

## TAXATION (REMEDIAL PROVISIONS) BILL

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### GENERAL POLICY STATEMENT

#### *Summary*

The purpose of this Bill is to effect a number of amendments to various tax acts. The nature of the changes is both substantive and remedial.

Part I amends the Income Tax Act 1994 in a number of areas.

#### *Taxation of unit trusts and group investment funds*

1. Where slice rule units are held by an investor they will often be in a class of their own. If all of a holding is redeemed there will be a pro rata redemption and the bright line tests could apply to treat the entire redemption proceeds as a taxable dividend. This is not the policy intention and, by amending section CF 3 (1), the slice rule units will be taken out of the ambit of the bright line tests.

#### *Fringe benefits*

2. (*Employee share loan benefits*) In order to reduce the extent to which fringe benefit tax (FBT) overtaxes particular benefits, some benefits are exempt from FBT. Where the exemption reflects the broad policy of the FBT regime, this achieves tax neutrality between cash and non cash remuneration of employees, and does not compromise the integrity of the FBT base, or raise concerns regarding compliance and administrative costs. The exemption of employee share loan benefits from FBT recognises that there have been problems in practice with the payment of FBT in this area.

(*Tax returns*) In practice FBT has been payable on assistance personally provided to employees with their tax affairs. As a result employees have not received the benefit of a deduction for these expenses. This is a particular issue with expatriate employees. The anomaly can be corrected by the proposed amendment.

(*Employer health care scheme contributions and life insurance premium payments*) The 1994 Act includes as fringe benefits employer contributions to a sick, accident or death benefit fund for the benefit of employees, employer-paid specified insurance premiums and employer contributions to an insurance fund of a friendly society for the benefit of employees. These contributions also come under the definition of "monetary remuneration". Under the Act, therefore, they are subject to double taxation. The proposed amendment corrects this anomaly.

*(Non-cash benefits)* Under existing legislation non-cash benefits received by persons who are shareholder employees can be dividends, fringe benefits or monetary remuneration. This has led to uncertainty in the correct application of the law. Certain non-cash benefits derived by shareholder employees in their capacity as shareholders are prima facie dividends unless they are subject to FBT, but, because of the deeming provisions in the FBT rules, these benefits are liable for FBT unless they are specifically excluded. Benefits which fall into the "benefit of any other kind" category are not subject to FBT to the extent they are "otherwise included in assessable income". A dividend conferred in a non-cash form would be in this category. The proposed amendment lets the employer company elect which of the two the benefit is to be. The election option also addresses the possibility of unequal treatment between shareholders where all shareholders receive a non-cash benefit, and some of them are also employees whose benefits are deemed to be employment related and therefore subject to FBT. The latter may be denied dividends to which imputation credits can be attached.

*(Benefit given to associated person)* Tax practitioners also raised concern that rules need to be provided where non-cash benefits are provided to persons who are associated with more than one type of shareholder, as often occurs in family companies. The proposed amendment deals with this.

*Deduction where one superannuation fund invests in another*

3. The current section does not allow for the deduction of expenditure of a member fund where the master trust does not have sufficient balance of assessable income in the year in which the expenditure is incurred. This is an anomaly which the proposed amendment is designed to correct by allowing the member fund to carry forward the expenditure for deduction by the master trust in a later income year.

*Depreciation—leasehold improvements and reservation of title*

4. It is necessary to own property in order to depreciate it. In two circumstances property which should be depreciable to a taxpayer is not owned by the taxpayer. First, when a lessee of land incurs expenditure in erecting fixtures on the land, in certain circumstances the fixtures are, under land law principles, owned by the lessor and not the lessee. Second, when a purchaser buys goods under a contract which reserves title in them to the vendor until the purchase price is paid but permits the purchaser to take possession of them before payment, the purchaser does not own the goods until payment is made. The amendments deem the property to be owned respectively by the lessee and purchaser.

*Election to treat short term trade credits as financial arrangements*

5. The proposed amendment is a compliance cost measure. Many taxpayers include income or expenditure from all trade credits in income for accounting purposes and the compliance costs of separating out short term trade credits are high. This amendment reflects a recommendation of the Valabh Committee on operational aspects of the accruals regime.

*International Tax Provisions*

6. A number of remedial amendments are being made to the international tax measures enacted by the Income Tax Act 1994 Amendment Act (No. 3) 1995. The remedial amendments relate to the new transfer pricing and thin capitalisation regimes, the extension of the foreign investor tax credit regime to foreign direct investors, and the reduction of the NRWT rate on fully imputed dividends from 30% to 15%. The amendments are to correct a number of deficiencies in the legislation and do not involve any significant change in policy.

Two other international tax-related amendments are being made. The first concerns the application of the foreign dividend withholding payment regime to former non-resident companies and ensures that the original policy intent of the regime is effected. The second amendment reduces the NRWT rate on dividends with full dividend withholding payment credits attached from 30% to 15%.

*Low income rebate*

7. Recipients of a veteran's pension cannot claim the low income rebate on their passive income (income from dividends, interest, rents, royalties or a trust). By contrast New Zealand superannuitants can. The reason for making passive income of New Zealand superannuitants eligible for the low income rebate is that a high proportion of their income is passive income. As this reason applies also to a veteran's pension, it is appropriate that it have the same eligibility for the low income rebate as New Zealand superannuitants.

*Set off of non-refundable overpaid tax*

8. The imputation and the dividend withholding payment rules do not allow the Commissioner to apply non-refundable overpaid tax toward tax liabilities for previous income years. Neither does the policyholder credit account regime. The proposed amendments rectify this by allowing the Commissioner to apply non-refundable overpaid tax toward tax liabilities for previous income years as well as future years.

Part 2 confirms the rates of income tax for the 1996-97 income year.

Part 3 of the proposed legislation amends the Income Tax Act 1976 to the extent it requires amendment in light of the proposed changes to the Income Tax Act 1994.

Part 4 amends the Tax Administration Act 1994.

*Records in various languages*

1. The Act does not make provision for records of gift-exempt bodies to be kept in languages other than English. The proposed amendment rectifies this by giving the Commissioner a discretion to authorise the keeping of such records in a language other than English.

*Removal of references to redundant administrative positions*

2. The references in the Act to District Commissioner, Deputy Commissioner and Regional Controller are redundant. These statutory positions no longer exist following the enactment of the State Sector Act 1988 which authorises the Chief Executive of a Government Department to appoint officers as necessary for the purposes of the Department.

Part 5 amends the Student Loan Scheme Act 1992.

*Special deduction rate*

The proposed amendment will allow the Commissioner, when requested by a borrower, to issue a special repayment deduction rate certificate for an amount in excess of the borrower's estimated repayment obligation for the income year.

Part 6 amends the Goods and Services Tax Amendment Act (No. 2) 1995.

*Double dipping and input tax credits for dwellings*

When the Minister of Revenue announced on 21 June 1995 that an amendment would be enacted to close a loophole that allowed double dipping, it was intended that registered persons who had committed themselves to a contract before the announcement, but who had been unable to make a claim

because the return for the period in which the claim arose was not furnished, were not disadvantaged by the retrospective nature of the amendment subsequently enacted in the Goods and Services Tax Amendment Act (No. 2) 1995. The wording of the amendment did not achieve the desired result, hence the need for the proposed amendment.

A similar amendment is proposed in relation to the amendment which the Minister of Revenue announced on 11 August 1995 to stop input tax deductions being claimed for dwellings that are used principally as private residences.

Part 7 amends the Goods and Services Tax Act 1985.

*District Commissioner*

1. The references in the Act to District Commissioner are obsolete for the reasons set out in Part 4.

*Officer of the Department*

2. A definition of "officer of the department" has been inserted into the Act. This is necessary since that term has replaced the term "District Commissioner".

*Subrogation*

The Act is unclear whether or not GST can be levied on subrogation payments. These are payments made by a third party to an insurer in respect of any liability owed by the third party to an insured party. The proposed amendment clarifies the situation by confirming that these payments are subject to GST and have been since the Goods and Services Tax Act 1985 came into force on 1 October 1986.

Part 8 makes consequential amendments to the Taxation (Core Provisions) Act 1996 so that it conforms with the changes made to the Income Tax Act 1994.

CLAUSE BY CLAUSE ANALYSIS

PART 1

AMENDMENTS TO INCOME TAX ACT 1994

This Part amends the Income Tax Act 1994.

