ANALYSIS

1995, No. 71

An Act to amend the Income Tax Act 1994

[*12 December 1995*

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

1. Short Title and application—(1) This Act may be cited as the Income Tax Act 1994 Amendment Act (No. 3) 1995, and shall be read together with and deemed part of the Income Tax Act 1994 (hereinafter referred to as the principal Act).

(2) Except as otherwise provided in this Act, this Act applies with respect to the tax on income derived in the 1996–97 income year and subsequent years.

2. Meaning of term "dividends"—(1) Section CF 2 (8) of the principal Act is amended by omitting from paragraph (a)(i) the expression "section LE 1 (2)", and substituting the expression "section LE 2 (5) and (6)".

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

3. Amount of dividends includes credits—(1) Section CF 6 (1) of the principal Act is amended by omitting the expression "and F", and substituting the expression "F, and LE".

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

4. Branch equivalent income calculation—(1) Section CG 11 (6) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

"(ba) Part FG:".

(2) Section CG 11 is further amended by repealing subsection (8), and substituting the following subsection:

"(8) Section GD 13 shall apply, with any necessary modifications, in determining the branch equivalent income or branch equivalent loss of the controlled foreign company, only where a transaction has been entered into between a controlled foreign company and any person associated with the controlled foreign company which has a purpose or effect of defeating the intent and application of any of the jurisdictional ring-fencing rules in sections IE 3, IG 4, LC 4, and LC 5; and for the purposes of this subsection a person and a controlled foreign company shall be treated as associated if they would be treated

as so associated by virtue of any of the provisions of section OD 7 or section OD 8 (3)."

5. Insurance with persons not carrying on business in New Zealand—Section CN 4 (1) of the principal Act is amended by omitting the words "not deemed to be resident in New Zealand, expressed as a percentage, stated in clause 6", and substituting the words ", expressed as a percentage, stated in clause 5".

6. Partial exemption of certain life insurance companies in respect of interest derived from certain debentures—The principal Act is amended by repealing section CZ 5.

7. Non-resident mining operators—Section DN 5 (2) of the principal Act is amended by omitting the words "and to clause 6 of Part A of Schedule 1".

8. Apportionment of income derived partly in New Zealand and partly elsewhere—Section FB 2 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

"(1) For the purposes of this Act generally, if—

"(a) Any business of a taxpayer is carried out partly in New Zealand and partly outside New Zealand; or

"(b) A contract is made in New Zealand and is wholly or partly performed by a taxpayer outside New Zealand, or is made outside New Zealand and is wholly or partly performed by a taxpayer in New Zealand,—

the gross amount of income from the business or contract, and expenditure incurred in gaining or producing the income, will be apportioned to New Zealand in such a way and to such an extent as is necessary to produce an amount of net income or net loss for the purposes of this Act in respect of the business or contract which the taxpayer might be expected to derive if the taxpayer's activities in New Zealand in respect of the business or contract were carried out by the taxpayer as a separate and wholly independent person undertaking only those activities and dealing at arm's length, and the gross income, so far as so apportioned to New Zealand, shall be deemed to be derived from New Zealand.

"(1A) For the purposes of Part L, if—

"(a) Any business of a taxpayer is carried on partly in one country and partly in another country; or

"(b) A contract is made in one country and wholly or partly performed by a taxpayer in another country, or is partly performed by a taxpayer in 2 or more countries,—

the gross amount of income from the business or contract, and expenditure incurred in gaining or producing the income, will be apportioned between the countries in such a way and to such an extent as is necessary to produce an amount of net income or net loss, in respect of each country and the business or contract, which the taxpayer might be expected to derive if the taxpayer's activities in that country in respect of the business or contract were carried out by the taxpayer as a separate and wholly independent person undertaking only those activities and dealing at arm's length.

"(1B) If an apportionment is made under subsection (1) or subsection (1A), the taxpayer will be assessable for income tax accordingly."

9. New Subpart inserted—The principal Act is amended by inserting, after Part FF, the following Subpart:

"SUBPART G—APPORTIONMENT OF INTEREST COSTS

"FG 1. **Purpose of this Subpart**—Subject always to the express provisions of this Subpart, the purpose of this Subpart is to ensure, in the case of a New Zealand taxpayer controlled by a single non-resident and which has a disproportionately high level of New Zealand group debt funding, an appropriate apportionment to the New Zealand taxpayer of the worldwide interest expenditure of the group of entities of which the New Zealand taxpayer is a part.

"FG 2. **Entities to which apportionment rule potentially applies**—(1) The interest apportionment rule in section FG 8 can apply only if, at any time in the relevant income year, the taxpayer is—

"(a) Not resident in New Zealand unless—

"(i) The taxpayer is a company in which a person resident in New Zealand has a 50% or greater direct ownership interest; and

"(ii) No person not resident in New Zealand, when aggregated with persons associated with the non-

resident, has a 50% or greater direct ownership interest in the taxpayer; or

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

"(i) A 50% or greater ownership interest in the company; or

"(ii) Control of the company by any other means whatsoever (whether or not in conjunction with persons associated with the non-resident); or

"(c) The trustee of a non-qualifying trust 50% or more settled by a person not resident in New Zealand.

"(2) A person's ownership interest in a company is equal to the sum of—

"(a) Any direct ownership interest held by the person in the company; and

"(b) Any direct ownership interest or interests held in the company by persons associated with the person; and

"(c) Any indirect ownership interest or interests held by the person in the company; and

"(d) Any indirect ownership interest or interests held in the company by persons associated with the person.

"(3) A person's direct ownership interest in a company is equal to the highest percentage held by the person out of the categories listed in paragraphs (a) to (d) of section CG 4 (4) (applying those paragraphs as if the company were the foreign company referred to).

"(4) If a person has a direct ownership interest in a company (referred to in this subsection as the upper company) and the upper company has an ownership interest in another company (referred to in this subsection as the lower company), then—

"(a) If the person's direct ownership interest in the upper company (when aggregated with the direct ownership interests of persons associated with the person) is less than 50%, the person will be deemed to hold an indirect ownership interest in the lower company calculated by multiplying the person's direct ownership interest in the upper company by the upper company's ownership interest in the lower company; and

"(b) If the person's direct ownership interest in the upper company (when aggregated with the direct ownership interests of persons associated with the person) is equal to or greater than 50%, the person will be deemed to hold an indirect ownership

interest in the lower company equal to the upper company's ownership interest in the lower company.

"(5) If the application of subsection (2) or subsection (4) to require a person's ownership interest in a company to be calculated on a basis of aggregation with associated persons results in the same percentage shares or rights in respect of the company being counted more than once, the person's ownership interest in the company will be adjusted to the extent necessary to avoid multiple counting.

