

[AS REPORTED FROM THE FINANCE AND EXPENDITURE
COMMITTEE]

House of Representatives, 14 March 1989.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. David Caygill

TAXATION REFORM (NO. 5)

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No. 109—2

Price
incl. GST \$6.00

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A BILL INTITULED

An Act to reform 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 Reform Act (No. 5) 1988.

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PART I

SUPERANNUATION SCHEMES

2. This Part to be read with Income Tax Act 1976—This Part of this Act shall be read together with and deemed part of the Income Tax Act 1976* (in this Part referred to as the principal Act).

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*R.S. Vol. 12, p. 1

Amendments: 1983, No. 4; 1983, No. 10; 1983, No. 139; 1984, No. 10; 1985, No. 1; 1985, No. 59; 1985, No. 125; 1986, No. 3; 1986, No. 7; 1986, No. 41; 1986, No. 117; 1987, No. 66; 1987, No. 104; 1987, No. 189; 1988, No. 6; 1988, No. 14; 1988, No. 123; 1988, No. 133; 1988, No. 225

3. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

5 “Employer superannuation contribution’ means any superannuation contribution provided by an employer for the benefit of an employee or employees of that employer:

10 “Specified superannuation contribution’ means an employer superannuation contribution (being a contribution in money) made to a superannuation fund on or after the 1st day of April 1989:

New

15 “Specified superannuation contribution withholding tax’ means specified superannuation contribution withholding tax payable in accordance with **Part Xc** of this Act:

20 “Superannuation contribution’ means any disposition of property (as defined in **section 226** of this Act) to or for the benefit of any superannuation scheme to the extent to which fully adequate consideration in money or money’s worth does not pass from the superannuation scheme to any person, other than a benefit from that superannuation scheme on the terms of that scheme:

25 “Superannuation scheme’ means—

“(a) Any trust or unit trust (as defined in section 211 of this Act) established by its trust deed principally for the purpose of providing retirement benefits to beneficiaries who are natural persons; or

30 “(b) Any company (not being a unit trust) that—

“*(i)* Is not resident in New Zealand; and

35 “*(ii)* Has been established principally for the purpose of providing retirement benefits to members or relatives of members who are natural persons; or

40 “(c) Any arrangement constituted under an Act of Parliament of New Zealand, other than the Social Security Act 1964, principally for the purpose of providing retirement benefits to natural persons; or any similar arrangement constituted under the legislation of any country, territory, state, or local authority outside New Zealand;—

and where the superannuation scheme is a trust, any reference in this Act to a superannuation scheme includes a reference to the trustees of that scheme:”.

(2) Section 2 of the principal Act is hereby further amended by adding to the definition of the term “expenditure on account of an employee” *((as amended by section 31 (2) of the Income Tax Amendment Act (No. 6) 1988)* the words “or any superannuation contribution made by an employer in respect of an employee:”.) the following paragraph:

“(e) Any employer superannuation contribution:”.

(3) Section 2 of the principal Act is hereby further amended by adding to the definition of the term “monetary remuneration” (as inserted by section 34 (3) of the Income Tax Amendment Act (No. 2) 1985) the words “; but does not include any *(superannuation contribution made by an employer in respect of an employee)* employer superannuation contribution”.

(4) Section 2 of the principal Act is hereby further amended by inserting in the definition of the term “salary or wages”, after paragraph (f), the following paragraph:

“(fa) Any employer superannuation contribution *(made by an employer in respect of an employee):*”.

(5) Section 2 of the principal Act is hereby further amended by adding to the definition of the term “superannuation fund” (as inserted by section 3 of the Income Tax Amendment Act (No. 3) 1983) the words “;—but does not include a superannuation scheme constituted outside New Zealand and classified by the Government Actuary under regulation 29 or regulation 30 of the Superannuation Schemes Regulations 1983:”.

(6) Section 2 of the principal Act is hereby further amended by inserting in the definition of the term “trustee” (as substituted by section (9) 10 of the Income Tax Amendment Act *((No. 6)) (No. 5) 1988)*, after the words “Public Trustee”, the words “; and also, in relation to a superannuation scheme that is a trust or that is deemed by this Act to be a trust, includes a person by whom the investments of that scheme (or any part thereof) are managed or controlled”.

(7) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

New

3A. Exclusions from term “dividends”—Section 4A (1) of the principal Act (as inserted by section 31 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the following paragraph:

“(n) Any distribution by way of a benefit paid before the 1st day of April 1990 by a unit trust that is a superannuation scheme constituted outside New Zealand and that was, on the 31st day of March 1988, classified by the Government Actuary under regulation 29 or regulation 30 of the Superannuation Schemes Regulations 1983.”

4. Incomes wholly exempt from tax—(1) Section 61 (2) of the principal Act is hereby amended by adding the following subparagraph:

“(g) Any authority to the extent to which it is a superannuation scheme:”.

(2) Section 61 (21) of the principal Act is hereby amended by inserting, after the word “derived”, the words “before the 1st day of April 1988”.

(3) Section 61 of the principal Act is hereby further amended by adding the following paragraph:

“~~((60))~~ (59) Annuities paid on or after the 1st day of April 1990 from the Life Insurance Fund of a company to which section 204 of this Act applies.”

(4) **Subsection (1)** of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

5. Interpretation—Section 64B (1) of the principal Act (as inserted by section 2 of the Income Tax Amendment Act 1987) is hereby amended by repealing the definition of the term “superannuation scheme”.

6. Shareholder-employee and major shareholder superannuation contributions paid on or after 1 April 1988 and before 1 April 1989, or before 1 October 1989 where company in course of being wound up—The principal Act is hereby amended by inserting, after section 65, the following section:

“65A. (1) In this section,—

“Major shareholder’ has the same meaning as in section 374E (1) of this Act:

“Shareholder-employee’ has the same meaning as in section 150 (1) of this Act.

“(2) Notwithstanding any other provision of this Act, where any superannuation contribution to a subsidised employee superannuation scheme (as defined in section 150 (1) of this Act) is paid on or after the 1st day of April 1988 and before the 1st day of April 1989 by a company in respect of any employee of the company who is a major shareholder or shareholder-employee of the company,—

“(a) The amount of the contribution so paid shall be deemed to be remuneration paid to the employee by the company for services rendered by the employee, in the income year in which the contribution was paid; and

“(b) The amount of the contribution shall be deemed to be assessable income derived by that employee, but shall not be a source deduction payment for the purposes of this Act; and

“(c) No fringe benefit tax shall be payable in respect of any such contribution.

New

“(3) Notwithstanding anything in subsection (7) of section 51 of the Income Tax Amendment Act (No. 5) 1988 (which exempts from the application of certain fringe benefit provisions benefits provided to major shareholders by a company that is in the course of being wound up), that subsection shall not apply to exempt from the application of subsections (1) to (5) of that section any benefit that is an employer superannuation contribution made on or after the 1st day of April 1989 and before the 1st day of October 1989”.

7. Assignments or settlements of income—Section 96 of the principal Act is hereby amended by adding the following subsection:

“(6) This section shall not apply with respect to any transfer or settlement to or on a superannuation fund.”

8. Certain deductions not permitted—(1) Section 106 (1) of the principal Act is hereby amended by repealing paragraph (m), and substituting the following paragraphs:

“(m) Any expenditure or loss by way of superannuation contributions made or to be made, on or after the 1st day of April 1988, for the benefit of the taxpayer or any other person:

- 5 “(ma) Any expenditure by way of bonus, gratuity, retiring allowance, or pension that is paid or payable, on or after the 1st day of April 1988, to or for the benefit of any employee or former employee of the taxpayer, or any relative of any such employee, during or on the occasion of the retirement of the employee.”
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New

- 15 (2) Section 106 (2) of the principal Act is hereby amended by adding the words “;—but does not include fringe benefit tax or specified superannuation contribution withholding tax.”

9. Contributions to employees’ benefit funds—Section 149 (1) of the principal Act is hereby amended—

- (a) By inserting, after the word “fund”, the words “(not being a superannuation scheme)”:
- 20 (b) By omitting the words “(not being superannuation benefits whether by way of pension or otherwise)”.

10. Contributions to employees’ superannuation schemes—(1) Section 150 (2) of the principal Act (as substituted by section 26 (3) of the Income Tax Amendment Act (No. 2) 1982) is hereby amended by inserting, after the word “paid”, the words “before the 1st day of April 1989”.

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(2) Section 150 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

- 30 “(2A) In calculating the assessable income of any person for any income year a deduction shall, subject to **subsections (2B) to (2D)** of this section and to section 104 of this Act, be allowed in respect of any employer superannuation contribution made on or after the 1st day of April 1989 by that person in that income year; and except as provided in **subsection (2D)** of this section any such contribution shall be deemed to be expenditure incurred at the time when the contribution is made.
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“(2B) *(No)* Except as provided in **subsection (2BA)** of this section, no deduction shall be allowed under **subsection (2A)** of this section in respect of an employer superannuation contribution made to

a superannuation scheme where the superannuation scheme is neither a superannuation fund nor a company.

New

“(2BA) For the purposes of **subsection (2B)** of this section, a superannuation scheme constituted outside New Zealand that was on the 31st day of March 1988 a subsidised employee superannuation scheme shall be deemed to be a superannuation fund with respect to employer superannuation contributions made to the scheme before the 1st day of April 1990.

Struck Out

“(2c) Where any employer receives any benefit whatever (including a recovery of contributions) on or after the 1st day of April 1989 from a superannuation scheme to which the employer has made contributions at any time, then, notwithstanding any other provision of this Act, no deduction shall be allowed to the employer for any contributions made by the employer to the superannuation scheme during the period of 12 months immediately preceding the date of the receipt by the employer of the benefit, and the Commissioner shall amend any assessment accordingly.

New

“(2c) Where any employer receives, on or after the 1st day of April 1989, any benefit in money or money’s worth (including a recovery of contributions) from a superannuation scheme to which the employer has made employer superannuation contributions at any time, then, notwithstanding any other provision of this Act, any deduction allowable to the employer for any such contributions made to the scheme during the period of 12 months immediately preceding the date of the receipt by the employer of the benefit shall be reduced by the amount of the benefit in money or money’s worth so received, and the Commissioner shall amend any assessment accordingly.

“(2CA) **Subsection (2c)** of this section shall not apply to any benefit received by the employer to the extent that the

New

5 Commissioner is satisfied that the benefit is a bona fide pension or annuity or lump sum payment paid to the employer on the terms of the scheme in consideration of previous contributions made by or on behalf of the employer in a personal capacity.

