: death in income year*

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- (2) The first exception is when the life insured died in the income year.

*Exclusion: death in 1990–91 income year or later*

- (3) The second exception is when—
- (a) the life insured died in the 1990–91 income year or a later income year before the income year for which the formula is being used; and 20
- (b) the claim has not already been included in **closing sum assured** for an income year.

*Exclusion: annuity being paid*

25

- (4) The third exception is when, and to the extent to which, the benefit under the policy is an annuity that is being paid at some time in the income year.

Defined in this Act: claim, income year, life insurance policy, life insured, life insurer, mortality profit formula, pay

30

Compare: 2004 No 35 s EY 32

### **EY 34 Mortality profit formula: negative result**

*When this section applies*

- (1) This section applies when a life insurer is allowed a deduction under **section DR 1** (Mortality profit formula: negative result). 35

*Amount of deduction*

- (2) The amount of the deduction is the negative result.

*Timing of deduction*

- (3) The life insurer is allowed the deduction in the income year.

Defined in this Act: amount, deduction, income year, life insurer, mortality profit formula

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Compare: 2004 No 35 s EY 33

***Discontinuance profit*****EY 35 How discontinuance profit is calculated***Life insurer providing life insurance at any time*

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- (1) **Section EY 36** sets out the steps that a life insurer follows to calculate the life insurer's discontinuance profit for an income year.

*Discontinuance profit formula (existing policies)*

- (2) **Section EY 37** sets out the discontinuance profit formula (existing policies). This is the formula a life insurer uses, as the first step in calculating the life insurer's discontinuance profit for an income year, to calculate an amount for a life insurance policy that exists at the start of the income year and to which 1 of the following applies in the income year:

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- (a) it terminates, wholly or partly, for a reason other than the life insured's death or the life insured's survival to the relevant date or age specified in the policy; or
- (b) a claim is paid under it for a reason other than the life insured's death or the life insured's survival to the relevant date or age specified in the policy.

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*Discontinuance profit formula (new policies)*

- (3) **Section EY 38** sets out the discontinuance profit formula (new policies). This is the formula a life insurer uses, as the first step in calculating the life insurer's discontinuance profit for an income year, to calculate an amount for a life insurance policy to which both the following apply:

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- (a) it does not exist at the start of the income year; and

- (b) it terminates in the income year for a reason other than the life insured's death or the life insured's survival to the relevant date or age specified in the policy.

Defined in this Act: claim, discontinuance profit, discontinuance profit formula, income year, life insurance, life insurance policy, life insured, life insurer, pay

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Compare: 2004 No 35 s EY 34

### EY 36 Discontinuance profit for income year

#### *Calculation of discontinuance profit*

- (1) A life insurer calculates the life insurer's **discontinuance profit** for an income year by following the steps in **subsection (2)**. 10

#### *Steps*

- (2) The steps are,—
- (a) first, use the relevant discontinuance profit formula to calculate an amount for each life insurance policy existing at some time in the income year: 15
- (b) second, add all the amounts together.

Defined in this Act: amount, discontinuance profit, discontinuance profit formula, income year, life insurance policy, life insurer

Compare: 2004 No 35 s EY 35

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### EY 37 Discontinuance profit formula (existing policies)

#### *Formula*

- (1) The **discontinuance profit formula** (existing policies) is—  
pre-termination actuarial reserves –  
post-termination actuarial reserves – termination payment. 25

#### *Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (5)**.

#### *Pre-termination actuarial reserves*

- (3) **Pre-termination actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insurance policy, determined immediately before the event described in **section EY 35(2)(a) or (b)**. It is calculated using the same assumptions and bases of calculation as were used at the start of the income year to calculate the amount in the life insurer's actuarial reserves for the policy. 30  
35

*Post-termination actuarial reserves*

- (4) **Post-termination actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insurance policy, determined immediately after the event described in **section EY 35(2)(a) or (b)** and having regard to the fact that the event has occurred. It is calculated using the same assumptions and bases of calculation as were used at the start of the income year to calculate the amount in the life insurer's actuarial reserves for the policy. 5

*Termination payment*

- (5) **Termination payment** is the claim payable by the life insurer on the occurrence of the event described in **section EY 35(2)(a) or (b)**. It may be zero. A variation to **termination payment** is in **section EY 39(2)**. 10

Defined in this Act: actuarial reserves, amount, claim, discontinuance profit formula, income year, life insurance policy, life insurer, pay 15

Compare: 2004 No 35 s EY 36

**EY 38 Discontinuance profit formula (new policies)***Formula*

- (1) The **discontinuance profit formula** (new policies) is— 20  
premium – termination payment.

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) and (4)**.

*Premium*

- (3) **Premium** is all the premiums paid to the life insurer for the life insurance policy, including a premium due before, but paid after, it terminates. A variation to **premium** is in **section EY 40(2)**. 25

*Termination payment*

- (4) **Termination payment** is the claim payable by the life insurer when the life insurance policy terminates. It may be zero. A variation to **termination payment** is in **section EY 40(3)**. 30

Defined in this Act: claim, discontinuance profit formula, life insurance policy, life insurer, pay, premium

Compare: 2004 No 35 s EY 37 35

<b>EY 39 Discontinuance profit formula (existing policies): when partial reinsurance exists</b>	
<i>When this section applies</i>	
(1) This section applies when a life insurer has partial reinsurance.	5
<i>Termination payment</i>	
(2) In using the discontinuance profit formula (existing policies), the life insurer must reduce <b>termination payment</b> by the claim receivable by the life insurer under the life reinsurance policy on the occurrence of the event described in <b>section EY 35(2)(a) or (b)</b> .	10
Defined in this Act: claim, discontinuance profit formula, life insurer, life reinsurance policy, partial reinsurance	
Compare: 2004 No 35 s EY 38	
<b>EY 40 Discontinuance profit formula (new policies): when partial reinsurance exists</b>	15
<i>When this section applies</i>	
(1) This section applies when a life insurer has partial reinsurance.	
<i>Premium</i>	20
(2) In using the discontinuance profit formula (new policies), the life insurer must reduce <b>premium</b> by an amount to which both the following apply:	
(a) it is part of the premiums payable by the life insurer in the income year for a life reinsurance policy or policies (the <b>life reinsurance premiums</b> ); and	25
(b) it is the part of the life reinsurance premiums that relates to the life insurance policy.	
<i>Termination payment</i>	
(3) In using the discontinuance profit formula (new policies), the life insurer must reduce <b>termination payment</b> by the claim receivable by the life insurer under the life reinsurance policy for the termination of the life insurance policy.	30
Defined in this Act: amount, claim, discontinuance profit formula, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, pay, premium	35
Compare: 2004 No 35 s EY 39	

**EY 41 Discontinuance profit formulas: individual result may never be negative**

If a life insurer gets a negative result from using a discontinuance profit formula to calculate an amount for a life insurance policy for an income year, the result is treated as zero. 5

Defined in this Act: discontinuance profit formula, income year, life insurance policy, life insurer

Compare: 2004 No 35 s EY 40

*Policyholder income*

**EY 42 How policyholder income is calculated** 10

**Section EY 43** sets out the policyholder income formula that a life insurer uses for each income year to calculate the life insurer's policyholder income for the income year.

Defined in this Act: income year, life insurer, policyholder income, policyholder income formula 15

Compare: 2004 No 35 s EY 41

**EY 43 Policyholder income formula**

*Formula*

- (1) The **policyholder income formula** is— 20
- $$\frac{\begin{array}{l} \text{claim due} \\ + (\text{closing actuarial reserves} - \text{opening actuarial reserves}) \\ - (\text{premium} - \text{underwriting result}) \end{array}}{(1 - \text{tax rate})}.$$

*Definition of items in formula*

- (2) The items in the formula are defined in **subsections (3) to (8)**. 25

*Claim due*

- (3) **Claim due** is the total of— 30
- (a) each claim that became due and payable in the income year; and
  - (b) each claim that became due and payable in a previous income year to the extent to which— 35
    - (i) the claim relates to a contingency that was met in the 1990–91 income year or a later income year before the income year for which the formula is being used; and



- (ii) the claim has not already been included in **claim** in an income year.

*Closing actuarial reserves*

- (4) **Closing actuarial reserves** is the life insurer's actuarial reserves, determined at the end of the income year. A variation to **closing actuarial reserves** is in **section EY 45(2)**. 5

*Opening actuarial reserves*

- (5) **Opening actuarial reserves** is the life insurer's actuarial reserves, determined at the start of the income year. A variation to **opening actuarial reserves** is in **section EY 45(3)**. 10

*Premium*

- (6) **Premium** is all the premiums due and payable to the life insurer in the income year. **Premium** does not include a premium due and payable to the life insurer in a previous income year. A variation to **premium** is in **section EY 44**. 15

*Underwriting result*

- (7) **Underwriting result** is the total of the following that the life insurer has in the income year:
- (a) the premium loading; and
  - (b) the mortality profit; and 20
  - (c) the discontinuance profit.

*Tax rate*

- (8) **Tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 7** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits). 25

*Positive result*

- (9) A positive result from using the policyholder income formula is policyholder income in the income year.

*Negative result*

- (10) A negative result from using the policyholder income formula is policyholder net loss for the income year, and is dealt with under **section IT 1** (Life insurers' policyholder net losses).

Defined in this Act: actuarial reserves, claim, discontinuance profit, income year, life insurer, mortality profit, pay, policyholder income, policyholder income formula, policyholder net loss, premium, premium loading, tax

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Compare: 2004 No 35 s EY 42

**EY 44 Policyholder income formula: when partial reinsurance exists**

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*When this section applies*

- (1) This section applies when a life insurer has partial reinsurance.

*Premium*

- (2) In using the policyholder income formula, the life insurer must reduce **premium** by an amount calculated using the formula—

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reinsurance premium – reinsurance claim.

*Definition of items in formula*

- (3) The items in the formula are defined in **subsections (4) and (5)**.

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*Reinsurance premium*

- (4) **Reinsurance premium** is the total of the premiums due and payable by the life insurer in the income year under the life reinsurance policies under which the life insurer has partial reinsurance. **Reinsurance premium** does not include premiums due and payable by the life insurer in previous income years.

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*Reinsurance claim*

- (5) **Reinsurance claim** is the total of the claims receivable by the life insurer in the income year under the life reinsurance policies under which the life insurer has partial reinsurance. **Reinsurance claim** does not include claims receivable by the life insurer in previous income years.

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Defined in this Act: amount, claim, income year, life insurer, life reinsurance policy, pay, partial reinsurance, policyholder income formula, premium

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Compare: 2004 No 35 s EY 43

### EY 45 Policyholder income formula: when life insurance business transferred

#### *When this section applies*

- (1) This section applies when a life insurance business is transferred in a transfer to which all the following apply: 5
- (a) the transferor and the transferee, whether or not resident in New Zealand, are part of the same wholly-owned group of companies immediately before and immediately after the transfer; and
  - (b) 1 of the following is met: 10
    - (i) if the transferor is resident in New Zealand, all the transferor's life insurance business is transferred to the transferee; or
    - (ii) if the transferor is not resident in New Zealand, all the life insurance policies offered or entered into in New Zealand that are held by the transferor are transferred to the transferee; and 15
  - (c) the Commissioner receives confirmation from the Government Actuary that— 20
    - (i) the requirements of **paragraph (b)** are met; and
    - (ii) no policyholder will be unduly disadvantaged as a result of the transfer; and
  - (d) the Commissioner is satisfied that the transfer is being undertaken for commercial reasons and that no undue tax advantage to either the transferor or the transferee will arise as a result of the transfer. 25

#### *Closing actuarial reserves*

- (2) In using the policyholder income formula for the income year in which the transfer occurs, the transferor must use as **closing actuarial reserves** the transferor's actuarial reserves immediately before the transfer. 30

#### *Opening actuarial reserves*

- (3) In using the policyholder income formula for the income year in which the transfer occurs, the transferee must use as **opening actuarial reserves** the total of— 35
- (a) the transferee's actuarial reserves, determined at the start of the income year; and

- (b) the transferee's actuarial reserves for the business or policies transferred to the transferee, determined immediately after the transfer.

Defined in this Act: actuarial reserves, business, Commissioner, income year, life insurance, life insurance policy, offered or entered into in New Zealand, policyholder income formula, resident in New Zealand, wholly-owned group of companies

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Compare: 2004 No 35 s EY 44

### *Disposal of property*

#### **EY 46 Income from disposal of property** 10

*When this section applies*

- (1) This section applies when a life insurer disposes of any property of their life insurance business.

*Property generally*

- (2) An amount that a life insurer derives from disposing of any property of their life insurance business is income of the life insurer under **section CR 1(5)** (Income of life insurer). However, if the property is a financial arrangement, **subsections (3) to (5)** apply instead of this subsection. 15

*Financial arrangement: application of financial arrangements rules*

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- (3) If the life insurer disposes of a financial arrangement to which the financial arrangements rules apply, **subpart EW** (Financial arrangements rules) applies.

*Financial arrangement: application of old financial arrangements rules*

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- (4) If the life insurer disposes of a financial arrangement to which the old financial arrangements rules apply, **sections EZ 33 to EZ 52** (which relate to the old financial arrangements rules) apply.

*Financial arrangement: before old financial arrangements rules*

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- (5) If the life insurer receives an amount on or after 1 April 1982 as repayment or partial repayment of a financial arrangement to which the old financial arrangements rules would have

applied if **section EZ 45** (Application of old financial arrangements rules) had not existed, the amount is income of the life insurer.

Defined in this Act: amount, business, financial arrangement, financial arrangements rules, income, life insurance, life insurer, old financial arrangements rules, pay, property

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Compare: 2004 No 35 s EY 45

### **EY 47 Deductions for disposal of property**

*When this section applies*

- (1) This section applies when a life insurer is allowed a deduction under **section DR 2** (Disposal of property). 10

*Amount of deduction*

- (2) The amount of the deduction is—
- (a) the property's acquisition value or cost; or
  - (b) the amount described in **section EZ 2(1)** (Deductions for disposal of property: 1982–83 and 1989–90 income years); or
  - (c) the amount described in **section EZ 2(2)**. 15

*Timing of deduction*

- (3) The life insurer is allowed the deduction in the income year in which they dispose of the property. 20

Defined in this Act: amount, deduction, income year, life insurer, property

Compare: 2004 No 35 s EY 46

### *Non-resident life insurers*

### **EY 48 Non-resident life insurers with life insurance policies in New Zealand** 25

*When this section applies*

- (1) This section applies when a life insurer not resident in New Zealand offers or is offered or enters into life insurance policies in New Zealand. 30

*Income derived from New Zealand*

- (2) The life insurer's income from the business of providing life insurance, as determined under this section, is income derived from New Zealand.

*Underwriting result and policyholder income*

- (3) The life insurer applies the items of the premium loading formula, the mortality profit formula, the discontinuance profit formula, and the policyholder income formula only to—
- (a) the life insurance policies the life insurer, as insurer, offered or was offered or entered into in New Zealand; and 5
  - (b) the life reinsurance policies held by the life insurer that relate exclusively to the life insurance policies the life insurer, as insurer, offered or was offered or entered into in New Zealand. 10

*Other income*

- (4) The life insurer's income from the business of providing life insurance, other than under a formula referred to in **subsection (3)**, is determined only in relation to the life insurer's New Zealand business. 15

Defined in this Act: business, discontinuance profit formula, income, income derived from New Zealand, life insurance, life insurance policy, life insurer, life reinsurance policy, mortality profit formula, New Zealand, New Zealand business, non-resident, offered or was offered or entered into, policyholder income formula, premium loading formula, resident in New Zealand 20

Compare: 2004 No 35 s EY 47

**EY 49 Non-resident life insurer becoming resident***Non-resident life insurer may apply*

- (1) A life insurer not resident in New Zealand may apply to be treated for its New Zealand business as resident in New Zealand on and after the first day of a particular income year. 25

*Application*

- (2) The life insurer applies by—
- (a) completing a written application specifying the particular income year; and 30
  - (b) giving the application to the Commissioner not less than 20 working days before the start of the particular income year.

*Commissioner may grant*

- (3) The Commissioner may grant the application. 35

<i>Company resident in New Zealand</i>		
(4)	If the application is granted, the life insurer's New Zealand business is treated, on and after the first day of the particular income year, as being carried on by a company resident in New Zealand in which the life insurer holds all the issued shares.	5
<i>Life insurer agent for company</i>		
(5)	The life insurer is treated as carrying on its New Zealand business as agent for the company and is liable, as agent for the company, to pay amounts payable to the Commissioner and to provide returns of income and other information required by the Commissioner.	10
<i>Company and life insurer separate persons</i>		
(6)	The life insurer and the company are treated as being separate persons in relation to the life insurer's New Zealand business.	15
	<small>Defined in this Act: agent, amount, Commissioner, company, income year, life insurer, New Zealand business, non-resident, pay, resident in New Zealand, return of income, share, working day</small>	
	<small>Compare: 2004 No 35 s EY 48</small>	
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### *Life insurance*

#### **EZ 1 Life insurers acquiring property before 1 April 1988**

*When this section applies*

- (1) This section applies when **section DZ 2** (Life insurers acquiring property before 1 April 1988) applies. 5

*Amount of deduction*

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

$$\frac{\text{specific liability}}{\text{total liability}} \times \text{property sum.}$$
 10

*Definition of items in formula*

- (3) The items in the formula are defined in **subsections (4) to (9)**.

*Specific liability*

- (4) **Specific liability** is the amount in the life insurer's total liability on the last day of the 1987–88 income year for the following matters covered by the life insurer's Life Insurance Fund: 15
- (a) superannuation policies; and
  - (b) pre-1983 mortgage repayment insurance policies; and
  - (c) annuities that have been granted.

*Total liability*

- (5) **Total liability** is the life insurer's liability for life insurance policies on the last day of the 1987–88 income year. 20

*Property sum*

- (6) The **property sum** is calculated under whichever is relevant of **subsections (7) to (9)**. 25

*Property acquired before last day of 1982–83 income year*

- (7) For property acquired on or before the last day of the 1982–83 income year, the property sum is calculated by subtracting the specified base cost for 1983 income year property from the market value of the property on 1 April 1988. 30

*Property acquired after end of 1982–83 income year: not financial arrangement*

- (8) For property acquired after the end of the 1982–83 income year that is not a financial arrangement, the property sum is calculated by subtracting the cost price or acquisition value of the property from the market value of the property on 1 April 1988. 5

*Property acquired after end of 1982–83 income year: financial arrangement*

- (9) For property acquired after the end of the 1982–83 income year that is a financial arrangement, the property sum is the base price adjustment for the arrangement, calculated as if the arrangement had matured on 1 April 1988 but using the formula in **section EW 31** (Base price adjustment formula). 10

*Timing of deduction*

- (10) The life insurer is allowed the deduction in the income year in which they dispose of the property. 15

Defined in this Act: amount, deduction, financial arrangement, income year, Life Insurance Fund, life insurance policy, life insurer, property, specified base cost for 1983 income year property, superannuation policy 20

Compare: 2004 No 35 s EZ 1

**EZ 2 Deductions for disposal of property: 1982–83 and 1989–90 income years**

*Section EY 47(2)(b)*

- (1) For the purposes of **section EY 47(2)(b)** (Deductions for disposal of property), for property to which both the following apply, the amount of the deduction is the market value of the property on the last day of the 1989–90 income year: 25
- (a) the property is land or buildings acquired on or before the last day of the 1989–90 income year; and 30
- (b) the profit from the property’s disposal on or before the last day of the 1989–90 income year, had it been disposed of then at a profit, would have been a capital profit or gain and not a profit on disposal of an investment subject to income tax under section 204 of the Income Tax Act 1976 (as that section was immediately before its repeal and substitution by section 13(1) of the Income Tax Amendment Act (No 2) 1990). 35

*Section EY 47(2)(c)*

- (2) For the purposes of **section EY 47(2)(c)**, for property to which both the following apply, the amount of the deduction is the specified base cost for 1983 income year property:
- (a) the property was acquired on or before the last day of the 1982–83 income year; and 5
  - (b) subsection (1) does not apply to the property.
- Defined in this Act: amount, deduction, income year, property, specified base cost for 1983 income year property
- Compare: 2004 No 35 s EZ 2 10

***Petroleum mining*****EZ 3 Petroleum development expenditure from 1 October 1990 to 15 December 1991***Timing of deduction*

- (1) Expenditure that is allowed as a deduction under **section DZ 3** (Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991) must be deducted in equal amounts over the 10 years starting with the later of— 15
- (a) the income year in which commercial production starts; and 20
  - (b) the income year in which the expenditure is incurred.

*Petroleum mining operations outside New Zealand*

- (2) This section applies 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 Act.

*Partnership interests* 30

- (3) For the purposes of this section, 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.

*Disposal of part of asset*

- (4) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: amount, commercial production, controlled foreign company, deduction, dispose, income year, New Zealand, petroleum, petroleum miner, petroleum mining operations, petroleum mining permit

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Compare: 2004 No 35 s EZ 3

*Livestock***EZ 4 Valuation of livestock bailed or leased as at 2 September 1992**

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*When this section applies*

- (1) This section applies when—

(a) an owner of livestock valued a class of livestock for the 1991–92 income year under section 86 of the Income Tax Act 1976 (as that section was in force before its repeal by section 21 of the Income Tax Amendment Act (No 2) 1993); and

15

(b) either—

(i) the livestock was, as at 2 September 1992, at the use of a person under a bailment, lease, or other agreement that the owner entered into on or before that date, or was, on or before that date, livestock that was subject to a binding contract to bail or lease the livestock to a person, or otherwise allow them to use the livestock; or

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(ii) the class of livestock was not one that the owner had on hand in the previous income year, but was a class that, as at 2 September 1992, was at the use of a person under a bailment, lease, or other agreement that the owner entered into on or before that date.

30

*Rolling average value*

- (2) The owner may value the livestock at a value equal to 70% of the rolling average value of that class of livestock.

*When subsection (2) applies*

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- (3) **Subsection (2)** applies for the 1992–93 income year and any later income year in which the livestock continues to be

bailed, leased, or otherwise used by the person under the bailment, lease, or other agreement.

*Number of livestock valued*

- (4) The number of specified livestock of a class that may be valued under this section is the number that is the least of— 5
- (a) the number of livestock of the class bailed, leased, or otherwise used (or, for a binding contract entered into before 2 September 1992 but not yet applying, the number of livestock of that class provided for in the contract); and 10
  - (b) the number of livestock of the class bailed, leased, or otherwise used as at the end of the 1992–93 income year; and
  - (c) the lesser of the opening and closing number of stock of the class bailed, leased, or otherwise used in a later income year up to and including the income year in which the livestock is being valued. 15

*Meaning of rolling average value*

- (5) In this section, **rolling average value**, for an income year and a class of specified livestock, means one-third of the sum of the national average market values set for that income year and each of the 2 previous income years for livestock of that class. 20

Defined in this Act: class, income year, lease, national average market value, rolling average value, specified livestock 25

Compare: 2004 No 35 s EZ 4

**EZ 5 Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006**

*Bloodstock to which this section applies*

- (1) This section applies to bloodstock that— 30
- (a) was not used for breeding in New Zealand before 16 December 1991; and
  - (b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person, unless— 35
    - (i) the other person transferred the bloodstock to person A under a matrimonial agreement to which **section FB 18** (Bloodstock) applies; or

- (ii) the other person and person A were companies in the same wholly-owned group at the time person A acquired the bloodstock from the other person; and
- (c) **section EC 39(1) or (2)** (First income year in breeding business) applies to,— 5
- (i) before 1 August 2006; or
- (ii) for an income year ending on or after 1 August 2006, if a requirement of **paragraphs (a) to (c) of section EC 39(1) or (2)** is first met before 1 August 2006. 10
- Stallion*
- (2) For the purposes of **sections EC 39 and EC 40** (which relate to bloodstock), the reduction applying to the value of a stallion is 25% of the cost price of the stallion unless person A chooses to value the stallion by the reducing value method. 15
- Stallion valued by reducing value method*
- (3) When person A chooses to value the stallion by the reducing value method, the reduction applying to the value of the stallion is 37.5% of its cost price in the first income year and 37.5% of its opening value in each later income year. Person A must give notice to the Commissioner of their election in their return of income for the first income year. 20
- Broodmare when first used before 1 April 2001*
- (4) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare is calculated using the formula— 25
- $$\frac{1.25 \times \text{cost price of broodmare}}{15 - \text{age of broodmare.}}$$
- Definition of item in formula* 30
- (5) In the formula in **subsection (4)**, **age of broodmare** is—
- (a) 12 years of age; or
- (b) the actual age in years, if the broodmare is 11 years of age or less at the end of the income year.

*Broodmare when first used on or after 1 April 2001 but before 1 August 2006*

- (6) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which **section EC 39(2)** applies is calculated using the formula—

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$$\frac{1.25 \times \text{cost price of broodmare}}{11 - \text{age of broodmare.}}$$

*Definition of item in formula*

- (7) In the formula in **subsection (6)**, **age of broodmare** is—
- (a) 8 years of age; or
  - (b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

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Defined in this Act: bloodstock, broodmare, Commissioner, company, cost price, income year, matrimonial agreement, New Zealand, notice, return of income, stallion, wholly-owned group, year

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Compare: 2004 No 35 s EZ 4B

## **EZ 6 Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006**

*Broodmare to which this section applies*

- (1) This section applies to a broodmare that **section EC 39(1) or (2)** (First income year in breeding business) applies to,—
- (a) before 1 August 2006; or
  - (b) for an income year ending on or after 1 August 2006, if a requirement of **paragraphs (a) to (c) of section EC 39(1) or (2)** is first met before 1 August 2006.

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*Broodmare when first used before 1 April 2001*

- (2) For the purposes of **sections EC 39 and EC 40** (which relate to bloodstock), the reduction applying to the value of a broodmare to which **section EC 39(1)** applies and **sections EC 41** (Reduction: bloodstock not previously used for breeding in New Zealand) and **EZ 5** do not apply is calculated using the formula—

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$$\frac{\text{cost price of broodmare}}{15 - \text{age of broodmare.}}$$

*Definition of item in formula*

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- (3) In the formula in **subsection (2)**, **age of broodmare** is—
- (a) 12 years of age; or



- (b) the actual age in years, if the broodmare is 11 years of age or less at the end of the income year.

*Broodmare when first used on or after 1 April 2001 but before 1 August 2006*

- (4) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which **section EC 39(2)** applies and **sections EC 41 and EZ 5** do not apply is calculated using the formula—
- $$\frac{\text{cost price of broodmare}}{11 - \text{age of broodmare.}}$$

*Definition of item in formula*

- (5) In the formula in **subsection (4)**, **age of broodmare** is—
- (a) 8 years of age; or
- (b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Defined in this Act: broodmare, cost price, income year, year

Compare: 2004 No 35 s EZ 4C

### *Patent rights*

- EZ 7 Buying patent rights before 1 April 1993** 20
- When this section applies*
- (1) This section applies when **section DZ 8** (Buying patent rights before 1 April 1993) applies.
- Amount of deduction*
- (2) The amount of the deduction is the expenditure that the person has incurred in buying the patent rights. 25
- Amount when patent rights expired or disposed of*
- (3) If, before the expiry of the patent rights, the rights have come to an end or have been disposed of, the person is allowed a deduction of an amount that bears to the total sum of the expenditure on the purchase of the rights the same proportion as the unexpired term of the rights when they came to an end or were disposed of bears to their unexpired term at the date of their purchase. An amount that the person has otherwise been allowed as a deduction is not included. 30

*Timing of deduction: subsection (2)*

- (4) The deduction referred to in **subsection (2)** is allocated to the income years in relation to which the term of the patent rights that is unexpired at the date of purchase applies.

*Timing of deduction: subsection (3)*

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- (5) The deduction referred to in **subsection (3)** is allocated to the income year in which the rights have come to an end or been disposed of.

Defined in this Act: amount, deduction, income year, patent rights

Compare: 2004 No 35 s EZ 5

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***Leases of land*****EZ 8 Premium paid on land leased before 1 April 1993***When this section applies*

- (1) This section applies when **section DZ 9** (Premium paid on land leased before 1 April 1993) applies.

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*Amount of deduction*

- (2) The amount of the deduction is the premium paid on the grant or renewal of the lease. If person A does not use the land for the whole of a tax year, the amount of the deduction is reduced proportionately.

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*Amount when lease or renewal granted to another person*

- (3) If the lease or the renewal of the lease is granted to another person, the deduction must not be more than the amount of the premium paid by person A on the acquisition of the lease.

*Timing of deduction*

25

- (4) The deduction is allocated evenly to the income years in relation to which the term of the lease applies.

*Meaning of term of the lease*

- (5) In this section, **term of the lease**, for a lease of indefinite duration, means the minimum period it has to run.

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Defined in this Act: amount, deduction, income year, lease, pay, premium, tax year, term of the lease

Compare: 2004 No 35 s EZ 6

### *Foreign investment fund rules*

#### **EZ 9 FIF interests held on 1 April 1993**

*When this section applies*

- (1) This section applies when—
- (a) a person held an attributing interest in a FIF at all times from 8.00 pm New Zealand Standard Time on 2 July 1992 until 1 April 1993; and 5
  - (b) used the comparative value method or deemed rate of return method to calculate their FIF income or loss from the interest for the period starting on 1 April 1993. 10

*Treated as having bought for market value*

- (2) The person is treated as having bought the interest on 1 April 1993 for an amount equal to its market value at the time, unless the person chooses not to apply this section by completing their return of income without applying it. 15

Defined in this Act: amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, loss, return of income

Compare: 2004 No 35 s EZ 7

### *Depreciation*

#### **EZ 10 Pool method for items accounted for by globo method for 1992–93 income year** 20

If a person chooses the pool method for an item of property of a kind described in **section EE 67(3)(c)** (Meaning of poolable property), they must also choose to treat as a single pool all such items of property they still own that they accounted for at the end of their 1992–93 income year within the same globo account. 25

Defined in this Act: income year, pool, pool method

Compare: 2004 No 35 s EZ 8

#### **EZ 11 Pool items accounted for by globo method for 1992–93 income year** 30

*Limit on amount of income*

- (1) If a person's pool consists solely of items of depreciable property accounted for at the end of the person's 1992–93 income year using, with the Commissioner's permission, the 35

globo accounting method, the amount of income under **section EE 22(5)(a)** (Cases affecting pool) is no more than the amount calculated using the formula—

depreciation allowed – income.

*Definition of items in formula*

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(2) In the formula,—

(a) **depreciation allowed** is the total of deductions for amounts of depreciation loss that the person has been allowed in all previous income years for all items in the pool, including amounts allowed before the person's 1993–94 income year under the globo accounting method:

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(b) **income** is all amounts of income under **section EE 22(5)(a)** in all previous income years.

Defined in this Act: amount, Commissioner, depreciable property, depreciation loss, income year, pool

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Compare: 2004 No 35 s EZ 9

**EZ 12 Amounts of depreciation recovery income and depreciation loss for part business use up to the 2004–05 income year**

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For the purposes of **sections EE 51(1)(b)(ii)** and **EE 52(5)(b)(ii)** (which relate to depreciation for partial income-producing use), the item is an item of property to which 1 or more of the following applies:

(a) the item is, at any time during the period the person owns it, subject to section FB 7 of the Income Tax Act 2004:

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(b) the item is, at any time during the period the person owns it, subject to section EG 2(1)(d) or (e) of the Income Tax Act 1994:

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(c) the item is, at any time during the period the person owns it, subject to section 108A(1)(d) or (e) of the Income Tax Act 1976:

(d) the item was, in the 1992–93 income year or a previous income year, an item that the person did not use wholly in deriving assessable income or carrying on a business for the purpose of deriving assessable income and for which, consequently, the person was allowed a smaller deduction for depreciation under section 108 of the Income Tax Act 1976 than they would have been

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allowed if they had used the item wholly for 1 of those purposes.

Defined in this Act: assessable income, business, income year

Compare: 2004 No 35 s EZ 10

- EZ 13 Amount of depreciation loss for item acquired from associated person on or before 23 September 1997** 5
- When this section applies*
- (1) This section applies when, on or before 23 September 1997, a person (**person A**) acquires an item from an associated person entitled to a deduction for an amount of depreciation loss for it. 10
- Exclusions*
- (2) This section does not apply—
- (a) if the item is acquired under a relationship agreement in circumstances to which **section FB 21** (Depreciable property) applies; or 15
- (b) if the item is listed in **schedule 14** (Depreciable intangible property) and the price that person A pays is income of the associated person; or
- (c) if the item is not listed in **schedule 14** and the Commissioner is of the opinion that the circumstances are such that a person should be allowed a deduction for an amount of depreciation loss for the item based on the actual price or other consideration given for it. 20
- No greater amount of depreciation loss* 25
- (3) Whether or not the associated person has been allowed a deduction for an amount of depreciation loss, person A does not have a greater amount of depreciation loss for the item than that which the associated person would have had if the associated person had kept the item. 30
- Amount of depreciation loss dealt with under section EE 50*
- (4) If the associated person has an amount of depreciation loss that has been dealt with under **section EE 50** (Effect of disposal or event), person A has an amount of depreciation loss for the item based on the total of— 35
- (a) all amounts dealt with under **section EE 50**; and

- (b) the depreciated value of the item immediately before person A acquired it.

*When subsection (6) applies and does not apply*

- (5) **Subsection (6)** applies when, on or before 23 September 1997, the holder of management rights created under the Radiocommunications Act 1989 grants a licence right under that Act to an associated person. However, it does not apply when the Crown acting by and through the Secretary of Commerce is named as the manager under section 11(1) of the Radiocommunications Act 1989. 5  
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*Licence right price*

- (6) The price of the licence right is treated as being zero for the purposes of **subpart EE** (Depreciation). 15  
Defined in this Act: amount, associated person, Commissioner, depreciation loss, pay, relationship agreement  
Compare: 2004 No 35 s EZ 11

#### **EZ 14 Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year**

*What this section is about*

- (1) This section is about the annual rate that applies to an item of depreciable property that a person acquires before the end of their 1994–95 income year (not including fixed life intangible property or excluded depreciable property, for which rates are set in **sections EE 32** (Annual rate for fixed life intangible property) and **EZ 16** respectively). 20  
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*Rate*

- (2) The rate is—  
(a) the item's economic rate; or  
(b) the pre-1993 depreciation rate described in **section EZ 15**, if the person chooses it under that section. 30

Defined in this Act: annual rate, depreciable property, economic rate, excluded depreciable property, fixed life intangible property, income year

Compare: 2004 No 35 s EZ 12

**EZ 15 Pre-1993 depreciation rate***Scope of election*

- (1) A person may choose the pre-1993 depreciation rate for all items, or any item, that they acquire before the end of their 1994–95 income year. 5

*How election made*

- (2) The election is made by applying the pre-1993 depreciation rate for the item to the item in the person's return of income for the income year for which the election is made.

*Election unchangeable*

- (3) The election must not be changed for the income year for which it is made. 10

*Moving from diminishing value to straight-line and vice versa*

- (4) A person who chooses the pre-1993 depreciation rate has the following choices: 15
- (a) if the rate is a diminishing value rate, the person may instead use the straight-line rate by—
- (i) rounding the diminishing value rate to the nearest rate specified in **schedule 10, column 1** (Straight-line equivalents of diminishing value rates of depreciation); and 20
- (ii) taking the equivalent straight-line rate specified in column 2 of the schedule; or
- (b) if the rate is a straight-line rate, the person may instead use the diminishing value rate by— 25
- (i) rounding the straight-line rate to the nearest rate specified in **schedule 10, column 2**; and
- (ii) taking the equivalent diminishing value rate specified in column 1 of the schedule. 30

*Pre-1993 depreciation rate*

- (5) The pre-1993 depreciation rate is the rate calculated using the formula—  
section 108 rate + section 108A rate + section 113A rate.

*Definition of items in formula*

- (6) The items in the formula are defined in **subsections (7) to (9)**. 35

*Section 108 rate*

- (7) **Section 108 rate** is the rate of depreciation that the Commissioner allowed persons with a standard balance date to use for the 1992–93 tax year to calculate a deduction for depreciation under section 108 of the Income Tax Act 1976, as in force for the 1992–93 tax year, for property of the same kind as the item. 5

*Section 108A rate*

- (8) **Section 108A rate** is the rate of additional deduction under section 108A of the Income Tax Act 1976, as in force for the 1992–93 tax year, for which the item was eligible for the 1992–93 tax year. 10

*Section 113A rate*

- (9) **Section 113A rate** is the rate of supplementary deduction under section 113A of the Income Tax Act 1976 for which the item was eligible for the 1992–93 tax year. 15

Defined in this Act: Commissioner, diminishing value rate, income year, return of income, standard balance date, straight-line rate, tax year

Compare: 2004 No 35 s EZ 13

**EZ 16 Annual rate for excluded depreciable property:** 20  
**1992–93 tax year**

*What this section is about*

- (1) This section is about the annual rate that applies to an item of excluded depreciable property.

*Rate*

- (2) The rate is the section 108 rate, without adding the section 108A rate or the other sections rate. The rates referred to in this subsection are described in **subsections (3) to (5)**. 25

*Section 108 rate*

- (3) **Section 108 rate** means the rate of depreciation that the Commissioner allowed persons with a standard balance date to use for the 1992–93 tax year to calculate a deduction for depreciation under section 108 of the Income Tax Act 1976, as in force for the 1992–93 tax year, for property of the same kind as the item. 30  
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*Section 108A rate*

- (4) **Section 108A rate** means the rate of additional deduction under section 108A of the Income Tax Act 1976, as in force for the 1992–93 tax year, for which the item was eligible for the 1992–93 tax year. 5

*Other sections rate*

- (5) **Other sections rate** means a rate of additional or supplementary deduction under section 113A or any other provision of the Income Tax Act 1976 for which the item was eligible for the 1992–93 tax year. 10

*Amount of depreciation loss under any other provision*

- (6) If a person has an additional amount of depreciation loss for an income year for an item of excluded depreciable property under **section EZ 17 or EZ 18** or any other provision of this Act,—
- (a) the rate applicable to the item under **subsection (2)** may be adjusted to incorporate the additional amount of depreciation loss in a manner prescribed or allowed by the Commissioner; and 15
- (b) when an adjusted rate is applied to the item, the person does not have a separate amount of depreciation loss for the item under **section EZ 17 or EZ 18** or the other provision. 20

*Changing rate*

- (7) A person applying the rate in **subsection (2)** has the following choices:
- (a) if the rate is a diminishing value rate, the person may instead use the straight-line rate by— 25
- (i) rounding the diminishing value rate to the nearest rate specified in **schedule 10, column 1** (Straight-line equivalents of diminishing value rates of depreciation); and 30
- (ii) taking the equivalent straight-line rate specified in column 2 of the schedule; or
- (b) if the rate is a straight-line rate, the person may instead use the diminishing value rate by—
- (i) rounding the straight-line rate to the nearest rate specified in **schedule 10, column 2**; and 35

- (ii) taking the equivalent diminishing value rate specified in column 1 of the schedule.

Defined in this Act: annual rate, Commissioner, depreciation loss, diminishing value rate, excluded depreciable property, prescribed, standard balance date, straight-line rate, tax year

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Compare: 2004 No 35 s EZ 14

### **EZ 17 Amount of depreciation loss for plant or machinery additional to section EZ 16 amount**

*When this section applies*

- (1) This section applies when a person carrying on a business in New Zealand incurs, wholly for the purpose of the business, capital expenditure in acquiring, installing, or extending plant or machinery that—
- (a) is excluded depreciable property; and
- (b) is—
- (i) plant or machinery that is normally in operation for an average of at least 16 hours each working day and is not normally in operation for 24 hours each working day:
- (ii) plant or machinery that is normally in operation for 24 hours each working day.

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*Exclusions*

- (2) This section does not apply to—
- (a) aluminium smelting plant or machinery:
- (b) cars:
- (c) petroleum refining plant or machinery:
- (d) ships, aircraft, or hovercraft:
- (e) plant or machinery for which a deduction by way of a fixed rate was denied under section 108 of the Income Tax Act 1976 for the 1992–93 income year or a previous relevant income year:
- (f) plant or machinery for which the Commissioner did not prescribe a differential rate for more than 1 shift operation when determining under section 108 of the Income Tax Act 1976 the rate of depreciation for the 1992–93 income year or a previous relevant income year.

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*Additional amount of depreciation loss*

- (3) The person has an amount of depreciation loss for the plant or machinery under this section in addition to any amounts of depreciation loss that they have for the plant or machinery under **section EZ 16**. 5

*Relevant income years*

- (4) The person has the additional amount of depreciation loss in the first, second, third, fourth, and fifth income years in which the plant or machinery is used in deriving assessable income.

*Rate*

- (5) The rate of the additional amount of depreciation loss is,— 10
- (a) for plant or machinery described in **subsection (1)(b)(i)**, 3% of the diminishing value of the plant or machinery in each income year:
- (b) for plant or machinery described in **subsection (1)(b)(ii)**, 6% of the diminishing value of the plant or machinery in each income year. 15

Defined in this Act: amount, assessable income, business, car, Commissioner, depreciation loss, excluded depreciable property, income year, New Zealand, petroleum, working day 20

Compare: 2004 No 35 s EZ 15

**EZ 18 Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994**

*When this section applies*

- (1) This section applies when a person incurs expenditure of the kind described in **subsection (2)** in— 25
- (a) the acquisition or installation of a qualifying asset; or
- (b) the making of a qualifying improvement to an item the person owns.

*Expenditure described*

- (2) The expenditure is expenditure of a capital nature, excluding any amount of input tax applying to the supply of the qualifying asset or qualifying improvement to the person. 30

*Additional amount of depreciation loss*

- (3) The person has an amount of depreciation loss for the asset or item under this section in addition to any amount of depreciation loss they have for it under **subpart EE** (Depreciation) and **section EZ 17**. This subsection is overridden by **section EE 50(2)** (Effect of disposal or event). 5

*Amount*

- (4) The additional amount of depreciation loss for an income year is 25% of the lesser of—
- (a) the amount of depreciation loss that the person has under **subpart EE** and **section EZ 17** for the asset or item and for the income year; and 10
  - (b) the amount of depreciation loss that the person would have had under **subpart EE** and **section EZ 17** for the asset or item and the income year had its value been equal to its qualifying capital value. 15

Defined in this Act: acquire, amount, depreciation loss, income year, qualifying capital value, qualifying asset, qualifying improvement

Compare: 2004 No 35 s EZ 16

**EZ 19 Section EZ 18 amount of depreciation loss when items transferred between companies in wholly-owned group before 1 April 1993** 20

*When this section applies*

- (1) This section applies when, before 1 April 1993, a company in a wholly-owned group of companies disposes of a qualifying asset, or an item to which the company has made a qualifying improvement, to another company in the same wholly-owned group. 25

*Transferee has amount of depreciation loss*

- (2) The transferee company has an amount of depreciation loss under **section EZ 18** for the period after the disposal as if the transferee company were the same person as the transferor company. 30

*Amount*

- (3) The amount of depreciation loss that the transferor company has under **section EZ 18** for the asset or item for the income year in which the disposal occurs must be subtracted when the 35

amount of depreciation loss that the transferee company has under **section EZ 18** for the income year is calculated.

*How definitions affected*

- (4) This section applies despite any limitations in the definitions of **new asset**, **New Zealand-new asset**, **qualifying capital value**, **qualifying improvement**, and **qualifying asset** as to the identity of the person for whom an asset or item or improvement will be treated as a qualifying asset or qualifying improvement. 5

Defined in this Act: amount, company, depreciation loss, dispose, income year, new asset, New Zealand-new asset, qualifying capital value, qualifying improvement, qualifying asset, wholly-owned group of companies 10

Compare: 2004 No 35 s EZ 17

**EZ 20 Section EZ 18 amount of depreciation loss when person previously exempt from tax acquires item** 15

*When this section applies*

- (1) This section applies when a person who has derived nothing but exempt income—
- (a) starts in an income year to derive income that is not exempt income; and 20
- (b) would have had an amount of depreciation loss under **section EZ 18** for an item and an income year if the person had been deriving income that was not exempt income at the time they acquired the item to which **section EZ 18** applies or made a qualifying improvement to the item to which **section EZ 18** applies. 25

*How qualifying capital value determined*

- (2) The item's qualifying capital value is determined as if the person had had an amount of depreciation loss for the period during which they derived nothing but exempt income. 30

Defined in this Act: amount, depreciation loss, exempt income, income, income year, qualifying capital value, qualifying improvement

Compare: 2004 No 35 s EZ 18

### **EZ 21 Adjusted tax value for software acquired before 1 April 1993**

*What this section applies to*

- (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: 5
- (a) the copyright in software:
  - (b) the right to use the copyright in software:
  - (c) the right to use software.

*Meaning of adjusted tax value* 10

- (2) The **adjusted tax value** of the item is its cost to the person minus all deductions that the person was allowed for it.

Defined in this Act: acquire, adjusted tax value

Compare: 2004 No 35 s EZ 19

### **EZ 22 Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995** 15

*Section EE 47(8)*

- (1) For the purposes of **section EE 47(8)** (Consideration for purposes of section EE 46), the consideration that a person derives from the event described in **subsection (2)** is the item's market value. 20  
Two qualifications are—
- (a) if the person makes a taxable supply, “market value” means the market value minus any GST that would be charged on the supply; and
  - (b) this subsection does not apply to a transfer under a relationship agreement. 25

*Section EE 40(10)*

- (2) For the purposes of **section EE 49(10)** (Events for purposes of section EE 46), the ninth event is the cessation of use in New Zealand, and the taking out of New Zealand for use outside New Zealand, of an item of property for which a first-year allowance has been granted under section 112(1) to (7) of the Income Tax Act 1976, except when the item— 30
- (a) has been taken out of New Zealand temporarily; and

- (b) will, after its return to New Zealand, be used in or for the purpose of a business in New Zealand.

Defined in this Act: business, GST, New Zealand, relationship agreement, taxable supply

Compare: 2004 No 35 s EZ 20

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**EZ 23 Base value and total deductions in section EE 57: before 1 April 1995**

*Base value in section EE 57 when section 108 of the Income Tax Act 1976 applies*

- (1) For the purposes of **section EE 57** (Formula), this subsection applies when a person could have been allowed a deduction for depreciation for an item under section 108 of the Income Tax Act 1976 for the 1992–93 income year and they have owned the item continuously since the 1992–93 income year. **Base value** is the amount at which the item was recorded in the person’s accounts for taxation purposes for the 1992–93 income year. 10  
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*Section EE 58(3)(d)*

- (2) For the purposes of **section EE 58(3)(d)** (Base value in section EE 57 when none of sections EE 59, EE 60, or EZ 23(1) applies),— 20
- (a) the expenditure is expenditure for which a person has been allowed a deduction for depreciation under any of sections 108 to 108N or section 113A of the Income Tax Act 1976; or 25
- (b) the expenditure is expenditure for which a person has been allowed a deduction for depreciation under any other provision of the Income Tax Act 1976.

*Section EE 59(1)(e)(ii)*

- (3) For the purposes of **section EE 59(1)(e)(ii)** (Base value in section EE 57 when no previous deduction), the item is one for which the person could not have been allowed a depreciation deduction under section 108 of the Income Tax Act 1976 for the 1992–93 income year. 30

*Section EE 61(2)(c)*

- (4) For the purposes of **section EE 61(2)(c)** (Total deductions in section EE 57), the provision is section 117(5) of the Income Tax Act 1976.

Defined in this Act: amount, income year

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Compare: 2004 No 35 s EZ 21

**EZ 24 Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005**

*What this section is about*

- (1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if— 10
- (a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and
- (b) the items are— 15
- (i) plant or equipment acquired before 1 April 2005;
- (ii) buildings acquired before 19 May 2005;
- (iii) buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under this section or a corresponding provision. 20

*Rate set by Commissioner*

- (2) The Commissioner sets the rate from time to time by— 25
- (a) following the procedure set out in this section; and
- (b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

*Procedure for setting economic rate*

- (3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner— 30
- (a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and
- (b) rounds the figure up or down to the nearest rate specified in **schedule 12, column 1** (Old banded rates of depreciation); and 35
- (c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if



the Commissioner thinks it is appropriate to do so having regard to—

- (i) the rate calculated for each kind; and
- (ii) the reduction in compliance costs that is likely to be achieved.

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*Formula*

- (4) The formula is—

$$1 - \left( \left( \frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

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*Definition of items in formula*

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- (5) In the formula,—

- (a) **residual value** is the greater of—
  - (i) estimated residual market value, which is defined in **section EE 68** (Other definitions):
  - (ii) 13.5% of cost:
- (b) **cost** is the cost of items of the kind to which the formula is applied:
- (c) **estimated useful life** is defined in **section EE 64** (Meaning of estimated useful life).

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Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property

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Compare: 2004 No 35 s EZ 21B

*Definitions*

**EZ 25 Meaning of new asset**

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*Meaning*

- (1) **New asset** means an item of property that a person owns to which **subsections (2) to (4)** apply and to which **subsection (5)** does not apply.

*Acquisition date*

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- (2) The item is—

- (a) acquired by the person in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract that they entered into before 16 December 1991; or
- (b) acquired by the person in the period starting on 1 April 1993 and ending with the close of 31 March 1994,

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- under a binding contract that they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; or
- (c) one to which all the following apply:
- (i) it was acquired by the person before 16 December 1991 as trading stock; and 5
  - (ii) it was used by the person as a capital item for the first time in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and 10
  - (iii) it qualified for a deduction for depreciation under section 108 of the Income Tax Act 1976 in the period starting on 16 December 1991 and ending with the close of 31 March 1993.
- Used before 1 April 1994* 15
- (3) The item is used by the person before 1 April 1994.
- Not used by anyone previously*
- (4) The item is—
- (a) not acquired by any other person before the date on which the person acquired it; and 20
  - (b) not used by any other person before the date on which the person acquired it; and
  - (c) not held for use by any other person before the date on which the person acquired it; and
  - (d) not an item or part of an item that qualified for a deduction for depreciation under the Income Tax Act 1976 for a period before the date on which the person acquired it. 25
- Exclusion*
- (5) A constructed item that a person owns is not a new asset if—
- (a) its construction started before 16 December 1991 (but this paragraph does not apply to the extent to which the item is trading stock to which subsection (2)(c) applies); or 30
  - (b) its construction started on or after 16 December 1991 under a binding contract that the person entered into before 16 December 1991; or 35
  - (c) its construction was not completed before 1 April 1994; or

- (d) the item was not first used by the person before 1 April 1994.

Defined in this Act: acquire, new asset, trading stock

Compare: 2004 No 35 s EZ 22

<b>EZ 26 Meaning of New Zealand-new asset</b>	5
<i>Meaning</i>	
(1) <b>New Zealand-new asset</b> means an item of property that a person owns to which <b>subsections (2) to (5)</b> apply.	
<i>Not new</i>	
(2) The item is not a new asset.	10
<i>Date of acquisition</i>	
(3) The item is—	
(a) acquired by the person in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract that they entered into before 16 December 1991; or	15
(b) acquired by the person in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract that they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; or	20
(c) one to which all the following apply:	
(i) it was acquired by the person before 16 December 1991 as trading stock; and	
(ii) it was used by the person as a capital item for the first time in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and	25
(iii) it qualified for a deduction for depreciation under section 108 of the Income Tax Act 1976 in the period starting on 16 December 1991 and ending with the close of 31 March 1993.	30
<i>Used before 1 April 1994</i>	
(4) The item is used by the person before 1 April 1994.	
<i>Not used</i>	
(5) The item is—	35

- (a) not used in New Zealand before the date on which the person acquired it; and
- (b) not an item or part of an item that qualified for a deduction for depreciation under the Income Tax Act 1976 for a period before the date on which the person acquired it. 5

Defined in this Act: acquire, new asset, New Zealand, New Zealand-new asset, trading stock

Compare: 2004 No 35 s EZ 23

## **EZ 27 Meaning of qualifying capital value**

*Meaning* 10

- (1) **Qualifying capital value** means, for an income year,—
  - (a) for a qualifying asset that a person owns, the amount calculated for the income year using the formula in **subsection (2)**; or
  - (b) for an item that a person owns that is not a qualifying asset but to which they have made a qualifying improvement, the amount calculated for the income year using the formula in **subsection (7)**. 15

*Formula*

- (2) The formula referred to in **subsection (1)(a)** is— 20
  - (acquisition cost + improvement cost)
  - item’s depreciation.

