
Rewriting the Income Tax Act

Exposure Draft

Part M

Land and Income Assessment Act 1891
Land and Income Assessment Act 1900
Land and Income Assessment Act 1908
Land and Income Tax Act 1916
Land and Income Tax Act 1923
Land and Income Tax Act 1954
Income Tax Act 1976
Income Tax Act 1994
Income Tax 2004

Rewrite Project Team

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Introduction

This exposure draft has been prepared by the project team responsible for rewriting New Zealand's income tax legislation. It contains draft legislation for the rewrite of Part M of the Income Tax Act 2004, which relates to the recording of credits and debits in various imputation and similar accounts.

The key objective of rewriting this Part is to produce tax legislation that is clear, uses plain language and is structurally consistent. This should make it easier for taxpayers to identify and comply with their income tax obligations, and ultimately save them time and money.

We are rewriting the law as it currently stands. Changes to the law, other than minor changes in the interests of clarity or simplicity, will continue to be handled through the normal legislative programme. Cross-references to sections outside Part M are to provisions within the Income Tax Act 2004. The presence or absence of provisions in the rewritten draft legislation does not necessarily indicate any future change in tax policy.

We invite submissions on any aspect of this work, including the points raised in this commentary. The closing date for submissions is 19 May 2006. Submissions should be made to:

The Rewrite Project
Policy Advice Division
Inland Revenue Department
PO Box 2198
WELLINGTON

Electronic submissions should be sent to: policy.webmaster@ird.govt.nz.

Please note submissions may be the subject of a request under the Official Information Act 1982. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with the Act. If you feel any part of your submission could be properly withheld under the Act (for example, for reasons of privacy), please indicate this clearly in your submission.

COMMENTARY ON REWRITTEN PART M OF THE INCOME TAX ACT 2004

Introduction

The current Part M contains a range of rules relating to tax payments, tax refunds and rules relating to a number of different types of memorandum accounts (imputation, dividend withholding payments, branch equivalent tax, conduit tax relief, supplementary available subscribed capital, and Maori authorities). These memorandum accounts, together with the tax credit rules in Part L, provide the legislative mechanism for transferring to shareholders in a company the benefit of tax paid at corporate level under the imputation system.

The rewritten Part M contains only the rules relating to the various memorandum accounts. All of the rules relating to tax payments and refunds from subparts MB to MD of the 2004 Act are to be rewritten in Part N.

The drafting changes relate mainly to structural relationships, are relatively minor, and are intended to improve the legislation. They fall into three main types:

- modernising the style and language;
- improving the clarity of the law; and
- removing redundant material and moving some provisions to other parts of the Act.

Policy clarification

Two minor policy clarifications are proposed as a result of a newly defined term “memorandum account” to allow the drafting of some general rules in the rewritten subpart MA.

In the definition of “tax position” in the Tax Administration Act 1994 (TAA), it is proposed to include in paragraph (j) the new term “memorandum account”. At present, paragraph (j) of this definition refers to an undefined phrase “tax account”. The phrase “tax account” does not appear elsewhere in the TAA and is used only once in the 2004 Act, in section MBB 2. It is clear from the language of the defined term “tax position” that the phrase “tax account” is intended to refer to the various memorandum accounts in Part M of the 2004 Act.

In section 22(2) of the TAA, it is proposed to rationalise paragraphs (k) and (kb) and have them refer only to memorandum accounts. This change will mean that section 22(2) will then apply to supplementary available subscribed capital accounts. As a consequence, section 22(2)(f) will need to be amended to include a unit trust or a group investment fund that maintains a supplementary available subscribed capital account.

Drafting improvements

Major improvements in the clarity of the legislation will arise from:

- having separate tables for credits and debits that summarise the rules for credits and debits for each type of memorandum account;
- rationalising common rules into a new subpart MA; and
- drawing together common rules that apply to all or most memorandum accounts, such as consolidated group rules and qualifying amalgamation rules.

Tables of credits and debits

Tables have been used in each subpart to provide quick access to the credits and debits that arise within each type of memorandum account. A separate table has been set out for all credits and debits with a brief description of the nature of the credit or debit, the date of the credit or debit and a link to the provision that defines that particular credit or debit. Tables are also used to summarise the credits and debits for each type of memorandum account as they apply to consolidated groups in new subpart MP.

Rationalisation of provisions

In the 2004 Act, a separate rule creates the opening balance for each type of memorandum account in each subpart. A similar situation arises for the rules relating to qualifying amalgamations, as these rules apply to most memorandum accounts.

These rules are repetitive and have been rationalised and placed in a new subpart MA.

Redundant material

Some provisions in subpart ME of the 2004 Act that apply to Maori authorities are now redundant.

Following the enactment of section ME 1(2)(j) in the 2004 Act by the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003, a Maori authority may not maintain an imputation credit account. Instead, a Maori authority may attach a Maori authority credit to a taxable Maori authority distribution.

Some rules in subpart ME relating to cooperative companies continue to indicate that imputation credits may be attached to a taxable Maori authority distribution. These references have been omitted from the rewritten provisions as they are redundant.

Benefits of the proposed structure

Although current readers may be familiar with the concepts contained in Part M, the rewrite of this Part must also take into account the needs of future readers.

Future readers will come to the legislation without knowledge of how the various rules in Part M interact with other Parts of the Act, particularly Part L. In identifying these interrelationships, the draft legislation helps readers understand the relationship between provisions in other Parts of the Act and the transactions and situations dealt with in Part M.

The ordering of the subparts and provisions in the subparts reflects the drafting policy that more generally applicable provisions should appear earliest in each Part.

Cross-references in this exposure draft to Parts outside Part M relate to the 2004 Act, not to the recently released exposure drafts of other rewritten Parts. This is because further intensive specialist reviews of these exposure drafts are planned and may lead to changes to these draft provisions.

Specific feedback

We invite comment on the proposed amendment to the definition of “tax position” and section 22(2) (both being in the TAA) as a consequence of introducing the new term “memorandum account” in Part M.

Comment on any of the drafting clarifications is welcomed.

Relationship of Part M to other Parts

The main relationship between Part M and the rest of the Act is to provide a way of tracking payments of tax at a corporate level and the subsequent use of that tax as a credit of tax under Part L. As a result there is no direct link with the core provisions from Part M.

Moving 2004 Act Part M provisions to Part N

Subparts MB, MBA, MBB, MBC, MC and MD are to be rewritten and relocated within Part N.

Comment is invited on the proposed relocation of these subparts, which deal with tax payments and refunds.

Moving 2004 Act provisions to subpart MZ

Section MJ 4 has been moved to draft section MZ 5.

Section MJ 7 has been moved to draft section MZ 6.