10 “(2D) An employer who makes an employer superannuation contribution on or after the 1st day of April 1989 (being a contribution that would otherwise be deductible under this section in the year in which it is made) may, where the contribution is made not more than 63 days after the end of the income year in respect of which—

15 “(a) The contribution was required under the conditions of the scheme to be made; or
 “(b) The amount of the contribution was calculated, having regard to the amounts of the earnings paid by the employer to any employee who was during that income year a member of the scheme,—

20 elect, at any time before the employer files a return of income for that income year or within such further time as the Commissioner allows, that the amount of the contribution should be deducted in calculating the assessable income of the employer for that income year instead of the income year in which the contribution was made; and where an employer so elects the contribution shall accordingly be deductible for that
 25 earlier income year and not for the later income year.”

30 (3) Section 150 of the principal Act is hereby further amended by repealing subsection (3) (as substituted by section 26 (4) of the Income Tax Amendment Act (No. 2) 1982 and amended by section 24 of the Income Tax Amendment Act (No. 3) 1983), and substituting the following subsection:

“ (3) The deduction allowed in accordance with this section in any income year in respect of contributions paid before the 1st day of April 1989 shall not exceed the smaller of—

35 “(a) The amount that the employer was required to contribute, before the 1st day of April 1989, under the conditions of the subsidised employee superannuation scheme or schemes in respect of the employer’s employees in that income year:

40 “(b) An amount equal to 10 percent of the aggregate of the earnings paid by the employer, before the 1st day of April 1989, in that income year to such of the employer’s employees as are, in that income year,

members of the subsidised employee superannuation scheme or schemes.”

(4) Section 150 of the principal Act is hereby further amended by repealing subsection (4) (as substituted by section 12 of the Income Tax Amendment Act (No. 2) 1988), and substituting the following subsection: 5

“(4) Notwithstanding anything in the foregoing provisions of this section, the Commissioner may, in the Commissioner’s discretion, disallow or decline to allow any deduction in respect of contributions paid before the 1st day of April 1988 in any income year by any company in respect of any employee who is a shareholder-employee of the company.” 10

(5) Section 150 (5) of the principal Act is hereby amended by inserting, after the word “determine”, the words “, in respect of contributions paid before the 1st day of April 1989,”. 15

(6) Section 150 (6) of the principal Act is hereby amended by omitting the words “(paid) as aforesaid”, and substituting the words “(to a superannuation fund made) before the 1st day of April 1989”. 20

(7) Section 150 (7) of the principal Act is hereby amended by omitting the words “(paid) as aforesaid”, and substituting the words “(to a superannuation fund made) before the 1st day of April 1989”. 25

(8) The following enactments are hereby consequentially repealed: 25

(a) Section 26 (4) of the Income Tax Amendment Act (No. 2) 1982:

(b) Section 24 of the Income Tax Amendment Act (No. 3) 1983:

(c) Section 12 of the Income Tax Amendment Act (No. 2) 1988. 30

11. Life insurance and reinsurance companies—

(1) Section 204 (1) of the principal Act (as substituted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1982) is hereby amended by repealing the definition of the term “superannuation policy”, and substituting the following definition: 35

“‘Superannuation policy’ means a policy of life insurance upon human life in New Zealand—

“(a) That is vested in the trustees of a superannuation fund that was or was deemed to be a superannuation category 1 scheme on or before the 17th day of December 1987, not being a scheme that was classified by the Government Actuary as a 40

personal pension superannuation scheme and that admitted new members after that date; or

“(b) That was—

5 “(i) Effected for the purposes of the trustees of any such superannuation fund; or

“(ii) Accepted by the trustees of any such superannuation fund for the purposes of the fund,—

10 not being in any case a policy that has ceased to be a policy for the purposes of any such superannuation fund.”.

(2) Section 204 of the principal Act (as so substituted) is hereby further amended by inserting, after subsection (8), the following subsection:

15 “(8A) For the purposes of assessing income tax in respect of any income year of a company that commences on any date after the 1st day of April 1987, every company to which this section applies shall be deemed to have derived and to derive assessable income in that income year—

20 “(a) In relation to its business in respect of superannuation policies and annuities, of an amount calculated in accordance with **subsection (9A) or subsection (9B)** of this section, as the case may require, and the company shall be assessable and liable for income tax on that amount at the rate specified in **clause 2A (b)** of the First Schedule to this Act:

25 “(b) In relation to its other business of life insurance, of an amount calculated in accordance with subsection (9) of this section, and the company shall be assessable and liable for income tax on that amount at the rate specified in **clause 2A (a)** of the First Schedule to this Act.”

30 (3) Section 204 of the principal Act (as so substituted) is hereby further amended by inserting, after subsection (9), the following subsections:

35 “(9A) For the purposes of **subsection (8A) (a)** of this section, the amount of assessable income of a company having the 31st day of March as its annual balance date for any income year (of the company) commencing on or after the 1st day of April 1988 in
40 respect of superannuation policies and annuities shall be calculated in accordance with the following formula:

$$\left(\frac{a}{b} \times c \right) - \left(\frac{d}{e} \times f \right)$$

where—

- a is the amount of so much of the liabilities of the company in respect of policies of life insurance, contracts of reinsurance, and annuities granted (being the liabilities at the end of the income year) as, in the opinion of the Commissioner, relates to superannuation policies included in the Life Insurance Fund of that company and annuities granted included in that Fund; and
- b is the amount of so much of the liabilities of the company as, in the opinion of the Commissioner, relates to all policies of life insurance, contracts of reinsurance, and annuities granted (being the liabilities at the end of the income year) included in that Fund; and
- c is the amount of the profits of the company for the income year, ascertained in accordance with subsection (8) of this section; and
- d is the amount of so much of the liabilities of the types referred to in item a of this formula that were liabilities of the company at the end of the income year of the company that last ended before the 1st day of April 1988; and
- e is the amount of so much of the liabilities of the types referred to in item b of this formula that were liabilities of the company at the end of the income year of the company that last ended before the 1st day of April 1988; and
- f is an amount (or, where appropriate, the aggregate of amounts) in respect of investments sold or disposed of by the company in the income year referred to in **items a to c** of this subsection (being investments made or acquired before the 1st day of April 1988) ascertained as follows:
- “(a) In relation to any such investments made or acquired on or before the last day of the income year commencing on the 1st day of April 1982, the amount shall be the amount obtained by subtracting from the market value of that investment on the 1st day of April 1988 the greater of—
- “(i) The cost price or acquisition value of that investment; or

“(ii) The market value of that investment on the last day of the income year commencing on the 1st day of April 1982; and

5 “(b) In relation to any such investments made or acquired after the end of the income year commencing on the 1st day of April 1982, the amount shall be *(the amount obtained by subtracting the cost price or acquisition value of that investment from the market value of that investment on the 1st day of April 1988.)*,—

10 *New*

“(i) In the case of investments other than financial arrangements to which sections 64B to 64L of this Act apply, the amount obtained by subtracting the cost price or acquisition value of the investment from the market value of the investment on the 1st day of April 1988:

15 “(ii) In the case of investments that are financial arrangements to which sections 64B to 64L of this Act apply, the amount shall be equal to the amount that would be the base price adjustment of the investment, calculated in accordance with section 64F (2) of this Act, if the investment had matured on the 1st day of April 1988.

25 “(9B) Where a company to which this section applies has an income year ending on a day other than the 31st day of March, the amount of the assessable income of the company for any income year of the company that commences before the 1st day of April 1988 and ends on or after that date shall, for the
30 purposes of subsection (8A) (a) of this section, be calculated in accordance with subsection (9A) of this section as if item f in the formula in that subsection related only to investments sold on or after the 1st day of April 1988, and as if for item c in that formula there were substituted an amount calculated in
35 accordance with the following formula:

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$$\frac{a}{365} \times (b - c) + d$$

New

$$\frac{g \times (h - i)}{k} + j$$

where—

- (a) *g* is the number of days from the 1st day of April 1988 until the last day of that income year of the company (both days inclusive); and 5
- (b) *h* is the amount of the profits of the company for that income year, determined in accordance with subsection (8) of this section; and
- (c) *i* is the amount of any profit or loss on the sale or other disposal during that income year of any investments of the company, determined in accordance with subsection (7) of this section; and 10
- (d) *j* is the amount of any profit or loss on the sale or other disposal during that income year, on or after the 1st day of April 1988, of any investment of the company, determined in accordance with (**section 232B (1) (a) of this Act.**) subsection (7) of this section; and 15

New

k is the number of days in that income year of the company.” 20

12. Trustees of superannuation category 2 and category 3 schemes—Section 225 of the principal Act is hereby amended by adding the following subsection: 25

“(8) This section shall not apply to—

“(a) The trustees of superannuation category 2 schemes in respect of the tax on income derived—

“(i) In the income year that commenced on the 1st day of April 1988 and in (*every*) subsequent years: 30

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“(ii) In relation to a scheme that has made an election in accordance with section 15 of this Act, in

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any income year of the scheme that commences before the 1st day of April 1988 and ends after that date:

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New

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“(ii) In relation to a scheme referred to in subsection (7) of this section, in any accounting year of the scheme that commences before the 1st day of April 1988 and ends on or after that date, and in subsequent years:

“(b) The trustees of superannuation category 3 schemes in respect of the tax on income derived in the income year commencing on the 1st day of April 1989 and in subsequent (*income*) years.”

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13. Disposal of investments of superannuation category 2 and category 3 schemes—The principal Act is hereby amended by inserting, after section 225, the following section:

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“225A. (A1) In this section, the term ‘operative date’ means—

New

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“(a) In relation to a superannuation scheme that was or was deemed to be a category 2 scheme on the 1st day of April 1988, the 1st day of April 1988:

“(b) In relation to a superannuation category 3 scheme, the beginning of the income year commencing on the 1st day of April 1989.

