TAXATION (REMEDIAL PROVISIONS) BILL

AS REPORTED FROM THE FINANCE AND EXPENDITURE COMMITTEE

COMMENTARY

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Remedial Provisions) Bill and Supplementary Order Papers Nos 199 and 217 and recommends that the bill be passed with the amendments shown in the bill.

Conduct of the examination

The Taxation (Remedial Provisions) Bill was referred after second reading to the Finance and Expenditure Committee on 11 June 1996. We divided Part 2 from the bill to form the Taxation (Annual Rates of Income Tax 1996–97) Bill, which was reported to the House on 17 June 1996.

Two Supplementary Order Papers relating to the bill, in the name of the Minister of Revenue, were also referred to us. Supplementary Order Papers Nos 199 and 217 were referred on 19 June and 18 July 1996 respectively.

The closing date for submissions on the bill was 15 July 1996. We also called for submissions on the two Supplementary Order Papers. In total, we received and considered 12 submissions from the New Zealand Society of Accountants, the New Zealand Stock Exchange, Cavill White Securities, the Trustee Corporations Association, Fletcher Challenge Limited, the Insurance Council of New Zealand and from law and accounting firms. Five submissions were heard orally. One hour and 36 minutes were spent on the hearing of evidence and consideration took one hour and 11 minutes.

Advice was received from the Inland Revenue Department and The Treasury. Lindsay McKay, Barrister, was our specialist adviser on the bill.

This commentary sets out the details of our consideration of the bill and of the major issues we addressed.

Background

The bill contains amendments to the Income Tax Act 1994, the Income Tax Act 1976, the Tax Administration Act 1994, the Student Loan Scheme Act 1992, the

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Goods and Services Tax Amendment Act (No. 2) 1995, the Goods and Services Tax Act 1985 and the Taxation (Core Provisions) Act 1996. The amendments are both substantive and remedial in nature. Detailed explanations of all the provisions are contained in the general policy statement contained in the bill, as introduced, and in the Minister of Revenue's *Commentary on the Bill.*

Following the introduction of the bill, the Minister of Revenue proposed that the following additional amendments be incorporated into the bill:

- Supplementary Order Paper No. 199 contains amendments to the Income Tax Act 1994 that are intended to align the tax treatment of distributions from group investment funds with that of unit trusts and companies.
- Supplementary Order Paper No. 217 proposes amendments concerning the special banking option for New Zealand recipients of overseas pensions, and portable New Zealand superannuation and veterans' pensions paid under bilateral social security arrangements.
- Amendments to the Goods and Services Tax Act 1985 to correct incorrect cross-references resulting from the passage of the Customs and Excise Act 1996.

We are recommending that these amendments be incorporated in the bill.

Depreciation—leasehold improvements and reservation of title

Arising from the post-implementation review of the depreciation rules which came into effect in 1993, the bill provides for taxpayers to be deemed to own property so that depreciation can be claimed in the case of:

- Land improvements erected by a lessee of the land but owned by the lessor.
- Goods purchased subject to a reservation of title clause.

Leasehold improvements

The bill provides that when a lessee of land incurs expenditure in erecting fixtures on, or making improvements to, land which are owned by the lessor under land law principles, the lessee is deemed to own the improvements and is entitled to depreciate them. The lessor is not entitled to depreciate them. The amendments will apply from the 1993/94 income year but any deductions claimed by lessors in 1994 and 1995 returns filed before the bill's introduction are not affected.

Bell Gully Buddle Weir suggested that this provision should be extended to taxpayers who hold a licence to occupy property rather than a lease. Such a licence may arise in circumstances such as when parties have an informal arrangement to occupy the land. We accept that an extension is appropriate, provided that the licensor is not able to depreciate the fixtures and improvements as well. We recommend that the bill be amended to permit holders of a licence to occupy property to depreciate improvements they construct on the property.

The New Zealand Society of Accountants submitted that the scope of the amendment should cover any expenditure by a taxpayer which gives rise to depreciable property, for which the economic risks and rewards of ownership are borne for a period. Other than licences to occupy, the Society of Accountants referred to situations where one person has legal ownership of an asset and another an equitable interest in the asset. Officials informed us that appropriate tests to determine who is entitled to a depreciation deduction in these situations are currently being considered. We accept that this issue should be resolved before any broadening of the scope of the amendment is considered.

The Society of Accountants also suggested that a lessee who incurs expenditure in "acquiring" a structure from a former lessee should be deemed to own it. This is a

common circumstance and we support the suggestion. We recommend that the bill be amended to provide that where, on transfer of a lessee's interest in a lease, the transferee pays to the transferor an amount for an improvement constructed and depreciated by the transferor, the transferee is deemed to own the structure for depreciation purposes.