"(6) For the purposes of subsections (1)(a)(ii) and (2), a person not resident in New Zealand who does not hold any direct or indirect ownership interests in the company and any relative of that person resident in New Zealand are not associated persons in respect of that company.

"(7) For the purposes of this section, a trust will be treated as being 50% or more settled by a single person if the value of settlements by the single person, when aggregated with the value of settlements by all the persons associated with the single person, aggregate to 50% or more of the total value of all settlements on the trust.

"(8) For the purposes of this section, a foreign company will be treated as not being resident in New Zealand.

"FG 3. **Circumstances in which apportionment required**—Section FG 8 will apply to require an apportionment of interest deductions for an income year if the taxpayer has a New Zealand group debt percentage for the income year which—

"(a) Exceeds 75%; and

"(b) If the taxpayer is a company or a trustee, also exceeds the worldwide group debt percentage of the taxpayer multiplied by 1.1.

"FG 4. **Rules for calculating New Zealand group debt percentage**—(1) The New Zealand group debt percentage will be the percentage which the amount of total debt represents of the amount of total assets for the taxpayer's New Zealand group for the income year, and must be calculated under the rules in this section.

"(2) Total debt means the aggregate of the outstanding balances on the relevant date chosen under subsection (5) of all financial arrangements issued by the taxpayer (or another group member) if—

"(a) The financial arrangement provides funds to the issuer; and

"(b) The issuer can claim a deduction in calculating its assessable income in respect of the financial arrangement, otherwise than a deduction solely attributable to a movement in currency exchange rates.

"(3) Total assets for the income year means the aggregate on the relevant date chosen under subsection (5) of all assets of the taxpayer (or another group member), which (subject to the following subsections) must be measured, by any combination, elected by the taxpayer, of—

"(a) The values shown in the financial accounts of the taxpayer's New Zealand group; or

"(b) The net current value of the assets; or

"(c) In the case of trading stock which is valued at market selling value in calculating the taxpayer's (or group member's) income tax liability for the income year, market selling value; or

"(d) If permitted under generally accepted accounting principles of New Zealand, a combination of the financial account values and net current values.

"(4) Except where subsection (3) (c) applies, the amount of total assets must be calculated under generally accepted accounting principles of New Zealand.

"(5) The amount of total debt and total assets for the income year must be measured, at the election of the taxpayer, on the basis of—

"(a) An average of the figures for the amount of total debt and total assets, respectively, calculated at the end of each day of the income year; or

"(b) An average of the figures for the amount of total debt and total assets, respectively, calculated at the end of each complete consecutive 3-month period during the income year; or

"(c) The amount of total debt and total assets, respectively, at the end of the income year.

"(6) Notwithstanding subsection (5), if members of the taxpayer's New Zealand group have different income tax balance dates, the election made by the taxpayer under subsection (5) will apply as if the taxpayer's income year was the same as that of the New Zealand parent (as defined in subsection (10)).

"(7) The amount of total debt and the amount of total assets calculated must be in New Zealand currency and, subject to section FG 7, any necessary currency conversions must be

made at the close of trading spot exchange rate on the date as at which the amount is being calculated.

"(8) Any temporary—

"(a) Reduction in the outstanding balance of a financial arrangement; or

"(b) Increase in the value of an asset,—

must be excluded from the calculations if the reduction or increase has a purpose or effect of defeating the intent and application of this Subpart.

"(9) If the taxpayer is a company, the amount of total debt and the amount of total assets must be calculated, on a consolidated basis for elimination of intra-group balances used under generally accepted accounting principles of New Zealand for consolidation of a group of companies, for the group identified under subsections (10) to (13).

"(10) If the taxpayer is a company, the members of the group will be determined in accordance with the election made under subsection (11) by—

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

"(i) Not resident in New Zealand; or

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

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

"(i) In which a person not resident in New Zealand has, under the rules set out in section FG 2, a direct ownership interest; and

"(ii) Which has, under those rules, an ownership interest in the taxpayer:

"(c) If more than one company is identified under paragraph (b), the company out of that set of companies where the highest figure is produced by multiplying—

"(i) The aggregate direct ownership interests held by non-residents in that company; and

"(ii) The ownership interest of that company in the taxpayer,—

(the party entitled to elect being referred to in subsections (12), (13), and (14) as the New Zealand parent).

"(11) Notwithstanding paragraph (c) of subsection (10), the 2 or more companies identified under paragraph (b) of that subsection may jointly elect that one of them will be the taxpayer's New Zealand parent referred to in subsections (12), (13), and (14), in which event subsection (10)(c) will not apply and the election will take effect.

"(12) The taxpayer's New Zealand group will comprise the taxpayer, the New Zealand parent (if different from the taxpayer), and all companies which—

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

"(b) Are, at the election of the New Zealand parent,—

"(i) Companies required under generally accepted accounting principles of New Zealand to be included with the New Zealand parent in consolidated group accounts; or

"(ii) Companies—

"(A) In which the New Zealand parent holds, under the rules set out in section FG 2, 66% or greater direct ownership interests; or

"(B) In which any combination of the New Zealand parent and companies included in the group under subsubparagraph (A) collectively hold, under those rules, 66% or greater direct ownership interests.

"(13) If the New Zealand parent has made an election for an income year to apply subparagraph (i) or subparagraph (ii) of subsection (12) (b) to identify a taxpayer's New Zealand group, the New Zealand parent must and is deemed to make the same election for the income year with respect to any other taxpayer in respect of which it is determined to be the New Zealand parent.

"(14) If the New Zealand parent fails to make an election under paragraph (b) of subsection (12), the New Zealand parent will be deemed to have elected that subparagraph (ii) of paragraph (b) applies.

"(15) If the taxpayer is a trustee, the amount of total debt and the amount of total assets must be calculated, on a consolidated basis for elimination of intra-group balances equivalent to that used for consolidation of a group of companies under generally accepted accounting principles of New Zealand, for the group comprising the taxpayer and all associated persons which are—

"(a) Resident in New Zealand; or

"(b) Carrying on business in New Zealand through a fixed establishment in New Zealand.

"(16) If the taxpayer is an individual who is not a trustee—

"(a) The only person in the group will be the taxpayer; and

"(b) Total assets will not include any private or domestic assets.

"(17) In any case where a group member required to be included in the consolidated calculation under subsection (9), subsection (12), or subsection (15) is not resident in New Zealand, the amount of total debt and amount of total assets will only include the total debt and total assets of that group member to the extent that that group member is carrying on business in New Zealand through a fixed establishment in New Zealand.

"(18) If the taxpayer is an individual, total assets will not include any private or domestic assets.