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(1) Where—

“(a) The trustees of a superannuation scheme that was or was deemed to be a superannuation category 2 scheme on the 1st day of April 1988 or a

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superannuation category 3 scheme, on or after that date sell or otherwise dispose of any investment that was held on that date; and

New

“(1) Where—

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“(a) The trustees of—

“(i) A superannuation scheme that was or was deemed to be a category 2 scheme on the 1st day of April 1988; or

“(ii) A superannuation category 3 scheme—
on or after the operative date sell or otherwise dispose of any investment (other than a financial arrangement to which sections 64B to 64L of this Act apply) that was held on that date; and

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“(b) If the investment had been sold or otherwise disposed of before the (*1st day of April 1988*) operative date, any profit derived or loss incurred on the sale or other disposition would have been taken into account in calculating the assessable income of the trustees; and

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“(c) Any profit derived or loss incurred on the sale or other disposal of that investment on or after the (*1st day of April 1988*) operative date would not, but for this section, be taken into account in calculating the assessable income of the trustees,—

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an amount determined in accordance with **subsection (2)** of this section in respect of investments sold or disposed of shall be deemed to be a profit or gain derived by the trustees or a loss incurred by the trustees (as the case may require) in the income year in which the investment was sold or otherwise disposed of, and shall be taken into account in calculating the assessable income derived by the trustees in that income year.

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“(2) The amount referred to in **subsection (1)** of this section shall be ascertained as follows:

“(a) In the case of an investment made or acquired on or before the last day of the income year commencing on the 1st day of April 1982, that amount shall be the difference between the market value of that

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investment on the (*1st day of April 1988*) operative date and the greater of—

“(i) The cost price or acquisition value of that investment; or

5 “(ii) The market value of that investment on the last day of the income year commencing on the 1st day of April 1982:

“(b) In the case of an investment acquired after the end of the income year commencing on the 1st day of April 1982, that amount shall be the difference between—

10 “(i) The market value of the investment on the (*1st day of April 1988*) operative date; and

“(ii) The cost price or acquisition value of the investment.

15 “(3) Every reference in this section to an income year shall, where the trustee of a superannuation scheme furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting
20 year corresponding with that income year, and, in every such case this section shall, with any necessary modifications, apply accordingly.”

14. Interpretation—

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25 (1) Section 226 (1) of the principal Act (as substituted by **section 11 (1) of the Income Tax Amendment Act (No. 6) 1988**) is hereby amended by adding to the definition of the term “beneficiary income” the following proviso:

30 “Provided that where in any income year the trust is a superannuation fund, no income derived in that income year by a trustee of that fund shall be beneficiary income:”

New

35 (1) Section 226 (1) of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the words “; — but does not include income derived by a trustee of the trust in

New

any income year during which the trust is a superannuation fund:".

(2) Section 226 (1) of the principal Act (as so substituted) is hereby further amended by inserting in the definition of the term "qualifying trust", after the words "in relation to any trust", the words ", other than a superannuation fund,". 5

(3) Section 226 (1) of the principal Act (as so substituted) is hereby further amended by adding to the definition of the term "qualifying trust" the following proviso: 10

"Provided that a superannuation fund shall be a qualifying trust on and after the 1st day of April 1990:".

Struck Out

(4) Section 226 (1) of the principal Act (as so substituted) is hereby further amended by inserting in the definition of the term "taxable distribution", after the words "a qualifying trust", the words "or a superannuation fund". 15

New

(4) Section 226 (1) of the principal Act (as so substituted) is hereby further amended by omitting from the definition of the term "taxable distribution" the words "a non-qualifying trust or a foreign trust", and substituting the words "a trust that is a non-qualifying trust or a foreign trust but is not a superannuation fund". 20

(5) Section 226 (10) of the principal Act (as so substituted) is hereby amended by omitting the words "; superannuation fund, or superannuation category 3 scheme". 25

(6) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year. 30

15. Trustee income—(1) Section 228 of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 6) (No. 5) 1988) is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) In calculating the assessable income derived in any income year by a trustee of a superannuation fund, and notwithstanding section 106 (1) (a) of this Act but subject to the other provisions of this Act, a deduction shall be allowed for
 5 expenditure incurred by the superannuation fund to the extent to which it is incurred in respect of developing, marketing, selling, promoting, and advertising for members to the fund, not being expenditure incurred in acquiring any plant, machinery, equipment, land, or building, or expenditure which
 10 is not income in the hands of the recipient.”

New

“(2B) Notwithstanding any other provision of this Act, where any funds of a superannuation fund are invested in whole or in part in another superannuation fund or in a policy of life
 15 insurance issued in New Zealand, any income, gain, or benefit arising from that investment of those contributions shall be deemed not to be assessable income derived by the trustee of the fund.”

(2) Section 228 (3) of the principal Act (as so substituted) is
 20 hereby further amended by inserting, after paragraph (a), the following paragraph:

“(aa) During which the trust is at any time a superannuation fund; or”.

Struck Out

(3) Section 228 (4) of the principal Act (as so substituted) is
 25 hereby further amended by inserting in the proviso, after paragraph (a), the following paragraph:

“(aa) Any settlor of a superannuation fund; or”.

New

(3) Section 228 (5) of the principal Act (as so substituted) is hereby amended by inserting, after paragraph (a), the following
 30 paragraph:

“(aa) Any settlor of a superannuation fund; or”.

(4) This section shall apply with respect to the tax on income
 35 derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

Struck Out

16. Disclosure—Section 231 (1) of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 6) 1988) is hereby amended by inserting, after the words “a settlor of a trust”, the words “(other than a superannuation fund)”.

New

5

16. Disclosure—(1) Section 231 of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the following subsections:

“(6) Nothing in subsections (1) to (4) of this section shall apply to any trust that is a superannuation fund, or to any person in respect of a superannuation fund. 10

“(7) Nothing in subsections (1) to (4) of this section shall, before the 1st day of April 1990, apply to any superannuation scheme constituted outside New Zealand and classified by the Government Actuary under regulation 29 or regulation 30 of the Superannuation Schemes Regulations 1983.” 15

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year. 20

17. New sections inserted in principal Act relating to superannuation schemes—The principal Act is hereby further amended by inserting, after section 232 (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 6) (No. 5) 1988), the following sections: 25

“232A. Value of loans provided by superannuation scheme deemed to be income of scheme—(1) Where any superannuation scheme in any income year has, directly or indirectly and whether by one transaction or by a series of transactions, provided to a member of that superannuation scheme in that income year any loan that would be a fringe benefit if it were provided by an employer to an employee in respect of that employee’s employment, the value of the loan so provided shall be deemed to be income derived by the superannuation scheme in that income year. 30 35

“(2) For the purposes of **subsection (1)** of this section, but subject to **subsection (2A)** of this section, the value of the loan shall be the amount, if any, by which the amount of interest that would have accrued on that loan in respect of that income
 5 year had that interest been calculated on the daily balance of that loan at the prescribed rate of interest (as defined in section 336N (1) of this Act in relation to employment related loans) exceeds the amount of interest that, whenever it accrues, arises in respect of that loan to the member during that income year.

10

New

“(2A) Where the loan is a loan that was made on or before the 31st day of March 1989, and the rate of interest payable on the loan is not subject to review, the prescribed rate of interest shall be deemed to be—

15

“(a) In the case of a loan made before the 1st day of April 1985, the non-concessionary rate of interest (as defined in section 336N (1) of this Act) prescribed in relation to employment related loans for the year in which the agreement to make the loan was signed or, where the agreement was not in writing, the making of the loan was agreed to by all the parties to the loan:

20

25

“(b) In the case of a loan made on or after the 1st day of April 1985, the prescribed rate of interest (as defined in section 336N (1) of this Act in relation to employment related loans) that applied during the quarter in which the agreement to make the loan was signed or, where the agreement was not in writing, the making of the loan was agreed to by all parties to the loan.

30

“(3) Every reference in this section to an income year shall, where the trustee of a superannuation scheme furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st
 35 day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case this section shall, with any necessary modifications, apply accordingly.

Struck Out

“(4) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

New

5

“(4) This section shall apply with respect to the tax on income derived—

“(a) In the income year commencing on the 1st day of April 1989 and in every subsequent year, in the case of a scheme having the 31st day of March as its annual balance date:

“(b) In the case of a scheme referred to in **subsection (3)** of this section, in the accounting year of the scheme that first commenced on or after the 1st day of April 1989 and in every subsequent year.

15

“232B. Realisation of superannuation scheme investments made or acquired before 1 April 1988—

(1) Where the trustees of a superannuation scheme (being a scheme that was in force on the 1st day of April 1988) sell or otherwise dispose of, on or after the 1st day of April 1988, any investment (*including* excluding a financial arrangement to which sections 64B to 64L of this Act apply) made or acquired before that date, and any profit derived or loss incurred on that sale or other disposal is to be taken into account in calculating the assessable income of the trustees of the scheme, the amount of the profit derived or loss incurred (as the case may be) to be so taken into account shall, notwithstanding section 228A of this Act, be—

“(a) In the case of a scheme that was or was deemed to be a category 1 scheme on the 1st day of April 1988, the amount of the difference between—

“(i) The consideration received or receivable on the sale or other disposal of the investment; and

“(ii) The market value of the investment on the 1st day of April 1988:

35

“(b) In the case of a scheme that was or was deemed (*on the 1st day of April 1988*) to be a category 2 or a category 3 scheme on the 1st day of April 1988, the amount

of the difference between the consideration received or receivable on the sale or other disposal of the investment, and—

5 “(i) Where the investment was made or acquired after the end of the income year commencing on the 1st day of April 1982, the cost price or acquisition value of the investment:

10 “(ii) Where the investment was made or acquired on or before the last day of the income year commencing on the 1st day of April 1982, the greater of the cost price or acquisition value of the investment and the market value of the investment on the last day of that income year.

New

15 “(1A) Where the trustees of a superannuation scheme that was or was deemed to be a category 1 scheme on the 1st day of April 1988 are, in terms of section 64B of this Act, holders or issuers of a financial arrangement to which sections 64B to 64L of this Act apply, then, notwithstanding section 228A of this
20 Act, any income derived or expenditure incurred in respect of that financial arrangement shall be calculated under sections 64B to 64M of this Act, except that the acquisition price of the financial arrangement shall be, at the option of any person who is liable to pay income tax on trustee income under this Act,
25 either—

“(a) The market value of the financial arrangement on the 1st day of April 1988; or

30 “(b) The adjusted base price, being, in the case of the issuer of a financial arrangement, the acquisition price of that financial arrangement together with all accrued expenditure incurred by the issuer, less consideration paid by the issuer in relation to that financial arrangement before the 1st day of April 1988, and in the case of the holder of a financial
35 arrangement, the acquisition price of that financial arrangement together with all accrued income derived by the holder, less consideration received by the holder in respect of that financial arrangement before the 1st day of April 1988.