Goods subject to reservation of title clause

The bill proposes that purchasers of goods, where the sale contract provides that title in the goods remains with the vendor until the purchase price is paid, be deemed to own the goods and be able to depreciate them. The amendments will apply from the 1993/94 income year.

The Society of Accountants noted that there may be many complex reservation of title clauses that the provision does not cover. Officials have undertaken, as part of the remedial work programme, to consider the extent to which the amendment should apply to other reservation of title clauses.

The Society of Accountants also sought clarification that, where property is repossessed by the vendor, the purchaser is treated as disposing of the property for the amount outstanding; that is, the cost of the property minus the amount paid by the purchaser less amounts refunded to the purchaser. We recommend that the bill be amended to clarify this provision.

Transitional provisions

In relation to the transitional provisions for these amendments, the Society of Accountants made several proposals. It suggested that a taxpayer affected by the new depreciation provisions should have the option of a catch-up adjustment in the next tax return filed. We consider that this option is not warranted. The amendments are intended to legitimise deductions that have been claimed by lessees and purchasers while deductions claimed by lessors are preserved if returns were filed prior to the bill's introduction and vendors are most unlikely to have depreciation claims.

The Society of Accountants proposed that returns for a lessor's depreciation deductions for the 1993/94 and 1994/95 years be allowed to be filed up to the date of the bill's assent rather than its introduction. We note that the bill's introduction gave notice to lessors that the deductions would not be permissable and, rather than permit both the lessor and the lessee to claim the deductions, we accept that lessors' deductions should be confined to those claimed prior to the bill's introduction.

Clarification was also sought by the Society of Accountants as to whether the lessee is prevented from claiming a deduction in the 1994 and 1995 income years if the lessor has made a claim. We consider that the bill is clear that a double deduction is permitted if a lessor has already claimed a deduction for the income years.

GST treatment of subrogation payments

The bill proposes to amend the Goods and Services Tax Act 1985 to clarify that subrogation payments are subject to GST. Subrogation payments are payments made by a third party to an insurer in respect of a liability owed by the third party to an insured party. The amendment is to be retrospective to the introduction of GST on 1 October 1986. Officials advised us that the Inland Revenue Department's practice has been to regard subrogation payments as being subject to GST output tax upon receipt and that the majority of the insurance industry has complied with this policy.

Application date

Several submissions suggested that it is inappropriate to make the amendment fully retrospective. Given that the majority of the insurance industry has followed the policy, no additional costs are imposed in most cases. We accept, however, that where industry members have filed GST returns excluding GST on subrogation payments and where members had live objections in respect of GST on subrogation payments prior to the bill's introduction, they would be unfairly affected. We recommend that the bill be amended to provide that the tax status of taxpayers in these circumstances be determined according to the legislation in force at the time the GST returns were filed or the objections were lodged.

Alternative approach

An alternative conceptual approach was suggested by three submissioners, involving drafting the provision as an amendment to section 20 (3)(d) of the Goods and Services Tax Act 1985, or inter-relating it to that section. This would subject any subrogation payment to output tax to the extent to which an insurer has previously obtained a deduction when making the associated indemnity payment.

Officials noted that the underlying policy rationale for the GST treatment of subrogation payments is that the payment includes an implied GST element for which the insurer should account to offset the GST deduction claimed when the associated indemnity is paid pursuant to a contract of insurance. Inter-relating the amendment with section 20 (3)(d) would restrict its application, as intended, to insurers who have previously been entitled to deductions under that section. As a result, subrogation payments arising out of zero-rated and GST-exempt insurance policies will not be subject to GST. The submissioners' further intention, however, that a subrogation payment should be subject to output tax only to the extent to which the insurer has previously obtained a deduction under section 20 (3)(d), is not accepted.

We recommend that the bill be amended to redraft the provision to inter-relate with section 20(3)(d) of the Goods and Services Tax Act 1985 and to ensure that a registered third party making a subrogation payment will be able, where the necessary conditions are met, to claim an input tax credit.

Interest component of subrogation payments

Submissions on this provision also contended that it is appropriate to exclude any "interest" element contained in a subrogation payment from the provision's effect. This is the difference between the value of the indemnity payment made to the insured party and the value of the subrogation payment received from the third party caused solely by the attachment of a penalty because of late payment. We accept the advice from officials that exempting this penalty from GST would undermine the intention and purpose of the Act.

