



ANALYSIS

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1995, No. 74

An Act to amend the Income Tax Act 1976

[12 December 1995]

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

1. Short Title—This Act may be cited as the Income Tax Act 1976 Amendment Act (No. 3) 1995, and shall be read together with and deemed part of the Income Tax Act 1976

(hereinafter referred to as the principal Act), and that Act shall, in respect of matters to which it applied before its repeal by section YB3 of the Income Tax Act 1994, be read as amended by the provisions of this Act.

2. Meaning of term “dividends”—(1) Section 4 of the principal Act (as substituted by section 31 (1) of the Income Tax Amendment Act (No. 5) 1988, and as variously amended) is amended by inserting, after subsection (3), the following subsection:

“(3A) Subsection (1)(e) of this section shall not apply to include within the meaning of the term ‘dividends’ the making available of any property by a flat-owning company, being a company—

“(a) Whose governing instrument provides that each registered shareholder is entitled to occupation or use of a residential property in New Zealand owned by the company; and

“(b) Whose significant assets comprise no more than—

“(i) Residential property in New Zealand which is principally occupied or available for use by registered shareholders or assignees of those shareholders; and

“(ii) Funds reserved for administration and management costs of the company and for repairs and maintenance and other outgoings on the property or properties.”

(2) This section is deemed to have come into force on the 1st day of October 1988.

3. Accruals in relation to income and expenditure in respect of financial arrangements—(1) Section 64c of the principal Act is amended by adding the following subsections:

“(8) Nothing in subsection (1) of this section shall be treated as having prevented a person, in calculating for any income year the amount deemed to be the person’s income or expenditure in relation to a financial arrangement, from having regard to—

“(a) If the person was a holder in relation to the financial arrangement,—

“(i) The amount of all consideration paid and to be paid to the person in relation to the financial arrangement; and

“(ii) Any amount remitted and to be remitted by the person in relation to the financial arrangement; and

“(iii) The acquisition price of the financial arrangement in relation to the person:

“(b) If the person was an issuer in relation to the financial arrangement,—

“(i) The amount of all consideration paid and to be paid by the person in relation to the financial arrangement; and

“(ii) The acquisition price of the financial arrangement in relation to the person,—

provided that the person has consistently applied that basis of calculation in respect of the financial arrangement in the person's return of income for each income year during which the person was the holder or issuer of the financial arrangement.

“(9) Nothing in sections 64B to 64L of this Act shall be treated as having prevented a person who was the holder or issuer of a financial arrangement—

“(a) That was of a kind referred to in section 64BA (1) (c) of this Act; and

“(b) Under which the consideration payable was denominated in a foreign currency,—

from calculating the core acquisition price in relation to the financial arrangement as if the ‘lowest price’ referred to in item w of the formula in section 64BA (1) (c) of this Act were to be determined in accordance with the rules described in section OB 7 of the Income Tax Act 1994 (as enacted by section 61 of the Income Tax Act 1994 Amendment Act (No. 4) 1995), provided that the person has consistently applied such rules for the calculation of the ‘lowest price’ in respect of the financial arrangement in the person's return of income for each income year during which the person was the holder or issuer of the financial arrangement.”

(2) This section applies with respect to the tax on income derived in the 1985–86 income year and subsequent years.

4. Valuation adjustments where company acquires its shares—(1) Section 85A (e) (ii) of the principal Act is amended by omitting the expression “subparagraphs (i) to (iii)”, and substituting the expression “subparagraph (i) or subparagraph (iii)”.

(2) This section is deemed to have come into force on 1 July 1994.

5. Interpretation—depreciation—(1) Section 107A (1) of the principal Act is amended by adding to the definition of the term “depreciable property” the following subparagraph:

“(vii) Property the cost of which was or is deductible to any other taxpayer under any of sections 127, 127A, and 128 of this Act or sections 119, 119D, and 119G of the Land and Income Tax Act 1954:”.

(2) Section 107A (1) is further amended by omitting from paragraph (a)(i) of the definition of the term “poolable property” the word “consideration”, and substituting the word “cost”.

