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# Rewriting the Income Tax Act

## Exposure Draft

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### Part O

*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 O of the Income Tax Act 2004, which relates to defined terms and related matters.

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 O 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 21 July 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](mailto: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 O OF THE INCOME TAX ACT 2004

## Introduction

This commentary deals with the rewrite of Part O of the Income Tax Act 2004, which relates to defined terms.

The rewritten Part O does not yet contain a draft subpart OA, covering sections OB 1 and OB 6 of the 2004 Act, as the rewrite of these sections is dependent on the completion of rewriting Parts F to N. The rewrite of the other subsections in subpart OB of the 2004 Act have been incorporated in other exposure drafts (for example, section OB 2 is rewritten in the exposure draft for 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.

## Drafting improvements

Some minor drafting clarifications are discussed and comment is invited on these questions. These are intended to simplify the drafting and there is no intention to change the effect of the law. The major improvements in the clarity of the legislation have been achieved by:

- presenting a list of tests of association for the associated persons rules in a table format;
- rationalising the source rules by income type; and
- drawing together source rules into subpart OE.

The major drafting improvements are set out below:

- Section OC 1(2)(c) of the 2004 Act is omitted from draft section FC 22 (Airport Operators: General) because it is to be incorporated in the definition of business in rewritten subpart OA.
- Section OC 3(d) of the 2004 Act has been omitted because the rewritten subpart DA overlaps with this rule by including in the general permission nexus test a relationship to excluded income.

In draft subpart OC:

- The associated persons rules have been grouped according to the year in which the various rules were introduced. New defined terms reflect this grouping, with those definitions set out in draft section OC 20. These new terms are the “1973 version provision”, the “1988 version provisions”, and “the 1999 version provisions.”

To help the reader understand these new terms in the rewritten associated persons rules, a brief explanatory note (which summarises the subject matter of these rules) follows the use of these new defined terms in the text.

- The tracing rules in section OD 8(2)(a) and (c) have been omitted from draft sections OC 2 and OC 8 on the basis that the voting interest and market value interest rules address this issue for companies.
- The tracing rules in section OD 8(2)(a) and (c) for partnerships have been omitted from draft sections OC 2 and OC 8 on the basis that the tracing through will operate in any event under partnership law.
- The tracing rules in section OD 8(2)(a) and (c) for trustees have been omitted from draft sections OC 2 and OC 8 on the basis that is unnecessary and unworkable to have this rule apply to beneficiaries of a trust.
- In draft section OC 9, which rewrites the definition of relative, subsection (5) is drafted to provide consistency with the Adoption Act 1955.
- Draft section OC 13 rationalises the associated persons rules relating to trustees and beneficiaries.
- Draft section OC 17 rationalises the associated persons rules relating to partnerships.

In draft subpart OE:

- The term “permanent place of abode” has been replaced with the term “permanent home” to provide consistency with the terminology used in the OECD model treaty.
- Section OE 2(2) has been omitted as the definition of “non-resident company” achieves the same result.
- In draft section OE 3(2), the words “any other criterion of a similar nature” have replaced the wording “place of incorporation”. This wording change is to provide consistency with the terminology used in the OECD model treaty.
- Section OE 4(1)(b), which deals with a business carried on out of New Zealand, has been omitted on the basis it is redundant as the subject matter the rule applies to is dealt with in other paragraphs in this section.

- Draft section OE 4(6) clarifies that a gratuitous payment has a source in New Zealand if it relates to services provided in New Zealand.
- The reference in section OE 4(1)(g) to debentures issued by a company resident in New Zealand has been omitted on the basis that income derived from such a debenture will be either a dividend or interest to which the relevant source rule would apply.
- The references in section OE 4(1)(k) to the common fund of the Public Trust and the Maori Trust Office have been omitted as these organisations fall within the meaning of a New Zealand-resident company.
- Sections FC 13, FC 18 to FC 19 and FC 21 have been moved to the source rules, as draft sections OE 6 to OE 8.
- It is proposed to omit section OE 5, as the source rule relating to contracts made in New Zealand overlaps with this rule.

## **Benefits of the proposed structure**

Although current readers may be familiar with the concepts contained in Part O, 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 O interact with other Parts of the Act. 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 O.

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 O 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**

Comment on any of the drafting simplifications is welcomed.

## **Relationship of Part O to other Parts**

The main relationship between Part O and the other Parts of the Act is that it provides a list of defined terms and a detailed definition of some complex terms.

## **Moving 2004 Act provisions to Part O**

Source rules moved to Part O are:

- section FB 2; and
- sections FC 13, FC 18 to FC 19 and FC 21.

## **Moving Part O provisions to other Parts of the Act**

Section OC 1 has been moved to draft sections FC 22 and FC 23.

Section OC 3(a) to (c) has been moved to draft section CV 5.

Section OC 3(d) has been omitted.

Section OC 4 has been moved to draft section 225AA of the TAA.