*Definition of items in formula*

- (3) The items in the formula in **subsection (2)** are defined in **subsections (4) to (6)**. 25

*Acquisition cost*

- (4) **Acquisition cost** is the amount of capital expenditure the person incurs in acquiring the asset or item. In the case of a constructed item, the amount of capital expenditure is reduced by the amount of capital expenditure the person incurs on the construction on or after 1 April 1993, other than under a binding contract that the person entered into before 1 April 1993. 30

*Improvement cost*

- (5) **Improvement cost** is the amount of capital expenditure, if any, the person incurs in making a qualifying improvement to the asset or item.

*Item's depreciation*

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- (6) **Item's depreciation** is the amount of depreciation loss for which the person has been allowed a deduction for the qualifying capital value of the asset or item in previous income years, not including an amount of depreciation loss calculated using the straight-line method.

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*Formula*

- (7) The formula referred to in **subsection (1)(b)** is—  
capital expenditure – improvement's depreciation.

*Definition of items in formula*

- (8) The items in the formula in **subsection (7)** are defined in **subsections (9) and (10)**.

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*Capital expenditure*

- (9) **Capital expenditure** is the amount of capital expenditure the person incurs for the improvement.

*Improvement's depreciation*

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- (10) **Improvement's depreciation** is the amount of depreciation loss for which the person has been allowed a deduction for the qualifying capital value of the improvement in previous income years, not including an amount of depreciation loss calculated using the straight-line method.

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Defined in this Act: acquire, amount, depreciation loss, income year, qualifying capital value, qualifying improvement, qualifying asset, straight-line method

Compare: 2004 No 35 s EZ 24

**EZ 28 Meaning of qualifying improvement***Meaning*

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- (1) **Qualifying improvement**, for a person's income year, means an improvement of an item that the person owns, if all the following apply:

- (a) the person incurred the expenditure on the improvement—
  - (i) in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract they entered into before 16 December 1991; or 5
  - (ii) in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and 10
- (b) the person used the item in its improved form before 1 April 1994; and
- (c) the person is allowed a deduction for depreciation under the Income Tax Act 1976 for the improvement for the income year. 15

*Exclusions*

- (2) **Qualifying improvement** does not include—
  - (a) an improvement to a building; or
  - (b) an improvement requiring construction, if— 20
    - (i) the construction started before 16 December 1991; or
    - (ii) the construction started on or after 16 December 1991 under a binding contract that the person entered into before 16 December 1991; or 25
    - (iii) the construction was not completed before 1 April 1994; or
    - (iv) the improvement was not first used by the person before 1 April 1994.

Defined in this Act: income year, qualifying improvement 30

Compare: 2004 No 35 s EZ 25

**EZ 29 Meaning of qualifying asset**

**Qualifying asset** means—

- (a) a new asset, other than a building, that a person owns in an income year and for which they are allowed a deduction for depreciation under the Income Tax Act 1976 for the income year; or 35
- (b) a New Zealand-new asset, other than a building or a car, that a person owns in an income year and for which they

are allowed a deduction for depreciation under the Income Tax Act 1976 for the income year.

Defined in this Act: car, income year, new asset, New Zealand-new asset, qualifying asset

Compare: 2004 No 35 s EZ 26

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### *Accident insurance*

#### **EZ 30 Private insurers under Accident Insurance Act 1998**

*When this section applies*

- (1) This section applies when an insurer, as defined in **paragraph (a)** of the definition of **insurer** in section 13 of the Accident Insurance Act 1998, has a reserve in a tax year to cover the following, all of which relate to events covered by the Accident Insurance Act 1998 occurring before the end of the tax year:
- (a) claims that have been made with the insurer but have not been settled before the end of the tax year; and 15
  - (b) claims that are expected to be made with the insurer in relation to events that the insurer knows about; and
  - (c) an estimate of claims that have not been reported to the insurer in relation to events that the insurer does not know about. 20

*Adjustment to deduction*

- (2) When the closing value of the reserve for a tax year is more than the opening value, the deduction that the insurer is allowed is adjusted by an amount equal to the amount calculated using the formula— 25
- $$\text{closing value} - \text{opening value.}$$

*Adjustment to income*

- (3) When the opening value of the reserve for a tax year is more than the closing value, the income of the insurer is adjusted by an amount equal to the amount calculated using the formula— 30
- $$\text{opening value} - \text{closing value.}$$

*Amount*

- (4) The reserve at the end of the tax year is—

- (a) an amount calculated by an actuary applying **subsection (5)** and adopted by the insurer for financial reporting purposes; or
- (b) if no such amount has been calculated, an amount determined by the Commissioner, who may seek the advice of the Government Actuary or any other actuary in determining it. 5

*Calculation or determination of reserve*

- (5) A person calculating or determining the amount of a reserve under subsection (4) must ensure that the amount has regard to— 10
  - (a) generally accepted accounting practice; and
  - (b) generally accepted actuarial practice; and
  - (c) the present value of expected future payments.

*Link with subpart DA* 15

- (6) This section supplements the general permission. The general limitations still apply.

Defined in this Act: actuary, amount, Commissioner, deduction, general limitation, general permission, generally accepted accounting practice, pay, supplement, tax year 20

Compare: 2004 No 35 s EZ 27

**EZ 31 Base premium for 1998–99 premium year under Accident Insurance Act 1998**

*Discount payment date*

- (1) An amount of base premium for the 1998–99 premium year that is paid on or before the discount payment date is treated as expenditure in the tax year in which the discount payment date falls if the discount payment date is before the date on the invoice that specifies when payment is due. This subsection overrides **section EF 3(1)** (ACC levies and premiums). 25 30

*Monthly instalment plan*

- (2) Interest payable on a base premium for the 1998–99 premium year under a monthly instalment plan is treated as being payable on the date that the interest is applied under regulation 8 of the Accident Insurance (Payment of Base Premiums) Regulations 1999. 35



*Some definitions*

- (3) In this section, **base premium for the 1998–99 premium year, discount payment date, and monthly instalment plan** have the meanings given to them in the Accident Insurance (Payment of Base Premiums) Regulations 1999. 5

Defined in this Act: amount, base premium for the 1998–99 premium year, discount payment date, interest, monthly instalment plan, pay, tax year

Compare: 2004 No 35 s EZ 28

*CFC and FIF rules*

**EZ 32 Disclosure restrictions on grey list CFCs before 2011–12** 10

*No attributed CFC income from taxable distribution*

- (1) No attributed CFC income arises under **section EX 19** (Taxable distribution from non-complying trust) in relation to a person's income interest in a CFC if **subsection (4)** applies. 15

*No branch equivalent income or loss*

- (2) No branch equivalent income or loss arises under **section EX 21** (Branch equivalent income or loss: calculation rules) in relation to a person's income interest in a CFC if **subsection (4)** applies. 20

*No FIF income or loss*

- (3) No FIF income or loss arises under **section EX 46** (Additional FIF income or loss if CFC owns FIF) in relation to a person's income interest in a CFC if **subsection (5)** applies.

*Application of subsections (1) and (2)* 25

- (4) **Subsection (1) or (2)** applies in relation to a person's income interest for an accounting period in a CFC if— 30
- (a) the income interest arises from an interest of the person in a CFC that meets the requirements of **subsection (6)**; and
  - (b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

*Application of subsection (3)*

- (5) **Subsection (3)** applies in relation to a person's income interest for an accounting period in a CFC if—
- (a) the income interest meets the requirements of **subsection (6)**; and
  - (b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

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*Relevant grey list CFC*

- (6) An interest in a CFC meets the requirements of this subsection for an accounting period if the CFC is, throughout the accounting period,—
- (a) resident in a country on the grey list; and
  - (b) quoted on the official list of a recognised exchange in the country; and
  - (c) under the law of the country or the rules of the exchange,—
    - (i) prevented from disclosing to the person information necessary for calculating attributed CFC income or loss or FIF income or loss;
    - (ii) required, as a result of the disclosure, to make a further disclosure of information that would be harmful to the commercial interests of the CFC.

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*Person must satisfy Commissioner*

- (7) For this section to apply in relation to a person's income interest for an accounting period in a CFC, the person must hold information that would satisfy the Commissioner that, for the accounting period, an effect of the law or rules referred to in **subsection (6)** is that the person cannot calculate the attributed CFC income or loss or FIF income or loss in relation to the income interest.

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*Section terminates after 2010–11 income year*

- (8) This section does not apply to the tax on income derived by a person in an income year after the income year that corresponds to the 2010–11 tax year.

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Defined in this Act: accounting period, attributed CFC income, attributed CFC income or loss, branch equivalent income or loss, Commissioner, CFC, FIF, FIF

income or loss, grey list, income, income interest, income year, recognised exchange, tax, tax year

Compare: 2004 No 35 s EZ 29

### *Old financial arrangements rules*

- EZ 33 Application of old financial arrangements rules** 5  
 The old financial arrangements rules apply to financial arrangements entered into on or after the implementation date and before 20 May 1999.  
 Compare: 2004 No 35 s EZ 30
- EZ 34 Election to apply financial arrangements rules in subpart EW** 10  
 Despite **section EZ 33**, a person may elect to apply the financial arrangements rules by calculating a transitional adjustment under **section EZ 51**.  
 Compare: 2004 No 35 s EZ 31 15
- EZ 35 Accruals in relation to income and expenditure in respect of financial arrangements**
- (1) For the purpose of calculating the amount deemed to be income or expenditure of any person under **subsections (2) to (7)**, regard must be had to,— 20
- (a) if the person is a holder in relation to the financial arrangement,—
- (i) the amount of all consideration paid and to be paid to the person in relation to the financial arrangement; and 25
- (ii) any amount remitted and to be remitted by the person in relation to the financial arrangement; and
- (iii) the acquisition price of the financial arrangement in relation to the person; and 30
- (b) if the person is an issuer in relation to the financial arrangement,—
- (i) the amount of all consideration paid and to be paid by the person in relation to the financial arrangement; and 35
- (ii) the acquisition price of the financial arrangement in relation to the person.

- (2) Subject to this section, where any person is a holder or an issuer of a financial arrangement, the amount that is deemed to be income or expenditure of that person in respect of the financial arrangement in any income year is an amount calculated using the yield to maturity method so as to result in the allocation to each income year of an amount that is fair and reasonable, and such amount so allocated to each income year is income deemed to be derived by or expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year: 5
- provided that the Commissioner must accept an alternative method to the yield to maturity method, that has regard to the principles of accrual accounting, and— 10
- (a) conforms with commercially acceptable practice; and
  - (b) except to the extent that the Commissioner may otherwise allow under **subsection (8)**, is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and 15
  - (c) results in the allocation to each income year of amounts that are not materially different from amounts that would be calculated but for this proviso. 20
- (3) Notwithstanding **subsection (2)**, but subject to the other provisions of this section, where in any income year the total value of all financial arrangements of which a person is a holder or an issuer has on no day within that income year exceeded \$1,500,000 or such greater amount as the Governor-General may by Order in Council declare for the purposes of this section,— 25
- (a) the person may calculate income or expenditure for that income year in respect of those financial arrangements by using the straight-line method so as to result in the allocation to that income year and subsequent income years of amounts that are fair and reasonable in respect of those arrangements; and 30
  - (b) where the straight-line method is used under paragraph (a), that method must be used by the person in respect of all financial arrangements of which the person was the holder or issuer during that income year; and 35
  - (c) where the person has in accordance with this subsection calculated income or expenditure using the straight-line method in respect of a financial arrangement for any 40

- income year, the person must, unless otherwise authorised in writing by the Commissioner, continue to use that method in respect of that financial arrangement for any subsequent income year, until the maturity, remittance, sale, or other transfer of the arrangement, notwithstanding that the total value of all financial arrangements of which the person is holder or issuer may at any time in any such subsequent income year exceed \$1,500,000 or such other amount as may be declared for the purposes of this section,— 5
- and any amount calculated in respect of a financial arrangement in accordance with this subsection is income deemed to be derived by or expenditure deemed to be incurred by the person in respect of the financial arrangement for the relevant income year. 10
- (4) For the purposes of **subsection (3)**, a person must take into account financial arrangements to which **subpart EW** applies. 15
- (5) For the purposes of **subsection (3)**,—
- (a) the value of any financial arrangement to be taken into account in determining whether the total value of all financial arrangements of which a person is the holder or issuer on any day exceeds \$1,500,000 or such other amount as may be declared for the purposes of this section is,— 20
- (i) in the case of a fixed principal financial arrangement, the nominal or face value of the arrangement; and 25
- (ii) in the case of a variable principal debt instrument, the amount owing by or to the person under the arrangement on the relevant day; and 30
- (iii) in the case of a financial arrangement to which subpart EW applies, the value determined under that subpart; and
- (b) in the first income year for which income or expenditure is calculated under **subsection (3)** in respect of a financial arrangement that— 35
- (i) was acquired or issued by the person in a previous income year; and
- (ii) continues to be held or issued by the person at the end of the first income year for which income or expenditure is calculated under **subsection (3)**,— 40

the amount of income or expenditure of the person in respect of that financial arrangement for that first income year is an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

- a is the sum of all amounts that would have been income derived by the person in respect of the financial arrangement if the straight-line method referred to in **subsection (3)** had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year 10
- b is the sum of all amounts that would have been expenditure incurred by the person in respect of the financial arrangement if the straight-line method referred to in **subsection (3)** had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year 15
- c is the sum of all amounts of income deemed to have been derived by the person in respect of the financial arrangement before the commencement of that first income year 20
- d is the sum of all amounts deemed to have been expenditure incurred by the person in respect of the financial arrangement before the commencement of that first income year;— 25

and any amount so calculated is, if a positive amount, deemed to be income derived by the person in that first income year and, if a negative amount, deemed to be expenditure incurred by the person in that first income year.

- (6) Where it is not possible to calculate an amount to be deemed to be income or expenditure in respect of a financial arrangement using the yield to maturity method as provided for in **subsection (2)** or (in a case to which **subsection (3)** applies) the straight-line method as provided for in subsection (3), the amount that is deemed to be income or expenditure of the person in any income year is an amount calculated by the person— 30
  - (a) using the method, if any, prescribed by the Commissioner for the financial arrangement in a determination made under section 90(1)(c) of the Tax Administration Act 1994: 40

- provided that the Commissioner must accept an alternative method to the method prescribed in any such determination that has regard to the principles of accrual accounting, and—
- (i) conforms with commercially acceptable practice; 5  
and
  - (ii) except to the extent that the Commissioner may otherwise allow under **subsection (8)**, is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and 10
  - (iii) results in the allocation to each income year of amounts that are not materially different from the amounts that would be calculated, but for this proviso; and 15
- (b) in the absence of any such determination, by applying a method that meets the requirements of **subparagraphs (i) and (ii)** of the proviso to **paragraph (a)** and that results in the allocation to each income year of an amount that, having regard to the tenor of **subsection (2)**, is fair and reasonable;— 20
- and such amount of income or expenditure so allocated to each income year is income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in the income year. 25
- (7) Notwithstanding **subsections (2) and (6)**, the Commissioner must accept an alternative method for calculating the amount to be deemed to be income or expenditure of the person, in respect of a financial arrangement, to the methods provided for under **subsections (2) and (6)**, if the alternative method has regard to market valuation, and— 30
- (a) conforms with commercially acceptable practice; and
  - (b) except to the extent that the Commissioner may otherwise allow under **subsection (8)**, is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and 35
  - (c) either—
    - (i) the business of the person comprises dealing in such financial arrangements; or 40

- (ii) the financial arrangement is a forward or future contract for foreign exchange, or a futures contract; and
- (d) the market, the method, and the source of the information used to determine the market values have been approved by the Commissioner under a determination issued under section 90(1)(e) of the Tax Administration Act 1994; and 5
- (e) the person and any other person who is a holder (where the person is an issuer) or an issuer (where the person is a holder) of the financial arrangement are not associated persons;— 10
- and such amount of income or expenditure so calculated is income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year: 15
- provided that where income or expenditure in respect of a financial arrangement has been calculated by a person under this subsection, income or expenditure in respect of that financial arrangement must, except as otherwise allowed under **subsection (8)**, continue to be calculated on that basis by that person until the maturity, remittance, sale, or other transfer of the arrangement. 20
- (8) Where a method of calculating income or expenditure in respect of a financial arrangement fails to meet the requirements of **paragraph (b)** of the proviso to **subsection (2) or subparagraph (ii)** of the proviso to **subsection (6)(a) or (7)(b)** by virtue of the fact that the method is not or will not be consistently applied by a person in respect of all such financial arrangements for financial reporting purposes, that method is nevertheless deemed to meet the relevant one of those provisions where the method— 25
- (a) appropriately reflects the dominant purpose for which the person acquired or issued the financial arrangement (or each such arrangement); and 30
- (b) has been and will be consistently applied by the person in respect of the particular financial arrangement (or each such financial arrangement) for the purposes of the old financial arrangements rules for every income year during its term (except to the extent that the Commissioner approves or may approve a change in method under the circumstances or conditions specified in a 40



- determination under section 90(1)(f) of the Tax Administration Act 1994); and
- (c) is not adopted for purposes that include the purpose of tax avoidance; and
- (d) has been approved by the Commissioner for adoption in the circumstances applicable to the taxpayer either by notice to the taxpayer or in a determination issued under section 90 of the Tax Administration Act 1994. 5
- (9) **Subsections (2) to (7)** do not apply—
- (a) to a cash basis holder; or 10
- (b) in relation to a financial arrangement and a person, in any income year where **section EZ 38** applies to that person and to that financial arrangement; or
- (c) in relation to a financial arrangement where—
- (i) the financial arrangement is held by a trustee upon trust for the management of compensation paid for personal injury where that compensation is paid under the Workers Compensation Act 1956 or the Accident Compensation Act 1972 or the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Injury Prevention, Rehabilitation, and Compensation Act 2001 or an order of court; and 15 20
- (ii) the trustee is, or if it were a natural person would be, a cash basis holder in respect of the financial arrangement. 25
- (10) For the purposes of this section, the Commissioner may determine whether and to what extent any issuer or class of issuers is not required to comply with this section in relation to expenditure incurred or income derived in respect of any class of financial arrangements, having regard to— 30
- (a) the nature and amount of the expenditure incurred or income derived by the issuer or class of issuers in respect of financial arrangements of that class; and 35
- (b) the costs of the issuer or class of issuers in complying with this section in relation to the class of financial arrangements; and
- (c) whether, in respect of that issuer or class of issuers and that class of financial arrangements, the application of the discretion given to the Commissioner under this 40

subsection would result in a material difference in the amount of deductions or income allocated to any income year, in relation to the amount that would have been allocated had the discretion not been exercised.

- (11) The Commissioner may at any time cancel any determination made in respect of any person or class of persons under **subsection (10)**. 5

Compare: 2004 No 35 s EZ 32

**EZ 36 Excepted financial arrangement that is part of financial arrangement** 10

The amount of the income deemed to be derived or the expenditure deemed to be incurred by a person in respect of a financial arrangement under the old financial arrangements rules does not include the amount of any income, gain or loss, or expenditure, that is solely attributable to an excepted financial arrangement that is part of the financial arrangement. 15

Compare: 2004 No 35 s EZ 33

**EZ 37 Cash basis holder**

- (1) Subject to this section, a natural person is a cash basis holder in respect of financial arrangements held by that person in any income year, where— 20
- (a) either—
- (i) the income derived by that person in that income year in respect of those financial arrangements, calculated in accordance with **subpart EW** or **section EZ 35 or EZ 38**, as the case may be, does not exceed \$70,000 (or such greater amount as the Governor-General may by Order in Council declare); or 25
- (ii) the total value of financial arrangements held by the person in the income year does not exceed at any time in the income year \$600,000 (or such greater amount as the Governor-General may by Order in Council declare), the value in respect of each financial arrangement being,— 30
- (A) in the case of a fixed principal financial arrangement, the greater of the acquisition price of the arrangement or the nominal or face value of the arrangement; and 35

- 
- (B) in the case of a variable principal debt instrument, the amount of money owing to the person according to the arrangement; and
      - (C) in the case of a financial arrangement to which **subpart EW** applies, the value determined under that subpart; and 5
    - (b) the difference between the following amounts does not exceed \$20,000 (or such greater amount as the Governor-General may by Order in Council declare): 10
      - (i) the amount of income that would be calculated by the person for the income year—
        - (A) using, at the option of the person, either the yield to maturity method or the straight-line method referred to in **section EZ 35(3)** (regardless of whether or not the person is entitled or has opted to use that method) or in accordance with **subpart EW**, as the case may be, or, where it is not possible to calculate an amount of income or expenditure in respect of the financial arrangements by using either of those methods, an alternative method approved by the Commissioner; and 15
        - (B) under either **section EW 34 or EZ 38**— 25
          - in respect of financial arrangements held by the person at the end of the income year; and
      - (ii) the amount of income that would be calculated by the person for the income year in respect of financial arrangements held by the person at the end of the income year if the person were a cash basis holder. 30
  - (2) For the purposes of **subsection (1)**, a person must take into account financial arrangements to which **subpart EW** applies.
  - (3) Notwithstanding anything in **subsection (1)**, the Commissioner may,— 35
    - (a) where the Commissioner is satisfied, having regard to the tenor of **section EZ 35(2)**, that treatment of a class of financial arrangements other than under **section EZ 35** results in a fair and reasonable allocation of income or expenditure among income years, deem natural persons 40

- to be cash basis holders in respect of such financial arrangements; and
- (b) where the Commissioner is satisfied that a class of financial arrangements has been structured and promoted with the objective of postponing any liability to income tax which would have arisen had those financial arrangements not been so structured, deem natural persons not to be cash basis holders in respect of such financial arrangements. 5
- (4) In any income year where a person who was a cash basis holder in the previous income year ceases to be a cash basis holder, the person must take into account, in calculating income or deductions for the income year, an accruals basis adjustment, in respect of every financial arrangement (other than arrangements that are already dealt with according to **section EZ 35** or in respect of which the Commissioner has exercised the discretion given under **subsection (3)(a)**) acquired in a previous income year and held by the person at the end of the income year equal to an amount calculated in accordance with the following formula: 10
- $$a - b - c + d \quad 15$$
- where—
- a is the sum of all amounts which would have been income derived by the person in respect of the financial arrangement from the date it was acquired to the end of the income year if the person had not been a cash basis holder at any time during that period 25
- b is the sum of all amounts that would have been deductions of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had not been a cash basis holder at any time during the period 30
- c is the sum of all amounts of income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year 35
- d is the sum of all amounts that have been deductions of the person in respect of the financial arrangement since it was acquired to the end of the previous income year;— 40

and the person must not take into account in the income year any other amount in respect of any such financial arrangement except those calculated under the accruals basis adjustment.

- (5) In any income year where a person who was not a cash basis holder in the previous income year becomes a cash basis holder, that person may take into account, in calculating income or deductions for the income year, a cash basis adjustment, in respect of every financial arrangement (other than arrangements already treated on a cash basis) acquired in a previous income year and held by the person at the end of the income year, equal to an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

- a is the sum of all amounts which would have been income derived by the person in respect of the financial arrangement from the date it was acquired to the end of the income year if the person had been a cash basis holder in respect of the financial arrangement for the whole of that period
- b is the sum of all amounts which would have been deductions of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had been a cash basis holder in respect of the financial arrangement for the whole of the period
- c is the sum of all amounts treated as income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year
- d is the sum of all amounts that have been deductions of the person in respect of the financial arrangement since it was acquired to the end of the previous income year;—

and, where the cash basis adjustment has been taken into account, the person must not take into account any other amount in respect of any such financial arrangement in the income year except those calculated under the cash basis adjustment:

provided that the person is deemed not to be a cash basis holder in relation to any financial arrangement in respect of

- which the person does not take into account a cash basis adjustment.
- (6) The amount of the accruals basis adjustment or the cash basis adjustment in respect of any financial arrangement and any income year is,— 5
- (a) where it is a positive amount, income deemed to be derived by the holder in the income year; and
- (b) where it is a negative amount, deemed to be a deduction of the holder in the income year.
- (7) For the purposes of **subsection (1)**, but subject to **subsections (8) and (9)**,— 10
- (a) all income in respect of financial arrangements that is trustee income or beneficiary income under the trust rules is disregarded, as is the value of all such financial arrangements producing such income; and 15
- (b) no person who holds such financial arrangements is a cash basis holder in relation to such financial arrangements.
- (8) **Subsection (7)** does not apply to financial arrangements held on a bare trust, or to income in respect of such financial arrangements, and the financial arrangements held and the income derived by the trustees is treated as being held or, as the case may be, derived by a beneficiary of the trust to the extent of the beneficiary's share of the beneficial interest in the financial arrangement. 20 25
- (9) Where a deceased person was at the time of his or her death a cash basis holder,—
- (a) nothing in **subsection (7)** or in any requirement under this section that a cash basis holder be a natural person, in respect of the income year in which the death occurred and in each of the 4 immediately succeeding income years, applies to prevent the trustee of the estate of the deceased person from being a cash basis holder for the purposes of this Act in respect of financial arrangements issued or held by the estate, where the estate would otherwise qualify as a cash basis holder under this section; but 30 35
- (b) if at any time during those income years the estate ceases to so otherwise qualify as a cash basis holder, it does not again qualify to become a cash basis holder by operation of **paragraph (a)**;— 40

and for the purposes of **subsections (4) and (5)**, any trustee of an estate who is a cash basis holder under this subsection is deemed to be the same person as the deceased cash basis holder.

- (10) For the purposes of **subsection (1)**,— 5
- (a) financial arrangements held; and
- (b) income required to be returned in respect of those financial arrangements under section 42(1) of the Tax Administration Act 1994—
- by a partnership is treated as being held or, as the case may be, 10  
derived by each partner to the extent of the partner's share in the financial arrangements held by the partnership or, as the case may be, the income of the partnership in respect of financial arrangements.
- Compare: 2004 No 35 s EZ 34 15

**EZ 38 Income and expenditure where financial arrangement redeemed or disposed of**

- (1) Subject to **subsection (2)**, where, in relation to any person, a financial arrangement matures or is remitted (other than by way of being written off as a bad debt), sold, or otherwise transferred by the person in any income year, the amount of the base price adjustment in relation to that income year, that person, and that financial arrangement is an amount calculated in accordance with the following formula: 20
- $$a - (b + c) \quad 25$$
- where—
- a is,—
- (i) in the case of a holder, the sum of—
- (A) the amount of all consideration that has been paid, and all further consideration that has or will become payable, to the person; and 30
- (B) any amounts that have been remitted by the person and that are not included in **subsubparagraph (A)**: 35
- (ii) in the case of an issuer, the sum of—
- (A) the amount of all consideration that has been paid, and all further consideration that has or will become payable, by the person; and 40

- (B) the amount paid by the person associated with the issuer if the issuer is the debtor of a debt to which **section EZ 38** applies—
- in relation to the financial arrangement
- b is the acquisition price of the financial arrangement in relation to the person 5
- c is,—
- (i) in the case of a holder, all amounts that are income derived, less the aggregate of amounts of expenditure deemed to be incurred under **section EZ 35 or EZ 42** or deemed to be a deduction under **section EZ 37** by the person in respect of the financial arrangement in all previous income years since the acquisition of the financial arrangement; and 10 15
- (ii) in the case of an issuer, all amounts of expenditure incurred in respect of the financial arrangement in all previous income years since the issue of the financial arrangement, less the aggregate of— 20
- (A) all amounts that are income deemed to be derived under **section EZ 35 or EZ 37 or EZ 42** by the person in respect of the financial arrangement in all previous income years since the issue of the financial arrangement; and 25
- (B) all amounts that are dividends derived by the person from the release of the obligation to repay the amount lent; and
- (C) All amounts that are income of the person under **section CF 2** in respect of the financial arrangement. 30
- (2) Where, in relation to a financial arrangement, a person is a cash basis holder, and the financial arrangement matures or is remitted (other than by way of being written off as a bad debt), sold, or otherwise transferred by that person in any income year, the amount of the cash base price adjustment in relation to that income year, that person, and that financial arrangement is an amount calculated in accordance with the following formula: 35 40

$$a - (b + c)$$



- where—
- a is the sum of all consideration derived in respect of the financial arrangement by the person, and amounts remitted by the person
  - b is the acquisition price of the financial arrangement 5
  - c is the sum of all amounts that are income derived by the person, less the aggregate of amounts of expenditure deemed to be incurred under **sections EZ 35 and EZ 42** or deemed to be a deduction under **section EZ 37**.
- (3) Subject to **subsection (5)**, the amount of the base price adjustment in relation to any financial arrangement and any income year is,— 10
- (a) in relation to a holder,—
    - (i) where it is a positive amount, deemed to be income derived by the holder in the income year; and 15
    - (ii) where it is a negative amount, deemed to be a deduction of the holder in the income year:
  - (b) in relation to an issuer,—
    - (i) where it is a positive amount, deemed to be expenditure incurred by the issuer in the income year; and 20
    - (ii) where it is a negative amount, deemed to be income derived by the issuer in the income year.
- (4) Subject to **subsection (5)**, the amount of the cash base price adjustment in relation to any financial arrangement and any income year is,— 25
- (a) where it is a positive amount, deemed to be income derived by the cash basis holder in the income year; and
  - (b) where it is a negative amount, deemed to be a deduction of the cash basis holder in the income year. 30
- (5) Notwithstanding anything in **section EZ 50(3)**, where a financial arrangement is sold or otherwise transferred by a person for a consideration influenced by— 35
- (a) a decline in the creditworthiness of the issuer between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or
  - (b) an increase in the possibility that the issuer may fail to meet any obligations under the financial arrangement

- between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or
- (c) the occurrence of any event reducing or cancelling the obligations of an issuer under the financial arrangement,— 5
- all amounts that would have been received but for the factors listed above are deemed, in calculating the base price adjustment or cash base price adjustment, to have become payable to the holder: 10
- provided that this subsection does not apply where the business of the holder comprises holding or dealing in financial arrangements of that class, and the issuer of the financial arrangement and the holder are not associated persons.
- (6) Where— 15
- (a) a person has been released from the obligation to make payment of an amount—
- (i) under a financial arrangement by operation of section 114 of the Insolvency Act 1967; or
- (ii) under any of the Inland Revenue Acts (and whether the relief arises through remission, waiver, or cancellation); or 20
- (iii) under a social assistance suspensory loan by virtue of that person satisfying the conditions referred to in **section EZ 38(8)(c)(ii)**; and 25
- (b) that amount would, but for this subsection, be taken into account in determining the income derived by or expenditure incurred by that person under the old financial arrangements rules,—
- that amount is, for the purpose of determining the income derived by or expenditure incurred by that person, and notwithstanding the old financial arrangements rules (other than this subsection), deemed to have been paid under that financial arrangement when the obligation to make payment has been so released. 30
- (7) Notwithstanding anything in this Act, where and to the extent that a person (in this subsection called the **surety**) suffers expenditure or a loss under a security arrangement and the expenditure or loss, in whole or in part, is due to— 35
- (a) the actions of; or 40

- (b) the occurrence, or failure to occur, of an event that was potentially or actually subject to the influence of— the surety or any person with whom the surety was, during the term of the security arrangement, an associated person, no deduction is allowed to the surety or any person in relation to the expenditure or loss. 5
- (8) In this section,—
- (a) the expression **holder**, in relation to a financial arrangement, includes a person who ceases to be a holder of the financial arrangement as provided in **subsection (1) or (2)**; and 10
- (b) the expression **issuer**, in relation to a financial arrangement, includes a person who ceases to be an issuer of the financial arrangement as provided in **subsection (1)**; and 15
- (c) the expression **social assistance suspensory loan** means a loan—
- (i) made by a department or instrument of the Executive Government of New Zealand; and
- (ii) under whose terms the issuer’s liability may be remitted in whole or in part if the issuer satisfies conditions intended to promote a social policy objective of the Government of New Zealand; and 20
- (iii) of a kind that is declared by the Governor-General by Order in Council to be a social assistance suspensory loan; and 25
- (d) a financial arrangement is deemed to be remitted where—
- (i) the issuer has been discharged from making all remaining payments under that financial arrangement without fully adequate consideration; or 30
- (ii) the issuer has been released from making all remaining payments under that financial arrangement by the operation of the Insolvency Act 1967 or the Companies Act 1955 or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement of composition with its creditors; or 35
- (iii) all of the remaining payments under the financial arrangement have become irrecoverable or unenforceable by action through the lapse of time; or 40

- (iv) the financial arrangement is a debt that is sold at a discount to a person associated with the debtor under the circumstances described in **section EZ 41**; and
- (e) where a person ceases to be a New Zealand resident any financial arrangement in relation to which that person is an issuer or a holder is deemed, in relation to the person, to have been transferred for its market value at that date. 5

Compare: 2004 No 35 s EZ 35

### **EZ 39 Forgiveness of debt** 10

- (1) In determining the income or expenditure under the base price adjustment in **section EZ 38**, an amount owing under a debt, including an amount accrued and unpaid at the time of the forgiveness, is treated as paid when forgiven under the old financial arrangements rules if— 15
  - (a) the creditor is a natural person who forgives the debt, whether in a will or otherwise, because of the natural love and affection the creditor has for the debtor; or
  - (b) the creditor is a natural person who forgives the debt owing by a trust, whether in a will or otherwise, and the trust was established primarily to benefit— 20
    - (i) a natural person for whom the creditor has natural love and affection; or
    - (ii) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**; or 25
    - (iii) a natural person that meets **paragraph (b)(i)** and an organisation or a trust that meets **paragraph (b)(ii)**.
- (2) Subsection (3) applies when a trustee makes a distribution, including a distribution of beneficiary income, to a beneficiary that is neither— 30
  - (a) a natural person for whom the creditor has natural love and affection; nor
  - (b) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**.
- (2A) **Subsection (3)** does not apply when a trustee of a trust (**trust A**) to which **subsection (1)(b)** applies makes a distribution to another trust (**trust B**) if— 35
  - (a) trust B is a trust described in **subparagraphs (i), (ii), or (iii) of subsection (1)(b)**; and

- (b) **subsection (1)(b)** would apply to trust B if, at the time the distribution is made, the creditor of trust A were a creditor of trust B, and the creditor had forgiven a debt owing by trust B.
- (3) A distribution to the beneficiary is income derived by the trustee— 5
- (a) in the income year in which the distribution is made; and
- (b) to the extent that the distribution is less than or equal to the total amount of debts forgiven by the creditor. 10
- (3A) If **subsection (3)** applies, the income derived by the trustee is not income for the purposes of the **beneficiary income** definition.
- (4) For the purposes of **subsection (3)**, the total amount of debts forgiven by the creditor is reduced by the amount of each distribution that is income derived by the trustee. 15
- (5) **Subsection (3)** applies to a distribution made on or after 20 May 1999.

Compare: 2004 No 35 s EZ 36

#### **EZ 40 Accrued income written off**

- (1) A deduction is allowed to a person for an amount written off by the person as a bad debt in respect of a financial arrangement where and to the extent that— 20
- (a) the person derives income in respect of the financial arrangement under any of **sections EZ 35, EZ 37(4), EZ 38, and EZ 42**; and 25
- (b) the amount written off is attributable to that income.
- (2) A deduction is allowed to a person for an amount written off by the person as a bad debt in respect of a financial arrangement (not being an amount allowed as a deduction under **subsection (1)**) where— 30
- (a) the person—
- (i) carries on a business which comprises holding or dealing in such financial arrangements; and
- (ii) is not associated with the person owing the amount written off; or 35
- (b) the financial arrangement is a trade credit and the person carries on a business of dealing in the goods or services for which the trade credit is a debt.

- (3) Where a person receives a security payment in relation to a loss and a deduction is denied to the person for the loss other than under this subsection, the person is allowed a deduction for the loss no greater than the amount of the security payment. 5
- (4) A deduction for bad debts is allowed under this section only where the requirements of **section DB 32(1) and (5)** have been met.
- (5) A deduction for a share loss (within the meaning of **section DB 25**) is allowed under **subsection (3)** only where the requirements of **section DB 25** have been met. 10

Compare: 2004 No 35 s EZ 37

#### **EZ 41 Sale of debt to associate of debtor**

- (1) This section applies to a financial arrangement that is a debt which is sold at a discount to a person associated with the debtor on or after 20 May 1999. 15
- (2) A creditor is treated as having sold a debt at a discount if the debt is sold to a person associated under the 1988 version provisions with the debtor for 80% or less of the market value of the debt.
- (3) **Subsection (4)** applies to a debt that is sold if its market value was influenced by— 20
- (a) the decline in the original debtor's creditworthiness between the date the debt was entered into and the date of sale; or
  - (b) an increase in the possibility that the original debtor would not pay an amount owing under the debt between the date the debt was entered into and the date of sale; or 25
  - (c) an event that occurred which reduced or cancelled the original debtor's obligations under the debt.
- (4) For the purposes of **subsection (2)**, a debt's market value is determined as if its market value were not influenced by a factor listed in **subsection (3)(a) to (c)**. 30
- (5) If a debt is sold at a discount to a person associated with the debtor, the associated person is treated as having provided the debtor with an interest free loan for the amount paid for the debt. 35
- (6) If the debtor subsequently repays the person associated with the debtor more than the amount the associated person paid for the debt, the excess amount paid by the debtor is—

- (a) a deduction to the debtor; and
- (b) income of the person associated with the debtor.

Compare: 2004 No 35 s EZ 38

#### **EZ 42 Post facto adjustment**

- (1) A financial arrangement is subject to the provisions of this section where— 5
  - (a) any of the amount or amounts payable under the financial arrangement are determined in the terms of the financial arrangement, as to whole or part, at the discretion of either the issuer or the holder, or both of them, or at the discretion of any other person where either the issuer or the holder and the other person are associated persons; and 10
  - (b) the change in the amount or amounts payable under the financial arrangement upon the exercise of a discretion as provided for in **paragraph (a)** does not reflect changes in economic, commodity, industrial, or financial indices or banking or general commercial rates; and 15
  - (c) the making of such financial arrangements is not generally accepted commercial practice; and 20
  - (d) the effect of the arrangement is to defeat the intent and application of the old financial arrangements rules.
- (2) Where a financial arrangement is subject to the provisions of this section, both the holder and the issuer of the financial arrangement are required to calculate a post facto adjustment in respect of the following income years: 25
  - (a) the income year in which the person ceases to be a holder or an issuer, as the case may be, in respect of the financial arrangement; and
  - (b) where the person has not ceased to be a holder or an issuer of the financial arrangement at the end of the fifth income year following the income year of its issue or acquisition by the person, in that fifth income year; and 30
  - (c) until the person ceases to be an issuer or a holder in respect of the financial arrangement, in every fifth income year succeeding the income year in which the post facto adjustment was last required to be made under this section. 35
- (3) In order to calculate the post facto adjustment, a person must,— 40

- (a) having regard to all amounts specified in **section EZ 35(1)** which have been paid or are payable, in respect of the financial arrangement, since acquisition or issue of the financial arrangement by the person to the end of the income year in which the post facto adjustment applies, calculate amounts of income or expenditure under the arrangement for each income year using the yield to maturity method as prescribed in a determination made by the Commissioner for the purposes of **section EZ 35(2)**: provided that where the post facto adjustment is made at a time determined by **subsection (2)(b) or (c)**, the person is, for the purpose of the post facto adjustment calculation, deemed to have transferred the financial arrangement for an amount equal to its market value on the last day of the income year; and
- (b) recalculate the income tax liability for each income year using the amounts of income or expenditure calculated under **paragraph (a)** in substitution for the amounts of income or expenditure previously calculated in respect of the financial arrangement for each income year.
- (4) Where a person has been required to calculate the post facto adjustment, the person is required to make a special return in respect of the post facto adjustment in the form required by the Commissioner, no later than the time at which that person is required to file an annual return for the income year in which the post facto adjustment is made.
- (5) Despite the time bar, the Commissioner must amend the person's assessment for the income years to which the post facto adjustment relates in accordance with the alterations to that income or expenditure as calculated by the post facto adjustment.

Compare: 2004 No 35 s EZ 39

### **EZ 43 Variable principal debt instruments**

For the purposes of the old financial arrangements rules, where a person is a party to a variable principal debt instrument on the implementation date, the person is deemed to have acquired or, as the case may be, issued it on that day for a consideration equal to the amount of money that would be payable to the holder on that day if the amount or amounts



payable under the financial arrangement were due and payable on that day.

Compare: 2004 No 35 s EZ 40

#### **EZ 44 Relationship with rest of Act**

- (1) Notwithstanding any other provision in this Act, income or expenditure in an income year in respect of a financial arrangement under the old financial arrangements rules is calculated under those rules. 5
- (1A) Expenditure incurred under the old financial arrangements rules is not included in— 10
- (a) the cost of trading stock, for small taxpayers:
  - (b) the cost of revenue account property:
  - (c) the cost of livestock:
  - (d) the cost of bloodstock:
  - (e) the cost of acquiring a film or a film right: 15
  - (f) film production expenditure:
  - (g) the cost of timber:
  - (h) petroleum exploration expenditure or petroleum development expenditure.
- (2) Where— 20
- (a) property is transferred under a financial arrangement; and
  - (b) the property or the consideration given for the property is relevant under any provision of this Act other than the old financial arrangements rules for the purpose of determining any amount of income or deduction of a person,— 25
- the property is treated for the purpose of that provision as having been transferred under the financial arrangement for an amount equal to the acquisition price of the property. 30

Compare: 2004 No 35 s EZ 41

#### **EZ 45 Application of old financial arrangements rules**

The old financial arrangements rules do not apply—

- (a) in relation to a person and a financial arrangement, where the financial arrangement was issued or acquired by the person before the implementation date for the financial arrangement; or 35
- (b) in relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a

- holder, of the financial arrangement is under a binding contract in existence before the implementation date in relation to that financial arrangement:  
 provided that this paragraph does not apply in relation to a rollover, extension, or advance provided for before the implementation date in relation to the financial arrangement where the rollover, extension, or advance occurs on or after 1 April 1990; or
- (c) in relation to a person and a financial arrangement, where the person acquired the financial arrangement in accordance with a relationship agreement and the transferor, in relation to the financial arrangement, was a person to whom **paragraph (a) or (b)** applied; or
- (d) in relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is under and in terms of a rollover, extension, or advance provided for before the implementation date in relation to the financial arrangement and the rollover, extension, or advance occurs before 1 April 1990; or
- (e) to the determination of—
- (i) income of or expenditure incurred by a person not resident in New Zealand in relation to a financial arrangement where and to the extent that the financial arrangement does not relate to a business carried on by that person through a fixed establishment in New Zealand; or
- (ii) non-resident passive income; or
- (f) in relation to a financial arrangement to the extent that the income or expenditure incurred by a person in respect of the financial arrangement consists of interest payable to or by the Commissioner under Part 7 of the Tax Administration Act 1994, being interest payable in relation to the income tax liability of the taxpayer in respect of the 1994–95 income year or any subsequent income year.

Compare: 2004 No 35 s EZ 42

#### **EZ 46 Election to treat short term trade credit as financial arrangement**

- (1) For the purposes of the old financial arrangements rules, a taxpayer may elect by notice given in accordance with **subsection (2)** to treat short term trade credits specified in **subsection (4)** as financial arrangements. 5
- (2) Notice of an election under **subsection (1)** in relation to an income year must be given to the Commissioner within the time within which a vendor or a purchaser is required under section 37 of the Tax Administration Act 1994 to furnish a return of income for the income year to which the election is to apply. 10
- (3) An election by the taxpayer under **subsection (1)** may be revoked by notice given to the Commissioner during any income year and the revocation applies only to short term trade credits created on or after the commencement of the subsequent income year. 15
- (4) An election under **subsection (1)** may be made in respect of—
  - (a) all short term trade credits of the taxpayer; or
  - (b) 1 or more classes of short term trade credits of the taxpayer that the taxpayer defines by reference either—
    - (i) to the particular currency in which the short term trade credit is denominated; or
    - (ii) to the term of the short term trade credit; or
    - (iii) to both the term and the particular currency in which the short term trade credit is denominated. 25

Compare: 2004 No 35 s EZ 43

#### **EZ 47 Election to continue to treat certain excepted financial arrangements as financial arrangements**

- (1) A person may elect to continue to treat all excepted financial arrangements under any of **paragraphs (p), (q), (r), (s), (t), (u), and (v)** of the definition of **excepted financial arrangement** as financial arrangements if the person is a holder or an issuer of an arrangement that was entered into on or after the person's last balance date and before 20 May 1999. 30
- (2) A person elects to treat their excepted financial arrangements as financial arrangements by returning income derived and expenditure incurred from the elected arrangements under the old financial arrangements rules in their return of income. 35

- (3) A financial arrangement that is an excepted financial arrangement under any of **paragraphs (p), (q), (r), (s), (t), (u), and (v)** of the definition of **excepted financial arrangement** is not an excepted financial arrangement for the holder or issuer who elects to treat it as a financial arrangement under **subsection (1)**. 5

Compare: 2004 No 35 s EZ 44

### **EZ 48 Definitions**

For the purposes of the old financial arrangements rules, each of the following terms has the meaning given to it, despite any other meaning given to the term in **section YA 1** (Definitions) for any other purpose and unless the context otherwise requires: 10

**acquisition price,—**

- (a) in relation to a financial arrangement and a holder of the financial arrangement, means an amount calculated in accordance with the following formula: 15

$$y - z$$

where—

y is the core acquisition price of the financial arrangement

z is the smaller of— 20

- (i) the amount of consideration provided in relation to the financial arrangement by the holder that is not contingent on the implementation of the financial arrangement; and 25

- (ii) an amount equal to 2% of the core acquisition price of the financial arrangement; and

- (b) in relation to a financial arrangement and an issuer of the financial arrangement, means an amount calculated in accordance with the following formula: 30

$$y + z$$

where—

y is the core acquisition price of the financial arrangement 35

z is the smaller of—

- (i) the amount of consideration provided in relation to the financial arrangement by the issuer that is not contingent on the implementation of the financial arrangement; and 5
- (ii) an amount equal to 2% of the core acquisition price of the financial arrangement
- agreement for the sale and purchase of property**, in relation to a person, means a financial arrangement that is an agreement (whether conditional or unconditional) entered into by the person to purchase or otherwise acquire or sell or otherwise dispose of property; but does not include an option, a specified option, or a futures contract 10
- amount of all consideration**, in the definition of **core acquisition price**, in relation to a person and to an agreement for the sale and purchase of property or a specified option, where all or part of the consideration provided to the holder is property, means the aggregate of the amount calculated in respect of that property in the manner provided in **subparagraph (i) or (ii)** of item “w” in **paragraph (c)** of the definition of **core acquisition price** and any consideration provided to the holder in relation to the financial arrangement, other than the property provided to the holder 15
- core acquisition price**, in relation to a financial arrangement, means,— 25
- (a) where **section EZ 50** applies, the amount determined under that section; and
- (b) where the financial arrangement is a trade credit, an amount calculated in accordance with the following formula: 30
- $$u + v$$
- where—
- u is—
- (i) the cash price of the goods or services to which the trade credit relates (referred to in this item and item “v” as the **specified goods or services**), as determined by section 5 of the Credit Contracts and Consumer Finance Act 2003; or 35
- 40

- |       |   |         |
|-------|---|---------|
| (ii)  | if <b>subparagraph (i)</b> is not applicable, the lowest price at which the specified goods or services could be purchased under a short term trade credit; or  |         |
| (iii) | if <b>subparagraphs (i) and (ii)</b> are not applicable, the discounted value of the amounts payable for the specified goods or services, as determined under a determination made by the Commissioner under section 90(1)(h) of the Tax Administration Act 1994  | 5<br>10 |
| v     | is,—  |         |
| (i)   | in relation to a holder of the financial arrangement, the amount of all consideration provided by the holder in relation to the financial arrangement, other than the specified goods or services; or   | 15      |
| (ii)  | in relation to an issuer of the financial arrangement, the amount of all consideration provided to the issuer in relation to the financial arrangement, other than the specified goods or services; and   | 20      |
| (c)   | where the financial arrangement is an agreement for the sale and purchase of property (not being an agreement for the sale and purchase of property that has lapsed or otherwise does not proceed) or a specified option (not being a specified option that has lapsed or otherwise does not proceed), an amount calculated in accordance with the following formula: | 25      |
|       | $w + x$   | 30      |
|       | where—  |         |
| w     | is—   |         |

- (i) the lowest price (determined in accordance with section EZ 46, if the consideration payable under the relevant financial arrangement is denominated in a foreign currency) that the parties would have agreed upon for the property that is the subject of the agreement for the sale and purchase of property or the specified option (referred to in this item and item “x” as the **specified property**) at the time at which the agreement for the sale and purchase of property was entered into or the specified option was granted on the basis of payment in full at the time at which the first right in the specified property is to be transferred; or 5
- (ii) if **subparagraph (i)** is not applicable, the discounted value of the amounts payable for the specified property as determined under a determination made by the Commissioner under section 90(1)(h) of the Tax Administration Act 1994 10
- x is,— 15
- (i) in relation to the holder of the financial arrangement, the amount of all consideration provided by the holder in relation to the financial arrangement other than the specified property; or 25
- (ii) in relation to an issuer of the financial arrangement, the amount of all consideration provided to the issuer in relation to the financial arrangement other than the specified property; and 30
- (d) where the financial arrangement is a hire purchase agreement and the holder is the first holder in relation to the hire purchase agreement, either— 35
- (i) an amount calculated in accordance with the following formula:
- $$a + b + c$$
- where— 40
- a is,—

- |   |      |   |         |
|---|------|---|---------|
|   | (A)  | the cash price of the hire purchase asset (as <b>cash price</b> is defined in section 5 of the Credit Contracts and Consumer Finance Act 2003); or  |         |
|   | (B)  | if <b>subsubparagraph (A)</b> of this item is not applicable, the lowest price at which the hire purchase asset could be purchased under a short term trade credit at the time of commencement of the hire purchase agreement                           | 5<br>10 |
| b |      | is the amount of all expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use to the extent to which any such expenditure or loss is not taken into account in determining the amount of item “a”         | 15      |
| c |      | is—   |         |
|   | (A)  | in relation to the holder, the amount of all consideration provided by the holder in relation to the hire purchase agreement, other than the hire purchase asset and the expenditure or loss referred to in item “b”; or                                | 20      |
|   | (B)  | in relation to the issuer, the amount of all consideration provided to the issuer in relation to the hire purchase agreement, other than the hire purchase asset and the expenditure or loss referred to in item “b”; or                                | 25      |
|   | (ii) | if <b>subparagraph (i)</b> is not applicable, or if either the holder or the issuer in relation to the hire purchase agreement applies to the Commissioner for a specific determination, an amount calculated in accordance with the following formula: | 30      |
|   |      | $d + e$   |         |
|   |      | where—  | 35      |
|   | d    | is—   |         |