(3) Subject to subsection (4) of this section, this section applies with respect to the tax on income derived in the 1993–94 income year and subsequent years.

(4) Subsection (1) of this section shall not operate to deny a taxpayer a depreciation deduction in the 1993–94 or 1994–95 income year for property whose cost was deductible to any other taxpayer under any of sections 127, 127A, and 128 of this Act if the taxpayer claimed a depreciation deduction for the property in a return of income for the relevant income year furnished to the Commissioner before the 19th day of July 1995.

6. Pool method of depreciation—(1) Section 108j of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

“(3) Where a taxpayer elects in an income year to include in a pool an item of poolable property acquired by the taxpayer during the income year, the adjusted tax value of the pool shall be increased by the cost of the item.

“(3A) Where a taxpayer elects in an income year to include in a pool an item of poolable property that the taxpayer has in the preceding income year depreciated separately,—

“(a) The adjusted tax value of the pool shall be increased by the adjusted tax value of the item at the date of its inclusion in the pool; and

“(b) The adjusted tax value of the property at the end of the preceding income year shall be included in item b of the formula in subsection (1) of this section.”

(2) This section applies with respect to the tax on income derived in the 1993–94 income year and subsequent years.

7. Depreciation deduction where depreciated asset acquired by taxpayer from associated person—(1) Section

111 of the principal Act is amended by adding the following subsection:

“(3) Where the holder of management rights created under the Radiocommunications Act 1989, other than the Crown acting by and through the Secretary of Commerce, grants a licence right under that Act to an associated person, the cost price of the licence right shall for the purposes of sections 107A to 117 of this Act be deemed to be nil.”

(2) This section is deemed to have come into force on the 1st day of April 1993.

8. Gain or loss from disposition of depreciable property—(1) Section 117 (10) of the principal Act is amended by omitting the word “but” from the end of subparagraph (v) of paragraph (a), and also by inserting after that subparagraph the following subparagraph:

“(vi) Any distribution of property.”.

(2) This section shall apply with respect to the tax on income derived in the 1993–94 income year.

9. Credits arising to imputation credit account of group—(1) Section 191SA (1) of the principal Act is amended by repealing paragraphs (g) and (h), and substituting the following paragraph:

“(g) Any amount forming all or part of a credit balance in the consolidated group’s dividend withholding payment account that the nominated company elects under section 191UD (7) of this Act during the imputation year to be a credit to the group’s imputation credit account.”.

(2) Section 191SA (2) of the principal Act is amended by omitting from paragraph (d) the expression “paragraphs (g), (h), and (k)”, and substituting the expression “paragraphs (g) and (k)”.

(3) This section is deemed to have come into force on the 28th day of September 1993.

10. Debits arising to imputation credit account of group—(1) Section 191SB (1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) The amount of any refund of income tax paid during that imputation year in respect of income derived by the consolidated group except to the extent that—

“(i) The refund is in respect of income tax paid before the date that a debit arises under paragraph (h) of this subsection; and

“(ii) The amount of the refund does not exceed the amount of the debit that arises on that date.”.

(2) Section 191SB (1) is further amended by repealing paragraph (g).

(3) Section 191SB (1) is further amended by adding the following paragraphs:

“(l) The amount of any overpaid income tax paid in respect of income derived by the consolidated group that the Commissioner applies in satisfaction of an amount (other than income tax) that is due and payable by a company that is a member of the consolidated group under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—

“(i) Is in respect of income tax paid before the date that a debit arises under paragraph (h) of this subsection; and

“(ii) Does not exceed the amount of the debit that arises on that date:

“(m) The amount of any overpaid dividend withholding payment paid by a company in respect of a dividend derived by the company, which is at the time of derivation a member of the consolidated group, that the Commissioner applies at a time when the consolidated group does not have a dividend withholding payment account, in satisfaction of an amount (other than dividend withholding payment or income tax) that is due and payable by a company that is a member of the consolidated group under any provision of this Act or any other of the Inland Revenue Acts.”