"FG 5. **Rules for calculating worldwide group debt percentage**—(1) The worldwide group debt percentage will be the percentage which the amount of total debt represents of the amount of total assets for the taxpayer's worldwide group for the accounting year of the group ending most immediately prior to the start of the income year, and must be calculated under the rules in this section.

"(2) Subject to the following subsections, either or both the amount of total debt and the amount of total assets can be taken from the financial accounts of the taxpayer's worldwide group.

"(3) The amount of total debt and amount of total assets for the income year will be measured at the end of the relevant accounting year.

"(4) The amount of total debt and amount of total assets must be calculated—

"(a) Under a standard for financial reporting in a consistent and non-distorting manner which is equivalent to generally accepted accounting principles of New Zealand; and

"(b) In accordance with the financial reporting standards of the country which are applied in the preparation of that group's consolidated financial accounts.

"(5) Notwithstanding subsections (3) and (4), the taxpayer may elect either or both—

"(a) To measure total debt applying the definition of total debt in section FG 4 (2) (applying that provision as if paragraph (b) referred also to a deduction which could be claimed if the issuer was resident in New Zealand):

"(b) To measure total debt and total assets on one of the bases listed in paragraph (a) or paragraph (b) of

section FG 4 (5) (applying that provision as if the accounting year were the income year referred to).

"(6) The amount of total debt and total assets calculated must be in New Zealand currency and, subject to section FG 7, any necessary currency conversions must be made at the close of trading spot exchange rate on the date as at which the amount is being calculated.

"(7) Any temporary increase in the amount of total debt and any temporary decrease in the amount of total assets must be excluded from the calculations if the increase or decrease has a purpose or effect of defeating the intent and application of this Subpart.

"(8) If the taxpayer is a company, the amount of total debt and total assets must be calculated for the group (referred to in this section as the taxpayer's worldwide group) which comprises—

"(a) The taxpayer; and

"(b) All persons included in the taxpayer's New Zealand group for the income year under section FG 4; and

"(c) All persons not resident in New Zealand required to be included in consolidated group accounts with the taxpayer under, at the election of the taxpayer,—

"(i) The generally accepted accounting principles of New Zealand; or

"(ii) An equivalent standard for financial reporting in a consistent and non-distorting manner of the country in which is resident the company (referred to in this section as the ultimate non-resident parent)—

"(A) Which has, under section FG 2, a 50% or greater ownership interest in the taxpayer; and

"(B) Is not excluded from the taxpayer's worldwide group under subsection (9) of this section; and

"(C) In which no other company, which has under the section FG 2 rules a 50% or greater ownership interest in the taxpayer, has under those rules an ownership interest; or

"(iii) An equivalent standard for financial reporting in a consistent and non-distorting manner which is in fact applied when preparing the consolidated group accounts of the international group of which the taxpayer is part; and

"(d) The ultimate non-resident parent and all persons not resident in New Zealand required to be included in consolidated group accounts with the ultimate non-resident parent under—

"(i) If an accounting standard of the ultimate non-resident parent's country applies under subparagraph (ii) of subsection (8) (c), that standard; and

"(ii) In any other case, under generally accepted accounting principles of New Zealand; and

"(e) Any person not resident in New Zealand who—

"(i) Is not a company; and

"(ii) Has a 50% or greater ownership interest in the company; and

"(f) Any person associated with any person included in the taxpayer's worldwide group under paragraph (e).

"(9) Notwithstanding subsection (8), if in a joint venture ownership situation of a taxpayer which is a company—

"(a) A person, under the rules set out in section FG 2, has an ownership interest in the taxpayer equal to 50%; and

"(b) The taxpayer elects to exclude the person (referred to in this subsection as the excluded joint venturer) from the taxpayer's worldwide group; and

"(c) There is still included in the taxpayer's worldwide group—

"(i) One other person (referred to in this subsection as the included joint venturer) who has an ownership interest equal to 50% in the taxpayer; and

"(ii) All other persons who have an ownership interest equal to 50% in the taxpayer and—

"(A) Who have an ownership interest in the included joint venturer; or

"(B) In whom the included joint venturer has an ownership interest,—

the excluded joint venturer will be excluded from the taxpayer's worldwide group for the income year in respect of which the election is made.

"(10) If the taxpayer is a company, the amount of total debt and total assets must be calculated, for the group identified under subsections (8) and (9), on a consolidated basis for elimination of intra-group balances, under—

"(a) If an accounting standard of the ultimate non-resident parent's country applies under subparagraph (ii) of subsection (8) (c), that standard; and

"(b) In any other case, under generally accepted accounting principles of New Zealand.

"(11) If the taxpayer is a trustee, the amount of total debt and total assets must be calculated, on a consolidated basis for elimination of intra-group balances equivalent to that used for consolidation of companies under generally accepted accounting principles of New Zealand, for the group comprising the taxpayer and all associated persons.

"(12) If it is impractical for the taxpayer to calculate the taxpayer's worldwide group debt percentage for an income year due to an inability to comply with all or any of these rules,—

"(a) The taxpayer may elect that the Commissioner must estimate the percentage in accordance with the intent of this Subpart and, if the Commissioner then makes an estimate, the estimate will be treated as being the percentage for the purposes of this Subpart; and

"(b) If the Commissioner is not asked to or cannot reasonably make an estimate, this Subpart will apply as if the percentage was 68.1818.

"(13) If there is no person in the taxpayer's worldwide group who is not resident in New Zealand (other than the taxpayer), the taxpayer's worldwide group debt percentage will be 68.1818 notwithstanding the calculation rules in this section.

"FG 6. **Concession for on-lending**—(1) If the taxpayer (or another group member) is the holder of a financial arrangement issued by—

"(a) A person not associated with the taxpayer; or

"(b) A person who is neither resident in New Zealand nor carrying on business in New Zealand through a fixed establishment in New Zealand,—

which provides funds to the issuer, in calculating the taxpayer's New Zealand group debt percentage the amount of total debt at the time and the amount of total assets at the time must be reduced by an amount equal to the outstanding balance of the financial arrangement.

"(2) If the taxpayer (or another group member) is the holder of a financial arrangement issued by a person not associated with the taxpayer which provides funds to the issuer, in calculating the taxpayer's worldwide group debt percentage

the amount of total debt at the time and the amount of total assets at the time must be reduced by an amount equal to the outstanding balance of the financial arrangement.

"FG 7. **Concession for exchange rate fluctuations**—The taxpayer may elect, when calculating the taxpayer's New Zealand or worldwide group debt percentage for the income year, to calculate the outstanding balance of any one or more financial arrangements, or the value of any one or more assets, denominated in a currency other than New Zealand currency using the forward exchange rate, for the relevant measurement date specified in section FG 4 or section FG 5, applicable on the first day of the income year.