- 
- (A) the discounted value of all hire purchase payments payable under the hire purchase agreement, as determined under a determination made by the Commissioner under section 90(1)(i) of the Tax Administration Act 1994; or 5
- (B) where either the holder or the issuer in relation to the hire purchase agreement applies to the Commissioner for a specific determination, an amount determined by the Commissioner in relation to that application (and the amount so determined applies for both the holder and the issuer to the exclusion of any determination made in respect of that hire purchase agreement under **subsub-paragraph (A)** of this item) 10 15
- e is,—
- (A) in relation to the holder, the amount of all consideration provided by the holder in relation to the hire purchase agreement, other than the hire purchase asset and any expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use; or 20 25
- (B) in relation to the issuer, the amount of all consideration provided to the issuer in relation to the hire purchase agreement, other than the hire purchase asset and any expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use; and 30
- (e) where none of **paragraphs (a) to (d)** applies to a financial arrangement,—
- (i) in relation to a holder of the financial arrangement, the value of all consideration provided by the holder in relation to the financial arrangement; or 35
- (ii) in relation to an issuer of the financial arrangement, the value of all consideration provided to the issuer in relation to the financial arrangement 40

- excepted financial arrangement**, other than an arrangement listed in **paragraphs (p), (q), (r), (s), (t), (u), and (v)** that a taxpayer has treated as a financial arrangement in a return of income already filed, means any of the following arrangements:
- (a) an annuity for a term contingent upon human life or an annuity for a term not contingent on human life to which **section EY 8(2)(c)** applies: 5
  - (b) an insurance contract or membership of a superannuation scheme:
  - (c) a debenture to which **section FA 2** applies: 10
  - (d) a short term trade credit, unless the purchaser or vendor has elected in accordance with **section EZ 46** to treat the short term trade credit as a financial arrangement to which the old financial arrangements rules apply:
  - (e) a specified preference share to which **section FZ 1** of the Income Tax Act 2004 applies: 15
  - (f) in relation to a holder or an issuer, shares, other than withdrawable shares, or an option to buy shares, other than withdrawable shares, where those shares were or that option was acquired or issued by the person before 8.00 pm New Zealand Standard Time on 18 June 1987: 20
  - (g) in relation to a holder or an issuer, shares, other than withdrawable shares, or an option to acquire or to sell or otherwise dispose of shares, other than withdrawable shares, where those shares were or that option was acquired or issued by the person after 8.00 pm New Zealand Standard Time on 18 June 1987: 25
  - (h) a lease:
  - (i) a bet on any—
    - (i) race, as defined in section 5 of the Racing Act 2003; or 30
    - (ii) sporting event under a sports-betting system administered under Part 6 of the Racing Act 2003; or
    - (iii) gambling, including a New Zealand lottery, as those terms are defined in section 4(1) of the Gambling Act 2003: 35
  - (j) in relation to an issuer or a holder, an option to acquire or to sell or otherwise dispose of property (other than an interest in a financial arrangement) where the option was issued or acquired by the person after 8.00 pm New 40

	Zealand Standard Time on 18 June 1987 for private or domestic purposes only:	
(k)	a short term agreement for the sale and purchase of property:	
(l)	a short term option:	5
(m)	a private or domestic agreement for the sale and purchase of property:	
(n)	a farm-out arrangement:	
(o)	a hire purchase agreement, as defined in <b>section YA 1</b> , but including an agreement that would be a hire purchase agreement but for the exclusion in <b>paragraph (g)</b> of the definition of that term, entered into before 1 April 1993, or any assignment of such an agreement:	10
(p)	a loan that is interest free, repayable on demand, and denominated in New Zealand dollars, for the lender of the loan only:	15
(q)	an employment contract:	
(r)	an interest in a group investment fund:	
(s)	an interest in a partnership or a joint venture:	
(t)	travellers' cheques:	20
(u)	a warranty for goods or services:	
(v)	a hire purchase agreement for livestock or bloodstock entered into on or after 1 April 1993	
	<b>financial arrangement</b> means—	
(a)	any debt or debt instrument; and	25
(b)	any arrangement (whether or not such arrangement includes an arrangement that is a debt or debt instrument, or an excepted financial arrangement) whereby a person obtains money in consideration for a promise by any person to provide money to any person at some future time or times, or upon the occurrence or non-occurrence of some future event or events (including the giving of, or failure to give, notice); and	30
(c)	any arrangement which is of a substantially similar nature (including, without restricting the generality of the preceding provisions of this subparagraph, sell-back and buy-back arrangements, debt defeasances, and assignments of income);—	35
	but does not include any excepted financial arrangement that is not part of a financial arrangement	40

- fixed principal financial arrangement** means any financial arrangement other than a variable principal debt instrument
- forward contract**, in the definitions of **holder** and **implementation date**, includes, but is not limited to, a forward contract for— 5
- (a) foreign exchange:
  - (b) commodities:
  - (c) financial arrangements:
  - (d) excepted financial arrangements;—
- but does not include an agreement for the sale and purchase of property or a specified option 10
- holder**—
- (a) means,—
    - (i) in relation to—
      - (A) an agreement for the sale and purchase of property; or 15
      - (B) a forward contract or a futures contract,—
- a person who is a vendor in relation to the financial arrangement:
- (ii) in relation to an option to purchase or otherwise acquire property, a person who is a grantor of the option: 20
  - (iii) in relation to an option to sell or otherwise dispose of property, a person who is a grantee of the option: 25
  - (iv) in relation to a hire purchase agreement, the lessor:
  - (v) in relation to any other financial arrangement, a person who, if the amount or amounts payable under the financial arrangement were due and payable at that time, would be entitled to receive, or would receive a pecuniary benefit from, payment of the amount or amounts so payable or any part of them;— 30
- and **hold** has a corresponding meaning; and 35
- (b) is further defined in **section EZ 38(8)** for the purposes of that section
- implementation date** means,—
- (a) in the case of—
    - (i) forward or future contracts, including, but not limited to, contracts for— 40

- (A) foreign exchange:
  - (B) commodities:
  - (C) financial arrangements:
  - (D) excepted financial arrangements; and
  - (ii) futures contracts; and 5
  - (iii) trade credits; and
  - (iv) annuities; and
  - (v) agreements for the sale and purchase of property; and
  - (vi) convertible notes,— 10
  - 8.00 pm New Zealand Standard Time on 23 October 1986; and
  - (b) in the case of debt defeasances and assignments of income, 20 December 1986; and
  - (c) in the case of variable principal debt instruments, 15  
1 April 1987; and
  - (d) in the case of a financial arrangement under which—
    - (i) the monetary obligations of the parties are expressed in New Zealand currency; and
    - (ii) it is contemplated that the holder may, upon demand or call, require the return of sums advanced to the issuer; and 20
    - (iii) it is not contemplated that the holder may advance further sums to the issuer upon demand or call under the financial arrangement,— 25
  - 1 April 1987; and
  - (e) in every other case, 8.30 pm New Zealand Standard Time on 31 July 1986
- issuer**,—
- (a) in relation to a financial arrangement at any time, means a person who is a party to the financial arrangement and is not a holder in relation to the financial arrangement; and 30
  - (b) is further defined in **section EZ 38(8)** for the purposes of that section 35
- maturity**, in relation to a financial arrangement, means the date on which the last payment contingent upon the financial arrangement is made, and **matures** has a corresponding meaning:
- provided that where a financial arrangement has not matured and where the amount which has not been paid is immaterial 40

and the financial arrangement has been structured to avoid the application of **section EZ 38**, the financial arrangement is deemed to have matured

- money**, in **paragraph (b)** of the definition of **financial arrangement** and in the definition of **security payment**, includes money's worth, whether or not convertible into money, and the right to money, including the deferral or cancellation of any obligation to pay money whether in whole or in part 5
- private or domestic agreement for the sale and purchase of property**, in the definition of **excepted financial arrangement**, in relation to any person, means an agreement for the sale and purchase of property or a specified option where— 10
- (a) the agreement was entered into by that person or the specified option was granted to or by that person for private or domestic purposes; and 15
  - (b) the subject-matter of the agreement or specified option is—
    - (i) real property, the purchase price of which is less than \$750,000; or
    - (ii) any other property, the purchase price of which is less than \$250,000; and 20
  - (c) settlement is required to take place within 365 days after the day on which the agreement was entered into or the specified option granted 25
- property**,— 25
- (a) in the definition of **specified base cost for 1983 income year property** and in the life insurance rules, includes any real or personal property; and
  - (b) in **paragraph (a)** of the definition of **holder** and **paragraph (b)** of the definition of **lease** and in the definitions of **agreement for the sale and purchase of property**, **amount of all consideration**, **core acquisition price**, **excepted financial arrangement**, **private or domestic agreement for the sale and purchase of property**, **right in the specified property**, **short term agreement for the sale and purchase of property**, **short term option**, and **specified option**, means— 30
    - (i) any capital asset that is not foreign exchange or a financial arrangement; and 35
    - (ii) trading stock; and 40
    - (iii) consumable aids; and

- (iv) property to be purchased or otherwise acquired or sold or otherwise disposed of for private or domestic purposes only

**right in the specified property**, in the definition of **core acquisition price**, means— 5

- (a) the right to possession of the property; or  
 (b) the right to any income or the right to control or influence the disposition of income derived from the property; or  
 (c) the right, directly or indirectly, to exercise, or to influence any other person in the exercise of, any decision-making in respect of the property; or 10  
 (d) any other right of a substantially similar nature: provided that the mere right to enforce any agreement for the sale and purchase of property or any specified option does not 15  
 of itself constitute a right in the specified property

**secured arrangement**, in the definitions of **security arrangement** and **security payment**, means an arrangement against which the failure to perform is secured by a financial arrangement 20

**security arrangement**, in the definition of **security payment**, means a financial arrangement that secures the holder against failure of any person to perform their obligations under a secured arrangement

**security payment** means money received by the holder of a security arrangement to the extent that the money is received in relation to a loss incurred due to the failure of performance of the secured arrangement and the value of the money is income of the holder 25

**short term agreement for the sale and purchase of property** means an agreement for the sale and purchase of property where— 30

- (a) the property is real property and settlement is required to take place within 93 days of the day on which the agreement was entered into; or 35  
 (b) the property is not real property and settlement is required to take place within 63 days of the day on which the agreement was entered into

**short-term option**, in the definition of **excepted financial arrangement**, means a specified option where— 40

- (a) the subject-matter of the option is real property and settlement is required to take place within 93 days of the day on which the option was granted; or
- (b) the subject-matter of the option is not real property and settlement is required to take place within 63 days of the day on which the option was granted 5
- short term trade credit**, in the definitions of **core acquisition price**, **excepted financial arrangement**, and **trade credit**, means any debt for goods or services where payment is required by the vendor— 10
- (a) within 63 days after the supply of the goods or services; or
- (b) because the supply of the goods or services is continuous and the vendor renders periodic invoices for the goods or services, within 63 days after the date of an invoice rendered for those goods or services 15
- social assistance suspensory loan** is defined in **section EZ 38(8)(c)** for the purposes of that section
- specified option** means an option to purchase or otherwise acquire or sell or otherwise dispose of property, and the agreement for the sale and purchase of property, if any, entered into as a result of the exercise of the option is deemed to be part of the option 20
- trade credit**, in the definitions of **core acquisition price** and **implementation date**, means any debt for goods or services, but does not include a short term trade credit 25
- trading stock**, in **paragraph (b)** of the definition of **property**, means—
- (a) any thing acquired for the purposes of manufacture, sale, or exchange: 30
- (b) livestock:
- (c) any other real or personal property where the business of the person by whom it is sold or disposed of comprises dealing in such property or the property was acquired by the person for the purpose of sale or other disposal: 35
- (d) any land, any amount derived from the sale or other disposal of which would be income to which any of **sections CB 6 to CB 23** applies:



- (e) anything in respect of which expenditure is incurred and which, if possession were taken, would fall within any of **paragraphs (a) to (d)**;—

but does not include any financial arrangement

**variable principal debt instrument** means a bank deposit account or other financial arrangement where it is contemplated that the holder may— 5

- (a) advance further sums to the issuer; or  
 (b) where the rights and obligations of the person under the financial arrangement are expressed in a currency other than New Zealand currency, require the return of sums advanced to the issuer— 10

in either case upon demand or call, and where all such sums form part of that bank deposit account or other instrument.

Compare: 2004 No 35 s EZ 45 15

**EZ 49 Determination of core acquisition price where consideration for property denominated in foreign currency**

- (1) For the purposes of **paragraph (c)** of the definition of **core acquisition price** in **section EZ 48**, if the consideration payable under the relevant financial arrangement for the specified property is denominated in a foreign currency, the lowest price referred to in that paragraph must be the lowest price the parties would have agreed upon in that foreign currency converted into New Zealand dollars using, at the option of the taxpayer,— 20
- (a) the rate, on the day on which the financial arrangement was entered into (in this section referred to as the **contract date**), available to the taxpayer from a New Zealand registered bank for the exchange of New Zealand dollars for that foreign currency on the day on which the first right in the specified property is to be transferred (in this section referred to as the **rights date**); or 30
- (b) if the period between the rights date and the day on which final payment is to be made under the financial arrangement (in this section referred to as the **settlement date**) is not greater than 5 years, the rate, on the contract date, available to the taxpayer from a New Zealand registered bank for the exchange of New 35 40

- Zealand dollars for that foreign currency on the settlement date; or
- (c) an exchange rate approved by the Commissioner for adoption under this subsection in the circumstances applicable to the taxpayer in a determination issued under section 90(1)(k) of the Tax Administration Act 1994. 5
- (2) The rate adopted by a taxpayer in relation to a financial arrangement under **subsection (1)** must be consistently applied by that taxpayer in respect of that particular financial arrangement for the purposes of the old financial arrangements rules for every income year during its term. 10
- (3) If the terms of the financial arrangement referred to in **subsection (1)** are such that the actual rights date is uncertain as at the contract date, then the rights date is for the purposes of **subsection (1)** the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that the first right in the specified property will be transferred. 15
- (4) If the terms of the financial arrangement referred to in **subsection (1)** are such that the actual settlement date is uncertain as at the contract date, then the settlement date is for the purposes of **subsection (1)** the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that final payment will be made. 20 25

Compare: 2004 No 35 s EZ 46

### **EZ 50 Rules for non-market transactions**

- (1) Where the Commissioner, having regard to any connection between the parties to the issue or transfer of a financial arrangement and to any other relevant circumstances, is satisfied that the parties were dealing with each other in relation to the issue or transfer in a manner that has the effect of defeating the intent and application of the old financial arrangements rules, the Commissioner may, under **section EZ 35 or EZ 37 or EZ 38 or EZ 42**, deem the consideration for the issue or transfer to be equal to the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer. 30 35
- (2) If at any time a person not resident in New Zealand— 40

- (a) commences to hold, whether temporarily or otherwise, a financial arrangement, for the purposes of a business carried on through a fixed establishment in New Zealand, the person is deemed to have acquired the financial arrangement at that time; or 5
- (b) ceases to hold, whether temporarily or otherwise, a financial arrangement for the purposes of a business carried on through a fixed establishment in New Zealand, the person is deemed to have disposed of the financial arrangement at that time; or 10
- (c) being a holder or an issuer of a financial arrangement, becomes a New Zealand resident, the person is deemed to acquire or to issue the financial arrangement at the time at which the person becomes a New Zealand resident;— 15
- and that acquisition or that disposal is deemed to have been made for a consideration equal to the consideration that might reasonably be expected for the acquisition or disposal if the acquisition or disposal had been made at arm's length.
- (3) A financial arrangement is treated as having been sold and purchased or transferred and realised at its market value on the date of its sale or transfer if the sale or transfer, including a transfer by way of distribution to shareholders, is not for consideration in money or is for a consideration that is less than the market value of the financial arrangement. 20 25
- (5) The market value of a financial arrangement is the market value for both seller and purchaser or transferor and transferee.
- Compare: 2004 No 35 s EZ 47

### **EZ 51 Transitional adjustment when changing to financial arrangements rules** 30

- (1) A person may elect to apply the financial arrangements rules to a financial arrangement to which the old financial arrangements rules apply.
- (2) A person who makes an election must apply the financial arrangements rules to all financial arrangements to which the person is a holder or an issuer. 35
- (3) Despite **subsections (1) and (2)**, a person must apply **section EZ 38** if that section applies to a financial arrangement in the income year in which the election is made. 40

- (4) Once an election is made, the financial arrangement is subject to the financial arrangements rules and is treated in the same way as a financial arrangement that was entered into on or after 20 May 1999.
- (5) A person who makes an election must calculate a transitional adjustment for the income year of election and return the resulting income or expenditure. 5
- (6) The transitional adjustment is calculated using the formula—
- |  |    |
|--|----|
| income (financial arrangements rules)            | 10 |
| – expenditure (financial arrangements rules)     |    |
| – income (old financial arrangements rules)      |    |
| + expenditure (old financial arrangements rules) |    |
- where—
- income (financial arrangements rules)** is the total amount of income that would be derived by the person from the financial arrangement if the financial arrangements rules were applied to the financial arrangement for the period beginning on the date the person acquires the arrangement and ending on the last day of the income year in which this calculation is made 15
- expenditure (financial arrangements rules)** is the total amount of expenditure that would be incurred by the person under the financial arrangement if the financial arrangements rules were applied to the financial arrangement for the period beginning on the date the person acquires the arrangement and ending on the last day of the income year in which this calculation is made 20
- income (old financial arrangements rules)** is the total amount of income of the person from the financial arrangement in all income years before the income year in which this calculation is made 30
- expenditure (old financial arrangements rules)** is the total amount of expenditure incurred by the person under the financial arrangement in all income years before the income year in which this calculation is made. 35
- (7) The result of the transitional adjustment is,—
- |  |    |
|--|----|
| (a) if a positive amount, income derived by the person in the income year; and   |    |
| (b) if a negative amount, expenditure incurred by the person in the income year. | 40 |

- (8) In the income year in which the transitional adjustment is made to a financial arrangement, a person must take into account only the income derived or the expenditure incurred as a result of the adjustment for the financial arrangement.
- (9) Despite **subsections (2) to (8)**, a person is treated as transferring a financial arrangement at market value at the end of the income year of election and must calculate a base price adjustment under **section EZ 38** if—
- (a) the financial arrangement is an arrangement to which the old financial arrangements rules apply; and 10
  - (b) the financial arrangement were entered into on or after 20 May 1999 and would not have been subject to the financial arrangements rules; and
  - (c) the person elects to apply the financial arrangements rules to a financial arrangement to which the old financial arrangements rules apply. 15

Compare: 2004 No 35 s EZ 48

#### **EZ 52 References to new rules include old rules**

- (1) **Subsection (2)** applies if—
- (a) the old financial arrangement rules apply to a financial arrangement (**old financial arrangement**); and 20
  - (b) a taxation law in this Act (**rewritten law**) refers only to, or applies only to, a financial arrangement to which the financial arrangements rules apply; and
  - (c) the rewritten law is in neither **subpart EW** nor **sections EZ 33 to EZ 51**; and 25
  - (d) the rewritten law corresponds to and replaces, with or without amendments, a taxation law that applied to the old financial arrangement before 20 May 1999.
- (2) The rewritten law applies to the old financial arrangement as if the rewritten law referred to, or applied to, a financial arrangement to which the old financial arrangements rules apply. 30
- (3) **Subsection (2)** does not apply to—
- (a) a definition, or parts of a definition, in **section YA 1** if that definition or part refers to **section EZ 48**; or 35
  - (b) **section GB 21**, because the former taxation law to which it corresponds has been re-enacted as **section EZ 50**.
- (4) **Section FM 8(3)(b)(ii)** applies to a financial arrangement to which the old financial arrangements rules apply as if—
- (a) the reference to **section EW 31** were to **section EZ 38**; and 40

(b) the words “financial arrangements rules” read “old financial arrangements rules”.

Compare: 2004 No 35 s EZ 49

## Part F

### Recharacterisation of certain transactions

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

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### *Introductory provision*

#### **FA 1 What this subpart does**

This subpart alters the tax treatment of certain commercial arrangements by—

- (a) recharacterising either their nature or that of the amounts derived under the arrangements; and 5
- (b) providing rules for the treatment of the parties to the arrangement.

Defined in this Act: amount, arrangement, tax

### *Debentures and shares* 10

#### **FA 2 Recharacterisation of certain debentures**

##### *Treatment of debenture and interest*

- (1) A profit-related debenture or a substituting debenture is treated for tax purposes as a share described in **paragraph (b)** of the definition of **share** in **section YA 1** (Definitions), and the interest payable under the debenture is treated as a dividend. 15

##### *No deduction*

- (2) A company issuing either a profit-related debenture or a substituting debenture is denied a deduction under **section DB 11** (Profit-related or substituting debentures) for— 20
  - (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. 25

##### *When interest fixed to certain rates or indices*

- (3) **Subsection (2)** does not apply to a profit-related debenture if the rate of interest payable under it is determined by a fixed relationship to— 30
  - (a) banking rates; or
  - (b) general commercial rates; or
  - (c) economic, commodity, industrial, or financial indices, but the application of this paragraph is subject to **section FZ 1(3)** (Treatment of interest payable under debentures issued before a certain date). 35



*Profit-related debenture*

- (4) In this section, a **profit-related debenture** means a debenture with a rate of interest that is set from time to time by reference to—
- (a) the dividend payable by the company issuing the debenture; or 5
  - (b) the profits of the company issuing the debenture, however measured.

*Substituting debenture*

- (5) In this section, a **substituting debenture**— 10
- (a) means a debenture issued by a company to a shareholder or class of shareholder of the company when the amount of the debenture is determined by reference to 1 or more of the following aspects of the shares in the company held by the shareholder or class of shareholder at the time the debenture is issued or at an earlier time: 15
    - (i) the number of shares:
    - (ii) the available subscribed capital of the company calculated under the slice rule set out in **section CD 23** (Ordering rule and slice rule): 20
    - (iii) some other reference to the shares:
  - (b) does not include a debenture that is a convertible note.

*Shares or available subscribed capital in another company*

- (6) A debenture is also a substituting debenture if it is issued to a shareholder or a class of shareholder and the amount of the debenture is determined by reference to 1 or more aspects of the shares as described in **subsection (5)** held by the shareholder in a company other than that issuing the debenture, whether or not the company is being, or has been, liquidated. 30

*Amount of debenture*

- (7) For the purposes of **subsections (5) and (6)**, the amount of the debenture means the principal sum secured by or owing under the debenture.

*Terminating provisions*

- (8) For the treatment of debentures issued before 8pm New Zealand standard time on 23 October 1986, see **section FZ 1**. 35

*Relationship with agency rules*

- (9) **Section HD 14** (Companies issuing debentures) does not apply to a profit-related debenture described in this section, or to an amount paid or payable under it.

Defined in this Act: amount, available subscribed capital, company, convertible note, debenture holder, debentures, deduction, dividend, interest, issue, liquidation, loss, money, pay, profit-related debenture, share, shareholder, slice rule, substituting debenture, tax

5

Compare: 2004 No 35 ss FC 1, FC 2

**FA 3 Recharacterisation of certain dividends: recovery of cost of shares held on revenue account** 10

*When this section applies*

- (1) This section applies to the amount of a dividend derived from shares that are revenue account property of a person when—
- (a) the payment of the dividend realises or recovers the price the person paid for the shares; and
  - (b) the payment is made at the person's control or direction, or is part of a scheme that includes the acquisition of the shares and the payment of the dividend.

15

*Treatment of amount derived*

- (2) The dividend is treated as an amount derived on a sale of the shares, but only to the extent to which the sum of the dividend and the actual amount realised by the person on the disposal of the shares is no more than the cost to the person of acquiring the shares.

20

25

*Dividend*

- (3) Despite **subsection (2)**, a dividend taken into account under this section remains a dividend derived by the person in the income year.

Defined in this Act: amount, consideration, control, dividend, income year, pay, revenue account property, share

30

Compare: 2004 No 35 s FC 3

**FA 4 Recharacterisation of shareholder's base: company repurchasing share**

*When this section applies*

- (1) This section applies to a shareholder in a company in relation to an off-market cancellation of shares by the company under

35

**section CD 22** (Returns of capital: off-market share cancellations) when—

- (a) the shareholder holds the share as revenue account property; and
- (b) after the cancellation, they continue to hold some shares of the same class. 5

*When whole amount treated as dividend*

- (2) If the whole of the amount that the shareholder receives for the cancellation is treated as a dividend, the following paragraphs apply: 10
  - (a) the shareholder is not regarded as having disposed of the cancelled share, except for the purpose of determining whether they have derived a dividend; and
  - (b) the amount is added to the cost of the shareholder's remaining shares of the same class under **subsection (6)**. 15

*Below market value of shares*

- (3) If **subsection (2)** does not apply, and the amount paid by the company is less than the market value of the shares at the time when notice is first given of the cancellation either by the shareholder or the company, the following paragraphs apply: 20
  - (a) an amount calculated using the formula in **subsection (4)** is added to the cost of the shareholder's remaining shares of the same class under **subsection (6)**; and
  - (b) the amount is excluded from the cost of the share being cancelled so that the shareholder is denied a deduction under **section DB 26** (Cancellation of shares held as revenue account property) for the amount unless the share is trading stock of the shareholder; and 25
  - (c) **sections GC 1 and GC 2** (which relate to the disposal of trading stock for inadequate consideration) does not apply. 30

*Formula*

- (4) The formula referred to in **subsection (3)(a)** is—
 
$$\text{share cost} - (\text{cost pre-cancellation} \times \frac{\text{amount from cancellation}}{\text{market value}})$$
 35

*Definition of items in formula*

- (5) In the formula,—

- (a) **share cost** is the cost of the cancelled share to the shareholder:
- (b) **cost pre-cancellation** is the total cost to the shareholder of all their shares of the same class immediately before the cancellation: 5
- (c) **amount from cancellation** is the amount derived by the shareholder from the company for the cancellation:
- (d) **market value** is the total market value of all the shareholder's shares of the same class immediately before the cancellation. 10
- When subsection (7) applies*
- (6) **Subsection (7)** applies at a time after the cancellation when the cost of the remaining shares is taken into account under **subpart EB** (Valuation of trading stock (including dealers' livestock)), or otherwise. 15
- Adding amount to cost of shares*
- (7) The amount referred to in **subsection (2)(b) or (3)(a)** must be fairly divided among, and added to, the cost of the shareholder's remaining shares of the same class. 20
- Defined in this Act: amount, cancellation, company, consideration, deduction, dividend, market value, notice, off-market cancellation, revenue account property, share, shareholder, shares of the same class, trading stock
- Compare: 2004 No 35 s FC 4

### *Leases*

- FA 5 Assets acquired and disposed of after deduction of payments under lease** 25
- When this section applies*
- (1) This section applies when a person (the **lessee**)—
- (a) leases, rents, or hires an asset that is— 30
- (i) plant, machinery, or other equipment; or
- (ii) a motor vehicle; or
- (iii) a temporary building; and
- (b) is allowed a deduction for the rental payments; and
- (c) acquires the asset and later disposes of it; and
- (d) the consideration derived on the disposal is not income of the lessee under a provision of this Act other than this section. 35

*Income*

- (2) If the consideration derived by the lessee for the asset is more than the cost of its acquisition, the excess is income of the lessee under **section CG 7** (Recoveries after deduction of payments under lease). **Subsection (3)** overrides this subsection. 5

*Adjustment to income*

- (3) If the total amount of the deductions referred to in **subsection (1)(b)** is less than or equal to the excess, the amount of income under **subsection (2)** is the total amount of the deductions.

*Apportionment*

- (4) If the asset is disposed of together with other assets, the total consideration must be apportioned to reflect the respective market values of the assets. 10

*Disposal below market value*

- (5) If the asset is disposed of without consideration or for a consideration that is less than market value at the date of disposal, the asset is treated as having been disposed of at its market value. 15

*Associated persons acquiring asset*

- (6) **Subsection (2)** also applies if a person associated with the lessee acquires the asset, whether from the lessee or not, and disposes of it for an amount that is more than the amount paid to acquire it. Association is determined at the time of acquisition by the associated person. The lesser of the excess and the total amount of the lessee's deductions is treated income of the lessee. 20  
25

*Transfers on settlement of relationship property*

- (7) In this section,—  
(a) **subsection (1)(c)** does not apply to an acquisition on a settlement of relationship property: 30  
(b) **subsection (5)** does not apply to a disposal on a settlement of relationship property.

Defined in this Act: amount, associated person, consideration, deduction, income, market value, motor vehicle, pay, settlement of relationship property, tax year, temporary building 35

Compare: 2004 No 35 s FC 5(1), (3)

*Finance leases***FA 6 Recharacterisation of amounts derived under finance leases**

When a personal property lease asset is leased under a finance lease, the lease is treated as a sale of the lease asset by the lessor to the lessee on the date on which the term of the lease starts, and— 5

- (a) the lessor is treated as giving a loan to the lessee for the lease asset; and
- (b) the lessee is treated as using the loan to buy the lease asset; and 10
- (c) **subpart EE** (Depreciation), the financial arrangements rules, and the other provisions of this Act apply to the arrangement as recharacterised.

Defined in this Act: amount, finance lease, financial arrangements rules, lessee, lessor, personal property lease asset 15

Compare: 2004 No 35 ss FC 8A(1), FC 8F, FC 8G

**FA 7 Determining amount of loan***Value to lessor*

- (1) For a lessor under a finance lease, the amount of the loan is determined under **section EW 32** (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease). 20

*Value to lessee*

- (2) For a lessee under a finance lease, the amount of the loan is determined under **sections EW 32 and EW 33** (which relate to the value of consideration under the financial arrangements rules). 25

Defined in this Act: amount, consideration, finance lease, financial arrangements rules, lease, lessee, lessor 30

Compare: 2004 No 35 ss FC 8A(2), (3), OB 1 “consideration”, “lessee’s acquisition cost”, “lessor’s disposition value”

**FA 8 Deductibility of expenditure under finance lease***Lessee treated as owner*

- (1) The lessee under a finance lease is treated as the owner of the personal property lease asset for the purposes of **subpart EE** (Depreciation). 35

*Lessor treated as not owner*

- (2) The lessor under a finance lease is not treated as the owner of the personal property lease asset for the purposes of **subpart EE**.

Defined in this Act: finance lease, lessee, lessor, personal property lease asset

Compare: 2004 No 35 s FC 8B(1)

5

**FA 9 Treatment when lease ends: lessee acquiring asset***Acquisition treated as sale*

- (1) When a lessee under a finance lease acquires the personal property lease asset by the date on which the term of the lease ends, the acquisition is treated as the same sale that is treated as occurring under **section FA 6**.

10

*When lessee or associated person acquires lease asset and later disposes of it*

- (2) If a lessee under a finance lease, or a person associated with them, acquires the lease asset and later disposes of it for an amount that is more than the consideration they paid for it, the excess is income of the lessee under **section CC 11** (Lessee acquiring lease asset on expiry of term of lease).

15

*Allocation and association*

- (3) For the purposes of **subsection (2)**,—
- (a) the excess is income of the lessee in the income year in which the lessee or associated person disposes of the asset:
- (b) association is determined at the time of acquisition by the associated person.

20

25

*Exception*

- (4) **Subsection (2)** does not apply if the consideration derived on the disposal is income of the lessee or an associated person under a provision of this Act other than this section.

Defined in this Act: amount, associated person, consideration, finance lease, income, income year, lease, lessee, personal property lease asset, term of the lease

30

Compare: 2004 No 35 ss FC 8B(2), FC 8E

**FA 10 Treatment when lease ends: lessor acquiring asset***When this section applies*

- (1) This section applies when a finance lease ends by the date on which its term ends.

*Acquisition by lessor at end of lease*

5

- (2) If the lessee does not acquire the personal property lease asset by the date on which the term of the lease ends, the lessor is treated as having acquired it on that date at its guaranteed residual value. If there is no guaranteed residual value, the consideration is treated as zero. In this section, the consideration is called the **notional value**. 10

*Further sale, assignment, or lease*

- (3) **Subsections (4) and (5)** apply when the lessor sells, assigns, or leases the lease asset to another person under another finance lease on or after date on which the term of the original lease ends. 15

*When consideration more than notional value*

- (4) If the consideration is more than the notional value,—  
 (a) to the extent to which it is paid by the lessor to the lessee under the original finance lease, the notional value is increased by the amount of the difference; and 20  
 (b) to the extent to which it is not paid by the lessor to the lessee under the original finance lease, the amount of the difference is income of the lessor under **section CC 12** (Lessor acquiring lease asset on expiry of term of lease) 25  
 in the income year in which the original lease term ends.

*When consideration less than notional value*

- (5) If the consideration is less than the notional value, and the lessee is required to pay the amount of the deficit to the lessor, the notional value is reduced by that amount. 30

*Acquisition by lessor when lease ends early*

- (6) If the lease is terminated before the end of its term and the lessee does not acquire the lease asset, the lessor is treated as acquiring it for an amount calculated using the formula— 35  
 outstanding balance – release payment.



*Definition of items in formula*

- (7) In the formula,—
- (a) **outstanding balance** is the amount of the outstanding balance of the loan on the date on which the lease is terminated: 5
- (b) **release payment** is the amount the lessee paid to be released from their obligations under the lease.

*Relationship with section EE 47*

- (8) **Subsections (2) to (6)** override **section EE 47** (Consideration for purposes of section EE 46). 10

Defined in this Act: amount, consideration, finance lease, guaranteed residual value, income, income year, lease, lessee, lessor, notional value, outstanding balance, pay, personal property lease asset, term of the lease

Compare: 2004 No 35 ss FC 8B(3), FC 8C, FC 8D

**FA 11 Consecutive or successive finance leases** 15*When this section applies*

- (1) This section applies for the purposes of **sections FA 6 to FA 10** if—
- (a) the lease is a consecutive or a successive lease that, under the definition of **lease**, is treated as part of the original lease because the same personal property lease asset is leased to the same lessee; and 20
- (b) the total lease runs for more than 75% of the lease asset's estimated useful life, although the lessor and lessee did not contemplate at the start of the term of the original lease that it would. 25

*Adjustment required*

- (2) The lessor and lessee must each adjust their income and expenditure calculated for the lease, and include the adjustment in a return of income for the income year in which the adjustment is made. 30

*Amount of adjustment*

- (3) The amount of the adjustment is calculated in relation to the period described in **subsection (5)** using the formula— 35
- $$\begin{aligned} & \text{finance lease income} - \text{finance lease expenditure} \\ & - \text{operating lease income} + \text{operating lease expenditure.} \end{aligned}$$

*Definition of items in formula*

- (4) In the formula,—
- (a) **finance lease income** is the income that would have been derived under the lease if the lease were a finance lease: 5
  - (b) **finance lease expenditure** is the expenditure that would have been incurred under the lease if the lease were a finance lease:
  - (c) **operating lease income** is the income derived under the lease as if the lease were an operating lease: 10
  - (d) **operating lease expenditure** is the sum of deductions allowed if the lease were an operating lease.

*Adjustment period*

- (5) The period starts on the date on which the lease starts and ends on the last day of the income year in which the lease becomes a finance lease. 15

*Adjustment positive*

- (6) If the adjustment is positive, the amount is income of the lessor or the lessee under **section CH 6** (Adjustments under consecutive or successive finance leases). 20

*Adjustment negative*

- (7) If the adjustment is negative, the amount is expenditure incurred by the lessor or the lessee in the income year in which the adjustment is made. 25
- Defined in this Act: amount, associated person, deduction, estimated useful life, finance lease, income, income year, lease, lessee, lessor, operating lease, personal property lease asset, return of income, term of the lease

Compare: 2004 No 35 ss FC 8H, FC 8I

***Hire purchase agreements***

- FA 12 Recharacterisation of amounts derived under hire purchase agreements** 30
- When a person (the **seller**) provides personal property other than livestock or bloodstock to another person (the **buyer**) under a hire purchase agreement, the agreement is treated as a sale by the seller to the buyer on the date on which the term of the agreement starts, and— 35

- (a) the seller is treated as giving a loan to the buyer for the property; and
- (b) the buyer is treated as using the loan to buy the property; and
- (c) **subpart EE** (Depreciation), the financial arrangements rules, and the other provisions of this Act apply to the arrangement as recharacterised. 5

Defined in this Act: amount, bloodstock, financial arrangements rules, hire purchase agreement, livestock, personal property

Compare: 2004 No 35 ss FC 9, FC 10 10

### **FA 13 Agreements recharacterised as sale with finance provided**

#### *Value to seller*

- (1) For a seller under a hire purchase agreement, the amount of the loan is determined under **section EW 32** (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease). 15

#### *Value to buyer*

- (2) For a buyer under a hire purchase agreement, the amount to the buyer is determined under **sections EW 32 and EW 33** (which relate to the value of consideration under the financial arrangements rules). 20

Defined in this Act: amount, consideration, financial arrangements rules, hire purchase agreement

Compare: 2004 No 35 ss FC 10(1)(a), OB 1 “consideration”, “lessee’s acquisition cost”, “lessor’s disposition value” 25

### **FA 14 Deductibility of expenditure or loss under hire purchase agreement**

#### *Buyer treated as owner*

- (1) The buyer in **section FA 12** is treated as the owner of the property for the purposes of **subpart EE** (Depreciation). 30

#### *Seller treated as not owner*

- (2) The seller in **section FA 12** is not treated as the owner of the property for the purposes of **subpart EE**.

*Discounted or bad debts*

- (3) **Subsection (4)** applies if the seller takes an amount calculated under **section FA 15** into account as the cost of trading stock or in the calculation of their net income for an income year.

*No deduction for seller*

5

- (4) The seller is denied a deduction under **section DB 15 or DB 32** (which relate to debts sold at a discount and bad debts) for an amount owing under the hire purchase agreement.

Defined in this Act: amount, deduction, hire purchase agreement, income year, net income, property, trading stock

10

Compare: 2004 No 35 s FC 10(1)(c), (5)(c)

### **FA 15 Treatment when agreement ends: seller acquiring property**

*When this section applies*

- (1) This section applies, subject to **sections FA 16 and FA 17**, when— 15
- (a) a hire purchase agreement described in **section FA 12** ends by the date on which its term ends or after that date; and
  - (b) the buyer does not acquire ownership of the property; and
  - (c) a person associated with the buyer does not acquire ownership of the property. 20

*Sale of property*

- (2) The seller is treated as buying the property from the buyer for an amount equal to the outstanding balance calculated under **subsection (3)**, and the buyer is treated as selling the property to the seller for that amount. The date of the sale is the date the agreement ends. 25

*Outstanding balance*

- (3) The outstanding balance is the amount calculated using the formula— 30
- $$\begin{aligned} &\text{net balance due on termination} \\ &\quad - \text{buyer's termination payment} \\ &\quad + \text{seller's termination payment.} \end{aligned}$$

*Definition of items in formula*

- (4) In the formula,— 35

- (a) **net balance due on termination** is the net balance due under the hire purchase agreement on the date the agreement ends less any costs and expenses referred to in section 31(2)(c) and (d) of the Credit (Repossession) Act 1997: 5
- (b) **buyer's termination payment** is the sum of the following amounts, as applicable:
- (i) an amount paid by the buyer, or an associated person, to the seller, or an associated person, under the agreement; and 10
  - (ii) an amount paid as a consequence of the ending of the agreement; and
  - (iii) an amount required to be taken into account by the buyer under the base price adjustment in **section EW 31** (Base price adjustment formula) or in item "a" of the formula in **section EZ 38(1)** (Income and expenditure where financial arrangement redeemed or disposed of): 15
- (c) **seller's termination payment** is the sum of the following amounts, as applicable: 20
- (i) an amount paid by the seller, or an associated person, to the buyer, or an associated person, under the agreement; and
  - (ii) an amount paid as a consequence of the ending of the agreement; and 25
  - (iii) an amount required to be taken into account by the buyer under the base price adjustment in **section EW 31** or by the seller in item "b" or "c" of the formula in **section EZ 38(1) or (2)**.
- Base price adjustment* 30
- (5) For the purposes of **section EW 31**, the outstanding balance is taken into account as the consideration paid by the buyer to the seller under the hire purchase agreement.
- Defined in this Act: amount, associated person, consideration, hire purchase agreement, outstanding balance, property 35
- Compare: 2004 No 35 ss FC 10(2), (5)(a), OB 1 "lessee's outstanding balance", "lessor's outstanding balance" "net balance due"

### FA 16 Treatment when agreement ends: when seller is cash basis person

*When this section applies*

- (1) This section applies for the purposes of **section FA 15** when the seller is a cash basis person. 5

*Reduction*

- (2) The amount treated as the seller's purchase price in **section FA 15(2)** is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula— 10
- $$\text{accrual income} - \text{income.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **accrual income** is the amount of income that would have been derived under 1 of the spreading methods for payments under the hire purchase agreement if— 15
- (i) the seller were not a cash basis person; and
  - (ii) **section EW 31** (Base price adjustment formula) did not apply to the seller and the agreement in the income year when the agreement ends: 20
- (b) **income** is the amount of the seller's income from payments received under the hire purchase agreement.

Defined in this Act: amount, cash basis person, hire purchase agreement, income, income year, interest, pay, spreading method

Compare: 2004 No 35 s FC 10(3) 25

### FA 17 Treatment when agreement ends: when buyer is cash basis person

*When this section applies*

- (1) This section applies for the purposes of **section FA 15** when the buyer is a cash basis person. 30

*Reduction*

- (2) The amount treated as the buyer's sale price in **section FA 15(2)** is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula— 35
- $$\text{prepaid expenditure} - \text{expenditure.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **prepaid expenditure** is the amount of prepaid expenditure that would have been incurred under 1 of the spreading methods for payments under the hire purchase agreement if—
- (i) the buyer were not a cash basis person; and
- (ii) **section EW 31** (Base price adjustment formula) did not apply to the buyer and the agreement in the income year when the agreement ends;
- (b) **expenditure** is the amount of expenditure incurred by the buyer and treated as interest under the hire purchase agreement.
- Defined in this Act: amount, cash basis person, hire purchase agreement, income year, interest, pay, prepaid expenditure, spreading method
- Compare: 2004 No 35 s FC 10(4)

**FA 18 Treatment of amounts paid in income years after agreement ends***When this section applies*

- (1) This section applies 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.

*Liability under agreement*

- (2) If the buyer is liable to pay the amount under the terms of the agreement to the seller, the amount is income of the seller under **section CC 13(2)** (Amounts paid in income years after hire purchase agreement ends).

*Payment after end of agreement*

- (3) If the seller pays the amount to the buyer under the agreement and, consequent on the ending of the agreement, the amount was not taken into account, the amount is treated as—
- (a) expenditure incurred by the seller in the income year in which the amount is paid; and
- (b) income of the buyer under **section CC 13(3)**, if they have been allowed a deduction in relation to the property under the agreement in the income year in which the amount is paid.

*Associated persons*

- (4) In this section, the seller or the buyer includes a person associated with them.

Defined in this Act: amount, associated person, deduction, hire purchase agreement, income, income year, pay, property

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Compare: 2004 No 35 s FC 10(5)(d)–(f)

## Subpart FB—Transfers of relationship property

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**FB 1 What this subpart does***When this subpart applies*

- (1) This subpart sets out the tax treatment when property is transferred on a settlement of relationship property.

*General treatment of parties to agreement*

35

- (2) The tax consequences for the transferee on a settlement of relationship property are the same as if the transferor had continued to hold the property.



*Meaning of settlement of relationship property*

- (3) A **settlement of relationship property** means a transaction between parties to a relationship agreement that creates a disposal and acquisition of property under this subpart.

Defined in this Act: relationship agreement, settlement of relationship property, tax

5

**FB 2 Personal property***When this section applies*

- (1) This section applies for the purposes of **sections CB 4** (Personal property acquired for purpose of disposal) **and CB 5** (Business of dealing in personal property) when personal property, or an interest in personal property, is transferred on a settlement of relationship property.

10

*Transfer at cost*

- (2) The transfer is treated as a disposal and acquisition of the property for an amount that equals the cost of the property or, as applicable, the interest in the property, to the transferor.

15

*Further disposal treated as dealing*

- (3) If, after the transfer, the transferee disposes of the property, they are treated in relation to the disposal as carrying on a business of dealing in the property.

20

Defined in this Act: amount, business, personal property, settlement of relationship property

Compare: 2004 No 35 s FF 4

**FB 3 Land acquired for certain purposes or under certain conditions**

25

*When this section applies*

- (1) This section applies for the purposes of **Part D** (Deductions), and **sections CB 6 to CB 12, CB 14, CB 17, CB 20, and CB 23** (which relate to the disposal of land) when land was acquired for a purpose set out in or under the conditions set out in any of those sections, and the land is transferred on a settlement of relationship property.

30

*Transfer at cost*

- (2) The transfer is treated as a disposal and acquisition for an amount that equals the total cost of the land to the transferor at the date of transfer.

*Date of acquisition*

5

- (3) The transferee is treated as having acquired the land on the date it was acquired by the transferor.

*Further disposal*

- (4) For the tax consequences if the transferee disposes of the land, see **section FB 5**.

10

Defined in this Act: amount, date of transfer, dispose, land, settlement of relationship property, tax

Compare: 2004 No 35 s FF 6(1)(a)

**FB 4 Land under scheme for major development or division***When this section applies*

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- (1) This section applies for the purposes of **Part D** (Deductions) and **section CB 13** (Disposal: amount from major development or division and not already in income) when land is transferred on a settlement of relationship property.

*Transfer at market value plus expenditure*

20

- (2) If the transferor has already begun an undertaking or scheme of the kind referred to in **section CB 13**, the transfer is treated as a disposal by them for an amount that equals the sum of—
- (a) the market value of the land on the date on which they began the undertaking or scheme: 25
  - (b) the expenditure that they have incurred in carrying on the undertaking or scheme before the date of transfer.

*Expenditure incurred by transferee*

- (3) For the purposes of **subsection (2)**, the transferee is treated as having incurred expenditure in— 30
- (a) acquiring the land of an amount equal to the market value referred to in **subsection (2)(a)**; and
  - (b) carrying out the undertaking or scheme of an amount equal to the expenditure in **subsection (2)(b)**.

*When scheme not begun at date of transfer*

- (4) If no undertaking or scheme as described in **subsection (2)** has begun at the date of transfer, the transferee is treated as having acquired the land for an amount that equals the total cost of the land to the transferor at the date of transfer. 5

*Further disposal*

- (5) For the tax consequences if the transferee disposes of the land, *see* **section FB 5**. 10
- Defined in this Act: amount, date of transfer, dispose, land, market value, settlement of relationship property, tax
- Compare: 2004 No 35 s FF 6(1)(b)

**FB 5 Disposal of land***When this section applies*

- (1) This section applies for the purposes of **sections FB 3 and FB 4** when the transferor and the transferee are not associated persons. 15

*Persons treated as associated*

- (2) If the transferee disposes of the land, **section CB 15** (Transactions between associated persons) applies as if the transferor and the transferee were associated persons. 20

*Land disposed of by mortgagee*

- (3) If a mortgagee disposes of land because the transferee defaults under the mortgage, the disposal is treated as a disposal of land. 25
- Defined in this Act: associated person, dispose, land, mortgage
- Compare: 2004 No 35 s FF 6(1)(a)(iv), (b)(iv), (2)

**FB 6 Timber or right to take timber***When this section applies*

- (1) This section applies for the purposes of **section CB 24** (Disposal of timber or right to take timber) when timber, or a right to take timber, is transferred on a settlement of relationship property. 30

*Transfer at cost of timber at date of transfer*

- (2) The transfer is treated as a disposal and acquisition for an amount that equals the total cost of timber, or the right to take timber, to the transferor at the date of transfer.

Defined in this Act: amount, date of transfer, right to take timber, settlement of relationship property, timber

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Compare: 2004 No 35 s FF 7(1), (2)

**FB 7 Land with standing timber***When this section applies*

- (1) This section applies for the purposes of **section CB 25** (Disposal of land with standing timber) when—
- (a) land with standing timber on it is transferred on a settlement of relationship property; and
- (b) the standing timber does not consist of ornamental or incidental trees, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994.

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*Transfer at cost of timber at date of transfer*

- (2) The transfer is treated as a disposal and acquisition for an amount that equals the total cost of the timber to the transferor at the date of transfer.

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Defined in this Act: amount, date of transfer, land, settlement of relationship property, standing timber, timber

Compare: 2004 No 35 s FF 7(3), (4)

**FB 8 Patent applications and patent rights***When this section applies*

- (1) This section applies for the purposes of **sections CB 29 and DB 39 to DB 41** (which relate to patent applications and patent rights) when a patent application with complete specifications or a patent right is transferred on a settlement of relationship property.

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*Transfer: part of expenditure or cost of rights*

- (2) The transfer is treated as a disposal and acquisition for an amount that equals, as applicable,—
- (a) expenditure referred to in **section DB 39** (Patent rights: devising patented inventions) for which the transferor is denied a deduction; or

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- (b) the cost of the applications or rights referred to in **section DB 40** (Patent rights acquired before 1 April 1993) for which the transferor is denied a deduction.

Defined in this Act: amount, deduction, patent rights, settlement of relationship property

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Compare: 2004 No 35 s FF 8

### **FB 9 Financial arrangements rules**

Under **section EW 10(6)** (Financial arrangements to which financial arrangements rules apply) the financial arrangements rules do not apply to a financial arrangement entered into on or after 20 May 1999 and transferred on a settlement of relationship property after that date. For the application of the old financial arrangement rules, *see* **section EZ 42(c)** (Application of old financial arrangements rules).

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Defined in this Act: financial arrangement, financial arrangements rules, old financial arrangement rules, settlement of relationship property

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Compare: 2004 No 35 s FF 2

### **FB 10 Continuity provisions: shares and options**

*When this section applies*

- (1) This section applies to modify **sections YC 2 to YC 6** (which relate to voting interests and market value interests) for the purposes of the application of the continuity provisions when a share, or option over a share, is transferred on a settlement of relationship property.

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*Transferee treated as holding share or option*

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- (2) The transferee is treated as having acquired the share or option on the date it was acquired by the transferor, and to have held it at all times up to the date of transfer.

Defined in this Act: continuity provisions, date of transfer, option, settlement of relationship property, share

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Compare: 2004 No 35 s FF 1

### **FB 11 Pension payments to former employees**

*When this section applies*

- (1) This section applies for the purposes of **section DC 2** (Pension payments to former employees) when a person is entitled to the payment of a pension from a former employer, and because of a settlement of relationship property, the employer

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pays some or all of the amount of the pension to another person.

*Deduction for employer*

- (2) **Section DC 2(1) and (2)** applies to the amount paid as if it were the payment of a pension to the former employee. 5

Defined in this Act: amount, deduction, employee, employer, pay, settlement of relationship property

Compare: 2004 No 35 s FF 17(1)

**FB 12 Pension payments to former partners**

*When this section applies* 10

- (1) This section applies for the purposes of **section DC 3** (Pension payments to former partners) when a person is entitled to the payment of a pension from a partner in a partnership or from any person, and because of a settlement of relationship property, the partnership, partner, or person pays some or all of the amount of the pension to another person. 15

*Deduction for partner*

- (2) **Section DC 3** applies to the amount paid as if it were the payment of a pension to the former partner. 20

Defined in this Act: amount, deduction, pay, settlement of relationship property

Compare: 2004 No 35 s FF 17(2), (3)

**FB 13 Trading stock**

*When this section applies*

- (1) This section applies for the purposes of **subpart EB** (Valuation of trading stock (including dealer's livestock)) when trading stock is transferred on a settlement of relationship property. 25

*When transferor holds and uses trading stock in business*

- (2) If the transferor used trading stock in carrying on a business and held the trading stock at the start of the year of transfer, the transfer is treated as a disposal by the transferor and an acquisition by the transferee for an amount equal to the greater of— 30
- (a) the value of the trading stock under **section EB 3** (Valuation of trading stock) for the transferor at the end of the income year before the year of transfer; or 35

- (b) the value of the trading stock under **section EB 3** for the transferee at the end of the year of transfer.