*Taxation of unit trusts and group investment funds*

*Clause 3* corrects an anomaly in the legislation by amending section CF 3 (1)(b)(i)(D) and adding *subsubparagraph (E)*. The effect of these amendments is to remove the redemption of units subject to the slice rule from the operation of the pro rata bright line tests. The change is retrospective to 1 April 1996.

*Meaning of fringe benefit*

*Clause 4* adds the following exclusions to the definition of "fringe benefit". The first is in respect of loans whose sole purpose is to enable employees to acquire shares in their company employers under a scheme of acquisition of shares by employees and applies from the beginning of the taxpayer's FBT return period in which the Bill is given the Royal assent. The second is in respect of assistance with the preparation of tax returns given to employees if the cost of the assistance would have been deductible to the employees under section DJ 5 and applies from the date on which the Bill is given the Royal assent.

*Subclause 3* amends section CI 1 (o) to include sickness, accident and death benefit fund contributions and life insurance premium payments to the extent to which they are monetary remuneration.

*Benefit received by shareholder employee*

*Clause 5* inserts *section CI 2A*. Under this section an employer may elect to treat a benefit given to a shareholder who is also an employee of the employer as either a

fringe benefit or a dividend. In default of an election the benefit is deemed to be a fringe benefit.

*Deduction where one superannuation fund invests in another superannuation fund*

Clause 6 amends section DI 3 to allow the carry forward of expenditure incurred by a member fund for deduction by the master fund in a later income year. This clause is retrospective to 1 April 1995.

*Depreciation—leasehold improvements and reservation of title to goods*

Clause 7 adds new sections EG 1A and EG 1B. Lessees of land who have made improvements to the land and purchasers of goods in which the vendor has reserved title are deemed, in certain circumstances, to own the improvements or goods and are able to claim depreciation deductions in respect of them.

Clause 8 makes 2 amendments to section EG 19. Under new section EG 19 (9)(a)(vii) there is a disposal of an improvement to land made by a lessee on termination of a lease period. New section EG 19 (10A) provides that where goods in which title has been reserved by the vendor are repossessed, the goods are deemed, for the purposes of the depreciation recovery/loss on sale provisions, to have been disposed of by the purchaser for the amount outstanding under the contract for sale.

These clauses are retrospective to 1 April 1995.

*Election to treat short term trade credits as financial arrangements*

Clause 9 adds section EH 10. This permits a taxpayer to elect to treat certain short term trade credits as financial arrangements for the purpose of the qualified accruals rules, provided notice in writing is given to the Commissioner.

*Rules for determining taxpayer's New Zealand group*

Clause 10 makes a number of technical amendments to the rules set out in section FG 4 for determining the taxpayer's New Zealand group when applying the thin capitalisation regime inserted into the Act as Part FG in December 1995. The changes will take effect from the application date of the new thin capitalisation regime, being the start of the 1996-97 income year.

Subclause (1) clarifies the rules for determining the taxpayer's New Zealand parent, to correct certain technical deficiencies in the provision originally enacted.

Subclause (2) repeals subsection (11), as the option given to taxpayers by subsection (11) is no longer appropriate in the context of the clarified rules for determining the New Zealand parent.

Subclause (3) replaces the tests originally enacted for determining members of the taxpayer's New Zealand group, to clarify application of the tests and to ensure that the rules apply appropriately in unusual shareholding circumstances. Generally, the taxpayer's New Zealand parent (which may in some cases be the taxpayer) can choose whether the New Zealand group should be determined on the basis of a greater than 50% control relationship or, alternatively, a 66% or greater control relationship from the New Zealand parent. A new subsection (14c) is inserted to deal with circumstances where the taxpayer itself does not fall within the group of companies controlled by the New Zealand parent making the election, providing that the taxpayer's New Zealand group in this circumstance should include only those companies which have the requisite degree of control relationship traced to or from the taxpayer. A new subsection (14d) is inserted to enable consolidation of companies owned through different ownership chains, provided there is a single non-resident who has at least a 50% ownership interest in each chain.

Subclause (4) corrects a minor drafting error.

*Subclause (5)* repeals the existing subsection (18), which is unnecessary having regard to the content of the existing subsection (16).

*Mode of elections*

*Clause 11* amends cross references in section FG (10)(3) as a necessary consequence of the amendments being made to section FG 4.

*Benefit given to associated person of employee*

*Clause 12* amends section GC 15 by deeming a person to be an employee and subject to fringe benefit tax if that person is associated with at least 2 other people, one of whom is an employee, the other of whom is a shareholder of an employer when the employer is a company.

*Substitution of an arm's length amount*

*Clause 13* amends section GD 13 of the new transfer pricing rules introduced into the Act in December 1995, to correct certain errors. The amendments apply with effect from the start of the 1996-97 income year, being the original application date for the new transfer pricing regime.

*Subclause (1)* amends section GD 13 (4), which provides for the substitution of an arm's-length amount for an inadequate amount of consideration receivable by the taxpayer, to clarify that the adjustment has effect with regard to the obligation of the taxpayer to make a withholding under the dividend withholding payment regime, but not with effect to the obligation of the taxpayer to make a withholding or deduction in circumstances where the inadequate receipt gives rise to a dividend payable by the taxpayer.

*Subclause (2)* clarifies that the general rule that transfer pricing adjustments have no effect on the obligation of a taxpayer to make withholdings or deductions does not apply in circumstances where the withholding or deduction is required by the taxpayer by virtue of the dividend withholding payment regime.

*Definition of "specified exemption"*

*Clause 14* consequentially amends the definition of "specified exemption" for New Zealand superannuation surcharge purposes to reflect changes made as a result of the Social Welfare (Transitional Provisions) Amendment Act 1996, with retrospective effect from 1 April 1995.

*Low income rebate*

*Clauses 15, 16 and 17* amend section KC 1 (1)(a) to enable recipients of a veteran's pension to claim the low income rebate on passive income.

*Special rules for section LE 3 holding companies*

*Clause 18* corrects some errors in the substituted foreign investor tax credit regime in Part LE of the Act. The corrections apply from 12 December 1995, the original date of enactment of the substituted foreign investor tax credit regime.

*Set off of non-refundable overpaid tax*

*Clause 19* replaces section MD 2 (5)(a) and provides that, for imputation credit account companies, non-refundable excess tax can be credited in payment of any tax liability arising in income years commencing after 31 March 1988.

*Clause 20* replaces section MD 3 (4)(a) and provides that, for a policyholder credit account person, non-refundable excess tax can be credited in payment of any tax liability arising in income years commencing after 31 March 1990.

*Loss of shareholder continuity and imputation credit accounts*

*Clause 21* amends section ME 5, which relates to debits arising to the imputation credit account of a company in respect of refunds of tax arising as a

result of the foreign investor tax credit regime. The amendment applies with effect from 12 December 1995, the date upon which section ME 5 was amended to refer to refunds arising from the foreign investor tax credit regime. The amendment ensures that a refund of tax occurring after the date of a debit to the imputation credit account arising from a change of share ownership will cause a debit to the imputation credit account, in circumstances where the refund is attributable to the foreign investor tax credit regime, only if the supplementary dividend was paid after the change of ownership.

*Link between debits arising in DWP accounts of consolidating groups continuity rules*

Clause 22 amends a cross reference in section MG 15 (1)(d).

*Reduction of non-resident withholding tax*

Clause 23 amends section NG 2, which determines rates of non-resident withholding tax. The amendment ensures that dividends with full dividend withholding payment credits attached are subject to non-resident withholding tax at the rate of 15% rather than the higher rate of 30%. The amendment, which aligns the treatment of those dividends with the treatment of fully imputed dividends, takes effect from the date upon which the Bill receives the Royal assent.

*Resident withholding tax rates on fully imputed non-cash dividends*

Clause 24 amends section NG 9 to put beyond doubt that there is no deduction of non-resident withholding tax from non-cash dividends subject to a zero percent rate of non-resident withholding tax as a result of the amendments made to the non-resident withholding tax rules in December 1995. The amendment applies with effect from 12 December 1995.