"FG 8. **Apportionment of interest deductions**—(1) Notwithstanding anything in section DD 1 (b), if a taxpayer's New Zealand group debt percentage for an income year fails the test in section FG 3, the amount deductible by the taxpayer in the income year under section DD 1 (b) will be reduced by the amount calculated as follows:

$$(I - GI - IFD) \times \frac{TNZD - NZDA}{TNZD} \times \frac{NZDP - TDP}{NZDP}$$

where—

"I is the amount which would have been deductible by the taxpayer under section DD 1 (b) but for this Subpart; and

"GI is the amount deductible by the taxpayer under section DD 1 (b) in respect of amounts payable (excluding any amount included in item IFD) to a company included in the taxpayer's New Zealand group under section FG 4 (12) or section FG 4 (15); and

"IFD is the amount deductible by the taxpayer under section DD 1 (b) in respect of financial arrangements excluded from total debt for the taxpayer's New Zealand group by virtue of section FG 4 (2); and

"TNZD is the total debt of the taxpayer's New Zealand group for the income year, calculated under section FG 4 before allowing for any adjustment under section FG 6; and

"NZDA is the amount, if any, deducted under section FG 6 in calculating the total debt of the taxpayer's New Zealand group for the income year (which amount must be averaged in circumstances where section FG 4 (5) (a) or section FG 4 (5) (b) applies); and

"NZDP is the taxpayer's New Zealand group debt percentage for the income year; and

"TDP is—

"(a) If the taxpayer is a company or a trustee, the greater of—

"(i) 75 percent; and

"(ii) The taxpayer's worldwide group debt percentage multiplied by 1.1; and

"(b) If the taxpayer is an individual who is not a trustee, 75 percent.

"(2) Notwithstanding subsection (1), if and to the extent that another member of the same wholly-owned group of companies elects that this subsection apply and has a sufficient deductible amount to be reduced (after allowing for any other reductions under this subsection), the reduction will be made to the amount deductible by the other group member under section DD 1 (b) for the income year instead of to the amount deductible by the taxpayer.

"FG 9. **Treatment of specified leases**—For the purposes of this Subpart—

"(a) The deemed loan arising under section FC 6 in respect of a specified lease will be treated as a financial arrangement which provides funds to the issuer; and

"(b) The expenditure incurred by the lessee for which a deduction is allowed will be treated as an amount of interest deductible to the lessee under section DD 1 (b).

"FG 10. **Mode of elections**—(1) Any election available to a person under this Subpart must be exercised by the person filing the person's return of income for the income year completed in a manner which reflects the election.

"(2) Notwithstanding subsection (1), any election under section FG 4 (5) or section FG 5 (5) (b) can be revoked and exercised differently on receipt of an assessment from the Commissioner for the relevant income year.

"(3) Notwithstanding subsection (1) of this section, an election made under section FG 4 (11) or section FG 4 (12) (b) by a person other than the taxpayer must be exercised by the

person giving a notice in writing to the Commissioner with the taxpayer's income tax return for the income year."

10. Arrangement to defeat application of cross-border arrangement provision—The principal Act is amended by repealing section GC 1, and substituting the following section:

"GC 1. Notwithstanding section GD 13 (2), section GD 13 will also apply to require the substitution of an arm's length amount of consideration in the case of an arrangement which has a purpose or effect in respect of any taxpayer of defeating the intent and application of that section (including, but without limiting the generality of this section, as a result of a collateral arrangement involving an associated person not resident in New Zealand, or another collateral arrangement such as a market sharing arrangement, an arrangement not to enter a particular market, a back-to-back supply arrangement, or an income sharing arrangement)."

11. Arrangement to defeat application of non-resident portfolio investor provisions—(1) The principal Act is amended by repealing section GC 13.

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

12. Cross-border arrangements between associated persons—The principal Act is amended by inserting, after section GD 12, the following section:

"GD 13. (1) Subject always to its express provisions, the purpose of this section is to require a taxpayer, who enters into a cross-border arrangement with an associated person for the acquisition or supply of goods, services, or anything else at a consideration which reduces the taxpayer's net income, to substitute an arm's length consideration when calculating the taxpayer's net income.

"(2) This section will only apply to require the substitution of an arm's length amount of consideration in the case of an arrangement—

"(a) Which involves the supply and acquisition of goods, services, money, other intangible property, or anything else; and

"(b) Where the supplier and acquirer are associated persons; and

"(c) Where the supplier and acquirer are—

"(i) Two persons each not resident in New Zealand (unless each enters into the arrangement

for the purposes of a business carried on by the person in New Zealand through a fixed establishment in New Zealand); or

"(ii) A person resident in New Zealand and a person not resident in New Zealand unless—

"(A) The non-resident is entering into the arrangement for the purposes of a business carried on by the non-resident in New Zealand through a fixed establishment in New Zealand; and

"(B) The New Zealand resident has not entered into the arrangement for the purposes of a business carried on by the New Zealand resident outside New Zealand; or

"(iii) Two persons each resident in New Zealand if either or both enter into the arrangement for the purposes of a business carried on by the person outside New Zealand.

"(3) If the amount of consideration payable by a taxpayer under such an arrangement exceeds the arm's length amount, then for all purposes of the application of this Act in relation to the income tax liability of the taxpayer, an amount equal to the arm's length amount will be deemed to be the amount payable by the taxpayer in substitution for the actual amount.

"(4) If the amount of consideration receivable by a taxpayer under such an arrangement is less than the arm's length amount, then for all purposes of the application of this Act in relation to the income tax liability of the taxpayer or to the obligation of the taxpayer or any other person to make a withholding or deduction from the amount under Part N, an amount equal to the arm's length amount will be deemed to be the amount receivable by the taxpayer in substitution for the actual amount.

"(5) Subsection (4) will not apply if—

"(a) The taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand; and

"(b) The amount is interest, royalties, or an insurance premium; and

"(c) The amount is deductible in calculating the net income of the other party.

"(6) For the purposes of this section, the arm's length amount of consideration must be determined by applying whichever one (or combination) of the methods listed in

subsection (7) will produce the most reliable measure of the amount completely independent parties would have agreed upon after real and fully adequate bargaining.

"(7) The arm's length amount of consideration must be calculated under any one (or a combination) of—

"(a) The comparable uncontrolled price method; or

"(b) The resale price method; or

"(c) The cost plus method; or

"(d) The profit split method; or

"(e) Comparable profits methods.

"(8) The choice of method or methods for calculation and the resultant application of the method (or methods) must be made having regard to—

"(a) The degree of comparability between the uncontrolled transactions used for comparison and the controlled transactions of the taxpayer; and

"(b) The completeness and accuracy of the data relied on; and

"(c) The reliability of all assumptions; and

"(d) The sensitivity of any results to possible deficiencies in the data and assumptions.