Taxation of group investment funds

Supplementary Order Paper No. 199 contains amendments to the Income Tax Act 1994 which align the tax treatment of distributions from group investment funds with that of unit trusts and companies. The amendments provide that:

- Distributions from group investment funds that are not designated group investment funds are subject to the dividend rules, except where the investment into the fund is from certain designated sources or investments made before 23 June 1988.
- An anti-avoidance provision in the definition of "available subscribed capital" which discourages investors who contribute shares to a company instead of cash is narrowed in scope.

The Trustee Corporations Association supported the first amendment but the New Zealand Stock Exchange, Cavill White Securities and Chapman Tripp Sheffield Young expressed opposition. They questioned whether there is a real "mischief" which the amendment to the taxation of distributions addresses. Officials explained that the amendments made to the taxation of group investment funds in 1992 created an anomaly whereby revenue account holders would be able to transfer shares into a fund, and any increase in the value of those shares while they were held in the fund would not be taxed. We accept that the amendment will remove a significant risk to the revenue base and ensure that the underlying policy intent is met, namely that the funds, in certain circumstances, be taxed as if they are companies.

The Stock Exchange proposed an alternative approach so that taxpayers who transfer securities into passive widely-held funds are treated as if they had not disposed of the assets. Officials noted that this would be inconsistent with the Government's policy of taxing those entities on a similar basis to companies.

Tax treatment of cross-border government pensions

We considered Supplementary Order Paper No. 217 which contains proposed amendments addressing issues relating to the tax treatment of overseas social security pensions. The first issue concerns the tax treatment of the proposed special banking option for overseas social security pensions. United Kingdom social security pensions are now paid directly to United Kingdom pensioners in New Zealand. The Department of Social Welfare has proposed a special banking option to allow the recipients to elect to have the pension paid into a special bank account. The Department of Social Welfare will then draw down the overseas pension and the New Zealand Income Support Service will pay these pensioners an amount equivalent to the full rate of New Zealand superannuation or veteran's pension to which the pensioner is entitled. The proposed amendments exempt the overseas pension from tax when paid into the special bank account and give the New Zealand Income Support Service authority to deduct PAYE from the amount it pays.

Secondly, an amendment is proposed in relation to the tax treatment of payments of portable New Zealand superannuation and veterans' pensions paid under bilateral social security arrangements. While the Government decided in 1989 to exempt from taxation portable New Zealand superannuation and veterans' pensions paid to pensioners overseas, only those paid to pensioners living in countries with whom New Zealand has no bilateral agreement are currently exempt. The amendment extends the exemption to portable benefits paid under bilateral social security agreements, with application from 1 April 1990.

No submissions were received on the proposed amendments. We recommend that the bill be amended by incorporating these amendments.

International tax—conduit investment

The bill contains a number of remedial amendments to the international tax regime. The Society of Accountants raised the issue of providing tax relief for conduit investment through New Zealand companies into third countries by non-resident investors. The controlled foreign company and foreign investment fund regimes tax foreign-sourced income earned by New Zealand residents as it accrues. The extent to which a resident company may be owned by non-residents does not affect the tax imposed, so the indirect effect is to tax non-residents on foreign-sourced income. This harms the competitiveness of New Zealand-based multi-nationals.

Officials commented that consideration has been given to how this problem can be ameliorated without undermining the principles of the international tax regime. The Government considers that conduit relief should be extended and intends to advance the issue through the generic tax policy consultative process. Our understanding is that Ministers view this as a priority issue and a consultative paper is expected later this year. We support this approach and urge the Government to deal with the issue expeditiously.

"Cost of minerals" tax deduction

Ernst & Young drew our attention to an issue arising from the passage of the Taxation (Core Provisions) Act 1996 relating to the "cost of minerals" tax deduction available under the Income Tax Act 1994. In rewriting the relevant section of the Income Tax Act 1994, Ernst & Young submitted that the specific deduction for the cost of non-specified minerals and flax has been omitted. It considered that the officials' interpretation, that "cost of coal" is "revenue account property" and is deductible under the same provisions applying to taxable land and personal property transactions, over-simplifies the concept of "cost of coal" and creates additional ambiguity for coalminers. Ernst & Young suggested that this could change the extent of the tax deduction, contrary to the intention of the rewrite process.

Officials acknowledged that such drafting changes inevitably cause some concern as to whether a change in the law has occurred. They advised us, however, that they do not consider that the law has changed and that the deduction will continue for the "cost of these minerals". While the submissioner should take some comfort from officials' advice, we are concerned that the legal certainty for this view may be lost as a result of the rewrite. We considered recommending that a savings provision for the tax treatment of the cost of minerals be incorporated in the bill. A concern with this approach is that, while satisfying coalminers, others who are in a similar position and who did not think that there was any need for a savings provision as a result of the amendments, would have to reconsider their position in the face of the savings provision. Officials made a commitment to us that, if a situation arises where the existing taxation treatment of the "cost of coal" is challenged under the new legislation, they would consider recommending retrospective legislation to the Government. We are, therefore, satisfied that there is adequate protection for the taxpayer in relation to this issue.