*Application of foreign withholding payment dividend regime by former non-resident company*

Clause 25 amends section NH 1 of the Act, which determines the extent to which there is a liability to deduct foreign withholding payment amounts from dividends received by a New Zealand company. The amendment is made to clarify that, in circumstances where a company not previously resident in New Zealand has become resident in New Zealand, there is an obligation to make dividend withholding payments to the extent to which those dividends do not exceed the distributable reserves of the company at the time of change in residence. At present, the legislation provides that there is an obligation to make dividend withholding payments in any circumstances where the dividend is less than those distributable reserves.

*Set-off of non-refundable overpaid dividend withholding payment*

Clauses 26 and 27 replace sections NH 4 (2)(b) and NH 5 (5)(b) and allow a non-refundable excess dividend withholding payment to be credited in payment of a dividend withholding payment liability that arises in any imputation year in respect of ordinary companies and consolidated group companies respectively.

*Definitions*

Clause 28 makes a number of changes to section OB 1.

It introduces "employee share loan benefit" in conjunction with the changes in clause 4 and amends "excepted financial arrangement" which should be read with clause 9.

Part of the definition of "expenditure on account of an employee" has been replaced to reflect the changes made in the Income Tax 1994 Amendment Act (No. 2) 1995 when sections CB 12 and CB 13 were amalgamated and is retrospective to coincide with the application of that Act.

The definition of District Commissioner has been repealed because it is no longer used in the Act.

The definition of short term trade credit has been broadened to incorporate a supply of goods or services of a continuous nature such as electricity.

*Definition of "supplementary dividend"*

Clause 29 amends section OF 2 of the Act, which provides that certain references in the Act to income years are to be read as references to a taxpayer's accounting year. The amendment clarifies that, in one of the definitions which has effect under the foreign investor tax credit regime, the reference to an income year is to be read as a reference to the appropriate accounting year. It applies with effect from the date of application of the substituted foreign investor tax credit regime enacted in December 1995.

PART 2

INCOME TAX (ANNUAL)

*Annual confirmation of tax rates*

Clause 30 provides the annual confirmation of rates of income tax for the 1996-97 income year.

PART 3

AMENDMENTS TO INCOME TAX ACT 1976

This Part amends the Income Tax Act 1976. All the amendments are to be read with that Act as it was in force before its repeal by the Income Tax 1994 Act.

*Depreciation—leasehold improvements and reservation of title to goods*

Clause 32 makes changes to section 108 which mirror the new sections EG 1A and EG 1B of the 1994 Act.

*Depreciation*

Clause 33 makes changes that mirror the changes made to section EG 19 of the 1994 Act by clause 8.

*Deduction when one superannuation fund invests in another fund*

Clause 34 inserts subsections (2D) and (2E) to section 228. These mirror the changes made to section DI 3 of the 1994 Act by clause 6.

*Definition of "specified exemption"*

Clause 35 consequentially amends the definition of "specified exemption" for New Zealand superannuation surcharge purposes to reflect changes made as a result of the Social Welfare (Transitional Provisions) Amendment Act 1996 and are retrospective to 1 April 1991.

PART 4

TAX ADMINISTRATION ACT 1994

This Part makes amendments of a minor nature to the Tax Administration Act 1994 and is retrospective to 1 April 1995.

*Records in language other than English*

Clause 38 enables the Commissioner to permit records of gift-exempt bodies to be kept in languages other than English.

*Removal of redundant references*

Clauses 39 and 40 delete references in the Act to "District Commissioner", "Deputy Commissioner" and "Regional Controller" and replace them with "an officer of the Department", and updates a section reference.



## PART 5

### AMENDMENT TO STUDENT LOAN SCHEME ACT 1992

This Part amends the Student Loan Scheme Act 1992.

#### *Special deduction rate*

*Clause 42*, in amending section 21 (1), now permits special repayment deduction rate certificates to be issued to borrowers for amounts in excess of the estimated repayment obligation for the income year.

## PART 6

### AMENDMENTS TO GOODS AND SERVICES TAX AMENDMENT ACT (NO. 2) 1995

This Part amends the Goods and Services Tax Amendment Act (No. 2) 1995.

#### *Interpretation and meaning of term "supply"*

*Clauses 44 and 45* amend sections 2 (5) and 3 (3) respectively. Section 2 amended the definition of "input tax" to stop the double dipping that occurred when secondhand goods were supplied by a person not resident in New Zealand, where those goods had been previously supplied to a registered person who had entered them for home consumption. Section 3 ensured that input tax deductions for dwellings could only be claimed if the dwelling itself had been acquired principally for use in a taxable activity. The general application date for each amendment was the date on which the Minister of Revenue announced it: 21 June 1995 for double dipping and 11 August 1995 for dwellings. Sections 2 (5) and 3 (3) modified the general application date and allowed claims where a supply had been made under an unconditional contract entered into before the date of the relevant announcement, if the return for the taxable period in which that contract was entered into had not, at that time, been furnished. *Clauses 44 and 45* now extend the modification to conditional contracts entered into before the relevant date that became unconditional before that date.

## PART 7

### AMENDMENTS TO GOODS AND SERVICES TAX ACT 1985

This Part makes amendments to the Goods and Services Tax Act 1985.

#### *"District Commissioner"*

*Clause 47* repeals the definition of "District Commissioner" and introduces a definition of "officer of the Department". These amendments and *clause 49* are retrospective to 1 April 1995.

#### *Meaning of term supply when subrogation payment*

*Clause 48* amends section 5 (13) by providing that subrogation payments made to an insurer by a third party in respect of any liability owed by the third party to an insured party are subject to GST. The amendment is retrospective to 1 October 1986.

#### *Consequential*

*Clause 49* makes consequential amendments following repeal of the definition of "District Commissioner".

## PART 8

### AMENDMENTS TO TAXATION (CORE PROVISIONS) ACT 1996

This Part makes consequential amendments to the Taxation (Core Provisions) Act 1996.

*Deduction when one superannuation fund invests in another fund*

Clause 52 amends section 101. The changes are similar to those found in clause 6 except that they incorporate the global/gross language of the core provisions.

*Low income rebate*

Clause 53 consequentially amends section 295 by extending the low income rebate to passive income of recipients of a veteran's pension. They mirror those made in clauses 15-17 and incorporate the global/gross language of the core provisions.

*Non-resident withholding tax imposed*

Clause 54 consequentially amends section 375 in a manner similar to that in which clause 23 amends section NG 2 of the 1994 Act.

*Definition*

Clause 55 consequentially amends Schedule 1 by replacing part of the definition of "expenditure on account of an employee".

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## TAXATION (REMEDIAL PROVISIONS)

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## A BILL INTITULED

**An Act to make various remedial amendments to the  
Taxation Acts**

BE IT ENACTED by the Parliament of New Zealand as follows:

1. **Short title**—This Act may be cited as the Taxation (Remedial Provisions) Act 1996. 5

## PART 1

## AMENDMENTS TO INCOME TAX ACT 1994

2. **Income Tax Act 1994**—The Income Tax Act 1994\* is amended by this Part. 10

3. **Exclusion from term "dividends"**—(1) Section CF 3 (1)(b)(i)(D) is replaced by:

“(D) The company is an unlisted trust and the share was issued on such terms that its redemption is subject to subparagraph (iv)(A); or” 15

(2) After section CF 3 (1)(b)(i)(D), the following is added:

“(E) The relevant cancellation is not part of a pro-rata cancellation and the company is an unlisted trust and the share was issued on such terms that its redemption is subject to subparagraph (iv)(B); and” 20

(3) This section is deemed to have come into force on 1 April 1996.

4. **Meaning of "fringe benefit"**—(1) After section CI 1 (i), the following is added: 25

“(ia) Any employee share loan benefit.”

(2) After section CI 1 (l), the following is added:

“(la) A benefit by way of assistance with the preparation of the tax return of the employee to the extent that 30

\*1994, No. 164

Amendments: 1995, No. 18; 1995, No. 21; 1995, No. 71; 1995, No. 73

the expenditure incurred in providing the assistance would have been an allowable deduction of the employee under section DJ 5 had the expenditure been incurred by the employee.”.

5 (3) In section CI 1, the portion between paragraphs (n) and (o) is replaced by:

“and does not, in relation to any benefit to which paragraph (e), (f), or (h) applies, include—”.

10 (4) **Subsection (1)** comes into force at the commencement of a period that is, for the purposes of fringe benefit tax returns, the quarter or, where fringe benefit tax is payable on an income year basis, that is the income year during which this Act receives the Royal assent notwithstanding that the period occurs before the date of assent.