40 “(2) Every reference in this section to an income year shall, where the trustee of a superannuation scheme furnished a return of income under section 15 of this Act for an accounting

year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case, this section shall, with any necessary modifications, apply accordingly. 5

“232c. Mixed funds of different categories of superannuation scheme—For any income year where the trustees of a superannuation fund receive income that is treated as income of both a superannuation category 1 scheme and a superannuation category 2 scheme, the income of the trustees shall be attributed to those schemes respectively on a basis satisfactory to the Commissioner. 10

“232d. National Provident Fund—The Board of the National Provident Fund shall be liable for income tax in the same manner in all respects as if the superannuation arrangements provided by the National Provident Fund were superannuation schemes that are trusts and (*the members of*) the Board were the trustee(s) of those schemes. 15

“232e. Government Superannuation Fund—The Board of the Government Superannuation Fund shall be liable for income tax in the same manner in all respects as if the Fund were a superannuation scheme that is a trust and (*the members of*) the Board were the trustee(s) of that scheme. 20

“232f. Valuation of assets of superannuation schemes previously exempt from income tax—(1) For the purposes of determining, in respect of the income year commencing on the 1st day of April 1988, the amount of any deduction allowable under section 108 of this Act for any superannuation category 1 scheme (being a scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988) in respect of the depreciation of any asset that— 25

“(a) Was acquired by the trustees of the scheme before the 1st day of April 1988; and

“(b) Was not used in the production of assessable income of the scheme before that date by reason of being an asset used in the tax exempt activities of the scheme,— 35

the Commissioner shall, subject to this section, have regard to the cost of the asset and to all amounts that the Commissioner would have allowed as a deduction under section 108 of this Act if the asset had been used in the production of assessable income of the scheme for— 40

“(c) The income year in which the asset was acquired; and

“(d) Any subsequent income year commencing on or before the 1st day of April 1987.

“(2) Where any asset to which **subsection (1)** of this section applies is a building, the Commissioner shall, when determining the amount of any deduction allowable in respect of the asset under section 108 of this Act, have regard to the amount of expenditure that the scheme incurred in acquiring the asset.

“(3) Where there is any question under this section as to—

“(a) The cost of any asset acquired by the trustees of a superannuation category 1 scheme before the 1st day of April 1988; or

“(b) The date on which the trustees of the scheme altered or added to any such asset,—

it shall be determined by agreement between the trustees of the scheme and the Commissioner or, in default of such agreement, by the Commissioner.”

18. Determination of “other income”—Section 336B of the principal Act (as inserted by section 17 of the Income Tax Amendment Act 1984) is hereby amended by inserting in item a of the formula, after the words “income year”, the words “, together with any amount received in the form of a pension from a superannuation fund or an annuity from the Life Insurance Fund of a company to which section 204 of this Act applies, which amount is not otherwise included in the taxable income of the national superannuitant”.

19. Interpretation—Section 336N (1) of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by inserting, after paragraph (g) of the definition of the term “fringe benefit”, the following paragraphs:

Struck Out

“(ga) Any specified superannuation contribution made on or after the 1st day of April 1989:”

New

“(ga) Any loan provided by a superannuation fund to the extent that it constitutes assessable income of the fund pursuant to **section 232A** of this Act:

New

“(gb) Any specified superannuation contribution made on or after the 1st day of April 1989: 5

“(gc) Any benefit by way of the provision of services to a superannuation fund to the extent that the Commissioner is satisfied that the expenditure incurred in providing those services would have been deductible under this Act from the income of the superannuation fund if that expenditure had been incurred by the superannuation fund:” 10

20. New Part Xc inserted in principal Act—(1) The principal Act is hereby amended by inserting, after Part Xb (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985), the following Part:

“PART XC 15

“SPECIFIED SUPERANNUATION CONTRIBUTION WITHHOLDING TAX

“336z. **Application**—Except as otherwise provided in this Part, this Part of this Act shall apply notwithstanding anything in any other Part of this Act. 20

“336ZA. **Specified superannuation contribution withholding tax imposed**—(1) A final withholding tax (in this Act called the specified superannuation contribution withholding tax) is hereby imposed on any specified superannuation contribution made to a superannuation fund on or after the 1st day of April 1989, and shall be charged at the rate specified in **clause 13** of the First Schedule to this Act. 25

New

“(2) For the purposes of **this Part** of this Act, unless the context otherwise requires, the amount of a specified superannuation contribution shall be deemed to be the aggregate of— 30

“(a) The amount of the specified superannuation contribution received by the superannuation fund; and

“(b) The amount of any specified superannuation contribution withholding tax payable pursuant to **this Part** of this Act in respect of the contribution. 35

“336ZB. **Specified superannuation contribution withholding tax to be deducted**—Where an employer makes a specified superannuation contribution, the employer shall, at the time of making the contribution, make a deduction
5 of specified superannuation contribution withholding tax therefrom of an amount determined in accordance with **section 336ZA** of this Act.

“336ZC. **Payment period**—Every employer who makes a deduction of specified superannuation contribution withholding
10 tax from a specified superannuation contribution shall, not later than the 20th day of the month next after the month in which the employer has made any such deduction, pay to the Commissioner the amount of the deduction.

“336ZD. **Furnishing of statement**—(1) Every employer who
15 in any month makes any deduction of specified superannuation contribution withholding tax from any specified superannuation contribution shall, not later than the 20th day of the month next after the month in which the employer has made any such deduction (*or made any payment to the*
20 *Commissioner in respect of that deduction*), deliver to the Commissioner a statement in a form prescribed by the Commissioner showing such particulars as are prescribed in that statement of the specified superannuation contribution and of the specified superannuation contribution withholding
25 tax relating thereto.

“(2) The Commissioner may extend the time for delivery of the statement referred to in **subsection (1)** of this section in such cases and to such extent as the Commissioner thinks fit.

“336ZE. **Specified superannuation contributions not to**
30 **be assessable income of fund**—Notwithstanding anything in this Act, no specified superannuation contribution shall be included in the assessable income of the trustees of the superannuation fund to whom that specified superannuation contribution is made.

“336ZF. **Failure to deduct tax**—Where an employer fails to
35 make any deduction of specified superannuation contribution withholding tax from any specified superannuation contribution in accordance with the obligations under **section (336ZB** *of this Act, the amount in respect of which default has been*
40 *made shall constitute a debt payable by that employer to the Commissioner, and shall be deemed to have become due and payable to the Commissioner on the 20th day of the month next after the month in which the specified superannuation contribution was made.*)

New

336z8 of this Act—

“(a) The amount in respect of which default has been made shall, notwithstanding any other provision of this Act, be deemed for the purposes of this Act to be an amount calculated in accordance with the following formula:

$$\frac{a}{1 - a} \times b$$

where—

- a is the rate of specified superannuation contribution withholding tax, expressed as a percentage, stated in **clause 13** of the First Schedule to this Act and applying at the time the contribution was made; and
- b is the amount of the contribution (exclusive of any amount of specified superannuation contribution withholding tax) received by the superannuation fund; and

“(b) That amount shall constitute a debt payable by the employer to the Commissioner, and shall be deemed to have become due and payable to the Commissioner on the 20th day of the month next after the month in which the specified superannuation contribution was made.

“336zC. **Assessment of tax**—(1) The Commissioner may, in respect of any employer who is chargeable with specified superannuation contribution withholding tax, make an assessment of the amount of the specified superannuation contribution on which, in the Commissioner’s judgment, specified superannuation contribution withholding tax ought to be levied and an assessment of the amount of that tax, and that employer shall be liable to pay the tax so assessed except so far as the employer establishes on objection that the assessment is excessive or that the employer is not chargeable with the tax so assessed.

“(2) Sections 23, 27, and 29 of this Act shall apply, so far as may be, with respect to every assessment made under **subsection (1)** of this section as if—

“(a) In those sections, the expression ‘taxpayer’ included a person who is chargeable with specified superannuation contribution withholding tax; and

5 “(b) In section 23, the expression ‘tax already assessed’ included specified superannuation contribution withholding tax already assessed under **subsection (1)** of this section.

“(3) An assessment made under this section shall be subject to objection in the same manner as an assessment of income tax levied under section 38 of this Act, and Part III of this Act shall apply, so far as may be, to an objection to an assessment made under this section as if the terms ‘income tax’ and ‘tax’ used in that Part included specified superannuation contribution withholding tax.

15 “336ZH. **Additional tax for failure to deduct—**

(1) Where—

“(a) Any employer, being an employer under an obligation under this Part of this Act to make a deduction of specified superannuation contribution withholding tax from a specified superannuation contribution, fails to make, wholly or in part, the deduction; or

20 “(b) Any employer who has made a deduction of specified superannuation contribution withholding tax fails to pay, wholly or in part, on or before the last day of the time prescribed, the amount of the deduction to the Commissioner,—

that employer shall, unless the Commissioner is satisfied that the employer has not been guilty of wilful neglect or default, on the expiry of the day on which that failure occurs be liable, without conviction, in addition to any other penalty to which the employer may be liable, to a penalty of an amount equal to—

35 “(c) Ten percent of the amount in respect of which default has been made (that amount being referred to in this subsection as ‘the amount in default’); and

“(d) Ten percent of so much of—

“(i) The amount in default; and

40 “(ii) The amount of any penalty added in accordance with **paragraph (c)** of this subsection,— as remains unpaid at the end of the day on which there expires the period of 6 months immediately following the day on which the failure to pay occurred; and

“(e) Ten percent of so much of—

“(i) The amount in default; and

“(ii) The amount of any penalty added in accordance with paragraph (c) or paragraph (d) of this subsection; and

“(iii) The amount of any penalty previously added 5
in accordance with this paragraph,—

as remains unpaid at the expiry of any of the periods of 6 months that, consecutively, succeed the 6-month period referred to in paragraph (d) of this subsection. 10

“(2) For the purposes of subsection (1) (b) of this section, a deduction of specified superannuation contribution withholding tax shall be deemed to have been made if and when payment is made of the net amount of any payment consisting of any specified superannuation contribution. 15

“(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed and shall be recoverable accordingly.

“(4) Subject to this Part of this Act, the other Parts of this Act, as far as they are applicable and with any necessary modifications, shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 398 of this Act and as if the person liable to the penalty were the taxpayer. 20
25

“336ZI. **Penal tax for failure to deduct**—(1) Where—

“(a) Any employer, being an employer under an obligation under this Part of this Act to make a deduction of specified superannuation contribution withholding tax from a payment consisting of any specified superannuation contribution, fails wholly or in part to make the deduction; or 30

“(b) Any person knowingly applies or permits to be applied the amount of any specified superannuation contribution withholding tax or any part thereof for any purpose other than the payment thereof to the Commissioner,— 35

that employer or person shall be chargeable by way of penalty, in addition to any other penalty to which the employer or person may be liable, with an additional amount (hereinafter referred to as penal tax) not exceeding an amount equal to 40
treble the amount in respect of which default has been made (hereinafter referred to as the deficient deduction).