"(9) The arm's length amount of consideration will be determined by the taxpayer under subsections (6) to (8), and the amount so determined will be the arm's length amount for the purposes of subsections (3), (4), and (10), unless—

"(a) The Commissioner can demonstrate another amount to be a more reliable measure of the arm's length amount; or

"(b) The taxpayer has not co-operated with the Commissioner in the Commissioner's administration of this section in relation to that taxpayer and the nonco-operation has materially affected the Commissioner in that administration,—

in either of which events the Commissioner will determine the amount under subsections (6) to (8) for the purposes of subsections (3), (4), and (10).

"(10) If—

"(a) The amount of consideration payable by a taxpayer for an acquisition is less than an arm's length amount or the amount of consideration receivable by the taxpayer for a supply exceeds an arm's length amount (that acquisition or supply being referred to in this subsection as the compensating adjustment arrangement); and

"(b) In the same income year or in the immediately preceding or succeeding income year, either—

"(i) An amount of consideration payable by the taxpayer is adjusted down under subsection (3); or

"(ii) An amount of consideration receivable by the taxpayer is adjusted up under subsection (4); and

"(c) The adjustment down (or up) is in respect of an arrangement for acquisition (or supply) with the same other party and—

"(i) Involving goods, services, money, other intangible property, or anything else of the same type as that supplied and acquired in the compensating adjustment arrangement; or

"(ii) Where the amount of consideration actually payable (or receivable) is set having regard to the amount of consideration actually payable (or receivable) under the compensating adjustment arrangement,—

then for all purposes of the application of this Act in relation to the income tax liability of the taxpayer (or, if the amount is receivable by the taxpayer, to the obligation of the taxpayer or any other person to make a withholding or deduction from the amount under Part N), an amount equal to the arm's length amount will be deemed to be the amount payable (or receivable) by the taxpayer under the compensation adjustment arrangement in substitution for the actual amount.

"(11) If—

"(a) An arm's length amount of consideration is substituted under subsection (3) or subsection (4) in respect of an arrangement entered into by a taxpayer; and

"(b) The other party to the arrangement (or, if the other party is a controlled foreign company, any person with an income interest in the controlled foreign company) applies to the Commissioner in writing within 6 months after the taxpayer has first received an assessment or determination from the Commissioner which reflects the substitution; and

"(c) The Commissioner considers it is fair and reasonable to do so, having regard to any adjustment made under a double tax agreement or any other matter, and has notified the other party in writing,—

then the substitution will so apply for all purposes of the application of this Act in relation to the other party—

"(d) Excluding the determination of whether and the extent to which the other party has derived or been paid a dividend; and

"(e) Including, in any case where the other party is a controlled foreign company, the calculation of branch equivalent income or branch equivalent loss in respect of the other party and the resultant calculation of the attributed foreign income or attributed foreign loss of any person.

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

"(13) In this section,—

" 'Acquisition'—

"(a) Subject to paragraph (b), includes obtaining the availability of any thing; and

"(b) Does not include the mere receipt, or retention, by a company of consideration for issue of a share (unless the share is a fixed rate share):

" 'Amount' includes a nil amount:

" 'Supply'—

"(a) Subject to paragraph (b), includes making any thing available; and

"(b) Does not include the mere payment, and subsequent continuing making available, by a person to a company of consideration for issue of a share (unless the share is a fixed rate share)."

13. Removal of rebates for non-resident companies—(1) The principal Act is amended by repealing sections KF 1 and KF 2.

(2) The following orders are revoked:

(a) The Income Tax (Non-resident Companies Special Development Project) Order 1970 (S.R. 1970/139):

(b) The Income Tax (Non-resident Companies Special Development Project) Order 1978 (S.R. 1978/322):

(c) The Income Tax (Non-resident Companies Special Development Project) Order 1990 (S.R. 1990/210).

14. Continuation of rebates in respect of certain specified development projects—The principal Act is amended by inserting, after section KZ 2, the following section:

"KZ 3. (1) Notwithstanding the repeal of sections KF 1, NF 1 (2)(a)(vi), NG 1 (2)(f), and OB 5 of this Act by sections 13,

21, 22, and 26 of the Income Tax Act 1994 Amendment Act (No. 3) 1995, a non-resident investment company shall, in relation to the development projects specified in subsection (2) of this section continue to be eligible for the rebates specified in subsections (2) and (3) of section KF 1 of this Act as if those subsections had not been repealed, and, accordingly,—

"(a) Sections NF 1 (2)(a)(vi) and NG 1 (2)(f) shall continue to apply in respect of the company; and

"(b) Section OB 5 and the definitions of any terms relevant to those rebates shall be treated as continuing in force for the purposes of this section.

"(2) This section applies to the development projects specified in the following orders:

"(a) The Income Tax (Non-Resident Investment Companies) Order 1970 (S.R. 1970/138):

"(b) The Income Tax (Non-Resident Investment Companies) Order 1972 (S.R. 1972/19):

"(c) The Income Tax (Non-Resident Investment Companies) Order (No. 2) 1972 (S.R. 1972/248):

"(d) The Income Tax (Non-Resident Investment Companies) Order (No. 3) 1974 (S.R. 1974/277)."

15. Resident withholding tax deductions to be credited against income tax assessed—(1) Section LD 3 (3) of the principal Act is amended by omitting the expression "sections LB 2, LC 1, and LE 1", and substituting the expression "sections LB 2 and LC 1 and Part LE".

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

16. Determination of amount of credit in certain cases—(1) Section LB 1 of the principal Act is amended by inserting, after subsection (3), the following subsection:

"(3A) In any case where a beneficiary of a trust derives, by reason of being a beneficiary of the trust, a supplementary dividend to which section LE 2 applies, subsection (3) will apply as if—

"(a) Item a of the formula in that subsection included the amount of all supplementary dividends distributed to beneficiaries of the trust in their capacity as such during the income year; and

"(b) The amount of the imputation credit calculated with respect to that beneficiary were reduced by the amount of the supplementary dividend."

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

17. Credits in respect of dividends to non-resident portfolio investors—(1) The principal Act is amended by repealing Part LE, and substituting the following Subpart:

"SUBPART E—NON-RESIDENT INVESTORS

"LE 1. **Purpose of Subpart**—Subject always to its express provisions, the purpose of this Subpart is to allow a company, which pays to a non-resident investor a dividend with an imputation credit attached, and a supplementary dividend to the same investor, to claim an income tax credit calculated by reference to the imputation credit which is equal to and sufficient to fund the supplementary dividend.

