

1955/55



**THE CO-OPERATIVE DAIRY COMPANIES INCOME TAX
REGULATIONS 1955**

C. W. M. NORRIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 26th day of April 1955

Present:

THE RIGHT HON. S. G. HOLLAND PRESIDING IN COUNCIL

PURSUANT to the Land and Income Tax Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. (1) These regulations may be cited as the Co-operative Dairy Companies Income Tax Regulations 1955.

(2) These regulations apply with respect to income tax for the year of assessment commencing on the 1st day of April 1956 and for every subsequent year.

2. (1) In these regulations, unless the context otherwise requires,—

“The Act” means the Land and Income Tax Act 1954:

“Appeal Authority” means the Co-operative Dairy Companies Income Tax Appeal Authority established under these regulations:

“Capital loss”, in relation to any company, means any loss incurred by the company on the sale or other realization of any trading assets which has not been taken into account in calculating the trading profit or trading loss of the company:

“Capital profit”, in relation to any company, means any profit made by the company on the sale or other realization of any trading assets which has not been taken into account in calculating the trading profit or trading loss of the company:

“Company” or “co-operative dairy company” means a co-operative dairy company registered as such under the Co-operative Dairy Companies Act 1949:

“Dairy asset” means any asset which is used exclusively for dairy purposes:

“Dairy purposes” means the purposes of the collection, handling, manufacture, treatment, sale, and distribution of butter, cheese, casein, dried milk, evaporated milk, and any other dairy produce, or any of those purposes:

“Dual purpose asset” means any asset which is used partly for dairy purposes and partly for trading purposes:

“Financial year”, in relation to any company, means a year ending with the date of the annual balance of the company’s accounts:

“Ordinary trading income”, in relation to any company, means income which is assessable income or non-assessable income as defined in section 2 of the Act; but does not include any amount which is deemed under regulation 5 hereof to be assessable income; and does not include any dividends received from shares which the Commissioner has determined to be dairy assets if the Commissioner is satisfied that the dividends have been applied in acquiring further share capital in the company declaring the dividends:

“Ordinary trading loss” means a loss calculated in accordance with the provisions of the Act for the calculation of assessable income:

“Special trading expenditure” means all expenditure for trading purposes which is not deductible in calculating the ordinary trading income; but does not include—

(a) Any income tax or social security charge payable in respect of income derived during the income year ending with the thirty-first day of March, nineteen hundred and fifty-five, or during any earlier income year; or

(b) Any expenditure incurred in the purchase or acquisition of trading assets:

“Trading asset”, in relation to any company, means any asset of the company which is used exclusively for trading purposes; but does not include any amounts owing to the company by its suppliers or its employees, or any cash, or any amount standing to the credit of the company with any bank:

“Trading bank” means any bank carrying on business in New Zealand, other than a trustee savings bank and the Post Office Savings Bank:

“Trading purposes” means any purposes other than dairy purposes.

(2) Expressions used in these regulations, unless the context otherwise requires, have the same meanings as in the Act.

(3) For the purposes of these regulations the amount of the trading balance of any company at the end of any financial year shall be calculated as the amount which in the opinion of the Commissioner is the sum of the following amounts:

(a) The net value of the trading assets of the company at the end of the year:

(b) The amount of any special trading expenditure incurred by the company during the year:

(c) The amount of any trading loss incurred by the company during the year:

(d) The amount of any capital loss incurred by the company during the year.

(4) For the purposes of these regulations the amount of the deductible trading balance of any company for any financial year shall be calculated as the amount which in the opinion of the Commissioner is the sum of the following amounts:

- (a) The net value of the trading assets of the company at the beginning of the year:
- (b) The amount of any ordinary trading income derived by the company during the year:
- (c) The amount of any capital profit derived by the company during the year:
- (d) The amount (if any) by which the trading balance of the company at the end of the preceding financial year was less than the deductible trading balance of the company for that preceding financial year:

Provided that paragraph (d) of this subclause shall not apply with respect to the year of assessment commencing on the 1st day of April 1956.

(5) For the purposes of these regulations the net value of the trading assets of a company shall be calculated by ascertaining the aggregate cost of those trading assets and deducting therefrom the amount of any depreciation properly allowable thereon under the Act and the amount of any mortgage, charge, or liability owing in respect of the purchase or acquisition of any of those trading assets, not being an amount owing to any trading bank:

Provided that for the purposes of this subclause—

- (a) The cost of any trading assets being trading stock shall be calculated as the value thereof as taken into account in calculating the ordinary trading income of the company:
- (b) The cost of any trading asset being a debt owing to the company shall be calculated as the amount of the debt owing to the company.

3. For the purposes of these regulations the Commissioner may from time to time—

- (a) Determine whether any asset of a company (including a share or investment) is a dairy asset or a trading asset or a dual purpose asset:
- (b) Determine whether or not any item of expenditure by a company is special trading expenditure:
- (c) Determine whether or not any product manufactured, sold, or distributed by a company is dairy produce:
- (d) Amend any determination previously made by him under this regulation where he is satisfied that any information supplied to him in relation thereto was incorrect.

4. Where the Commissioner is satisfied that any asset of a company is a dual purpose asset, he may for the purposes of these regulations treat the asset as being—

- (a) Wholly a trading asset; or
- (b) Wholly a dairy asset; or
- (c) Partly a trading asset and partly a dairy asset in such proportions as the Commissioner determines.