*When transferor acquires and uses trading stock in business*

- (3) If the transferor used the trading stock in carrying on a business and acquired the trading stock during the year of transfer, the transfer is treated as a disposal by the transferor and an acquisition by the transferee for an amount equal to the cost of the trading stock to the transferor. 5

*When transferor has not used trading stock in business*

- (4) If the transferor did not use the trading stock in the carrying on of a business, the transfer is treated as a disposal by the transferor and acquisition by the transferee for an amount equal to the cost of the trading stock to the transferor. 10

*When transferee disposes of trading stock*

- (5) If, after a transfer under **subsection (2) or (3)**, the trading stock was not used by the transferee in the carrying on of a business and they dispose of the trading stock at any time, the disposal is treated as a disposal of trading stock used by the transferee in the carrying on a business. 15  
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*Specified livestock in dealing operation*

- (6) For the purposes of **subsection (2)**, trading stock does not include specified livestock unless it is used in a dealing operation and **sections FB 14 and FB 17** apply.

*Relationship with sections GC 1 and GC 2*

- (7) This section overrides **sections GC 1 and GC 2** (which relate to the disposal of trading stock for inadequate consideration). 25

Defined in this Act: acquire, amount, business, consideration, settlement of relationship property, specified livestock, tax year, trading stock, year of transfer

Compare: 2004 No 35 s FF 13

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## **FB 14 Specified livestock**

*When this section applies*

- (1) This section applies for the purposes of **sections EC 6 to EC 26** (which relate to the valuation of specified livestock) when—

- (a) specified livestock is transferred on a settlement of relationship property; and
- (b) the transferor used the livestock in the carrying on of a business other than a business of dealing in livestock, and held the livestock at the start of the year of transfer; and 5
- (c) the value of the livestock is not determined under the herd scheme, *see* **section FB 15**.
- Transfer at amount determined under subparts EA and EC*
- (2) The transfer is treated as a disposal and acquisition for an amount equal to the value that the transferor determined under **subpart EC** (Valuation of livestock) and took into account in **section EA 1** (Trading stock, livestock, and excepted financial arrangements) at the end of the income year before the year of transfer. 10  
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- Relationship with section GC 1 and GC 2*
- (3) This section overrides **sections GC 1 and GC 2** (which relate to the disposal of trading stock for inadequate consideration). 20
- Defined in this Act: amount, business, herd scheme, income year, livestock, settlement of relationship property, specified livestock, year of transfer
- Compare: 2004 No 35 s FF 13(1)(a)(i), (3)
- FB 15 Specified livestock valued under herd scheme**
- When this section applies*
- (1) This section applies for the purposes of **sections EC 8 to EC 26** (which relate to the valuation of specified livestock) when— 25
- (a) specified livestock is transferred on a settlement of relationship property and the transferor—
- (i) used the livestock in the carrying on of a business; and
- (ii) held the livestock at the start of the year of transfer; and 30
- (b) the value of the livestock is determined under the herd scheme—
- (i) by the transferor at the end of the income year before the year of transfer; and 35
- (ii) by the transferee at the end of the year of transfer.



*Transfer at national average market value*

- (2) The transfer is treated as a disposal and acquisition for an amount equal to the national average market value of the livestock for the year of transfer. If the transferor adopted a herd value ratio, the amount is equal to the national average market value of the livestock for the year of transfer multiplied by the herd value ratio applying in the income year before the year of transfer. 5

Defined in this Act: amount, business, herd scheme, herd value ratio, income year, market value, national average market value, settlement of relationship property, specified livestock, year of transfer 10

Compare: 2004 No 35 s FF 9

**FB 16 Non-specified livestock***When subsections (2) to (4) apply*

- (1) **Subsections (2) to (4)** apply for the purposes of **section EC 31** (Enhanced production) in an income year when— 15
- (a) non-specified livestock is transferred on a settlement of relationship property; and
  - (b) because of the transfer, the transferee starts to derive, or once again derives, income from non-specified livestock. 20

*Transferee not starting to derive income*

- (2) The transferee is treated as not starting to derive, or once again deriving income from non-specified livestock. However, the transfer is taken into account in working out whether any later acquisition by the transferee of non-specified livestock means that they start to derive, or once again derive, income from non-specified livestock. 25

*When subsection (4) applies*

- (3) **Subsection (4)** applies when the transferee uses the non-specified livestock in deriving income and was not, before the transfer, deriving income from non-specified livestock. 30

*Livestock being written down to standard value*

- (4) If the year of transfer falls in the first or second year of the 3-year period referred to in **section EC 31(1)(b)**, the transferee must apply **section EC 31(2)** as if they were the transferor and the transfer had not taken place. 35

*Transferee not acquiring land for production*

- (5) For the purposes of **section EC 31(1)(a)(ii) and (iii)**, if land is transferred on a settlement of relationship property, the transferee is treated as having acquired the land on the date it was acquired by the transferor.

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Defined in this Act: income, income year, land, non-specified livestock, settlement of relationship property, standard value, year of transfer

Compare: 2004 No 35 s FF 10

**FB 17 High-priced livestock***When this section applies*

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- (1) This section applies for the purposes of **sections EC 32 to EC 37** (which relate to the valuation of high-priced livestock) when high-priced livestock is transferred on a settlement of relationship property.

*Transfer at cost*

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- (2) The transfer is treated as a disposal and acquisition for an amount equal to the cost of the livestock to the transferor. The transferee is treated as having acquired the livestock on the day it was acquired by the transferor.

*Straight-line method of valuation*

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- (3) In determining the value of the livestock at the end of the year of transfer, the transferee must take into account the amount referred to in **subsection (2)** reduced by the depreciation percentage of its cost price under **section EC 34(2)** (General rule). **Subsection (4)** overrides this subsection.

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*When diminishing value chosen*

- (4) If the transferor had chosen to apply the diminishing value method to the valuation of the livestock, the transferee is treated as also having made that choice, and the reduction is calculated under **section EC 34(3)**. But if the transferor had not chosen to apply the diminishing value method, the transferee may make a choice between the methods set out in **section EC**

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**34(2) and (3)** only if the livestock was acquired by the transferor in the year of transfer.

Defined in this Act: amount, cost price, depreciation percentage, diminishing value method, high-priced livestock, settlement of relationship property, straight-line method, year of transfer

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Compare: 2004 No 35 s FF 11

## **FB 18 Bloodstock**

*When this section applies*

- (1) This section applies for the purposes of **section EC 41** (Reduction: bloodstock not previously used for breeding in New Zealand) when bloodstock is transferred on a settlement of relationship property. 10

*Use for breeding purposes in New Zealand*

- (2) If the bloodstock has been used for breeding purposes in New Zealand by the transferor, then for valuation purposes by the transferee and the amount of reduction applying to the value of an animal, the bloodstock is treated as not having been used for breeding purposes in New Zealand by the transferor. 15

Defined in this Act: amount, bloodstock, New Zealand, settlement of relationship property

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Compare: 2004 No 35 s FF 12

## **FB 19 Leased assets**

*When this section applies*

- (1) This section applies when—
- (a) a person leases, rents, or hires plant, machinery, or other equipment, including a motor vehicle or a temporary building; and 25
  - (b) they are allowed a deduction in an income year for an amount paid under the agreement to lease, rent, or hire; and 30
  - (c) they acquire the lease asset at any time, or a person associated with them acquires the asset; and
  - (d) either they, or the associated person, transfer the asset on a settlement of relationship property.

*Income when transferee disposes of asset*

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- (2) If the transferee disposes of the asset for an amount that is more than the transfer amount, they are treated as deriving

- income as described in **section FA 5** (Assets acquired and disposed of after deduction of payments under lease) in the income year of the disposal of the asset equal to the lesser of—
- (a) the amount by which the amount derived on disposal is more than the transfer amount; or 5
  - (b) the sum of the amounts for which the transferor has been allowed a deduction.
- Transfer amount*
- (3) In this section, the **transfer amount** is the amount that equals, as applicable,— 10
    - (a) the adjusted tax value of the asset at the start of the year of transfer; or
    - (b) if the asset was acquired by the transferor or the associated person during the year of transfer, the base value of the asset. 15
- Defined in this Act: adjusted tax value, amount, associated person, consideration, deduction, income, income year, lease, motor vehicle, pay, settlement of relationship property, tax year, temporary building, transfer amount, year of transfer
- Compare: 2004 No 35 s FF 14 20

## FB 20 Mining assets

### *When this section applies*

- (1) This section applies when a resident mining operator transfers on a settlement of relationship property an asset that they used immediately before the transfer in deriving assessable income from mining. 25

### *Transfer at cost, reduced value, or reduced expenditure*

- (2) The transfer is treated as a disposal and acquisition for an amount equal to the least of—
  - (a) the amount of expenditure incurred by the transferor in acquiring the asset: 30
  - (b) when the transferor has been allowed a deduction for an amount of depreciation loss in relation to the asset, the adjusted tax value at the start of the year of transfer:
  - (c) when the asset has been acquired as a result of mining exploration expenditure or mining development expenditure incurred by the transferor for which they have been allowed a deduction under **sections DU 1 and DU 9(1)** 35

(which relate to mineral mining expenditure), the amount of expenditure not allowed as a deduction under those provisions.

*Transferee's expenditure*

- (3) The transferee is treated as having incurred expenditure in acquiring the asset equal to the amount determined under **subsection (2)**. 5

*When transferee not a resident mining operator*

- (4) **Subsections (5) and (6)** apply when— 10
- (a) the transferor is treated as having disposed of the asset for an amount determined under **subsection (2)(c)**; and
  - (b) the transferee is not a resident mining operator at and after the date of transfer.

*Treatment of disposal and transferee*

- (5) If the transferee disposes of the asset, they are treated as a resident mining operator in relation to the disposal, and the disposal is treated as a sale to which **sections CU 3, CU 12(1), DU 2, and DU 9(1)** (which relate to mining) apply. 15

*Consideration for disposal*

- (6) For the purposes of **subsection (5)**, and **sections CU 1 to CU 11, DU 1 to DU 8, and IH 4**, the consideration for the disposal is the amount by which the amount derived on the disposal under **subsection (5)** is more than the amount determined under **subsection (2)(c)**. 20

*When transferee is resident mining operator*

- (7) If the transferee is, at and after the date of transfer, a resident mining operator, and the transferor is treated as having disposed of the asset for an amount determined under **subsection (2)(c)**, then for the purposes of **sections CU 3, CU 10, DU 2, and DU 6**, the transferee is treated as having acquired the asset as a result of mining exploration expenditure or mining development expenditure incurred by the transferee. 30

Defined in this Act: adjusted tax value, amount, assessable income, consideration, date of transfer, deduction, depreciation loss, income from mining, mining development expenditure, mining exploration expenditure, resident mining operator, settlement of relationship property, year of transfer 35

Compare: 2004 No 35 s FF 19

**FB 21 Depreciable property***When this section applies*

- (1) This section applies when a person who is allowed a deduction for an amount of depreciation loss for an item of property transfers the item on a settlement of relationship property. 5

*Persons to whom section does not apply*

- (2) This section does not apply if the person is a resident mining operator to whom **section FB 20** applies.

*Transfer at cost or adjusted tax value*

- (3) The transfer is treated as a disposal and acquisition for an amount equal to, as applicable,— 10
- (a) if the transferor acquired the item in the year of transfer, the cost of the item to them; or
- (b) in any other case, the adjusted tax value of the item measured at the start of the year of transfer. 15

*Treatment of transferee*

- (4) In relation to amounts of depreciation loss for the item, the transferee—
- (a) has an amount of depreciation loss for the item from the date of the transfer, whether or not the transferor has in fact had an amount of depreciation loss: 20
- (b) is treated as having had an amount of depreciation loss equal to all amounts of depreciation loss that the transferor had for the item in income years before the year of transfer: 25
- (c) does not have a greater amount of depreciation loss than that which the transferor would have had if they had kept the item.

*When item is building*

- (5) If the item is a building, the transferee's amount of depreciation loss must be determined having regard to the original cost of the building to the transferor. 30

*Activities in year of transfer*

- (6) If the item has been acquired, erected, installed, altered, extended, improved, or attached by the transferor in the year of transfer, the item is treated as if it were acquired, erected, 35

installed, altered, extended, improved, or attached by the transferee in the income year.

*Conditions applying to item*

- (7) For the purposes of determining the rate that applies to the item under **section EE 30(2)(b) or EZ 25(4)** (which relate to depreciation rates for new assets), if either of the following conditions applied to the item when the transferor acquired or erected it, the condition is treated as applying to the item at the date of transfer:
- (a) the item had not previously been used by a person, or acquired or held by a person for their use; and 10
  - (b) if the item is a building or part of a building, it had not previously been occupied.

Defined in this Act: acquire, adjusted tax value, amount, date of transfer, depreciable property, depreciation loss, dispose, income year, property, resident mining operator, settlement of relationship property, year of transfer 15

Compare: 2004 No 35 ss FF 15, FF 16

**Subpart FC—Distribution, transmission, and gifts of  
property  
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-

### *Introductory provisions*

#### **FC 1 What this subpart does**

##### *Types of distributions and gifts*

- |   |    |
|---|----|
| (1) This subpart provides a value for property that is disposed of under the following transactions:  | 5  |
| (a) the transfer of a person's estate to an executor or administrator on the death of the person:   |    |
| (b) the transfer of property on a distribution by an executor, administrator, or trustee of a deceased person's estate to a beneficiary who is beneficially entitled to receive the property under the will or the rules governing intestacy: | 10 |
| (c) the transfer of property on a distribution by a trustee of a trust to a beneficiary of the trust:   |    |
| (d) the transfer of property on a distribution in kind by a company in a transfer of value caused by a shareholding in the company under <b>section CD 6</b> (When is a transfer caused by a shareholding relationship?):                     | 15 |
| (e) the transfer of property on the making of a gift:   |    |
| (f) the transfer of property on a settlement by the trustee of a trust on the trustee of another trust, if authorised under—  | 20 |
| (i) a trust instrument as a power of advancement or resettlement:   |    |
| (ii) section 41 of the Trustee Act 1956 as the payment of money or the application of property.   | 25 |

##### *Some definitions*

- |  |    |
|--|----|
| (2) In this subpart,—  |    |
| <b>close relative</b> , in relation to a transfer from a person's estate,—   |    |
| (a) means a person who is within the second degree of relationship to the deceased person just before the death of the person: | 30 |
| (b) does not include a surviving spouse, civil union partner, or de facto partner of the deceased person                       |    |
| <b>tax-base property</b> means—  | 35 |
| (a) revenue account property:  |    |
| (b) an attributing interest in a FIF:  |    |



- (c) a financial arrangement other than an arrangement for which the deceased person, or their trustee, was a cash basis person:
- (d) an item for which a deduction for an amount of depreciation loss arises. 5

Defined in this Act: amount, attributing interest, cash basis person, company, deduction, depreciation loss, distribution, FIF, financial arrangement, money, pay, property, revenue account property, settlement, transfer of value, trustee

Compare: 2004 No 35 s FI 1

## **FC 2 Transfer at market value** 10

### *Market value*

- (1) The transfer of property under **section FC 1(1)** is treated as a disposal by the transferor and an acquisition by the transferee at the market value of the item for the transferor.

### *Date of transfer of estate of deceased person* 15

- (2) For property referred to in **section FC 1(1)(b)**, the disposal and acquisition is treated as occurring immediately before the death of the person.

### *Exceptions to general rule*

- (3) **Sections FC 3 to FC 6** override this subsection. 20

Defined in this Act: market value, property

Compare: 2004 No 35 ss FI 2, FI 3

## ***Exceptions for property transferred on death of person***

## **FC 3 Property transferred to spouse or partner**

### *When this section applies* 25

- (1) This section applies in the circumstances described in **section FC 1(1)(a) or (b)** when property is transferred on a person's death to the surviving spouse, civil union partner, or de facto partner of the deceased person. However, this section does not apply if— 30

- (a) the property is tax-base property; and
- (b) a person who is not a close relative of the deceased person is beneficially entitled to the property.

*Disposal to spouse or partner*

- (2) The transfer of property to the surviving spouse, civil union partner, or de facto partner of the deceased person, including any intervening transfer to an executor or administrator, is treated as a transfer of property under a settlement of relationship property under **subpart FB** (Transfers of relationship property). 5
- Defined in this Act: close relative, property, settlement of relationship property, tax base property
- Compare: 2004 No 35 s FI 4 10

**FC 4 Property transferred to charities or to close relatives and others***When this section applies*

- (1) This section applies in the circumstances described in **section FC 1(1)(a) or (b)** when property is transferred on a person's death to a person exempt under **section CW 42** (Charitable bequests) or to a close relative of the deceased person when— 15
- (a) all beneficiaries of the deceased person are close relatives; or
- (b) the only beneficiaries of all the tax-base property of the deceased person are close relatives. 20

*Treated as transfer under settlement of relationship property*

- (2) The transfer, including any intervening transfer to an executor or administrator, is treated as a transfer of property on a settlement of relationship property for the purposes of **subpart FB** (Transfers of relationship property) if the following requirements are met: 25
- (a) no life interest in the property is created; and
- (b) no trust over the property is created, other than a trust to execute the will and administer the estate; and 30
- (c) while the administration of the estate is continuing, the net income of the estate is distributed to the extent allowed—
- (i) under the will or the rules governing intestacy; 35
- and

- (ii) by the trustee's legal obligations.

Defined in this Act: close relative, net income, property, settlement of relationship property, tax base property, trustee

Compare: 2004 No 35 s FI 5

## **FC 5 Land transferred to close relatives** 5

*What this section applies to*

- (1) This section applies in the circumstances described in **section FC 1(1)(a) or (b)** when land is transferred on a person's death to a close relative of the person.

*Land*

- (2) **Sections CB 9 to CB 11 and CB 14** (which relate to the disposal of land) do not apply to the transfer of land, including any intervening transfer to an executor or administrator that, if it had been disposed of by the deceased person, would have resulted in income under any of those sections. 15

*Cost of land*

- (3) If the land is transferred to a person who disposes of it within 10 years of its acquisition by the deceased person, and the person derives income under any of **sections CB 9 to CB 11 and CB 14**, the cost of land to the person is— 20
- (a) the cost of the land incurred by the deceased person; and
- (b) all other expenditure incurred by both the person and the deceased person that relate to the land for which no deduction has been allowed. 25

Defined in this Act: close relative, deduction, dispose, income, land, settlement of relationship property

Compare: 2004 No 35 s FI 7

## **FC 6 Forestry assets transferred to close relatives** 30

*What this section applies to*

- (1) This section applies in the circumstances described in **section FC 1(1)(a) or (b)** when forestry assets are transferred on a person's death to a close relative of the person.

*Forestry assets*

- (2) A transfer of a forestry asset, including any intervening transfer to an executor or administrator, is treated as a transfer of property on a settlement of relationship property for the purposes of **subpart FB** (Transfers of relationship property). 5

*Meaning of forestry assets*

- (3) In this section, **forestry assets** means timber, standing timber, and a right to take timber. 10
- Defined in this Act: close relative, property, right to take timber, settlement of relationship property, timber
- Compare: 2004 No 35 s FI 6

**FC 7 Transfer of prepaid property***What this section applies to*

- (1) This section applies, in the circumstances described in **section FC 1(1)(a) or (b)**, to a transfer of property on a person's death for which the deceased person has, in the year of transfer, an unexpired portion of expenditure under **section EA 3** (Prepayments). 15

*Unexpired prepayments*

- (2) If **section EA 3** applies to the property transferred, the property must be valued under **section EA 3(4) to (7)**, as if the date of transfer were the end of an income year. 20
- Defined in this Act: date of transfer, financial arrangement, forestry assets, income year, pay, property, year of transfer
- Compare: 2004 No 35 s FI 8 25

**FC 8 Transfer of certain financial arrangements***What this section applies to*

- (1) This section applies, in the circumstances described in **section FC 1(1)(a) or (b)**, to a transfer of a financial arrangement on a person's death. 30

*Financial arrangements: cash basis person*

- (3) If the trustee of the deceased person's estate is a cash basis person under **section EW 60(1)** (Trustee of deceased's estate), the property must be valued at cost.

Defined in this Act: cash basis person, date of transfer, financial arrangement, income year, pay, property, trustee, year of transfer

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Compare: 2004 No 35 s FI 11

## Subpart FE—Interest apportionment on thin capitalisation

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### ***Introductory provisions***

<b>FE 1</b>	<b>What this subpart does</b>	
	<i>Interest apportionment</i>	30
(1)	This subpart applies—	
	(a) to apportion certain interest expenditure between income derived from New Zealand and other income for a New Zealand taxpayer who—	
	(i) is controlled by a single non-resident; and	35
	(ii) has a disproportionately high level of debt funding in relation to their worldwide interest expenditure; and	

- (b) to prescribe an acceptable level of equity for a foreign-owned bank for the application of the interest apportionment rules.

*Structure of subpart*

- (2) This subpart sets out— 5
- (a) the persons to whom the interest apportionment rules may apply:
- (b) the thresholds for the application of the rules:
- (c) the consequences of application of the rules:
- (d) how to calculate the debt percentages of a New Zealand group and a worldwide group: 10
- (e) how to calculate a reporting bank's New Zealand equity threshold, net equity, and funding debt:
- (f) how to determine the membership of a New Zealand group, a worldwide group, and a New Zealand banking group: 15
- (g) how to measure ownership interests in companies for the purposes of this subpart.

Defined in this Act: income, income derived from New Zealand, interest, New Zealand, New Zealand banking group, non-resident, reporting bank, taxpayer 20

Compare: 2004 No 35 s FG 1

## FE 2 When this subpart applies

*Persons to whom interest apportionment rules may apply*

- (1) The interest apportionment rules in **sections FE 6 and FE 7** may apply to the following persons if, at a time in an income year, they are: 25
- (a) a non-resident who is not a company:
- (b) a non-resident company unless the company is 1 in which— 30
- (i) a person resident in New Zealand has a direct ownership interest of 50% or more; and
- (ii) no non-resident has a direct ownership interest of 50% or more, when added to any direct ownership interests of all persons associated with them:
- (c) a company that is resident in New Zealand if a non-resident has— 35
- (i) an ownership interest in the company of 50% or more:
- (ii) control of the company by any other means:

- (d) the trustee of a non-complying trust settled by a non-resident if the value of the settlements made by them, including the value of all settlements made by a person associated with them, are 50% or more of the value of the settlements made on the trust. 5
- Ownership interests*
- (2) Ownership interests in a company are determined under **sections FE 38 to FE 41**.
- Treatment of foreign companies*
- (3) For the purposes of this section, a company resident in New Zealand is treated as being a non-resident company if it is treated under a double tax agreement as not being resident in New Zealand. 10
- Associated persons*
- (4) For the purposes of **subsection (1)(b)(ii)**, a non-resident who does not have a direct or an indirect ownership interest in a company and a relative resident in New Zealand are not associated persons in relation to the company. 15
- Defined in this Act: associated person, company, control, income year, interest, New Zealand, non-complying trust, non-resident, non-resident company, relative, resident in New Zealand, settlement, trustee 20
- Compare: 2004 No 35 s FG 2(1), (6), (8)
- FE 3 Interest apportionment for individuals**
- Natural person who is not trustee*
- (1) This subpart applies to a natural person who is not a trustee, with the following modifications: 25
- (a) the person's New Zealand group is made up only of the person; and
- (b) in the calculation of the amount of the person's total assets, private and domestic assets are excluded. 30
- Trustees*
- (2) For the purposes of **section FE 2(1)(d)**, this subpart applies to a trustee with the following modifications:
- (a) the trustee's New Zealand group is made up of the trustee and all associated persons who are resident in 35



New Zealand, or carrying on business in New Zealand through a fixed establishment in New Zealand:

- (b) the debt percentage is calculated by determining the total group debt and total group assets of the members of the trustee's New Zealand group on a consolidated basis equivalent to the generally accepted accounting practice for the consolidation of a group of companies for the purposes of eliminating intra-group balances. 5

Defined in this Act: amount, associated person, business, fixed establishment, generally accepted accounting practice, group of companies, natural person, New Zealand, resident in New Zealand, total group assets, total group debt, trustee 10

Compare: 2004 No 35 s FG 4(15), (16)

#### FE 4 Some definitions

In this subpart,—

**excess debt entity** for an income year is a person who— 15

- (a) meets the requirements of **section FE 2** in the income year; and
- (b) is not, at any time in the income year, a reporting bank for a New Zealand banking group, or part of a New Zealand banking group; and 20
- (c) is not a natural person other than a person acting as a trustee

**natural person** for an income year is a natural person who—

- (a) meets the requirements of **section FE 2** in the income year; and 25
- (b) is a person who is not acting as a trustee

**reporting bank** for an income year for a New Zealand banking group is a person who—

- (a) meets the requirements of **section FE 2** in the income year; and 30
- (b) is the registered bank in the banking group, unless the circumstances set out in **section FE 36** apply.

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

### *Interest apportionment rules*

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

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

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

##### *Threshold for reporting bank*

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

##### *Threshold for natural person*

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

##### *Debt percentages*

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

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

- (5) The calculations that a reporting bank must make for the purposes of **section FE 7** are set out as follows:
- (a) for the banking group's equity threshold, *see* **section FE 19**;
  - (b) for the banking group's New Zealand net equity, *see* **section FE 21**;

(c) for the banking group's funding debt, *see* **section FE 23**.

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

Compare: 2004 No 35 s FG 3

5

## FE 6 Apportionment of interest by excess debt entity

*When this section applies*

- (1) This section applies to an excess debt entity if the debt percentage of its New Zealand group for an income year is more than the threshold set out in **section FE 5(1)**. This section overrides **sections DA 1, and DB 6 to DB 8** (which relate to deductions for interest expenditure). 10

*No deduction*

- (2) The excess debt entity is denied a deduction under **section DB 10** (Interest expenditure by excess debt entity) for interest incurred to the extent of the amount calculated under **subsection (3)**, which is treated as expenditure not allocated to income derived from New Zealand. 15

*Formula*

$$\text{total deduction} \times \frac{\text{total debt} - \text{concession}}{\text{total debt}} \times \frac{\text{group debt percentage} - \text{threshold amount}}{\text{group debt percentage}}. \quad 20$$

*Items in formula*

- (4) In the formula,— 25
- (a) **total deduction** is the whole amount of the excess debt entity's deduction for interest to which any of **sections DB 6 to DB 8** applies less, as applicable,—
- (i) an amount allowed in relation to interest payable to a company that is a member of the entity's New Zealand group under **sections FE 14(2) and FE 28**, but this does not include an amount referred to in **subparagraph (ii)**; and 30
- (ii) an amount of interest payable under a financial arrangement that is not income of the entity and is excluded from the total group debt of its New Zealand group under **section FE 15**: 35

- (b) **total debt** is the whole amount of the debt of the excess debt entity's New Zealand group for the income year as calculated under **section FE 15**, before allowing for a reduction under **section FE 13:**
- (c) **concession** is any reduction allowed under **section FE 13** in the total group debt of the excess debt entity's New Zealand group for the income year, averaged when **section FE 8(1)(a) or (b)** applies: 5
- (d) **group debt percentage** is the debt percentage of the excess debt entity's New Zealand group for the income year: 10
- (e) **threshold amount** is, as applicable,—
- (i) if the excess debt entity is a company or trustee, the greater of 75% and 110% of the debt percentage of their worldwide group: 15
- (ii) if the person is a natural person who is not a trustee, 75%.

Defined in this Act: amount, company, deduction, excess debt entity, financial arrangement, income, income derived from New Zealand, income year, interest, natural person, New Zealand, pay, total group debt, trustee 20

Compare: 2004 No 35 s FG 8(1)

## FE 7 Apportionment of interest by reporting bank

*When this section applies*

- (1) This section applies to a reporting bank if, at the relevant measurement date referred to in **section FE 8(3)**,— 25
- (a) the New Zealand net equity of its New Zealand banking group for an income year is less than its equity threshold under **section FE 19**; and
- (b) its group funding debt for the corresponding tax year is more than zero. 30

*Income*

- (2) The reporting bank is treated as deriving an amount of income under **section CH 9** (Interest apportionment) calculated using the formula—

$$\text{amount below threshold} \times \frac{\text{interest expenditure}}{\text{group funding debt}} \times \frac{\text{days in period}}{\text{days in year.}} \quad 35$$

*Definition of items in formula*

- (3) In the formula,—

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

*Apportionment of income to part-years*

- (4) If an amount of income described in **subsection (2)** must be apportioned under this Act to a part of an income year, the amount of income for a measurement period is attributed to the part of the income year in which the measurement period falls.

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

Compare: 2004 No 35 s FG 8B

**FE 8 Measurement dates**

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

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

- (c) the amount at the end of the income year.

*Different balance dates*

- (2) For the purposes of **subsection (1)**, if the members of the entity's New Zealand group do not have the same balance date, the alternatives in **subsection (1)** apply as if the entity has the same balance date as that of the New Zealand parent. 5

*Daily, monthly, or quarterly for reporting bank*

- (3) A reporting bank must measure both the equity threshold and the net equity of its New Zealand banking group for an income year on 1 of the following dates: 10
- (a) each day of the income year; or
- (b) the last day of each calendar month of the income year; or
- (c) if the reporting bank does not choose either **paragraph (a) or (b)**, the last day of each quarter of an income year. 15

*Change in identity of reporting bank*

- (4) If the identity of the reporting bank changes, the first measurement date for the new reporting bank is the day after the last measurement date of the former reporting bank. 20
- Defined in this Act: amount, excess debt entity, income year, New Zealand, New Zealand banking group, quarter, reporting bank, total group assets, total group debt
- Compare: 2004 No 35 ss FG 4(5), (6), FG 8E

## FE 9 Elections

*Return of income*

- (1) An election or choice under this subpart is made by providing a return of income for the relevant income year. 25

*Measurement date*

- (2) A choice of measurement date under **section FE 8** may be changed after a notice of assessment for an income year is received from the Commissioner. 30

*Control threshold, enlarged New Zealand group*

- (3) A choice of control threshold under **section FE 27**, or an election to include certain other companies in a New Zealand group under **section FE 30** by a person other than an excess debt entity

is made by providing notice to the Commissioner with the return of income for the relevant income year.

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

Compare: 2004 No 35 s FG 10

5

## FE 10 Currency

### *Calculations*

- (1) In this subpart, the following values must be calculated in New Zealand currency:
- (a) an amount of total group debt and an amount of total group assets of a New Zealand group or of a worldwide group: 10
  - (b) a financial arrangement or risk-weighted exposure.

### *Currency conversions for excess debt entity*

- (2) If the value referred to in **subsection (1)** is denominated in a foreign currency, an excess debt entity must convert the value to New Zealand currency at— 15
- (a) the close of trading spot exchange rate for the foreign currency on the relevant measurement date under **section FE 8**; or 20
  - (b) the forward exchange rate that applies on the first day of the income year for the relevant measurement date under **section FE 8**.

### *Currency conversions for reporting bank*

- (3) If the value referred to in **subsection (1)** is denominated in a foreign currency, a reporting bank must convert the value to New Zealand currency at the close of trading spot exchange rate for the foreign currency on the relevant measurement date under **section FE 8**. 25

Defined in this Act: amount, close of trading spot exchange rate, excess debt entity, financial arrangement, income year, New Zealand, reporting bank, total group assets, total group debt 30

Compare: 2004 No 35 ss FG 4(7), FG 5(6), FG 7, FG 8I

## FE 11 Temporary increases or decreases in value

A temporary increase or decrease in a value applying in this subpart must be excluded from a calculation made under this subpart if— 35

- (a) the increase or decrease has, or would have, a purpose or effect of defeating the intent and application of this subpart; or
- (b) the change is produced by an arrangement that has an effect of defeating the intent and application of this subpart. 5

Defined in this Act: arrangement

Compare: 2004 No 35 ss FG 4(8), FG 5(7), FG 8J

### *Calculations*

#### **FE 12 Calculation of debt percentages** 10

##### *Requirement for New Zealand group*

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

##### *Requirement for worldwide group*

- (2) If the debt percentage of the New Zealand group is more than 75% as described in **section FE 5(1)(a)**, the entity or natural person must calculate the debt percentage of their worldwide group under the rules set out in **sections FE 17 and FE 18**. 20

##### *Debt percentage of group*

- (3) A debt percentage of a group is found by dividing the amount of total group debt by the amount of total group assets of the group for an income year or accounting year, as applicable. The amounts are calculated on a consolidated basis. Total group debt and total group assets for an income year or accounting year are defined in— 25
  - (a) **sections FE 15 and FE 16** for a New Zealand group; and
  - (b) **section FE 18** for a worldwide group. 30

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

- (4) For an excess debt entity that is a company, the New Zealand group is made up of all companies, traced tier by tier, that are identified as within the control threshold of the New Zealand parent, *see* **section FE 27**. **Section FE 25** provides the process for 35



determining who is a member of a group based on the identification of a New Zealand parent and the establishment of the control threshold.

*Membership of a company's worldwide group*

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

*Membership of a trustee's New Zealand and worldwide groups* 10

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

Defined in this Act: accounting year, amount, company, control, excess debt entity, income year, natural person, New Zealand, non-resident, total group assets, total group debt, trustee 15

Compare: 2004 No 35 ss FG 3, FG 4(1) FG 5(1)

**FE 13 Financial arrangements entered into with persons outside group** 20

*When this section applies*

- (1) This section applies when a natural person, or an excess debt entity, or a member of an entity's New Zealand group or worldwide group, enters into a financial arrangement with another person (**person A**) as described in this section, and the financial arrangement provides funds to person A. 25

*Reduction*

- (2) In the calculation of the debt percentage of the New Zealand group, the amount of total group debt and total group assets is reduced by the outstanding balance of the financial arrangement. 30

*Debt percentage of New Zealand group*

- (3) In the calculation of the debt percentage of a New Zealand group, the reduction applies if the consideration for the financial arrangement is at arm's length, and person A is 1 of the following: 35

- (a) a non-resident who is not carrying on a business in New Zealand through a fixed establishment in New Zealand; or
- (b) a person who is not associated with the excess debt entity; or 5
- (c) a person who is associated with the excess debt entity but—
- (i) is not a member of the New Zealand group; and
- (ii) is a person to whom this subpart may apply under **section FE 2.** 10
- Debt percentage of worldwide group*
- (4) In the calculation of the debt percentage of a worldwide group, the reduction applies if person A is not associated with the excess debt entity. 15
- Defined in this Act: amount, business, consideration, excess debt entity, financial arrangement, fixed establishment, natural person, New Zealand, non-resident, total group assets, total group debt
- Compare: 2004 No 35 s FG 6
- Debt percentage of New Zealand group*
- FE 14 Consolidation of debts and assets** 20
- Company calculation*
- (1) For an excess debt entity that is a company, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets of the members of the entity's New Zealand group. 25
- Trustee calculation*
- (2) For an excess debt entity that is a trustee, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets for the group that is made up of— 30
- (a) the entity; and 35
- (b) all associated persons resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand.

*When member not resident*

- (3) If a member of a New Zealand group is not resident in New Zealand, the assets and debts of the member are included in a consolidation only to the extent to which the group member is carrying on business in New Zealand through a fixed establishment in New Zealand. 5

*Treatment of specified leases and particular interest expenditure*

- (4) In this subpart, in the determination of total group debt and total group assets and the calculation of an amount for which a deduction is denied,— 10
- (a) a specified lease under **section FZ 2** (Effect of specified lease on lessor and lessee) is treated as a financial arrangement that provides funds to the issuer; and
- (b) expenditure incurred by the lessee under a specified lease for which a deduction is allowed under **section BD 2** (Deductions) is treated as an amount of interest to which any of **sections DB 6 to DB 8** (which relate to deductions for interest expenditure) applies; and 15
- (c) interest that is allowed as a deduction under either of the following sections is treated as an amount of interest to which any of **sections DB 6 to DB 8** applies, if not already allowed under those sections: 20
- (i) **section DP 1(1)(b)** (Expenditure of forestry business): 25
- (ii) **section DV 10(1)(a) or (b)** (Building societies).

Defined in this Act: associated person, business, excess debt entity, financial arrangement, fixed establishment, generally accepted accounting practice, interest, issuer, lease, lessee, New Zealand, resident in New Zealand, specified lease, total group assets, total group debt, trustee 30

Compare: 2004 No 35 ss FG 4(9), (15), (17), FG 9

**FE 15 Total group debt***Meaning*

- (1) In this subpart for a New Zealand group, **total group debt** means the sum of the outstanding balances of all financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, measured on the date the entity chooses under **section FE 8** if both the following conditions are met: 35

- (a) the financial arrangement provides funds to the natural person, the entity, or another member of the group; and
- (b) the financial arrangement gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction. 5

*Exchange rate fluctuations*

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

*Section 90A Tax Administration Act 1994*

- (3) For a determination on whether a financial arrangement provides funds, *see* section 90A of the Tax Administration Act 1994. 10

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

Compare: 2004 No 35 s FG 4(2) 15

## **FE 16 Total group assets**

*Meaning*

- (1) In this subpart, for a New Zealand group, **total group assets** for an income year means the total assets of a natural person, or an excess debt entity, or another member of the New Zealand group, measured under the following paragraphs, as applicable or as the person or entity chooses:
- (a) the value of the assets shown in the financial statements of the entity's New Zealand group; or
  - (b) the net current value of the assets; or 25
  - (c) market value, for trading stock that is valued at market value in calculating the person or entity's income tax liability for the income year, or that of a member of the group; or
  - (d) adjusted tax value of a personal property lease asset at the start of the income year, in the case of a specified lease or a finance lease that is not recognised as an asset under generally accepted accounting practice; or 30
  - (e) if allowed under generally accepted accounting practice, a combination of the financial statement values and net current values. 35

*Generally accepted accounting practice*

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

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

5

Compare: 2004 No 35 s FG 4(3), (4)

*Debt percentage of worldwide group*

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**FE 17 Consolidation of debts and assets**

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

15

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

20

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

Compare: 2004 No 35 s FG 5(2), (10)

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

25

*Standards applying*

- (1) The amount of total group debt and the amount of total group assets of the worldwide group of a natural person or an excess debt entity must be calculated—

- (a) using a standard that is equivalent to generally accepted accounting practice for consistent and non-distorting financial reporting; and
- (b) in accordance with the financial reporting standards of the country where the worldwide group's consolidated financial accounts are prepared.

30

35

*Date of measurement*

- (2) The amount of total group debt and the amount of total group assets of the worldwide group of a natural person or an excess

debt entity for an income year are measured at the worldwide group's balance date that immediately precedes the relevant income year.

*Measurement of amounts*

- (3) A natural person or an excess debt entity may choose to measure— 5
- (a) the amount of total group debt by applying **section FE 15**, applying the provision as if it referred to a deduction that would be allowed if the person, entity, or another group member were resident in New Zealand; or 10
  - (b) the amount of total group debt and amount of total group assets on a basis listed in **section FE 8(1)(a) or (b)**.

*Commissioner's estimate*

- (4) If a natural person or an excess debt entity is unable to calculate the debt percentage of their worldwide group for an income year, they may ask the Commissioner to estimate the percentage under this subpart. The estimate is then treated as the percentage applying for the purposes of this subpart. 15

*Default percentage*

- (5) The debt percentage of the worldwide group or a natural person or an excess debt entity is treated as 68.1818% in the following cases: 20
- (a) the person or entity is unable to calculate the percentage, and does not ask the Commissioner to make an estimate under **subsection (4)**: 25
  - (b) the Commissioner cannot reasonably estimate the debt percentage under **subsection (4)**;
  - (c) no member of the entity's worldwide group, other than the entity, is not resident in New Zealand.

Defined in this Act: accounting year, amount, Commissioner, deduction, excess debt entity, generally accepted accounting practice, income year, natural person, New Zealand, resident in New Zealand, total group assets, total group debt 30

Compare: 2004 No 35 s FG 5(2)–(5), (12), (13)

*New Zealand banking group***FE 19 Banking group's equity threshold***Requirement for New Zealand banking group: formula*

- (1) A reporting bank must calculate the equity threshold of its New Zealand banking group for a tax year using the formula— 5

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

*Definition of items in formula*

- (2) In the formula,— 10
- (a) **risk-weighted exposures** is the sum of the following values:
- (i) for an asset included in a balance sheet, the regulatory value of the asset:
- (ii) for an exposure not included in a balance sheet, the regulatory value of the exposure: 15
- (iii) for an amount of goodwill that is not taken into account in adjustment 4: intangible assets in determining the New Zealand net equity of the group under **section FE 21**, the financial value of the goodwill: 20
- (b) **deductions from equity value** is the total amount of the regulatory values of adjustments 1 to 10 referred to in **section FE 21**.

*Assets of fixed establishments*

- (3) For the purposes of this section, the assets of a fixed establishment include those treated as assets of the fixed establishment under generally accepted accounting practice. 25

Defined in this Act: amount, deduction, financial value, fixed establishment, generally accepted accounting practice, New Zealand banking group, New Zealand net equity, regulatory value, reporting bank, tax year 30

Compare: 2004 No 35 s FG 8H

**FE 20 Financial value and regulatory value***Financial value*

- (1) In **sections FE 19, and FE 21 to FE 23**, the **financial value** of an item for a New Zealand banking group at a time is the amount recorded for the item in the group's financial statements that— 35

- (a) relate to the time; and
- (b) are prepared for external reporting purposes; and
- (c) are consistent with generally accepted accounting practice for the consolidation of a group of companies for the purposes of eliminating intra-group balances. 5

*Regulatory value*

- (2) In **section FE 19**, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item for the purposes of the Capital Adequacy Framework issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989. 10

Defined in this Act: amount, financial value, generally accepted accounting practice, group of companies, issue, New Zealand, New Zealand banking group, registered bank, regulatory value 15

Compare: 2004 No 35 s FG 8F

## **FE 21 Banking group's New Zealand net equity**

*Formula*

- (1) A reporting bank must calculate the New Zealand net equity of its New Zealand banking group for an income year using the formula— 20
- equity value – adjustments 1 to 11.

*Definition of items in formula*

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

*Equity value*

- (3) **Equity value** is the total financial value of— 25
- (a) the shareholders' equity for the group; and
  - (b) the branch equity relating to fixed establishments of the group; and
  - (c) any shares issued by a member of the group whose value is not included under **paragraph (a) or (b)**; and 30
  - (d) any financial arrangement that is a loan or provision of funds—
    - (i) that is not taken into account in calculating the group's funding debt for the tax year corresponding to the income year; and 35



- (ii) that is made by a non-resident who is not a member of the New Zealand banking group or associated with a member of the group under the parts of **subpart YB** (Associated persons and nominees) that apply for the purposes of the whole Act, excluding the 1973, 1988, and 1990 version provisions; and 5
- (iii) that is made to a member of the group; and
- (iv) that does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and 10
- (v) whose value is not included under **paragraph (a) or (b)**; and
- (vi) that does not relate to a supply of goods or services; and 15
- (e) an instrument specified by the Governor-General by Order in Council under **section FE 24** as included in equity value, but excluding an instrument specified under that section as not being an item of equity value. 20

*Fixed-rate shares*

- (4) **Adjustment 1** is the financial value of fixed-rate shares that are—
  - (a) issued by a member of the group on or after 1 January 2005, or before that date if the measurement period starts on or after 1 January 2010; and 25
  - (b) owned by a person resident in New Zealand; and
  - (c) included in equity value under **subsection (3)**.

*Tax debts*

- (5) **Adjustment 2** is the financial value of a tax debt that is a financial arrangement— 30
  - (a) included in equity value under **subsection (3)(a) to (c)**; and
  - (b) in relation to which a member of the group is allowed a deduction for the tax year for interest to which any of **sections DB 6 to DB 8** (which relate to interest expenditure) applies. 35

- Policyholder liabilities and retained profits*
- (6) **Adjustment 3** is the financial value of unvested policyholder benefit liabilities and policyholder retained profits included in equity value under **subsection (3)**.
- Intangible assets* 5
- (7) **Adjustment 4** is the financial value of intangible assets, but does not include the value of—
- (a) the goodwill of a business that is not a banking, financing, leasing, or life insurance business—
- (i) acquired from a person who, at the time of acquisition, is not associated under **subpart YB** with a member of the group; or 10
- (ii) relating to an entity that is acquired from a person who is not associated under **subpart YB** with a member of the group: 15
- (b) a film or film right:
- (c) property that is depreciable property or is expected to become depreciable property.
- Capital gains*
- (8) **Adjustment 5** is the total amount of capital gain arising for the 2004–05 or later income year from a transfer of an intangible asset between a member of the group and a person who is associated under **subpart YB** with a member of the group. 20
- Asset revaluation reserves*
- (9) **Adjustment 6** is the financial value of revaluation reserves included in equity value under **subsection (3)**. 25
- Future tax benefits*
- (10) **Adjustment 7** is the financial value of net future tax benefits included in equity value under **subsection (3)** that arise from—
- (a) a tax loss for the tax year corresponding to the income year referred to in **subsection (1)**: 30
- (b) a loss balance carried forward from an earlier tax year:
- (c) a timing or temporary difference to the extent to which the item giving rise to the difference would contribute to the amount of a tax loss for the tax year corresponding to the income year referred to in **subsection (1)** if allowed as a deduction. 35

*Prudential deductions*

- (11) **Adjustment 8** is the financial value of a credit enhancement or advance that is, for the purposes of the Capital Adequacy Framework described in **section FE 20(2)**,—
- (a) a credit enhancement that a member of the group provides to—
    - (i) an associated funds management and securitisation scheme of a non-member:
    - (ii) an affiliated insurance group that is a non-member when the credit has not been expensed: 10
  - (b) an advance by a member of the group of a capital nature to a connected person who is a non-member. 5

*Offshore assets*

- (12) **Adjustment 9** is the financial value of shares in a non-resident company that— 15
- (a) are held by—
    - (i) a member or potential member of the group; or
    - (ii) a company resident in New Zealand in which a member or potential member of the group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a CTR credit is attached; and 20
  - (b) are not interests in a FIF for which the FIF income or FIF loss is calculated using the comparative value method or the deemed rate of return method; and 25
  - (c) are not shares in a grey list company that—
    - (i) are listed on the official list of a recognised exchange; and
    - (ii) are revenue account property; and 30
    - (iii) would not be a sufficient interest in the company if the class of shares were the only class of share issued by the company.

*Cross holdings*

- (13) **Adjustment 10** is the financial value of— 35
- (a) interests included in equity value under **subsection (3)** held by a person who—
    - (i) is not a member of the group because of an exclusion under **section FE 35**; and

- (ii) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand:
- (b) shares in or loans (other than on an arm's length basis) to a person who is not a member of the group because of an exclusion under **section FE 35**. 5
- Notional offshore investments*
- (14) **Adjustment 11** is the amount of notional offshore investment for the group for the income year under **section FE 22**.
- Components of adjustment items counted once*
- (15) For the purposes of this section, if a component of an item described in adjustments 1 to 10 is a component of 1 or more other adjustment items, the value of the component is counted once only at its highest value. 10
- Defined in this Act: 1973 version provisions, 1988 version provisions, 1990 version provisions, acquire, amount, business, company, comparative value method, CTR credit, deduction, deemed rate of return method, depreciable property, direct voting interest, dividend, FIF, FIF income, FIF loss, film, film right, financial arrangement, financial value, fixed establishment, fixed-rate share, grey list company, group funding debit, income year, interest, issue, loan, loss, loss balance, measurement period, New Zealand, New Zealand banking group, New Zealand net equity, non-resident, non-resident company, pay, recognised exchange, reporting bank, resident in New Zealand, revenue account property, share, shareholder, shares of the same class, tax loss, tax year, voting interest 15
- Compare: 2004 No 35 s FG 8G(1)–(3) 20
- FE 22 Notional offshore investment** 25
- When this section applies*
- (1) This section applies for the purposes of **section FE 21(14)** to determine an amount of notional offshore investment for a New Zealand banking group for an income year.
- Formula* 30
- (2) The amount of notional offshore investment is calculated using the formula—
- $$\frac{(\text{foreign tax credits} - \text{threshold}) \times 12}{\text{tax rate} \times \text{interest rate of return} \times \text{months}}$$
- Definition of items in formula* 35
- (3) In the formula,—
- (a) **foreign tax credits** is the total amount of foreign tax credits for the tax year corresponding to the income

- year claimed as a credit against the income tax liability for the tax year of a member of the group or a person excluded from the group under **section FE 35** that does not arise from—
- (i) attributed CFC income or from FIF income; or 5
  - (ii) income derived before 1 July 2005.
- (b) **threshold** is—
- (i) the amount set by the Governor-General by Order in Council as the threshold amount for the purposes of this subsection; or 10
  - (ii) \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year that includes that date, if no threshold is set under **subparagraph (i)**;
  - (iii) \$5,000,000 if no threshold amount is set under **subparagraph (i)** or **(ii)**: 15
- (c) **tax rate** is the rate of tax for companies set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year corresponding to the income year referred to in **subsection (1)**: 20
- (d) **interest rate of return** is—
- (i) the percentage amount set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or 25
  - (ii) 7%, if no interest rate of return is set under **subparagraph (i)**;
- (e) **months** is the number of months beginning on or after 1 July 2005 in the corresponding income year. 30
- Defined in this Act: amount, attributed CFC income, corresponding income year, FIF income, income, income tax liability, interest, New Zealand banking group, notional offshore investment account, tax year
- Compare: 2004 No 35 s FG 8G(4)

## FE 23 Banking group's funding debt

*Formula* 35

- (1) A reporting bank must calculate the funding debt of its New Zealand banking group for a tax year using the formula—
- $$\frac{\text{total interest} + \text{interest deductions} - \text{shares}}{\text{days in quarter}}$$

*Definition of items in formula*

- (2) In the formula,—
- (a) **total interest** is the financial value of the total interest-bearing debt for the group, measured on the last day of a quarter in the reporting bank's corresponding income year: 5
- (b) **interest deductions** is the financial value not included in **paragraph (a)** of a financial arrangement in relation to which the group has a deduction for interest to which any of **sections DB 6 to DB 8** (which relate to interest expenditure) applies, other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country: 10
- (c) **shares** is the financial value of shares included in **paragraph (a)**, measured on the last day of a quarter in the reporting bank's corresponding income year: 15
- (d) **days in quarter** is the number of days in a quarter in the reporting bank's corresponding income year.

Defined in this Act: corresponding income year, deduction, financial arrangement, financial value, interest, New Zealand banking group, quarter, reporting bank, share, tax year 20

Compare: 2004 No 35 s FG 8B(3)

**FE 24 Regulations***When this section applies*

- (1) This section applies for the purposes of **sections FE 21 and FE 22**. 25

*Specifications*

- (2) The Governor-General may, from time to time, by Order in Council—
- (a) specify a type of instrument that is included in equity value under **section FE 21(3)**: 30
- (b) specify a type of instrument that is not included in equity value under **section FE 21(3)**:
- (c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under **paragraph (a) or (b)**: 35
- (d) amend or delete a specification under **paragraphs (a) to (c)**:

- (e) set, replace, or repeal a figure for the threshold amount for the purposes of the definition of **threshold** in **section FE 22(3)(b)(i)**:
- (f) set, replace, or repeal a figure for the definition of **interest rate of return** in **section FE 22(3)(d)(i)**. 5

*Application or effective date*

- (3) An Order in Council under **subsection (2)** may—
  - (a) come into effect on or after 1 July 2005:
  - (b) apply for measurement periods and quarters that—
    - (i) are in the 2005–06 or a subsequent income year; 10
    - and
    - (ii) commence on or after 1 July 2005.

