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OA 1 Definitions

1973 version provisions is defined in section OC 20 (Some definitions) for the purposes of sections OC 1 to OC 19 (which relate to associated persons)

1988 version provisions is defined in section OC 20 (Some definitions) for the purposes of sections OC 1 to OC 19 (which relate to associated persons)

1990 version provisions is defined in section OC 20 (Some definitions) for the purposes of sections OC 1 to OC 19 (which relate to associated persons)

business—

- (aa) includes the activities of—
 - (i) a statutory producer board:
 - (ii) an airport operator

...

foreign-sourced amount means an amount that is not treated as having a source in New Zealand under section OE 4 (Classes of income treated as having source in New Zealand)

non-resident company means a company that is not a New Zealand resident

Subpart OC—Associated persons and nominees

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Table O1: Associated person rules

<i>Type of association</i>	<i>Application</i>				<i>Governing section in ITA 2004</i>
	Whole Act excluding 1973, 1988 or 1990 version provisions	1973 version provisions	1988 version provisions	1990 version provisions	
Two companies with common control	Yes	Yes, with modifications	Yes, with modifications	Yes, with modifications	OC 2
Two companies with common control: 1988 version	No	No	Yes	No	OC 3
Company and associate's associate: 1988 version	No	No	Yes	No	OC 4
Company and non-corporate 25% interest holder	Yes	Yes, with modifications	No	No	OC 5
Company and relative of 25% interest holder: 1973 version	No	Yes	No	No	OC 6
Company and non-corporate 50% interest holder: 1988 version	No	No	Yes	No	OC 7
Company and non-corporate 50% interest holder: 1990 version	No	No	No	Yes	OC 8
Relatives: persons with blood or adoption relationship	Yes	Yes, with modifications	Yes, with modifications	Yes	OC 9
Relatives: person and their spouse or partner	Yes	Yes	Yes	Yes	OC 10
Relatives: person with blood relationship to spouse or partner of other person	Yes	No	Yes, with modifications	Yes	OC 11
Trusts: person and trustee for their relative	Yes	Yes	No	Yes	OC 12
Trusts: person and trustee for the person	No	No	Yes, with modifications	Yes	OC 13
Trusts: trustees with common settlor	No	Yes	Yes, with modifications	No	OC 14
Trusts: trustee and settler: 1988 version	No	No	Yes	No	OC 15
Partnerships: partnership and a partner	Yes	Yes	Yes	Yes	OC 16
Partnerships: partnership and associate of a partner	Yes	Yes, with modifications	Yes, with modifications	Yes	OC 17
Persons habitually acting together: 1988 version	No	No	Yes	No	OC 18
Person and controlled non-profit organisation: 1990 version	No	No	No	Yes	OC 19
<i>How to use this table</i>					
Each row of this table describes—					
(a) a type of association; and					
(b) the provisions for which it applies.					
A more detailed description is contained in the section noted in the last column.					

Associated persons

OC 1 What this subpart does

Associated persons and nominee rules

- (1) This subpart sets out the rules that—
 - (a) define when 2 persons are associated persons; and
 - (b) determine how nominees are treated.

Other references included

- (2) If a rule in this subpart states that 2 persons are associated persons for 1 or more provisions in this Act, a reference in the relevant provision to persons who are associated with each other includes those persons.

Application stated in sections

- (3) Each section in this subpart relating to associated persons states the extent to which the section applies.

Defined in this Act: associated person, nominee

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

OC 2 Two companies with common control

50% or greater common voting interests

- (1) Two companies are associated persons if a group of persons exists whose total voting interests in each company are 50% or greater.

50% or greater common market value interests

- (2) Two companies are associated persons if—
 - (a) a market value circumstance exists for either company; and
 - (b) a group of persons exists whose total market value interests in each company are 50% or greater.

Common control by other means

- (3) Two companies are associated persons if a group of persons exists who control both companies by any other means.

Person treated as holding relative's rights

- (4) In the application of this section, a natural person is treated as holding rights held by a relative of the person. Subsections (5) and (9) override this subsection.

No double counting

- (5) Despite subsection (4), rights may be counted only once for the purposes of determining whether 2 companies are associated persons.

Exception for certain government entities

- (6) This section does not apply to make a company an associated person of another company if the first company is—
- (a) a state enterprise:
 - (b) a Crown Research Institute:
 - (c) a Crown health enterprise:
 - (d) a company that is in the same group of companies as an entity referred to in paragraphs (a) to (c).

Exception for international tax rules

- (7) In the international tax rules (except sections CD 34 to CD 41 and CZ 10, which relate to calculation of attributed repatriation dividends), 2 companies are not associated persons if 1, but not both, is a non-resident.

Application: whole Act

- (8) This section applies for the purposes of the whole Act.

Limit on application: relative's interests

- (9) Despite subsection (8), subsection (4) does not apply for the purposes of—
- (a) the 1973 version provisions (which relate to taxation of transactions involving land):
 - (b) the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1973 version provisions, 1988 version provisions, associated person, attributed repatriation, company, control, Crown research institute, dividend, group of companies, group of persons, international tax rules, market value circumstance, market value interest, non-resident, relative, state enterprise, voting interest

Origin:	(1)	OD 7(1)(a)(i), OD 8(1)(a)(i), (3)(a)(i), (4)(a)(i)
	(2)	OD 7(1)(a)(ii), OD 8(1)(a)(ii), (3)(a)(i), (4)(a)(ii)
	(3)	OD 7(1)(a)(iii), OD 8(1)(a)(iii), (3)(a)(i), (4)(a)(iii)
	(4)	OD 7(2), OD 8(2)(b)
	(5)	OD 8(2)(c)
	(6)	OD 7(3), OD 8(6)
	(7)	OD 8(3A)
	(8)	new
	(9)	new
	(10)	OD 8(2)(a)
	(11)	OD 8(2)(c)

OC 3 Two companies with common control: 1988 version provisions

50% or greater common income interests

- (1) Two companies are associated persons if a group of persons exists whose total income interests in each company are 50% or greater.

Modified application of income interest rules

- (2) For the purposes of this section in defining an income interest, sections EX 8 to EX 10, EX 13, EX 17, EX 27, and GC 9 (which relate to the calculation of income interests) apply as if—
- (a) each reference to a “CFC” or “foreign company” were a reference to a “company”; and
- (b) section GC 9(6) were omitted.

Exception for international tax rules

- (3) In the international tax rules (except sections CD 34 to CD 41 and CZ 10, which relate to calculation of attributed repatriation dividends), 2 companies are not associated persons if 1, but not both, is a non-resident.

Application: 1988 version provisions

- (4) This section applies for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, associated person, attributed repatriation, CFC, company, foreign company, group of persons, income interest, international tax rules, non-resident

Origin:	(1)	OD 8(3)(a)(ii)
	(2)	OD 8(3)(a)(ii)
	(3)	OD 8(3A)
	(4)	new

OC 4 Company and associate’s associate: 1988 version provisions

Company and associate’s associate

- (1) A company and a person are associated persons if the person is associated with another person who is associated, other than under this section, with the company.

Exception for international tax rules

- (2) In the international tax rules (except sections CD 34 to CD 41 and CZ 10, which relate to calculation of attributed repatriation dividends), 2 companies are not associated persons if 1, but not both, is a non-resident.

Application: 1988 version provisions

- (3) This section applies for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Meaning of associated

- (4) In this section, the term **associated** has the meaning that it has for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, associated person, attributed repatriation, company, dividend, international tax rules, non-resident

Origin:	(1)	OD 8(3)(c)
	(2)	OD 8(3A)
	(3)	new
	(4)	OD 8(3)(c)

OC 5 Company and non-corporate 25% interest holder

Company and 25% voting interest holder

- (1) A company and a person other than a company are associated persons if the person has a voting interest in the company of 25% or more.

Company and 25% market value interest holder

- (2) A company and a person other than a company are associated persons if—
- (a) a market value circumstance exists for the company; and
 - (b) the person has a market value interest in the company of 25% or more.

Person treated as holding relative's rights

- (3) In the application of this section, a natural person is treated as holding rights held by a relative of the person. Subsections (4) and (6) override this subsection.

No double counting

- (4) Despite subsection (3), rights may be counted only once for the purposes of determining whether 2 companies are associated persons.

Application: whole Act unless other versions apply

- (5) This section applies for the purposes of the whole Act except for—
- (a) the 1988 version provisions (which are the international tax rules and other miscellaneous rules) ; and
 - (b) the 1990 version provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules).

Limit on application: relative's interests

- (6) Despite subsection (5), subsection (3) does not apply for the purposes of the 1973 version provisions (which relate to taxation of transactions involving land).

Defined in this Act: 1973 version provisions, 1988 version provisions, 1990 version provisions, associated person, company, market value circumstance, market value interest, relative, voting interest

Origin:	(1)	OD 7(1)(b), OD 8(4)(b)(i)
	(2)	OD 7(1)(b), OD 8(4)(b)(i)
	(3)	OD 7(2)
	(4)	new
	(5)	new
	(6)	new

OC 6 Company and relative of 25% interest holder: 1973 version provisions

Company and relative of 25% voting interest holder

- (1) A company and a person other than a company are associated persons if a voting interest in the company of 25% or more is held by—
- (a) the person’s spouse or civil union partner:
 - (b) the person’s infant child:
 - (c) the trustee of a trust under which the person, their spouse, their civil union partner, or their infant child has benefited or is eligible to benefit:
 - (d) any combination of the person and a person referred to in paragraphs (a) to (c).

Company and 25% market value interest holder

- (2) A company and a person other than a company are associated persons if—
- (a) a market value circumstance exists for the company; and
 - (b) the market value interest in the company of 25% or more is held by—
 - (i) the person’s spouse or civil union partner:
 - (ii) the person’s infant child:
 - (iii) the trustee of a trust under which the person, their spouse, their civil union partner, or their infant child has benefited or is eligible to benefit:
 - (iv) any combination of the person and a person referred to in paragraphs (a) to (c).

Application: 1973 version provisions

- (3) This section applies for the purposes of the 1973 version provisions (which relate to taxation of transactions involving land).