Other amendments

We are recommending a significant number of other amendments to the bill that arise from the technical and drafting issues raised by submissioners and officials.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous) Subject to this Act,	Text struck out unanimously
New (Unanimous) Subject to this Act,	Text inserted unanimously
(Subject to this Act,)	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Hon. Peter Dunne

TAXATION (REMEDIAL PROVISIONS)

ANALYSIS

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**.

PART 1

AMENDMENTS TO INCOME TAX ACT 1994

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

*1994, No. 164
Amendments: 1995, No. 18; 1995, No. 21; 1995, No. 71; 1995, No. 73

New (Unanimous)

2A. Certain pensions, benefits, and other compensation exempt—(1) In section CB 5 (1), the following is added after paragraph (f):

"(fa) Any amount derived by any person from an overseas pension to the extent to which the pension is subject to an arrangement under **section 70 (3)** of the Social Security Act 1964, but the equivalent amount of New Zealand superannuation or veteran's pension paid under **section 70 (3)(b)** of the Social Security Act 1964 is not exempt income under this section:".

(2) Subsection (1) comes into force on a date to be appointed by the Governor-General by Order in Council.

New (Unanimous)

2AA. Meaning of term "dividends"—(1) In section CF 2 (2), "subsection (1)" is replaced with "subsections (1) and (3)".

(2) Section CF 2 (3) is replaced by:

"(3) In this Act, the term 'dividends', in relation to a group investment fund, includes any payment from or transaction by the group investment fund to or with another person having regard to that person's (or any other person's) capacity as an investor in the fund where—

"(a) The fund is not a designated investment fund; and

"(b) The investor's interest in the fund (referred to in this subsection and **subsection (3A)** as a 'deemed share') in respect of which the payment or the transaction is made does not result from—

"(i) An investment from a designated source (as defined in section HE 2 (3)); or

"(ii) An investment made in the fund on or before 22 June 1983, including any amount deemed to be invested at that date under paragraph (c) or (d) of the definition of 'protected amount' in section HE 2 (3); and

"(c) The payment or transaction would be dividends under this Act if the fund were a company, the interests of investors that are deemed shares were the only shares and the investors holding deemed shares were the only shareholders.

"(3A) In the case of a payment to or transaction with an investor in a group investment fund that is dividends under subsection (3),—

"(a) The provisions of this Act that have specific application with respect to dividends, companies, shares, or shareholders; and

"(b) Section HH 3 (5)—

apply as if the fund were a company, the interests of investors that are deemed shares were the only shares and the investors holding deemed shares were the only shareholders.".

(3) Subsections (1) and (2) apply to a payment made or to a transaction entered into after 3 p.m. on 10 June 1996.

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".

(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".

(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:

"(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 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:".

(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—".

(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.

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

"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

"(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

"(c) The benefit is a non-cash benefit that would, but for CI 1 (o)(i)(B), 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

"(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.

"(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.

New (Unanimous)

"(5) An employer who wishes to make an election under **subsection (1)** relating to the quarter ending 30 June 1996 must make that election within 20 days of the date of assent of this Act.".

(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 or insufficient 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 not so deducted may be carried forward by the first superannuation fund to a later income year.

"(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*) carried forward under **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.

"(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*) carried forward under **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.

"(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.

"(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 its funds invested (*in all or part of*) in whole or in part in the second superannuation fund when the first superannuation fund incurs expenditure of the type referred to in subsection (2); and

Struck Out (Unanimous)

"(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.".

New (Unanimous)

"(b) The first superannuation fund has, at all times between the time referred to in **paragraph (a)** and the time when the expenditure of the first superannuation fund is deducted from the balance of the assessable income of the second superannuation fund, its funds invested in whole or in part in the second superannuation fund.".

(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:

"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—

"(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—

"(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.

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

New (Unanimous)

"(4) For the purposes of this Subpart, where on the transfer of a lessee's interest in a lease of land—

"(a) The transferee pays an amount to the lessee in respect of a fixture or improvement erected by the lessee or a preceding lessee; and

"(b) That fixture or improvement has been depreciated by the lessee,

the transferee is deemed to own the fixture or improvement.

"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

"(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—

"(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.

"(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:

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

(2) After section EG 19 (10), the following are 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.