15 **5. Election whether fringe benefit or dividend**—(1) After section CI 2, the following is added:

20 “CI 2A. (1) For the purposes of the FBT rules and notwithstanding section CI 2, an employer may elect, by notice given in accordance with **subsection (4)**, to treat a benefit as either a fringe benefit subject to fringe benefit tax or a dividend where—

“(a) The employer is a company or the trustee of a group investment fund; and

25 “(b) The employer provides or grants a benefit for or to a person who is both a shareholder and an employee (in this subsection referred to as the ‘shareholder employee’) of the employer; and

30 “(c) The benefit is a non-cash benefit that would be subject to section CI 1 (h) if the benefit were provided or granted for or to the shareholder employee in the shareholder employee’s capacity as an employee; and

35 “(d) The benefit is a non-cash benefit that would, but for section CF 3 (1)(g), be a dividend under section CF 2 if the benefit were provided or granted for or to the shareholder employee in the shareholder employee’s capacity as a shareholder.

40 “(2) If the employer elects, under **subsection (1)**, to treat the benefit as a dividend, the benefit is deemed to be a dividend notwithstanding section CF 3 (1)(g).

“(3) If the employer does not make an election under **subsection (1)**, the benefit is deemed to be a fringe benefit subject to fringe benefit tax.

“(4) Notice of an election under **subsection (1)** must be made in writing to the Commissioner within the time allowed for filing a fringe benefit tax return for the quarter or, where section ND 4 applies, the income year in which the benefit was provided or deemed to be provided.”.

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(2) This section is deemed to come into force on 21 May 1996.

**6. Expenditure incurred by superannuation funds**—(1) After section DI 3 (2), the following are added:

“(3) Where the first superannuation fund has incurred expenditure of the type referred to in subsection (2) and there is no balance of the assessable income, referred to in subsection (2)(d), of the second superannuation fund in the same income year from which it may be deducted, the expenditure may be carried forward by the first superannuation fund to a later income year.

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“(4) If the balance of the assessable income of the second superannuation fund in that later income year extends, in whole or in part, to the expenditure referred to in **subsection (3)** of the first superannuation fund, the expenditure may, at the election of the first superannuation fund, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing assessable income in that later income year to the extent of the balance of assessable income.

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“(5) If the balance of the assessable income of the second superannuation fund is not sufficient in that later year for all of the expenditure referred to in **subsection (3)** of the first superannuation fund to be deducted in that later income year, that part of the expenditure (in this subsection referred to as the ‘remaining expenditure’) may be carried forward to successive income years until all of that expenditure has been deducted and when that balance extends, in whole or in part, to the remaining expenditure, the remaining expenditure or the extent to which that balance extends in the relevant succeeding income year, may, at the election of the first superannuation fund, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing assessable income in the year to which the election refers.

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“(6) If expenditure incurred in 1 or more income years is carried forward under **subsection (3)** or **subsection (5)** and an election is made by the first superannuation fund in a later income year to treat that expenditure in the manner referred to in that subsection, the expenditure must be deducted sequentially in

40

accordance with the income years in which that expenditure was incurred by the first superannuation fund.

“(7) Subsection (2)(d) and (e) apply if the first superannuation fund makes an election under subsection (4) or (5).

5 “(8) Subsections (3), (4), (5), (6) and (7) apply only if—

“(a) The first superannuation fund has funds invested in all or part of the second superannuation fund when the first superannuation fund incurs expenditure of the type referred to in subsection (2); and

10 “(b) The first superannuation fund continues to have funds invested in all or part of the second superannuation fund when the expenditure of the first superannuation fund is deducted from the balance of the assessable income of the second superannuation fund.”.

15 (2) This section is deemed to have come into force on 1 April 1995.

**7. New sections added**—(1) After section EG 1, the following are added:

20 “EG 1A. **Ownership of improvements made by lessee of land**—(1) For the purposes of this Subpart, a lessee of land is deemed to own a fixture on or improvement to the land for the period during which the land is leased to the lessee if—

25 “(a) The lessee incurs expenditure in erecting the fixture or making the improvement during that period; and

“(b) The fixture or improvement is the property of the lessor.

“(2) For the purposes of this Subpart—

30 “(a) The lessor is deemed not to own the fixture or improvement for the period during which the land is leased to the lessee; and

“(b) The lessor is deemed not to own the fixture or improvement after that period except where the lessor incurs a cost in respect of it at the end of that period.

35 “(3) For the purposes of subsection (2), a lessor includes a subsequent lessor who purchases the land from the original lessor during that period.

40 “EG 1B. **Ownership of goods subject to reservation of title**—(1) For the purposes of this Subpart, a purchaser of depreciable property is deemed to own the property before title to the property passes to the purchaser if—

- “(a) The purchaser enters into an unconditional contract to purchase the property; and
- “(b) The contract is subject to the Sale of Goods Act 1908; and
- “(c) Title to the property does not pass until the purchase price is paid in full; and 5
- “(d) The purchaser takes possession of the property before title to the property passes.
- “(2) Where **subsection (1)** applies, the purchaser is deemed to own, and the vendor is deemed not to own, the property from the later of the time that— 10
- (a) The purchaser enters into the contract; and
- (b) The purchaser takes possession of the property; until title to the property passes to the purchaser or the property is repossessed by the vendor. 15
- “(3) **Subsections (1) and (2)** do not apply to hire purchase assets that are the subject of a hire purchase agreement.”.
- (2) This section is deemed to have come into force on 1 April 1995.

**8. Disposition of depreciable property**—(1) After section EG 19 (9)(a)(vi), the following is added: 20

“(vii) Cessation of deemed ownership of a fixture or improvement to which **section EG 1A** applies.”.

(2) After section EG 19 (10), the following is added:

“(10A) Where a purchaser has purchased depreciable property to which **section EG 1B** applies and the vendor of that property repossesses it because of partial or total failure of consideration, the purchaser is deemed to have disposed of the property on the date of repossession for a consideration equal to the cost of the property less the net amount paid to the vendor for the property under the contract.”. 25 30

(3) This section is deemed to have come into force on 1 April 1995.

**9. Election to treat short term trade credit as financial arrangement**—(1) After section EH 9, the following is added: 35

“EH 10. (1) For the purposes of the qualified accruals rules, a taxpayer may elect by notice given in accordance with **subsection (2)** to treat short term trade credits specified in **subsection (4)** as financial arrangements.

“(2) Notice of an election under **subsection (1)** in relation to an income year must be made in writing to the Commissioner within the time within which a vendor or a purchaser is required under section 37 of the Tax Administration Act 1994 40



to furnish a return of income for the income year to which the election is to apply.

5 “(3) An election by the taxpayer under **subsection (1)** may be revoked by notice in writing to the Commissioner during any income year and the revocation will apply only to short term trade credits created on or after the commencement of the subsequent income year.

“(4) An election under **subsection (1)** may be made in respect of—

10 “(a) All short term trade credits of the taxpayer; or

“(b) One or more classes of short term trade credits of the taxpayer that the taxpayer defines by reference either—

15 “(i) To the particular currency in which the short term trade credit is denominated; or

“(ii) To the term of the short term trade credit.”.

(2) This section comes into force on the day on which this Act receives the Royal assent.