Defined in this Act: 1973 version provisions, associated person, company, market value interest, market value circumstances, trustee

Origin:	(1)	OD 8(4)(b)(i), (ii), (iii), (iv)(1)(b), OD 8(4)(b)(i)
	(2)	OD 8(4)(b)(i), (ii), (iii), (iv)(1)(b), OD 8(4)(b)(i)
	(3)	new

OC 7 Company and non-corporate 50% interest holder: 1988 version provisions

Company and 50% income interest holder

- (1) A company and a person other than a company are associated persons if the person has an income interest in the company of 50% or more.

Modified application of income interest rules

- (2) For the purposes of this section in defining an income interest, sections EX 8 to EX 10, EX 13, EX 17, EX 27 and GC 9 (which all relate to calculating income interests) apply as if—
- (a) each reference to a “CFC” or “foreign company” were a reference to a “company”; and
- (b) section GC 9(6) were omitted.

Application: 1988 version provisions

- (3) This section applies for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, associated person, CFC, company, foreign company, income interest

Origin: (1) OD 8(3)(b)
(2) OD 8(3)(b)
(3) new

OC 8 Company and non-corporate 50% interest holder: 1990 version provisions

Company and 50% income interest holder

- (1) A company and a person other than a company are associated persons if the person has a voting interest in the company of 50% or more.

Company and 50% market value interest holder

- (2) A company and a person other than a company are associated persons if—
- (a) a market value circumstance exists for the company; and
- (b) the person has a market value interest in the company of 50% or more.

Person treated as holding relative’s rights

- (3) In the application of this section, a natural person is treated as holding rights held by a relative of the person. Subsection (4) overrides this subsection.

No double counting

- (4) Despite subsection (3), rights may be counted only once for the purposes of determining whether a company and a person are associated persons.

Application: 1990 version provisions

- (5) This section applies for the purposes of the 1990 version provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules).

Defined in this Act: 1990 version provisions, associated person, company, market value circumstance, market value interest, relative, voting interest

Origin:	(1)	OD 8(1)(b)
	(2)	OD 8(1)(b)
	(3)	OD 8(2)(b)
	(4)	OD 8(2)(c)
	(5)	new

OC 9 Relatives: persons with blood or adoption relationships

Fourth degree of relationship

- (1) Two persons are associated persons if they are within the fourth degree of blood relationship to each other.

Application: whole Act

- (2) Subsection (1) applies for the purposes of the whole Act, except—
- (a) the 1973 version provisions (which relate to taxation of transactions involving land); and
 - (b) the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

1973 version provisions: infant children only

- (3) For the purposes of the 1973 version provisions (which relate to taxation of transactions involving land), persons are associated persons because of a blood relationship only if 1 is the infant child of the other.

1988 version provisions : second degree of relationship only

- (4) For the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules), persons are associated persons because of a blood relationship only if they are within the second degree of blood relationship.

Treatment of adoption

- (5) For the purposes of this section, a child by adoption is treated as a natural child.

Defined in this Act: 1973 version provisions, 1988 version provisions, associated person

Origin:	(1)	OD 7(1)(c), OD 8(1)(c), OB 1 “relative”
	(2)	new
	(3)	OD 8(4)(c)
	(4)	OD 8(3)(d), OB 1 “relative”
	(5)	OB 1 “relative”

OC 10 Relatives: person and their spouse or partner

Marriage

- (1) Two persons are associated persons if they are married.

Civil union

- (2) Two persons are associated persons if they are in a civil union.

De facto relationship

- (3) Two persons are associated persons if they are in a de facto relationship.

Application: whole Act

- (4) This section applies for the purposes of the whole Act.

Defined in this Act: associated person

- | | | |
|---------|-----|---|
| Origin: | (1) | OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative” |
| | (2) | OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative” |
| | (3) | OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative” |
| | (4) | new |

OC 11 Relatives: person with blood relationship to spouse or partner of other person

Fourth degree of blood relationship with spouse

- (1) Two persons are associated persons if 1 person is within the fourth degree of blood relationship to the spouse of the other person.

Fourth degree of blood relationship with civil union partner

- (2) Two persons are associated persons if 1 person is within the fourth degree of blood relationship to the civil union partner of the other person.

Fourth degree of blood relationship with de facto partner

- (3) Two persons are associated persons if 1 person is within the fourth degree of blood relationship to the de facto partner of the other person.

Application: whole Act

- (4) Subsections (1) to (3) apply for the purposes of the whole Act, except—
- (a) the 1973 version provisions (which relate to taxation of transactions involving land); and
 - (b) the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

1988 version provisions : section degree of relationship only

- (5) For the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules), a person is an associated person because of a

blood relationship with the other person’s spouse or partner only if they are within the second degree of blood relationship with the spouse or partner.

Defined in this Act: 1973 version provisions, 1988 version provisions, associated person

Origin:	(1)	OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative”
	(2)	OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative”
	(3)	OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative”
	(4)	new
	(5)	new

OC 12 Trusts: person and trustee for their relative

Person and trustee for their relative

- (1) Two persons are associated persons if 1 person is the trustee of a trust under which any of the following persons associated with the other person has benefited or is eligible to benefit:
 - (a) a person associated with the other person under section OC 9:
 - (b) a person associated with the other person under section OC 10:
 - (c) a person associated with the other person under section OC 11.

Application: whole Act

- (2) This section applies for the purposes of the whole Act, except the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, associated person, trustee

Origin:	(1)	OD 7(1)(c), OD 8(1)(c), OD 8(3)(d), OD 8(4)(c), OB 1 “relative”
	(2)	new

OC 13 Trusts: person and trustee for person

Person and trustee for the person : first case

- (1) Two persons are associated persons if 1 person is the trustee of a trust under which the other (**beneficiary**) has benefited or is eligible to benefit.

Exception: employee trusts

- (2) Subsection (1) does not apply if—
 - (a) the trust is only for the benefit of employees of an employer; and
 - (b) neither the beneficiary nor any person associated with the beneficiary directly or indirectly controls the trust.

Application: 1988 and 1990 version provisions

- (3) This section applies for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules) and the 1990 version

provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules).

Meaning of associated: second case

- (4) In subsection (2)(b), the term **associated** has the meaning that it has for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, 1990 version provisions, associated person, trust

Origin:	(1)	OD 8(1)(g)
	(2)	OD 8(3)(g)
	(3)	new
	(4)	OD 8(3)(g)(ii)

OC 14 Trusts: trustees with common settlor

Trustees with common settlor

- (1) The trustees of 2 separate trusts are associated persons if the 2 trusts have 1 or more settlors in common.

Application: 1973 and 1988 version provisions

- (2) Subsection (1) applies for the purposes of—
- (a) the 1973 version provisions (which relate to taxation of transactions involving land); and
 - (b) the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Exception: 1988 version provisions: non-corporate settlor of employee trust

- (3) Despite subsection (2), subsection (1) does not apply for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules) if—
- (a) the settlor is not a company; and
 - (b) the settlor settles property on the terms of the trust only for the benefit of employees of the settlor; and
 - (c) neither the settlor nor any associated person of the settlor directly or indirectly controls the trust.

Exception: 1988 version provisions: corporate settlor of employee trust

- (4) Despite subsection (2), subsection (1) does not apply for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules) if—
- (a) the settlor is a company; and
 - (b) the settlor settles property on the terms of the trust only for the benefit of its employees; and
 - (c) none of the following directly or indirectly controls the trust—

- (i) the settlor:
- (ii) a person associated with the settlor:
- (iii) an executive of the settlor:
- (iv) a director of the settlor:
- (v) a person holding a direct voting interest of 25% or more in the settlor:
- (vi) if a market value circumstance exists for the settlor, a person holding a 25% or greater direct market value interest in the settlor.

Meaning of associated

- (5) In subsection (3)(c), the term **associated** has the meaning that it has for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1973 version provisions, 1988 version provisions, associated person, company, direct market value interest, direct voting interest, employee, market value circumstance, settlor, trustee

Origin:	(1)	OD 8(1)(f), OD 8(3)(h)
	(2)	new
	(3)	OD 8(3)(h)(i)
	(4)	OD 8(3)(h)(ii)
	(5)	OD 8(3)(h)(ii)

OC 15 Trusts: trustee and settlor: 1988 version provisions

Trustee and settlor

- (1) Two persons are associated persons if 1 is the trustee of a trust of which the other is a settlor.

Exception: non-corporate settlor of employee trust

- (2) Subsection (1) does not apply if—
- (a) the settlor is not a company; and
 - (b) the settlor settles property on the terms of the trust only for the benefit of employees of the settlor; and
 - (c) neither the settlor nor any associated person of the settlor directly or indirectly controls the trust.

Exception: corporate settlor of employee trust

- (3) Subsection (1) does not apply if—
- (a) the settlor is a company; and
 - (b) the settlor settles property on the terms of the trust only for the benefit of its employees; and
 - (c) none of the following directly or indirectly controls the trust—
 - (i) the settlor:
 - (ii) a person associated with the settlor:

- (iii) an executive of the settlor:
- (iv) a director of the settlor:
- (v) a person holding a direct voting interest of 25% or more in the settlor:
- (vi) if a market value circumstance exists for the settlor, a person holding a 25% or greater direct market value interest in the settlor.

Application: 1988 version provisions

- (4) This section applies for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Meaning of associated person

- (5) In this section, the term **associated person** has the meaning that it has for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, associated person, company, direct market value interest, direct voting interest, employee, market value circumstance, settlor, trustee

Origin:	(1)	OD 8(3)(i)
	(2)	new
	(3)	OD 8(3)(i)
	(4)	OD 8(3)(i), (ii)
	(5)	OD 8(3)(i)

OC 16 Partnerships: partnership and partner

Partnership and partner

- (1) A partnership and a partner in the partnership are associated persons.

Application: whole Act

- (2) This section applies for the purposes of the whole Act.

Defined in this Act: associated person

Origin:	(1)	OD 7(1)(d)(i), OD 8(1)(d), (3)(e), (4)(d)
	(2)	new

OC 17 Partnerships: partnership and associate of partner

Partnership and associate of a partner

- (1) A partnership and a person associated with a partner are associated persons.

Application: whole Act

- (2) This section applies for the purposes of the whole Act.