“(2) For the purposes of **subsection (1) (b)** of this section, a deduction of specified superannuation contribution withholding tax shall be deemed to have been made if and when payment is made of the net amount of any specified superannuation contribution, and the amount of any specified superannuation contribution withholding tax shall be deemed to have been applied for a purpose other than the payment thereof if that amount is not duly paid to the Commissioner:

“Provided that no person shall be chargeable with penal tax under **subsection (1) (b)** of this section if that person satisfies the Commissioner that the amount of the specified superannuation contribution withholding tax has been accounted for, and that the failure to account for it within the prescribed time was due to mistake, illness, accident, or other cause beyond that person’s control.

“(3) Penal tax imposed by this section shall for all purposes be deemed to be of the same nature as the deficient deduction, and shall be recoverable accordingly.

“(4) Subject to this Part of this Act, the other Parts of this Act, as far as they are applicable and with any necessary modifications, shall apply with respect to all penal tax imposed under this section as if—

“(a) It were penal tax under section 420 of this Act; and

“(b) The person chargeable with the penal tax imposed under this section were the taxpayer; and

“(c) The deficient deduction were deficient tax payable for the same year of assessment as that in which the deficient deduction became due and payable to the Commissioner.

“336zj. **Offences**—(1) Without limiting the application of section 416 of this Act, every person commits an offence against this Act who—

“(a) Being a person under an obligation under this Part of this Act to make a deduction of specified superannuation contribution withholding tax from a specified superannuation contribution fails wholly or in part to make the deduction; or

“(b) Knowingly applies or permits to be applied the amount of any specified superannuation contribution withholding tax or any part thereof for any purpose other than the payment thereof to the Commissioner.

“(2) For the purposes of **subsection (1) (b)** of this section, a deduction of specified superannuation contribution withholding

tax shall be deemed to have been made if and when payment is made of the net amount of any specified superannuation contribution, and the amount of any specified superannuation contribution withholding tax shall be deemed to have been applied for a purpose other than the payment thereof if that amount is not duly paid to the Commissioner: 5

“Provided that no person shall be convicted of an offence under subsection (1)(b) of this section if the person satisfies the court that the amount of the specified superannuation contribution withholding tax has been accounted for, and that the person’s failure to account for it within the prescribed time was due to mistake, illness, accident, or other cause beyond that person’s control. 10

“336zk. **Application of other provisions**—(1) Subject to this Part of this Act, sections 365 (1A), 365 (2), 365 (3), 367, and 371 of this Act, as far as they are applicable and with any necessary modifications, shall, for the purposes of this Part of this Act, apply as if— 15

“(a) Every reference in those sections to a tax deduction were a reference to a deduction of specified superannuation contribution withholding tax: 20

“(b) Every reference in those sections to Part XI of this Act were a reference to this Part of this Act.

“(2) Subject to this Part of this Act, the other Parts of this Act (other than sections 365, 367, and 371), as far as they are applicable and with any necessary modifications, shall apply with respect to specified superannuation contribution withholding tax as if it were income tax levied under section 38 of this Act; but nothing in this Part of this Act shall be construed so as to include specified superannuation contribution withholding tax in the terms ‘income tax’ or ‘tax’ for the purposes of section 398A or section 413A of this Act.” 25 30

(2) This section shall apply to specified superannuation contributions made on or after the 1st day of April 1989.

21. Determination of assessable income—Section 35
374B (1) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by adding after paragraph (h) (as added by section 11 (4) of the Income Tax Amendment Act (No. 3) 1987) the expression “; and”, and the following paragraph: 40

“(i) Where any person receives, on or after the 1st day of April 1990, any distribution from a superannuation scheme, and an employer of that person (being an

5 employer by whom the person continues to be
employed one month after the date of receipt of the
distribution) has made contributions to that
superannuation scheme in the income year in which
10 the distribution was received or in the immediately
preceding 2 income years, the amount of that
distribution shall, unless the Commissioner in the
Commissioner's discretion determines otherwise, be
included in the person's assessable income for the
15 income year or years determined by the
Commissioner as being the income year or years for
which the contributions were appropriate, less an
amount that the Commissioner determines is
attributable to the member's contributions for any
such year(.)

New

20 "Provided that this paragraph shall not apply to
any person who receives any distribution from a
superannuation scheme as a result of and on or after
the person's retirement from employment with an
employer who was a contributor to the scheme."

25 **22. Interpretation**—Section 394A of the principal Act (as
inserted by section 55 of the Income Tax Amendment Act
(No. 6) (No. 5) 1988 is hereby amended by inserting in the
definition of the term "income tax", after the words "excess
retention tax," the words "any specified superannuation
contribution withholding tax (payable under Part Xc of this
Act),".

New

30 **22A. Payment of tax by public authorities**—Section 396
of the principal Act is hereby amended by inserting, after the
words "income tax", the words "or any other tax or amount
under this Act".

35 **22B. Deduction of tax from payment due to
defaulters**—(1) Section 400 (1) of the principal Act (as
substituted by section 47 (1) of the Income Tax Amendment
Act 1980) is hereby amended by adding to the definition of the
term "income tax" the following paragraph:

New

“(e) An amount that pursuant to **section 336zF** of this Act constitutes a debt payable to the Commissioner:”.

(2) Section 400 (1) of the principal Act (as so substituted) is hereby further amended by inserting in the definition of the term “taxpayer”, after the words “or paragraph (d)”, the words “or paragraph (e)”. 5

22c. Publication of names of tax evaders—Section 427 (1) (c) of the principal Act is hereby amended by inserting after the expression “section 323 or” (as inserted by section 43 (1) of the Income Tax Amendment Act (No. 2) 1985), the expression “**section 336zi** or”. 10

23. Keeping of business records—(1) Section 428 (3) of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph: 15

“(ba) Is a person to whom the provisions of **Part Xc** of this Act apply and who makes any specified superannuation contribution to a superannuation fund:”.

(2) Section 428 (3) of the principal Act is hereby further amended by inserting, after paragraph (h) (as inserted by section 59 (3) of the Income Tax Amendment Act (No. 6) (No. 5) 1988), the expression “; and”, and the following paragraph: 20

“(i) Every specified superannuation contribution, and the taxable value thereof, made by the person to any superannuation fund, those records to include (without limiting the generality of the foregoing provisions of this paragraph) details of the recipient of the specified superannuation contribution and the occasion of making it,—”. 25 30

24. First Schedule amended—(1) The First Schedule to the principal Act is hereby amended by repealing clause 2A (as inserted by section 42 (1) of the Income Tax Amendment Act (No. 2) 1982 and amended by section 19 of the Income Tax Amendment Act 1984), and substituting the following clause: 35

“**2A. Life insurance companies**—On the amount of taxable income derived by a company to which section 204 of this Act applies from life insurance business carried on by it, the basic rate of income tax shall be—

“(a) For every \$1 of the amount that is assessable under section 204 (9) of this Act, 33c; and

“(b) For every \$1 of the amount that is assessable under subsection (9A) or subsection (9B) of section 204 of this Act, 25c.”

5

(2) The First Schedule to the principal Act is hereby further amended by repealing clauses 9A and 9B (as inserted by section 42 (2) of the Income Tax Amendment Act (No. 2) 1982), and substituting the following clauses:

10

“9A. **Trustees of superannuation category 1 and category 2 schemes**—On the amount of taxable income derived by the trustees of a superannuation category 1 or category 2 scheme, the basic rate of income tax shall be,—

15

“(a) In the case of a scheme that was or was deemed to be a superannuation category 1 scheme on or before the 17th day of December 1987 (not being a scheme that was classified by the Government Actuary as a personal pension scheme and that admitted new members after that date), 25c for every \$1 of the amount of that taxable income; and

20

“(b) In any other case, 33c for every \$1 of the amount of that taxable income.

25

“9B. **Trustees of superannuation category 3 schemes**—On the amount of the taxable income derived by the trustees of any superannuation category 3 scheme, the basic rate of income tax for every \$1 of that amount shall be 40.5c.”

(3) The First Schedule to the principal Act is hereby further amended by adding to Part A the following subheading and clause:

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“Specified Superannuation Contribution Withholding Tax

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“13. **Specified superannuation contribution withholding tax**—On the amount of any specified superannuation contribution (being the gross amount of that contribution before deduction of specified superannuation contribution withholding tax) by an employer to a superannuation fund, the specified superannuation contribution withholding tax for every \$1 of that amount shall be 33c.”

(4) The following enactments are hereby consequentially repealed:

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(a) Section 42 (2) of the Income Tax Amendment Act (No. 2) 1982:

(b) Section 19 of the Income Tax Amendment Act 1984:

- (c) Section 4 (1) (a) of the Income Tax Amendment Act (No. 4) 1985.
- (5) Subsections (1) and (2) of this section shall apply with respect to the tax on income derived—
- (a) In the income year that commenced on the 1st day of April 1988 and in every subsequent year; and 5
- (b) In relation to any company or superannuation category 1 or category 2 scheme that has made an election in accordance with section 15 of the principal Act, in any income year of the company or fund that commences before the 1st day of April 1988 and ends after that date, and in every subsequent year. 10
- (6) Subsection (3) of this section shall apply with respect to the tax on specified superannuation contributions made on or after the 1st day of April 1989. 15

25. Amendments to National Provident Fund Act 1950—(1) The National Provident Fund Act 1950 is hereby amended by repealing section 8 (as amended by section 39 (2) of the Income Tax Amendment Act (No. 2) 1982).

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(2) Section 66A of the National Provident Fund Act 1950 (as inserted by section 6 of the National Provident Fund Amendment Act 1983) is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) The 1965 Superannuation Scheme for Permanent Representatives; or” 25

(3) Section 66A of the National Provident Fund Act 1950 (as so inserted) is hereby further amended by omitting the expression “paragraphs (d)”, and substituting the expression “paragraphs (ca), (d)”.