"LE 2. **Credits in respect of dividends to non-resident investors**—(1) This section applies if a company resident in New Zealand pays in any income year with respect to its own shares—

"(a) A dividend (referred to in this section as the dividend); and

"(b) A single supplementary dividend with respect to the dividend,—

derived by a person not resident in New Zealand.

"(2) The company will be entitled under this section to a credit against payment of its income tax calculated under the following formula:

$$IC \times \frac{67}{120}$$

where IC is the imputation credit (if any, and calculated having regard to subsections (11) and (12)) attached to the dividend.

"(3) The tax credit will be allowed only against the income tax payable—

"(a) After allowing for any credit under section LC 1; and

"(b) Before allowing for any credit under section LB 2 or section LD 3.

"(4) The tax credit will be allowed in the first instance against income tax payable by the company for the income year.

"(5) If the amount of tax credit exceeds the income tax payable (after allowing for any credit under section LC 1 and before allowing for any credit under section LB 2 or section LD 3) by the company in respect of the income year, the company may—

"(a) Elect under subsection (6) that the excess credit be credited in payment of other income tax of the company or the income tax of another company; and

"(b) If and to the extent that the excess credit cannot be credited in payment of income tax as a result of an election under subsection (6), carry forward the excess credit under subsection (7) to a later income year.

"(6) If a company has any excess credit for an income year and the company so elects, by notice in writing to the Commissioner with the company's return of income for the income year, the excess credit will be credited (so far as it extends) in payment of income tax payable—

"(a) In respect of the income year, by any other company which is for the income year (or in any case where one of the companies exists for part only of the income year, at all times in the income year at which the 2 companies both exist) in the same wholly-owned group of companies as the company; or

"(b) In respect of any of the 4 income years immediately preceding the income year (being in each case the 1993–94 income year or a subsequent income year), by—

"(i) The company; or

"(ii) Any other company which is, for both the income year and the relevant preceding income year (or, in any case where one of the companies exists for part only of the relevant income year, at all times in the relevant income year at which the 2 companies both exist) in the same wholly-owned group of companies as the company.

"(7) A company which has an excess credit for an income year (referred to in this section as the original income year) may carry the excess credit forward to the succeeding or a later income year (referred to in this section as the year of carry forward) if and only if there is a group of persons—

"(a) The aggregate of whose minimum voting interests in the company in the period from the beginning of the original income year to the end of the year of carry forward (in this subsection referred to as the continuity period) is equal to or greater than 49%; and

"(b) In any case where at any time during the continuity period a market value circumstance exists in respect of the company, the aggregate of whose minimum market value interests in the company in the continuity period is equal to or greater than 49%,—

and, for the purposes of this subsection, the minimum voting interest or minimum market value interest, as the case may be, of any person in the company in the continuity period shall be equal to the lowest voting interest or market value interest (as the case may be) in the company which that person has during the continuity period.

"(8) If a company has carried forward any excess credit to a year of carry forward, the excess credit will be allowed in the first instance against the income tax payable (after allowing for any credit under section LC 1 and before allowing for any credit under section LB 2 or section LD 3) by the company for the year of carry forward.

"(9) If and to the extent that the excess credit carried forward exceeds the income tax payable by the company for the year of carry forward, and the company so elects by notice in writing to the Commissioner with the company's return of income for the year of carry forward, the excess credit will be credited in payment of income tax payable in respect of the year of carry forward by any other company which is in the same wholly-owned group of companies as the company for both the year of carry forward and the original income year (or, in any case where one of the companies exists for part only of the relevant income year, at all times in the relevant income year at which the 2 companies both exist).

"(10) If and to the extent that an excess credit is credited in payment of income tax under subsection (6) or subsection (8) or subsection (9), the excess credit shall cease to be available otherwise to be carried forward or credited under this section.

"(11) The benchmark dividend provisions of sections ME 8 and MG 8 and the provisions of section GC 22 will apply as if the company had never paid the supplementary dividend.

"(12) The maximum imputation credit ratio and benchmark dividend provisions of section ME 8 and the provisions of section GC 22 will apply as if the imputation credit attached to the dividend were increased by an amount equal to the tax credit calculated with respect to the dividend under subsection (2).

"(13) If the company pays such a supplementary dividend with respect to all shares of the relevant class held by persons not resident in New Zealand, the payment of the

supplementary dividend with respect only to certain shares of that class will not be treated as contravening—

"(a) Any provision of the Companies Act 1955, or section 53 of the Companies Act 1993; or

"(b) Any provision of the company's articles of association or constitution (not being a provision which expressly refers to this subsection); or

"(c) Any rule of law—

which would otherwise prohibit the payment by the company at the time of dividends of different amounts in relation to shares of the class.

"(14) If a trustee derives the dividend and is required under the terms of the trust to distribute it as beneficiary income to a beneficiary, the distribution by the trustee of the supplementary dividend to the same beneficiary will not be treated as contravening any term of the trust.

"LE 3. **Special rules for holding companies**—(1) Subsections (4) to (10) apply if a company (referred to in this section as the company) resident in New Zealand pays in any income year with respect to its own shares—

"(a) A dividend (referred to in this section as the dividend); and

"(b) A single supplementary dividend with respect to the dividend,—

derived by a section LE 3 holding company.

"(2) A section LE 3 holding company is a company resident in New Zealand which—

"(a) Has given a notice in writing to the company before the dividend is paid advising the company that it is a section LE 3 holding company; and

"(b) Has not revoked that notice before the dividend is paid.

"(3) A notice given under subsection (2) (a) will be treated as having been revoked by the company which gave it (referred to in this section as the former section LE 3 holding company), and the former section LE 3 holding company must give notice in writing to the company of the revocation as soon as is practicable, if—

"(a) More than 7 years have passed since the end of the year in which the notice was given; or

"(b) The former section LE 3 holding company elects to revoke the notice; or

"(c) The former section LE 3 holding company does not have the purpose, in keeping the notice in existence, of enabling, directly or indirectly, the payment of a

supplementary dividend to a person not resident in New Zealand; or

"(d) The only persons holding voting interests in the former section LE 3 holding company are residents of New Zealand; or

"(e) The former section LE 3 holding company is exempt from income tax on dividends other than under section CB 10.

"(4) Section LE 2 will apply, with respect to the dividend and the supplementary dividend, as if the section LE 3 holding company were not resident in New Zealand.

"(5) Notwithstanding subsection (4) of this section and section LE 2, if—

"(a) The section LE 3 holding company and the company are associated persons (as defined in section OD 8 (3) but as if each reference in that provision to '50% or more' instead read 'more than 50%'); and

"(b) Because the section LE 3 holding company has an earlier income tax balance date than the company, the dividend is derived by the section LE 3 holding company in a later income year than the income year of the company in which the company pays the dividend,—

the provisions of section LE 2 allowing the company a tax credit will apply as if the income year in which the company pays the dividend were the later income year.