New (Unanimous)

"(10B) In **subsection (10A)**, 'net amount paid' means the amount paid under a contract by a purchaser to a vendor less any amount refunded by the vendor to the purchaser.".

(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:

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

"(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—

"(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—

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

Struck Out (Unanimous)

"(ii) To the term of the short term trade credit.".

New (Unanimous)

"(ii) To the term of the short term trade credit; or

"(iii) To both the term and the particular currency in which the short term trade credit is denominated.".

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

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—

"(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—

"(i) That is resident in New Zealand; and

"(ii) That has, under the rules set out in section FG 2 (but applied as if the rules for aggregation of the interests of associates set out in section FG 2 (2)(b) and (d) were omitted), an ownership interest in the taxpayer; and

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

Struck Out (Unanimous)

"(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

New (Unanimous)

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

"(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—

"(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

"(ii) The ownership interest of that company in the taxpayer calculated under the rules set out in section FG 2 (but applied as if the rules for aggregation of the interests of associates set out in section FG 2 (2)(b) and (d) were omitted):

"(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,—

(the party identified under paragraphs (a) to (e) being referred to in **subsections (12) to (14D)** as the New Zealand parent).".

(2) Section FG 4 (11) is repealed.

(3) Section FG 4 (12), (13) and (14) are replaced by:

"(12) ***(The)*** Subject to subsections (14C) and (14D), 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

"(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—

"(a) The New Zealand parent; and

"(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—

"(a) The New Zealand parent; **(*or*)** and

Struck Out (Unanimous)

"(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

New (Unanimous)

"(b) A person not resident in New Zealand if—

"(i) The person has a 50% or greater ownership interest in both the taxpayer and the New Zealand parent; and

"(ii) The company included in the New Zealand group as a result would have been included in the New Zealand group under **subsection (13)** if the New Zealand parent had elected that **subsection (13)** applied; and

"(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.

"(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.

"(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—

"(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—

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

Struck Out (Unanimous)

"(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.

New (Unanimous)

"(ii) Would result in the taxpayer being identified under **subsection (13) or (14)** as being controlled by the other company being included in the group under this subparagraph if the other company were treated as being the New Zealand parent; or

"(iii) Would be identified under **subsection (13) or (14)** as being controlled by a company included in the taxpayer's New Zealand group under **subparagraph (ii)**

New (Unanimous)

if that other company were treated as being the New Zealand parent.

"(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—

"(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

Struck Out (Unanimous)

"(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.".

New (Unanimous)

"(c) Any necessary elections are made under this subsection to ensure that the New Zealand group of—

"(i) Each of those other companies; and

"(ii) Each company which is a member of the taxpayer's New Zealand group other than under this subsection,—

comprises the same companies as the taxpayer's New Zealand group; and

"(d) The other company is not a company in which, under the rules set out in section FG 2, a direct ownership interest is held by a company (referred to in this paragraph as the possible group member) if—

New (Unanimous)

"(i) The possible group member is not included in the taxpayer's New Zealand group; and

"(ii) The possible group member could have been included in the taxpayer's New Zealand group had the New Zealand parent made an appropriate election under **subsection (13)** or this subsection.".

(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.

11. Mode of elections—(1) In section FG 10 (3), "or FG 4 (12)(b)" is replaced with ", **(13)**, **(14)** or **(14D)**".

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

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—

"(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

"(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

"(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

"(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.

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

"(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—

"(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.".

(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 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:

"(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 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 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:

$$\text{“}\frac{f \times g}{h}$$

"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)*~~ (calculated on the basis that New Zealand superannuation is not gross income) 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

"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

"h is the number of days in the income year:

Provided that in no case shall item f be less than $4,160:".

(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".

Struck Out (Unanimous)

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

New (Unanimous)

(3) **Subsection (1)** applies to the 1996–97 income year.

(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:

"(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:".

(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:".

(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:

"(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:

"(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

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

"(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;

"(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.

18. Special rules for holding companies—(1) In the formula in section LE 3 (6), the Roman numeral "I" is replaced by the figure "1".

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

"(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*) Part 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.".

(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:".

Struck Out (Unanimous)

(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.

New (Unanimous)

(2) This section comes into force on 1 April 1997 and applies on and after that date to income tax paid in excess of the amount properly payable—

(a) Where the payment is made before that date and the income tax paid in excess is not refundable to a company under section MD 2 (1) or (2) and was not credited under section MD 2 (5)(a) before 1 April 1997; or

(b) Where the payment is made after that date and the income tax paid in excess is not refundable to a company under section MD 2 (1) or (2).

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:".

Struck Out (Unanimous)

(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.