When associated

- (3) In this section, a person is treated as being associated with a partner if—

- (a) the person is associated with the partner other than under this section; and
- (b) for the purposes of the 1973 version provisions (which relate to taxation of transactions involving land), the term **associated** has the meaning that it has for the purposes of those provisions; and
- (c) for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules), the term **associated** has the meaning that it has for the purposes of those provisions.

Defined in this Act: 1973 version provisions, 1988 version provisions, 1990 version provisions, associated person

Origin: (1) OD 7(1)(d)(ii), OD 8(1)(e), (3)(f), (4)(e)
(2) new
(3) OD 7(1)(d)(ii), OD 8(1)(e), (3)(f), (4)(e)

OC 18 Persons habitually acting together: 1988 version provisions

Persons habitually acting together

- (1) Two persons are associated persons if they habitually act together in holding or exercising any of the rights in relation to a foreign company described in section EX 5(1) (Direct control interests).

Only associated concerning specific rights

- (2) Despite subsection (1), the 2 persons are treated as associated persons only concerning the right in relation to which they act together.

Application: 1988 version provisions

- (3) This section applies for the purposes of the 1988 version provisions (which are the international tax rules and other miscellaneous rules).

Defined in this Act: 1988 version provisions, associated person, foreign company

Origin: (1) OD 8(3)(j)
(2) OD 8(3)(j)
(3) new

OC 19 Person and controlled non-profit organisation: 1990 version provisions

Person and controlled non-profit organisation

- (1) A person and an organisation are associated persons if—
 - (a) the organisation is 1 of those listed in subsection (2); and
 - (b) the organisation is controlled, directly or indirectly, by—
 - (i) the person:
 - (ii) a person associated with the person under section OC 9:
 - (iii) a person associated with the person under section OC 10:

- (iv) a person associated with the person under section OC 11.

Relevant organisations

- (2) The organisations referred to in subsection (1) are—
- (a) an organisation described in section CW 34 (Charities: non-business income):
 - (b) an organisation described in section CW 37 (Friendly societies):
 - (c) an organisation described in section DV 8 (Non-profit organisations).

Application: 1990 version provisions

- (3) This section applies for the purposes of the 1990 version provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules).

Defined in this Act: 1990 version provisions, associated person

Origin:	(1)	OD 8(1)(h)
	(2)	OD 8(1)(h)
	(3)	new

OC 20 Some definitions

1973 version provisions

- (1) In sections OC 1 to OC 19, **1973 version provisions** (which relate to taxation of transactions involving land) refers to the following provisions, which relate to taxation of land transactions:
- (a) sections CB 6 to CB 9 (which relate to certain land transactions):
 - (b) section CB 13 (Transactions between associated persons):
 - (c) section FF 6 (Land).

1988 version provisions

- (2) In sections OC 1 to OC 19, **1988 version provisions** (which are the international tax rules and other miscellaneous rules) refers to the international tax rules and the following provisions:
- (a) sections DB 10, EW 45, EW 50 and EZ 38 (which relate to taxation of transactions involving financial arrangements):
 - (b) section DS 4 (Meaning of film reimbursement scheme):
 - (c) section DT 4 (Acquisition of exploratory material):
 - (d) section EC 10(4)(b) (Restriction on use of cost price method):
 - (e) sections EE 34 to E36, EE 50, EE 51 and EZ 11 (which relate to depreciation losses):
 - (f) section FC 13 (Premiums derived by non-resident general insurers treated as being derived from New Zealand):

- (g) subpart FG (Apportionment of interest costs):
- (h) section FH 1(2) (Circumstances in which group excess interest allocation required):
- (i) section GC 14B (Attribution rule for personal services):
- (j) section GD 13 (Cross border arrangements between associated persons):
- (k) section HK 11 (Liability for tax of company left with insufficient assets):
- (l) sections KH 2, NH 7, OE 7 and OE 8 (which relate to conduit tax relief):
- (m) section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand):
- (n) subpart LF (Underlying foreign tax credits generally, and interpretation).

1990 version provisions

- (3) In sections OC 1 to OC 19, **1990 version provisions** (which are certain provisions relating to petroleum mining and some other miscellaneous rules) refers to the following provisions:
 - (a) section CW 11B (Proceeds of share disposal by qualifying foreign equity investor):
 - (b) sections DT 2, DT 9 to DT 11, DT 15, EJ 14 and GC 12 (which relate to petroleum mining):
 - (c) section GD 15 (Disposal of timber, or right to take timber, or standing timber to associated person).

Defined in this Act:

- Origin: (1) OD 8(4)
(2) OD 8(3)
(3) OD 8(1)

Nominees

OC 21 Transparency of nominees

Treatment of nominee

- (1) In this Act, unless the context otherwise requires, if a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored.

Who is a nominee?

- (2) A person holds or does something as a nominee for another person if the person acts on the other person's behalf. However, a trustee is a nominee only if the trustee is a bare trustee.

Defined in this Act: nominee, trustee

Origin: (1) OD 9(1)
(2) OD 9(2)

Subpart OD—Measurement of company control and ownership

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Control

OD 1 Meaning of control

Meaning

- (1) In this Act, a company is treated as being under the **control** of a group of persons—
 - (a) whose total voting interests in the company are more than 50%:
 - (b) whose total market value interests in the company are more than 50%, if a market value circumstance exists for the company:
 - (c) who control the company by any other means.

Person treated as holding relative's rights

- (2) In the application of this section, a natural person is treated as holding rights held by a relative of the person.

No double counting

- (3) Despite subsection (2), rights may be counted only once for the purposes of determining whether a company is under the control of a group of persons.

Defined in this Act: company, control, group, market value circumstance, market value interest, relative, voting interest

Origin: (1) OD 1(1)
(2) OD 1(2)
(3) new

Voting and market value interests

OD 2 Voting interests

Percentage of shareholder decision-making rights

- (1) A person's voting interest in a company equals the percentage of the total shareholder decision-making rights for the company carried by shares or options held by the person.

When decision-making rights vary

- (2) Despite subsection (1), if the percentage of shareholder decision-making rights for a company carried by shares or options held by any person differs as between the types of decision-making listed in the definition of shareholder decision-making rights, the person's voting interest in the company equals the average of those differing percentages.

Defined in this Act: company, share, shareholder decision-making, voting interest

Origin: (1) OD 3(1)
(2) OD 3(2)

OD 3 Market value interests

Percentage of market value

- (1) A person's market value interest in a company equals the percentage of the total market value of shares and options over shares in the company that the market value of shares and options over shares in the company held by the person represents.

Market value adjusted for options

- (2) For the purposes of subsection (1), the market value of any share in a company that is subject to an option is calculated having regard to the terms of the option.

Defined in this Act: company, market value, market value interest, share, option

Origin: (1) OD 4(1)
(2) OD 4(2)

OD 4 Look-through rule for corporate shareholders

When subsection (2) applies

- (1) Subsection (2) applies if a company (**shareholder company**) is or is treated as having, whether under subsection (2) or otherwise, a voting interest in another company (**issuing company**).

Voting interest attributed to shareholders

- (2) Each person (**shareholder**) who has a voting interest in the shareholder company is treated as having (to be added to any other percentage voting interest in the issuing company which the shareholder has) their portion of the shareholder company's voting interest in the issuing company and the shareholder company is treated as not having that portion.

Calculation of shareholder's portion

- (3) The shareholder's portion of the voting interest is calculated by multiplying the shareholder company's voting interest in the issuing company by the shareholder's voting interest in the shareholder company.

When subsection (5) applies

- (4) Subsection (5) applies if a company (**shareholder company**) is or is treated as having, whether under subsection (5) or otherwise, a market value interest in another company (**issuing company**).

Market value interest attributed to shareholders

- (5) Each person (**shareholder**) who has a market value interest in the shareholder company is treated as having (to be added to any other percentage market value interest in the issuing company which the shareholder has at that time) their portion of the shareholder company's market value interest in the issuing company and the shareholder company is treated as not having that portion.

Calculation of shareholder's portion

- (6) The shareholder's portion of the market value interest is calculated by multiplying the shareholder company's market value interest in the issuing company by the shareholder's market value interest in the shareholder company.

When subsection (8) applies

- (7) Subsection (8) applies if—
- (a) for a company (**first company**), no direct market value circumstance exists; but
 - (b) it is necessary to determine the direct market value interest of a person in the first company in order to apply subsection (5) in relation to an issuing company (whether that issuing company is the first company or any other company) because a direct market value circumstance exists for some other relevant company.

Direct market value interest equal to direct voting interest

- (8) The direct market value interest of the person in the first company is equal to the direct voting interest of the person in the first company.

Defined in this Act: company, direct market value circumstance, direct market value interest, direct voting interest, director, market value interest, voting interest

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

OD 5 Treatment of special corporate entities

When this section applies

- (1) This section applies for the purposes of sections OD 2 to OD 6 in the case of a company that is a special corporate entity.

Treated as issuing shares

- (2) If no shares have been issued by the special corporate entity, it is treated as having issued shares that carry all shareholder decision-making rights and all other rights of ownership in relation to the special corporate entity.

Who is treated as shareholder?

- (3) The shares are treated as being held by—
- (a) the members for the time being of the special corporate entity, if there are any;
 - (b) the directors for the time being of the special corporate entity, if there are no members;
 - (c) in the case of a public authority or state enterprise that has neither members nor directors, the Minister of the Crown for the time being who performs a director's functions.

Persons also treated as holding related rights

- (4) The persons treated under subsection (3) as holding the shares are also treated as holding—
- (a) any options over the shares; and
 - (b) any rights derived from the shares and options, including any interests treated as being held under section OD 4.

Shareholders treated as collective body existing with entity

- (5) The members, directors, or Ministers are treated as holding their shares and related rights—
- (a) in their capacity as members, directors, or Ministers; and
 - (b) as a collective body that—
 - (i) exists as long as the special corporate entity exists; and
 - (ii) holds nothing other than shares and related rights concerning the entity.

Defined in this Act: company, director, public authority, share, special corporate entity, state enterprise

Origin:	(1)	OD 3(3)(a); OD 4(3)(a)
	(2)	OD 3(3)(a); OD 4(3)(a)
	(3)	OD 3(3)(a); OD 4(3)(a)
	(4)	OD 3(3)(a); OD 4(3)(a)
	(5)	OD 3(3)(a); OD 4(3)(a)

OD 6 Disregarding certain securities

When this section applies

- (1) This section applies for the purposes of sections OD 2 to OD 5 if—
- (a) a company has issued an excluded fixed rate security;
 - (b) an excluded option has been granted in relation to a share in a company;
 - (c) a company has issued a pre-1991 budget security.