"(6) Section CB 10 (2) can apply to exempt the dividend from tax only to the extent to which it exceeds the amount calculated under the following formula:

$$(IC + SD) \times \frac{I - T}{T} + IC$$

where—

"IC is the amount of imputation credit attached to the dividend; and

"SD is the amount of the supplementary dividend; and

"T is the rate of resident companies' tax, expressed as a percentage, stated in clause 5 of Part A of Schedule 1 and applying in respect of the income year,—

and the imputation credit will be deemed, for the purposes of section LB 2, to be included in the part of the dividend which is not exempt.

"(7) The dividend will be ignored for the purposes of the RWT rules to the extent to which it does not exceed the amount calculated under the formula in subsection (6), and the

imputation credit will be deemed to be included in the part ignored.

"(8) The supplementary dividend will not be exempt from tax under section CB 10 (2).

"(9) The supplementary dividend will be ignored for the purposes of the RWT rules.

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

"(11) If and to the extent subsection (10) applies to require payment of an additional amount of tax (or would have required payment but for any credit under section LE 2), the section LE 3 holding company will be deemed to have incurred an amount of loss for the relevant income year (in addition to any other loss for the income year) equal to the tax amount divided by the rate of resident companies' tax, expressed as a percentage, stated in clause 5 of Part A of Schedule 1 and applying for the income year."

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

18. Credits arising to imputation credit account—(1) Section ME 4 (1)(a)(v) of the principal Act is amended by omitting the expression "section LE 1" and substituting the expression "Part LE".

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

19. Debits arising to imputation credit account—(1) Section ME 5 (1)(e) of the principal Act is amended by inserting in subparagraph (iii), after the words "this subsection", the words "and the refund does not arise by virtue of Part LE".

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

20. Company may attach imputation credit to dividend—The principal Act is amended by repealing section ME 6 and substituting the following section:

"ME 6. (1) An imputation credit account company may, on payment of a dividend by the company, attach an imputation credit to that dividend.

"(2) Notwithstanding subsection (1), if—

"(a) An imputation credit account company pays a non-cash dividend; and

"(b) The company is subject to an adjustment under section GD 13 (3) or section GD 13 (4) in respect of the arrangement giving rise to the dividend,—

the company may retrospectively attach an imputation credit to the dividend, subject to compliance with subsections (3), (4), and (5) of this section.

"(3) The amount of imputation credit able to be attached retrospectively under subsection (2) must not (when aggregated with all other imputation credits retrospectively attached by the company to dividends paid in the same imputation year) exceed the least of—

"(a) The credit balance, if any, in the company's imputation credit account at the end of the imputation year in which the dividend is paid; and

"(b) The credit balances, if any, in the company's imputation credit account at the end of each imputation year after the year in which the dividend is paid and before the year in which the company makes the retrospective attachment.

"(4) Where a company has determined that an imputation credit will be attached to a dividend under subsection (2),—

"(a) The amount of the imputation credit will, for the purposes of section ME 5, be a debit to the company's imputation credit account arising on the date the company paid the dividend; and

"(b) The company dividend statement to be completed in accordance with section 67 of the Tax Administration Act 1994 must be completed at the time the company makes the determination under subsection (2) of this section; and

"(c) The shareholder dividend statement to be given by the company in accordance with section 29 of the Tax Administration Act 1994 must be given at the time the company makes the determination under subsection (2) of this section.

"(5) If and to the extent that—

"(a) A company has determined that an imputation credit will be attached to a dividend under subsection (2); and

"(b) An amount of income tax paid by the company is attributable to the relevant adjustment under section GD 13 (3) or section GD 13 (4); and

"(c) The company would not, without application of imputation penalty tax, be able to attach the imputation credit; and

"(d) The company notifies the Commissioner in writing with the company dividend statement completed under subsection (4) (b),—

the amount of income tax will be treated for the purposes of this Subpart as if it were paid on the date the dividend was paid and the company will not be liable for any failure to have furnished a correct imputation return under section 69 of the Tax Administration Act 1994 to the extent the return is rendered incorrect solely as a result of this subsection."

21. Application of RWT rules—Section NF 1 (2)(a) of the principal Act is amended by repealing subparagraph (vi).

22. Application of NRWT rules—Section NG 1 (2) of the principal Act is amended by repealing paragraph (f).

23. Non-resident withholding tax imposed—(1) The principal Act is amended by repealing section NG 2, and substituting the following section:

"NG 2. (1) Every person who derives non-resident withholding income shall be liable to pay non-resident withholding tax upon that income—

"(a) At the rate of 30% of the gross amount of so much of that income as consists of dividends (other than investment society dividends, or supplementary dividends payable as a result of Part LE) to the extent the dividends are not fully imputed:

"(b) At the rate of zero percent of the gross amount of so much of that income as consists of—

"(i) Interest paid by an approved issuer in respect of a registered security and derived by a person who is not an associated person of the approved issuer; or

"(ii) Non-cash dividends to the extent fully imputed; or

"(iii) Non-resident withholding income derived by a life insurer from a company resident in New Zealand deemed to exist as a result of the life insurer making an election under section OE 3:

"(c) At the rate of 15% of the gross amount of so much of that income as consists of income to which neither paragraph (a) nor paragraph (b) applies.

"(2) Every person liable under subsection (1) to pay an amount of non-resident withholding tax in respect of non-resident withholding income consisting of dividends shall be deemed to have paid the non-resident withholding tax to the extent of any dividend withholding payment credit that is included within the non-resident withholding income.

"(3) For the purposes of this section, the extent to which any dividends are fully imputed must be calculated under the following formula:

$$(IC + SD) \times \frac{1 - T}{T}$$

where—

"IC is the amount of imputation credits attached to the dividends; and

"SD is the amount of supplementary dividends payable as a result of Part LE in respect of the dividends; and

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

(2) This section applies with respect to non-resident withholding income paid on or after the day on which this Act receives the Royal assent.

24. Non-resident withholding tax to be final tax in certain cases—(1) Section NG 3 of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

"(ba) Interest or royalties derived by a life insurer from a company resident in New Zealand deemed to exist as a result of the life insurer making an election under section OE 3; or".

(2) Section NG 3 is further amended by omitting the words ", subject to section KF 1,".

(3) Subsection (1) applies with respect to non-resident withholding income paid on or after the day on which this Act receives the Royal assent.

25. Definitions—(1) The definition of the term "accounting year" in section OB 1 of the principal Act is amended—

(a) By omitting from paragraph (a) the words "Subject to paragraph (c),":

(b) By further omitting from paragraph (a) the words "and section KF 2":

(c) By repealing paragraph (c).