New (Unanimous)

(2) This section comes into force on 1 April 1997 and applies on and after that date to income tax paid in excess of the amount properly payable—

(a) Where the payment is made before that date and the income tax paid in excess is not refundable to a person under section MD 3 (1) or (2) and was not credited under section MD 3 (4)(a) before 1 April 1997; or

(b) Where the payment is made after that date and the income tax paid in excess is not refundable to a person under section MD 3 (1) or (2).

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 "neither fully imputed nor fully dividend withholding payment credited".

New (Unanimous)

(1A) Section NG 2(2) is replaced by:

"(2) Every person liable under the NRWT rules to pay or deduct an amount of non-resident withholding tax in respect of any non-resident withholding income consisting of dividends is deemed to have paid or deducted (as the case may be) the non-resident withholding tax to the extent of any dividend withholding payment credit that is included within the non-resident withholding income.".

(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 must be calculated under the following formula:

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

"where—

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

"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—

Struck Out (Unanimous)

(1) In section NG 9 (1), "to the extent not fully imputed (as described in section NG 2 (3))" is added after "non-cash dividends".

New (Unanimous)

(1) Section NG 9 (1) is replaced by:

"NG 9. (1) Notwithstanding any provision of the NRWT rules, but subject to this section, where a person is required under the NRWT rules to make a deduction of non-resident withholding tax from a payment of non-resident withholding income which consists of non-cash dividends (to the extent not fully imputed, as described in section NG 2 (3)), the amount required to be deducted shall be equal—

"(a) To the extent to which the payment consists of dividends not being a taxable bonus issue, to an amount calculated in accordance with the following formula:

$$\left(\left(\frac{a}{1-a}\right) \times b\right) + (c \times d)$$

"where—

"a is the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2 (1)(a); and

"b is the amount of the dividends paid—

"(i) To the extent neither fully imputed nor fully dividend withholding payment credited (as described in section NG 2 (3) and (4)); and

"(ii) Disregarding any deduction of non-resident withholding tax; and

"c is the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2 (1)(c); and

"d is the amount of the dividends paid—

New (Unanimous)

"(i) To the extent fully dividend withholding payment credited (as described in section NG 2 (4)); and

"(ii) Disregarding any deduction of non-resident withholding tax; and

"(b) To the extent to which the payment consists of a taxable bonus issue, to an amount calculated in accordance with the following formula:

"$(a \times e) + (c \times f)$

"where—

"a is the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2 (1)(a); and

"e is the amount of the dividends calculated under section CF 2 (6)—

"(i) To the extent neither fully imputed nor fully dividend withholding payment credited (as described in section NG 2 (3) and (4)); and

"(ii) Before any deduction of non-resident withholding tax; and

"c is the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2 (1)(c); and

"f is the amount of the dividends calculated under section CF 2 (6)—

"(i) To the extent fully dividend withholding payment credited (as described in section NG 2 (4)); and

"(ii) Before any deduction of non-resident withholding tax.".

(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 replaced by:

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

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

"(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.".

(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.".

Struck Out (Unanimous)

(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.

New (Unanimous)

(2) This section comes into force on 1 April 1997 and applies on and after that date to a dividend withholding payment in excess of the amount properly payable—

(a) Where the dividend withholding payment is made before that date and is not refundable to a company under section NH 4 (2)(a) and was not credited under section NH 4 (2)(b) before 1 April 1997; or

(b) Where the dividend withholding payment is made after that date and is not refundable to a company under section NH 4 (2)(a).

27. Dividend withholding payments and consolidated groups—(1) Section NH 5 (5)(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 in which the company was a member of the consolidated group.".

Struck Out (Unanimous)

(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.

New (Unanimous)

(2) This section comes into force on 1 April 1997 and applies on and after that date to a dividend withholding payment in excess of the amount properly payable—

(a) Where the dividend withholding payment is made before that date and is not refundable to a company under section NH 5 (5)(a) and is not credited under section NH 5 (5)(b) before 1 April 1997; or

(b) Where the dividend withholding payment is made after that date and is not refundable to a company under section NH 5 (5)(a).

28. Definitions—(1) In section OB 1:

New (Unanimous)

(aa) Paragraph (ix) of the definition of quantity "b" in the definition of "available subscribed capital" is replaced by,—

"(ix) In any case where—

"(A) The consideration received by the company in respect of the issue of shares (other than on an amalgamation), directly or indirectly and whether by one or a

New (Unanimous)

series of transactions, is in the form of shares in another company; and

"(B) Immediately after the issue, there are one or more persons the aggregate of whose common voting interests (or common market value interests), as defined in section IG 1 (5), in the company and the other company is 10% or greater,—

the amount of the consideration received by the company to the extent to which the consideration exceeds the aggregate available subscribed capital per share (calculated after deducting the ineligible capital amount, if any) in respect of the shares in the other company at the date of the receipt; or".