Security treated as not issued or granted

- (2) The excluded fixed rate security, excluded option, or pre-1991 budget security is treated as never having been issued or granted.

Holder treated as not holding security

- (3) The holder of the excluded fixed rate security, excluded option, or pre-1991 budget security is treated as never having held it.

Credit account continuity provisions: excluded fixed return securities counted

- (4) This section is overridden by section OD 19.

Defined in this Act: company, excluded fixed rate security, excluded option, pre-1991 budget security share

Origin:	(1)	OD 3(3)(c); OD 4(3)(c)
	(2)	OD 3(3)(c); OD 4(3)(c)
	(3)	OD 3(3)(c); OD 4(3)(c)
	(4)	new

Voting and market value interests: modifications for continuity provisions

OD 7 When sections OD 8 to OD 19 apply

Sections OD 8 to OD 19 apply when the continuity provisions are applied.

Defined in this Act: continuity provisions

Origin: OD 5(1)

OD 8 Death of share or option holder

If a person acquires a share or option over a share on the death of a person (**deceased person**), as a beneficiary or trustee under the will or intestacy, the person is treated as having—

- (a) acquired the share or option on the date the deceased person acquired it;
and
- (b) held it until the person in fact acquired it.

Defined in this Act: company, share, trustee

Origin: OD 5(2)

OD 9 Shares or options held by trustees

Trustees treated as notional single person

- (1) All the trustees of a trust holding a share or an option over a share in a company under the trust are treated as the same notional single person that is—
- (a) not a company; and
 - (b) separate and distinct from the trustees in their capacities other than as trustees of the trust.

Exception to subsection (1)

- (2) Subsection (1) does not apply if any of the following has a purpose or effect of defeating the intent and application of a continuity provision:
- (a) the establishment of the trust;
 - (b) the termination of the trust;
 - (c) a change in the trustees of the trust.

Change in ownership of corporate trustee

- (3) Subsection (4) applies if—
- (a) any share in a company (**first company**) or option over a share in the first company is held by a trustee; and
 - (b) the trustee is a company other than—
 - (i) Public Trust;
 - (ii) any company in which Public Trust holds all voting and market value interests;
 - (iii) a statutory trustee company; and
 - (c) any share in the trustee or option over a share in the trustee is disposed of, issued or granted; and
 - (d) to the extent that the disposal, issue or grant changes the beneficial ownership of the share or option over a share in the first company, unless it can be shown not to have a purpose or effect of defeating the intent and application of any of the continuity provisions.

Trustee treated as disposing of share or option

- (4) The trustee is treated as having disposed of the share or option in the first company, at that time of the disposal, issue or grant, to an unrelated person and having immediately re-acquired the share or option.

Defined in this Act: company, continuity provision, market value interest, share, statutory trustee company, trustee, voting interest

Origin: (1) OD 5(4)
(2) OD 5(4)

- (3) OD 5(3)
- (4) OD 5(3)

OD 10 Shareholders holding less than 10% direct interests

When this section applies

- (1) This section applies when—
 - (a) a person has a direct voting interest or direct market value interest of less than 10% in a company (**issuing company**), calculated before section OD 4, as modified by section OD 11, is applied;
 - (b) the person is not a company that is associated with the issuing company.

Person's interest treated as being held by notional single person

- (2) The person's direct voting or market value interest is treated as being held by a notional single person that—
 - (a) is not a company; and
 - (b) exists as long as the issuing company exists; and
 - (c) holds all interests in the issuing company to which this section applies; and
 - (d) holds nothing other than voting or market value interests in the company.

Overriding look-through rule for corporate shareholders

- (3) This section overrides section OD 4.

Defined in this Act: associated person, company, direct market value interest, direct voting interest, market value interest, shareholder, voting interest

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

OD 11 No look-through rule for companies in certain cases

When this section applies

- (1) This section applies when a company (**shareholder company**) has, before section OD 4 is applied to that interest, a voting interest or market value interest in another company (**issuing company**) and either subsection (2) or (3) applies.

First case: limited attribution company holding less than 50%

- (2) The shareholder company—
 - (a) is a limited attribution company as defined in subsection (5); and
 - (b) the voting interest or market value interest (when added to any interests which the shareholder company is treated as having under section OD 4, as modified by this section and section OD 10) is less than 50%.

Second case: shareholder not associated and would be attributed less than 10%

- (3) The person (**shareholder**), who holds a voting or market value interest in the shareholder company, to whom the relevant portion of the voting interest or market value interest would be attributed under section OD 4 (assuming section OD 10 does not then apply to the portion)—
- (a) is not associated with the issuing company: and
 - (b) the relevant portion (before adding any other voting or market value interest which the shareholder has or is treated as having) is less than 10%.

Overriding look-through rule

- (4) Section OD 4 does not apply to the voting or market value interest of the shareholder company.

Limited attribution companies

- (5) A company is a limited attribution company if it is—
- (a) a listed company:
 - (b) a widely-held company:
 - (c) a limited attribution foreign company:
 - (d) a building society:
 - (e) a co-operative company registered under Part 2 or 3 of the Co-operative Companies Act 1996.

Limited attribution foreign companies

- (6) A company is a limited attribution foreign company if it is—
- (a) either—
 - (i) not resident in New Zealand:
 - (ii) resident in New Zealand but treated, under a double tax agreement, as not being resident in New Zealand for the purposes of the agreement; and
 - (b) not a closely-held company.

Defined in this Act: associated person, building society, closely-held company, company, co-operative company, double tax agreement, listed company, market value interest, resident in New Zealand, shareholder, voting interest, widely-held company

- Origin: (1) OD 5(6)
(2) OD 5(6)(a)
(3) OD 5(6)(b)
(4) OD 5(6)
(5) OD 5(10) “limited attribution company”
(6) OD 5(10) “limited attribution foreign company”

OD 12 Qualifying unit trusts

When this section applies

- (1) This section applies in relation to a qualifying unit trust if the qualifying unit trust chooses to apply it.

Unit holders treated as notional single person

- (2) The unit holders' shares in the unit trust are treated as being held by a notional single person that—
- (a) is not a company; and
 - (b) exists as long as the unit trust exists; and
 - (c) holds nothing other than the shares in the unit trust.

Treatment of balances carried forward into 2001-02 tax year

- (3) Subsection (4) applies if—
- (a) a qualifying unit trust exists on the first day of the 2001-02 tax year; and
 - (b) chose to apply section OD 5(5B) of the Income Tax Act 1976 from the first day of the tax year.

Notional single person treated as always existing

- (4) The notional single person is treated as having accumulated and as having always existed in relation to the balances, at the start of the 2001-02 tax year, of the unit trust's—
- (a) imputation credit account:
 - (b) dividend withholding payment account:
 - (c) carried forward net losses.

Defined in this Act: company, dividend withholding payment account, imputation credit account, net loss, qualifying unit trust, share, shareholder, tax year, unit trust

Origin:	(1)	OD 5(5A)
	(2)	OD 5(5B)
	(3)	OD 5(5C)
	(4)	OD 5(5C)

OD 13 Corporate spin-outs

When this section applies

- (1) This section applies if—
- (a) a share in a company (**spun-out company**) is transferred or issued to a shareholder in another company (**original parent**); and
 - (b) before the transfer or issue, the original parent is treated, under section OD 11(3), as holding a voting interest or market value interest in another company (**spun-out subsidiary**); and

- (c) before the transfer or issue, the original parent is treated as holding all voting interests and, if a market value circumstance exists, all market value interests in the spun-out company (assuming section OD 4 did not apply to treat the original parent's interests to be held by others); and
- (d) at the time of the transfer or issue, the original parent is a company of the type described in section OD 11(5); and
- (e) after the transfer or issue, the spun-out company is treated, under section OD 11(3), as holding the voting interest or market value interest in the spun-out subsidiary; and
- (f) after the transfer or issue, the spun-out company is, at all times during the relevant period described in subsection (3), a company of the type described in section OD 11(5).

Overriding look-through rule for spun-out company

- (2) Section OD 4 is overridden and the spun-out company is treated as holding the voting interest or market value interest in the spun-out subsidiary—
 - (a) for the period before the transfer or issue that the original parent was treated as holding the interest; and
 - (b) for the purposes of applying the continuity provisions from the date of the transfer or issue; and
 - (c) to the extent that, immediately after the transfer or issue, there is a group of persons who hold common interests in the original parent and the spun-out company, calculated on the assumption that the only voting interests and market value interests in those companies are those treated as being held by those companies under section OD 11(3).

Meaning of relevant period

- (3) In subsection (1)(f), **relevant period** means—
 - (a) in relation to the offset of a loss under Part I (Treatment of net losses), the period from the date of the transfer or issue until the last day of the period in which the loss is offset;
 - (b) in relation to a credit subject to a continuity provision, the period from the date of the transfer or issue until the date the credit is cancelled by a subsequent debit.

Meaning of common interest

- (4) In subsection (2)(c), **common interest** means—
 - (a) if a market value circumstance does not exist for the original parent or the spun-out company, the common voting interest described in subsection (5);
 - (b) if a market value circumstance exists for the original parent but not the spun-out company, the lower of—
 - (i) the common voting interest described in subsection (5); and

- (ii) the market value interest in the original parent:
- (c) if a market value circumstance exists for the spun-out company but not the original parent, the lower of—
 - (i) the common voting interest described in subsection (5); and
 - (ii) the market value interest in the spun-out company:
- (d) if a market value circumstance exists for the original parent and the spun-out company, the lower of the common voting interest described in subsection (5) and the common market value interest described in subsection (6).

Meaning of common voting interest

- (5) In subsection (4), **common voting interest**, for a person in relation to the original parent and the spun-out company, means—
 - (a) the percentage voting interest of the person in each company, if the percentages are the same:
 - (b) the lower of the percentage voting interests of the person in the companies, if the percentages differ.