(4) Section 191SB (2) of the principal Act is amended by repealing paragraph (f).

(5) Section 191SB (2) is further amended by adding the following paragraph:

“(k) In the case of a debit referred to in paragraph (l) or paragraph (m) of that subsection, on the date that the Commissioner applies the amount of overpaid income tax or dividend withholding payment in satisfaction of the other amount that is due and payable.”

(6) Subsections (1), (2), and (4) of this section are deemed to have come into force on the 28th day of September 1993.

(7) Subject to section 394zJA of the principal Act (as inserted by section 19 of this Act), subsections (3) and (5) of this section apply—

(a) In the case of companies with a standard or late balance date for the 1993–94 income year, with respect to the tax on income derived in the 1993–94 income year and subsequent years:

(b) In the case of companies with an early balance date for the 1993–94 year, with respect to the tax on income derived in the 1994–95 income year and subsequent years.

11. Debits arising to group dividend withholding payment account—(1) Section 191UB (1) of the principal Act is amended by adding the following paragraph:

“(l) The amount of any overpaid dividend withholding payment paid by a company in respect of a dividend derived by the company, which is at the time of derivation a member of the consolidated group, that the Commissioner applies in satisfaction of an amount (other than dividend withholding payment) that is due and payable by a company that is a member of the consolidated group under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—

“(i) Is in respect of dividend withholding payment paid before the date that a debit arises under paragraph (i) of this subsection; and

“(ii) Does not exceed the amount of the debit that arises on that date.”

(2) Section 191UB (2) of the principal Act is amended by adding the following paragraph:

“(j) In the case of a debit referred to in paragraph (l) of that subsection, on the date that the Commissioner applies the relevant amount in satisfaction of the other amount that is due and payable.”

(3) Subject to section 394zJA of the principal Act (as inserted by section 19 of this Act), this section applies—

(a) In the case of companies with a standard or late balance date for the 1993–94 income year, with respect to the tax on income derived in the 1993–94 income year and subsequent years:

- (b) In the case of companies with an early balance date for the 1993-94 income year, with respect to the tax on income derived in the 1994-95 income year and subsequent years.

12. New sections substituted—(1) The principal Act is amended by repealing sections 191VA to 191VC, and substituting the following sections:

“191VA. Debits and credits arising to group branch equivalent tax account—(1) The opening balance of the branch equivalent tax account of a consolidated group for any income year shall be—

“(a) Nil, for the imputation year during which the consolidated group commences to maintain a branch equivalent tax account; and

“(b) The amount of the closing balance of the branch equivalent tax account for the preceding imputation year (being a credit or debit as the case may be), in any other case.

“(2) There shall arise as credits to be recorded in the branch equivalent tax account of a consolidated group the following amounts:

“(a) An amount (not less than nil) calculated in accordance with the following formula:

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

where—

“a is the amount of the income tax payable by the consolidated group for any income year; and

“b is the amount of any foreign tax credit allowed in accordance with sections 245K, 245L, and 191P of this Act in calculating the income tax payable by the consolidated group for the income year; and

“c is the lesser of—

“(i) The amount of any attributed foreign income derived by the consolidated group during the income year; and

“(ii) The taxable income of the consolidated group for the income year; and

“d is the taxable income referred to in paragraph (ii) of item c of this formula; and

“e is the amount of income tax for the income year paid by the consolidated group by way of crediting the debit balance in the branch equivalent tax account of the consolidated group or of any company:

“(b) Where the amount of any attributed foreign income derived by a consolidated group during an income year is offset against any loss incurred by the consolidated group, or, under section 191A (2) of this Act, offset against the loss of a company not included in the same consolidated group for that income year, an amount calculated in accordance with the following formula:

$$f \times g$$

where—

“f is the amount of attributed foreign income derived by the consolidated group during the income year that is so offset; and

“g is the rate of resident companies’ income tax, expressed as a percentage, stated in clause 7 of Part A of the First Schedule to this Act and applying in respect of the income year:

“(c) The amount of any debit balance in the account that the nominated company for the consolidated group elects in accordance with subsection (3) or subsection (4) of section 191vc of this Act to use to reduce an amount of income tax payable in respect of the group’s income or by any other company:

“(d) An amount equal to any refund of dividend withholding payment paid under section 394zo of this Act to the extent that the refund is in respect of an amount of dividend withholding payment paid which gave rise to a debit to the branch equivalent tax account under this section; except, to the extent that the refund is in respect of a dividend withholding payment paid before the date that a credit arises under paragraph (e) of this subsection, a credit shall not arise to the extent that the amount of the refund does not exceed the amount of the credit that arises on that date:

“(e) The amount of any credit which would arise under section 394zp (1)(e) of this Act if that provision were to apply, with any necessary modifications, to a

consolidated group and its branch equivalent tax account as if it were a single company.

“(3) The credits referred to in subsection (2) of this section arise—

“(a) In the case of the credits referred to in paragraphs (a) and (b) of that subsection, on the date on which is filed a return of income for the consolidated group for the income year referred to in those paragraphs:

“(b) In the case of a credit referred to in paragraph (c) of that subsection, on the date the nominated company elects in accordance with subsection (3) or subsection (4) of section 191vc of this Act to reduce an amount of income tax:

“(c) In the case of a credit referred to in paragraph (d) of that subsection, on the date the refund is paid:

“(d) In the case of a credit referred to in paragraph (e) of that subsection, at the relevant specified time referred to in section 394ZZP (1) (e) of this Act.

“(4) There shall arise as debits to be recorded in the branch equivalent tax account of a consolidated group the following amounts:

“(a) The amount of any dividend withholding payment paid (whether directly or by way of an election to reduce an amount of loss) during the year by a company which is, at the time of payment of the dividend giving rise to the liability to pay dividend withholding payment, a member of the consolidated group, in respect of a dividend derived by the company in respect of an income interest in a controlled foreign company:

“(b) The amount of any credit balance in the account that the nominated company for the consolidated group elects in accordance with section 191vc(1) of this Act to use to reduce an amount of dividend withholding payment deductible under sections 394ZL and 394ZM of this Act by a company which is, at the time of payment of the dividend giving rise to the liability to pay the dividend withholding payment, a member of the consolidated group:

“(c) An amount equal to any refund of income tax to the extent that the refund is attributable to income tax paid in relation to attributed foreign income derived by the consolidated group in respect of one or more income interests in controlled foreign companies;

except that, where the refund is in respect of income tax paid before the date that a debit arises under paragraph (d) of this subsection, a debit shall not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date:

“(d) The amount of any debit which would arise under section 394ZZP (3) (d) of this Act if that provision were to apply, with any necessary modifications, to a consolidated group and its branch equivalent tax account as if it were a single company.

“(5) The debits referred to in subsection (4) of this section arise—

“(a) In the case of a debit referred to in paragraph (a) of that subsection, on the date the dividend withholding payment is paid:

“(b) In the case of a debit referred to in paragraph (b) of that subsection, on the date by which the relevant company is required by section 394ZN of this Act to pay to the Commissioner the dividend withholding payment that is reduced by the relevant amount of the credit balance:

“(c) In the case of a debit referred to in paragraph (c) of that subsection, on the date the refund is paid:

“(d) In the case of a debit referred to in paragraph (d) of that subsection, at the relevant specified time referred to in section 394ZZP (3) (d) of this Act.

“(6) Section 394ZZR of this Act shall, with any necessary modifications, apply in the case of a branch equivalent tax account of a consolidated group as if the group were a single company.

“191VB. Debiting and crediting between group and individual branch equivalent tax accounts—Where—

“(a) Any credit arises to the branch equivalent tax account of a consolidated group in respect of any attributed foreign income; or

“(b) Any debit arises to the branch equivalent tax account of a consolidated group in respect of a refund of income tax paid in respect of attributed foreign income; or

“(c) Any debit arises to the branch equivalent tax account of a consolidated group in respect of an amount of dividend withholding payment paid; or

“(d) Any credit arises to the branch equivalent tax account of a consolidated group in respect of a refund of dividend withholding payment paid,—

no credit or debit shall arise to the branch equivalent tax account of any individual company in respect of that income, income tax refund, dividend withholding payment, or dividend withholding payment refund.