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(4) Section 66A of the National Provident Fund Act 1950 (as so inserted) is hereby further amended by adding the following subsections:

“(2) For the purposes of the Income Tax Act 1976, the schemes referred to in paragraphs (a) to (e) of subsection (1) of this section shall be deemed to be, and to have been as from the 31st day of March 1983, superannuation category 1 schemes (*approved by the Government Actuary under Part II of the Superannuation Schemes Act 1976*).

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“(3) For the purposes of section 150 of the Income Tax Act 1976, the schemes referred to in paragraphs ~~((ca),)~~ (d), and (e)

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of subsection (1) of this section shall be deemed to be, and to have been as from the 31st day of March 1983, subsidised employee superannuation schemes.”

5 (5) Section 39 (2) of the Income Tax Amendment Act (No. 2) 1982 is hereby consequentially repealed.

(6) **Subsection (1)** of this section shall apply with respect to—

- (a) The tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year:
- 10 (b) The land tax for the year of assessment commencing on the 1st day of April 1989 and for every subsequent year.

26. Amendment to Government Superannuation Fund Act 1956—(1) The Government Superannuation Fund Act 15 1956 is hereby amended by repealing section 18.

(2) This section shall apply with respect to—

- (a) The tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year:
- 20 (b) The land tax for the year of assessment commencing on the 1st day of April 1989 and for every subsequent year.

Transitional Provisions

27. Assessable income of superannuation category 1 and category 2 schemes for non-standard accounting year in which 1 April 1988 occurs—(1) In this section, unless the context otherwise requires,—

“First part of the income year”, in relation to an income year referred to in this section, means the period commencing with the first day of the income year and ending with the 31st day of March 1988 (both dates inclusive):

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“Income year”, in relation to a taxpayer who has made an election in accordance with section 15 of this Act to furnish a return for the year ending with the date of the annual balance of the taxpayer’s accounts, means a year ending with the date of that annual balance:

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“New law” means the provisions of the principal Act as amended by this Act, as those provisions relate to any income, expenditure, profit, or loss to be included in determining the assessable income of a taxpayer:

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“Previous law” means the provisions of the principal Act as they were in force before the enactment of this

Act, as those provisions relate to any income, expenditure, profit, or loss to be included in determining the assessable income of a taxpayer:

“Second part of the income year”, in relation to any income year referred to in this section, means the period commencing with the 1st day of April 1988 and ending with the last day of the income year (both dates inclusive). 5

(2) The assessable income of the trustees of a superannuation category 1 scheme (being a scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988) that has an income year ending on a day other than the 31st day of March shall, for any income year of the scheme that commences before the 1st day of April 1988 and ends on or after that date, be calculated in accordance with the following formula: 10 15

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$$\frac{a \times b}{365} + c$$

New

$$\frac{a \times b}{d} + c$$

where—

- a is the amount of the assessable income of the trustees of the scheme for the income year, determined as if the new law applied for the whole of the income year, but excluding the amount of any profit or loss on the sale or other disposal during the income year of any investments of the scheme; and 25
- b is the number of days in the second part of the income year; and
- c is the amount of any profit or loss on the sale or disposal during the second part of the income year of any investments of the scheme (including any financial arrangement), determined in accordance with the new law(.); and 30

New

d is the number of days in the income year of the scheme.

(3) The assessable income of the trustees of a superannuation category 2 scheme (being a scheme that was or was deemed to be a superannuation category 2 scheme on the 1st day of April 1988) that has an income year ending on a day other than the 31st day of March shall, for any income year of the scheme that commences before the 1st day of April 1988 and ends on or after that date, be calculated in accordance with the following formula:

$$a + b + c + \frac{d \times e}{(365) f}$$

where—

- a is the amount of the assessable income of the trustees of the scheme for the income year determined as if the new law applied for the whole of the income year, but excluding the amount of any profit or loss on the sale or other disposal during the income year of any investments of the scheme; and
- b is the amount of any profit or loss on the sale or other disposal during the first part of the income year of any investments of the scheme (including any financial arrangement), determined in accordance with the previous law; and
- c is the amount of any profit or loss on the sale or other disposal during the second part of the income year of any investments of the scheme (including any financial arrangement), determined in accordance with the new law; and
- d is the amount of deductible expenditure for the income year determined as if the new law applied for the whole of the income year, less the amount of deductible expenditure for the income year determined as if the previous law applied for the whole of the income year; and
- e is the number of days in the first part of the income year(.); and

New

f is the number of days in the income year of the scheme.

28. Provisional tax and terminal tax—

(1) Notwithstanding anything in Part XII of the principal Act, no provisional tax shall be payable in respect of the income year ending on the 31st day of March 1989 by—

(a) The trustees of any superannuation category 1 scheme (being a scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988) in respect of the assessable income of that scheme:

(b) Any company to which section 204 of this Act applies in respect of the income of the company that is assessable under **subsection (9A) or subsection (9B)** of that section.

(2) Notwithstanding anything in Part XII of the principal Act, where any provisional tax is payable in respect of the income year ending on the 31st day of March 1990 by—

(a) The trustees of any superannuation category 1 scheme (being a scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988) with an income year ending after the 30th day of September 1989 but before the 1st day of **(January) March** 1990, in respect of the assessable income of that scheme; or

(b) Any company to which section 204 of this Act applies, being a company with an income year ending after the 30th day of September 1989 but before the 1st day of **(January) March** 1990, in respect of the income of the company that is assessable under **(subsection (9A) or) subsection (9B)** of that section,—

the first instalment of provisional tax for the income year ending on the 31st day of March 1990 shall not be due until the second instalment date specified in the Eighth Schedule to the principal Act.

(3) Notwithstanding anything in section 388 of the principal Act, where any terminal tax is due and payable under that section in respect of the income year ending on the 31st day of March 1988 by—

(a) The trustees of any superannuation category 1 scheme (being a scheme that was or was deemed to be a

superannuation category 1 scheme on the 1st day of April 1988) with an income year ending after the 31st day of March 1988 but before the 1st day of October 1988, in respect of the assessable income of that scheme; or

- 5 (b) Any company to which section 204 of this Act applies, being a company with an income year ending after the 31st day of March 1988 but before the 1st day of October 1988, in respect of the income of the company that is assessable under **subsection (9A) or**
- 10 **subsection (9B)** of that section,—

half the amount of that tax shall be payable on the 7th day of (May) July 1989 and the other half of the amount of that tax shall be payable on the 7th day of February 1990.

- 15 (4) Notwithstanding anything in section 388 of the principal Act, where any terminal tax is due and payable under that section in respect of the income year ending on the 31st day of March 1989 by—

- 20 (a) The trustees of any superannuation category 1 scheme (being a scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988) with an income year ending after the 30th day of September 1988 but before the 1st day of April 1989, in respect of the assessable income of that scheme; or

- 25 (b) Any company to which section 204 of this Act applies, being a company with an income year ending after the 30th day of September 1988 but before the 1st day of April 1989, in respect of the income of the company that is assessable under (**subsection (9A) or**
- 30 **subsection (9B)**) of that section,—

- half the amount of that tax shall be payable on the date on which it falls due and payable in accordance with section 388 of the principal Act, and the other half of the amount of that tax
- 35 shall be payable on the date on which terminal tax is due and payable in accordance with that section for the income year ending on the 31st day of March 1990.

- (5) Every reference in this section to an income year shall, where the taxpayer furnishes a return of income under section
- 40 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and in every such case this section shall, with any necessary modifications, apply accordingly.

New

28A. Furnishing of returns by superannuation category 1 schemes and life insurance companies with balance dates 1 April 1988 to 30 September 1988—

(1) The trustee of a superannuation scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988, being a scheme—

(a) To which **subsection (2) of section 27** of this Act applies; and

(b) Whose authorised balance date for the income year referred to in that subsection is any date from the 1st day of April 1988 to the 30th day of September 1988 (both dates inclusive),—

shall furnish to the Commissioner, not later than the 7th day of July 1989 or such later date as the Commissioner may allow, a return in the prescribed form of income derived by the scheme in that income year.

(2) A company that is a company—

(a) To which **subsection 204 (9b)** of the principal Act (as inserted by **section 11 (3)** of this Act) applies; and

(b) Whose authorised balance date for the income year referred to in that subsection is any date from the 1st day of April 1988 to the 30th day of September 1988 (both dates inclusive)—

shall furnish to the Commissioner, not later than the 7th day of July 1989 or such later date as the Commissioner may allow, a return in the prescribed form of income referred to in **section 204 (8A) (a)** of the principal Act (as inserted by **section 11 (2)** of this Act) derived by the company in that income year.

(3) Nothing in subsection (4) or in any other provision of section 17 of this Act shall apply to require a return in respect of income referred to in this section to be furnished to the Commissioner before the 7th day of July 1989, but nothing in this section shall apply to remove any requirement under the principal Act to furnish a return in respect of any other income of the superannuation scheme or company, as the case may be.

PART II

MISCELLANEOUS INCOME TAX PROVISIONS

29. This Part to be read with Income Tax Act 1976—

This Part of this Act shall be read together with and deemed

part of the Income Tax Act 1976* (in this Part referred to as the principal Act).

30. Interpretation—(1) Section 2 of the principal Act is hereby amended by omitting from paragraph (c) of the definition of the term “extra emolument” (as amended by section 2 (1) of the Income Tax Amendment Act (No. 3) 1988) the words “and not being a payment, or part of a payment, that is deemed to be a dividend in terms of section 152 (4) (a) of this Act”.

(2) This section shall apply to payments made on or after the 1st day of April 1989.

31. Retiring allowances payable to employees—(1) Section 68 (5) of the principal Act is hereby amended by repealing paragraphs (b) and (c) including the provisos thereto (as amended by section 12 (6) of the Income Tax Amendment Act (No. 3) 1983 and section 5 (1) (i) of the Income Tax Amendment Act (No. 3) 1988).

(2) Section 12 (6) of the Income Tax Amendment Act (No. 3) 1983 and section 5 (1) (i) of the Income Tax Amendment Act (No. 3) 1988 are hereby consequentially repealed.

(3) This section shall apply to any bonus, gratuity, redundancy payment, or retiring allowance paid on or after the 1st day of April 1989.

32. Standard values of wine, brandy, and whisky—Section 87 of the principal Act is hereby amended by adding the following subsection:

“(4) Subsections (1), (2), and (3) of this section shall not apply at the end of the income year ending with the 31st day of March 1989, or in any subsequent income year, with respect to any trading stock, being—

“(a) Wine; or

“(b) Brandy; or

“(c) Whisky,—

that is manufactured in New Zealand and is held as reserve stock for maturity purposes.”