Meaning of common market value interest

- (6) In subsection (4), **common market value interest**, for a person in relation to the original parent and the spun-out company, means—
 - (a) the percentage market value interest of the person in each company, if the percentages are the same:
 - (b) the lower of the percentage market value interests of the person in the companies, if the percentages differ.

Common interests: look-through rules partially overridden

- (7) For the purposes of measuring common interests, neither section OC 21 (Transparency of nominees) nor section OD 4 apply to treat a nominee's or company's voting interest or market value interest in the original parent or the spun-out company to be held by another person, if the interest the other person would be treated as holding would be less than 10%.

Defined in this Act: common interest, common market value interest, common voting interest, company, continuity provision, group of persons, market value circumstance, market value interest, share, shareholder, voting interest

Origin:	(1)	OD 5(6A)
	(2)	OD 5(6B)
	(3)	OD 5(6C)
	(4)	OD 5(6D)
	(5)	OD 5(6E)
	(6)	OD 5(6E)
	(7)	OD 5(6F)

OD 14 Disregarding concessionary rules

When this section applies

- (1) As the provisions of sections OD 10 to OD 13 are intended to have concessionary effect, subsection (2) applies if—
- (a) at a time, for a company and a continuity provision, the requirements of the provision are not satisfied; but
 - (b) the requirements would have been satisfied but for sections OD 10 to OD 13 applying to any particular extent.

Continuity provision treated as satisfied

- (2) The requirements of that continuity provision are treated as satisfied at that time.

Defined in this Act: company, continuity provision

Origin: (1) OD 5(7)
(2) OD 5(7)

OD 15 Directors' knowledge of failure to satisfy continuity provision

When this section applies

- (1) This section applies if—
- (a) for a company at a time, the requirements of a continuity provision would not have been satisfied but for the application of section OD 10, section OD 11, or both; and
 - (b) the failure, but for that concessionary application, to meet the requirements was not due only to—
 - (i) the sale of shares in a company in the ordinary course of trading on a recognised exchange between less than 10% holders:
 - (ii) the cancellation of shares in a unit trust, that falls within paragraph (a), (b), or (c) of the definition of “widely-held trust”, held by less than 10% holders:
 - (iii) the cancellation of shares in a unit trust, that falls within paragraph (a), (b), or (c) of the definition of “widely-held trust”, which were acquired from less than 10% holders by the manager or trustee of the unit trust in the ordinary course of their activities in relation to the unit trust; and
 - (c) the directors of the company know or could reasonably be expected to know, without making enquiries specifically for the purposes of applying the continuity provisions, that the requirements of the continuity provision would not have been satisfied but for that concessionary application.

Continuity provision treated as not satisfied

- (2) The requirements of the continuity provision are treated as not satisfied at the time.

Meaning of less than 10% holder

- (3) In this section, **less than 10% holder** means a person whose direct voting interest or direct market value interest is at all relevant times one to which section OD 10 applies.

Defined in this Act: company, continuity provision, director, recognised exchange, share, trustee, unit trust, widely-held trust,

Origin: (1) OD 5(8)
(2) OD 5(8)
(3) OD 5(8)

OD 16 Disregarding market value changes

When this section applies

- (1) This section applies if—
- (a) for a company at a time, the requirements of a continuity provision are not satisfied; and
 - (b) the requirements would have been satisfied but for a change in the market value interest of 1 or more persons; and
 - (c) the change is solely attributable to—
 - (i) a change in the market value of the tangible and intangible assets of the company;
 - (ii) a change in the market value of any 1 or more shares in the company that is not attributable to any change in the terms of those shares;
 - (iii) a combination of those factors.

Continuity provision treated as satisfied

- (2) The requirements of that continuity provision are treated as being satisfied at the time.

Defined in this Act: company, continuity provision, market value interest, market value, share

Origin: (1) OD 5(9)
(2) OD 5(9)

OD 17 Demutualisation of insurers

When this section applies

- (1) This section applies if an insurer ceases to be a special corporate entity as a result of demutualisation.

Former member acquiring voting or market value interest

- (2) Subsection (3) applies if—
- (a) a person acquires a voting interest or a market value interest in an insurer on the demutualisation of the insurer; and
 - (b) immediately before the demutualisation, the person was a member of the insurer; and
 - (c) the interest is acquired solely as a result of that membership.

Person treated as holding interest while insurer was special corporate entity

- (3) With effect from the date of the acquisition but subject to section OD 10, the person is treated as having held the voting interest or market value interest at all times during the period in which the insurer was a special corporate entity.

Trustee for former member acquiring voting or market value interest in life insurer

- (4) Subsection (5) applies if—
- (a) a person acquires a voting interest or a market value interest in a life insurer on the demutualisation of the life insurer; and
 - (b) the person is the trustee of a trust for the benefit of persons who were members of the life insurer immediately before the demutualisation; and
 - (c) the trust was established before the demutualisation process—
 - (i) as an interim holding vehicle pending distribution to the members of all shares held by the trust;
 - (ii) to exercise voting rights on behalf of the members in relation to any holding company establishing before the demutualisation process which holds all the shares in the life insurer; and
 - (d) the Commissioner is satisfied, and has notified the trustee accordingly, that the trust falls within paragraphs (b) and (c).

Trustee treated as holding interest while life insurer was special corporate entity

- (5) With effect from the date of the acquisition, the trustee is treated as having held the voting interest or market value interest at all times during the period in which the life insurer was a special corporate entity.

Application of section OD 10 to interests of former members

- (6) Subsection (7) applies if—
- (a) subsection (5) applies; and
 - (b) the notional single person referred to in section OD 10 acquires a voting interest or market value interest in the life insurer on—
 - (i) the distribution by the trustee of the shares from the trust;
 - (ii) the issue of shares by the holding company;
 - (c) the person referred to in section OD 10(1) whose direct voting interest or direct market value interest is treated under section OD 10 as being that of

the notional single person resulting in the notional single person's interest in the life insurer—

- (i) was a member of the life insurer immediately before the demutualisation, or is a trustee of a trust for such members; and
- (ii) acquired the direct voting interest or direct market value interest as a result of the membership.

Notional single person treated as holding interest while life insurer was special corporate entity

- (7) With effect from the date of the acquisition, the notional single person is treated as having existed and having held the voting interest or market value interest at all times during—
 - (a) the period in which the life insurer was a special corporate entity; and
 - (b) the period of the trust before the acquisition by the notional single person.

Community trust acquires voting or market value interest

- (8) Subsection (9) applies if—
 - (a) a person acquires a voting interest or a market value interest in an insurer on and solely as a result of the demutualisation of the insurer; and
 - (b) the person is the trustee of a community trust for the benefit of a community (or part of a community) which community (or part) generally includes persons who were members of the insurer immediately before the demutualisation; and
 - (c) the Commissioner is satisfied, and has notified the trustee accordingly, that the trust falls within paragraph (b).

Trustee treated as holding interest while insurer was special corporate entity

- (9) With effect from the date of the acquisition, the trustee is treated as having held the voting interest or market value interest at all times during the period in which the insurer was a special corporate entity.

Net losses of years before 1992-93

- (10) Subsection (11) applies if—
 - (a) an insurer undergoes demutualisation; and
 - (b) the insurer (or another member of the same group of companies) (**loss company**) had a net loss in a tax year before the 1992-93 tax year; and
 - (c) the loss company carried the loss forward to the 1992-93 tax year under the Income Tax Act 1976; and
 - (d) the loss has not been offset against net income for any period before demutualisation.

Net loss treated as being for 1992-93 tax year

- (11) Despite section IF 1(6), for the purposes of Part I, with effect from the date on which the insurer ceases to be a special corporate entity on the demutualisation,

the loss is treated as having arisen on the first day of the loss company's 1992-93 tax year and not to have arisen in the earlier tax year.

Credit account credits that arose before 1 April 2002

- (12) Subsection (13) applies if—
- (a) an insurer undergoes demutualisation; and
 - (b) the insurer (or another member of the same group of companies) has, at the time of the commencement of the process of demutualisation, a credit that arose before 1 April 1992 in—
 - (i) its imputation credit account:
 - (ii) its dividend withholding payment account:
 - (iii) its branch equivalent tax account.

Credit treated as arising on 1 April 1992

- (13) Despite sections ME 5(4)(e), MF 4(6)(f), and MG 5(4)(e) (which relate to debits arising to certain accounts), for the purposes of Part M (Tax payments), with effect from the date on which the insurer ceases to be a special corporate entity on the demutualisation, the credit is treated as having first arisen in the account on 1 April 1992 and not when it actually arose.

Defined in this Act: branch equivalent tax account, community trust, company, direct market value interest, direct voting interest, dividend withholding payment account, imputation credit account, insurer, life insurer, market value interest, net income, net loss, share, special corporate entity, tax year, trustee, voting interest,

Origin:	(1)	OD 5A(1)
	(2)	OD 5A(2)
	(3)	OD 5A(2)
	(4)	OD 5A(3)
	(5)	OD 5A(3)
	(6)	OD 5A(4)
	(7)	OD 5A(4)
	(8)	OD 5A(5)
	(9)	OD 5A(5)
	(10)	OD 5A(6)
	(11)	OD 5A(6)
	(12)	OD 5A(7)
	(13)	OD 5A(7)

OD 18 Legislative conversion of foreign company of proprietors

When this section applies

- (1) This section applies if—
- (a) a company of proprietors is established by a statute of a legislature outside New Zealand; and
 - (b) the company of proprietors becomes a limited liability company as a result of another statute.

Proprietor acquires voting or market value interest

- (2) Subsection (3) applies if—
- (a) a person acquires a voting interest or a market value interest in a company on the conversion of a company of proprietors; and
 - (b) immediately before the conversion, the person was a proprietor of the company of proprietors and the person acquired the interest solely as a result of being a proprietor.

Treated as always having held interest

- (3) With effect from the date of acquisition but subject to section OD 10,—
- (a) the company of proprietors is treated as having been a company with shareholders at all times before the conversion; and
 - (b) the person is treated as having held the voting interest or market value interest at all times before the conversion.

Defined in this Act: company, market value interest, New Zealand, voting interest, shareholder

Origin: (1) OD 5B(1)
(2) OD 5B(2)
(3) OD 5B(3)

OD 19 Credit account continuity provisions: excluded fixed return securities

When this section applies

- (1) This section applies for the purposes of the credit account continuity provisions.