“191vc. Use of consolidated group credit to reduce dividend withholding payment and use of group or individual debit to reduce income tax—(1) Where—

“(a) There is a credit balance in the branch equivalent tax account of a consolidated group; and

“(b) The nominated company for the consolidated group elects (by debiting the account) to use all or any part of the credit balance for the purpose of reducing, so far as the liability extends, the amount of any dividend withholding payment deduction required to be made under sections 394ZL and 394ZM of this Act by a company; and

“(c) The company, at the time of payment of the dividend giving rise to the liability to pay dividend withholding payment,—

“(i) Is a member of the consolidated group; or

“(ii) Would be a member of the same group of companies as the consolidated group if the consolidated group were a single company,—

the dividend withholding payment required to be made shall be reduced by the amount of the credit balance so elected.

“(2) Notwithstanding subsection (1) of this section, a credit balance in a consolidated group’s branch equivalent tax account may only be used to reduce an amount of dividend withholding payment deduction—

“(a) In any case where and to the extent that the credit has arisen under section 191VA(1)(a) of this Act (determined by applying the procedure set out in section 394ZZP(6) of this Act), to the extent that the consolidated group has paid income tax (including provisional tax) for the income year equal to or exceeding the credit balance so used; and

“(b) In any case where and to the extent that the credit has arisen under section 191VA(1)(b) of this Act (as so determined), where the Commissioner has made an assessment or a determination of loss for the income

year in which the attributed foreign income is derived.

“(3) Where income tax is payable by a consolidated group in respect of attributed foreign income derived in an income year,—

“(a) The nominated company of the consolidated group; or

“(b) Any member of the group; or

“(c) Any other company which for the income year would be in the same group of companies as the consolidated group if the consolidated group were a single company—

may elect (by crediting the account) that all or any part of the debit balance in the branch equivalent tax account of the consolidated group or the company (as the case may be) at the time of the election shall be credited in payment of the income tax.

“(4) Where income tax is payable by a company (referred to in this section as the first company) in respect of attributed foreign income derived in an income year, the nominated company of a consolidated group, which group would be, if the consolidated group were a single company, in the same group of companies as the first company for the income year, may elect (by crediting the account) that all or part of any debit balance in the branch equivalent tax account of the consolidated group at the time of the election shall be credited in payment of the income tax.

“(5) Where a company has made an election under subsection (3) or subsection (4) of this section in respect of income tax payable for any income year, the amount of debit balance in respect of which the election is made shall be credited in payment of the income tax to the extent that the Commissioner is satisfied that—

“(a) The amount credited does not exceed the amount of income tax payable for the income year that is attributable to the attributed foreign income referred to in subsection (3) or subsection (4) of this section; and

“(b) The company has made a proper election in accordance with this section; and

“(c) The consolidated group or relevant other company (as the case may be) has paid (whether directly or by way of an election to reduce an amount of loss) the dividend withholding payment that gives rise to a debit to the branch equivalent tax account.

“(6) For the purposes of this section, the amount of income tax payable for an income year that is attributable to attributed foreign income derived in the income year is to be calculated under the formula set out in section 191VA (2) (a) of this Act (but applying as if item e were nil).”

(2) This section is deemed to have come into force on the 28th day of September 1993.

13. Amalgamation of companies—(1) Section 191WD of the principal Act (as inserted by section 29 of the Income Tax Amendment Act 1994) is amended by inserting, after subsection (14), the following subsections:

“(14A) Subsection (14) of this section does not apply where the property is land that is only revenue account property of the amalgamating company under the 10-year rule in any of paragraphs (b)(ii), (ba)(ii), (c)(ii), and (d) of section 67 (4) of this Act, but, if the amalgamated company disposes of the property within 10 years after the date of its acquisition by the amalgamating company, any profit or gain from the disposition will be assessable income of the amalgamated company under the relevant paragraph of section 67 (4) (subject to section 67 (5) to (14)).