20 **10. Rules for calculating New Zealand group debt percentage**—(1) Section FG 4 (10) is replaced by:

“(10) If the taxpayer is a company, the members of the group will be determined in accordance with **subsection (12)** by—

“(a) The taxpayer, if the taxpayer is—

25 “(i) Not resident in New Zealand; or

“(ii) A company in which persons not resident in New Zealand have, under the rules set out in section FG 2, in aggregate a 50% or greater direct ownership interest:

“(b) If **paragraph (a)** does not apply, the company—

30 “(i) That is resident in New Zealand; and

“(ii) That has, under the rules set out in section FG 2, an ownership interest in the taxpayer; and

35 “(iii) In which a person not resident in New Zealand has, under those rules, a direct ownership interest; and

“(iv) In which a person not resident in New Zealand who has, under those rules, a 50% or greater ownership interest in the taxpayer, also has a 50% or greater ownership interest; and

40 “(v) In which no company satisfying the conditions of **subparagraphs (i), (ii), (iii) and (iv)** has, under those rules set out in section FG 2, a direct ownership interest:

- “(c) The taxpayer, if **paragraph (a)** does not apply and no company can be identified under **paragraph (b)**:
- “(d) If more than one company is identified under **paragraph (b)**, the company out of that set of companies where the highest figure is produced by multiplying— 5
- “(i) The aggregate direct ownership interests held in that company by persons not resident in New Zealand who also have a 50% or greater ownership interest in the taxpayer; and 10
- “(ii) The ownership interest of that company in the taxpayer:
- “(e) If more than one company is identified under **paragraph (d)**, the company out of that set of companies that was incorporated at the earliest time,— 15
- (the party identified under paragraphs (a) to (e) being referred to in **subsections (12) to (14b)** as the New Zealand parent).”.
- (2) Section FG 4 (11) is repealed.
- (3) Section FG 4 (12), (13) and (14) are replaced by: 20
- “(12) The taxpayer’s New Zealand group will comprise the taxpayer, the New Zealand parent (if different from the taxpayer), and all companies that—
- “(a) Are resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand; and 25
- “(b) Are identified under **subsection (13) or (14)** as being controlled by the New Zealand parent.
- “(13) If the New Zealand parent elects that the relevant control percentage will be any percentage greater than 50%, the companies treated as being controlled by the New Zealand parent and to be included in the New Zealand group will be those in which greater than 50% direct ownership interests are held collectively by any combination of— 30
- “(a) The New Zealand parent; and 35
- “(b) Companies already included in the group as a result of **paragraph (a)** or this paragraph.
- “(14) If the New Zealand parent elects that the relevant control percentage will be 66% or any greater percentage, the companies treated as being controlled by the New Zealand parent and to be included in the New Zealand group will be those in which 66% or greater direct ownership interests are held collectively by any combination of— 40
- “(a) The New Zealand parent; or

5 “(b) If the company would have been included in the New Zealand group under **subsection (13)** if the New Zealand parent had elected that **subsection (13)** applied, any person not resident in New Zealand who also has a 50% or greater ownership interest both in the taxpayer and the New Zealand parent;  
or

10 “(c) Companies already included in the group, as a result of any or all of **paragraph (a)**, **paragraph (b)** and this paragraph.

“**(14A)** If the New Zealand parent fails to elect that either **subsection (13)** or **(14)** applies, the New Zealand parent will be deemed to have elected that **subsection (14)** applies.

15 “**(14B)** The New Zealand parent must and is deemed to make the same election whether **subsection (13)** or **(14)** applies for the income year with respect to any other taxpayer in respect of which it is determined to be the New Zealand parent.

20 “**(14C)** Notwithstanding **subsections (12)**, **(13)** and **(14)**, if the taxpayer is not a company identified under **subsection (13)** or **(14)** as being controlled by the New Zealand parent, the taxpayer’s New Zealand group will comprise only the taxpayer and all companies that—

25 “(a) Are resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand; and

“(b) Are companies that—

30 “(i) Would be identified under **subsection (13)** or **(14)** as being controlled by the New Zealand parent if the taxpayer were treated as being the New Zealand parent; or

“(ii) Would result in the taxpayer being identified under **subsection (13)** or **(14)** as being controlled by the New Zealand parent if the relevant company were treated as being the New Zealand parent.

35 “**(14D)** Notwithstanding **subsections (12)** to **(14C)**, the taxpayer’s New Zealand group will also include one or more other companies resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand if—

40 “(a) The New Zealand parent so elects; and

“(b) The same person who is not resident in New Zealand holds an ownership interest of 50% or more in the taxpayer and each of those companies; and

45 “(c) In the case of each of those companies, the New Zealand group of any other taxpayer in which the company

is included comprises the same companies as the taxpayer's New Zealand group for the income year; and

“(d) The New Zealand parent makes the same election under this subsection for each other taxpayer in respect of which it is deemed to be the New Zealand parent.” 5

(4) In section FG 4 (17) “or subsection (15)” is replaced with “subsection (15), or subsection (16)”.

(5) Section FG 4 (18) is repealed.

(6) This section applies with respect to the tax on income derived in the 1996–97 income year and subsequent years. 10

**11. Mode of elections**—(1) In section FG 10 (3), “or FG (12)(b)” is replaced with “, (13), (14) or (14a)”.

(2) This section applies with respect to the tax on income derived in the 1996–97 income year and subsequent years. 15

**12. Benefit given to associated person of employee**—(1) After section GC 15 (2), the following is added:

“(3) For the purposes of the FBT rules and notwithstanding section CI 1 (o)(i)(B), an associated person is deemed to be an employee of an employer and a benefit is deemed to be a fringe benefit subject to fringe benefit tax where— 20

“(a) The employer is a company; and

“(b) The employer provides or grants a benefit, or has entered into an arrangement with another person for the providing or granting of that benefit, for or to an associated person of an employee; and 25

“(c) The person associated with the employee is also an associated person of a shareholder in the company; and

“(d) The associated person is not a company; and 30

“(e) The associated person is not an employee or shareholder in the company except to the extent this section deems otherwise; and

“(f) The benefit is of a kind that would be a fringe benefit under the FBT rules were it provided or granted for or to the employee; and 35

“(g) The benefit is of a kind that would be a dividend under section CF 2 (1) were it provided or granted for or to the shareholder.”

(2) This section is deemed to have come into force on 21 May 1996. 40

**13. Cross-border arrangements between associated persons**—(1) Section GD 13 (4) is replaced by:

5 “(4) If the amount of consideration receivable by a taxpayer under such an arrangement is less than the arm’s length amount, an amount equal to the arm’s length amount will be deemed to be the amount receivable by the taxpayer in substitution for the actual amount for all purposes of the application of this Act in relation to—

- 10 “(a) The income tax liability of the taxpayer; or  
 “(b) The obligation of the taxpayer under Part NH to make a withholding or deduction from the amount; or  
 “(c) The obligation of any person other than the taxpayer to make a withholding or deduction under Part N from the amount.”.

15 (2) Section GD 13 (12) is replaced by:

“ (12) Except to the extent that subsection (11) applies, an adjustment under any of subsections (3), (4) and (10) will have no effect on any obligation of the taxpayer to make a withholding or deduction in respect of the amount under  
 20 Part N, other than under Part NH.”.

(3) This section applies with respect to the tax on income derived in the 1996–97 income year and subsequent years.

**14. Definition of “specified exemption”**—(1) After section JB 4 (1)(c), the following is added:

25 “(ca) Where in respect of any period in the income year (whether that period is a part or a whole of the income year) the New Zealand superannuation received by the New Zealand superannuitant was at a rate payable to a married person under  
 30 clause 1 (c) of the First Schedule to the Social Welfare (Transitional Provisions) Act 1990 by reason of the New Zealand superannuitant’s spouse not being entitled to New Zealand superannuation and where the superannuitant was previously  
 35 entitled to the rate payable under paragraph 1 (d) of the First Schedule to the Social Welfare (Transitional Provisions) Act 1990, an amount calculated in accordance with the following formula:

40 
$$\frac{f \times g}{h}$$

“where—

- “f is the amount remaining after deducting from \$6,240 an amount equal to the taxable income (not including any amount of New Zealand superannuation) for the income year, of the spouse of the New Zealand superannuitant, reduced by the amount of every pension of the same type as a specified foreign social security pension received by that spouse in respect of the income year; and 5
- “g is the number of days in respect of which the New Zealand superannuation was payable to the New Zealand superannuitant in respect of the income year; and 10
- “h is the number of days in the income year:
- Provided that in no case shall item f be less than \$4,160.” 15

(2) In section JB 4 (1)(d), “to a married person under clause 1 (d) of the First Schedule to the Social Welfare (Transitional Provisions) Act 1990 or” is added after “rate payable”.

(3) Subsection (1) applies to income years commencing on or after 1 April 1996. 20

(4) Subsection (2) is deemed to apply to the income year commencing 1 April 1995.

**15. Low income rebate**—(1) Section KC 1 (1)(a) is replaced by: 25

“(a) Where the assessable income derived in the income year by that taxpayer, being a New Zealand superannuitant or a person in receipt of a veteran’s pension, is less than \$9,500, a rebate of an amount equal to 7.125 cents for each complete dollar of that assessable income:” 30

(2) In section KC 1 (1)(c), subparagraph (i) of the definition of quantity “x” is replaced by:

“(i) \$676.87, where the taxpayer is a New Zealand superannuitant or a person in receipt of a veteran’s pension:” 35

(3) This section is deemed to apply to the income year commencing 1 April 1996.