Assessable Income of Co-operative Dairy Companies

5. (1) The Commissioner may for any financial year of a co-operative dairy company classify as assessable income of the company the amount expended by the company in trading assets or in special trading expenditure during that year, calculated as provided in this regulation, and the amount so classified shall, subject to section 8 of the Act and to any allocation under regulation 6 hereof, be deemed to be assessable income derived by the company during that year.

(2) For the purposes of this regulation, the amount expended by a company in trading assets or in special trading expenditure during any year shall be calculated as the amount by which, in the opinion of the Commissioner, the amount of the trading balance of the company at the end of the year exceeds the amount of the deductible trading balance of the company for the year.

6. Where the Commissioner has under regulation 5 hereof classified any amount as assessable income of a company, he may, on the application of the company, allocate that amount to such income year or income years as he thinks fit, and the amount so allocated to any income year shall be deemed to be assessable income derived by the company during that income year.

Assessable Income of Shareholders

7. Where there is paid to a shareholder of a co-operative dairy company—

- (a) On the surrender of any of his shares in the company, any amount in excess of the paid up value of the shares surrendered; or
- (b) On the winding up of the company, any amount in excess of the paid up value of his shares in the company,—

the Commissioner may classify as assessable income of the shareholder the amount of the excess or so much thereof as the Commissioner determines, and the amount so classified shall be deemed to be assessable income derived by the shareholder.

Objections

8. (1) Any person affected by any decision made by the Commissioner under section 146 of the Act or under these regulations may object to that decision by delivering or posting to the Commissioner a written notice of objection, stating shortly the grounds of the objection, within one month after the date on which notice of the decision has been given.

(2) No notice of objection given after the time prescribed in subclause (1) of this regulation shall be of any force or effect unless the Commissioner in his discretion accepts the objection and gives notice to the objector accordingly.

9. The Commissioner shall consider all such objections, and may alter any decision objected to; but, if an objection is not allowed by the Commissioner, the objector may, within one month after the date on which notice of the disallowance is given to him by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be referred to the Co-operative Dairy Companies Appeal Authority, and in that event the objection shall be heard and determined by the Appeal Authority, which shall for that purpose have all the powers and functions of the Commissioner in making the decision, and the decision of the Appeal Authority shall take effect as if it were the decision of the Commissioner.

Appeal Authority

10. (1) For the purposes of these regulations there is hereby established an appeal authority to be called the Co-operative Dairy Companies Income Tax Appeal Authority.

(2) The Appeal Authority shall consist of three members to be appointed by the Governor-General to hold office during his pleasure, of whom—

- (a) One shall be the Secretary to the Treasury, who shall be the Chairman of the Appeal Authority:
- (b) One shall be the Director of the Dairy Division of the Department of Agriculture:
- (c) One shall be a person nominated by the New Zealand Dairy Board.

(3) If any member of the Appeal Authority dies or resigns or is removed from office the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made.

(4) In the absence from any meeting of the Appeal Authority of any member who is employed in the service of the Crown, any officer of his Department having authority to act in his place during his absence may attend the meeting in his stead, and while so attending shall be deemed to be a member of the Appeal Authority and, if he is an officer of the Treasury, to be the Chairman of the Appeal Authority.

11. (1) The Appeal Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of these regulations, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.

(2) For the purpose of considering any objection under these regulations, the Appeal Authority shall have free access to all records under the control of the Commissioner relating to the objector.

(3) On the hearing and determination of any objection under these regulations the burden of proof shall be on the objector, and the Appeal Authority may receive such evidence as it thinks fit, whether or not it would be admissible in a Court of law.

(4) Subject to these regulations, the Appeal Authority may determine its own procedure.

12. (1) The decision of a majority of the members of the Appeal Authority on any matter shall be the decision of the Authority.

(2) Every decision of the Appeal Authority shall be final and conclusive.

13. There shall be paid out of money appropriated by Parliament for the purpose to the member of the Appeal Authority appointed on the nomination of the New Zealand Dairy Board remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if that member were a member of a statutory Board within the meaning of that Act.

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

[This note is not part of the regulations, but is intended to indicate their general effect.]

These regulations are made for the purposes of section 146 of the Land and Income Tax Act 1954, which—

- (a) Exempts the income of co-operative dairy companies from income tax (and accordingly from social security charge also) to the extent to which their income is derived from the dairy industry; but
- (b) Enables regulations to be made for the taxation of income derived from the dairy industry if it is applied otherwise than for the purposes of that industry.

The regulations authorize the Commissioner of Inland Revenue to classify as assessable income of co-operative dairy companies any payments made by them otherwise than for the purposes of the dairy industry; and they set out in detail the method of determining the amount to be classified as assessable income in each year.

Regulation 7 authorizes the Commissioner to classify as assessable income of a shareholder of a co-operative dairy company the whole or any part of any amount received by him in excess of the paid up value of his shares, either on surrendering his shares or on the winding up of the company.

The regulations also provide for the establishment, powers, and procedure of the Co-operative Dairy Companies Income Tax Appeal Authority, which is to hear and determine objections to any decisions of the Commissioner under the regulations or under section 146 of the Land and Income Tax Act 1954.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 28 April 1955.

These regulations are administered in the Inland Revenue Department.