(ab) In the definition of "designated group investment fund", "**section CF 2 (3)** and" is inserted before "section HE 2".

(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—

"(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

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

"(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

"(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

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

"(h) The loan is not a loan to which section DF 7 applies:".

(b) Paragraph (d) of the definition of "excepted financial arrangement" is replaced by:

"(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:

"(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:

New (Unanimous)

(da) In the definition of "lease"—

(i) In paragraph (a) "Except as provided in paragraphs (b), (d), and (e)," is replaced by "Except as provided in paragraphs (b), (d), (e), and (f)":

(ii) The following is added after paragraph (e):

"(f) For the purposes of Part EG includes a licence to occupy.":

(db) In the definition of "lessee" in paragraph (b), after "assignee of that person" add ", and, for the purposes of Part EG, the holder of a licence to occupy":

(dc) In the definition of "lessor" in paragraph (a), after "assignee of that person" add ", and, for the purposes of Part EG, the grantor of a licence to occupy":

(dd) In the definition of "New Zealand superannuation" the following is added after paragraph (b)(i):

New (Unanimous)

"(ia) Any amount paid under **section 70 (3)(b)** of the Social Security Act 1964; and":

(de) In the definition of "portable New Zealand superannuation", "or 19" is added after "section 17":

(df) In the definition of "portable veteran's pension", "or 19" is added after "section 17":

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

" '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

"(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:".

New (Unanimous)

(f) In the definition of "veteran's pension" after "Social Welfare Transitional Provisions Act 1990", add "or **section 70 (3)(b)** of the Social Security Act 1964".

(1A) In section OB 2(4) "1 April 1997" is replaced with "1 April 1998".

(1B) **Subsection (1)(aa) and (ab)** apply to a payment made or to a transaction entered into after 3 p.m. on 10 June 1996.

(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.

New (Unanimous)

(4A) **Subsections (1)(dd)** and **(1)(f)** come into force on a date to be appointed by the Governor-General by Order in Council.

(4B) **Subsection (1)(de) and (df)** are deemed to come into force on 1 April 1995.

(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:

"(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.

New (Unanimous)

29A. References to particular regimes in former Act, etc.—In section OZ 1 in the definition of "accruals rules", "to EH 8," is replaced with "to EH 8, EH 10".

. . . . .

PART 3

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.

*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

New (Unanimous)

31A. Interpretation—(1) In section 2,—

(a) The following is added after the definition of "petroleum mining company":

" 'Portable guaranteed retirement income' means guaranteed retirement income paid or payable

New (Unanimous)

overseas under section 17 or section 19 of the Social Welfare (Transitional Provisions) Act 1990:":

(b) The following is added after the definition of "portable guaranteed retirement income" as added by paragraph (a):

" 'Portable national superannuation' means national superannuation paid or payable overseas under section 17 or section 19 of the Social Welfare (Transitional Provisions) Act 1990:":

(c) In the definition of "portable New Zealand superannuation", "or section 19" is added after "section 17":

(d) In the definition of "portable veteran's pension", "or section 19" is added after "section 17":

(e) In the definition of "lease", ", and for the purposes of sections 107A, 108 to 108O, 111, 113A and 117, includes a licence to occupy" is added after "created".

(2) **Subsection (1) (a) and (d)** are deemed to have come into force on 1 April 1990.

(3) **Subsection (1) (b)** is deemed to have come into force on 1 April 1992.

(4) **Subsection (1) (c)** is deemed to have come into force on 1 April 1994.

(5) **Subsection (1) (e)** is deemed to apply to the tax on the income derived in the 1993-94 or 1994-95 income years.

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*) 111, 113A, 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—

"(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.

"(1B) For the purposes of sections 107A, 108 to 108O, (*111 and 117*) 111, 113A, and 117 of this Act,—

"(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.

New (Unanimous)

"(1CA) For the purposes of sections 107A, 108 to 108O, 111, 113A, and 117, where on the transfer of a lessee's interest in a lease of land—

"(a) The transferee pays an amount to the lessee in respect of a fixture or improvement erected by the lessee or a preceding lessee; and

"(b) That fixture or improvement has been depreciated by the lessee,—

the transferee is deemed to own the fixture or improvement.

"(1D) For the purposes of sections 107A, 108 to 108O, (*111 and 117*) 111, 113A, 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—

"(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

"(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—

"(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.

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

(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.