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

Compare: 2004 No 35 s FG 8G(5), (6) 15

***Determining membership of groups***

*New Zealand group*

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

*Steps to determine membership* 20

- (1) The following steps are used to determine the membership of the New Zealand group of an excess debt entity that is a company:
  - (a) identifying the New Zealand parent, *see* **section FE 26**:
  - (b) establishing the companies under the parent’s control, *see* **section FE 27**: 25
  - (c) identifying the members of the New Zealand group, *see* **sections FE 28 and FE 29**:
  - (d) if a non-resident has ownership interests in 2 or more New Zealand groups, establishing whether the groups may be combined into a single New Zealand group, *see* **section FE 30**. 30

*Entity as company*

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

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

Compare: 2004 No 35 s FG 4(10), (11)

5

**FE 26 Identifying New Zealand parent***Identifying resident company*

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

*Entity as parent*

10

- (2) The excess debt entity is treated as the New Zealand parent if—

(a) the entity is not resident in New Zealand; or

(b) the entity is resident in New Zealand, and—

(i) a non-resident has a direct ownership interest in the entity of 50% or more, as determined under **section FE 39**; and

15

(ii) no single non-resident carrying on business in New Zealand through a fixed establishment in New Zealand has an ownership interest in the entity of 50% or more.

20

*Top tier New Zealand resident company*

- (3) If **subsection (2)** does not apply, the excess debt entity's New Zealand parent is the company (**company A**) that meets all the following requirements:

25

(a) company A is either—

(i) resident in New Zealand; or

(ii) not resident in New Zealand but carrying on business in New Zealand through a fixed establishment in New Zealand; and

30

(b) company A has an ownership interest in the entity; and

(c) a non-resident has a direct ownership interest in company A; and

(d) if company A is resident in New Zealand, a non-resident who has an ownership interest in the entity of 50% or more, also has an ownership interest in company A of 50% or more; and

35



- (e) no company that meets the requirements of **paragraphs (a) to (d)** has a direct ownership interest in company A.

*When parent controlled by non-resident*

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

*Tie-breaker*

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

*Entity as parent*

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

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

- (7) In **subsections (3) and (4)**, ownership interests are determined under **sections FE 38 to FE 41**, but for the purpose of identifying a

New Zealand parent, the ownership interests of an associated person are ignored.

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

5

Compare: 2004 No 35 s FG 4(10)

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

### *Choosing threshold*

- (1) A control threshold that the New Zealand parent of an excess debt entity chooses under this section must apply consistently to all companies that are members of the group. 10

### *Percentages*

- (2) The New Zealand parent of an excess debt entity may choose as the relevant control threshold a percentage that is either— 15
- (a) more than 50%; or
  - (b) 66% or more.

### *Threshold over 50%*

- (3) For a control threshold that is more than 50%, the company or companies treated as controlled by the New Zealand parent are those in which direct ownership interests of more than 50% are held collectively by either or both— 20
- (a) the New Zealand parent; and
  - (b) any other company included in the New Zealand group.

### *Threshold of 66% or more*

- (4) For a control threshold of 66% or more, the companies treated as controlled by the New Zealand parent are those in which direct ownership interests of 66% or more are held collectively by any combination of— 25
- (a) the New Zealand parent; and
  - (b) a non-resident if— 30
    - (i) they have ownership interests of 50% or more in both the entity and the New Zealand parent; and
    - (ii) a company included in the New Zealand group as a result of the control percentage would have been included in the group under **section FE 28** 35

- through the application of the control test in **subsection (3)**, had the control percentage in that subsection been chosen; and
- (c) any other company or companies that are included in the New Zealand group under **section FE 28** through the application of any of these paragraphs. 5
- Default threshold of 66%*
- (5) If the New Zealand parent does not choose a control threshold under **subsection (3) or (4)**, the control threshold applying to the New Zealand group is 66% or more. 10
- Application to other companies of New Zealand parent*
- (6) The control threshold applying for an income year in relation to the entity and its New Zealand parent applies to any company of the New Zealand parent. 15
- Defined in this Act: company, control, excess debt entity, income year, New Zealand, non-resident
- Compare: 2004 No 35 s FG 4(12)–(14B)

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

- New Zealand parent's group*
- (1) A New Zealand group is made up of— 20
- (a) an excess debt entity; and
- (b) the entity's New Zealand parent; and
- (c) a company that is— 25
- (i) resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand; and
- (ii) identified under **section FE 27** as under the control of the New Zealand parent:
- (iii) not a member of the New Zealand banking group of a registered bank: 30
- (d) a CTR holding company as described in **section FE 29**.
- Entity's group*
- (2) Despite **subsection (1)**, if the excess debt entity is not a company identified under **section FE 27** as under the control of the New Zealand parent because the threshold is not met, the New Zealand group is made up only of— 35
- (a) the entity; and

- (b) any company that is resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand, and that—
- (i) would be, under **section FE 27** under the control of the entity, if the entity is treated as the New Zealand parent; or 5
  - (ii) would be, under **section FE 27** under the control of another company (**company A**) if the entity is identified as under the control of company A, and company A is included in the New Zealand group and treated as the New Zealand parent; or 10
  - (iii) would be, under **section FE 27** under the control of company A included in the entity's New Zealand group under **subparagraph (ii)**, if company A is treated as the New Zealand parent: 15
  - (iv) is not a member of the New Zealand banking group of a registered bank; and
- (c) a CTR holding company as described in **section FE 29**.

Defined in this Act: business, company, control, CTR holding company, excess debt entity, fixed establishment, New Zealand, New Zealand banking group, registered bank, resident in New Zealand 20

Compare: 2004 No 35 s FG 4(12), (14C), (14E)

## FE 29 Holding companies

### *Company included in New Zealand group*

- (1) A company is included in an excess debt entity's New Zealand group under **section FE 28** if it is,— 25
- (a) on the date referred to in **section FE 8**, a CTR holding company for a CTR company—
    - (i) that is a member of the entity's New Zealand group; and 30
    - (ii) in which the holding company has direct ownership interests of more than 50%:
  - (b) a member of the New Zealand group of a company described in **paragraph (a)**.

*When subsection (1) does not apply* 35

- (2) **Subsection (1)** does not apply in relation to an income year if, at the end of the income year, the total dividends to the extent fully credited and previously derived by the CTR holding company are no more than the total dividends to the extent

fully credited and previously paid by the CTR holding company.

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

Compare: 2004 No 35 s FG 4(12), (14C), (14E), (14F)

5

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

*When this section applies*

- (1) This section applies when—
- (a) a New Zealand group is in existence; and 10
  - (b) a particular excess debt entity (**company A**) is outside the group; and
  - (c) company A is resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand; and 15
  - (d) a single non-resident has ownership interests of 50% or more in both—
    - (i) the New Zealand group; and
    - (ii) company A.

*Consistency in group membership*

20

- (2) The New Zealand parent of company A may choose to include the company in the New Zealand group if every company to be included in the enlarged group that is a New Zealand parent in the group makes the same election in relation to all other companies that are not in a New Zealand group with that parent before this section applies. 25

*When company D cannot be part of group*

- (3) Despite **subsection (2)**, company A cannot be part of the New Zealand group if—
- (a) another company (**company B**) that is outside the group has a direct ownership in company A; and 30
  - (b) company B is resident in New Zealand, or is carrying on business in New Zealand through a fixed establishment in New Zealand; and
  - (c) either— 35
    - (i) a New Zealand parent in the group, after the application of **subsection (2)**, has control of company B under **section FE 27(3)**; or

- (ii) the single non-resident has ownership interests of 50% or more in company B.

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

5

Compare: 2004 No 35 s FG 4(14D)

### *Worldwide group*

#### **FE 31 Worldwide group for corporate excess debt entity**

##### *Members of worldwide group*

- (1) A worldwide group for an income year is made up of— 10
- (a) an excess debt entity that is a company; and
  - (b) the entity's New Zealand group for the income year; and
  - (c) the entity's worldwide GAAP group, as described in **subsection (2)**; and 15
  - (d) the entity's ultimate non-resident parent, as described in **subsection (3)**; and
  - (e) the ultimate non-resident parent's worldwide GAAP group, as described in **subsection (4)**; and
  - (f) any non-resident that— 20
    - (i) is not a company; and
    - (ii) has ownership interests in the entity of 50% or more; and
  - (g) any person associated with the non-resident referred to in **paragraph (f)**. 25

##### *Worldwide GAAP group*

- (2) An excess debt entity's worldwide GAAP group is made up of all non-residents who are required to be included with the entity in the consolidated financial statements under, as the entity chooses,— 30
- (a) generally accepted accounting practice; or
  - (b) an equivalent standard for consistent and non-distorting financial reporting that is—
    - (i) set in the country where the ultimate non-resident parent of the parent, as described in **subsection (3)**, resides; or 35
    - (ii) applied when preparing the consolidated financial statements of the international group of which the entity is part.

*Ultimate non-resident parent*

- (3) An excess debt entity's ultimate non-resident parent is the company that meets the following requirements:
- (a) the company has ownership interests in the entity of 50% or more; and 5
  - (b) the company is not excluded from the entity's worldwide group under **section FE 32**; and
  - (c) no other company has both—
    - (i) an ownership interest in the entity of 50% or more: 10
    - (ii) an ownership interest in the company referred to in **paragraphs (a) and (b)**.

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

- (4) The ultimate non-resident parent's worldwide GAAP group is made up of— 15
- (a) the ultimate non-resident parent; and
  - (b) any non-resident who is required to be included with the ultimate non-resident parent in consolidated group accounts under, as the non-resident parent chooses,—
    - (i) the standard referred to in **subsection (2)(b)(i)**, if applicable; or 20
    - (ii) generally accepted accounting practice.

*Measuring ownership interests*

- (5) In **subsection (3)**, ownership interests are determined under **sections FE 38 to FE 41**. 25

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

Compare: 2004 No 35 s FG 5(8)

**FE 32 Joint venture parties***When this section applies* 30

- (1) This section applies, despite **section FE 31**, when—
- (a) ownership interests of 50% are held by each of 2 joint venture parties in a company (**company A**) that is included in a worldwide group; and
  - (b) a person holds an ownership interest equal to 50% in company A and— 35
    - (i) the person has an interest in a joint venture party referred to in **paragraph (a)**; or

- (ii) a joint venture party referred to in **paragraph (a)** has an interest in the person.

*Exclusion of 1 joint venture partner*

- (2) An excess debt entity may choose to exclude company A from its worldwide group for an income year. 5

*Ownership interests*

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

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

Compare: 2004 No 35 s FG 5(9) 10

*New Zealand banking group*

**FE 33 New Zealand banking group**

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

- (a) identifying the ultimate parent of a registered bank, *see* **section FE 34**: 15
- (b) determining whether a person may be excluded from a banking group, *see* **section FE 35**:
- (c) identifying a person and a fixed establishment as a member of a banking group, *see* **section FE 36**. 20

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

**FE 34 Identifying ultimate parent**

*Identifying company*

- (1) The ultimate parent is the company identified in **subsection (2) or (3)**, as applicable. 25

*Registered bank's parent*

- (2) An ultimate parent of a registered bank is a company—
- (a) that has an ownership interest in the registered bank of 50% or more; and 30
- (b) in which no other company that has an ownership interest in the registered bank of 50% or more has an ownership interest.



*Fixed establishment's parent*

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

*Ownership interests*

- (4) For the purposes of this section, ownership interests are determined under **sections FE 38 to FE 41**. 5

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

Compare: 2004 No 35 s FG 8C(9), (10)

**FE 35 Persons who may be excluded from banking groups** 10*Reporting bank's exclusions*

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

*Life insurance providers* 15

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

*Entity owning life insurer or banker*

- (3) A reporting bank may choose to exclude from its New Zealand banking group a person resident in New Zealand— 20
- (a) who has a voting interest of 100% in a person excluded under **subsection (2)**; and
  - (b) whose main activity is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing. 25

*Resident group company with other activities*

- (4) A reporting bank may choose to exclude from its New Zealand banking group a person resident in New Zealand— 30
- (a) who is required under generally accepted accounting practice to be included in consolidated group accounts with a person or fixed establishment excluded under **subsection (2) or (3)**; and 30
  - (b) whose main activity is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing. 35

*Fixed establishment with other activities*

- (5) A reporting bank may choose to exclude from its New Zealand banking group a fixed establishment of a non-resident if—
- (a) the non-resident has a voting interest of 100% in a person excluded under **subsection (2)**; and 5
  - (b) the fixed establishment has a main activity of financing the person excluded under **subsection (2)**; and
  - (c) the main activity of the fixed establishment is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing. 10

Defined in this Act: company, consolidated group, control, fixed establishment, generally accepted accounting practice, New Zealand, New Zealand banking group, non-resident, reporting bank, resident in New Zealand, voting interest 15

Compare: 2004 No 35 s FG 8C(8)

**FE 36 Identifying members of New Zealand banking group***Entities included in group*

- (1) The New Zealand banking group of a registered bank includes the entities described in **subsection (2)**, and may also include the entities described in **subsections (3) to (6)** if the conditions set out in those subsections are met. 20

*Registered bank or fixed establishment*

- (2) The banking group includes—
- (a) the registered bank, if resident in New Zealand: 25
  - (b) the registered bank's fixed establishment, if the registered bank is not resident in New Zealand.

*Resident person in group with registered bank*

- (3) A resident person is included in the banking group if the person is part of the same group of companies as the registered bank, and the following conditions under generally accepted accounting practice are met: 30
- (a) for a resident registered bank with no non-resident ultimate parent, the consolidated group accounts include both the person and the registered bank, or would include both but for relevant materiality thresholds; or 35
  - (b) for a non-resident registered bank with no non-resident ultimate parent, the consolidated group accounts would

include the person and the registered bank if the registered bank were resident in New Zealand and the relevant materiality thresholds were met.

*Resident in group with non-resident ultimate parent*

- (4) A resident is included in the banking group if— 5
- (a) the person is part of the same group of companies as a non-resident ultimate parent; and
  - (b) under generally accepted accounting practice, the consolidated group accounts would include the person and the ultimate parent if the ultimate parent were resident in New Zealand and the relevant materiality thresholds were met. 10

*Fixed establishment in group with registered bank*

- (5) A fixed establishment in New Zealand of a non-resident is included in the banking group separately from the non-resident if— 15
- (a) the fixed establishment is part of the same group of companies as a non-resident registered bank with no non-resident ultimate parent; and
  - (b) under generally accepted accounting practice, the consolidated group accounts would include the fixed establishment and the registered bank if the registered bank were resident in New Zealand and the relevant materiality thresholds were met. 20

*Fixed establishment in group with non-resident ultimate parent* 25

- (6) A fixed establishment in New Zealand of a non-resident is included in the banking group separately from the non-resident if—
- (a) the fixed establishment is part of the same group of companies as a non-resident ultimate parent; and 30
  - (b) under generally accepted accounting practice, the consolidated group accounts would include the fixed establishment and the ultimate parent if the ultimate parent

were resident in New Zealand and the relevant materiality thresholds were met.

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

5

Compare: 2004 No 35 s FG 8C(1), (2), (4)–(7)

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

*When subsection (2) applies*

- (1) **Subsection (2)** applies on a day when a New Zealand banking group has either— 10
- (a) a single registered bank, or
  - (b) no registered bank but a fixed establishment of a single registered bank.

*Registered bank*

- (2) The reporting bank for the day is the registered bank. 15

*When subsection (4) applies*

- (3) **Subsection (4)** applies on a day when a New Zealand banking group has either— 20
- (a) more than 1 registered bank; or
  - (b) no registered bank but fixed establishments of more than 1 registered bank.

*Notice or Commissioner's appointment*

- (4) The reporting bank is— 25
- (a) the registered bank that first notifies the Commissioner of an election to be the reporting bank, if the Commissioner receives the notice within 6 months after the end of the income year in which the day occurs; or
  - (b) if **paragraph (a)** does not apply, the registered bank chosen by the Commissioner. 30

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

Compare: 2004 No 35 s FG 8D

*Measuring ownership interests in companies*

**FE 38 Measuring ownership interests in companies**

For the purposes of this subpart, a person's ownership interest in a company is the total of the following percentages:

- (a) any direct ownership interests they hold in the company; and 5
- (b) any direct ownership interests held in the company by an associated person; and
- (c) any indirect ownership interests they hold in the company; and 10
- (d) any indirect ownership interests held in the company by an associated person.

Defined in this Act: associated person, company

Compare: 2004 No 35 s FG 2(2)

**FE 39 Direct ownership interests** 15

A person's direct ownership interest in a company referred to in **section FE 38** is equal to the highest percentage of shares or rights the person holds in the categories listed in **section EX 5(1)** (Direct control interests), applying the subsection as if the company were a foreign company. 20

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

Compare: 2004 No 35 s FG 2(3)

**FE 40 Tiered ownership interests**

*When this section applies*

- (1) This section applies when a person has a direct ownership interest in a company (**company A**), and that company has an ownership interest in another company (**company B**). 25

*When ownership interest less than 50%*

- (2) If the person's direct ownership interest in company A is less than 50%, they are treated as holding an indirect ownership interest in company B. The interest is calculated by multiplying the percentage that is the person's direct ownership interest in company A by the percentage that is company A's ownership in company B. 30

*When ownership interest more than 50%*

- (3) If the person's direct ownership interest in company A is equal to or more than 50%, they are treated as holding an indirect ownership interest in company B that is equal to company A's ownership interest in company B. 5

Defined in this Act: company

Compare: 2004 No 35 s FG 2(4)

**FE 41 Treatment of associated persons' interests***Aggregating ownership interests*

- (1) For the purposes of **section FE 39**, a person's direct ownership interests include the direct ownership interests of a person associated with them. But if an aggregation of ownership interests results in the same percentage shares or rights in a company being counted more than once, the person's ownership interest in the company must be adjusted to the extent necessary to avoid multiple counting. 10  
15

*Relative resident in New Zealand*

- (2) For the purposes of **sections FE 38 to FE 40**, a non-resident who does not have a direct or an indirect ownership interest in a company and a relative resident in New Zealand are not associated persons in relation to the company. 20

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

Compare: 2004 No 35 s FG 2(4)–(6)

Subpart FF—Interest apportionment for conduit investment 25

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*Interest apportionment rule*

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### *Introductory provisions*

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

##### *What this subpart does*

- (1) This subpart applies to restrict the conduit tax relief that a company has under **sections LQ 1 to LQ 4** (which relate to conduit tax relief) or **section RG 7** (Reduction of payments for conduit tax relief) by limiting the amount of interest expenditure that may be apportioned to the company's New Zealand operations, and apportioning the excess to conduit investments. 10  
15

##### *Structure of subpart*

- (2) This subpart sets out—
- (a) the companies to which the interest apportionment rule applies:
  - (b) the thresholds for the application of the rule: 20
  - (c) how to identify the companies that are part of a company's foreign attributed interest group (the **FAI group**):
  - (d) the formulas for the calculation of—
    - (i) the debt percentage of a New Zealand FAI group: 25
    - (ii) the debt percentage of a consolidated FAI group:
    - (iii) the amount of excess interest to be allocated against foreign attributed income:
    - (iv) the company's share of the apportionment:
  - (e) how to determine the amount to be applied to reduce conduit tax relief under **sections LQ 1 to LQ 4**: 30
  - (f) the treatment of any remaining balance of interest expenditure.

Defined in this Act: amount, company, FAI group, foreign attributed income, interest, New Zealand, share 35

**FF 2 When interest apportionment rule applies**

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

- (a) the conduit company is a FDPA company or a CTR company, and is not a member of a New Zealand banking group for a registered bank; and 5
- (b) in the income year, the conduit company—
  - (i) derives foreign attributed income; or
  - (ii) is paid a dividend from which the company must pay FDP, or would be required to do so in the absence of **section RG 7** (Reduction of payments for conduit tax relief); and 10
- (c) the threshold test in **section FF 4** is met.

Defined in this Act: amount, company, conduit company, CTR company, dividend, FDP, FDP account, FDPA company, foreign attributed income, interest, income year, New Zealand banking group, pay, registered bank 15

Compare: 2004 No 35 s FH 1(1)

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

The following steps are required to determine if a conduit company has an excessive amount of interest expenditure apportioned to its New Zealand operations, and how the amount is to be treated: 20

- (a) step 1: identify the members of the conduit company's New Zealand FAI group, *see* **section FF 8**: 25
- (b) step 2: calculate the debt percentage of the New Zealand FAI group, *see* **section FF 9**:
- (c) step 3: if the debt percentage is more than 66%, and the conduit company chooses to make the calculation, calculate the debt percentage of its consolidated FAI group, *see* **section FF 10**: 30
- (d) step 4: determine whether an excess amount of interest expenditure exists, *see* **section FF 5**:
- (e) step 5: determine the conduit company's share of the excess amount of interest expenditure for inclusion in the formula in **section LQ 1(2)** (Tax credits of CTR companies) reducing the tax credit for conduit tax relief, *see* **section FF 6**: 35
- (f) step 6: use any surplus amount to adjust the amount of the conduit company's foreign dividends by treating the 40



company as having an additional amount of income and a debit in its CTR account, *see* **section FF 7**.

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

### *Interest apportionment rule*

5

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

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

- (1) The interest apportionment rule in this subpart applies for a tax year only if—
- (a) the amount of a conduit company's conduit tax relief determined under **subsection (2)** for the tax year is \$50,000 or more; or 10
  - (b) the debt percentage of a conduit company's New Zealand FAI group, as determined under **sections FF 9 and FF 10**, for the tax year is more than 66%. 15

##### *Determination of threshold amount*

- (2) The amount of conduit tax relief referred to in **subsection (1)(a)** is the sum of the tax credits under **sections LQ 1 to LQ 4** (which relate to conduit tax relief) and reductions in FDP under **section RG 7** (Reduction of payments for conduit tax relief) that— 20
- (a) the company has for the tax year as a CTR company, or would have if it were a CTR company; and
  - (b) all companies associated with the company have for the tax year as CTR companies, or would have if they were CTR companies. 25

##### *Calculation*

- (3) For the purposes of **subsection (2)**, the calculation of each credit is made as if item **excess interest allocation** in the formula in **section LQ 1(2)** (Tax credits for CTR companies) were zero. 30

Defined in this Act: amount, company, conduit company, CTR company, FAI group, FDP, interest, New Zealand, pay, tax year

Compare: 2004 No 35 s FH 1

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

*When this section applies*

- (1) This section applies to determine whether a group of companies has an excess amount of interest expenditure in an income year. 5

*Formula*

- (2) The amount is calculated using the formula—
- $$\text{interest expenditure} \times \frac{\text{NZ FAI group debt percentage} - \text{relief debt percentage}}{\text{NZ FAI group debt percentage}} \quad 10$$

*Definition of items in formula*

- (3) In the formula, —
- (a) **interest expenditure** is the total amount of deductions for interest under any of **sections DB 6 to DB 8** (which relate to deductions for interest) as modified by **section FE 6** (Apportionment of interest by excess debt entity) or **section FZ 2** (Effect of specified lease on lessor and lessee), that members of the company's FAI group at the end of the income year are allowed for the income year, excluding— 15
- (i) any amount payable to another company in the FAI group; and
- (ii) any amount for a financial arrangement excluded, when **sections FF 9 and FF 10** are applied, as a result of the rules in **section FE 15** (Total group debt): 25
- (b) **NZ FAI group debt percentage** is the debt percentage of the company's New Zealand FAI group for the income year calculated under **section FF 9**: 30
- (c) **relief debt percentage** is the greatest of the following: 30
- (i) 66%:
- (ii) the debt percentage of the New Zealand FAI group for the income year as calculated for the conduit company without any reduction of the total group assets under **section FF 9(3)**: 35
- (iii) the debt percentage of the consolidated FAI group for the income year under **section FF 10**, if the conduit company chooses to make the modified calculation described in that section.

*Negative result*

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

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

5

Compare: 2004 No 35 s FH 5

**FF 6 Conduit tax relief***What this section does*

- (1) This section provides for the calculation of a conduit company's share of an excess interest allocation determined under **section FF 5**. The result is included as an item in the formula in **section LQ 1(2)** (Tax credits for CTR companies) that determines the company's tax credit for conduit tax relief.

10

*Conduit company's share: formula*

- (2) The conduit company's share of an excess amount of interest expenditure for a tax year is calculated using the formula—
- $$\left( \text{foreign income} - \frac{\text{company credits}}{\text{tax rate}} \right) \times \text{apportionment percentage.}$$

15

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **foreign income** is the conduit company's foreign attributed income for the income year less its foreign attributed loss offsets for the tax year:
- (b) **company credits** is the sum of—
- (i) an amount that the conduit company is able to credit under **section OE 7(3)** (BETA payment of income tax) against its income tax liability for the tax year, determined as if the amount of the tax credit calculated under **section LQ 1** were zero; and
- (ii) an amount that another company that is part of the same group of companies is able to credit under **section OE 7(3)** against the conduit company's income tax liability for the tax year, determined as if the amount of the tax credit calculated under **section LQ 1** were zero:
- (c) **apportionment percentage** is the amount calculated for the tax year corresponding to the income year referred to in **paragraph (a)** under **subsection (4)**:

20

25

30

35

- (d) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the income year.
- Apportionment percentage: formula* 5
- (4) An apportionment percentage for an income year is the lesser of 1 and the amount calculated using the formula—
- $$\frac{\text{excess amount} \times \text{tax rate}}{\text{rate} \times \text{net foreign attributed income} - \text{credits}}.$$
- Definition of items in formula* 10
- (5) In the formula in **subsection (4)**,—
- (a) **excess amount** is the excess amount of interest expenditure that the conduit company's FAI group has for the tax year, calculated under **section FF 5**:
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** for the tax year: 15
- (c) **net foreign attributed income** is the total foreign attributed income for the tax year less the total amount of tax losses for the corresponding tax year of all companies, including the conduit company, that are part of the conduit company's FAI group at the end of its income year: 20
- (d) **credits** is the total amount that can be credited against the income tax liability for the tax year under **section OE 7(3)** of all companies, including the conduit company, that are part of the conduit company's FAI group at the end of its income year, determined as if the amount of the tax credit calculated under **section LQ 1** for all companies were zero. 25
- Defined in this Act: amount, company, conduit company, FAI group, foreign attributed income, foreign attributed loss offsets, group of companies, income tax, income tax liability, income year, interest, tax loss, tax year 30
- Compare: 2004 No 35 ss FH 6, FH 7
- FF 7 Surplus to foreign dividends**
- When this section applies* 35
- (1) This section applies when the total amount of interest expenditure that is apportioned at the end of an income year to all members of a conduit company's FAI group under **section FF**

**6(4)** is less than the amount of interest expenditure calculated for all members of the group under **section FF 5(2)**.

*Adjustments*

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

*Surplus amount as percentage: formula*

- (3) The tax cash value of the surplus amount for the tax year is the lesser of 1 and the percentage calculated using the formula—
- $$\frac{\text{surplus amount} \times \text{tax rate}}{\text{group FDP}}.$$

*Definition of items in formula*

- (4) In the formula in **subsection (3)**,—
- (a) **surplus amount** is the amount that is the difference between the results of the calculations made under **sections FF 5(2)** and **FF 6(4)** as described in **subsection (1)**;
  - (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the corresponding tax year;
  - (c) **group FDP** is the total amount of FDP—
    - (i) calculated after taking into account an amount of a tax loss component that the conduit company chooses to use to satisfy a liability to pay some or all of a payment of FDP under **section RA 6** (Withholding and payment obligations for passive income), but before taking into account a reduction in liability under **section RG 7** (Reduction of payments for conduit tax relief); and

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

*Adjustment to foreign dividends: formula*

5

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

$$\frac{\text{company FDP} \times \text{surplus percentage}}{\text{tax rate.}}$$

10

*Definition of items in formula*

- (6) In the formula in **subsection (5)**,—
  - (a) **company FDP** is the total amount of FDP—
    - (i) calculated after taking into account an amount of a loss balance that the company chooses to use to satisfy a liability to pay some or all of payment of FDP under **section RG 6** (Using loss balances) but before taking into account a reduction in liability under **section RG 7**; and
    - (ii) required to be withheld from dividends paid to the company during the income year: 20
  - (b) **surplus percentage** is the percentage figure given by the formula in **subsection (4)**;
  - (c) **tax rate** is the rate of income tax set out in **schedule 1, part A, clause 2** for the corresponding tax year. 25

*Income*

- (7) The conduit company is treated as deriving under **section CV 10** (FDPA companies or CTR companies) on the last day of the income year an amount of income equal to the adjustment calculated under **subsection (5)**. 30

*Debit in CTR account*

- (8) If the conduit company is a CTR company, the CTR account is adjusted by a debit under **section OD 13** (CTRA adjustment for conduit tax relief) of an amount calculated using the formula— 35
  - income under **subsection (7)** × tax rate.

*Definition of items in formula*

- (9) In the formula in **subsection (8)**,—
- (a) **income under subsection (7)** is the amount of income referred to in **subsection (7)**: 5
- (b) **tax rate** is the rate of income tax set out in **schedule 1, part A, clause 2** for the corresponding tax year. 5
- Defined in this Act: amount, basic rate, company, conduit company, CTR account, CTR company, dividend, FAI group, FDP, foreign dividend, income, income tax, income year, interest, pay, tax loss, tax loss component, tax year 10
- Compare: 2004 No 35 s FH 8 10

*Membership and debt percentages of FAI groups***FF 8 Identifying members of FAI groups***New Zealand group under interest apportionment rules*

- (1) If a conduit company is a person described in **section FE 2** (When this subpart applies), the company's FAI group is made up of the members of its New Zealand group under **section FE 28** (Identifying members of New Zealand group). However, the grouping rules for holding companies in **section FE 29** (Holding companies) do not apply. 15

*Resident group companies* 20

- (2) If **subsection (1)** does not apply, a conduit company's FAI group is made up of—
- (a) the conduit company; and
- (b) a company that is— 25
- (i) part of the same group of companies as the conduit company; and
- (ii) resident in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand.

Defined in this Act: business, company, conduit company, FAI group, fixed establishment, group of companies, New Zealand, resident in New Zealand 30

Compare: 2004 No 35 s FH 2

**FF 9 Calculating debt percentage of New Zealand FAI groups***When this section applies*

- (1) This section applies to determine the debt percentage of a New Zealand FAI group for an income year. 35

*Total group debt divided by total group assets*

- (2) The debt percentage of a conduit company's New Zealand FAI group is found by dividing the amount of total group debt by the amount of total group assets of the group for the income year, applying, as relevant, **sections FE 3, FE 8, FE 10(1), FE 11 to FE 16, FE 25 to FE 28 and FE 30**, as if the conduit company were an excess debt entity calculating the debt percentage of their New Zealand group. 5

*Formula*

- (3) For the purposes of this section, the amount that is the total group assets of the New Zealand FAI group as determined under **section FE 16** (Total group assets) is reduced by the sum of the amounts calculated for each member of the group using the formula— 10
- percentage of non-resident shareholders 15  
× (CFC rights + FIF interests).

*Definition of items in formula*

- (4) In the formula,—
- (a) **percentage of non-resident shareholders** is either,—
- (i) for a member receiving conduit tax relief through a tax credit under **sections LQ 1** (Tax credits of CTR companies), the percentage of that member's non-resident shareholders used to calculate the amount of the credit under **section LQ 1(2)**; or 20
- (ii) for a member receiving conduit tax relief through a reduction in FDP under **section RG 7** (Reduction of payments for conduit tax relief), the average of the percentages of that member's non-resident shareholders used to calculate the amount of the reduction under **section RG 7(1)**: 25 30
- (b) **CFC rights** is the total value of the rights that the member has in a CFC that—
- (i) are determined under **section FE 16** at the relevant measurement date; and
- (ii) result in the member having attributed CFC income or attributed CFC loss for an accounting period that includes the relevant measurement date: 35



- (c) **FIF interests** is the total value of interests that the member has in a FIF that—
- (i) are determined under **section FE 16** at the relevant measurement date; and
  - (ii) in relation to which they determine their FIF income or FIF loss under the accounting profits method or the branch equivalent method. 5

*Modifications in certain circumstances*

- (5) For the purposes of this section, if the conduit company and each company in the same New Zealand group are the company's FAI group under **section FF 8(2)**, the following modifications apply: 10
- (a) **sections FE 26 to FE 30** (which relate to the identification of members of a New Zealand group) do not apply:
  - (b) the group of companies referred to in **section FE 14** (Consolidation of debts and assets) is the group identified under **section FF 8(2)** (Measurement dates): 15
  - (c) **section FE 8(2)** applies as if the company were the New Zealand parent. 20

Defined in this Act: accounting period, accounting profits method, amount, attributed CFC income, attributed CFC loss, branch equivalent method, CFC, company, conduit company, dividend, excess debt entity, FAI group, FDP, FIF, FIF income, FIF loss, group of companies, income year, New Zealand, non-resident, pay, shareholder, total group assets, total group debt 20

Compare: 2004 No 35 s FH 3 25

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

*When this section applies*

- (1) This section applies when the debt percentage of a New Zealand FAI group for an income year is more than the threshold percentage set out in **section FF 4(1)(b)** to determine whether, on a consolidated basis, a higher threshold for the application of the interest apportionment rule is justified. 30

*Conduit company's election*

- (2) If the debt percentage of a conduit company's New Zealand FAI group for an income year is more than 66%, the company may choose to calculate the debt percentage of its consolidated FAI group under **section FF 9**, as modified by **subsection (3)**. 35

*Modifications*

- (3) For the purposes of the consolidated calculation,—
- (a) the assets of the group exclude all income interests in a CFC or FIF in a country that is not included in the grey list, calculated under the accounting profits or branch equivalent method: 5
  - (b) the debts and assets of a CFC or FIF are consolidated with the FAI group if, for the accounting period in which the relevant measurement date under **section FE 8(1)** (Measurement dates) falls,— 10
    - (i) the FAI group holds total income interests of 40% or more in a CFC; or
    - (ii) the FAI group would be treated under **section EX 8** (Income interests: total of direct and indirect interests) if the FIF were a CFC as holding total income interests of 40% or more in the FIF: 15
  - (c) a percentage of the debts and assets of a CFC or FIF equal to the total percentage income interest of the FAI group in the CFC or FIF is consolidated with the FAI group if, for the accounting period in which the relevant measurement date under **section FE 8(1)** falls,— 20
    - (i) the FAI group holds total income interests of 5% or more but less than 40% in a CFC; or
    - (ii) the FAI group would be treated under **section EX 8** if the FIF were a CFC as holding total income interests of 5% or more but less than 40% in the FIF. 25

*Accounting practice*

- (4) A consolidation under this section is made as if the CFC or FIF were a member of the FAI group using— 30
- (a) generally accepted accounting practice for consolidation of a group of companies for the elimination of intra-group balances; and
  - (b) the values shown in the financial accounts for the accounting period calculated according to a financial reporting standard that is equivalent to generally accepted accounting practice. 35

Defined in this Act: accounting period, branch equivalent method, CFC, company, conduit company, FAI group, FIF, generally accepted accounting practice, grey list, group of companies, income interest, New Zealand, tax year 40

Compare: 2004 No 35 ss FH 3(1), FH

**FF 11 Changes in FAI group membership**

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

5

Defined in this Act: conduit company, FAI group

Compare: 2004 No 35 s FH 8(6)

**Subpart FL—Emigration of resident companies****Contents**

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FL 2	Treatment of emigrating companies and their shareholders	

**FL 1 What this subpart does**

*When this subpart applies*

- |     |   |    |
|-----|---|----|
| (1) | This subpart applies when a company that is a New Zealand resident (the <b>emigrating company</b> ) stops being a New Zealand resident. | 15 |
|-----|---|----|

*Tax effects*

- |       |   |    |
|-------|---|----|
| (2)   | For tax purposes, the effects on an emigrating company and its shareholders, when an emigrating company becomes non-resident reflect the effects that would have resulted if,—  | 20 |
| (a)   | just before the time of emigration,—  |    |
| (i)   | the emigrating company disposed of its property at market value; and  |    |
| (ii)  | the emigrating company went into liquidation; and   | 25 |
| (iii) | the amount available for distribution on liquidation were distributed as dividends to shareholders of the emigrating company to the extent to which the amount is more than the available subscribed capital and any capital gain of the company; and | 30 |
| (b)   | at the time of emigration, the emigrating company were reformed as a foreign company with—  |    |
| (i)   | the same ownership and business activities as those of the emigrating company just before the time of emigration; and   | 35 |

- (ii) the property of the emigrating company just before the time of emigration, acquired at its market value at that time.

Defined in this Act: amount, business, company, emigrating company, foreign company, liquidation, New Zealand resident, non-resident, shareholder, time of emigration

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Compare: 2004 No 35 s FCB 1

## **FL 2 Treatment of emigrating companies and their shareholders**

*When this section applies*

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- (1) This section applies just before the time of emigration of an emigrating company.

*Treatment of company*

- (2) The company is treated as—
- (a) disposing of its property to a person, and reacquiring the property from the person, for consideration equal to the market value of the property at the time; and
- (b) making a distribution in money as a dividend to its shareholders of an amount that would be available for distribution at the time if the company were treated as going into liquidation.

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*Treatment of shareholder*

- (3) Each shareholder of the company is treated as being paid a distribution in money as a dividend of the amount the shareholder would be entitled to at the time if the company were treated as going into liquidation.

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Defined in this Act: emigrating company, liquidation, shareholder, time of emigration

Compare: 2004 No 35 ss FCB 2, FCB 3

## **Subpart FM—Consolidated groups of companies**

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**FM 1 What this subpart applies to**

This subpart applies to eligible companies that are part of a wholly-owned group of companies that choose to form a consolidated group of companies.

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

Compare: 2004 No 35 s FD 1

**FM 2 Consolidation rules**

*Purpose*

- |     |   |    |
|-----|---|----|
| (1) | The consolidation rules are intended to ensure that, unless a provision of this Act expressly provides otherwise or the context requires another result, this Act applies to companies part of a consolidated group as if they were a single company, including its treatment for the following purposes: | 25 |
| (a) | to determine whether a tax credit may be used to satisfy the income tax liability of a consolidated group for a tax year:   | 30 |
| (b) | when a provision sets a limit or provides a threshold, and its application depends on whether or not something is more or less than the limit or threshold.   |    |

*Meaning*

- (2) The **consolidation rules** means the following:
- (a) this subpart:
  - (b) **section GB 38** (When sections GB 35 to GB 37 apply to consolidated groups): 5
  - (c) **subpart ID** (Use of tax losses by consolidated groups):
  - (d) **sections LK 8 to LK 11** (which relate to tax credits of consolidated group companies):
  - (e) **subpart OP** (Memorandum accounts of consolidated groups): 10
  - (f) **section RC 28** (Provisional tax rules and consolidated groups):
  - (g) sections 73 and 74 of the Tax Administration Act 1994.
- Defined in this Act: company, consolidated group, consolidation rules, FDP, FDP account, imputation credit account, income tax liability, pay, tax year, wholly-owned group 15
- Compare: 2004 No 35 ss FD 1, OB 1 “consolidation rules”

**FM 3 Liability of consolidated groups and group companies***Taxable income of group*

- (1) For the purposes of calculating the income tax liability for a tax year of a consolidated group under **subpart BC** (Calculating and satisfying income tax liabilities), the taxable income of a consolidated group for a tax year is the sum of the amounts calculated under **subsection (2)** for each company in the consolidated group for all or part of the corresponding income year. 20 25

*Calculation for each company in consolidated group*

- (2) Each company that is part of a consolidated group for all or part of an income year must calculate the amount that would be its taxable income under **subpart BC**, as modified by this section and **sections FM 4 to FM 13**, for all or part of the income year in which the company is part of the consolidated group. 30

*Returns and assessment by consolidated group*

- (3) The nominated company of a consolidated group must—
- (a) provide a single return of income for a tax year for the companies in the consolidated group in the corresponding income year under section 33 of the Tax Administration Act 1994; and 35

- (b) make an assessment under section 92 of the Tax Administration Act 1994 of the amount of income tax payable by the consolidated group.

*No separate returns or assessment (with exception)*

- (4) A group company cannot make a separate assessment or return for the tax year unless it is, for part of the corresponding income year, not part of the consolidated group. 5

*Joint and several liability*

- (5) Each company that is part of a consolidated group is jointly and severally liable for the amount of income tax assessed for the consolidated group in relation to its taxable income. 10

*Individual liability*

- (6) The joint and several liability of each company that is part of a consolidated group is substituted for their individual income tax liability, but only to the extent— 15
- (a) of the income tax liability of the consolidated group for the period of the income year in which the company is in the consolidated group; and
- (b) to which **section FM 37** does not apply.

*Withholding and payment obligations of companies*

- (7) Each company that is part of a consolidated group is liable to comply with its obligations under the PAYE rules, the FBT rules, the ESCT rules, the RWT rules, and the NRWT rules. 20

Defined in this Act: amount, company, consolidated group, ESCT rules, FBT rules, income tax, income tax liability, income year, nominated company, NRWT rules, PAYE rules, return of income, RWT rules, tax year, taxable income 25

Compare: 2004 No 35 ss HB 1(1), HB 2(1), NB 1

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

*When this section applies*

- (1) This section applies before the nominated company of a consolidated group makes an assessment for the consolidated group for a tax year. 30

*Named companies bearing liability*

- (2) Despite **section FM 3(3)**, the nominated company may ask the Commissioner for approval for 1 or more named companies in 35



the consolidated group to bear the consolidated group's income tax liability for the tax year.

*Approval by Commissioner*

- (3) The Commissioner must approve a request under **subsection (2)** unless limiting the liability to the named companies will significantly prejudice the recovery, or likely recovery, of the income tax liability of the consolidated group for the tax year. 5

*Liability limited to named companies*

- (4) For a tax year to which an approval referred to in **subsection (3)** relates,— 10
- (a) only a named company is liable for the income tax liability of the consolidated group, and if more than 1 company is named, the liability is joint and several:
- (b) **section RC 28** (Provisional tax rules and consolidated groups) does not apply to impose on a company other than a named company joint and several liability for provisional tax payable by the consolidated group. 15

*When named companies do not meet obligations*

- (5) Despite **subsection (4)**, the joint and several liability of a group company other than a named company is not extinguished to the extent to which— 20
- (a) a named company does not meet their income tax liability under this section; and
- (b) the Commissioner determines that the income tax liability of the consolidated group that is attributable to the taxable income of a company other than a named company is to be recovered from the other company. 25

Defined in this Act: amount, assessment, Commissioner, company, consolidated group, income tax liability, nominated company, pay, provisional tax, tax year, taxable income 30

Compare: 2004 No 35 s HB 1(3)–(5)

## **FM 5 Liability when company leaves consolidated group**

*Company leaving consolidated group*

- (1) In an income year in which a company leaves a consolidated group, the company's liability under **section FM 3(3)** is removed if all the following paragraphs apply: 35
- (a) if the assessment is made after the later of—

- (i) the date on which the company is treated as leaving the consolidated group; or
- (ii) the date of the event that caused the company to be treated as leaving the consolidated group; and
- (b) the amount assessed is more than an earlier assessment of the consolidated group for the income year; and
- (c) the Commissioner considers that the removal of the liability will not significantly prejudice the recovery, or likely recovery, of the amount of income tax assessed for the income year.

*Notifying company and consolidated group*

- (2) For the purposes of **subsection (1)(c)**, the Commissioner must notify the company and the consolidated group if the discretion has been exercised.

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

Compare: 2004 No 35 s HB 1(2)

## **FM 6 Some general rules for the treatment of consolidated groups**

*References to income, tax losses, tax payable, and credits*

- (1) For the purposes of the consolidation rules, the following amounts are determined on the basis of a single assessment:
- (a) income, assessable income, net income, or taxable income of a consolidated group:
  - (b) a tax loss component, a tax loss, a loss balance, an attributed CFC net loss, or a FIF net loss of a consolidated group:
  - (c) tax payable by a consolidated group:
  - (d) a tax credit available to a consolidated group.

*Shares*

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

*Dividends*

- (3) A dividend that 1 company that is part of a consolidated group pays to another group company continues to be taken into account for the purposes of—
- (a) the imputation rules: 5
  - (b) the FDP rules:
  - (c) **sections FM 8(3)(c), FM 24 to FM 30, GB 38, GB 40, OP 3 to OP 77**, (which relate to dividends and consolidated groups):
  - (d) **subpart OE** (Branch equivalent tax accounts): 10
  - (e) sections 73 and 74 of the Tax Administration Act 1994.

*International tax rules*

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

*Balances of imputation credit and FDP accounts*

- (5) **Sections OA 3** (General rules for maintaining memorandum accounts), and **YA 2(2)(e)** (Meaning of income tax) apply for the purposes of **sections FM 24 to FM 30, GB 38, subpart OP**, and sections 73 and 74 of the Tax Administration Act 1994, as if the references to—
- (a) the imputation rules were references to **sections OP 3 to OP 50**: 20
  - (b) the FDP rules were references to **sections FM 24 to FM 30, and OP 51 to OP 77**. 25

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

Compare: 2004 No 35 ss FD 2, FD 11

*Calculating taxable income for consolidated group returns**Accounting generally*

- FM 7 Treatment of amounts derived or expenditure incurred**
- Sections FM 8 to FM 30** set out the treatment of certain amounts derived or expenditure incurred while a company is part of a consolidated group. The treatment applies to the part of a

company's income year when the company is in the consolidated group.

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

Compare: 2004 No 35 s HB 2(1)

<b>FM 8 Transactions between group companies: income</b>	5
<i>When this section applies</i>	
(1) This section applies when a company that is part of a consolidated group derives an amount of income from a transaction or arrangement with another company in the same consolidated group, and the amount would not be income if the consolidated group were 1 company.	10
<i>Excluded income</i>	
(2) The amount is excluded income of the company under <b>section CX 57</b> (Intra-group transactions).	
<i>Exclusion of certain amounts</i>	
(3) Despite <b>subsection (2)</b> , this section does not apply to—	15
(a) an amount arising from the disposal of the company's trading stock; or	
(b) an amount arising under <b>section EW 31</b> (Base price adjustment formula) from—	20
(i) the disposal of a financial arrangement to which the financial arrangements rules apply; or	
(ii) the remission of a financial arrangement to which the financial arrangements rules apply, if the parties were not group companies for the whole term of the arrangement; or	25
(c) a dividend under <b>section CD 4(1)</b> (Transfers of value generally) between group companies arising from the release of an obligation to repay money lent before the companies are treated under <b>section FM 35</b> as part of the consolidated group.	30
Defined in this Act: amount, arrangement, company, consolidated group, excluded income, financial arrangement, financial arrangements rules, income, income year, money lent, pay, trading stock	
Compare: 2004 No 35 s HB 2(1)(a)	35

**FM 9 Amounts that are company's income***When this section applies*

- (1) This section applies when a company that is part of a consolidated group derives an amount that would not be income of the company in the absence of this section, but would be income of the consolidated group if it were 1 company either— 5
- (a) because of a purpose for which an item of property was acquired; or
  - (b) because a connection exists between the amount and the carrying on of a business by another consolidated group company; or 10
  - (c) for some other reason.

*Income*

- (2) The amount is income of the company under **section CV 2** (Consolidated group: income of company in group). 15

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

Compare: 2004 No 35 s HB 2(1)(e)

**FM 10 Expenditure: intra-group transactions***When this section applies* 20

- (1) This section applies when—
- (a) a company incurs expenditure or loss, or has an amount of depreciation loss, in a tax year or part of a tax year in which it is part of a consolidated group; and
  - (b) the company incurs the expenditure or loss through a payment or disposal to, or a transaction or arrangement with, another consolidated group company. 25

*No deduction (with exception)*

- (2) If a deduction would not be allowed for the expenditure or loss if the consolidated group were 1 company, the company is denied a deduction under **section DV 16** (Consolidated groups: intra-group transactions). 30

Defined in this Act: amount, arrangement, business, company, consolidated group, deduction, depreciation loss, income, interest, pay, share, tax year, taxable income, trading stock 35

Compare: 2004 No 35 s HB 2(1)(b)

**FM 11 Expenditure: nexus with income derivation***When this section applies*

- (1) This section applies when a company incurs expenditure or loss or has an amount of depreciation loss in a tax year or part of a tax year in which it is part of a consolidated group that— 5
- (a) is not expenditure or loss to which **section FM 10** applies; and
  - (b) would not be allowed as a deduction to the company in the absence of this section.

*Deduction*

- (2) The company is allowed a deduction for the amount under **section DV 17** (Consolidated groups: expenditure or loss incurred by group companies) if the consolidated group would be allowed a deduction for the amount, treating the group as if it were 1 company, because of a connection between— 10 15
- (a) the incurring of the expenditure or loss or amount of depreciation loss; and
  - (b) the deriving of assessable or excluded income, or the carrying on of a business by another company in the consolidated group. 20

Defined in this Act: amount, arrangement, assessable income, business, company, consolidated group, deduction, depreciation loss, income, interest, pay, share, tax year, taxable income, trading stock

Compare: 2004 No 35 s HB 2(1)(c)

**FM 12 Expenditure when deduction would be denied to consolidated group** 25*When this section applies*

- (1) This section applies when a company incurs expenditure or loss or an amount of depreciation loss in a tax year or part of a tax year in which it is part of a consolidated group that— 30
- (a) is not expenditure or loss to which **section FM 10** applies; and
  - (b) would be allowed as a deduction to that company in the absence of this section.

*No deduction (with exception)*

- (2) The company is denied a deduction for an amount under **section DV 17** (Consolidated groups: expenditure or loss incurred by group companies) if the deduction would be 35

- denied to the consolidated group, treating the group as if it were 1 company, except to the extent to which the expenditure or loss or amount of depreciation loss is interest on money that the company has borrowed from a person that is part of the consolidated group, and the company— 5
- (a) is allowed a deduction under **section DB 7** (Interest: most companies need no nexus with income) or **DB 8** (Interest: money borrowed to acquire shares in group companies); or
- (b) would be allowed a deduction under **section DB 7 or DB 8** 10 because the company is treated as having used the money borrowed, to the extent of the actual acquisition cost, to acquire certain shares when, through interposed intra-group borrowings, the money borrowed was in fact used by another group company in acquiring the shares. 15

Defined in this Act: amount, arrangement, business, company, consolidated group, deduction, depreciation loss, interest, pay, share, tax year, trading stock

Compare: 2004 No 35 s HB 2(1)(d)

### **FM 13 Capital expenditure** 20

*When this section applies*

- (1) This section applies when a company that is part of a consolidated group incurs expenditure or loss that would, treating the consolidated group as if it were 1 company, be taken into account in determining the cost of property but would not otherwise be taken into account in the absence of this section. 25

*Amount taken into account*

- (2) The expenditure or loss is taken into account in determining the cost of property of companies in the consolidated group. 30

Defined in this Act: company, consolidated group, loss

Compare: 2004 No 35 s HB 2(2)

### **FM 14 Part-year financial statements**

*When this section applies*

- (1) This section applies in an income year when— 35
- (a) a company joins or leaves a consolidated group during the income year; or

- (b) a consolidated group is formed or ends its existence during the income year.