*Section Coming into Force on 1 April 1997*

**16. Low income rebate**—(1) Section KC 1 (1)(a) is replaced by: 40

5 “(a) Where the net income derived in the income year by that taxpayer, being a New Zealand superannuitant or a person in receipt of a veteran’s pension, is less than \$9,500, a rebate of an amount equal to 5 cents for each complete dollar of that net income:”.

(2) In section KC 1 (1)(c), subparagraph (i) of the definition of quantity “x” is replaced by:

10 “(i) \$475, where the taxpayer is a New Zealand superannuitant or a person in receipt of a veteran’s pension:”.

(3) This section applies to the income year commencing 1 April 1997.

*Section Coming into Force on 1 April 1998*

15 **17. Low income rebate**—(1) Section KC 1 (1)(a) is replaced by:

20 “(a) Where the net income derived in the income year by that taxpayer, being a New Zealand superannuitant or a person in receipt of a veteran’s pension, is less than \$9,500, a rebate of an amount equal to 4.5 cents for each complete dollar of that net income:”.

(2) In section KC 1 (1)(c), subparagraph (i) of the definition of quantity “x” is replaced by;

25 “(i) \$427.50, where the taxpayer is a New Zealand superannuitant or a person in receipt of a veteran’s pension:”.

(3) This section applies to income years commencing on or after 1 April 1998.

30 **18. Special rules for holding companies**—(1) In the formula in section LE 3 (6), the Roman numeral “I” is replaced with the figure “1”.

(2) Section LE 3 (10) is replaced by:

35 “(10) Notwithstanding any other provision of this Act, the income tax payable by the section LE 3 holding company for the income year, before allowing for any credits under Subpart LD or under section LE 2 but after allowing for any other credits under this Part, will be at least equal to the amount of all supplementary dividends derived by the section LE 3 holding company in the income year, and the section LE 3 holding company will be assessable accordingly.”.

40 (3) This section applies with respect to dividends paid on or after 12 December 1995.

**19. Limits on refunds of tax**—(1) Section MD 2 (5)(a) is replaced by:

“(a) Shall be credited in payment of any income tax or provisional tax that is payable by the company for the income year during which the entitlement to the refund arose, or for any income year commencing after 31 March 1988, whether before or after the income year in which the entitlement to the refund arose:”.

(2) This section comes into force on 1 April 1997 and applies from that date to income tax paid in excess that is not refundable to a company under section MD 2 (1) or (2) of the Income Tax Act 1994.

**20. Refund of income tax not to exceed amount of credit balance**—(1) Section MD 3 (4)(a) is replaced by:

“(a) Shall be credited in payment of any income tax or provisional tax payable by the person for the income year during which the entitlement to the refund arose, or for any income year commencing after 31 March 1990, whether before or after the income year in which the entitlement to the refund arose:”.

(2) This section comes into force on 1 April 1997 and applies from that date to income tax paid in excess that is not refundable to a person under section MD 3 (1) or (2) of the Income Tax Act 1994.

**21. Debits arising to imputation credit account**—

(1) Section ME 5 (1)(e)(iii) is replaced by:

“(iii) The amount of the refund does not exceed the amount of a debit arising under paragraph (i) of this subsection if—

“(A) The refund is in respect of income tax paid prior to the date that the debit arose; and

“(B) In the case of a refund arising by virtue of Part LE, the supplementary dividend paid by the company giving rise to the refund was paid before the date that the debit arose under paragraph (i) of this subsection:”.

(2) This section is deemed to have come into force on 12 December 1995.



**22. Consequential changes**—In section MG 15 (1)(d), “paragraph (h)” is replaced with “paragraph (i)”.

**23. Non-resident withholding tax imposed**—(1) In section NG 2 (1)(a), “not fully imputed” is replaced with  
5 “neither fully imputed nor fully dividend withholding payment credited”.

(2) After section NG 2 (3), the following is added:

“(4) For the purposes of this section, the extent to which any dividends are fully dividend withholding payment credited  
10 must be calculated under the following formula:

$$\text{“DWPC} \times \frac{1}{T}\text{”}$$

“where—

15 “DWPC is the amount of dividend withholding payment credits attached to the dividends; and

20 “T is the rate of resident companies’ tax, expressed as a percentage, stated in clause 5 of Part A of Schedule 1 and applying in respect of the income year that is concurrent with the imputation year in which the dividends are paid.”.

(3) This section applies with respect to dividends paid on or after the date on which this Act receives the Royal assent.

**24. Non-resident withholding tax on dividends not paid in money**—(1) In section NG 9 (1), “to the extent not  
25 fully imputed (as described in section NG 2 (3))” is added after “non-cash dividends”.

(2) This section applies with respect to dividends paid on or after 12 December 1995.

**25. Liability to make deduction in respect of foreign withholding payment dividend**—(1) Section NH 1 (2)(b) is  
30 replaced by:

“(b) Dividends paid by a company resident in New Zealand, where and to the extent that—

35 “(i) The company previously was not resident in New Zealand; and

40 “(ii) The amount of the dividend is less than the amount the company had available, immediately before becoming resident in New Zealand, for distribution by way of dividend (calculated after deduction from that available amount of the

amount of any previous dividend paid by the company to which this paragraph applied); and

“(iii) The dividend is exempt income in accordance with section CB 10 on being derived by a company resident in New Zealand.”.

5

(2) This section is deemed to have come into force on 21 May 1996.

**26. Refund for overpayment and to company in loss**—(1) Section NH 4 (2)(b) is replaced by:

“(b) Any amount of dividend withholding payment that is not refunded because it exceeds that credit balance shall be credited in payment of a dividend withholding payment payable by the company for any imputation year.”.

10

(2) This section comes into force on 1 April 1997 and applies from that date to a dividend withholding payment that is not refundable to a company under section NH 4 (2)(a) of the Income Tax Act 1994.

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**27. Dividend withholding payments and consolidated groups**—(1) Section NH 5 (5)(b) is replaced by:

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“(b) Any amount of dividend withholding payment that is not refunded because it exceeds that credit balance shall be credited in payment of a dividend withholding payment payable by the company for any imputation year in which the company was a member of the consolidated group.”.

25

(2) This section comes into force on 1 April 1997 and applies from that date to a dividend withholding payment that is not refundable to a company under section NH 5 (5)(a) of the Income Tax Act 1994.

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**28. Definitions**—(1) In section OB 1:

(a) The following is added after the definition of “employee”:

“ ‘Employee share loan benefit’ means, for the purposes of section CI 1, a loan benefit provided to an employee where—

35

“(a) The sole purpose of the loan is to enable the employee to acquire shares or rights in, or options to shares in a company that is the employer (or a company associated with the employer) under a scheme for the acquisition of those shares, rights or options by the employee; and

40

“(b) The loan is used by the employee for that purpose only; and

5 “(c) The shares, rights or options are beneficially owned by the employee at all times during the currency of the loan; and

“(d) It is a condition of the loan that it be subject to immediate repayment in full if the employee ceases to be the beneficial owner of any of the shares rights or options; and

10 “(e) The company issuing the shares, rights or options to the employee maintains a dividend paying policy during the currency of the loan; and

“(f) The employer or the company issuing the shares, rights or options is not a qualifying company; and

15 “(g) The employer and the employee are not associated persons; and

“(h) The loan is not a loan to which section DF 7 applies.”

20 (b) Paragraph (d) of the definition of “excepted financial arrangement” is replaced by:

25 “(d) A short term trade credit, unless the purchaser or vendor has elected in accordance with section EH 10 to treat the short term trade credit as a financial arrangement to which the qualified accruals rules apply.”:

(c) Paragraph (a)(i) of the definition of “expenditure on account of an employee” is replaced by:

30 “(i) The whole or part of a payment that is exempt income under section CB 12 (1)(a) or (2).”:

(d) The definition of “District Commissioner” is repealed:

(e) The definition of “short term trade credit” is replaced by:

35 “‘Short term trade credit’, in the definitions of ‘core acquisition price’, ‘excepted financial arrangement’, and ‘trade credit’, and in the qualified accruals rules, means any debt for goods or services where payment is required by the vendor—

“(a) Within 63 days after the supply of the goods or services; or

40 “(b) Because the supply of the goods or services is continuous and the vendor renders periodic invoices for the goods or services, within 63 days after the date of an invoice rendered for those goods or services.”.