“(14B) Where an amalgamated company, on a qualifying amalgamation, acquires any land of an amalgamating company which is not revenue account property of the amalgamating company but is (to the extent that its sale or disposition would give rise to assessable income under section 67(4) of this Act) revenue account property of the amalgamated company, for the purposes of this Act the amalgamating company will be deemed to have disposed of the land and the amalgamated company will be deemed to have acquired the land at the time of the amalgamation for a consideration equal to its market value at that time.”

(2) This section is deemed to have come into force on the 1st day of July 1994.

14. Interpretation—trusts—(1) Section 226 (9A) of the principal Act is amended by adding the following proviso:

“Provided that this subsection shall not apply to any employer superannuation contribution made to the trustee of a superannuation scheme.”

(2) This section is deemed to have come into force on the 31st day of March 1991.

15. Additional tax where residual income tax underestimated as at final instalment date—(1) Section 385 of the principal Act (as inserted by section 71 of the Income Tax Amendment Act (No. 2) 1993) is amended by repealing subsection (3), and substituting the following subsection:

“(3) Additional tax payable under this section shall not be eligible for relief under section 413 of this Act, but for all other purposes shall be deemed to be of the same nature as income tax and shall be recoverable accordingly.”

(2) This section applies with respect to the provisional tax payable on income derived in the 1994–95 income year and subsequent years.

16. Remission of additional tax imposed on underestimation—(1) Section 386 of the principal Act (as inserted by section 71 of the Income Tax Amendment Act (No. 2) 1993) is amended by repealing subsection (4).

(2) This section applies with respect to the provisional tax payable on income derived in the 1994–95 income year and subsequent years.

17. Meaning of “qualifying company”—(1) Section 393B (1) of the principal Act is amended by inserting, at the beginning of paragraph (c), the words “Subject to subsection (3A) of this section,”.

(2) Section 393B (1) (c) is further amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) A natural person (other than a trustee); or”.

(3) Section 393B is further amended by inserting, after subsection (3), the following subsection:

“(3A) A company shall not cease to be a qualifying company in an income year by reason only of a failure to comply with subsection (1) (c) (ii) of this section if—

“(a) As much of the dividend income of the kind specified in subsection (1)(c)(ii) of this section as is available to be distributed under general trust law is beneficiary income of beneficiaries (not being trustees or companies other than qualifying companies); and

“(b) At any time since the company attained qualifying company status, at least some dividends derived by the trustee from the company have vested or been distributed as beneficiary income of beneficiaries (not being trustees or companies other than qualifying companies).”

(4) This section applies with respect to the tax on income derived in—

- (a) The 1992–93 income year and subsequent years; and
- (b) The 1991–92 income year, to the extent that any dividend or amount is paid by a qualifying company to a person in that person’s 1991–92 income year.

18. Debits arising to imputation credit account—

(1) Section 394E (1) of the principal Act is amended by adding the following paragraphs:

“(k) The amount of any overpaid income tax that the Commissioner applies in satisfaction of an amount (other than income tax) that is due and payable under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—

“(i) Is in respect of income tax paid before the date that a debit arises under paragraph (g) of this subsection; and

“(ii) Does not exceed the amount of the debit that arises on that date:

“(l) The amount of any overpaid dividend withholding payment that the Commissioner applies at a time when the company is not a dividend withholding payment account company, in satisfaction of an amount (other than dividend withholding payment or income tax) that is due and payable under this Act or any other of the Inland Revenue Acts:

“(m) The amount of any overpaid income tax or dividend withholding payment that the Commissioner applies at a time when the company is not a dividend withholding payment account company, in satisfaction of income tax that is due and payable in respect of the 1987–88 or any earlier income year, except to the extent that the amount applied—

“(i) Is in respect of income tax or dividend withholding payment paid before the date that a debit arises under paragraph (g) of this subsection; and

“(ii) Does not exceed the amount of the debit that arises on that date.”