Excluded fixed return securities counted

- (2) Section OD 6 applies as if—
- (a) section OD 6(1)(a) were omitted; and
 - (b) each other reference to “excluded fixed rate security” were omitted.

Relationship with section OA 1

- (3) Section OA 1 (Definitions) applies as if—
- (a) paragraph (e) of the definition of “excluded option” were omitted; and
 - (b) in paragraphs (a), (b), and (f) of the definition of **market value circumstance**, the words “an excluded fixed return security” were replaced by “a”.

Defined in this Act: continuity provisions, credit account, excluded fixed return security

Origin: (1) OD 6
(2) OD 6(c)
(3) OD 6(a), (b)

Subpart OE—Residence and source in New Zealand

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Residence

OE 1 Residence of non-corporate persons

What this section does

- (1) This section contains the rules for determining when a person who is not a company is a New Zealand resident for the purposes of this Act.

Permanent home in New Zealand

- (2) Despite anything else in this section, a person is a New Zealand resident if they have a permanent home in New Zealand, even if they also have a permanent home elsewhere.

183 days in New Zealand

- (3) A person is a New Zealand resident if they are personally present in New Zealand for more than 183 days in total in a 12-month period.

Treated as resident from first of 183 days

- (4) If subsection (3) applies, the person is treated as resident from the first of the 183 days until the person is treated under subsection (5) as ceasing to be a New Zealand resident.

Ceasing residence: 325 days outside New Zealand

- (5) A person treated as a New Zealand resident only under subsection (3) ceases to be a New Zealand resident if they are personally absent from New Zealand for more than 325 days in total in a 12-month period.

Treated as non-resident from first of 325 days

- (6) The person is treated as not being resident from the first of the 325 days until they are treated again as being resident under this section.

Government servants

- (7) Despite subsection (5), a person who is personally absent from New Zealand in the service, in any capacity, of the New Zealand Government is treated as being a New Zealand resident during the absence.

Presence for part days

- (8) For the purposes of this section, a person personally present in New Zealand for part of a day is treated as—
- (a) being present in New Zealand for the whole day; and
 - (b) not being absent from New Zealand for any part of the day.

Defined in this Act: company, New Zealand resident

Origin: (1) OE 1
(2) OE 1(1)

- (3) OE 1(2)
- (4) OE 1(2)
- (5) OE 1(3)
- (6) OE 1(3)
- (7) OE 1(5)
- (8) OE 1(4)

OE 2 Residence of companies

Four bases for residence

- (1) A company is a New Zealand resident for the purposes of this Act if—
- (a) it is incorporated in New Zealand:
 - (b) its head office is in New Zealand:
 - (c) its centre of management is in New Zealand:
 - (d) its directors, in their capacity as directors, exercise control of the company in New Zealand, even if the directors’ decision-making also occurs outside New Zealand.

Cook Islands National Superannuation Fund trustee

- (2) Despite subsection (1), the trustee of the Cook Islands National Superannuation Fund, established by the Cook Islands National Superannuation Fund Deed under the Cook Islands National Superannuation Scheme Act 2000 (Cook Islands), is not a New Zealand resident.

Defined in this Act: company, director, New Zealand resident

- Origin: (1) OE 2(1)
(2) OE 2(1B)

OE 3 Country of residence of foreign companies

When this section applies

- (1) This section applies for the purposes of the international tax rules to determine the country in which a foreign company is treated as resident for an accounting period.

Liability to income tax in country

- (2) The company is treated as resident in a country if, at any time during the accounting period, it is liable to income tax in the country because any of the following is located in the country—
- (a) its domicile:
 - (b) its residence:
 - (c) its place of management:
 - (d) any other criterion of a similar nature.

Further rule if not resolved

- (3) Subsection (4) applies if the application of subsection (2) for an accounting period means that—
- (a) the company is resident in 2 or more countries:
 - (b) the company is not resident in any country.

Applying New Zealand rules

- (4) The company is treated as resident in the country in which—
- (a) it is incorporated:
 - (b) it has its head office:
 - (c) it has its centre of management:
 - (d) its directors, in their capacity as directors, exercise control of the company, even if the directors' decision-making also occurs outside the country.

Further rule if still not resolved

- (5) The company is treated as resident in the country in which its centre of management is located for the accounting period if no 1 country of residence is identified under subsection (4).

Final rule if still not resolved

- (6) The Commissioner must determine the country of residence if no 1 country of residence is identified under subsection (5).

Defined in this Act: accounting period, Commissioner, company, director, foreign company, international tax rules

Origin:	(1)	OE 2
	(2)	OE 2(2)
	(3)	OE 2(4)
	(4)	OE 2(4)
	(5)	OE 2(5)
	(6)	OE 2(6)

Source

OE 4 Classes of income treated as having New Zealand source

What this section does

- (1) This section lists the types of income that are treated as having a source in New Zealand for the purposes of this Act.

Business in New Zealand

- (2) Income derived from a business has a source in New Zealand if—
- (a) the business is wholly carried on in New Zealand;
 - (b) the business is partly carried on in New Zealand, to the extent to which the income is apportioned to a New Zealand source under section OE 5.

Contracts made or performed in New Zealand

- (3) Income derived by a person from a contract has a source in New Zealand if the contract is—
- (a) made in New Zealand, except to the extent to which the person wholly or partly performs the contract outside New Zealand, and the income is apportioned to a source outside New Zealand under section OE 5;
 - (b) made outside New Zealand but the person wholly or partly performs the contract here, to the extent to which the income is apportioned to a New Zealand source under section OE 5.

Personal services in New Zealand

- (4) An amount that is income under section CE 1 (Amounts derived in connection with employment) has a source in New Zealand if the amount is earned in New Zealand, even if the employer is not a New Zealand resident.

Accident compensation payments

- (5) An accident compensation payment as defined in section CF 1(2) (Benefits, pensions, compensation, and government grants) has a source in New Zealand.

Pensions

- (6) The following amounts have a source in New Zealand:
- (a) a pension or annuity payable by the government of New Zealand;
 - (b) a pension or annuity payable out of a superannuation scheme established in New Zealand;
 - (c) a gratuitous payment, within the definition of **pension** in section CF 1(2), if the services are provided in New Zealand.

Income from land owned in New Zealand

- (7) Income derived by a person as the owner of land in New Zealand has a source in New Zealand.

Income from use in New Zealand of personal property

- (8) Income, other than a royalty, derived as consideration for the use of, or right to use, personal property in New Zealand has a source in New Zealand if the income is—
- (a) paid by a New Zealand resident:
 - (b) paid by a non-resident, and for which the non-resident is allowed a deduction.

Royalties

- (9) A royalty has a source in New Zealand if it is—
- (a) paid by a New Zealand resident and not made in connection with a business they carry on outside New Zealand through a fixed establishment outside New Zealand:
 - (b) paid by a non-resident, and for which the non-resident is allowed a deduction.

Dividends

- (10) Income derived from shares in, or membership of, a company resident in New Zealand has a source in New Zealand.

Income from debt instruments

- (11) The following amounts have a source in New Zealand—
- (a) interest or a redemption payment derived from money lent in New Zealand:
 - (b) interest or a redemption payment derived from money lent outside New Zealand—
 - (i) to a New Zealand resident, unless the money is used by them for the purposes of a business they carry on outside New Zealand through a fixed establishment outside New Zealand:
 - (ii) to a non-resident, if the money is used by them for the purposes of a business they carry on in New Zealand through a fixed establishment in New Zealand:
 - (c) income from securities issued by the government of New Zealand:
 - (d) income derived from debentures issued by a local authority or public authority:
 - (e) income derived from a mortgage of land in New Zealand.

Income from disposal of New Zealand property

- (12) Income derived from the disposal of property situated in New Zealand has a source in New Zealand.

Beneficiary income

- (13) Income derived by a beneficiary from a trust has a source in New Zealand to the extent to which the income of the trust fund has a source in New Zealand.

Income from air transport

- (14) Income derived from transporting people or property by air has a source in New Zealand if the transportation leaves from New Zealand.

Income from sea transport

- (15) Income derived from transporting people or property by sea has a source in New Zealand if the transportation leaves from New Zealand to the extent to which the income is apportioned to a New Zealand source under section OE 6.

Non-resident general insurers

- (16) A premium for general insurance paid to a non-resident general insurer of the type described in section OE 8 (Apportionment of premiums derived by non-resident general insurer) has a source in New Zealand to the extent set out in section OE 7.

Non-resident life insurers: policies in New Zealand

- (17) Income of a non-resident life insurer calculated under section EY 47 (Non-resident life insurer with life insurance policies in New Zealand) has a source in New Zealand.

Any other source in New Zealand

- (18) Income derived directly or indirectly from any other source in New Zealand has a source in New Zealand.

Defined in this Act: accident compensation payment, amount, business, company, debentures, deduction, dispose, employer, fixed establishment, general insurance, income, interest, life insurer, local authority, money lent, New Zealand, New Zealand resident, non-resident, pay, pension, public authority, redemption payment, royalty, share, source in New Zealand, superannuation scheme

Origin: OE 4(1)

OE 5 Apportionment of income derived partly in New Zealand

When this section applies

- (1) This section applies when—
- (a) a person carries on business partly in New Zealand and partly outside New Zealand; or
 - (b) a contract is made in New Zealand and is performed, in whole or in part, by a person outside New Zealand; or
 - (c) a contract is made outside New Zealand and is performed, in whole or in part, by a person in New Zealand.

Apportionment

- (2) The amount of income derived from the business or under the contract, and the amount of expenditure incurred in deriving the income, must be apportioned between New Zealand and sources outside New Zealand to the extent necessary to achieve the result in subsection (3).

Necessary effect of apportionment

- (3) The result of the apportionment must be that the person's net income or net loss, in relation to the business or contract, is the same as a separate and independent person would have if they were carrying out only the person's activities in New Zealand and dealing at arm's length.

Defined in this Act: amount, business, gross, income, New Zealand

Origin: (1) FB 2(1)
(2) FB 2(1)
(3) FB 2(1)

OE 6 Apportionment of income from sea transport

When this section applies

- (1) This section applies when a non-resident derives an amount of income from transporting people or property by sea from New Zealand to a destination outside New Zealand.