(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 are added:

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

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

"(8A) Where a purchaser has purchased depreciable property to which **section 108 (1D)** 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.

New (Unanimous)

"(8B) In **subsection (8A)**, 'net amount paid' means the amount paid under a contract by a purchaser to a vendor less any amount refunded by the vendor to the purchaser.".

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

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.

"(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.

"(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 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.

"(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.

"(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—

"(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

"(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.

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".

(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.

(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*) must 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 authorisation.".

New (Unanimous)

38A. Certain rights of objection not conferred—In section 125—

(a) In paragraph (d), "section CB 5(g)" is replaced with "section CB 5(1)(g)":

(b) Paragraph (j)(iii) is replaced by:

"(iii) Any of sections CF 6, HK 7, HK 11, HK 18, HK 24, HK 26, IB 1, LC 1 to LC 3, LC 7, LC 13 to LC 15, MD 1, and OB 2 of the Income Tax Act 1994 and sections 33, 89, and 184 of the Tax Administration Act 1994.":

(c) In paragraph (j) (iv), "106 to 111" is replaced with "106, 107, 109 to 111".

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 6A.".

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) 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

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
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:

"(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

"(b) Some other amount required by the borrower.".

PART 6

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

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

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—

"(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.

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—

"(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

"(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.

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.

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":

" '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.

48. Meaning of term "supply"—

Struck Out (Unanimous)

(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 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.".

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

New (Unanimous)

(1) After section 5 (13A), the following is added:

"(13B) For the purposes of this Act, where—

"(a) An insurer recovers an amount (other than aggravated or exemplary damages) as a result of the exercise of rights acquired by subrogation under a contract of insurance; and

"(b) A deduction under section 20 (3)(d) of this Act has been allowed in relation to that amount,—

the amount recovered is deemed to be consideration received for a supply of services performed in the course of that insurer's taxable activity, and a supply of services is deemed to be performed on the day of the insurer's receipt of the amount.".

(2) Subject to **subsection (3)**, this section is deemed to apply to supplies made on or after 1 October 1986.

(3) This section does not apply to a supply—

(a) Made by a registered person who has not accounted for output tax in relation to that supply, if the last day for furnishing the return for the taxable period to which the output tax is attributable occurred before 21 May 1996; and

(b) Made by a registered person who before 21 May 1996 made an objection—

(i) To an assessment in which a subrogation payment to which **subsection (1)** refers was treated as consideration received for a supply of services; and

(ii) The objection has not been disallowed.

48A. Imposition of goods and services tax on imports—(1) In section 12(4)(c), "Sections 112, 113, 114, 116 and 117" is replaced with "Sections 111, 112, 113, 115, and 118".

(2) In section 12(4)(d), "119" is replaced with "117".

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

PART 8

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

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

New (Unanimous)

51A. Expenditure incurred by superannuation funds—In section DI 3 (2)(d), "does not exceed the following amount:" is replaced with "does not exceed the following amount (referred to in this section as 'the deduction balance'):".

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

Struck Out (Unanimous)

"(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 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 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.

"(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

Struck Out (Unanimous)

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.

New (Unanimous)

"(3) Where the first superannuation fund has incurred expenditure of the type referred to in subsection (2) and the deduction balance in the income year in which the expenditure is incurred does not exceed the expenditure incurred, the expenditure not so deducted by the second superannuation fund in that year may be carried forward by the first superannuation fund to the succeeding income year.

"(4) If the deduction balance in the succeeding income year extends, in whole or in part, to the expenditure carried forward under **subsection (3)**, 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 deduction balance.

"(5) When the deduction balance in a succeeding income year is less than the expenditure carried forward under **subsection (3)**, the expenditure not deducted (in this subsection referred to as 'the remaining expenditure') may be carried forward to succeeding income years until all of that expenditure is deducted.

"(5A) When the deduction balance extends, in whole or in part, to the remaining expenditure, the remaining expenditure (or the extent to which the deduction balance extends in the succeeding income year) may at the election of the first superannuation fund be treated as if it is expenditure incurred

New (Unanimous)

by the second superannuation fund in gaining or producing gross income in the income year to which the election refers.

"(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.

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

"(8) ***(Subsections (3), (4), (5), (6) and (7))*** **Subsections (3) to (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

Struck Out (Unanimous)

"(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.".

New (Unanimous)

"(b) The first superannuation fund has at all times between the time referred to in paragraph (a) and the time when the expenditure of the first superannuation fund is deducted from the gross income of the second superannuation fund its funds invested in whole or in part in the second superannuation fund.".

Struck Out (Unanimous)

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

"(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 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:".

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

"(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:".

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*) or (2):".

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