(2) Section 394E (2) of the principal Act is amended by adding the following paragraph:

“(j) In the case of a debit referred to in paragraph (k) or paragraph (l) or paragraph (m) of that subsection, on

the date that the Commissioner applies the amount of overpaid income tax or dividend withholding payment in satisfaction of the amount that is referred to in those paragraphs as due and payable.”

(3) Subject to section 394zJA of the principal Act (as inserted by section 19 of this Act), this section is deemed to have come into force on the 1st day of April 1988.

19. New sections inserted—(1) The principal Act is amended by inserting, after section 394zj, the following sections:

“394zJA. Saving for certain credits arising before 17 August 1995 in relation to overpayment of income tax or dividend withholding payment—(1) Where and to the extent that—

“(a) A windfall credit has been recorded in the imputation credit account or dividend withholding payment account of a company or a consolidated group before the 17th day of August 1995; and

“(b) That windfall credit has been—

“(i) Offset by a debit in accordance with subsection (3) of this section; or

“(ii) With the approval of the Commissioner, treated as having been simultaneously offset by a debit before the 17th day of August 1995,—

then that credit shall not be denied to the company or consolidated group by reason of the enactment of section 19 of the Income Tax Act 1976 Amendment Act (No. 3) 1995.

“(2) No debit shall arise to a company’s or consolidated group’s imputation credit account or dividend withholding payment account under any of sections 191SB (1) (l) and (m), 191UB (1) (l), 394E (1) (k) to (m), and 394ZW (1) (h) of this Act to the extent that—

“(a) The amount of income tax or dividend withholding payment that is referred to in those provisions as being applied by the Commissioner has, before the 17th day of August 1995, given rise to a credit to that imputation credit account or dividend withholding payment account of the company or group; and

“(b) That credit has been offset before that date by a debit.

“(3) For the purposes of determining under this section whether, and if so to what extent, a credit has been offset by a debit,—

“(a) A calculation shall be made of the credits and debits that would arise in the relevant imputation credit account or dividend withholding payment account as if that account were maintained in accordance with (as the case may require) section 191s or section 191u or section 394c or section 394zu of this Act subject to the following modifications:

“(i) The account is to be treated as maintained as a single account for the period from its establishment until the 17th day of August 1995, and not as a separate account for each imputation year; and

“(ii) Sections 191s (2)(b), 191u (3)(b), 394c (2)(b), and 394zu (2)(b) of this Act shall not apply; and

“(iii) Sections 191sb (1) (l) and (m), 191ub (1) (l), 394e (1) (k) to (m), 394zjb, and 394zw (1) (h) of this Act shall apply as if the relevant amendments of or inserting those provisions enacted by the Income Tax Act 1976 Amendment Act (No. 3) 1995 had not come into force before the 17th day of August 1995; and

“(b) The amount of any credits shall be offset successively (in the order in which those credits arise) against the amounts recorded as debits (in the order in which those debits arise).

“(4) If—

“(a) A credit in a company’s imputation credit account arises from an election under section 394zze of this Act made by a company before the 17th day of August 1995; and

“(b) The corresponding debit to the company’s dividend withholding payment account is attributable in accordance with section 394zze of this Act to a credit which—

“(i) In accordance with the law that was in force before enactment of the Income Tax Act 1976 Amendment Act (No. 3) 1995, was recorded in the company’s dividend withholding payment account before the 17th day of August 1995; and

“(ii) Was a credit arising by virtue of—

“(A) The crediting towards dividend withholding payment of an amount of overpaid dividend withholding payment; or

“(B) An amount of overpaid dividend withholding payment that was applied by the Commissioner in satisfaction of an amount (other than dividend withholding payment) that was due and payable under any provision of this Act or any other of the Inland Revenue Acts,—

then, for the purpose of determining the extent of relief available to a company under subsections (1) and (2) of this section the credit to the company’s imputation credit account shall be deemed to be a credit which qualifies for the relief provided by this section.