*Who must provide statements*

- (2) The following returns of income for the tax year must include part-year financial statements under **sections FM 38(5) and FM 40(4)**: 5
- (a) by the company when the financial statements relate to a period in which the company is not in the consolidated group: 10
- (b) by the consolidated group when the financial statements relate to a period in which the company is in the consolidated group: 10
- (c) by another consolidated group when the financial statements relate to a period in which the company is in another consolidated group. 15

*Detailed statements*

- (3) The part-year financial statements must determine, as applicable, the annual gross income, annual total deductions, income tax liability, or tax loss of the company in a fair and reasonable way. For this purpose the relevant part of the income year is treated as a complete income year. 20

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

Compare: 2004 No 35 s FD 9

*Accounting for particular property* 25

**FM 15 Amortising property and revenue account property**

*When this section applies*

- (1) This section applies—
- (a) when property is transferred from a company (**company A**) to another company (**company B**) and both companies are in the same consolidated group at the time the transfer takes place, and the property transferred is— 30
- (i) amortising property; or
- (ii) revenue account property, but not trading stock or a financial arrangement to which the financial arrangements rules apply; and 35



- (b) to determine the income and deductions on a later disposal of property, or in relation to the depreciation or amortisation of the acquisition cost of the property under this Act.
- Acquisition by company B* 5
- (2) Company B is treated as acquiring the property on the date it was acquired by company A for the amount set out in **subsections (3) to (5)**.
- Whole pool*
- (3) When the property forms the whole of a pool of property that is depreciated by company A under **sections EE 20 to EE 24** (which relate to depreciation loss calculated under the pool method), the amount in **subsection (2)** is the adjusted tax value of the pool immediately before the property is transferred to company B. 10  
15
- Part pool*
- (4) When the property forms only part of a pool of property that is depreciated by company A under **sections EE 20 to EE 24**, the amount in **subsection (2)** is the lesser of—
- (a) the market value of the property transferred to company B; and 20
- (b) the adjusted tax value of the whole of the pool immediately before the property is transferred to company B.
- Not pool property*
- (5) If **subsections (3) and (4)** do not apply, the amount in **subsection (2)** is the sum of the following amounts of expenditure incurred by company A before the property is transferred to company B for which no deduction has been allowed other than by the depreciation or amortisation of the acquisition cost of the property under **section EE 1, EZ 7, or EZ 8** (which relate to depreciation) or another amortisation provision of this Act: 25  
30
- (a) the original purchase price of the property:
- (b) expenditure incurred—
- (i) in purchasing or improving the property; or
- (ii) in securing or improving company A's legal rights to the property. 35

- When subsection (7) applies*
- (6) **Subsection (7)** applies—
- (a) for the purposes of **sections EE 48 to EE 54** (which relate to disposals and depreciation recovery income); and
  - (b) to property referred to in **subsection (1)(b)** other than pooled property; and
  - (c) in relation to an amount of depreciation loss or amortisation of acquisition cost up to the time the property is transferred from company A to company B.
- Pre-transfer deductions for depreciation loss and amortisation* 10
- (7) Company B is treated as allowed the pre-transfer deductions that company A is allowed for amounts of depreciation loss under **section EZ 7 or EZ 8**, or for an amount of expenditure or loss under another amortisation provision of this Act. 15
- Defined in this Act: acquire, adjusted tax value, amortising property, amount, company, consolidated group, deduction, depreciation loss, financial arrangement, financial arrangements rules, income, market value, other amortisation provision, pool, revenue account property, trading stock
- Compare: 2004 No 35 s FD 10(1), (2) 20

## **FM 16 Land or business: certain farming or forestry expenditure**

*When this section applies*

- (1) This section applies in an income year when 2 companies (**company A** and **company B**) are in the same consolidated group for the whole of the income year, and — 25
- (a) company A transfers land to company B, and company B holds the land for the remainder of the income year; or
  - (b) company A stops carrying on a business, and company B carries on the business for the remainder of the income year. 30

*Deductions for certain farming and forestry expenditure*

- (2) Company A is allowed a deduction under **sections DO 4 to DO 6, and DO 12** (which relate to farming and aquaculture expenditure), or **DP 3** (Improvements to forestry land) after the transfer 35

or cessation of the business as if the transfer or cessation did not occur.

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

Compare: 2004 No 35 s FD 10(3)

5

## FM 17 Trading stock

*When this section applies*

- (1) This section applies in an income year in which a company (**company A**) transfers identifiable trading stock to another company (**company B**) when— 10
- (a) company A and company B are in the same consolidated group at the time of the transfer; and
  - (b) company A and company B choose to value the trading stock under **subpart EB** (Valuation of trading stock (including dealer's livestock)) or at the cost to company A, as applicable; and 15
  - (c) the nominated company of the consolidated group notifies the Commissioner within the time for providing the consolidated group's return of income, or a later time if the Commissioner agrees. 20

*Trading stock held at start of income year*

- (2) If company A held the trading stock at the start of the income year, the consideration for the transfer is the value of the trading stock at the start of the income year determined under **subpart EB**. 25

*Trading stock acquired*

- (3) If **subsection (2)** does not apply, the consideration for the transfer is the cost of the trading stock to company A. 30

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

Compare: 2004 No 35 s FD 10(5)

## FM 18 Financial arrangements: transfer from company A to company B

*When this section applies*

- (1) This section applies in an income year in which a company (**company A**) transfers a financial arrangement to which the 35

financial arrangements rules apply to another company (**company B**) when—

- (a) company A and company B are in the same consolidated group for the whole of the income year; and 5
- (b) the method of calculating income and expenditure from the financial arrangement does not change after the transfer, and the consolidated group's return of income is made on that basis; and
- (c) neither company A or company B is entitled to use under **sections IA 4 and IA 5** (which relate to the use of loss balances by companies) a loss balance carried forward unless **subpart ID** (Use of tax losses by consolidated groups) applies. 10

*Treatment of companies*

- (2) In the year of transfer and in later income years,— 15
  - (a) company A is treated as if it had never been a party to the financial arrangement, and **section EW 31** (Base price adjustment formula) does not apply;
  - (b) company B is treated as if it had taken all the actions that company A undertook before the transfer in entering into the financial arrangement, incurring expenditure and deriving income, and providing its return of income in relation to the financial arrangement. 20

*Relationship with sections EW 38 and GB 21*

- (3) This section overrides **sections EW 38** (Consideration when disposal for no, or inadequate, consideration) and **GB 21** (Dealing that defeats intention of financial arrangements rules). 25

Defined in this Act: company, consolidated group, financial arrangement, financial arrangements rules, income, income year, loss balance, return of income, tax loss, year of transfer 30

Compare: 2004 No 35 s FD 10(4), (4A)

**FM 19 Financial arrangements: transfer for fair and reasonable consideration**

*When this section applies*

- (1) This section applies in an income year in which a company (**company A**) transfers a financial arrangement to another company (**company B**) when— 35

- (a) company A and company B are in the same consolidated group at the time of the transfer; and
- (b) **section FM 18** does not apply to the transfer; and
- (c) the method of calculating income and expenditure from the financial arrangement does not change after the transfer, and the consolidated group's return is made on this basis. 5

*Consideration for transfer*

- (2) In calculating the base price adjustment, company A's consideration for the transfer is a fair and reasonable amount of the income that would have been derived, or the expenditure that would have been incurred, by company A in the year of transfer if the transfer had not taken place. 10

*Relationship with sections EW 38 and GB 21*

- (3) This section overrides **sections EW 38** (Consideration when disposal for no, or inadequate, consideration) and **GB 21** (Dealing that defeats intention of financial arrangements rules). 15

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

Compare: 2004 No 35 s FD 10(4), (4B) 20

## **FM 20 Financial arrangements: transfer at market value**

*When this section applies*

- (1) This section applies in an income year in which a company (**company A**) transfers a financial arrangement to another company (**company B**) when— 25
  - (a) company A and company B are in the same consolidated group at the time of the transfer; and
  - (b) neither **section FM 18 or FM 19** applies to the transfer.

*Consideration for transfer*

- (2) The consideration for the transfer is the market value of the financial arrangement on the date of the transfer. 30

*Relationship with sections EW 38 and GB 21*

- (3) This section overrides **sections EW 38** (Consideration when disposal for no, or inadequate, consideration) and **GB 21** (Dealing that defeats intention of financial arrangements rules).

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

5

Compare: 2004 No 35 s FD 10(4), (4C)

### **FM 21 Property transfers when companies leave consolidated groups**

*When this section applies*

10

- (1) This section applies to the extent to which a transfer of property has not previously been taken into account in the calculation of a consolidated group's taxable income under **sections FM 8 to FM 13, or FM 15 to FM 20 and FM 23** when—

(a) a company leaves a consolidated group, but not through liquidation; and

15

(b) the company holds property that has at any time been transferred between companies in the same consolidated group; and

(c) **sections FM 15, or FM 17 to FM 20** applied to the transfer of the property.

20

*Disposal and acquisition at market value*

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

25

*Market value at time of transfer*

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

30

35

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

Compare: 2004 No 35 s FD 10(6), (7)

**FM 22 Arrangements to avoid consolidation rules***When this section applies*

- (1) This section applies when—
- (a) a company joins a consolidated group and at the time holds property that it later transfers to another group company; and 5
  - (b) **sections FM 15 or FM 17 to FM 20** would otherwise apply to the transfer of the property; and
  - (c) after the transfer the company leaves the consolidated group, whether by liquidation or otherwise. 10

*Arrangement to defeat consolidation rules*

- (2) If, in undertaking the activities, it could reasonably be concluded that the company was involved in an arrangement that had a purpose or effect of defeating the intent and application of the consolidation rules, the relevant provision does not apply to the transfer. 15

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

Compare: 2004 No 35 s FD 10(9)

**FM 23 Arrangements for disposal of shares** 20*When this section applies*

- (1) This section applies when—
- (a) 2 companies (**company A** and **company B**) are in the same consolidated group; and
  - (b) the value of company A's net assets have been reduced as a result of a dividend, distribution, payment, arrangement, or transaction between company A and company B at the time the dividend is paid or the distribution, payment, arrangement, or transaction is made; and 25
  - (c) another company (**company C**) disposes of shares in company A for consideration that is less than the amount that would have been received in an arm's length transaction had the reduction in the value of company A's net assets not occurred; and 30
  - (d) if the disposal were by way of sale, the consideration from the sale would be included in company C's income, other than income taken into account under **section FM 3**. 35

*Arm's length transaction on disposal of shares*

- (2) The disposal is treated as if it were a sale at arm's length.

*Income*

- (3) The amount that would have been received in an arm's length transaction is income of company C under **section CV 3** (Consolidated group: arrangement for disposal of shares). 5

*Timing*

- (4) The time at which the consideration for the sale at arm's length is determined is before the reduction in the value of company A's net assets. 10

*Relationship with sections FM 8 and FM 11*

- (5) **Subsection (2)** does not apply to an amount of income taken into account under **section FM 8 or FM 11**.

Defined in this Act: amount, arrangement, company, consideration, consolidated group, dispose, distribution, dividend, income, pay, share 15

Compare: 2004 No 35 s FD 10(8)

*Treatment of foreign dividends***FM 24 General treatment of foreign dividends***When this section applies*

- (1) This section applies when a company is part of a consolidated group at a time when it receives a foreign dividend for which it is required to make a payment to the Commissioner under **section RG 3** (Obligation to pay FDP). 20

*Joint and several liability*

- (2) All companies in the consolidated group at the time of the payment of the foreign dividend are jointly and severally liable for the payment, and the Commissioner's assessment under section 102 of the Tax Administration Act 1994 must reflect the joint and several liability. 25



*Tax credits*

- (3) For the purposes of **sections FM 25 to FM 30, section LF 9** (When income tax unpaid) applies to a company that is part of a consolidated group.

Defined in this Act: assessment, Commissioner, company, consolidated group, foreign dividend, pay

5

Compare: 2004 No 35 s NH 5(3), (9)

**FM 25 Reduction in payments for foreign dividends***When this section applies*

- (1) This section applies at a time when— 10
- (a) a company is part of a consolidated group that maintains a branch equivalent tax account under **section OP 97** (Branch equivalent tax accounts of consolidated BETA groups); and
- (b) the company receives a foreign dividend to which **section RG 5(3)** (Credit balance in branch equivalent tax account) applies in relation to an income interest in a CFC for which it is liable to make a payment to the Commissioner. 15

*Reduction in payment*

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- (2) If the nominated company of the consolidated group chooses under **section OP 106(1)** (Consolidated BETA reduction of FDP), the payment is reduced by a credit balance in the group's branch equivalent tax account at the time the dividend is paid.

*Whether sufficient interest*

25

- (3) In determining whether a person has a sufficient interest in a company at the time, a consolidated group is treated as if it were a single company.

*Relationship with section RG 5*

- (4) This section overrides **section RG 5(2)**. 30

Defined in this Act: branch equivalent tax account, CFC, Commissioner, company, consolidated group, foreign dividend, income interest, nominated company, pay

Compare: 2004 No 35 s NH 5(1), (2)

**FM 26 Using tax losses to pay FDP***When this section applies*

- (1) This section applies when—
- (a) a company is liable to pay FDP to the Commissioner for a foreign dividend paid to it; and 5
  - (b) the company is part of a consolidated group at the time of the payment; and
  - (c) either—
    - (i) the consolidated group has a tax loss component or a loss balance that may be used or carried forward and used under **sections IA 3 to IA 9 and subpart ID** (which relate to the treatment of tax losses) for the income year in which the foreign dividend is paid to the company; or 10
    - (ii) the nominated company of the consolidated group has a reasonable expectation that, for the income year in which the foreign dividend is paid to the company, the consolidated group will have a loss balance that may be used under **sections IA 3 to IA 9 and subpart ID** for the next income year. 15 20

*Maximum reduction*

- (2) The nominated company may notify the Commissioner within the time for payment to the Commissioner set out in **section RA 15(3)(c)** (Payment dates for interim and other tax payments) that it chooses to use the tax loss component or loss balance, so far as it extends, to pay some or all of the payment. The maximum reduction is calculated using the formula— 25

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

*Definition of items in formula* 30

- (3) In the formula,—
- (a) **payment** is the amount determined under **section RG 4** (Calculating amount of FDP);
  - (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year in which the dividend is paid. 35

*Relationship with section RG 6*

- (4) For the purposes of this section, **section RG 6(6)** (Using losses balances) applies, modified as necessary.

Defined in this Act: amount, basic rate, Commissioner, company, consolidated group, foreign dividend, income year, loss balance, nominated company, pay, tax loss component 5

Compare: 2004 No 35 s NH 5(4)

**FM 27 Refunds of FDP***When this section applies*

- (1) This section applies when a company becomes entitled in a tax year to a refund of a FDP paid by it to the Commissioner in an earlier tax year in relation to a foreign dividend received when the company was part of a consolidated group. 10

*Maximum amount of refund*

- (2) The refund must not be more than the amount set out in the following paragraphs, as applicable: 15
- (a) if the consolidated group has an FDP account at the time the entitlement arises, a credit balance in the group's FDP account at the end of the tax year that is before the tax year in which the entitlement arises; or 20
- (b) if the consolidated group does not have an FDP account at the time the entitlement arises, a credit balance in the group's imputation credit account at the end of the tax year that is before the tax year in which the entitlement arises. 25

*Treatment of excess*

- (3) If **subsection (2)** does not apply to some or all of the payment because it is more than the applicable credit balance, the amount in excess is credited to FDP payable by the company for a tax year in which it is part of the consolidated group. 30

*Earlier refunds of payments*

- (4) The credit balance referred to in **subsection (3)** is treated as reduced by an earlier refund of FDP that is made in the tax year to the company or to another company in the same consolidated group at the time the dividend is paid or for the income year in which the refund is made. 35

*Refunds of income tax*

- (5) **Subsection (4)** also applies in relation to a refund of income tax that is, under **sections RM 13 to RM 17** (which relate to limit on refunds) no more than the credit balance described in **subsection (2)**. 5

*Relationship with section RM 18*

- (6) This section overrides **section RM 18** (Limits on refunds related to foreign dividends). However, **section RM 18** does not limit a refund of FDP to a company that is part of a consolidated group at the time the dividend is paid to the extent to which this section would not have limited the refund. 10

Defined in this Act: amount, Commissioner, company, consolidated group, FDP account, foreign dividend, imputation credit account, income year, pay, tax year

Compare: 2004 No 35 s NH 5(5), (6), (8)

**FM 28 Refund when consolidated group has loss** 15*When this section applies*

- (1) This section applies when—
- (a) a company has paid FDP to the Commissioner in an income year and, at the time the dividend was paid, the company was part of a consolidated group; and 20
  - (b) the group has a tax loss component for the tax year that corresponds to the income year that may be used under **section IA 3 and subpart ID** (which relate to the treatment of tax losses); and
  - (c) the nominated company of the consolidated group has filed its return of income under **section FM 3(3)** (Liability of consolidated groups and group companies). 25

*Applying for refund*

- (2) The company may apply to the Commissioner for a refund of the payment. The maximum refund is the smallest of the following amounts: 30
- (a) the amount of the payment paid in the income year:
  - (b) the amount of the tax loss component multiplied by the rate set out in **subsection (4)(b)**;
  - (c) the credit balance of the group's FDP account at the end of the tax year just ended. 35

*Tax loss component reduced*

- (3) The amount of the tax loss component is reduced by an amount calculated using the formula—
- $$\frac{\text{amount of refund}}{\text{tax rate.}}$$
- 5

*Definition of items in formula*

- (4) In the formula,—
- (a) **amount of refund** is the amount of the refund paid to the company:
- (b) **tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 2** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) for the tax year that corresponds to the income year. 10

*Relationship with section RM 21*

- (5) This section overrides **section RM 21** (Refunds when loss balances used to reduce net income). 15

Defined in this Act: amount, basic rate, Commissioner, company, consolidated group, FDP account, foreign dividend, income tax liability, income year, pay, return of income, tax loss component, tax year

Compare: 2004 No 35 s NH 5(7) 20

## **FM 29 Treatment of credit balance in consolidated group's FDP account**

*When this section applies*

- (1) This section applies when a consolidated group has a credit balance in its FDP account at the end of a tax year. 25

*Credit and debit*

- (2) The nominated company of the consolidated group may choose that some or all of the credit balance becomes—
- (a) a credit in the imputation credit account of the group, or of the imputation group to which the consolidated group companies belong; and 30
- (b) a debit in the FDP account of the consolidated group.

*How election made*

- (3) The company makes the election by recording the debit in the consolidated group's FDP account.

Defined in this Act: consolidated group, FDP account, imputation credit account, nominated company, tax year

5

Compare: 2004 No 35 s NH 6(6)

### **FM 30 Application of certain provisions to consolidated groups**

*When subsections (2) and (3) apply*

- (1) **Subsections (2) and (3)** apply when a consolidated group has a policyholder credit account and an FDP account. 10

*Credit and debit balances*

- (2) The nominated company of the consolidated group may choose to have some or all of a credit balance in the FDP account credited to its policyholder credit account by recording the credit and corresponding debit in its accounts. 15

*Section OC 20: life insurance credit balance*

- (3) **Section OC 20** (FDPA transfer to policyholder credit account) applies in relation to a consolidated group, modified as necessary, as if— 20
- (a) a reference to a company were a reference to the consolidated group:
- (b) a reference to a provision of this Act applying to a company were a reference to the equivalent of **sections FD 12 to FD 17, and OP 51 to OP 77** applying to a consolidated group. 25

*Section OC 27: FDP credits*

- (4) **Section OC 27** (FDP credits attached to dividends) applies in relation to a consolidated group as if the reference to an FDP account company includes a reference to a company if, at the time a foreign dividend is paid to it, the company is part of a consolidated group that maintains an FDP account. 30

*Sections OC 30 to OC 32, and others: liability for payments and penalties*

- (5) **Sections OA 2(5) and OC 30 to OC 32** (which relate to further FDP), and 103, 104, 139B, 140C, 140D, and 181 of the Tax 35

Administration Act 1994 apply, modified as necessary in relation to a consolidated group and its FDP account as if—

- (a) the group were a single company:
- (b) a reference to a provision of this Act were a reference to the equivalent provision applying to a consolidated group: 5
- (c) a reference to a liability of a company for further FDP, FDP penalty tax, and a late payment penalty were a reference to the joint and several liability for the payment, tax, or penalty of each company that is part of the group at the time the payment, tax or penalty becomes payable. 10

*Section RA 19: amalgamations*

- (6) **Section RA 19** (Refunds of excess amounts or when amounts mistakenly paid) applies, modified as necessary, from the time of amalgamation when a consolidated group ends its existence on a resident's restricted amalgamation that involves all companies in the consolidated group, whether or not with a company outside the consolidated group, in relation to tax paid by the consolidated group as if it and the amalgamated company were a single company. 15 20

*Sections 30 and 68 of Tax Administration Act 1994: FDP accounts*

- (7) Sections 30 and 68 of the Tax Administration Act 1994 apply, modified as necessary, in relation to a consolidated group as if a reference to an FDP account company were a reference to a company that is part of a consolidated group that maintains an FDP account. 25

Defined in this Act: amalgamation, company, consolidated group, FDP account, foreign dividend, FDP penalty tax, pay, policyholder credit account, resident's restricted amalgamation 30

Compare: 2004 No 35 s NH 6(1), (2), (5), (7)

## *Membership of consolidated groups*

### *Eligibility and restrictions*

#### **FM 31 Eligibility rules**

##### *When company eligible*

- (1) A company is eligible to be part of a consolidated group at a particular time if, at the time,— 5
- (a) it is resident in New Zealand; and
  - (b) it is not a foreign company; and
  - (c) it is not a company that derives only exempt income (except income under **sections CW 9 to CW 11** (which relates to exempt income from equity)); and 10
  - (d) when **subsection (2)** applies, it meets the relevant condition; and
  - (e) **subsections (4) and (5)** do not apply to it.

##### *Restriction when company of certain type* 15

- (2) Despite **subsection (1)**, if a company that is part of a consolidated group is 1 of the following types of company, all companies in the consolidated group at the time must be the same type as that company:
- (a) an attributing company: 20
  - (b) a mining company.

##### *Non-standard balance date*

- (3) Despite **subsection (1)**, if a company that is part of a consolidated group has a non-standard balance date, all companies in the consolidated group at the time must have the same non-standard balance date. 25

##### *Loss attributing companies*

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

##### *Anti-avoidance measure* 30

- (5) A company is not eligible to be part of a consolidated group if, for a purpose of enabling a company to be part of a consolidated group so as to defeat the intent and application of the consolidation rules, the company's shares—



- (a) are subject to an arrangement, or to a series of related or connected arrangements; or
- (b) have rights attaching to them extinguished or altered directly or indirectly by any means.

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

5

Compare: 2004 No 35 ss FD 3(b)–(e), OB 1 “eligible company”

### **FM 32 Restriction on membership of consolidated groups** 10

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

- (a) the company is treated as in the consolidated group of which it was first part; or 15
- (b) if the company is in 2 or more consolidated groups simultaneously, the Commissioner may specify its consolidated group, having regard to all the circumstances of the case. 20

Defined in this Act: Commissioner, company, consolidated group

Compare: 2004 No 35 s FD 5

### **FM 33 When membership is reduced**

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

25

Defined in this Act: company, consolidated group

Compare: 2004 No 35 s FD 8(9)

### *Nominated companies* 30

#### **FM 34 Nominated companies**

*Group company at the time*

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

*Agent*

35

- (2) For the purposes of this Act and the Tax Administration Act 1994, a nominated company of a consolidated group is, at a

time, the agent of the consolidated group and of each company that is in the consolidated group at the time.

*Changing nominated company*

- (3) A nominated company may notify the Commissioner that it is, at a particular date, no longer to continue as the agent for the consolidated group, and that another company is to become the nominated company for the consolidated group. 5

*When notice takes effect*

- (4) A notice referred to in **subsection (3)** takes effect—  
 (a) on the date the Commissioner receives the notice; or 10  
 (b) a later date set out in the notice.

*Replacing nominated company*

- (5) If the nominated company of a consolidated group is liquidated, the other companies in the consolidated group may choose a replacement. The replacement company— 15  
 (a) becomes the nominated company of the consolidated group from the date of liquidation; and  
 (b) must notify the Commissioner of its selection as nominated company within 20 working days after the date of liquidation, or a longer period if the Commissioner agrees. 20

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

Compare: 2004 No 35 ss FD 6, FD 8(5) proviso

*Forming, joining, or leaving consolidated groups* 25

**FM 35 Forming consolidated group**

*Election*

- (1) Two or more companies may choose to form a consolidated group of companies if the companies are, at the time,—  
 (a) a wholly-owned group of companies; and 30  
 (b) eligible under **section FM 31**.

*Notifying Commissioner*

- (2) The Commissioner must be notified of an election under **subsection (1)**. For the purposes of **section FM 3(3)**, the notice must state that each company that is part of the consolidated group 35

acknowledges their joint and several liability for the amount of income tax assessed for the consolidated group.

*Nominated company*

- (3) A notice under **subsection (2)** must nominate 1 of the companies in the consolidated group as its agent. The company is called the **nominated company**. 5

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

Compare: 2004 No 35 ss FD 3(a), FD 4(1), (2)

**FM 36 Joining existing consolidated group** 10

*When this section applies*

- (1) This section applies when 2 or more companies have formed a consolidated group and the consolidated group has not ended its existence.

*Eligible for and entitled to membership* 15

- (2) If a company is eligible under **section FM 31** and entitled to join the consolidated group, it may choose to join the consolidated group by notifying the Commissioner.

*Joint and several liability*

- (3) The company providing the notification referred to in **subsection (2)** must agree in the notice to be jointly and severally liable under **section FM 3(4)** for income tax payable by the consolidated group. 20

Defined in this Act: Commissioner, company, consolidated group, income tax, notice, notify, pay 25

Compare: 2004 No 35 s FD 7(1), (2)

**FM 37 Leaving consolidated group**

A company leaves a consolidated group if—

- (a) it chooses to leave the consolidated group and notifies the Commissioner of its election, *see* **section FM 39**; or 30
- (b) it no longer meets the eligibility criteria set out in **section FM 31**, *see* **section FM 40**; or
- (c) when it is not a nominated company, it is no longer entitled to be in the same consolidated group as the nominated company, *see* **section FM 40**; or 35

- (d) it is part of a consolidated group that no longer has a nominated company, *see* **section FM 41**.

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

Compare: 2004 No 35 s FD 8(1)

5

*When membership starts and stops*

**FM 38 Notice requirements on forming or joining consolidated group**

*When this section applies*

- (1) This section applies when— 10
- (a) 2 or more companies choose to form a consolidated group under **section FM 35**; or
- (b) a company chooses to join an existing consolidated group under **section FM 36**.

*Condition*

15

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

*Setting out income year in notice*

20

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

*When notice does not specify income year*

25

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

*Setting out entitlement date in notice*

30

- (5) Despite **subsections (3) and (4)**, if a company becomes eligible to join a consolidated group during an income year, and the notice is given to the Commissioner within the notice period, the company may provide that the election applies from the

date they first became entitled to make an election. The company treated as in the consolidated group from that date, and part-year financial statements under **section FM 14** are required.

*Notice period*

- (6) In this section, **notice period** means 1 of the following: 5
- (a) 63 working days after the start of an income year; or
  - (b) if the company joining, or the companies forming, the consolidated group in the income year are incorporated or formed in the same income year, 63 working days after the latest incorporation or formation; or 10
  - (c) if the company or companies become entitled to make an election during an income year, 63 working days from the date they first became entitled; or
  - (d) an extended period if the Commissioner agrees that the notice could not reasonably have been provided within the 63-day period. 15

*Anti-avoidance measure*

- (7) **Subsection (5)** does not apply if it would be reasonable to conclude that an arrangement has been entered into for a purpose of enabling the company to meet the requirements of the subsection so as to defeat the intent and application of the consolidation rules. 20

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

Compare: 2004 No 35 ss FD 4(3)–(8), FD 7(3)–(8) 25

**FM 39 Choosing to leave consolidated group**

*When this section applies*

- (1) This section applies when a company chooses to leave a consolidated group and notifies the Commissioner of its election. 30

*Deferring leaving date*

- (2) When the company notifies the Commissioner of its election, it may defer the date on which it leaves the consolidated group to the first day of the next income year. However, unless **subsections (3) and (4)** apply, if the company does not defer the leaving date, it is treated as no longer in the consolidated 35

group from the start of the income year in which the Commissioner receives the notice.

*First income year: deferral*

- (3) Despite **subsection (2)**, if a company leaves a consolidated group in the same income year in which it joins the group, and defers the leaving date in the notice, it is treated as leaving the consolidated group from the start of the income year after the income year in which the Commissioner receives the notice. **Sections FM 40 and 41** override this subsection. 5

*First income year: no deferral*

- (4) Despite **subsection (2)**, if a company leaves a consolidated group in the same income year in which it joins the consolidated group, and does not defer the leaving date in the notice, it is treated as leaving the consolidated group on the date it joined the group. 10  
15

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

Compare: 2004 No 35 s FD 8(2)

**FM 40 Losing eligibility or entitlement to be part of consolidated group** 20

*When this section applies*

- (1) This section applies when a company is no longer eligible to be part of a consolidated group or, if it is not the nominated company, when it is no longer entitled to be in the same consolidated group as the nominated company. 25

*Effective date*

- (2) Unless **subsections (3) or (4)** apply, the company is treated as leaving the consolidated group from the start of the income year in which the relevant event occurs, making it no longer— 30  
(a) eligible to be part of the consolidated group; or  
(b) if it is not the nominated company, entitled to be in the same consolidated group as the nominated company.

*First income year*

- (3) Despite **subsection (2)**, if a company becomes no longer eligible or entitled to be in the consolidated group in the same income 35

year in which it joined the group, the company is treated as leaving the consolidated group on the day it joined the group.

*Notifying date*

- (4) Despite **subsections (2) and (3)**, the company may notify the Commissioner that it is leaving the consolidated group from the date on which its eligibility or its entitlement ended. For the notice to be effective, the company must—
- (a) provide the notice within 20 working days after the date on which the company's eligibility or entitlement ended, although the Commissioner may agree to extend this period if it is reasonable to do so in the circumstances; and
  - (b) provide part-year financial statements under **section FM 14**.

*Anti-avoidance measure*

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

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

Compare: 2004 No 35 s FD 8(3), (4), (6), (7)

**FM 41 No nominated company**

If, during an income year, no nominated company exists for a consolidated group and no company that is part of the consolidated group is notified as a replacement under **section FM 34(3)**, all companies in the consolidated group are treated as having left the consolidated group with effect from the start of the income year. **Section FM 34(5)** overrides this section.

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

Compare: 2004 No 35 s FD 8(5)

**FM 42 When company liquidated**

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

- (a) the company is not treated as leaving the consolidated group from the start of the income year of the liquidation under **sections FM 39 and FM 40:**
- (b) part-year financial statements are not required under **section FM 40(4)(b).**

5

Defined in this Act: company, consolidated group, income year, liquidation  
Compare: 2004 No 35 s FD 8(8)

## Subpart FN—Imputation groups of companies

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#### FN 1 When this subpart applies 25

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

30

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

#### FN 2 Imputation rules

The **imputation rules** means the following:

- (a) this subpart: 35
- (b) **section CD 15** (Tax credits linked to dividends):
- (c) **sections GB 34 to GB 37** (which relate to tax avoidance and imputation):



- (d) **subparts LE and LF, and sections LO 1 to LO 3** (which relate to tax credits):
  - (e) **sections OB 1 to OB 82** (which relate to imputation credit accounts):
  - (f) **sections OP 1 to OP 50** (which relate to imputation credits and consolidated groups): 5
  - (g) **subpart OZ** (Terminating provisions):
  - (h) **sections RM 13 to RM 17, RM 32, and RZ 3** (which relate to limits on refunds):
  - (i) **section YA 2(2)(d)** (Meaning of income tax): 10
  - (j) sections 29, 64, 67, 69, 70, 78D, 97, 101, 139B, 140B, 140D(1) and (2), and 180 of the Tax Administration Act 1994.
- Defined in this Act: imputation rules
- Compare: 2004 No 35 s OB 1 “imputation rules” 15

### **FN 3 Liabilities of companies in imputation group**

A company that is part of an imputation group is jointly and severally liable for further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising from the operation of the imputation credit account of the imputation group. 20

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

Compare: 2004 No 35 s FDA 4

### **FN 4 Eligibility rules** 25

*When company eligible*

- (1) A company is eligible to be part of an imputation group at a particular time if, at the time,—
  - (a) it is resident in New Zealand or resident in Australia; and 30
  - (b) it is part of the same wholly-owned group of companies; and
  - (c) it is not treated under a double tax agreement as resident in a country other than New Zealand or Australia, as applicable, for the purposes of taxation in the relevant country; and 35
  - (d) it is required to maintain an imputation credit account under **section OB 1** (General rules for companies with imputation credit accounts), or chooses to maintain an

- account under **section OB 2** (Australian companies with imputation credit accounts); and
- (e) if it is a company that is part of a consolidated group, it meets the criteria set out in **subsection (2)**; and
  - (f) if it is a attributing company or a mining company, it meets the condition set out in **subsection (3)**; and
  - (g) **subsections (4) and (5)** do not apply to it.
- Consolidated group companies*
- (2) A company that is part of a consolidated group is eligible to be part of an imputation group at a particular time if, at the time,—
    - (a) all companies in the consolidated group meet the criteria set out in **subsection (1)** and are part of the imputation group; and
    - (b) for an imputation group that includes or will include companies from more than 1 consolidated group, the companies in the consolidated groups are part of a single wholly-owned group of companies from the earliest date on which a credit arose and remains uncanceled in the imputation credit account of a consolidated group or an imputation group, all of whose members are, or would be, in the imputation group.
- Restriction when company of certain type*
- (3) Despite **subsections (1) and (2)**, if a company that is part of an imputation group is 1 of the following types of company, all companies in the imputation group at the time must be the same type as that company:
    - (a) an attributing company; or
    - (b) a mining company.
- Loss-attributing companies*
- (4) A company is not eligible to be part of an imputation group if it is a loss-attributing company.
- Anti-avoidance measure*
- (5) A company is not eligible to be part of an imputation group if, for a purpose of enabling a company to be part of an imputation group so as to defeat the intent and application of the imputation rules, the company's shares—

- (a) are subject to an arrangement or to a series of related or connected arrangements; or
- (b) have rights attaching to them extinguished or altered, either directly or indirectly, by any means.

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

5

Compare: 2004 No 35 s FDA 1

## **FN 5 Imputation groups or subgroups with reduced numbers** 10

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

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

15

Compare: 2004 No 35 s FDA 3(2)–(4)

## **FN 6 Nominated companies**

### *Group company at the time*

- (1) The nominated company of an imputation group at any time must be part of the imputation group at the time. 20

### *Trans-Tasman imputation groups*

- (2) For a trans-Tasman imputation group, the nominated company—
  - (a) must not be an Australian ICA company:
  - (b) is the nominated company for the resident imputation subgroup associated with the trans-Tasman imputation group. 25

### *Agent*

- (3) For the purposes of the imputation rules, a nominated company is, at a time, the agent of the imputation group and of each company that is part of the imputation group at the time. 30

### *Changing nominated company*

- (4) A nominated company may notify the Commissioner that it is, at a particular date, no longer to continue as the agent for the imputation group, and that another company is to become the nominated company. 35

*When notice takes effect*

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

*Replacing nominated company*

- (6) If a nominated company of an imputation group is liquidated, the other companies in the imputation group may choose a replacement. The replacement company—
- (a) becomes the nominated company from the date of the liquidation, on complying with **paragraph (b)**; and
  - (b) must notify the Commissioner of its selection as nominated company within 30 days after the date of the liquidation, or by a later date if the Commissioner agrees.

Defined in this Act: agent, Australian ICA company, Commissioner, company, imputation group, liquidation, nominated company, notice, notify, resident imputation subgroup, trans-Tasman imputation group 15

Compare: 2004 No 35 ss FDA 5, FDA 6(6)

**FN 7 Forming imputation groups***Election*

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

*Notifying Commissioner*

- (2) The Commissioner must be notified of an election under **subsection (1)**. 25

*Nominated company*

- (3) A notice under **subsection (2)** must nominate 1 of the companies in the imputation group as its agent for the purposes of the imputation rules. In this subpart, the company is called the **nominated company**. 30

*Consolidated group companies*

- (4) A nominated company of a consolidated group may notify the Commissioner that, having met the eligibility criteria in **section FN 4**, all the group companies have chosen— 35

- (a) to form an imputation group with eligible companies that are not part of the consolidated group; or
- (b) to join an existing imputation group.

*Effective date*

- (5) A notice under **subsection (1) or (4)** has effect from the start of the tax year in which the Commissioner receives the notice. 5
- Defined in this Act: agent, Commissioner, company, consolidated group, group of companies, imputation group, nominated company, notice, notify, tax year, wholly-owned group
- Compare: 2004 No 35 s FDA 2 10

**FN 8 Trans-Tasman imputation groups and resident imputation subgroups**

*Trans-Tasman imputation group*

- (1) If at least 1 company in an imputation group is an Australian ICA company, and at least 1 company in the imputation group is not an Australian ICA company, the imputation group is a trans-Tasman imputation group. 15

*Resident imputation subgroup*

- (2) One or more companies in a trans-Tasman imputation group forms a resident imputation subgroup that is associated with the trans-Tasman imputation group by notifying the Commissioner. The subgroup consists of the companies in the imputation group that are not Australian ICA companies. 20
- Defined in this Act: Australian ICA company, Commissioner, company, imputation group, notify, resident imputation subgroup, trans-Tasman imputation group 25
- Compare: 2004 No 35 ss FDA 3(1), OB 1 “resident imputation subgroup”, “trans-Tasman imputation group”

**FN 9 Joining existing imputation group**

*Generally*

- (1) A company that is eligible under **section FN 4(1)** may join an imputation group by notifying the Commissioner. 30

*Consolidated groups*

- (2) If the companies part of a consolidated group are eligible under **section FN 4(2)**, the nominated company of the consolidated group may notify the Commissioner that all the companies in the consolidated group are to join an imputation group. 35

*Joint and several liability*

- (3) The companies referred to in **subsections (1) and (2)** must agree in the notice to be jointly and severally liable under **section FN 3** for any further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising from the operation of the imputation credit account of the imputation group. 5

Defined in this Act: Commissioner, company, consolidated group, further income tax, imputation credit account, imputation group, nominated company, notice, notify, resident 10

Compare: 2004 No 35 ss FDA 2(1)–(3), FDA 4

**FN 10 When membership of imputation group ends**

A company stops being part of an imputation group if—

- (a) the company chooses to leave the imputation group and notifies the Commissioner, *see section FN 11*; or 15
- (b) the company no longer meets the eligibility criteria set out in **section FN 4**, *see section FN 12*; or
- (c) the company is not a nominated company and is no longer entitled to be part of the same imputation group as the nominated company, *see section FN 12*; or 20
- (d) the company is in an imputation group that no longer has a nominated company, *see section FN 13*.

Defined in this Act: Commissioner, company, imputation group, nominated company 25

Compare: 2004 No 35 s FDA 6(1)

**FN 11 Company choosing to leave imputation group***When this section applies*

- (1) This section applies when a company chooses to leave an imputation group and notifies the Commissioner of its election. 30

*Effective date*

- (2) When the company notifies the Commissioner of its election, it may set out in the notice a date from which it is no longer to be treated as part of the imputation group. However, unless **subsection (3)** applies, if the company does not set out a date in the notice, it is treated as no longer part of the imputation group from the start of the tax year in which the Commissioner receives the notice. 35

*First tax year*

- (3) Despite **subsection (2)**, if a company leaves an imputation group in the same tax year in which it joined the imputation group, it is treated as leaving the imputation group on the date when it became part of the imputation group, and not from the start of the tax year. 5

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

Compare: 2004 No 35 s FDA 6(2)

**FN 12 Company no longer eligible or entitled to membership***When this section applies* 10

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

*Effective date* 15

- (2) Unless **subsections (3) or (4)** apply, the company is treated as no longer part of the imputation group from the start of the tax year in which the relevant event occurs, making it no longer—
- (a) eligible to be part of the imputation group; or
  - (b) if it is not the nominated company, entitled to be part of the same imputation group as the nominated company. 20

*Notifying date*

- (3) Despite **subsection (2)**, the company may notify the Commissioner that it is no longer to be treated as part of the imputation group from the date on which its eligibility or its entitlement ended. The company must provide the notice within 30 days after the date on which the company's eligibility or entitlement ended, although the Commissioner may agree to extend this period if it is reasonable to do so in the circumstances. 25

*First tax year* 30

- (4) Despite **subsections (2) and (3)**, if a company leaves an imputation group in the same tax year in which it became part of the imputation group, the company is treated as leaving the group on the date when it became part of the imputation group, and not at the start of the tax year. 35

*Anti-avoidance measure*

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

Defined in this Act: arrangement, Commissioner, company, imputation group, imputation rules, nominated company, notice, notify, tax year 10

Compare: 2004 No 35 s FDA 6(3), (4), (7), (8)

**FN 13 Imputation group with no nominated company**

If, during a tax year, no nominated company exists for an imputation group and no replacement is made under **section FN 6(6)**, all companies in the imputation group are treated as having left the imputation group with effect from the start of the tax year. 15

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

Compare: 2004 No 35 s FDA 6(5)

**FN 14 Effect of liquidation of company** 20

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

Defined in this Act: company, imputation group, income year, liquidation 25

Compare: 2004 No 35 s FDA 6(9)

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### ***Introductory provisions***

<b>FO 1</b>	<b>What this subpart does</b>	30
	This subpart sets out the rules that provide for some tax consequences when companies amalgamate. In general, the rules provide roll-over relief when a resident's restricted amalgamation occurs.	
	Defined in this Act: amalgamation, resident's restricted amalgamation	35
	Compare: 2004 No 35 s FE 1(1)(a), (b)	

**FO 2 Amalgamation rules**

The **amalgamation rules** means the following:

- (a) this subpart:
- (b) **sections CD 35, CD 43(23) and (24), and CD 44(8)** (which relate to the treatment of dividends): 5
- (c) **sections DB 8(3) to (5), DV 14 and DV 15** (which relate to the treatment of deductions when an amalgamating company ends its existence on a resident's restricted amalgamation):
- (d) **sections IA 9, IE 2 to IE 5, and IQ 1** (which relate to tax losses): 10
- (e) **sections LK 12 to LK 15** (which relate to tax credits):
- (f) **sections OA 9, OB 24, OB 53** (which relate to memorandum accounts):
- (g) **sections RA 20, RC 33, RD 47, and RD 50** (which relate to tax payments): 15
- (h) sections 75 and 76 of the Tax Administration Act 1994.

Defined in this Act: amalgamation rules

Compare: 2004 No 35 s FE 1(2)

**FO 3 Resident's restricted amalgamations** 20

*What is a resident's restricted amalgamation?*

- (1) In the amalgamation rules, an amalgamation is a **resident's restricted amalgamation** if, at the time of the amalgamation, each of the amalgamating companies and the amalgamated company— 25
  - (a) is resident in New Zealand; and
  - (b) is not treated under, and for the purposes of, a double tax agreement as resident in another country; and
  - (c) is not a company that derives only exempt income, except income exempt under **sections CW 9 to CW 11** (which relate to income from equity); and 30
  - (d) if the amalgamated company is an attributing company, it meets the condition in **subsection (2)**; and
  - (e) if the amalgamated company is a loss-attributing company, it meets the condition in **subsection (3)**. 35

*Attributing companies*

- (2) If the amalgamated company is an attributing company immediately after the amalgamation, each of the amalgamating

companies must be an attributing company at the time of the amalgamation.

*Loss-attributing companies*

- (3) If the amalgamated company is a loss-attributing company immediately after the amalgamation, each of the amalgamating companies must be a loss-attributing company at the time of the amalgamation. 5

*Companies opting out*

- (4) Even if they meet the requirements of **subsection (1)**, the companies may choose that the amalgamation will not be treated as a resident's restricted amalgamation by notifying the Commissioner in the way set out in section 75 of the Tax Administration Act 1994. 10

Defined in this Act: amalgamated company, amalgamating company, amalgamation, attributing company, Commissioner, company, double tax agreement, exempt income, income, loss-attributing company, New Zealand, notify, resident's restricted amalgamation 15

Compare: 2004 No 35 s OB 1 "qualifying amalgamation"

**FO 4 Rights and obligations of amalgamated companies**

*When this section applies* 20

- (1) This section applies when an amalgamating company ends its existence on amalgamation.

*Amalgamated company assuming rights, obligations, and liabilities*

- (2) For the income year of amalgamation and for earlier income years, the amalgamated company, under section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993,— 25
- (a) must comply with the obligations of the amalgamating company under the Inland Revenue Acts; and 30
- (b) must meet the liabilities of the amalgamating company under the Inland Revenue Acts; and
- (c) is entitled to the rights and powers of the amalgamating company under the Inland Revenue Acts.

*Relationship with Companies Act 1993*

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

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, income year, Inland Revenue Acts, pay, right

5

Compare: 2004 No 35 ss FE 1(1)(c), FE 8

**FO 5 Amalgamations and remitted liabilities**

**Sections CG 2** (Remitted amounts) and **DB 48** (Payments for remitted amounts) do not apply merely because an amalgamated company succeeds to a liability of an amalgamating company on an amalgamation.

10

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

Compare: 2004 No 35 s FE 9

*Treatment of shares, income, expenditure, and bad debts*

15

**FO 6 Cancellation of shares**

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

20

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

Compare: 2004 No 35 s FE 2

**FO 7 Income derived after amalgamation**

25

*When this section applies*

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

30

*Income of amalgamated company*

- (2) The amount is income of the amalgamated company under **section CV 4** (Amalgamated companies: amount derived after

amalgamation) if it would have been income of the amalgamating company but for the amalgamation.

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

Compare: 2004 No 35 s FE 4(b)

5

## **FO 8 Bad debts and expenditure or loss on resident's restricted amalgamation**

*When this section applies*

- (1) This section applies when an amalgamating company ends its existence on a resident's restricted amalgamation, and the amalgamated company at any time— 10
- (a) writes off as bad the amount of a debt that it acquires from the amalgamating company at the time of the amalgamation; or
  - (b) incurs an amount of expenditure or loss, including an amount of depreciation loss, as a result of something that the amalgamating company did or did not do. 15

*Deduction of amalgamated company*

- (2) The amalgamated company is allowed a deduction under **section DV 15(2)** (Amalgamated companies: property passing on resident's restricted amalgamation) for the amount if— 20
- (a) the amalgamating company would have been allowed the deduction but for the amalgamation; and
  - (b) the amalgamated company is not otherwise allowed the deduction. 25

Defined in this Act: amalgamated company, amalgamating company, amount, deduction, depreciation loss, loss, resident's restricted amalgamation

Compare: 2004 No 35 s FE 3

## **FO 9 Unexpired portion of prepaid expenditure**

If an amalgamating company ends its existence on amalgamation, the unexpired portion under **section EA 3** (Prepayments) of an amount of expenditure of the amalgamating company for the income year of amalgamation is treated as the amalgamated company's unexpired amount of the expenditure. 30

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, income year, prepaid expenditure 35

Compare: 2004 No 35 s FE 4(a)

*Property passing to amalgamated company on  
amalgamation*

**FO 10 When property passes on resident's restricted  
amalgamation**

*When this section applies* 5

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

*What this section does not apply to*

- (2) Despite **subsection (1)**, this section— 10
- (a) does not apply to property that is a financial arrangement, *see* **sections FO 12 to FO 15**;
- (b) is subject to the rules for—
- (i) amortising property in **section FO 16**;
- (ii) land in **section FO 17**. 15

*Property passing*

- (3) The amalgamating company is treated as having disposed of the property immediately before the amalgamation. The passing of ownership is treated as a disposal of the property by the amalgamating company and an acquisition of the property by the amalgamated company. 20

*Timing and consideration*

- (4) Unless **subsections (5) or (6)** apply, the amalgamated company is treated as having acquired the property on the date on which the amalgamating company acquired it for an amount that is the sum of— 25
- (a) the price paid for the property; and
- (b) any expenditure incurred in buying or improving the property; and
- (c) any expenditure incurred in securing or improving the amalgamating company's legal rights to the property. 30

*Trading stock*

- (5) If the property is trading stock for both the amalgamating company and the amalgamated company, the consideration for the disposal and acquisition is taken as the value of the trading stock to the amalgamating company determined under 35

**subpart EB** (Valuation of trading stock (including dealer's live-stock)) at the time of the amalgamation.

*Revenue account property*

- (6) If the property is revenue account property of the amalgamating company but not revenue account property of the amalgamated company, the consideration for the disposal and acquisition is taken as the market value of the property at the time of the amalgamation. But this subsection does not apply to land that is revenue account property merely because of the 10-year rule in **sections CB 9 to CB 11 and CB 14** (which relate to the disposal of land), in which case **section FO 17(3)** may apply.

*Depreciation loss*

- (7) An amalgamating company is allowed a deduction under **section DV 15(3)** (Amalgamated companies: property passing on resident's restricted amalgamation) for an amount of depreciation loss for property transferred to the amalgamated company for the period beginning on the first day of the income year of amalgamation and ending on the day before the date of the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amortising property, amount, consideration, deduction, depreciable property, financial arrangement, income year, land, market value, resident's restricted amalgamation, revenue account property, trading stock

Compare: 2004 No 35 ss FE 6(1)–(3B), FE 6A

**FO 11 When property passes on amalgamation other than resident's restricted amalgamation**

*Disposal and acquisition*

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

*Timing: depreciable property*

- (2) For the purposes of **section EE 43** (Transfer of depreciable property on or after 24 September 1997), the amalgamating company is treated as existing at the time the amalgamated company is treated as acquiring the property. 5

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

Compare: 2004 No 35 s FE 5

**FO 12 Financial arrangements: resident's restricted amalgamation, companies in wholly-owned group** 10

*When this section applies*

- (1) This section applies, despite **sections EW 42 and GB 21** (which relate to non-market transfers of financial arrangements) in an income year in which the obligations that an amalgamating company has under a financial arrangement pass to the amalgamated company on a resident's restricted amalgamation when,— 15
- (a) the financial arrangements rules apply to the financial arrangement; and 20
- (b) for the whole of the income year before the amalgamation, the amalgamating company and the amalgamated company were part of the same wholly-owned group of companies; and
- (c) the method of calculating income and expenditure from the financial arrangement does not change after the amalgamation, and the amalgamated company's return is made on this basis; and 25
- (d) **sections IA 3 to IA 6 and subpart ID** (which relate to tax losses of companies and consolidated groups) do not apply to allow the amalgamating company to carry a loss balance forward from an earlier tax year for use in the tax year corresponding to the income year unless **section IE 2** (Treatment of tax losses by amalgamating company) applies when the tax losses are those of the consolidated group. 30 35



*Amalgamated company's election*

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

*Treatment of amalgamating company*

5

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

*Treatment of amalgamated company*

10

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

15

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

20

Compare: 2004 No 35 ss FE 6(5), (6), FE 7(1)(a), (2)

**FO 13 Financial arrangements: resident's restricted amalgamation, calculation method unchanged**

25

*When this section applies*

- (1) This section applies, despite **sections EW 42 and GB 21** (which relate to non-market transfers of financial arrangements) in an income year in which the obligations that an amalgamating company has under a financial arrangement pass to the amalgamated company on a resident's restricted amalgamation when—
  - (a) the method of calculating income and expenditure from the financial arrangement does not change after the amalgamation; and
  - (b) **section FO 12** does not apply.