(2) **Subsection (1)(a)** comes into force at the same time as section 4 (1) of this Act.

(3) **Subsection (1)(b)** comes into force at the same time as section 9 of this Act.

(4) **Subsections (1)(c) and (d)** are deemed to have come into force on 1 April 1995. 5

(5) **Subsection (1)(e)** comes into force on the day on which this Act receives the Royal assent.

**29. References to income year in particular provisions—**(1) Section OF 2 (2)(m)(iia) is replaced by: 10

“(iia) Part LE and the definition ‘supplementary dividend’ in section OB 1:”.

(2) This section is deemed to apply with respect to dividends paid on or after 12 December 1995.

## PART 2 15

### INCOME TAX (ANNUAL)

**30. Rates of income tax for 1996–97 income year—**(1) For the 1996–97 income year, income tax must be assessed, levied and paid under Part B of the Income Tax Act 1994 (as amended by the Income Tax Act 1994 Amendment Act 1996) at the basic rates specified in Schedule 1 to the Income Tax Act 1994. 20

(2) Section 75 of the Income Tax Act 1994 Amendment Act (No. 4) 1995 is repealed.

## PART 3 25

### AMENDMENTS TO INCOME TAX ACT 1976

**31. Income Tax Act 1976—**The Income Tax Act 1976\*, in respect of matters to which it applied before its repeal by section YB 3 of the Income Tax Act 1994, is amended by this Part. 30

\*1976, No. 65; R.S. Vol 29–1, p. 1; R.S. Vol 29–2, p. 999

Amendments: 1994, No. 76; 1994, No. 84; 1995, No. 17; 1995, No. 20; 1995, No. 74

**32. Annual depreciation deduction—**(1) After section 108 (1), the following are added:

“(1A) For the purposes of sections 107A, 108 to 108O, 111 and 117 of this Act, a lessee of land is deemed to own a fixture on or an improvement to the land for the period during which the land is leased to the lessee if— 35

“(a) The lessee incurs expenditure in erecting the fixture or making the improvement during that period; and 40

“(b) The fixture or improvement is the property of the lessor.

“(1B) For the purposes of sections 107A, 108 to 108O, 111 and 117 of this Act—

5 “(a) The lessor is deemed not to own the fixture or improvement for the period during which the land is leased to the lessee; and

“(b) The lessor is deemed not to own the fixture or improvement after that period except where the lessor incurs a cost in respect of it at the end of that period.

“(1C) For the purposes of **subsection (1B)**, a lessor includes a subsequent lessor who purchases the land from the original lessor during that period.

15 “(1D) For the purposes of sections 107A, 108 to 108O, 111 and 117 of this Act, a purchaser of depreciable property is deemed to own the property before title to the property passes to the purchaser if—

20 “(a) The purchaser enters into an unconditional contract to purchase the property; and

“(b) The contract is subject to the Sale of Goods Act 1908; and

“(c) Title to the property does not pass until the purchase price is paid in full; and

25 “(d) The purchaser takes possession of the property before title to that property passes.

“(1E) Where **subsection (1D)** applies, the purchaser is deemed to own, and the vendor is deemed not to own, the property from the later of the time that—

30 “(a) The purchaser enters into the contract; and

“(b) The purchaser takes possession of the property; until title to the property passes to the purchaser or the property is repossessed by the vendor.”

35 “(1F) **Subsection (1D)** and **subsection (1E)** do not apply to hire purchase assets that are the subject of a hire purchase agreement.”

40 (2) **Section 108 (1B)** of the Income Tax Act 1976 does not operate to deny a lessor a depreciation deduction for the 1993–94 or 1994–95 income year if the lessor has claimed a depreciation deduction in respect of the property in a return of income for the relevant income year provided to the Commissioner before 21 May 1996.

45 (3) Subject to **subsection (2)**, this section is deemed to apply to the tax on income derived in the 1993–94 or 1994–95 income year.

**33. Gain or loss from disposition of depreciable property**—(1) After section 117 (10)(a)(vi), the following is added:

“(vii) Cessation of deemed ownership of a fixture or improvement to which **section 108 (1A)** applies.”. 5

(2) After section 117 (8), the following is added:

“(8A) Where a purchaser has purchased depreciable property to which **section 108 (1b)** of this Act applies and the vendor of that property repossesses it because of partial or total failure of consideration, the purchaser is deemed to have disposed of the property on the date of repossession for a consideration equal to the cost of the property less the net amount paid to the vendor for the property under the contract.”. 10

(3) This section is deemed to apply with respect to the tax on income derived in the 1993–94 or 1994–95 income year. 15

**34. Deductions where superannuation fund invests in another fund**—(1) After section 228 (2c), the following are added:

“(2D) Where the first superannuation fund has incurred expenditure of the type referred to in subsection (2c) and there is no balance of the assessable income, referred to in subsection (2c)(d), of the second superannuation fund in the same income year from which it may be deducted, the expenditure may be carried forward by the first superannuation fund to a later income year. 20 25

“(2E) If the balance of assessable income of the second superannuation fund in that later income year extends, in whole or in part, to the expenditure referred to in **subsection (2D)** of the first superannuation fund, the expenditure may, at the election of the first superannuation fund, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing assessable income in that later income year to the extent of the balance of assessable income. 30

“(2F) If the balance of the assessable income of the second superannuation fund is not sufficient in that later income year for all of the expenditure referred to in **subsection (2D)** of the first superannuation fund to be deducted in that later income year, that part of the expenditure (in this subsection referred to as the “remaining expenditure”) may be carried forward to successive income years until all of that expenditure has been deducted and when that balance extends, in whole or in part, to the remaining expenditure, the remaining expenditure or 35 40

5 the extent to which that balance extends in the relevant succeeding income year, may, at the election of the first superannuation fund, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing assessable income in the year to which the election refers.

10 “(2G) If expenditure incurred in 1 or more income years is carried forward under subsection (2D) or subsection (2F) and an election is made by the first superannuation fund in a later income year to treat that expenditure in the manner referred to in that subsection, the expenditure must be deducted sequentially in accordance with the income years in which that expenditure was incurred by the first superannuation fund.

15 “(2H) Subsection (2c)(d) and (e) apply if the first superannuation fund makes an election under subsection (2E) or (2F).

“**(2I) Subsections (2D), (2E), (2F), (2G) and (2H) apply only if—**

20 “(a) The first superannuation fund has funds invested in all or some of the second superannuation fund when the first superannuation fund incurs expenditure of the type referred to in subsection (2c); and

25 “(b) The first superannuation fund continues to have funds invested in all or some of the second superannuation fund when the expenditure of the first superannuation fund is deducted from the assessable income of the second superannuation fund.”.

(2) This section is deemed to have come into force on 1 April 1990.

30 **35. Definition of “specified exemption”**—(1) In section 336E(1)(d), “to a married person under clause 1(d) of the First Schedule to the Social Welfare (Transitional Provisions) Act 1990, or,” is added after “rate payable”.

35 (2) In section 336BA(1)(c), “to a married person under clause 1(d) of the First Schedule to the Social Welfare (Transitional Provisions) Act 1990, or,” is added after “rate payable”.

(3) Subsection (1) is deemed to apply to income years commencing on or after 1 April 1992.

40 (4) Subsection (2) is deemed to apply to the income year commencing on 1 April 1991.

## PART 4

## AMENDMENTS TO TAX ADMINISTRATION ACT 1994

**36. Tax Administration Act 1994**—The Tax Administration Act 1994\* is amended by this Part.

\*1994, No. 166.

Amendments: 1995, No. 24; 1995, No. 72; 1995, No. 73

**37. Commencement**—(1) This Part, except section 38, is deemed to have come into force on 1 April 1995.

(2) Section 38 applies to the 1996–97 and subsequent income years.

**38. Records of specified charitable, benevolent, philanthropic, or cultural bodies**—Section 32 is replaced by:

“32. (1) All gift-exempt bodies shall keep in New Zealand sufficient records in the English language to enable the Commissioner to determine both the sources of donations made to them and the application, within New Zealand or within a country or territory outside New Zealand, of their funds.