33. Spreading of income from the revaluation of trading stocks of wine, brandy, and whisky—The principal

*R.S. Vol. 12, p. 1

Amendments: 1983, No. 4; 1983, No. 10; 1983, No. 139; 1984, No. 10; 1985, No. 1; 1985, No. 59; 1985, No. 125; 1986, No. 3; 1986, No. 7; 1986, No. 41; 1986, No. 117; 1987, No. 66; 1987, No. 104; 1987, No. 189; 1988, No. 6; 1988, No. 14; 1988, No. 123; 1988, No. 133

Act is hereby amended by inserting, after section 87, the following section:

“87A. (1) For the purposes of this section,—

“‘Liquor licence holder’ means any taxpayer who is a holder, or on whose behalf another person is a holder, 5
of a grape wine licence granted under the Wine Makers Act 1981, or of a licence to distil spirits granted under Part II of the Distillation Act 1971:

“‘Liquor revaluation income’, in relation to any specified trading stock owned at the end of the income year 10
ending with the 31st day of March 1989 by any liquor licence holder, means the amount (if a positive amount) calculated in accordance with the following formula:

$$a - b \quad 15$$

where—

a is the value at which that specified trading stock is to be taken into account by that liquor licence holder in accordance with section 85 of this Act, at the end of that income year; 20
and

b is the value of that specified trading stock calculated by reference to the standard value that would have applied at the beginning of that income year in terms of section 87 of this Act: 25

“‘Specified trading stock’ means any trading stock, being—

“(a) Wine; or

“(b) Brandy; or 30

“(c) Whisky,—

that is manufactured in New Zealand and held as reserve stock for maturity purposes.

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“(2) Subject to subsection (3) of this section, where any liquor licence holder derives income from specified trading stock 35
during the income year ending with the 31st day of March 1989, the Commissioner may, upon application made in writing by or on behalf of a liquor licence holder within the time in which the taxpayer is required to furnish a return of income for 40
that income year, or within such further time as is allowed by

Struck Out

the Commissioner, apportion that liquor licence holder's liquor revaluation income between that income year and all or any of the 4 income years immediately succeeding that income year, and in every such case the amount of income so apportioned shall be deemed to have been income derived by the liquor licence holder in the income year to which it is apportioned.

New

“(2) Where any liquor licence holder derives liquor revaluation income from specified trading stock during the income year ending with the 31st day of March 1989, the liquor licence holder may by notice in writing to the Commissioner within the time in which the liquor licence holder is required to furnish a return of income for that income year, or within such further time as the Commissioner may allow, elect to either—

“(a) Apportion that liquor revaluation income between that income year and all or any of the 8 income years immediately succeeding that income year, and in every such case the amount of income so apportioned shall be deemed to have been income derived by the liquor licence holder in the income year to which it is apportioned; or

“(b) Claim a deduction in calculating the assessable income for that income year amounting to one half of the liquor revaluation income of that liquor licence holder.

“(2A) An election made under **subsection (2)** of this section shall be final.

“(3) The amount of any liquor revaluation income (so) apportioned to any income year in accordance with the provisions of **subsection (2) (a)** of this section shall not be less than the lesser of—

“(a) An amount equal to (20) 11 percent of the liquor revaluation income;

“(b) The amount of the balance of the liquor revaluation income not included in calculating the assessable income of the liquor licence holder in any income year preceding that income year.

“(4) Any apportionment made under **subsection (2) (a)** of this section may at any time be cancelled by the Commissioner, and in every such case the whole of the liquor revaluation income so apportioned shall be deemed to have been derived by the liquor licence holder in the income year immediately preceding the income year in respect of which the apportionment is cancelled, except to the extent to which the income has been apportioned to and assessed for an earlier year. 5

“(5) Every reference in this section or in section 87 of this Act to an income year shall, where the taxpayer furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and in every such case this section shall, with any necessary modifications, apply accordingly.” 10 15

34. Certain deductions not permitted—(1) Section 106 (1) of the principal Act is hereby amended by inserting, after paragraph (f), the following paragraphs:

“(fa) Additional tax for late payment of any fringe benefit tax or land tax: 20

New

“(faa) Any penalty imposed pursuant to **section 336ZH** of this Act for failure to deduct or to pay specified superannuation contribution withholding tax: 25

“(fb) Any penalty in respect of any stamp and cheque duties imposed under the Stamp and Cheque Duties Act 1971:” 25

(2) Section 106 (2) (a) of the principal Act is hereby amended by omitting the words “and fringe benefit tax” (as inserted by section 34 (9) of the Income Tax Amendment Act (No. 2) 1985). 30

(3) Section 34 (9) of the Income Tax Amendment Act (No. 2) 1985 is hereby consequentially repealed.

(4) **Subsections (2) and (3)** of this section shall apply with respect to the fringe benefit tax on fringe benefits provided or granted on or after the 1st day of April 1989. 35

35. Year in which fringe benefit tax and specified superannuation contribution withholding tax deductible—(1) The principal Act is hereby amended by inserting, after section 140A, the following sections:

“140AA. Year in which fringe benefit tax deductible—

- (1) For the purposes of calculating the assessable income derived in any income year by any taxpayer, any amount of fringe benefit tax that becomes due and payable by the taxpayer in respect of fringe benefits provided or granted in that income year shall be deemed to be expenditure incurred by the taxpayer in that income year and in no other income year, and the deduction (if any) allowable in respect thereof under section 104 of this Act shall be computed accordingly.”
- (2) This section shall apply with respect to the fringe benefit tax on fringe benefits provided or granted on or after the 1st day of April 1989.

New

- “140AB. Year in which specified superannuation contribution withholding tax deductible—**For the purposes of calculating the assessable income derived in any income year by any taxpayer, any amount of specified superannuation contribution withholding tax that becomes due and payable by the taxpayer in respect of specified superannuation contributions made by the taxpayer in that income year shall be deemed to be expenditure incurred by the taxpayer in that income year and in no other income year, and the deduction (if any) allowable in respect thereof under section 104 of this Act shall be computed accordingly.”

25 36. Retiring allowances payable to employees—

(1) Section 152 of the principal Act is hereby amended by repealing subsections (3), (4), and (5).

- (2) This section shall apply to any bonus, gratuity, retiring allowance, or other lump sum paid on or after the 1st day of April 1989.

- 37. Energy trading operators—**Section 197c (9) (a) of the principal Act (as inserted by section 33 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended, as from its commencement, by omitting the expression “section 45 (5) (a)”, and substituting the expression “section 45 (5A)”.

38. Interpretation of term “fringe benefit”—(1) Section 336N (1) of the principal Act is hereby amended by omitting from paragraph (k) of the definition of the term “fringe benefit” the words “or section 152 (4) (b)”.

(2) This section shall apply with respect to the fringe benefit tax on fringe benefits provided or granted on or after the 1st day of April 1989.

39. Fringe benefit tax imposed—(1) Section 336s of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985 and amended by section 19 (1) of the Income Tax Amendment Act (No. 2) 1988) is hereby amended—

- (a) By inserting, after the words “Every employer of an employee who has”, the words “, before the 1st day of April 1989,”;
- (b) By omitting from paragraph (a) the expression “(da) and (db)”, and substituting the expression “(da), (db), (dc), and (dd)”;
- (c) By omitting from the proviso the words “this section”, in both places where they occur, and substituting in each case the words “this subsection”.

(2) Section 336s of the principal Act (as so substituted) is hereby further amended by adding the following subsection:

“(2) Every employer who has, on or after the 1st day of April 1989, provided or granted a fringe benefit to an employee of the employer shall be liable to pay a special tax by way of an income tax to be known as fringe benefit tax at the rate of 49 percent of the taxable value of that fringe benefit:

“Provided that, for the purposes of this subsection, in relation to an employee and to any quarter, the value of any fringe benefit or, as the case may be, the aggregate of the values of the fringe benefits (being in every case a fringe benefit that consists of a benefit of the kind referred to in paragraph (e) of the definition of the term ‘fringe benefit’ in section 336N (1) of this Act and being in every case the value that, but for this proviso, would be the taxable value of the fringe benefit) provided or granted in the quarter to the employee by the employer of the employee shall be reduced to,—

- “(a) Where that value or, as the case may be, that aggregate does not exceed \$50, nil;
- “(b) Where that value or, as the case may be, that aggregate exceeds \$50, an amount equal to the balance remaining after deducting from that value or, as the case may be, that aggregate the amount of \$50;— and the liability of the employer under this subsection (apart from this proviso) shall be reduced accordingly.”

(3) This section shall apply to the fringe benefit tax on fringe benefits provided or granted on or after the 1st day of October 1988.

40. Determination of assessable income—(1) Section 374B (1) (e) (ii) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by inserting, after the expression “86FA,” (as inserted by section 11 (2) (a) of the Income Tax Amendment Act (No. 3) 1987), the expression “87A,”.

(2) Section 374B (1) (e) of the principal Act (as so inserted) is hereby further amended by adding the following subparagraph:

“(iv) Any amount of income that, under section 87A of this Act, is liquor revaluation income that is deemed to be, or has been, derived by the person in the income year that commenced on the 1st day of April 1988; and”.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

41. Rates of income tax for year commencing on 1 April 1988—For the year commencing on the 1st day of April 1988, income tax shall be assessed, levied, and paid pursuant to Part IV of the principal Act at the basic rates specified in the First Schedule to the principal Act (as amended by section 22 (1) of the Income Tax Amendment Act (No. 2) 1988, sections 23 (1) and 25 (1) of the Income Tax Amendment Act (No. 3) 1988, section 14 of the Income Tax Amendment Act ((No. 6)) (No. 5) 1988, and section 24 of this Act).

42. Rate of excess retention tax for year commencing on 1 April 1988—For the year commencing on the 1st day of April 1988, excess retention tax shall be assessed, levied, and paid pursuant to Part V of the principal Act at the rate specified in clause 11 of Part A of the First Schedule to that Act.

43. Repeal—The Income Tax Amendment Act (No. 2) 1987 is hereby consequentially amended by repealing sections 2, 3, and 4.