30

35

*Calculating base price adjustment*

- (2) The amalgamating company is treated as having disposed of the financial arrangement. In calculating the base price adjustment, the consideration is the amount that would fairly and reasonably represent the income or expenditure that the amalgamating company would have derived or would have incurred in the income year if the amalgamation had not taken place. 5

Defined in this Act: amalgamated company, amalgamating company, amalgamation, consideration, dispose, financial arrangement, income, income year, resident's restricted amalgamation 10

Compare: 2004 No 35 ss FE 6(5), (7), FE 7(1)(b), (3)

**FO 14 Financial arrangements: resident's restricted amalgamation, other cases**

*When this section applies* 15

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

*Market value* 20

- (2) The amalgamating company is treated as having disposed of the financial arrangement. The consideration for the disposal is the market value of the financial arrangement on the date the amalgamated company acquires it. 25

Defined in this Act: amalgamated company, amalgamating company, amount, consideration, dispose, financial arrangement, income year, market value, resident's restricted amalgamation 25

Compare: 2004 No 35 ss FE 6(5), (8), FE 7(1)(b), (4)

**FO 15 Financial arrangements: amalgamation other than resident's restricted amalgamation** 30

*When this section applies*

- (1) This section applies when an obligation that an amalgamating company has in relation to a financial arrangement passes to the amalgamated company on an amalgamation that is not a resident's restricted amalgamation. 35

*Market value for amalgamating company*

- (2) The amalgamating company is treated as having disposed of the financial arrangement or relieved itself of the obligations immediately before the amalgamation. The consideration for the disposal is the market price for assuming the obligations at the time of the amalgamation. 5

*Market value for amalgamated company*

- (3) The amalgamated company is treated as having acquired the financial arrangement or assumed the obligations immediately after the amalgamation. The consideration for the acquisition is the market value of the property at the time of the amalgamation. 10

*Treatment of amalgamating company*

- (4) The amalgamating company is treated as having disposed of the property or relieved itself of the obligations just before the amalgamation. 15

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

Compare: 2004 No 35 s FE 5 20

**FO 16 Amortising property***When this section applies*

- (1) This section applies in an income year in which amortising property belonging to an amalgamating company passes to the amalgamated company on a resident's restricted amalgamation. The passing of ownership is treated as a disposal of the property by the amalgamating company and an acquisition by the amalgamated company. 25

*Value: all pool property*

- (2) If the amortising property forms the whole of a pool of property of the amalgamating company that is depreciated under **sections EE 20 to EE 24** (which relate to depreciation under the pool method), the consideration for the disposal and acquisition is taken as the adjusted tax value of the pool immediately before the amalgamation. 30  
35

*Value: part pool property*

- (3) If the amortising property forms part of a pool of property of the amalgamating company that is depreciated under **sections EE 20 to EE 24**, the consideration for the disposal and acquisition is taken as the lesser of— 5
- (a) the market value of the property; or
  - (b) the adjusted tax value of the pool immediately before the amalgamation.

*Deductions for depreciation loss*

- (4) If the amortising property is other than pool property of the amalgamating company, the amalgamated company is treated as having been allowed the deduction that the amalgamating company would have had for an amount of depreciation loss, or a deduction under any other amortisation provision of this Act, relating to the property. 10  
15

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

Compare: 2004 No 35 s FE 6(1), (4) 20

**FO 17 Land***When this section applies*

- (1) This section applies when land belonging to an amalgamating company passes to the amalgamated company on a resident's restricted amalgamation. 25

*Disposal at market value*

- (2) If the land is not revenue account property of the amalgamating company, but the disposal of the land would give rise to income for the amalgamated company under any of **sections CB 6 to CB 14** (which relate to the disposal of land), the amalgamating company is treated as having disposed of the land to the amalgamated company at the market value of the land at the date of the amalgamation. 30

*Disposal of land within 10-year period*

- (3) If the land is, or may be, revenue account property of the amalgamating company because of the 10-year rule in any of **sections CB 9 to CB 11 and CB 14**, and the amalgamated company 35

disposes of the land within the 10-year period after the amalgamating company acquired it, an amount derived from the disposal is income of the amalgamated company under whichever is applicable of **sections CB 6 to CB 14**.

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

Compare: 2004 No 35 s FE 6(3A), (3B)

5

### *Treatment of financial arrangements between amalgamating companies*

10

## **FO 18 When amalgamating companies are parties to financial arrangement**

### *When this section applies*

- (1) This section applies when amalgamating companies are parties to a financial arrangement that exists on the date of the amalgamation of the companies. 15

### *Financial arrangement discharged*

- (2) The financial arrangement is, for the purposes of **section EW 31** (Base price adjustment formula), treated as having been discharged immediately before the amalgamation. The consideration for the discharge is,— 20
- (a) on a resident's restricted amalgamation, the amalgamating company's outstanding accrued balance for the financial arrangement, *see* **section FO 19**; or
- (b) on an amalgamation other than a resident's restricted amalgamation or when the borrowing company is insolvent, the market value of the financial arrangement on the date of the amalgamation. 25

### *Amounts remitted*

- (3) An amount outstanding under a financial arrangement is not regarded as remitted merely because it is treated as discharged under **subsection (2)**. However, for these purposes, an amalgamated company is treated as having remitted an amount equal to the excess over market value of the outstanding accrued balance for the financial arrangement, *see* **section FO 20**. 30 35

*When borrower insolvent*

- (4) If an amalgamating company that is the borrower under the arrangement is insolvent and is unlikely to be able to meet its obligations under the arrangement, the company is treated as having paid to the other party to the arrangement in consideration for the discharge an amount that is the market value of the financial arrangement on the date of the amalgamation. A company is treated as insolvent if it does not meet the solvency test in section 4 in the Companies Act 1993. 5

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, company, consideration, financial arrangement, market value, resident's restricted amalgamation 10

Compare: 2004 No 35 s FE 10(1)–(5), (6)(c)

**FO 19 Calculation of outstanding accrued balance: consideration for discharge** 15

*Formula*

- (1) In **section FO 18(2)(a)**, the outstanding accrued balance is calculated using the formula—
- $$\begin{aligned} & \text{consideration} + \text{prior expenditure} \\ & \quad + \text{expenditure accrued in year} \\ & - \text{income accrued in year} - \text{consideration paid.} \end{aligned} \quad 20$$

*Definition of items in formula*

- (2) In the formula,—
- (a) **consideration** is the consideration paid to the amalgamating company under the financial arrangement: 25
- (b) **prior expenditure** is the expenditure that the amalgamating company incurs less the income that it derives from the financial arrangement calculated under either a spreading method or **section EW 53** (Adjustment required) in all income years other than the current income year from the time the financial arrangement was entered into: 30
- (c) **expenditure accrued in year** is the expenditure that the amalgamating company accrues from the financial arrangement for the period from the first day of the income year in which the amalgamation occurs to the date of the amalgamation, calculated either— 35
- (i) if the amalgamating company was party to the financial arrangement in an earlier income year,

- using the spreading method it used to calculate income and expenditure under the financial arrangement in the income year; or
- (ii) using a spreading method that the amalgamating company chooses, if the method could have been used if the income year had ended immediately before the amalgamation: 5
- (d) **income accrued in year** is the income that the amalgamating company accrues from the financial arrangement for the period described in **paragraph (c)** and calculated as described in that paragraph: 10
- (e) **consideration paid** is the consideration that the amalgamating company pays for the financial arrangement before the date of the amalgamation. 15
- Defined in this Act: amalgamating company, amalgamation, consideration, financial arrangement, income, income year, pay, spreading method 15
- Compare: 2004 No 35 s FE 10(6)(a)

## FO 20 Calculation of outstanding accrued balance: amounts remitted

*Formula* 20

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

$$\text{consideration} + \text{prior income} + \text{income accrued in year} \\ - \text{expenditure accrued in year} - \text{consideration paid.}$$

*Definition of items in formula* 25

- (2) In the formula,—
- (a) **consideration** is the consideration paid by the party under the financial arrangement:
- (b) **prior income** is the income that the party derives less the expenditure that it incurs under the financial arrangement calculated under either a spreading method or **section EW 53** (Adjustment required) in all income years other than the current income year from the time the financial arrangement was entered into: 30
- (c) **income accrued in year** is the income that the party accrues from the financial arrangement for the period from the first day of the income year in which the amalgamation occurs to the date of the amalgamation, calculated either— 35

- (i) using the spreading method used to calculate income and expenditure under the financial arrangement in the income year, if the party was a party to the financial arrangement in an earlier income year; or 5
- (ii) using a spreading method that the party chooses, if the method could have been used if the income year had ended immediately before the amalgamation:
- (d) **expenditure accrued in year** is the expenditure that the party accrues under the financial arrangement for the period described in **paragraph (c)** and calculated as described in that paragraph: 10
- (e) **consideration paid** is the consideration paid to the party under the financial arrangement before the date of the amalgamation. 15

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

Compare: 2004 No 35 s FE 10(6)(b)

## Subpart FZ—Terminating provisions 20

### Contents

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- FZ 3 Income of lessor under specified lease
- FZ 4 Deductions under specified leases

#### *Relationship property*

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#### *Estate property*

- FZ 7 Transitional valuation rule for estate property
-



## *Debentures*

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

*When this section applies*

- (1) This section applies for the purposes of **section FA 2** (Recharacterisation of certain debentures). 5

*Profit-related debentures*

- (2) A debenture issued before 8pm New Zealand standard time on 23 October 1986 is a profit-related debenture if the rate of interest may be determined by reference to the dividend payable by the company issuing the debenture or in any other manner. 10

*Fixed rates of interest*

- (3) Despite **section FA 2(3)(c)**, **section FA 2(2)** applies to a profit-related debenture issued before 8pm New Zealand standard time on 23 October 1986. 15

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

Compare: 2004 No 35 s FC 1

## *Leases* 20

### **FZ 2 Effect of specified lease on lessor and lessee**

*Lease treated as sale*

- (1) The leasing of a personal property lease asset under a specified lease is treated as a sale of the asset, made at the start of the term of the lease, by the lessor to the lessee. The lessee is treated as having incurred, through the sale, capital expenditure of an amount equal to the cost price of the asset. 25

*Loan applied to finance acquisition of asset*

- (2) A lessor under a specified lease is treated as having advanced to the lessee a loan of an amount equal to the cost price of the personal property lease asset. The lessee is treated as having applied the loan in the financing of the acquisition of the asset. 30

*No deduction*

- (3) A lessor under a specified lease is denied a deduction under **section DZ 14(2)** (Deductions under specified leases) for an amount of depreciation loss for the personal property lease asset. 5

*Asset sold to lessor*

- (4) At the end of the term of a specified lease, if the personal property lease asset is not acquired by the lessee under the terms of the lease or in the exercise of an option under the lease, the asset is treated as sold at the end of the term of the lease to the lessor for— 10
- (a) an amount equal to the guaranteed residual value, if any, set out for the asset in the lease; or
- (b) if no guaranteed residual value is set out in the lease, no consideration. 15

*Treatment when lease terminated*

- (5) If a specified lease is terminated before the term of the lease ends, whether by cancellation, surrender, or otherwise,—
- (a) the personal property lease asset relating to the lease is treated as sold on the date of the termination to the lessor by the lessee at a price equal to the amount by which the amount of the outstanding balance, at the time of termination, of a loan advance by the lessor to the lessee is more than the amount or the sum of the amounts payable by the lessee to the lessor in consideration for the release by the lessor of the lessee from the obligations of the lessee under the lease: 20
- (b) despite **paragraph (a)**, if, in relation to the amount of the outstanding balance and the amount or the sum of the amounts payable by the lessee to the lessor, no excess arises, the asset is treated as having been sold for no consideration: 25
- (c) if the value of the consideration payable by the lessee to the lessor in relation to the termination is more than the amount of the outstanding balance, at the time of termination, of a loan advanced by the lessor to the lessee, an amount equal to the amount of the excess is treated as income derived by the lessor in the income year in which the lease is terminated. 35

*Subsequent sale, assignment, or lease*

- (6) If, on or after the end of the term of a specified lease, the personal property lease asset relating to the lease is sold, assigned, or leased under a specified lease by the lessor to another person, and the value of the consideration on the sale, assignment, or lease— 5
- (a) is more than the amount determined for the first specified lease under **subsection (4)**, the amount determined is increased by a further amount that is equal to the part, if any, of the excess paid by the lessor to the lessee: 10
- (b) is less than the amount determined for the first specified lease under **subsection (4)(a)**, and the lessee is required to make a further payment to the lessor equal to the difference between the guaranteed residual value for the lease value, and the value of the consideration, the amount determined is reduced by the amount of the further payment. 15

*Consideration more than amount determined under subsection (4)*

- (7) Despite **subsection (6)**, if the value of the consideration on the sale, assignment, or lease is more than the amount determined under **subsection (4)**, the part, if any, of the excess that is not paid to the lessee is treated as income under **section CZ 20** (Disposal of personal property lease asset under specified lease). 20  
25

*Associated persons*

- (8) If the lessee under a specified lease, or another person who is associated with the lessee, at any time acquires the personal property lease asset, and disposes of the asset, and the value of the consideration for the disposal is more than the value of the consideration for which the lessee or other person acquired it, an amount equal to the excess is income under **section CZ 20**. 30

*Meaning of outstanding balance*

- (9) In this section, and in **section FZ 3**, **outstanding balance** means the amount calculated using the formula— 35
- (loans advanced + interest payable) – instalments.

*Definition of items in formula*

- (10) In the formula,—
- (a) **loans advanced** is the total amount of all loans advanced under the lease by the lessor for the period—
    - (i) starting on the date that the lease started; and 5
    - (ii) ending on the date immediately before the start of the instalment period:
  - (b) **interest payable** is the total amount of interest payable for each loan for the period—
    - (i) starting on the date that the lease started; and 10
    - (ii) ending on the date immediately before the start of the instalment period:
  - (c) **instalments** is the total amount of all instalments paid by the lessee in the period—
    - (i) starting on the date that the lease started; and 15
    - (ii) ending on the date immediately before the start of the instalment period.

Defined in this Act: amount, cancellation, cost price, deduction, depreciation loss, dispose, guaranteed residual value, income, instalment, instalment period, lease, lessee, lessor, outstanding balance, pay, personal property lease asset, specified lease, term of the lease 20

Compare: 2004 No 35 s FC 6(2)–(8)

**FZ 3 Income of lessor under specified lease***Interest*

- (1) The income of a lessor derived under a specified lease is treated as interest. 25

*Treatment of amount derived*

- (2) The amount of interest derived under **subsection (1)** is treated as—
- (a) during the term of the lease, derived during the initial period and each instalment period, an amount that is calculated either,— 30
    - (i) on the outstanding balance for the initial period, and each instalment period, at such a rate and in such a manner that the aggregate of all of the amounts so calculated is equal to the amount first mentioned in **paragraph (b)**; or 35
    - (ii) for the initial period and each instalment period, under such other method commonly applied in commercial usage as, having regard to the term of 40

	the lease and to the frequency of the personal property lease payments, results in the allocation to that initial period and to each instalment period of an amount that is fair and reasonable and results in the sum of all amounts so allocated being equal to the amount first mentioned in <b>paragraph (b)</b> :	5
(b)	in relation to the term of the lease, an amount that is equal to the sum of the personal property lease payments under the specified lease and the amount of the guaranteed residual value, if any, under the specified lease, reduced by the cost price of the personal property lease asset.	10
	<i>Calculation for income year</i>	
(3)	The interest derived by a lessor is, for an income year, treated as an amount equal to the sum of the amounts calculated under <b>subsection (2)(a)</b> as a calculated for the initial period, if any, and each instalment period that ends in the income year.	15
	<i>Some definitions</i>	
(4)	In this section,—	20
	<b>initial period</b> means the period—	
	(a) starting on the date of the start of a lease; and	
	(b) ending just before the start of the instalment period that follows the start of the lease	
	<b>instalment period</b> means the period—	25
	(a) starting on the day on which an instalment is payable; and	
	(b) ending with the day just before the day on which the next instalment is payable.	
	Defined in this Act: amount, guaranteed residual value, income, income year, initial period, instalment period, interest, lessor, personal property lease asset, personal property lease payment, specified lease, term of the lease	30
	Compare: 2004 No 35 s FC 7	
<b>FZ 4</b>	<b>Deductions under specified leases</b>	
	A lessee under a specified lease is denied a deduction for expenditure incurred by them under the lease except to the	35

extent described in **section DZ 14(3)** (Deductions under specified leases).

Defined in this Act: deduction, instalment, lessee, specified lease

Compare: 2004 No 35 s FC 8

### ***Relationship property***

5

#### **FZ 5 Land used in specified activity**

*When this section applies*

- (1) This section applies for the purposes of the definition of **established activity** in **section IZ 1** (Use of specified activity net losses) when— 10
- (a) land is transferred under a settlement of relationship property; and
  - (b) the transferor conducted a specified activity on the land as at 1 October 1982, and the conduct of the activity constituted their livelihood or sole source of income; 15
  - and
  - (c) the transferee conducts the same specified activity on the land.

*Treatment of transferee*

- (2) The transferee is treated as continuing the specified activity, 20  
and that activity is treated as constituting their livelihood and sole source of income.

*Date of commencement*

- (3) For the purposes of **section IZ 1(7)**, if the transferor was an existing farmer immediately before the date of transfer, the transferee is treated as having acquired the land on the date it was acquired by the transferor. However, if the transferee starts to conduct the same kind of specified activity on the land that the transferor conducted immediately before the date of transfer, the transferee is not treated as having acquired the 25  
land on that date. 30

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

Compare: 2004 No 35 s FF 18

**FZ 6 Commercial bills***When this section applies*

- (1) This section applies for the purposes of **section CZ 6** (Commercial bills before 31 July 1986) when a commercial bill is transferred under a settlement of relationship property. 5

*Transfer at cost*

- (2) The transfer is treated as a disposal by the transferor and an acquisition by the transferee for an amount that equals the cost of the bill to the transferor. 10

Defined in this Act: amount, commercial bill, conduct, settlement of relationship property 10

Compare: 2004 No 35 s FF 5

*Estate property***FZ 7 Transitional valuation rule for estate property***What this section applies to* 15

- (1) This section applies to property transferred under **section FC 1(1)(a)** (What this subpart does) either on a person's death or on a distribution by an executor, administrator, or trustee of an estate, if—
- (a) the death or distribution occurred before 1 October 2005; and 20
- (b) in the tax year in which the property passes, all beneficiaries of the deceased person are resident in New Zealand, and no income of a beneficiary is exempt income under **section CW 42** (Charitable bequests). 25

*Market value or value under settlement of relationship property*

- (2) The valuation of the transferred property for tax purposes for the corresponding income year in which the death or distribution occurred is measured as a transfer occurring immediately before the death of the person, or at the date of distribution, as applicable, at— 30
- (a) market value; or
- (b) a value under **subpart FB** (Transfers of relationship property) for property of the type; or 35
- (c) a value under **subsection (4)**.

*Returns of income*

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

*Requirements of other provisions*

5

- (4) Despite **subsection (3)**, if this Act, the Income Tax Act 2004, or Income Tax Act 1994, requires the use of a market value for an item of property, that value must be used in the return of income.

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

10

Compare: 2004 No 35 ss FI 9, FI 10



## Part G Avoidance and non-market transactions

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<b>GA 1 Commissioner's power to adjust</b>		
	<i>When this section applies</i>	
(1)	This section applies if an arrangement is void under <b>section BG 1</b> (Tax avoidance).	10
	<i>Commissioner's general power</i>	
(2)	The Commissioner may adjust the taxable income of a person affected by the arrangement in a way the Commissioner thinks appropriate, in order to counteract a tax advantage obtained by the person from or under the arrangement.	15
	<i>Commissioner's specific power over tax credits</i>	
(3)	The Commissioner may—	
	(a) disallow some or all of a tax credit of a person affected by the arrangement; or	
	(b) allow another person to benefit from some or all of the tax credit.	20
	<i>Commissioner's identification of hypothetical situation</i>	
(4)	When applying <b>subsections (2) and (3)</b> , the Commissioner may have regard to 1 or more of the amounts listed in <b>subsection (5)</b> which, in the Commissioner's opinion, had the arrangement not occurred, the person—	25
	(a) would have had; or	
	(b) would in all likelihood have had; or	
	(c) might be expected to have had.	
	<i>Reconstructed amounts</i>	
(5)	The amounts referred to in <b>subsection (4)</b> are—	30
	(a) an amount of income of the person:	
	(b) an amount of deduction of the person:	
	(c) an amount of tax loss of the person:	

- (d) an amount of tax credit of the person.

*No double counting*

- (6) If the Commissioner includes an amount of income or deduction in calculating the taxable income of the person, it must not be included in calculating the taxable income of another person. 5

*Meaning of tax credit*

- (7) In this section, **tax credit** means a reduction in the tax a person must pay because of— 10
- (a) a credit allowed for a payment by the person of an amount of tax or of another item; or
- (b) another type of benefit.

Defined in this Act: amount, arrangement, Commissioner, deduction, income tax, tax credit, tax loss, taxable income

Compare: 2004 No 35 s GB 1(1)–(2C) 15

**GA 2 Commissioner’s power to adjust: FBT**

*When this section applies*

- (1) This section applies if—
- (a) an arrangement is void under **section BG 1** (Tax avoidance); and 20
- (b) the arrangement involves altering the incidence of fringe benefit tax.

*Commissioner’s power in relation to excluded income*

- (2) The Commissioner may adjust the excluded income under **section CX 3** (Excluded income) of a person affected by the arrangement in a way the Commissioner thinks appropriate, in order to counteract a tax advantage obtained by the person from or under the arrangement. 25

*Commissioner’s identification of hypothetical situation*

- (3) When applying **subsection (2)**, the Commissioner may have regard to 1 or more of the amounts listed in **subsection (4)** which, in the Commissioner’s opinion, but for the arrangement, the person— 30
- (a) would have had; or
- (b) would in all likelihood have had; or 35
- (c) might be expected to have had.

*Reconstructed amounts*

- (4) The amounts referred to in **subsection (3)** are—
- (a) an amount of excluded income of the person:
  - (b) an amount of excluded income of the person, if the person had been allowed the benefit of an amount of excluded income derived by another person as a result of the arrangement. 5

*No double counting*

- (5) If the Commissioner includes an amount of excluded income in calculating the taxable income of the person, it must not be included in calculating the taxable income of another person. 10

Defined in this Act: amount, arrangement, Commissioner, excluded income, taxable income

Compare: 2004 No 35 s GC 17B

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***Arrangements involving dividend stripping***

**GB 1 Arrangements involving dividend stripping**

*When this section applies*

- (1) This section applies when—
- (a) a person disposes of shares in a company in an income year; and
  - (b) the disposal is part of a tax avoidance arrangement; and

- (c) some or all of the consideration that the person derives from the disposal is in substitution for a dividend in an income year.

*When amount substitutes for dividend*

- (2) An amount derived by the person is in substitution for a dividend if it is equivalent to or substitutes for a dividend that, but for the arrangement, the person—
- (a) would have derived; or
  - (b) would in all likelihood have derived; or
  - (c) might be expected to have derived.

*Substitute treated as dividend*

- (3) The amount derived in substitution for a dividend is treated as a dividend derived by the person in the income year in which the disposal occurs.
- Defined in this Act: arrangement, company, dispose, dividend, income year, tax avoidance arrangement
- Compare: 2004 No 35 s GB 1(3)

***Arrangements involving transfer pricing***

**GB 2 Arrangements involving transfer pricing**

*When this section applies* 20

- (1) This section applies in relation to a person if an arrangement has a purpose or effect of defeating the intent and application of—
- (a) **section GC 7** (Excess amount payable by person):
  - (b) **section GC 8** (Insufficient amount receivable by person): 25
  - (c) **section GC 9** (Compensating arrangement: person paying less than arm's length amount):
  - (d) **section GC 10** (Compensating arrangement: person receiving more than arm's length amount).

*Possible examples* 30

- (2) Without limiting the generality of **subsection (1)**, the following collateral arrangements may result in that purpose or effect:
- (a) a collateral arrangement with an associated person who is a non-resident:
  - (b) a market-sharing arrangement: 35
  - (c) an arrangement not to enter a market:

- (d) a back-to-back supply arrangement:
- (e) an income-sharing arrangement.

*Application of sections GC 7 to GC 10*

- (3) **Section GC 7, GC 8, GC 9, or GC 10**, as applicable, applies to require the substitution of an arm's length amount of consideration, despite **section GC 6(2) and (3)** (Purpose of rules and nature of arrangements). 5

Defined in this Act: arrangement, associated person, non-resident

Compare: 2004 No 35 s GC 1

*Arrangements involving tax losses* 10

**GB 3 Arrangements for carrying forward loss balances: companies**

*When this section applies*

- (1) This section applies when— 15
- (a) a share in a company (the **loss company**) or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the shares; and 15
  - (b) the arrangement allows the loss company to meet the requirements of **section IA 5** (Restrictions on companies' loss balances carried forward); and 20
  - (c) a purpose of the arrangement is to defeat the intent and application of **sections IA 5 and IP 3** (Continuity breach: tax loss components of companies carried forward).

*Company treated as not meeting requirements* 25

- (2) The loss company is treated as not meeting the requirements of **section IA 5** in relation to the share.

Defined in this Act: arrangement, company, loss balance, share

Compare: 2004 No 35 s GC 2

**GB 4 Arrangements for grouping tax losses: companies** 30

*When this section applies*

- (1) This section applies when—
- (a) a share in a company (the **offset company**) or another company has been subject to an arrangement, including

- an arrangement directly or indirectly altering rights attached to the shares; and
- (b) the arrangement allows the offset company to meet the requirements of **subparts IC and IP, and section IZ 7** (which relate to the use of tax losses by group companies), as applicable; and 5
- (c) a purpose of the arrangement is to defeat the intent and application of those provisions.
- Company treated as not meeting requirements*
- (2) The offset company is treated as not meeting the requirements of **subparts IC and IP and section IZ 7**, as applicable, in relation to the share. 10
- Defined in this Act: arrangement, company, share, tax loss  
Compare: 2004 No 35 s GC 4
- Arrangements to defeat continuity provisions* 15
- GB 5 Arrangements involving trust beneficiaries**
- When this section applies*
- (1) This section applies when—
- (a) a share in a company or option over a share in a company is held by a trustee; and 20
- (b) a change occurs in the beneficiaries of the trust; and
- (c) a purpose or effect of the change is to defeat the intent and application of a continuity provision.
- Trustee treated as disposing of share or option*
- (2) The trustee is treated as having disposed of the share or option to an unrelated person at the time of the change in beneficiaries, and as having reacquired it immediately afterwards. 25
- Limited application of subsection (2)*
- (3) **Subsection (2)** applies only for the purposes of the application of the rules in **sections YC 2** (Voting interests) and **YC 3** (Market value interests) in the case of the continuity provisions. 30
- Defined in this Act: company, continuity provisions, dispose, option, share, trustee  
Compare: 2004 No 35 s GC 3



*Arrangements involving attributing companies*

**GB 6 Arrangements involving attributing companies**

*When this section applies*

- (1) This section applies when—
- (a) a share in a company has been subject to an arrangement at a time; and 5
  - (b) the arrangement allows the company or another company to be an attributing company at the time; and
  - (c) a purpose of the arrangement is to defeat the intent and application of **subpart HA** (Attributing companies and loss-attributing companies). 10

*Company treated as not attributing company*

- (2) The relevant company is treated as not being an attributing company at that time. 15
- Defined in this Act: arrangement, attributing company, company, share  
Compare: 2004 No 35 s GC 5

*Arrangements involving CFCs*

**GB 7 Arrangements involving CFC control interests**

*When this section applies*

- (1) This section applies when— 20
- (a) 2 or more persons who are New Zealand residents enter into an arrangement; and
  - (b) under the arrangement, a control interest in a foreign company is held by another person; and
  - (c) a purpose of the arrangement is to prevent the foreign company being a CFC. 25

*Interest treated as held by residents*

- (2) The control interest is treated as being held by the New Zealand residents in equal proportions, for the purposes of determining whether the company is a CFC. 30

Defined in this Act: arrangement, CFC, control interest, foreign company, New Zealand resident

Compare: 2004 No 35 s GC 7

## GB 8 Arrangements involving attributed repatriation from CFCs

*When this section applies*

- (1) This section applies when—
- (a) a CFC enters into a loan, security, or other type of arrangement (the **CFC arrangement**) with another person; and 5
  - (b) the CFC arrangement does not directly result in a person having an attributed repatriation from the CFC; and
  - (c) the CFC arrangement has a purpose or effect of allowing a person (the **investor**) to enter into a loan or other arrangement (the **investor arrangement**); and 10
  - (d) the investor arrangement would, if it had been made by the CFC, have resulted in a person having some attributed repatriation from the CFC; and 15
  - (e) the purpose or effect of the arrangement is to defeat the intent and application of **section CD 45** (When does a person have attributed repatriation from a CFC?).

*Investor arrangement treated as made by CFC*

- (2) For the purposes of applying **section CD 45**, the investor arrangement is treated as having been made by the CFC and not the investor. 20

Defined in this Act: arrangement, attributed repatriation, CFC

Compare: 2004 No 35 s GC 8

## GB 9 Temporary disposals of direct control or income interests 25

*When this section applies*

- (1) This section applies when,—
- (a) before the end of a quarter, a person (the **disposer**), directly or indirectly disposes of a direct control interest or direct income interest in a foreign company (the **disposal**); and 30
  - (b) the disposal is not to a New Zealand resident who has an income interest of 10% or more in the foreign company from which attributed CFC income or attributed repatriation is derived; and 35
  - (c) within 183 days after the disposal, the disposer directly or indirectly acquires a direct control interest or direct

- income interest in the foreign company (the **reacquisition**); and
- (d) the disposal has the effect of reducing attributed CFC income or attributed repatriation of—
- (i) the disposer; or 5
  - (ii) an associated person of the disposer; or
  - (iii) if the disposer is a CFC, a person holding an income interest in the disposer; and
- (e) the disposal and reacquisition are part of an arrangement that has an effect of defeating the intent and application of the international tax rules. 10

*Treatment of disposal*

- (2) The disposal is treated as not having occurred, when the person's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the reacquisition reverses the disposal. 15

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(1), (4) 20

**GB 10 Temporary acquisitions of direct control or income interests**

*When this section applies*

- (1) This section applies when,—
- (a) before the end of a quarter, a person (the **acquirer**), directly or indirectly acquires a direct control interest or direct income interest in a foreign company (the **acquisition**); and 25
  - (b) the acquisition is not from a New Zealand resident who has an income interest of 10% or more in the foreign company from which an attributed CFC loss is incurred; and 30
  - (c) within 183 days after the acquisition, the acquirer directly or indirectly disposes of a direct control interest or direct income interest in the foreign company (the **disposal**); and 35
  - (d) the acquisition has the effect of increasing an attributed CFC loss of—
    - (i) the acquirer; or
    - (ii) an associated person of the acquirer; or 40

- (iii) if the acquirer is a CFC, a person holding an income interest in the acquirer; and
- (e) the acquisition and disposal are part of an arrangement that has an effect of defeating the intent and application of the international tax rules. 5

*Treatment of acquisition*

- (2) The acquisition is treated as not having occurred, when the person's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the disposal reverses the acquisition. 10

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(1), (4)

**GB 11 Temporary increases in totals for control interest categories** 15

*When this section applies*

- (1) This section applies when,—
  - (a) before the end of a quarter, an increase occurs in the total of direct control interests in a foreign company in any of the control interest categories (the **total increase**); and 20
  - (b) the total increase results in a person (the **interest holder**) having a reduced income interest or control interest in a foreign company (the **interest reduction**); and 25
  - (c) within 365 days after the total increase, a reduction occurs in the total for the control interest category (the **total reduction**); and
  - (d) the interest reduction has the effect of reducing attributed CFC income or attributed repatriation of— 30
    - (i) the interest holder; or
    - (ii) an associated person of the interest holder; or
    - (iii) if the interest holder is a CFC, another person holding an income interest in the interest holder; and 35
  - (e) the total increase and total reduction are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

*Treatment of interest reduction*

- (2) The interest reduction is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total reduction reverses the interest reduction. 5

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, control interest category, direct control interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(2) 10

## **GB 12 Temporary reductions in totals for control interest categories**

*When this section applies*

- (1) This section applies when,—
- (a) before the end of a quarter, a reduction in the total of direct control interests in a foreign company occurs in a control interest category (the **total reduction**); and 15
  - (b) the total reduction results in a person (the **interest holder**) having an increased income interest or control interest in a foreign company (the **interest increase**); and 20
  - (c) within 365 days after the total reduction, an increase occurs in the total for the control interest category (the **total increase**); and
  - (d) the interest increase has the effect of increasing an attributed CFC loss of— 25
    - (i) the interest holder; or
    - (ii) an associated person of the interest holder; or
    - (iii) another person holding an income interest in the interest holder, if the interest holder is a CFC; and 30
  - (e) the total reduction and total increase are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

*Treatment of interest increase*

- (2) The interest increase is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the 35

extent to which the total increase reverses the interest increase.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, control interest category, direct control interest, foreign company, income interest, international tax rules, quarter

5

Compare: 2004 No 35 s GC 9(2)

### GB 13 When combination of changes reduces income

*When this section applies*

- (1) This section applies when—
- (a) before the end of a quarter, either—
    - (i) a person directly or indirectly disposes of a direct control interest or direct income interest in a foreign company (the **disposal**); or
    - (ii) an increase occurs in the total of direct control interests in a foreign company in any of the control interest categories (the **total increase**); and
  - (b) in the case of the disposal, the disposal is not to a New Zealand resident who has an income interest of 10% or more in the foreign company from which they derive attributed CFC income or attributed repatriation; and
  - (c) in the case of the disposal, within 365 days after the disposal, a reduction occurs in the total of direct control interests in the foreign company in any of the control interest categories (the **total reduction**); and
  - (d) in the case of the total increase, within 365 days after the total increase, a person directly or indirectly acquires a direct control interest or direct income interest in the foreign company (the **reacquisition**); and
  - (e) the disposal or total increase has the effect of reducing attributed CFC income or attributed repatriation of—
    - (i) the person (the **interest holder**); or
    - (ii) an associated person of the interest holder; or
    - (iii) if the interest holder is a CFC, a person holding an income interest in the interest holder; and
  - (f) the disposal and total reduction or total increase and reacquisition are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

*Treatment of disposal or total increase*

- (2) The disposal or total increase is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total reduction or reacquisition has the effect of reversing the effect of the disposal or total increase on the level of the interest holder's control interest or income interest. 5

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, control interest category, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter 10

Compare: 2004 No 35 s GC 9(3), (4)

**GB 14 When combination of changes increases loss**

*When this section applies* 15

- (1) This section applies when,—
- (a) before the end of a quarter, either—
    - (i) a person directly or indirectly acquires a direct control interest or direct income interest in a foreign company (the **acquisition**); or 20
    - (ii) a decrease occurs in the total of direct control interests in a foreign company in any of the control interest categories (the **total decrease**); and
  - (b) in the case of the acquisition, the acquisition is not from a New Zealand resident who has an income interest of 10% or more in the foreign company from which they have an attributed CFC loss; and 25
  - (c) in the case of the acquisition, within 365 days after the acquisition, an increase occurs in the total of direct control interests in the foreign company in any of the control interest categories (the **total increase**); and 30
  - (d) in the case of the total reduction, within 365 days after the total reduction, a person directly or indirectly disposes of a direct control interest or direct income interest in the foreign company (the **disposal**); and 35
  - (e) the acquisition or total reduction has the effect of reducing an attributed CFC loss of—
    - (i) the person (the **interest holder**); or
    - (ii) an associated person of the interest holder; or
    - (iii) if the interest holder is a CFC, a person holding an income interest in the interest holder; and 40

- (f) the acquisition and total increase or total reduction and disposal are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

*Treatment of acquisition or total reduction*

5

- (2) The acquisition or total reduction is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total increase or disposal has the effect of reversing the effect of the acquisition or total reduction on the level of the interest holder's control interest or income interest.

10

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, control interest category, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

15

Compare: 2004 No 35 s GC 9(3), (4)

**GB 15 CFC income or loss: arrangements related to quarterly measurement**

*When this section applies*

- (1) This section applies when—
- (a) an income interest in a CFC is transferred by a person to an associated person; and
- (b) the associated persons make an arrangement for making or not making an election under **section EX 27(3)** (Use of quarterly measurement); and
- (c) the arrangement has an effect of defeating the intent and application of the international tax rules.

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*Treatment of election*

- (2) The Commissioner may treat the election as having been made or not made, as applicable, to the extent appropriate to prevent the effect of the arrangement.

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Defined in this Act: arrangement, associated person, CFC, Commissioner, income interest, international tax rules

Compare: 2004 No 35 s GC 10



### *Arrangements involving FIFs*

#### **GB 16 FIF income or loss: arrangements for measurement day concessions**

*When this section applies*

- |     |   |    |
|-----|---|----|
| (1) | This section applies when—  | 5  |
|     | (a) an attributing interest in a FIF is transferred by a person to an associated person; and              |    |
|     | (b) the associated persons make an arrangement for making or not making—                                  |    |
|     | (i) an election under <b>section EX 27(3)</b> (Use of quarterly measurement); or                          | 10 |
|     | (ii) an election under <b>section EX 42(5)</b> (Accounting profits method); or                            |    |
|     | (iii) a combination of those elections; and   |    |
|     | (c) the arrangement has an effect of defeating the intent and application of the international tax rules. | 15 |

*Treatment of election*

- |     |  |    |
|-----|--|----|
| (2) | The Commissioner may treat an election as having been made or not made, as applicable, to the extent appropriate to prevent the effect of the arrangement. | 20 |
|-----|--|----|

Defined in this Act: arrangement, associated person, attributing interest, FIF, Commissioner, international tax rules

Compare: 2004 No 35 s GC 10

### *Arrangements involving film rights*

#### **GB 17 Excessive amounts for film rights or production expenditure**

*When this section applies*

- |     |   |    |
|-----|---|----|
| (1) | This section applies when—  |    |
|     | (a) a person (the <b>buyer</b> ) is allowed a deduction under—  |    |
|     | (i) <b>section DS 1</b> (Acquiring film rights) for expenditure incurred in acquiring a film right; or                                    | 30 |
|     | (ii) <b>section DS 2</b> (Film production expenditure) for expenditure incurred in acquiring goods or services in relation to a film; and |    |
|     | (b) the Commissioner considers that the buyer and the person from whom the film right, goods or services were                             | 35 |

- acquired (the **seller**) were not dealing with each other at arm's length; and
- (c) the amount of expenditure incurred by the buyer is more than the market value of the film right, goods, or services at the time they were acquired. 5

*Deduction reduced to market value*

- (2) The deduction is reduced to an amount equal to the market value.

*Application to shares in film rights*

- (3) If the buyer acquires only a share in a film right, this section applies only to the part of the total market value of the film right that is attributable to that share. 10

Defined in this Act: Commissioner, deduction, film right, film production expenditure

Compare: 2004 No 35 ss GC 11A, GD 12 15

**GB 18 Arrangements to acquire film rights or incur production expenditure**

*When this section applies*

- (1) This section applies if the Commissioner considers that 2 persons have made arrangements so that any of the following sections applies more favourably in relation to a person in an income year than would have applied without the arrangements: 20
- (a) **section DS 1** (Acquiring film rights):
- (b) **section DS 2** (Film production expenditure): 25
- (c) **section EJ 4** (Expenditure incurred in acquiring film rights in feature films):
- (d) **section EJ 5** (Expenditure incurred in acquiring film rights in films other than feature films):
- (e) **section EJ 7** (Film production expenditure for New Zealand films): 30
- (f) **section EJ 8** (Film production expenditure for films other than New Zealand films).

*Deduction reduced*

- (2) The deduction allowed to the person under **section DS 1 or DS 2** is reduced to the amount that the Commissioner considers would have been allowed if the arrangements had not been made. 35

*Allocation*

- (3) The deduction allocated under **section EJ 4, EJ 5, EJ 7, or EJ 8** is allocated to the income year to which the Commissioner considers it would have been allocated if the arrangements had not been made. 5

Defined in this Act: arrangement, Commissioner, deduction, film production expenditure, film right, income year

Compare: 2004 No 35 ss GC 11B, GD 12B

**GB 19 When film production expenditure payments delayed or contingent** 10

*When this section applies*

- (1) This section applies when—
- (a) a person (the **payer**) is liable to pay any of the costs of goods or services applied in producing a film; and
  - (b) under an agreement between the provider of the goods or services and another person, payment of the costs is deferred; and 15
  - (c) either—
    - (i) the period of deferral is excessive; or
    - (ii) the payment is contingent. 20

*Costs incurred when paid*

- (2) For the purposes of **sections DS, EJ 7, and EJ 8** (which relate to film production expenditure), the payer is treated as incurring the costs at the time of payment. 25

Defined in this Act: film, film production expenditure

Compare: 2004 No 35 s GD 12A

*Arrangements involving petroleum mining***GB 20 Arrangements involving petroleum mining***When this section applies*

- (1) This section applies if the requirements of both of the following paragraphs are met: 30
- (a) an arrangement includes—
    - (i) a disposal of a petroleum mining asset; or
    - (ii) the incurring of petroleum exploration expenditure; or 35
    - (iii) a farm-out arrangement:

- (b) the arrangement has a purpose or effect of tax avoidance.

*Applying section GA 1*

- (2) The Commissioner may apply **section GA 1** (Commissioner's power to adjust) to adjust the taxable income of a person affected by the arrangement so as to counteract a tax advantage obtained by the person. 5

*Examples*

- (3) Without limiting the generality of **subsection (1)**, arrangements having the effect of tax avoidance include the arrangements described in **subsections (4) to (8)**. 10

*Person acquiring asset relieved or compensated*

- (4) An arrangement has the effect of tax avoidance if it involves the disposal of a petroleum mining asset and it is probable that, at the time the arrangement is entered into, the person acquiring the petroleum mining asset— 15
- (a) will, through a related arrangement, not have to suffer some or all of the expenditure of acquiring the petroleum mining asset; or
- (b) will be effectively compensated in some way for some or all of the expenditure. 20

*Person incurring expenditure relieved or compensated*

- (5) An arrangement has the effect of tax avoidance if it involves the incurring of petroleum exploration expenditure and it is probable that, at the time the arrangement is entered into, the person who is to incur the petroleum exploration expenditure— 25
- (a) will, through a related arrangement, not have to suffer some or all of the petroleum exploration expenditure; or
- (b) will be effectively compensated in some way for some or all of the petroleum exploration expenditure. 30

*Farm-in party relieved or compensated*

- (6) An arrangement has the effect of tax avoidance if it involves a farm-out arrangement and it is probable that, at the time the arrangement is entered into,— 35

- 
- (a) the farm-in party will, through a related arrangement, not have to suffer some or all of the farm-in expenditure attributable to the proportionate interest acquired by the farm-in party under the farm-out arrangement; or
- (b) the farm-in party or an associated person will be effectively compensated in some way for some or all of the farm-in expenditure. 5
- Disposal of asset to associated person for over-value*
- (7) An arrangement has the effect of tax avoidance if it involves a petroleum miner disposing of a petroleum mining asset to an associated person for a purpose of ensuring that the associated person has a greater deduction than would have been allowed if the asset had been disposed of for its market value. 10
- Farm-out arrangement with associated person for over-value* 15
- (8) An arrangement has the effect of tax avoidance if it involves a petroleum miner entering into a farm-out arrangement with an associated person for a purpose of ensuring that the associated person has a greater deduction than would have been allowed if the farm-out arrangement had been entered into on substantially the same terms as those on which it would have been entered into with a person who is not associated. 20
- Miners operating offshore*
- (9) This section applies, with the necessary modifications, to a petroleum miner who undertakes petroleum mining operations that are— 25
- (a) outside New Zealand and undertaken through a branch or CFC; and
- (b) substantially the same as the petroleum mining activities governed by this Act. 30
- Treatment of partners*
- (10) For the purposes of this section, a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their income interest in the partnership. 35

*Disposal of part of asset*

- (11) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: arrangement, associated person, CFC, deduction, dispose, farm-in expenditure, farm-out arrangement, New Zealand, petroleum exploration expenditure, petroleum miner, petroleum mining asset, petroleum permit, tax avoidance, taxable income

5

Compare: 2004 No 35 s GC 12

*Arrangements involving financial arrangements*

**GB 21 Dealing that defeats intention of financial arrangements rules** 10

*When this section applies*

- (1) This section applies if the Commissioner considers that the parties to a financial arrangement were dealing with each other in a way that defeats the intention of the financial arrangements rules at the time the financial arrangement was—
- (a) entered into or otherwise acquired; or
- (b) varied; or
- (c) disposed of. 20

*Alteration of consideration*

- (2) The Commissioner may treat the relevant transaction as having occurred for the consideration that parties dealing at arm's length would have agreed on.

Defined in this Act: Commissioner, financial arrangement, financial arrangements rules

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Compare: 2004 No 35 s GD 11

*Arrangements involving trust beneficiary income*

**GB 22 Arrangements involving trust beneficiary income**

*When this section applies* 30

- (1) This section applies when—
- (a) an arrangement involves a trustee transferring property, or providing services or other benefits, to a person other than a beneficiary of the trust; and
- (b) the arrangement has the effect of defeating the intent and application of **sections HC 17 to HC 23** (which relate to

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- the income of beneficiaries) in relation to the beneficiary; and
- (c) the trust is not a Maori authority.

*Application of sections HC 17 to HC 23*

- (2) The beneficiary is treated, for the purposes of **sections HC 17 to HC 23**, as receiving the property or enjoying the services or benefits. 5

Defined in this Act: arrangement, Maori authority, trustee

Compare: 2004 No 35 s GC 14

***Excessive remuneration*** 10

**GB 23 Excessive remuneration to relatives**

*When this section applies: first case*

- (1) This section applies when—
- (a) a person carries on a business or undertaking; and
- (b) the person employs or engages a relative or, in a case in which the person is a company but not a close company, a relative of a director or shareholder of the company, to perform services for the business or undertaking; and 15
- (c) the Commissioner considers that the income payable to the relative for the services is excessive; and 20
- (d) the exemption in **section GB 24** does not apply.

*When this section applies: second case*

- (2) This section also applies when—
- (a) a person carries on a business in partnership; and
- (b) the partnership employs or engages a relative of the person or, in a case in which the person is a company, a relative of a director or shareholder in the company, to perform services for the business; and 25
- (c) the Commissioner considers that the income payable to the relative for the services is excessive; and 30
- (d) the exemption in **section GB 24** does not apply.

*When this section applies: third case*

- (3) This section also applies when—
- (a) a person carries on a business in partnership; and
- (b) another partner in the partnership is— 35

- (i) a relative of the person; or
  - (ii) if the person is a company, a relative of a director or shareholder in the company; or
  - (iii) a company in which a relative of the person is a director or shareholder; and 5
  - (c) the Commissioner considers that the other partner's share of partnership profit or losses is excessive; and
  - (d) the exemption in **section GB 24** does not apply.
- Allocation of income or losses*
- (4) For the purposes of this Act, the Commissioner may allocate the income or losses of the business or undertaking among the parties to the contract or partnership as the Commissioner considers reasonable, without taking into account an amount provided to the relative or other partner. 10
- Treatment of amount allocated* 15
- (5) An amount the Commissioner allocates to 1 person is treated as not belonging to another person.
- Matters for Commissioner's consideration*
- (6) The Commissioner may take into account each of the following matters when applying this section: 20
    - (a) the nature and extent of the services rendered by the relative:
    - (b) the value of the contributions made by the respective partners, by way of services, capital, or otherwise:
    - (c) any other relevant matters. 25
- Treatment of amount allocated back to company*
- (7) If an amount provided by a company to a relative of a director or shareholder for services is allocated to the company under **subsection (4)**, it is treated as a dividend paid by the company and derived by the relative. 30
- Defined in this Act: close company, company, director, dividend, income, relative, shareholder
- Compare: 2004 No 35 s GD 3(1), (2)



**GB 24 Exemption for genuine contracts***When section GB 23 does not apply*

- (1) **Section GB 23** does not apply if the relevant contract of employment, engagement, or partnership is a genuine contract. 5

*When contracts genuine*

- (2) A contract is treated as a genuine contract if—
- (a) the contract is in writing; and
  - (b) the contract is signed by all the parties to it; and
  - (c) in the case of a contract of employment or engagement, each person employed or engaged under the contract is 20 years or older on the date of signing the contract; and 10
  - (d) in the case of a contract of partnership, each partner is 20 years or older on the date of signing the contract; and
  - (e) the contract is binding for at least 3 years, except for the reasons set out in sections 36 and 38 of the Partnership Act; and 15
  - (f) in the case of a contract of employment or engagement, each person employed or engaged has real control over their income under the contract; and 20
  - (g) in the case of a contract of partnership, each partner has—
    - (i) real control over their share of profits under the contract; and
    - (ii) real liability for their shares or losses under the contract; and 25
  - (h) no part of the income or share of profits derived by the relative, or company of which the relative is a shareholder or director, is a gift for the purposes of the Estate and Gift Duties Act 1968. 30

Defined in this Act: director, income, loss, shareholder, year

Compare: 2004 No 35 s GD 3(4), (5)

**GB 25 Close company remuneration to shareholders, directors, or relatives***When this section applies*

- (1) This section applies when— 35
- (a) a close company provides remuneration for services to a person (the **service provider**) who is—

- (i) a shareholder or director of the company; or
  - (ii) a relative of a shareholder or director of the company; and
  - (b) the Commissioner considers that the amount provided is excessive; and 5
  - (c) the exemption in **subsection (3)** does not apply.
- Excess treated as dividend*
- (2) For the purposes of this Act, the excess is treated as a dividend paid by the company and derived by the service provider.
- Exemption: residents working full-time* 10
- (3) This section does not apply when—
    - (a) the service provider is an adult employed substantially full-time in the business of the company; and
    - (b) the service provider participates in the management of the company; and 15
    - (c) the amount provided to the service provider was not influenced by their relationship with a shareholder or director; and
    - (d) the service provider is a New Zealand resident. 20
- Defined in this Act: close company, Commissioner, company, director, dividend, New Zealand resident, shareholder
- Compare: 2004 No 35 s GD 5

### *Arrangements involving repatriation of commercial bills*

- GB 26 Arrangements involving repatriation of commercial bills** 25
- When this section applies*
- (1) This section applies when—
    - (a) a commercial bill has been issued by—
      - (i) a New Zealand resident who does not use the money lent in a business carried on through a fixed establishment outside New Zealand; or 30
      - (ii) a non-resident who uses the money lent in a business carried on through a fixed establishment in New Zealand; and
    - (b) a non-resident who holds the bill transfers it to another person (the **New Zealand transferee**); and 35

- (c) the non-resident did not become a party to the bill for the purpose of carrying on a business through a fixed establishment in New Zealand; and
- (d) the New Zealand transferee is either—
  - (i) a New Zealand resident; or 5
  - (ii) a non-resident who becomes a party to the commercial bill for the purpose of carrying on a business through a fixed establishment in New Zealand; and
- (e) the transfer of the bill has the purpose of avoiding NRWT or the approved issuer levy. 10

*Income*

- (2) If the New Zealand transferee redeems the commercial bill, the redemption payment is income of the New Zealand transferee. 15

*New Zealand transferee treated as redeeming bill*

- (3) For the purposes of this section, the New Zealand transferee is treated as redeeming the bill on the scheduled redemption date even if it is not redeemed. 20
- Defined in this Act: approved issuer, commercial bill, fixed establishment, income, money lent, New Zealand resident, non-resident, NRWT, redemption payment
- Compare: 2004 No 35 s GC 14A

*Attribution rule for income from personal services***GB 27 Attribution rule for income from personal services***Application of section GB 29* 25

- (1) An amount of income in an income year of a person (the **associated entity**) is attributed to another person (the **working person**) under **section GB 29** for the working person's corresponding tax year if,—
  - (a) during the income year, a third person (the **buyer**) purchases services from the associated entity, and the services are personally performed by the working person; and 30
  - (b) the working person is associated with the associated entity; and 35
  - (c) the threshold test in **subsection (2)** is met; and
  - (d) none of the exemptions in **subsection (3)** applies.