“(5) Subsection (4) of this section applies with any necessary modifications to all or any part of the credit balance in the dividend withholding payment account of a consolidated group which, in accordance with section 191UD (7) of this Act, the nominated company for the group elects to be a credit in the group’s imputation credit account.

“(6) In this section, ‘windfall credit’ means any credit arising to a company’s or consolidated group’s imputation credit account or dividend withholding payment account by reason of the Commissioner crediting an amount of overpaid income tax or overpaid dividend withholding payment towards payment by the company or, as the case may be, the consolidated group or a member of the consolidated group, of income tax or dividend withholding payment respectively.

“394zJB. **Application of income tax or dividend withholding payment not refunded**—For the purposes of sections 191c to 191wc, Part XIIA, and Part XIIb of this Act, where any amount of overpaid income tax or overpaid dividend withholding payment which has been credited to the imputation credit account or dividend withholding payment account of a company, or a consolidated group as the case may be, is not refunded and is applied by the Commissioner towards the payment of another income tax liability or dividend withholding payment liability respectively, the application of the amount overpaid shall not give rise to another credit in the company’s or group’s imputation credit account or dividend withholding payment account.”

(2) This section applies with respect to any credit or debit arising on or after the 1st day of April 1988.

20. Debits arising to dividend withholding payment account—(1) Section 394zw (1) of the principal Act is amended by adding the following paragraph:

“(h) The amount of any overpaid dividend withholding payment that the Commissioner applies in satisfaction of an amount (other than dividend withholding payment) that is due and payable under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied—

“(i) Is in respect of dividend withholding payment paid before the date that a debit arises under paragraph (f) of this subsection; and

“(ii) Does not exceed the amount of the debit that arises on that date.”

(2) Section 394zw (2) of the principal Act is amended by adding the following paragraph:

“(h) In the case of a debit referred to in paragraph (h) of that subsection, on the date that the Commissioner applies the relevant amount in satisfaction of the other amount that is due and payable.”

(3) Subject to section 394zjA of the principal Act (as inserted by section 19 of this Act), this section is deemed to have come into force on the 1st day of April 1988.

21. Interest to be charged where residual income tax exceeds provisional tax—(1) Section 398A (3) of the principal Act (as inserted by section 80 of the Income Tax Amendment Act (No. 2) 1993) is amended by omitting from item a of the formula the words “due and payable under”, and substituting the words “treated as due and payable for the purposes of”.

(2) Section 398A (5) (b) (ii) of the principal Act (as so inserted) is amended by omitting the expression “Act,—”, and substituting the expression “Act; or”.

(3) Section 398A (5) (b) is further amended by inserting, after subparagraph (ii), the following subparagraph:

“(iii) Who in that person’s capacity as trustee has for that income year, in relation to trustee income, residual income tax equal to or less than \$30,000 or such other amount as may be prescribed under subsection (11) (b) of this section,—”.

(4) This section applies with respect to the tax on income derived in the 1994–95 income year and subsequent years.

22. Schedule 17A amended—(1) Schedule 17A to the principal Act is amended by omitting the item relating to Western Samoa.

(2) This section applies with respect to the tax on income derived on or after the 9th day of March 1993.

23. Twenty-Second Schedule amended—(1) The Twenty-Second Schedule to the principal Act is amended by omitting from item 2 the words “property right”, and substituting the words “property or right”.

(2) The Twenty-Second Schedule is further amended by adding the following item:

“8. Management rights and licence rights created under the Radiocommunications Act 1989.”

(3) This section applies with respect to the tax on income derived in the 1993–94 income year and subsequent years.

24. Repeal of amendments effected by this Act—The amendments effected by this Act shall be deemed to be repealed with effect from the commencement of the Income Tax Act 1994, and sections YB 4 and YB 5 of that Act shall apply in relation to those amendments as if they were enactments repealed by section YB 3 of that Act.

This Act is administered in the Inland Revenue Department.