“(2) Notwithstanding subsection (1), the Commissioner, in writing, may authorise a gift-exempt body to keep those records in a language other than English if the gift-exempt body applies in writing to the Commissioner for the authorization.”.

**39. Commissioner and Department**—Section 228 is replaced by:

“228. The person who, on 1 April 1995, holds office as Commissioner of Inland Revenue is deemed to have been appointed Commissioner of Inland Revenue under section 6(A).”.

**40. Consequential changes**—(1) In section 81 (1)(b), “or a Deputy Commissioner, or a Regional Controller, or a District Commissioner,” is replaced with “or an officer of the Department,”.

(2) Wherever they occur in section 110 (1) and (2), “a Regional Controller or a District Commissioner” and “Regional Controller or District Commissioner” are replaced with “an officer of the Department”.

(3) Wherever they occur in section 118, “a District Commissioner” and “District Commissioner” are replaced with “an officer of the Department”.



(4) Wherever it occurs in section 229 (4) and (5), “a Deputy Commissioner of Inland Revenue” is replaced with “an officer of the Department”.

5 (5) In section 229 (6), “a District Commissioner of Inland Revenue” is replaced with “an officer of the Department”.

PART 5

AMENDMENT TO STUDENT LOAN SCHEME ACT 1992

10 **41. Part to be read with Student Loan Scheme Act 1992**—(1) This Part of this Act shall be read together with and deemed part of the Student Loan Scheme Act 1992\* (in this Part referred to as the principal Act.)

(2) This Part comes into force on the day on which this Act receives the Royal assent.

\*1992, No. 141

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Amendments: 1993, No. 12; 1993, No. 136; 1995, No. 26

**42. Special deduction rates**—Section 21 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

20 “(1) If a borrower wishes to vary the standard deduction rate, the borrower may apply by notice in writing to the Commissioner for the issue of a special repayment deduction rate certificate that takes into account the greater of—

“(a) The borrower’s estimated repayment obligation for the income year; or

25 “(b) Some other amount required by the borrower.”.

PART 6

AMENDMENTS TO GOODS AND SERVICES TAX AMENDMENT ACT  
(NO. 2) 1995

30 **43. Goods and Services Tax Amendment Act (No. 2) 1995**—The Goods and Services Tax Amendment Act (No. 2) 1995\* is amended by this Part.

\*1995, No. 75

35 **44. Interpretation**—(1) Section 2 (5) (as it relates to the amendment of section 2 (1) of the Goods and Services Tax Act 1985) is replaced by:

“(5) Subsection (2) of this section does not apply where—

40 “(a) There is a supply by way of sale under an unconditional contract entered into before 21 June 1995 or a conditional contract entered into before 21 June 1995 that became unconditional before that date; and

“(b) No return was furnished on or before 21 June 1995 for the taxable period in which payment for the supply was made.”

(2) This section is deemed to have come into force on 21 June 1995.

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**45. Meaning of term “supply”**—(1) Section 3 (3) (as it relates to the amendment of section 5 of the Goods and Services Act 1985) is replaced by:

“(3) Notwithstanding subsection (2)(b)(i) of this section, this section does not apply where—

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“(a) There is a supply by way of sale under an unconditional contract entered into before 11 August 1995 or a conditional contract entered into before 11 August 1995 that became unconditional before that date; and

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“(b) No return was furnished on or before 11 August 1995 for the taxable period in which payment was made.”

(2) This section is deemed to have come into force on 11 August 1995.

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## PART 7

### AMENDMENTS TO GOODS AND SERVICES TAX ACT 1985

**46. Goods and Services Tax Act 1985**—The Goods and Services Tax Act 1985 is amended by this Part.

\*R.S. Vol. 27, p. 425

Amendments: 1992, No. 2; 1992, No. 116; 1993, No. 10; 1993, No. 131, 1994, No. 77; 1995, No. 22; 1995, No. 75; 1995, No. 80; 1995, No. 83.

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**47. District Commissioner**—(1) In section 2 (1), the definition of “District Commissioner” is repealed.

(2) In section 2 (1), the following is added after the definition of “Office of Parliament”:

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“ ‘Officer of the Department’ means an officer of the department as defined in the Tax Administration Act 1994.”

(3) This section and section 49 of this Act are deemed to have come into force on 1 April 1995.

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**48. Meaning of term “supply”**—(1) After section 5 (13A), the following is added:

“(13B) For the purposes of this Act, where a registered person receives a subrogation payment in relation to a contract of insurance between a registered person and an insured person, the payment is deemed to be consideration received

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for a supply of services performed on the day of receipt of the payment by the registered person in the course or furtherance of that person's taxable activity."

5 (2) This section is deemed to apply to supplies made on or after 1 October 1986.

**49. Consequentials**—Wherever they occur in section 30, "a District Commissioner" and "District Commissioner" are replaced by "an officer of the Department".

PART 8

10 CONSEQUENTIAL AMENDMENTS TO TAXATION (CORE PROVISIONS) ACT 1996

**50. Taxation (Core Provisions) Act 1996**—The Taxation (Core Provisions) Act 1996\* is amended by this Part.

\*1996, No. 136-1

15 **51. Commencement**—This Part comes into force on 1 April 1997.

**52. Expenditure incurred by superannuation funds**—In section 101, the following is added after section DI 3 (2):

20 "(3) Where the first superannuation fund has incurred expenditure of the type referred to in subsection (2) and there is no balance of the gross income, referred to in subsection (2) (d), of the second superannuation fund in the same income year, from which it may be deducted, the  
25 expenditure may be carried forward by the first superannuation fund to a later income year.

"(4) If the balance of the gross income of the second superannuation fund in that later year extends, in whole or part, to the expenditure referred to in subsection (3) of the first  
30 superannuation fund, the expenditure may, at the election of the first superannuation fund, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing gross income in that later income year to the extent of the balance of gross income.

35 "(5) If the balance of the gross income of the second superannuation fund is not sufficient in that later income year for all of the expenditure referred to in subsection (3) of the first superannuation fund to be deducted in that later income year, that part of the expenditure (in this subsection referred to as  
40 the "remaining expenditure") may be carried forward to successive income years until all of that expenditure has been

deducted and when that balance extends, in whole or in part, to the remaining expenditure, the remaining expenditure or the extent to which that balance extends in the relevant succeeding income year, may, at the election of the first superannuation fund, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing gross income in the year to which the election refers. 5

“(6) If expenditure incurred in 1 or more income years is carried forward under subsection (3) or subsection (5) and an election is made by the first superannuation fund in a later income year to treat that expenditure in the manner referred to in that subsection, the expenditure must be deducted sequentially in accordance with the income years in which that expenditure was incurred by the first superannuation fund. 10 15

“(7) Subsection (2)(d) and (e) apply if the first superannuation fund makes an election under subsection (4) or (5).

“(8) Subsections (3), (4), (5), (6) and (7) apply only if—

“(a) The first superannuation fund has funds invested in all or part of the second superannuation fund when the first superannuation fund incurs expenditure of the type referred to in subsection (2); and 20

“(b) The first superannuation fund continues to have funds invested in all or part of the second superannuation fund when the expenditure of the first superannuation fund is deducted from the balance of the gross income of the second superannuation fund.”. 25

**53. Low income rebate**—(1) In section 295, section KC 1 (1)(a) is replaced by: 30

“(a) Where the net income derived in the income year by that taxpayer, being a New Zealand superannuitant or a person in receipt of a veteran’s pension, is less than \$9,500, a rebate of an amount equal to 5 cents for each complete dollar of that net income:” 35

(2) In section 295, subparagraph (i) of the definition of quantity “x” in section KC 1 (1)(c) is replaced by:

“\$475, where the taxpayer is a New Zealand superannuitant or a person in receipt of a veteran’s pension:” 40

**54. Non-resident withholding tax imposed**—In section 375, section NG 2 (1)(a) is replaced by:

5 “(a) At the rate of 30% of so much of that non-resident withholding income that consists of dividends, other than investment society dividends or supplementary dividends payable as a result of Part LE, to the extent the dividends are neither fully imputed nor fully dividend withholding payment credited:”.

10 **55. Definitions**—In Schedule 1, paragraph (a)(i) of the definition of “expenditure on account of an employee” is replaced by:  
“(i) The whole or part of a payment that is exempt income under section CB 12 (1)(a) and (2):”.