PART III

GOODS AND SERVICES TAX

44. This Part to be read with Goods and Services Tax Act 1985—(1) This Part of this Act shall be read together with and deemed part of the Goods and Services Tax Act 1985* (in this Part referred to as the principal Act). 5

(2) Except where this Part of this Act otherwise provides, this Part of this Act shall come into force on the date on which this Part of this Act receives the Royal assent, and shall apply to supplies made on or after that date. 10

45. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by omitting from the definition of the term “associated persons” the words “and includes any 2 persons, one of whom is a trustee for the other, and any 2 persons who are relatives as defined in section 2 of that Act:”, and substituting the words “and includes— 15

“(a) Any 2 persons, one of whom is a trustee for the other:

“(b) Any 2 persons who are relatives as defined in section 2 of the Income Tax Act 1976: 20

“(c) Any company and any person where the person is associated with another person who is associated with the company:”.

(2) Section 2 (1) of the principal Act is hereby further amended by omitting from paragraph (c) of the definition of the term “input tax” the words “not being a taxable supply”, and substituting the words “being a supply by way of sale that is not a taxable supply”. 25

(3) Section 2 (1) of the principal Act is hereby further amended by inserting in the proviso to the definition of the term “input tax” (as amended by section 2 (5) of the Goods and Services Tax Amendment Act 1986), after the words “associated persons,”, the words “or the supply is not the only matter to which the consideration relates,”. 30

(4) Section 2 (1) of the principal Act is hereby further amended by adding to the definition of the term “secondhand goods” (as substituted by section 2 (1) of the Goods and Services Tax Amendment Act 1988) the word “; or”, and the following paragraph: 35

“(c) Livestock:” 40

*R.S. Vol. 19, p. 369

Amendments: 1987, No. 103; 1987, No. 191; 1988, No. 7; 1988, No. 15; 1988, No. 125

46. Value of supply of goods and services—(1) Section 10 of the principal Act is hereby amended by repealing subsection (3) (as amended by section 8 (2) and (3) of the Goods and Services Tax Amendment Act 1986), and substituting the

5 following subsections:

“(3) Subject to **subsections (3A) and (8)** of this section, where—

“(a) A supply is made by a person for no consideration or for a consideration in money that is less than the open market value of that supply; and

10 “(b) The supplier and the recipient are associated persons; and

“(c) The supply is not a fringe benefit that the supplier has, or is deemed to have, provided or granted pursuant to Part XB of the Income Tax Act 1976 to the recipient, being a person employed under a contract of service by the supplier,—

15 the consideration in money for the supply shall be deemed to be the open market value of that supply.

“(3A) **Subsection (3)** of this section shall not apply to any supply made by a registered person where the recipient of the supply is entitled, under section 20 (3) of this Act, to make a deduction in respect of that supply.”

(2) Section 10 (5) of the principal Act (as amended by section 8 (5) (a) of the Goods and Services Tax Amendment Act 1986) is

25 hereby amended by omitting the word “taxable”.

(3) Section 8 of the Goods and Services Tax Amendment Act 1986 is hereby consequentially amended by repealing subsections (2) and (3).

(4) **Subsections (1) and (3)** of this section shall come into force on the 1st day of April 1989 and shall apply to supplies made on or

30 after that date.

47. Imposition of goods and services tax on imports—

(1) Section 12 (1) of the principal Act is hereby amended by omitting the words “(not being goods the supply of which is

35 exempt from tax pursuant to section 14 of this Act)” (as inserted by section 10 (1) of the Goods and Services Tax Amendment Act 1986), and substituting the words “(not being fine metal)”.

(2) Section 12 (6) (a) of the principal Act is hereby amended

40 by inserting, after the words “The terms”, the words “‘fine metal’”.

(3) Section 10 (1) of the Goods and Services Tax Amendment Act 1986 is hereby consequentially repealed.

(4) This section shall come into force on the date on which this Act receives the Royal assent, and shall apply to the importation of goods on or after that date.

48. Accounting basis—Section 19 (3) (a) (i) of the principal Act is hereby amended by omitting the expression “section 53 (c)”, and substituting the expression “section 53 (cb)”.

49. Calculation of tax payable—(1) Section 20 (3) (a) (i) of the principal Act is hereby amended by inserting, after the word “services”, the words “(not being a supply of secondhand goods to which paragraph (c) of the definition of the term ‘input tax’ in section 2 (1) of this Act applies),”.

(2) Section 20 (3) (a) of the principal Act is hereby amended by inserting, after subparagraph (i), the following subparagraph:

“(ia) In relation to the supply of secondhand goods to which paragraph (c) of the definition of the term ‘input tax’ in section 2 (1) of this Act applies, to the extent that a payment in respect of that supply has been made during that taxable period:”.

50. Allocation of taxable supplies following investigation by Commissioner—(1) The principal Act is hereby amended by inserting, after section 20A, the following section:

“20B. (1) For the purposes of this section—

“ ‘Discrepancy’ means any understatement or overstatement of the taxable supplies made or received by a registered person calculated or otherwise ascertained in respect of any specified period:

“ ‘Specified period’ means any period, being a period that extends over more than a single taxable period, to which a discrepancy relates:

“ ‘Tax discrepancy’, in relation to a discrepancy, means an amount equal to the tax fraction (being the tax fraction applicable to the taxable period, or any part of a taxable period, in relation to which the discrepancy has been deemed to have occurred) of the amount of the taxable supplies made or received by a registered person that have been understated or overstated.

“(2) For the purposes of this Act, in any case where, upon investigation by the Commissioner of the liability of a

registered person for tax, the Commissioner has calculated or otherwise ascertained a discrepancy in relation to any specified period then,—

5 “(a) Subject to paragraphs (b) and (c) of this subsection, the amount of the discrepancy shall be deemed to be taxable supplies made or received (as the case may be) by the registered person at a uniform daily rate throughout that specified period, and those taxable supplies shall be deemed to have been so made or received by the registered person in the taxable periods, or parts thereof, included in the specified period:

10 “(b) Subject to paragraph (c) of this subsection, where the Commissioner is satisfied that the registered person did not carry on the taxable activity for any part of any specified period, the amount of the discrepancy shall be deemed to be taxable supplies made or received (as the case may be) by the registered person at a uniform daily rate throughout the part of the specified period in which the taxable activity was carried on, and those taxable supplies shall be deemed to be so made or received by the registered person in the taxable periods, or parts thereof, in which the taxable activity was carried on during the specified period:

15 “(c) Where the registered person satisfies the Commissioner that it would be appropriate for the amount of the discrepancy to be allocated on a basis otherwise than in accordance with paragraph (a) or paragraph (b) of this subsection, the amount of the discrepancy shall be allocated on that basis, and the amount so allocated shall be deemed to be taxable supplies made or received (as the case may be) by the registered person in the taxable periods, or parts thereof, to which the discrepancy has been so allocated.

20 “(3) For the purposes of section 20 of this Act, where a discrepancy has been deemed pursuant to this section to be taxable supplies made or received by a registered person in respect of any taxable period or any part of a taxable period, the tax discrepancy calculated in respect of the discrepancy shall be deemed to be output tax or, as the case may be, input tax in respect of that taxable period or part of a taxable period.”

(2) This section shall come into force on the date on which this Act receives the Royal assent, and shall apply to any assessment issued on or after that date.

51. Adjustments—(1) Section 21 (3) of the principal Act is hereby amended by omitting the words “Notwithstanding anything in this section”, and substituting the words “Subject to subsection (3A) of this section, but notwithstanding any other provision of this section”.

(2) Section 21 (3) of the principal Act (as amended by section 18 (5) of the Goods and Services Tax Amendment Act 1986) is hereby further amended by repealing both provisos.

(3) Section 21 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Subsection (3) of this section shall not apply in respect of any fringe benefit to the extent that—

“(a) It has arisen by virtue of any supply of goods and services that is an exempt supply under section 14 of this Act; or

“(b) It has arisen by virtue of any supply of goods and services that is a supply charged with tax at the rate of zero percent pursuant to section 11 of this Act; or

“(c) It is, or is deemed to be, provided or granted by a registered person in the course of making exempt supplies; or

“(d) It has arisen by virtue of any payment made in a lump sum by way of a bonus, gratuity, or retiring allowance that is deemed not to be assessable income under section 68 of the Income Tax Act 1976; or

“(e) It has arisen by virtue of any redundancy payment (as defined in section 68 (1) of the Income Tax Act 1976) made in a lump sum.”

(4) Section 21 of the principal Act is hereby further amended by adding the following subsection:

“(6) Where any goods and services that are deemed by section 5 (3) of this Act to be supplied to a person who ceases to be a registered person are subsequently applied by that person, or by a partnership (as defined in section 57 of this Act) of which that person is a partner, for the purpose of making taxable supplies,—

“(a) Those goods and services shall, for the purposes of subsection (5) of this section, be deemed to have been acquired or produced by that person at the

time of that deemed supply other than for the principal purpose of making taxable supplies; and
 “(b) That subsection shall apply as if no deduction had, before the time of that deemed supply, been made by that person in respect of or in relation to those goods and services pursuant to section 20 (3) of this Act.”

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(5) Section 18 (5) of the Goods and Services Tax Amendment Act 1986 is hereby consequentially repealed.

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(6) Subsections (1), (2), (3), and (5) of this section shall be deemed to have come into force on the 1st day of October 1988 and shall apply in respect of any fringe benefit provided or granted, or deemed to have been provided or granted, by a registered person on or after that date.

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(7) Subsection (4) of this section shall be deemed to have come into force on the 3rd day of December 1985 and shall apply to supplies made on or after that date.

52. Group of companies—(1) Section 55 (7) of the principal Act is hereby amended by repealing paragraph (c) (as amended by section 29 (2) of the Goods and Services Tax Amendment Act 1986), and substituting the following paragraph:

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“(c) Subject to paragraphs (db) and (dc) of this subsection, any taxable supply of goods and services by a member of the group to another member of the group may be disregarded; and”

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(2) Section 55 (7) of the principal Act is hereby further amended by inserting, after paragraph (da), the following paragraphs:

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“(db) To the extent that goods and services applied by any member of a group for the principal purpose of making taxable supplies are subsequently applied by the representative member of that group for a purpose other than that of making taxable supplies, that first-mentioned application of those goods and services shall, for the purposes of section 21 (1) of this Act, be deemed to have been made by the representative member of that group; and

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“(dc) To the extent that goods and services acquired or produced on or after the 1st day of October 1986 by any member of a group other than for the principal purpose of making taxable supplies are subsequently applied by the representative member of that group for a purpose of making taxable supplies, that

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acquisition or production of those goods and services shall, for the purposes of section 21 (5) of this Act, be deemed to have been made by the representative member of that group; and”.

(3) Section 29 (2) of the Goods and Services Tax Amendment Act 1986 is hereby consequentially repealed. 5