Five percent from source in New Zealand

- (2) Five percent of the amount is treated as having a source in New Zealand and the remainder of the amount is treated as not having a source in New Zealand.

Reduction by Commissioner

- (3) Despite subsection (2), the Commissioner may reduce the amount that is treated as having a source in New Zealand to the extent to which the country in which the non-resident is resident would treat an amount derived by a New Zealand resident from sea transport from that country as—
- (a) not having a source in that country:
 - (b) otherwise as exempt from income tax in that country.

No deduction

- (4) The non-resident is denied a deduction under section DW 3 (Non-resident general insurers, shippers, and film renters) for expenditure or loss incurred.

Intervening stop in New Zealand

- (5) The transport of people or property from a port in New Zealand is treated as being to a place outside New Zealand even if the ship calls at another New Zealand port before leaving New Zealand.

Defined in this Act: amount, Commissioner, income, income tax, New Zealand resident, non-resident

- Origin: (1) FC 18(1)
(2) FC 18(2)
(3) FC 19
(4) new
(5) FC 18(1)

OE 7 Apportionment of film rental income

When this section applies

- (1) This section applies if a non-resident person derives an amount that would be treated as having a source in New Zealand under section OE 4 from 1 or more of the following activities:
- (a) renting, exhibiting, or issuing a film or making other arrangements for its exhibition:
 - (b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film:
 - (c) selling or hiring advertising materials relating to a film.

Income and exempt income

- (2) Despite section OE 4, 10% of the amount is treated as having a source in New Zealand and the remainder of the amount is treated as not having a source in New Zealand.

No deduction

- (3) The non-resident is denied a deduction under section DW 3 (Non-resident general insurers, shippers, and film renters) for expenditure or loss incurred.

Insignificant proportion

- (4) This section does not apply to a non-resident person if the amounts derived by them for the activities are an insignificant proportion of the total amounts derived by them from a business carried on in New Zealand or elsewhere.

Defined in this Act: amount, arrangement, business, exempt income, film, income, New Zealand, non-resident, source in New Zealand

- Origin: (1) FC 21(1)
(2) FC 21(1), (2)
(3) new
(4) FC 21(4)

OE 8 Apportionment of premiums derived by non-resident general insurers

When this section applies

- (1) This section applies if—

- (a) a premium is paid under a contract of insurance; and
- (b) the insurance is of 1 of the types listed in subsection (4); and
- (c) when the insurer derives the premium, they are a non-resident; and
- (d) the premium is not attributable to a business of the insurer which they carry on in New Zealand through a fixed establishment in New Zealand; and
- (e) the premium is treated as connected with New Zealand under any of the tests of connection in subsection (5); and
- (f) subsection (6) does not apply to override subsection (5).

Ten percent of premium from source in New Zealand

- (2) Ten percent of the gross premium is treated as having a source in New Zealand and the remainder of the gross premium is treated as not having a source in New Zealand.

Special rules applying

- (3) The following provisions apply in relation to taxation of the 10%:
 - (a) the insurer is denied a deduction for expenditure or loss incurred, under section DW 3 (Non-resident general insurers, shippers, and film renters):
 - (b) sections HK 27 (Non-resident general insurers) and HK 28 (Agent paying premiums to residents of Switzerland and the Netherlands) apply to impose certain obligations with respect to payment of income tax and provision of tax returns and other information.

Kinds of insurance

- (4) The kinds of insurance referred to in subsection (1)(b) are—
 - (a) general insurance:
 - (b) a guarantee against risk given by an insurer to an insured person if—
 - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
 - (ii) the insured person is associated with the insurer:
 - (c) a guarantee against risk given by an insurer to an insured person if—
 - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
 - (ii) the risk arises from money lent to the insured person; and
 - (iii) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and
 - (iv) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee.

Connection with New Zealand

- (5) The premium is connected with New Zealand if—
- (a) the insurance contract from which the premium is derived is offered or entered into in New Zealand;
 - (b) the insured person is resident in New Zealand;
 - (c) the insured person is a non-resident but enters into the insurance contract for the purposes of a business they carry on in New Zealand through a fixed establishment in New Zealand.

No connection if all risk offshore

- (6) Despite subsection (5), the premium is treated as not being connected with New Zealand if—
- (a) all risk covered by the premium is located outside New Zealand; and
 - (b) the insurer deriving the premium is not associated with the insured person.

Defined in this Act: business, fixed establishment, general insurance, insurance, insurance contract, insured person, insurer, source in New Zealand

Origin:	(1)	FC 13(1), (5), (6)
	(2)	FC 14
	(3)	new
	(4)	FC 13(2), (3), (4)
	(5)	FC 13(7)
	(6)	FC 13(8)

Conduit tax relief companies: special residence rules

OE 9 Residence of conduit tax relief company shareholders

When these sections apply

- (1) The rules in this section and sections OE 10 and OE 11 apply only for the purposes of applying the conduit tax relief provisions in sections KH 2, LG 1(1) and (4), MG 6(2), MI 5(1)(e) and (4), MI 7(1), MZ 4(1), NH 7, OE 10(3) and OE 11(4).

Associated CFC or non-qualifying trust treated as resident

- (2) A non-resident is treated as resident in New Zealand if the non-resident is—
- (a) associated with the conduit tax relief company; and
 - (b) a CFC or the trustee of a non-qualifying trust.

Conduit tax relief holding companies and group members treated as non-resident

- (3) A company resident in New Zealand holding shares in a conduit tax relief company is treated as not resident in New Zealand if it is—
- (a) a conduit tax relief holding company for the conduit tax relief company; or
 - (b) a conduit tax relief group member for the conduit tax relief company, but only to the extent described in subsection (4).

Limitation to treatment of group member as non-resident

- (4) A conduit tax relief group member is treated as not resident in New Zealand for the percentage of its direct voting interest, direct market value interest, and entitlement to derive dividends that is equal to the total percentage of direct voting interests, or direct market value interests if market value circumstances exist, referred to in section OE 11(4).

Defined in this Act: associated person, CFC, company, conduit tax relief company, conduit tax relief group member, conduit tax relief holding company, direct market value interest, direct voting interest, dividend, market value circumstance, non-qualifying trust, non-resident, resident in New Zealand, share, trustee

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

OE 10 Meaning of conduit tax relief holding company

What is a conduit tax relief holding company?

- (1) A company is a **conduit tax relief holding company**, in relation to a conduit tax relief company in which it holds shares, if the requirements in subsections (2) to (5) are each met.

Conduit tax relief company

- (2) The company must itself be a conduit tax relief company.

Direct ownership by single non-resident

- (3) A single person not resident in New Zealand must have—
- (a) 100% of the direct voting interests in the conduit tax relief holding company; and
 - (b) 100% of the direct market value interests in the conduit tax relief holding company, if a direct market value circumstance exists at the relevant time for the conduit tax relief holding company.

Owning 10% or more of conduit tax relief company

- (4) The company must itself have—

- (a) a 10% or greater direct voting interest in the conduit tax relief company;
and
- (b) a 10% or greater direct market value interest in the conduit tax relief company, if a direct market value circumstance exists at the relevant time for the conduit tax relief company.

Notice to conduit tax relief company

- (5) The company must have previously given, and have not revoked, a notice to the conduit tax relief company that it is to be a conduit tax relief holding company for the conduit tax relief company.

Nominal shareholding

- (6) In the application of subsection (3), a nominal shareholding held by a person solely to comply with company law requirements is disregarded.

CFC or non-qualifying trust

- (7) Despite subsection (3), a company is not a conduit tax relief holding company if the single person is a CFC or the trustee of a non-qualifying trust.

Defined in this Act: CFC, company, conduit tax relief company, conduit tax relief holding company, direct market value circumstance, direct market value interest, direct voting interest, non-qualifying trust, resident in New Zealand, share, trustee

Origin:	(1)	OE 7(1)
	(2)	OE 7(1)(a)
	(3)	OE 7(1)(b)
	(4)	OE 7(1)(c)
	(5)	OE 7(1)(d)
	(6)	OE 7(1)(b)
	(7)	OE 7(2)

OE 11 Meaning of conduit tax relief group member

What is a conduit tax relief group member

- (1) A company resident in New Zealand is a **conduit tax relief group member**, in relation to a conduit tax relief company in which it holds shares, if the requirements in subsections (2) to (4) are each met.

Conduit tax relief company

- (2) The company must itself be a conduit tax relief company.

Direct ownership of conduit tax relief company

- (3) The company must have, in the conduit tax relief company,—
 - (a) a 100% direct voting interest; and
 - (b) a 100% direct market value interest, if a market value circumstance exists at the time for the conduit tax relief company.

Direct or indirect interest in group member

- (4) One or more non-residents have a direct voting interest, or a direct market value interest if a market value circumstance exists at the time for the group member, in—
- (a) the conduit tax relief group member;
 - (b) another member of the same wholly-owned group of companies that—
 - (i) is resident in New Zealand; and
 - (ii) has a 100% voting interest and, if such a market value circumstance exists, a 100% market value interest, in the conduit tax relief company.

Nominal shareholding

- (5) For the purposes of subsections (3) and (4), a nominal shareholding held by a person solely to comply with company law requirements is disregarded.

No application of look-through rules

- (6) In the application of subsection (4)(b), the look-through rules in sections OD 3(3)(d) and OD 4(3)(d) do not apply to treat the other member's interests as being held by others.

Associated CFC or non-qualifying trust treated as resident

- (7) For the purposes of subsection (4), a non-resident is treated as resident in New Zealand if the non-resident is—
- (a) associated with the company or the conduit tax relief company; and
 - (b) a CFC or the trustee of a non-qualifying trust.

Defined in this Act: associated person, CFC, company, conduit tax relief company, conduit tax relief group member, direct market value interest, direct voting interest, market value circumstance, non-qualifying trust, non-resident, resident in New Zealand, share, trustee

Origin:	(1)	OE 7(3)
	(2)	OE 7(3)(a)
	(3)	OE 7(3)(b)
	(4)	OE 7(3)(c)
	(5)	OE 7(4)
	(6)	OE 7(3)(c)
	(7)	OE 7(5)

Subpart OF—References to balance dates and years

OF 1 References to balance dates and years

When this section applies

- (1) This section applies for the purposes of the Act unless the context requires otherwise.