*Threshold for application of attribution rule*

- (2) The attribution occurs only if—
- (a) 80% or more of the associated entity's total income from personal services during the income year is derived from the sale of services to the buyer, a person associated with the buyer, or a combination of them; and 5
  - (b) 80% or more of the associated entity's income from personal services during the income year is derived through services personally performed by the working person, a relative of the working person, or a combination of them; and 10
  - (c) the working person's net income for the income year, assuming **section GB 29** applies in relation to the associated entity and working person, is more than \$60,000; and 15
  - (d) substantial business assets are not a necessary part of the business structure that is used to derive the total income referred to in **paragraph (a)**.

*Exemptions* 20

- (3) The attribution does not occur—
- (a) if both the associated entity and the working person are non-residents at all times during the associated entity's income year:
  - (b) if the associated entity is a natural person and is neither a partner of a partnership nor a trustee of a trust: 25
  - (c) to the extent to which the services personally performed by the working person are essential support for a product supplied by the associated entity:
  - (d) if the total amount to be attributed to the working person, for the associated entity and the income year, is less than \$5,000, unless this paragraph applies to prevent income being attributed to the working person for the income year in relation to another associated entity. 30

Defined in this Act: associated person, income, income year, net income, non-resident, relative, tax year, trustee 35

Compare: 2004 No 35 ss GC 14B, GC 14E

**GB 28 Interpretation of terms used in section GB 27***When this section applies*

- (1) This section applies for the purposes of **section GB 27**.

*Associated persons*

- (2) A person is treated as being associated with another person if the person would be treated as being associated under the parts of **subpart YB** (Associated persons and nominees) that apply for the purposes of the whole Act, excluding the 1973, 1988, and 1990 version provisions, at the time the services are personally performed by the working person. 5  
10

*Non-associated buyers*

- (3) For the purposes of **section GB 27(2)(a)**, a buyer is not treated as being associated with another buyer if either—  
(a) both buyers are public authorities; or  
(b) the working person cannot be reasonably expected to know that a particular buyer is associated with another buyer, other than by making a specific enquiry. 15

*Relatives*

- (4) For the purposes of **section GB 27(2)(b)**, a person is a relative of the working person only if the person is a relative at the beginning of the relevant income year of the working person. 20

*Fringe benefits included*

- (5) For the purposes of **section GB 27(2)(c)**, the working person's annual gross income includes the taxable value of a fringe benefit, as determined under **sections RD 26 to RD 64** (which relate to fringe benefit tax), provided or granted by a person associated with the working person. 25

*Meaning of substantial business assets*

- (6) **Substantial business assets** means depreciable property that— 30  
(a) at the end of the associated entity's corresponding income year, has a total cost of more than either—  
(i) \$75,000; or  
(ii) 25% or more of the associated entity's total income from services for the income year; and 35  
(b) is not for private use.

*Assets subject to finance lease, hire purchase agreement, or specified lease*

- (7) For the purposes of **subsection (6)(a)**, the cost of depreciable property includes—
- (a) the consideration provided to the lessee in the case of property subject to a finance lease or a hire purchase agreement, including expenditure or loss incurred by the lessee in preparing and installing the finance lease asset for use, unless the lessee is allowed a deduction for the expenditure or loss, other than a deduction for an amount of depreciation loss: 5
  - (b) the cost price, in the case of property subject to a specified lease. 10

*Private use of assets*

- (8) **Subsection (6)(b)** does not apply to depreciable property if 20% or less of the property's use is for private use. 15

*Calculation of private proportion of use*

- (9) For the purposes of **subsection (8)**, the percentage of a property's use for private purposes for an income year is calculated according to— 20
- (a) the proportion that the number of days for which fringe benefit tax is payable by the associated entity in relation to the property bears to the total number of days in the income year in which the property is owned by or is subject to a finance lease, hire purchase agreement, or specified lease, involving the associated entity, if the property is subject to the FBT rules: 25
  - (b) the proportion that the expenditure incurred in relation to the property, for which a deduction is denied to the associated entity, bears to all expenditure incurred by the associated entity in relation to the property in the income year, if the property is not subject to the FBT rules. 30

Defined in this Act: 1973 version provisions, 1988 version provisions, 1990 version provisions, annual gross income, associated person, consideration, cost price, deduction, depreciable property, FBT rules, finance lease, fringe benefit, fringe benefit tax, hire purchase agreement, income, income year, public authority, relative, specified lease, substantial business asset 35

Compare: 2004 No 35 s GC 14C

**GB 29 Attribution rule: calculation***Amount attributed*

- (1) A working person is treated as deriving income in an income year equal to the least of the following amounts:
- (a) the associated entity's net income for the income year, calculated as if their only income were derived from personal services: 5
  - (b) the associated entity's net income for the income year:
  - (c) if and to the extent to which the associated entity is a company or a trust that has a loss balance to be carried forward under **section IA 4** (Using loss balances carried forward to tax year) arising from a business or a trading activity of selling personal services, the associated entity's net income for the income year after subtracting the loss balance carried forward from an earlier income year. 10  
15

*Calculation for trustee or partnership*

- (2) For the purposes of calculating the associated entity's net income for the income year in the application of **subsection (1)**,— 20
- (a) if the associated entity is a trustee of a trust, the trustees are treated as not having made a distribution of beneficiary income out of the year's income:
  - (b) if the associated entity is a partnership, the associated entity is treated as a taxpayer and **section HR 1** (Partnerships and joint ventures) does not apply. 25

*Salary paid or fringe benefits treated as deductions*

- (3) For the purposes of calculating the associated entity's net income for the income year in the application of **subsection (1)**,— 30
- (a) the associated entity is allowed a deduction for employment income paid to the working person during the income year:
  - (b) the associated entity is allowed a deduction for the taxable value of a fringe benefit provided or granted by the associated entity to the working person during the income year, and for the fringe benefit tax payable on the fringe benefit. 35

*Reduction of attributable income for distributions*

- (4) For the purposes of calculating the associated entity's net income for the income year in the application of **subsection (1)**, the amount of net income of the associated entity for the income year is reduced by—
- (a) in the case of a trustee of a trust, the amount of beneficiary income derived by the working person from the trust in the income year: 5
  - (b) in the case of a partnership, the share of profits allocated by the partnership to the working person: 10
  - (c) in the case of a company, a dividend paid—
    - (i) by the associated entity to the working person during the income year or before the end of 6 months after the end of the income year; and
    - (ii) from income derived in the income year. 15

*Attribution reduced by market value of administrative services*

- (5) If the associated entity is a partnership that receives administrative services from another person related to their income from personal services and has not paid for the administrative services, the amount to be attributed to the working person is reduced by the market value of the administrative services provided by the other person. 20

*Reduction of beneficiary income when rule results in trust having tax loss*

- (6) If the associated entity is a trustee and the amount attributable would cause the associated entity to have a tax loss for the income year, for the purposes of this Act,—
- (a) beneficiary income from the trust for the income year must be reduced to the extent to which the associated entity's taxable income for the income year is zero; and 30
  - (b) the reduction in beneficiary income must be divided among the beneficiaries other than the working person—
    - (i) according to proportions determined by the trust's trustees: 35
    - (ii) if the trustees do not make the determination, according to the proportion that each beneficiary's beneficiary income bears to the total



beneficiary income from the trust for the income year.

*Attribution to more than 1 working person*

- (7) If the amount attributable is to be attributed to more than 1 working person, the share attributed to each working person must reflect the respective value of the services personally performed by each working person. 5

Defined in this Act: Defined in the Act: beneficiary income, company, deduction, dividend, fringe benefit, fringe benefit tax, income, income year, net income, taxpayer, tax loss, tax year, trustee 10

Compare: 2004 No 35 s GC 14D

*Arrangements involving restrictive covenants*

**GB 30 Arrangements to avoid taxation of restrictive covenant payments**

*When this section applies* 15

- (1) This section applies if a person enters into an arrangement that has an effect of avoiding **section CE 9** (Restrictive covenants).

*Treatment as restrictive covenant payment*

- (2) The Commissioner may treat— 20
- (a) an amount provided under the arrangement as an amount to which **section CE 9(2)** applies; and
  - (b) a person affected by the arrangement as the person who gave the undertaking referred to in **section CE 9(1)**.

*Example*

- (3) An example of an arrangement that may be subject to this section is an arrangement that involves a collateral arrangement to dispose of property. 25

Defined in this Act: arrangement, Commissioner

Compare: 2004 No 35 s GC 14F

*Arrangements involving fringe benefit tax* 30

**GB 31 FBT arrangements: general**

*When this section applies*

- (1) This section applies when—

- (a) 2 or more persons enter into an arrangement; and
  - (b) a purpose or effect of the arrangement is to defeat the intent and application of any of the FBT rules; and
  - (c) the purpose or effect is not merely incidental.
- FBT rules treated as applying* 5
- (2) For the purposes of the FBT rules, the Commissioner may treat—
- (a) a party to the arrangement (the **provider**) as the employer of a person (the **recipient**) of whom the Commissioner notifies the provider: 10
  - (b) the recipient as the employee of the provider:
  - (c) a benefit as being provided by the provider to the recipient through the employment of the recipient.
- Actual or likely benefit*
- (3) The Commissioner may apply **subsection (2)(c)** only in the case of a benefit that,— 15
- (a) is in fact provided by the provider to the recipient; or
  - (b) but for the arrangement, the recipient—
    - (i) would have obtained; or
    - (ii) would in all likelihood have obtained; or 20
    - (iii) might be expected to have obtained.
- Arrangements to reduce motor vehicle costs*
- (4) **Schedule 5, clause 4(c)** (Fringe benefit values for motor vehicles) may apply to treat the cost of a motor vehicle as equal to its market value. 25
- Defined in this Act: arrangement, Commissioner, employee, employer, employment, FBT rules
- Compare: 2004 No 35 ss GC 16(b), GC 17
- GB 32 Benefits provided to employee's associates**
- When this section applies* 30
- (1) This section applies when—
- (a) a benefit is provided to a person who is associated with an employee of an employer; and
  - (b) the benefit would be a fringe benefit if provided to the employee; and 35

- (c) the benefit is provided either by the employer or by another person under an arrangement with the employer for providing the benefit; and
- (d) the exemption in **subsection (2)** does not apply.
- Exemption for shareholder-employees and corporate associates* 5
- (2) **Subsection (3)** does not apply when—
- (a) the benefit is provided by an employer that is a company; and
- (b) the employee is a shareholder in the company; and 10
- (c) the person associated with the employee is a company; and
- (d) the benefit is not provided under an arrangement that has a purpose of providing the benefit either— 15
- (i) in place of employment income; or
- (ii) free from fringe benefit tax.
- Benefit treated as provided to employee*
- (3) For the purposes of the FBT rules, the benefit is treated as provided by the employer to the employee.
- Application of section CX 18* 20
- (4) **Section CX 18** (Benefits provided to associates of both employees and shareholders) applies to determine when a benefit provided to an associate of both an employee and a shareholder is treated as a fringe benefit and not a dividend.
- Defined in this Act: arrangement, associated person, company, dividend, employee, employer, employment income, FBT rules, fringe benefit, fringe benefit tax 25
- Compare: 2004 No 35 s GC 15(1)–(3)

### *Arrangements involving depreciation loss*

#### **GB 33 Arrangements involving depreciation loss**

- When this section applies* 30
- (1) This section applies when—
- (a) an asset of a person has been subject to an arrangement; and
- (b) the arrangement allows the person or another person to have a deduction for an amount of depreciation loss; 35
- and

- (c) a purpose of the arrangement is to defeat the intent and application of this Act.

*No deduction*

- (2) The relevant person is denied the deduction.

Defined in this Act: arrangement, Commissioner, deduction, depreciation loss

5

Compare: 2004 No 35 s GC 6

*Arrangements involving imputation rules*

**GB 34 ICA arrangements for carrying amounts forward**

*When this section applies*

- (1) This section applies when— 10
- (a) a share in an ICA company or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the share; and
- (b) the arrangement allows the ICA company to meet the requirements of **section OB 41** (ICA debit for loss of shareholder continuity); and 15
- (c) a purpose of the arrangement is to defeat the intent and application of **section OB 41**.

*Company treated as not meeting requirements*

20

- (2) The ICA company is treated as not meeting the requirements in relation to the share.

Defined in this Act: arrangement, company, imputation credit account, share

Compare: 2004 No 35 s GC 21

**GB 35 Imputation arrangements to obtain tax advantage**

25

*When section GB 36 applies*

- (1) **Section GB 36** applies if an arrangement to obtain a tax advantage arises as described in either **subsection (2) or (3)**.

*Share disposal or issue arrangements*

- (2) An arrangement is an arrangement to obtain a tax advantage if— 30
- (a) the arrangement is for the disposal or issue of shares; and

- (b) a party to the arrangement might reasonably have expected that a dividend would be paid in relation to the shares with an imputation credit or FDP credit attached; and
- (c) a party might reasonably have expected that a party will, or will not, be able to obtain a tax advantage from the credit; and 5
- (d) a purpose of the arrangement is that a party will obtain a tax advantage; and
- (e) the purpose is not a merely incidental one. 10

*Dividend or credit streaming arrangements*

- (3) An arrangement is an arrangement to obtain a tax advantage if—
  - (a) the arrangement relates to 1 or more distributions by a company, including bonus issues, during 1 or more tax years; and 15
  - (b) under the arrangement, the company streams—
    - (i) the payment of dividends; or
    - (ii) the attachment of imputation credits; or
    - (iii) the attachment of FDP credits; or 20
    - (iv) the attachment of both imputation credits and FDP credits; and
  - (c) the streaming will give a higher credit value to a person who will obtain a tax advantage from the higher credit value than to a person who will not or may reasonably be expected to obtain a lesser benefit. 25

*Meaning of higher credit value*

- (4) For the purposes of **subsection (3)(c)**, a dividend has a **higher credit value** than another dividend if any of the following applies: 30
  - (a) the dividend has an attached imputation credit and the other dividend does not:
  - (b) the imputation ratio of the dividend is higher than that of the other dividend:
  - (c) the dividend has an attached FDP credit and the other dividend does not: 35
  - (d) the FDP ratio of the dividend is higher than that of the other dividend:

- (e) the dividend has attached both an imputation credit and an FDP credit and the other dividend does not have both types of credit attached:
- (f) the combined imputation ratio and FDP ratio of the dividend is higher than that of the other dividend. 5

Defined in this Act: arrangement, combined imputation and FDP ratio, dividend, FDP ratio, higher credit value, imputation credit, imputation ratio, share, tax advantage

Compare: 2004 No 35 s GC 22(1), (2)

### **GB 36 Reconstruction of imputation arrangements to obtain tax advantage** 10

#### *Reconstruction of either type of arrangement*

- (1) In the case of a share disposal or issue arrangement described in **section GB 35(2)**, or a streaming arrangement described in **section GB 35(3)**, if the Commissioner decides this subsection should apply, the following paragraphs apply: 15
  - (a) a person who would get a tax credit advantage from the arrangement is denied it:
  - (b) a company that would get an account advantage from the arrangement has a debit to its imputation credit account or FDP account, as applicable, in the tax year in which the arrangement began. 20

#### *Reconstruction of streaming arrangement*

- (2) In the case of a streaming arrangement described in **section GB 35(3)** in which the company is the only party, or if the Commissioner decides this subsection should apply, the company has a debit to its imputation credit account or FDP account, as applicable, in the tax year in which the arrangement began. **Subsection (1)** does not apply. 25

#### *Amount of adjustment* 30

- (3) The amount of the credit or refund denied under **subsection (1)(a)** and the debit arising under **subsection (1)(b) or (2)** is in each case the amount of the imputation credit or FDP credit that the Commissioner determines is subject to the arrangement.

*Commissioner's powers of determination*

- (4) The Commissioner may make determinations for the purposes of this section under section 90AF of the Tax Administration Act 1994.

*Some definitions*

5

- (5) In this section and section 90AF of the Tax Administration Act 1994,—

**account advantage** means—

- (a) a credit arising to an imputation credit account under **sections OB 4 to OB 29** (which relate to credits arising to imputation credit accounts); or 10
- (b) a credit arising to an FDP account under **sections OC 6 to OC 12** (which relate to credits arising to FDP accounts)

**tax credit advantage** means—

- (a) a tax credit allowed under **section LE 1** (Tax credits for imputation credits); or 15
- (b) a tax credit allowed under **section LF 1** (Tax credits for FDP credits); or
- (c) a refund of FDP obtained under **section LF 8** (Credits for persons who are non-resident or who receive exempt income). 20

Defined in this Act: account advantage, arrangement, Commissioner, company, FDP account, FDP credit, imputation credit, imputation credit account, notice, tax credit advantage, tax year

Compare: 2004 No 35 s GC 22(4), (5), (9)

25

**GB 37 Arrangements for payment of dividend by other companies***When this section applies*

- (1) This section applies when—
- (a) an arrangement is entered into in relation to a company (the **first company**) and a shareholder in the first company; and 30
- (b) the arrangement has a purpose of allowing a dividend to be paid by another company to any of the following parties (the **payee**): 35
- (i) the shareholder:
- (ii) if the shareholder is a trustee in relation to the shareholding, a beneficiary of the trust:
- (iii) an associated person of the shareholder:

- (iv) an associated person of a beneficiary of the trust.

*Direct or indirect payments*

- (2) The arrangement may include—
- (a) the payee acquiring shares in the other company;
  - (b) a form of indirect payment of a dividend from the other company. 5

*Dividend treated as paid by first company*

- (3) For the purposes of the imputation rules, the dividend is treated as if it were paid by the first company.

*No imputation credit* 10

- (4) Any imputation credit attached to the dividend paid by the other company—
- (a) is not included in the amount of the dividend derived by the payee; and
  - (b) is not treated as an imputation credit for the purposes of **section LE 1** (Tax credits for imputation credits); and 15
  - (c) is a debit under **section OB 30** (ICA payment of dividend) of the first company.

Defined in this Act: arrangement, associated person, company, dividend, imputation credit, imputation credit account, share, shareholder, trustee 20

Compare: 2004 No 35 s GC 23

**GB 38 When sections GB 35 to GB 37 apply to consolidated groups**

*Tax advantage arrangements*

- (1) **Sections GB 35 and GB 36** apply, with the necessary modifications, in a case that involves accounts of a consolidated group as if— 25
- (a) the consolidated group were a single company; and
  - (b) references to provisions of this Act were references to the equivalent provisions applicable to the equivalent accounts. 30

*Arrangement for dividend from another company*

- (2) If a company is treated by **section GB 37(3)** as having paid a dividend, and is at the time of payment a member of a consolidated group, **section GB 37** applies as if the reference to **section** 35



**OB 30** (ICA payment of dividend) were a reference to **section OP 28** (Consolidated ICA payment of dividend).

Defined in this Act: company, consolidated group, dividend

Compare: 2004 No 35 s GC 24

### *Arrangements involving foreign dividends* 5

#### **GB 39 FDP arrangements: general**

*When this section applies*

- (1) This section applies if both of the following requirements are met:
- (a) 2 or more persons enter into an arrangement: 10
  - (b) a purpose or effect of the arrangement is to defeat the intent and application of any of the FDP rules.

*Payment treated as subject to rules*

- (2) For the purposes of the FDP rules, the Commissioner may treat a payment that is subject to the arrangement as a foreign dividend. 15

Defined in this Act: arrangement, Commissioner, FDP rules, foreign dividend

Compare: 2004 No 35 s GC 25

#### **GB 40 BETA arrangements for carrying amounts forward**

*When this section applies* 20

- (1) This section applies when—
- (a) a share in a BETA company or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the shares; and 25
  - (b) the arrangement allows the BETA company to meet the requirements of **section OE 10 or OE 15** (which relate to credits and debits arising to branch equivalent tax accounts); and
  - (c) a purpose of the arrangement is to defeat the intent and application of **section OE 10 or OE 15**. 30

*Company treated as not meeting requirements*

- (2) The BETA company is treated as not meeting the requirements of the relevant provision in relation to the share.

Defined in this Act: arrangement, BETA company, company, share

Compare: 2004 No 35 s GC 26

5

**GB 41 FDPA arrangements for carrying amounts forward***When this section applies*

- (1) This section applies when—
- (a) a share in an FDPA company or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the share; and 10
  - (b) the arrangement allows the FDPA company to meet the requirements of **section OC 24** (FDPA debit for loss of shareholder continuity); and 15
  - (c) a purpose of the arrangement is to defeat the intent and application of **section OC 24**.

*Company treated as not meeting requirements*

- (2) The FDPA company is treated as not meeting the requirements of **section OC 24** in relation to the share. 20

Defined in this Act: arrangement, FDPA company, share

Compare: 2004 No 35 s GC 27

*Arrangements involving Maori authority credits***GB 42 Maori authority credit arrangements to obtain tax advantage** 25*When section GB 43 applies*

- (1) **Section GB 43** applies if an arrangement to obtain a tax advantage arises as described in either **subsection (2) or (3)**.

*Arrangements for share disposal or issue*

- (2) An arrangement is an arrangement to obtain a tax advantage if— 30
- (a) the arrangement is for the disposal or issue of a share in a Maori authority that is a company; and

- (b) a party to the arrangement might reasonably have expected that a taxable Maori authority distribution would be paid in relation to the share with a Maori authority credit attached; and
- (c) a party might reasonably have expected that a party will or will not be able to obtain a tax advantage from the credit; and 5
- (d) a purpose of the arrangement is that a party will obtain a tax advantage; and
- (e) the purpose is not a merely incidental one. 10

*Distribution or credit streaming arrangements*

- (3) An arrangement is an arrangement to obtain a tax advantage if—
  - (a) the arrangement is in relation to 1 or more taxable Maori authority distributions by a Maori authority during 1 or more tax years; and 15
  - (b) under the arrangement, the Maori authority streams—
    - (i) the distributions; or
    - (ii) the attachment of Maori authority credits; and
  - (c) the streaming will give a higher credit value to a member who will obtain a tax advantage from the higher credit value than to a member who will not or may reasonably be expected to obtain a lesser benefit. 20

*Meaning of higher credit value*

- (4) A taxable Maori authority distribution has a **higher credit value** than another distribution if either of the following applies: 25
  - (a) the distribution has a Maori authority credit and the other distribution does not:
  - (b) the Maori authority credit ratio under **section OK 19(2)** (Maori authority credits attached to distributions) of the distribution is higher than that of the other distribution. 30

Defined in this Act: arrangement, Maori authority, Maori authority credit, member, share, tax advantage, taxable Maori authority distribution

Compare: 2004 No 35 s GC 27A(1)–(3) 35

### **GB 43 Reconstruction of Maori authority credit arrangements to obtain tax advantage**

#### *Reconstruction of either type of arrangement*

- (1) In the case of an arrangement for a share disposal or issue as described in **section GB 42(2)** or a streaming arrangement as described in **section GB 42(3)**, if the Commissioner decides this subsection should apply, the following paragraphs apply:
- (a) a member who would get a tax credit advantage from the arrangement is denied it: 5
  - (b) a Maori authority that would get both a tax credit advantage and an account advantage from the arrangement has a debit to its Maori authority credit account in the tax year in which the arrangement began. 10

#### *Reconstruction of streaming arrangement*

- (2) In the case of a streaming arrangement as described in **section GB 42(3)** in which the Maori authority is the only party, or if the Commissioner decides this subsection should apply, the Maori authority has a debit to its Maori authority credit account in the tax year in which the arrangement began. 15

#### *Amount of adjustment*

- (3) The amount of the credit denied under **subsection (1)(a)** and the debit arising under **subsection (1)(b) or (2)** is in each case the amount of the Maori authority credit that the Commissioner determines is subject to the arrangement. 20

#### *Commissioner's powers of determination*

- (4) The Commissioner may make determinations for the purposes of this section under **section 90AG** of the Tax Administration Act 1994. 25

#### *Some definitions*

- (5) In this section and **section 90AG** of the Tax Administration Act 1994,— 30

**account advantage** means a credit arising to a Maori authority credit account under **sections OK 2 to OK 9** (which relate to credits arising to Maori authority credit accounts)

**tax credit advantage** means a tax credit allowed under **section 10 1** (Tax credits for Maori authority credits).

Defined in this Act: account advantage, arrangement, Commissioner, Maori authority, Maori authority credit, Maori authority credit account, member, notice, tax credit advantage, tax year

5

Compare: 2004 No 35 s GC 27A (5), (6), (10)

### *Arrangements involving family support credits*

#### **GB 44 Arrangements involving family support credits**

*When this section applies*

- (1) This section applies if both of the following paragraphs are met: 10
- (a) a person (the **claimant**) enters into an arrangement with another person:
  - (b) a purpose of the arrangement is that **Part M** (Tax credits for families) has a more favourable effect for the claimant than would otherwise have occurred. 15

*Credit reduced*

- (2) The claimant's tax credit under **Part M** is reduced to the amount that the Commissioner considers would have arisen if the arrangement had not been made. 20

Defined in this Act: arrangement, Commissioner, family plus

Compare: 2004 No 35 s GC 28

### *Arrangements involving money not at risk*

#### **GB 45 Arrangements involving money not at risk**

*Application of section GB 46* 25

- (1) **Section GB 46** can apply to an arrangement when—
- (a) a person sells or issues, or promotes the selling or issuing of, the arrangement, whether or not for remuneration; and
  - (b) a person (the **participant**) who is a party to the arrangement or affected by it, considered together with their affected associates, has for an assessment period a total amount of deductions from the arrangement that is more than their total amount of assessable income from 30

- the arrangement, having regard to the rules in **subsection (2)**; and
- (c) as part of or for the purposes of the arrangement, the participant or an affected associate borrows a limited-recourse amount under a limited-recourse loan; and 5
- (d) on the relevant balance date, the total of the limited-recourse amounts of the limited-recourse loans of the participant and affected associates is more than half of the total cost of their arrangement property on the relevant balance date; and 10
- (e) on the relevant balance date, the total cost of their arrangement property is more than 142.85% of the total cost of the part of the property that is acceptable property.
- Certain deductions or income disregarded* 15
- (2) For the purposes of **subsection (1)(b)**, the following amounts are disregarded:
- (a) a deduction under **section GB 46**;
- (b) a tax loss component of a loss-attributing company to the extent to which it is attributed to shareholders under **section HA 20** (Attribution of tax losses); 20
- (c) an amount of income under **section GB 46**.
- Some definitions*
- (3) In this section,—
- acceptable property** is— 25
- (a) land;
- (b) buildings;
- (c) plant;
- (d) machinery;
- (e) shares in a listed company that in total represent a direct voting interest of 10% or less in the listed company; 30
- (f) a share and an option that are acquired or created with an intention that the share or option will produce income that is employment income of a participant under **section CE 1(d)** (Amounts derived in connection with employment); 35
- (g) a share in a foreign company, if the proceeds of a disposal of the share would not be assessable income of the holder other than under the FIF rules

**arrangement property** means property held as part of the arrangement by the participant and affected associates

**assessment period** is any of—

- (a) the earliest income year (the **first income year**) in which an interest in the arrangement was acquired by the participant or an affected associate of the participant: 5
- (b) the first income year and the next income year:
- (c) the first income year and the next 2 income years

**relevant balance date** means the balance date, or the latest balance date, of the participant and affected associates that ends the assessment period. 10

Defined in this Act: acceptable property, affected associate, arrangement, arrangement property, assessable income, assessment period, deduction, direct voting interest, dispose, employment income, FIF rules, foreign company, income, income year, limited-recourse amount, limited-recourse loan, loss-attributing company, relevant balance date, share, shareholder, tax loss component 15

Compare: 2004 No 35 s GC 29 (1)

## **GB 46 Deferral of surplus deductions from arrangements**

*When this section applies* 20

- (1) This section applies when—
  - (a) an arrangement of the type described in **section GB 45** is made; and
  - (b) a person (the **participant**) is a party to the arrangement or affected by it; and 25
  - (c) the participant is not a loss-attributing company; and
  - (d) the participant has, for an income year, a total amount of deductions from the arrangement that is more than their total amount of assessable income from the arrangement, having regard to the rules in **subsection (6)**; and 30
  - (e) the participant considered together with their affected associates, excluding a loss-attributing company that has a tax loss from the arrangement for the income year, has for the income year a total amount of deductions from the arrangement that is more than their total amount of assessable income from the arrangement, having regard to the rules in **subsection (6)**; and 35
  - (f) on the balance date, or the latest balance date, of the participant and affected associates for the income year, the arrangement involves a limited-recourse loan in 40

relation to which the participant or an affected associate of the participant is a borrower.

*Income for participant*

- (2) The participant is treated as deriving in the income year an amount of assessable income calculated using the formula— 5
- $$\frac{\text{participant's excess deductions}}{\text{total individual excess deductions}} \times \text{total ineligible amount.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **participant's excess deductions** is the amount of excess deductions of the participant for the income year described in **subsection (1)(d)**: 10
- (b) **total individual excess deductions** is the amount, for the income year, by which the total deductions from the arrangement are more than the total assessable income from the arrangement, having regard to the rules in **subsection (6)**, for the group that consists of— 15
- (i) the participant; and
- (ii) each affected associate of the participant who is not a loss-attributing company and who has, for the income year, a total amount of deductions from the arrangement that is more than their total assessable income from the arrangement, having regard to the rules in **subsection (6)**: 20
- (c) **total ineligible amount** is the lesser of— 25
- (i) the total individual excess deductions for the group and the income year as described in **subsection (1)(e)**; and
- (ii) the total limited-recourse amount that, on the balance date or the latest balance date of the participant and the affected associates, the participant and the affected associates have an undischarged obligation to repay as part of or for the purposes of the arrangement. 30

*Matching deduction in following year* 35

- (4) A participant who has an amount of assessable income for an income year under **subsection (2)** has a deduction of an equal amount for the following income year.



- Obligation to repay limited-recourse amount not discharged*
- (5) For the purposes of **subsections (1) and (3)(c)(ii)**, an obligation to repay a limited-recourse amount is not discharged by a transaction to the extent to which the transaction—
- (a) involves, as part of the arrangement, the use of—
    - (i) a put or call option that is not a contract for the sale for future delivery of goods at market value: 5
    - (ii) a contract of insurance or guarantee; and
  - (b) does not give rise to assessable income for the person who is the borrower of the limited-recourse amount under the limited-recourse loan. 10

- Some deductions included, some income excluded*
- (6) For the purposes of **subsections (1)(d) and (e) and (3)(b)**,—
- (a) a deduction of a person includes—
    - (i) a deduction under **subsection (4)**; and 15
    - (ii) a deduction under **section HA 20** (Attribution of tax losses); and
  - (b) income of a person excludes an amount of income arising under **subsection (2)**. 20

Defined in this Act: arrangement, assessable income, associated person, deduction, income year, limited-recourse amount, limited-recourse loan, loss-attributing company, tax loss

Compare: 2004 No 35 s GC 31

## **GB 47 Calculation rules for sections GB 45 and GB 46**

- Consolidation of assessable income and deductions, and cost of property* 25
- (1) The deductions and assessable income from an arrangement for each person in a group of persons, and the cost of property that is held by each person in the group as part of the arrangement, are calculated on a basis of consolidation for the elimination of intra-group balances in accordance with generally accepted accounting practice. 30

- Calculation of assessable income and deductions, and cost of property*
- (2) The deductions and assessable income from an arrangement for each person in a group of persons, and the cost of property 35

that is held by each person in the group as part of the arrangement, are calculated using the proportionate method in accordance with generally accepted accounting practice for partnerships, if the group is any of—

- (a) persons who are a partnership and the partners in a partnership: 5
- (b) a joint venture and the partners in the joint venture:
- (c) a loss-attributing company and the shareholders in the loss-attributing company.

Defined in this Act: arrangement, assessable income, deduction, generally accepted accounting practice, loss-attributing company, shareholder 10

Compare: 2004 No 35 s GC 29(2), (3)

#### **GB 48 Defined terms for sections GB 45 and GB 46**

##### *Affected associate*

- (1) For an arrangement, a person is an **affected associate** of another person if each person is a party to the arrangement or is affected by the arrangement, and— 15
  - (a) 1 person is a loss-attributing company and the other person is a shareholder in the loss-attributing company; or 20
  - (b) the persons are associated under the parts of **subpart YB** (Associated persons and nominees) that apply for the purposes of the whole Act, excluding the 1973, 1988, and 1990 version provisions.

##### *Limited-recourse amount* 25

- (2) A **limited-recourse amount**, for a limited-recourse loan, means the total for the limited-recourse loan of the amounts for which the obligations of a borrower are affected in a way that is described in **subsection (3)(c)**.

##### *Limited-recourse loan* 30

- (3) A **limited recourse loan** means a financial arrangement that meets each of the following requirements:
  - (a) it is not an excepted financial arrangement:
  - (b) it involves the provision of money by a person (the **lender**) to another person (the **borrower**): 35
  - (c) it has 1 or more of the following effects, or an effect which is substantially similar:

- (i) relieving the borrower from the obligation to repay all or some of the money, whether the relief is contingent or not:
  - (ii) requiring the borrower to make no repayment for a period of 10 or more years from the date on which the loan is made, other than repayments for the purpose of defeating the intent and application of **section GB 46**: 5
  - (iii) providing that the repayment of the money is in substance secured solely against assets that are employed in the arrangement: 10
  - (d) if the lender is not an associated person of the borrower under **subpart YB**, the lender provides the money on terms that are not arm's length and the lender is either—
    - (i) not a person who regularly provides money to persons on arm's length terms under arrangements that do not meet the requirements of **paragraphs (a) to (c)**; or 15
    - (ii) a person who is neither a New Zealand resident nor carrying on business in New Zealand through a fixed establishment in New Zealand: 20
  - (e) if the lender is an associated person of the borrower under **subpart YB**, the lender obtains the money under an arrangement that meets the requirements of **paragraphs (a) to (c)**. 25
- Defined in this Act: 1973 version provisions, 1988 version provisions, 1990 version provisions, affected associate, arrangement, associated person, excepted financial arrangement, financial arrangement, fixed establishment, limited-recourse amount, limited-recourse loan, listed company, loss-attributing company, money, resident in New Zealand 30
- Compare: 2004 No 35 s GC 30

### *Arrangements involving returning share transfers*

#### **GB 49 Arrangements involving returning share transfers**

##### *When this section applies*

- (1) This section applies when— 35
  - (a) a person enters into an arrangement; and
  - (b) an effect of the arrangement means that a requirement of the definition of **returning share transfer** is not met; and

- (c) a purpose of the arrangement is to defeat the intent and application of this Act.

*Arrangement treated as returning share transfer*

- (2) The Commissioner may treat—
- (a) the arrangement as a returning share transfer; and 5
  - (b) a person affected by the arrangement as a share user or a share supplier, under the returning share transfer.

Defined in this Act: arrangement, Commissioner, returning share transfer, share supplier, share user

Compare: 2004 No 35 s GC 14G 10

**Subpart GC—Market value substituted**

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### *Disposals of trading stock or similar property*

#### **GC 1 Disposals of trading stock at below market value**

*When this section applies*

- (1) This section applies if a person (the **transferor**) disposes of trading stock to another person (the **transferee**) for— 5
- (a) no consideration:
  - (b) an amount of consideration that is less than the market value of the trading stock at the time of disposal.

*Disposal treated as being for market value*

- (2) For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being an amount equal to the market value at the time. 10

*Shares in trading stock*

- (3) In this section, **trading stock** includes a share in trading stock.

*Exclusions*

- (4) This section does not apply to a disposal of trading stock— 15
- (a) under a relationship agreement:
  - (b) for use by the transferee in a farming, agricultural, or fishing business that is affected by a self-assessed adverse event, if the transferor and transferee are not associated persons: 20
  - (c) under a share-lending arrangement, by a share user to a share supplier or by a share supplier to a share user.

Defined in this Act: amount, qualifying event, relationship agreement, self-assessed adverse event, share-lending arrangement, share supplier, share user, trading stock 25

Compare: 2004 No 35 s GD 1(1), (3), (4)

#### **GC 2 Disposals of timber rights or standing timber**

*When section GC 1 applies*

- (1) **Section GC 1** applies to each of the following disposals as if it were a disposal of trading stock— 30
- (a) a grant of a right to take timber, other than in favour of the grantor:
  - (b) a disposal of standing timber as part of the disposal of the land on which it stands.

*Exclusion*

- (2) **Subsection (1)** does not apply to a disposal of land with standing timber if the disposal is within 1 of the exclusions in **section CB 25(2)** (Disposal of land with standing timber).

*Limitation*

5

- (3) **Section GC 1(3)** does not apply if the disposal is of land with standing timber subject to a right to take timber.

Defined in this Act: timber, trading stock

Compare: 2004 No 35 s GD 1(2), (3A)

**GC 3 Disposals by life insurers**

10

**Section GC 1** applies to a life insurer that disposes of any property, other than a financial arrangement, in the course of their business of life insurance, as if the property were trading stock.

Defined in this Act: financial arrangement, life insurance, life insurer, property, trading stock

15

Compare: 2004 No 35 s GD 7

**GC 4 Disposals and acquisitions of FIF attributing interests***When subsection (2) applies*

- (1) **Subsection (2)** applies if— 20
- (a) a person disposes of an attributing interest in a FIF; and
  - (b) they use the comparative value method or deemed rate of return method to calculate their FIF income or loss for the period up to the time of the disposal; and
  - (c) the consideration, if any, for the disposal is below the market value of the interest at the time. 25

*Disposal treated as at market value*

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

*When subsection (4) applies*

30

- (3) **Subsection (4)** applies if—
- (a) a person acquires an attributing interest in a FIF; and
  - (b) they use the comparative value method or deemed rate of return method to calculate their FIF income or loss from the interest for the period after the acquisition; and 35

- (c) the consideration, if any, for the acquisition is not equal to the market value of the interest at the time.

*Acquisition treated as at market value*

- (4) The person is treated as having acquired the interest for an amount equal to its market value at the time. 5

Defined in this Act: attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, FIF loss

Compare: 2004 No 35 s GD 14

*Leases*

**GC 5 Leases for inadequate rent** 10

*When this section applies*

- (1) This section applies if and to the extent to which—
- (a) a property is leased; and
  - (b) the lease is 1 of the types referred to in **subsection (2)**; and
  - (c) the lessee uses the property in deriving income; and 15
  - (d) no rent is payable, or the Commissioner considers that the rent is less than adequate.

*Types of leases*

- (2) The following types of leases are subject to this section:
- (a) a lease by a company: 20
  - (b) a lease by a person to a relative or a related company:
  - (c) a lease by 2 or more persons to a relative or a related company of any of those persons:
  - (d) a lease by a partnership to a relative of a partner or a related company of the partnership. 25

*Lease treated as having adequate rent*

- (3) The lessee is treated as paying, and the lessor is treated as deriving as income, an adequate rent determined by the Commissioner.

*Timing*

- (4) The adequate rent is treated as— 30
- (a) paid on the rent payment dates set out in the lease, if any; and
  - (b) paid on a daily basis on each day of the lease term, if there are no rent payment dates; and 35

- (c) income derived by the lessor on the date on which is treated as being paid; and
- (d) accruing on a daily basis.

*Some definitions*

- (5) In this section,— 5
- lease** means a tenancy of any duration, including a sublease or bailment
- related company** means a company that is under the control of,—
- (a) in the case of a single lessor, the lessor, 1 or more relatives of the lessor, or a combination of them: 10
  - (b) in the case of multiple lessors, including a partnership, any of the lessors, 1 or more relatives of any of the lessors, or a combination of them
- rent** includes a premium or other consideration for the lease. 15
- Defined in this Act: Commissioner, company, income, lease, related company, relative, rent
- Compare: 2004 No 35 s GD 10

*Transfer pricing arrangements*

**GC 6 Purpose of rules and nature of arrangements** 20

*Purpose of rules*

- (1) The purpose of this section and **sections GC 7 to GC 14** is to substitute an arm's length consideration in the calculation of a person's net income if the person's net income is reduced by the terms of a cross-border arrangement with an associated person for the acquisition or supply of goods, services, or anything else. 25

*What is a transfer pricing arrangement?*

- (2) An arrangement is a **transfer pricing arrangement** if— 30
- (a) the arrangement involves the supply and acquisition of goods, services, money, other intangible property, or anything else; and
  - (b) the supplier and acquirer are associated persons; and
  - (c) the arrangement is a cross-border arrangement under **subsection (3)**. 35



*When arrangement is cross-border arrangement*

- (3) An arrangement is a cross-border arrangement if the requirements of any of the following paragraphs is met:
- (a) the supplier and acquirer are a New Zealand resident and non-resident, unless the requirements of both of the following subparagraphs are met:
    - (i) the non-resident enters into the arrangement for the purposes of a business carried on by the non-resident in New Zealand through a fixed establishment in New Zealand: 5
    - (ii) the New Zealand resident has not entered into the arrangement for the purposes of a business carried on by the New Zealand resident outside New Zealand: 10
  - (b) the supplier and acquirer are 2 New Zealand residents if either or both enter into the arrangement for the purposes of a business carried on by the person outside New Zealand: 15
  - (c) the supplier and acquirer are 2 non-residents, unless each enters into the arrangement for the purposes of a business carried on by the person in New Zealand through a fixed establishment in New Zealand. 20

*Application of sections*

- (4) **Section GC 7, GC 8, GC 9, or GC 10** can apply to an arrangement under **section GB 2** (Arrangements involving transfer pricing). 25

Defined in this Act: acquisition, arrangement, associated person, fixed establishment, net income, New Zealand, New Zealand resident, non-resident, supply, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(1), (2)

**GC 7 Excess amount payable by person** 30

If the amount of consideration payable by a person (the **taxpayer**) under a transfer pricing arrangement is more than an arm's length amount, an amount equal to the arm's length amount is treated as the amount payable by the taxpayer for the purposes of the calculation of their income tax liability for a tax year. 35

Defined in this Act: amount, arrangement, income tax liability, tax year, taxpayer, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(3)

**GC 8 Insufficient amount receivable by person***Amount receivable*

- (1) If the amount of consideration receivable by a person (the **taxpayer**) under a transfer pricing arrangement is less than an arm's length amount, an amount equal to the arm's length amount is treated as the amount receivable by the taxpayer for each of the following purposes:
- (a) the calculation of their income tax liability for a tax year: 5
  - (b) the determination of their obligation to withhold under **subpart RG** (Payments for foreign dividends) from the amount: 10
  - (c) the determination of the obligation of another person to withhold under **Part R** (General collection rules) from the amount. 15

*Non-resident's exemption: deduction to payer*

- (2) This section does not apply when—
- (a) the taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand; and 20
  - (b) the amount receivable is a deduction of the other party or, in the case of an interest-free loan, would be a deduction but for the application of **subpart FE** (Interest apportionment on thin capitalisation) if an arm's length amount of interest were substituted; and 25
  - (c) the amount receivable is interest, royalties, or an insurance premium to which **section YD 8** (Apportionment of premiums derived by non-resident general insurers) applies. 30

*Non-resident's exemption: fixed-rate share dividend*

- (3) This section does not apply if both of the following requirements are met:
- (a) the taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand: 35

- (b) the amount is a dividend receivable on a fixed-rate share.

Defined in this Act: amount, arrangement, deduction, dividend, fixed establishment, fixed-rate share, income tax liability, interest, resident in New Zealand, royalty, tax year, taxpayer, transfer pricing arrangement

5

Compare: 2004 No 35 s GD 13(4), (5)

## **GC 9 Compensating arrangement: person paying less than arm's length amount**

*When this section applies*

- (1) This section applies when— 10
- (a) a person (the **taxpayer**) is a party to a transfer pricing arrangement with another person; and
- (b) an adjustment is made for an income year under either—
- (i) **section GC 7** to an amount payable by the taxpayer under the transfer pricing arrangement; or 15
- (ii) **section GC 8** to an amount receivable by the taxpayer under the transfer pricing arrangement; and
- (c) an amount of consideration payable by the taxpayer in the same income year, or in the preceding or next income year, for an acquisition (the **compensating acquisition arrangement**) from the same person is less than an arm's length amount; and 20
- (d) either—
- (i) the transfer pricing arrangement involves goods, services, money, other intangible property, or anything else of the same type as that acquired in the compensating acquisition arrangement; or 25
- (ii) the amount of consideration actually payable or receivable in the transfer pricing arrangement is set having regard to the amount of consideration payable under the compensating acquisition arrangement. 30

*Paying arm's length amount*

- (2) For the purposes of calculating the taxpayer's income tax liability, the amount paid by them in the compensating acquisition arrangement is treated for the corresponding tax year as 35

an amount equal to the arm's length amount determined under **section GC 13**.

Defined in this Act: acquisition, amount, arrangement, income tax liability, tax year, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(10)

5

### **GC 10 Compensating arrangement: person receiving more than arm's length amount**

*When this section applies*

- (1) This section applies when—
- (a) a person (the **taxpayer**) is a party to a transfer pricing arrangement with another person; and 10
  - (b) an adjustment is made for a tax year under either—
    - (i) **section GC 7** to an amount payable by the taxpayer under the transfer pricing arrangement; or
    - (ii) **section GC 8** to an amount receivable by the taxpayer under the transfer pricing arrangement: 15
  - (c) an amount of consideration receivable by the taxpayer in the same tax year, or the preceding or next tax year, for a supply (the **compensating supply arrangement**) to the same person is more than an arm's length amount: 20
  - (d) either—
    - (i) the transfer pricing arrangement involves goods, services, money, other intangible property, or anything else of the same type as that acquired in the compensating supply arrangement; or 25
    - (ii) the amount of consideration actually payable or receivable in the transfer pricing arrangement is set having regard to the amount of consideration receivable under the compensating supply arrangement. 30

*Receiving arm's length amount*

- (2) The amount received by the taxpayer in the compensating supply arrangement is treated as being an amount equal to the arm's length amount determined under **section GC 13**, for each of the following purposes: 35
- (a) the calculation of their income tax liability for a tax year:

- (b) the determination of their obligation to withhold under **subpart RG** (Payments for foreign dividends) from the amount:
- (c) the determination of the obligation of another person to withhold under **Part R** (General collection rules) from the amount. 5

Defined in this Act: amount, arrangement, income tax liability, supply, tax year, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(10)

## **GC 11 Requests for matching treatment** 10

*When this section applies*

- (1) This section applies when—
  - (a) an arm's length amount of consideration is substituted under **section GC 7 or GC 8** in relation to a transfer pricing arrangement entered into by a person (the **taxpayer**); 15  
and
  - (b) the other party to the arrangement or, if the other party is a CFC, a person with an income interest in the CFC, applies to the Commissioner in writing within 6 months after an assessment is made for the taxpayer which reflects the substitution; and 20
  - (c) the Commissioner considers it is fair and reasonable to apply **subsection (2)**, having regard to an adjustment made under a double tax agreement or any other matter; 25  
and
  - (d) the Commissioner has notified the other party.

*Substitution applying for other party*

- (2) The substitution applies for the purposes of the application of this Act to the other party—
  - (a) excluding the determination of the extent to which the other party has derived or been paid a dividend; and 30
  - (b) including, when the other party is a CFC, the calculation of branch equivalent income or branch equivalent loss in relation to the other party, and the resultant calculation of the attributed CFC income or an attributed CFC loss or attributed CFC net loss of a person. 35

Defined in this Act: amount, arrangement, assessment, attributed CFC income, attributed CFC loss, attributed CFC net loss, branch equivalent income, branch

equivalent loss, CFC, Commissioner, dividend, double tax agreement, income interest, taxpayer, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(11)

### GC 12 Effect on person's withholding obligations

- An adjustment under any of **sections GC 7 to GC 10** has no effect on an obligation of the taxpayer to withhold in relation to the amount under **Part R** (General collection rules) other than—
- (a) an obligation under **subpart RG** (Payments for foreign dividends); or
  - (b) to the extent to which **section GC 11(2)** applies. 10

Defined in this Act: amount

Compare: 2004 No 35 ss GC 12(1), GD 13(12)

### GC 13 Calculation of arm's length amounts

#### *Use of most reliable measure*

- (1) An arm's length amount of consideration must be determined by applying whichever 1 or a combination of the methods listed in **subsection (2)** produces the most reliable measure of the amount that completely independent parties would have agreed upon after real and fully adequate bargaining. 15

#### *Five available methods*

- (2) The arm's length amount of consideration must be calculated under any 1 or a combination of—
- (a) the comparable uncontrolled price method:
  - (b) the resale price method:
  - (c) the cost plus method: 25
  - (d) the profit split method:
  - (e) the comparable profits methods.

#### *Criteria for choice and application of method*

- (3) The choice and application of a method or methods must be made having regard to each of the following factors: 30
- (a) the degree of comparability between the uncontrolled transactions used for comparison and the controlled transactions of the taxpayer:
  - (b) the completeness and accuracy of the data relied on:
  - (c) the reliability of all assumptions: 35
  - (d) the sensitivity of a result to possible deficiencies in the data and assumptions.

*Initial determination by the taxpayer*

- (4) The arm's length amount of consideration is determined by the taxpayer under **subsections (1) to (3)**, and the amount determined is the arm's length amount for the purposes of **sections GC 7 to GC 11**, unless either— 5
- (a) the Commissioner can demonstrate that another amount is a more reliable measure of the arm's length amount; or
- (b) the taxpayer has not co-operated with the Commissioner in the Commissioner's administration of **sections GC 6 to GC 14** in relation to the taxpayer, and the non-co-operation has materially affected the Commissioner in that administration. 10

*Commissioner's determination*

- (5) If **subsection (4)(a) or (b)** applies, the Commissioner determines the amount under **subsections (1) to (3)** for the purposes of **sections GC 7 to GC 11**. 15

Defined in this Act: amount, Commissioner

Compare: 2004 No 35 s GD 13(6)–(9)

**GC 14 Definitions for sections GC 6 to GC 13** 20

In **sections GC 6 to GC 13**,—

**acquisition—**

- (a) includes obtaining the availability of anything; but
- (b) does not include the mere receipt or retention by a company of consideration for the issue of a share, unless the share is a fixed-rate share 25

**amount** includes zero

**supply—**

- (a) includes making anything available; but
- (b) does not include the mere payment, and subsequent continuing making available, by a person to a company of consideration for the issue of a share, unless the share is a fixed-rate share. 30

Defined in this Act: acquisition, amount, company, fixed-rate share, share, supply

Compare: 2004 No 35 s GD 13(13) 35

## Subpart GZ—Terminating provisions

## Contents

GZ 1 Limitation on section GB 20: petroleum mining arrangements

<b>GZ 1</b>	<b>Limitation on section GB 20: petroleum mining arrangements</b>	<b>5</b>
	<b>Section GB 20</b> (Arrangements involving petroleum mining) does not apply to an arrangement if—	
	(a) the petroleum mining asset was disposed of before 1 July 1992:	10
	(b) the petroleum exploration expenditure was incurred before 1 July 1992:	
	(c) the farm-out arrangement was entered into before 16 December 1991.	
	Defined in this Act: arrangement, dispose, farm-out arrangement, petroleum mining asset, petroleum mining expenditure	15
	Compare: 2004 No 35 s GD 12(1)	