Tax year identified by 2 years

- (2) A reference to a tax year that is identified by a reference, in full or short form, to 2 years is a reference to the tax year that—
- (a) starts on 1 April in the earlier of those years; and
 - (b) ends on 31 March in the later of those years.

Income year identified by 2 years

- (3) A reference to an income year that is identified by a reference (in full or short form) to 2 years is a reference to the corresponding income year for the tax year that a reference to the same 2 years would identify.

Standard balance date or accounting years

- (4) A reference to a person with a standard balance date, a standard accounting year or a standard income year is a reference to a person who furnishes a return of income under section 33 of the Tax Administration Act 1994 for a tax year on the basis of a corresponding income year also ending on 31 March.

Non-standard balance date, accounting year or income year

- (5) A reference to a person with a non-standard balance date, non-standard accounting year or non-standard income year is a reference to a person who has approval under section 38 of the Tax Administration Act 1994 to furnish a return of income for a tax year on the basis of a corresponding income year ending other than 31 March. Unless the context requires otherwise, the non-standard year is the accounting year that corresponds to the tax year for which the reference is made.

Early balance date

- (6) A reference to a person with an early balance date is a reference to a person who has approval under section 38 of the Tax Administration Act 1994 to furnish a return of income for a tax year on the basis of a corresponding income year that ends in a date between 1 October and the following 31 March (both days inclusive). Unless the context requires otherwise, the year with the early balance date is the accounting year that corresponds with the tax year for which the reference is made.

Late balance date

- (7) A reference to a person with a late balance date is a reference to a person who has approval under section 38 of the Tax Administration Act 1994 to furnish a return of income for a tax year on the basis of a corresponding income year that ends in a date between 1 April and the following 30 September (both days inclusive). Unless the context otherwise requires, the year with the late balance date is the accounting year that corresponds with the tax year in relation to which the reference is made.

Defined in this Act: accounting year, corresponding income year, income year, late balance date, non-standard accounting year, non-standard balance date, non-standard income year, return of income, standard accounting year, standard balance date, standard income year

Origin:	(1)	new
	(2)	OF 1(1), (1B)
	(3)	OF 1(1A), (1B)
	(4)	OF 1(2)(a)
	(5)	OF 1(2)(b)
	(6)	OF 1(2)(c)
	(7)	OF 1(2)(d)

Subpart OZ—Terminating provisions

OZ 1 Source rule for interest

Applicable from 29 July 1983

- (1) Section OE 4(11)(a) and (b) (Classes of income treated as having New Zealand source) applies to—
- (a) interest derived from money lent under a binding contract entered into on or after 29 July 1983;
 - (b) a redemption payment made on a commercial bill if—
 - (i) it was issued on or after 29 July 1983; and
 - (ii) it was not issued under a binding contract entered into before that date.

Meaning of issue

- (2) In this section, **issue** has the meaning given in section 2 of the Bills of Exchange Act 1908.

Defined in this Act: commercial bill, interest, money lent, redemption payment

Origin: (1) OE 4(1A)
 (2) OE 4(1A)

Provisions in other Parts of the Act

CV 5 Statutory producer boards

A levy received by a statutory producer board, other than a levy charged specifically for capital development, is income.

Defined in this Act: income, levy, statutory producer board

Origin: OC 3(c)

FC 22 Airport operators: general

When this section applies

- (1) This section and sections FC 23 and FC 24 apply to determine for this Act certain aspects of the treatment of an airport operator that is a joint venture between the Crown and a local authority.

Company

- (2) The airport operator is treated as a company.

Shares in company

- (3) Each joint venturer is treated as holding shares in the company in proportion to their share of the profits of the joint venture, as determined under the joint venture agreement (after allowing for adjustments for earlier income years).

Separate from joint ventures

- (4) The airport operator is treated as a person separate from—
 - (a) the Crown; and
 - (b) each airport authority; and
 - (c) each other person.

Neither public nor local authority

- (5) The airport operator is treated as neither a public authority nor a local authority.

Not subject to mutual association rules

- (6) The airport operator is treated as not a mutual association for the purposes of section HF 1 (Profit of mutual associations in respect of transactions with members).

Interest-bearing funding

- (7) Subsection (8) applies to the extent to which—

- (a) a joint venturer provides funds for the airport operator’s activities; and
- (b) the joint venturers expressly agree that the funds are to be provided for the airport operator’s activities; and
- (c) the funds are provided for consideration in the nature of interest payable by the airport operator.

Funding

- (8) The funds are treated as money borrowed by the airport operator and the consideration is treated as interest.

Defined in this Act: airport operator, airport operator’s activities, company, interest, local authority, public authority, share

Origin:	(1)	OC 1
	(2)	OC 1(2)(a)
	(3)	OC 1(2)(b)
	(4)	OC 1(2)(e)
	(5)	OC 1(2)(f)
	(6)	OC 1(2)(g)
	(7)	OC 1(2)(c)
	(8)	OC 1 (2)(h)

FC 23 Airport operator’s assets

Ownership of airport assets

- (1) An airport operator is treated as owning each of its airport assets.

Time of acquisition

- (2) An airport operator is treated as having acquired an asset at the time—
 - (a) it acquired it other than by way of purchase:
 - (b) it agreed to use it:
 - (c) it started to have the power to use it.

Cost of acquisition

- (3) An airport operator is treated as having incurred, in acquiring an asset, its market value at the time of acquisition.

Ceasing to be airport asset

- (4) If an asset ceases to be an airport asset of the airport operator, other than on sale, the airport operator is treated as having sold it, at the time, for a price equal to its market value at the time.

Disputes concerning value or timing

- (5) Subsection (6) applies if a question arises concerning—
 - (a) the market value of an asset:
 - (b) the cost of an airport asset:

- (c) the time at which an airport operator acquired, agreed to use, or started to have the power to use an asset.

Resolved by agreement or Commissioner

- (6) The question must be resolved by agreement between the airport operator and the Commissioner or, failing agreement, by the Commissioner.

Meaning of airport asset

- (7) In this section, for an airport operator, **airport asset** means—
 - (a) an asset that, under the joint venture agreement and for the purposes of the airport operator’s activities, the airport authority—
 - (i) acquires:
 - (ii) agrees to use:
 - (iii) is given the power to use:
 - (b) an asset owned by a person for the purposes of a depreciation sinking fund for an airport asset:
 - (c) an asset owned by a person for the purposes of a loan redemption sinking fund for a loan on which the interest payments are a charge against the joint venture income of the airport operator:
 - (d) an asset acquired by the airport operator using funds that are, or by exchanging property that is, acquired in carrying on the airport operator’s activities and not allocated or distributed to the joint venturers.

Exclusion

- (8) Subsection (7)(a) does not apply to an asset that—
 - (a) the airport operator has—
 - (i) disposed of:
 - (ii) ceased to agree to use:
 - (iii) ceased to have the power to use:
 - (b) the airport operator has acquired, agreed to use or acquired the power to use under a lease, unless the lease is a specified lease or a finance lease.

Defined in this Act: acquire, airport asset, airport operator, Commissioner, finance lease, interest, specified lease

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

FC 24 Meaning of airport operator's activities

Meaning of airport operator's activities

- (1) In sections FC 22 and FC 23, **airport operator's activities** means the following activities undertaken for the purposes of the airport operator's joint venture agreement concerning the airport, including the airport's approaches, buildings and equipment:
- (a) its establishment:
 - (b) its improvement:
 - (c) its maintenance:
 - (d) its operation:
 - (e) its management.

Meaning of airport

- (2) In this section, **airport** has the same meaning as in section 2 of the Airport Authorities Act 1966.

Defined in this Act: airport, airport operator, airport operator's activities

Origin: (1) OC 1(6)
(2) OC 1(6)

Amend the heading of **section HH 3F** to read “Definitions of associated person, guardian, minor, and relative”.

Insert a new section HH 3F(1A) before section HH EF(1), as follows—

- (1A) In sections HH 3C and HH 3D, the term **associated person** or **person associated** does not include a person associated only under sections OC 9 to OC 11 (which refer to relatives who are treated as being associated persons).

HH 3G Beneficiary income from trust with non-standard year

When this section applies

- (1) This section applies if—
- (a) A trustee is a person with a non-standard income year; and
 - (b) Any amount derived by that trustee in that income year is also beneficiary income.

Beneficiary treated as deriving income in same year as trustee

- (2) The beneficiary is treated as having derived the beneficiary income during the same tax year as that which corresponds to the trustee’s income year.

Defined in this Act: amount, beneficiary income, income year, non-standard income year, tax year, trustee

Origin: (1) OF 2(1)
(2) OF 2(1)

To be added to section IG 2

- (12) In this section, every reference to a year of offset, a preceding loss year, or a tax year of a company includes a reference to any non-standard accounting year of the company that corresponds with the year of offset, preceding loss year, or tax year

Origin: (12) OF 2(2)

Provisions in the Tax Administration Act 1994

225AA Regulations: co-operative dairy and marketing companies

- (1) The Governor-General may from time to time, by Order in Council, make regulations for the type of company described in subsection (2) for the purposes described in subsection (3).
- (2) The type of company to which this section applies is a company that—
 - (a) is 1 of the following:
 - (i) a co-operative dairy company:
 - (ii) a co-operative milk marketing company, as defined in section 2 of the Co-operative Companies Act 1956:
 - (iii) a co-operative pig marketing company, as defined in section 2 of the Co-operative Companies Act 1956; and
 - (b) is registered under Part 2 or Part 3 of the Co-operative Companies Act 1996; and
 - (c) was in existence at the start of the 1988-89 income year:
 - (d) was a company to which any of sections 201 to 203 of the Income Tax Act 1976, in force at the time, applied at the time.
- (3) The purposes for which the regulations can be made are—
 - (a) authorising the Commissioner to classify as income, other than as a dividend, of a shareholder of the company some or all of an amount paid to the shareholder on the surrender of a share in the company, or for a share on the liquidation of the company, that is more than the available subscribed capital per share, calculated under the slice rule, of the share:
 - (b) authorising the Commissioner to allocate the income to an income year or income years as the Commissioner thinks fit:
 - (c) conferring on the Commissioner a discretionary power necessary for the purposes of the regulations.
- (4) The regulations made may apply different rules in relation to different classes of companies.