(2) Section OB 1 is further amended by inserting, after the definition of the term "accruals rules", the following definition:

" 'Acquisition' is defined in section GD 13 (13) for the purposes of that section:".

(3) Section OB 1 is further amended by repealing paragraph (b) of the definition of the term "amount".

(4) The definition of the term "amount" is further amended by adding the following paragraph:

"(c) Is defined in section GD 13 (13) for the purposes of that section:".

(5) Section OB 1 is further amended by omitting from paragraph (d) of the definition of the term "associated person" the expression "HK 11 (10), and LE 1", and substituting the expression "and HK 11 (10)".

(6) Section OB 1 is further amended by repealing the definitions of the terms "branch" and "development investments".

(7) Section OB 1 is further amended by inserting in the definition of the term "continuity provisions", after the expression "IG 2 (1)(b) and (2)(e),", the expression "LE 2 (7),".

(8) The definition of the term "dividend" in section OB 1 is amended—

(a) By omitting from paragraph (a) the words "paragraphs (b) to (f)", and substituting the words "paragraphs (b) to (e)":

(b) By omitting from paragraph (b) of the definition of the term "dividend" the words "and in section LE 1":

(c) By inserting in that definition, after paragraph (b), the following paragraph:

"(ba) In Part LE—

"(i) Includes in any case where—

"(A) An amount is paid by a company (in this subparagraph referred to as the first company) to a shareholder being a company (in this subparagraph referred to as the second company); and

"(B) The second company would at that time, by virtue of the provisions of section CF 3 (12) if the first company

were a specified company, be a person related to that first company,—

that amount to the extent that it would be treated as a dividend derived by the second company in respect of a share or shares in the first company upon liquidation of the first company if, and only if, in applying section CF 3 (1)(c) to the liquidation, the excess return amount in respect of each share were nil:

"(ii) Does not include—

"(A) Any non-cash dividend; or

"(B) Any dividend derived by a life insurer from a company resident in New Zealand deemed to exist as a result of the life insurer making an election under section OE 3:":

(d) By repealing paragraph (f).

(9) Section OB 1 is further amended by repealing the definition of the term "dividend withholding payment portion".

(10) Section OB 1 is further amended by repealing the definitions of the terms "effective rate of domestic tax" and "first specified period".

(11) Section OB 1 is further amended by omitting from paragraph (a) of the definition of the term "fixed rate share" the expression "section CF 3", and substituting the expression "sections CF 3 and GD 13".

(12) Section OB 1 is further amended by inserting, in paragraph (a) of the definition of the term "life insurer", after the term " 'claim' ", the term " 'dividend',".

(13) Section OB 1 is further amended by omitting from the definition of the term "mining venture" the words "and in clause 4 of Schedule 1".

(14) Section OB 1 is further amended by repealing the definition of the term "mineral", and substituting the following definition:

" 'Mineral', or 'minerals', includes all minerals, metals, coal, oil, kauri gum, clay, stone, gravel, sand, and precious stones:".

(15) Section OB 1 is further amended by inserting, after the definition of the term "New Zealand film", the following definition:

" 'New Zealand group debt percentage' means, in respect of a taxpayer and an income year, the percentage calculated under section FG 4:".

(16) Section OB 1 is further amended by repealing the definition of the term "non-resident investment company".

(17) Section OB 1 is further amended by repealing the definition of the term "non-resident portfolio investor".

(18) Section OB 1 is further amended by repealing paragraph (b) of the definition of the term "paid".

(19) The definition of the term "residual income tax" in section OB 1 is amended—

(a) By inserting in paragraph (g), after the expression "section LE 1", the words "(other than by virtue of subsection (2) (b) of that section)":

(b) By omitting from paragraph (g) (as amended by paragraph (a) of this subsection) the words "section LE 1 (other than by virtue of subsection (2) (b) of that section)" and substituting the words "Part LE, other than by virtue of section LE 2 (6) (b)".

(20) Section OB 1 is further amended by repealing the definitions of the terms "primary metal", "second specified period", and "specified industrial undertaking".

(21) Section OB 1 is further amended by omitting from paragraph (b) of the definition of the term "settlement" the expression "section HH 1", and substituting the expression "sections FG 2 and HH 1".

(22) Section OB 1 is further amended by repealing the definition of the term "supplementary dividend", and substituting the following definition:

" 'Supplementary dividend', in Part LE in respect of any company and any person deriving a dividend (referred to in this definition as the first dividend) from the company, means a dividend—

"(a) Paid by the company in the same income year as the first dividend; and

"(b) Paid with respect to the first dividend; and

"(c) Also derived by that person; and

"(d) Which is equal in amount to the tax credit calculated, with respect to the first dividend, under section LE 2 (2):".

(23) Section OB 1 is further amended by inserting, after the definition of the term "supplementary dividend", the following definition:

" 'Supply' is defined in section GD 13 (13) for the purposes of that section:".

(24) Section OB 1 is further amended by repealing paragraph (b) of the definition of the term "taxable income".

(25) Section OB 1 is further amended by inserting in paragraph (b) of the definition of the term "trading stock", after the expression "FE 6,", the expression "FG 4,".

(26) Section OB 1 is further amended by inserting, after the definition of the term "work related vehicle", the following definition:

" 'Worldwide group debt percentage' means, in respect of a taxpayer and an income year, the percentage calculated under section FG 5:".

(27) Subsections (5), (8) (b) and (c), (9), (12), (17), (19) (b), and (22) apply with respect to dividends paid on or after the day on which this Act receives the Royal assent.

(28) Subsection (19) (a) applies with respect to dividends paid during the 1995–96 income year and subsequent years.

26. Meaning of "non-resident investment company"—The principal Act is amended by repealing section OB 5.

27. Meaning of "income tax"—Section OB 6 (1) of the principal Act is amended—

(a) By omitting from paragraph (a) the expression "paragraphs (b) to (k)", and substituting the expression "paragraphs (b) to (i)":

(b) By repealing paragraphs (h), (j), and (k).

28. Further definitions of associated persons—(1) Section OD 8 (3) of the principal Act is amended—

(a) By omitting the expression "Part LF" where it first occurs, and substituting the expression "Parts FG and LF":

(b) By omitting the expression "EZ 9, HK 11,", and substituting the expression "EZ 9, GD 13, and HK 11":

(c) By omitting the expression "and LE 1" where it first occurs:

(d) By omitting from the proviso to paragraph (a) the expression "Part LF and sections CG 8, HK 11,", and substituting the expression "Parts FG and LF and sections CG 8, GD 13, and HK 11":

(e) By omitting from the proviso to paragraph (a) the expression "and LE 1".

(2) Paragraphs (c) and (e) of subsection (1) apply with respect to dividends paid on or after the day on which this Act receives the Royal assent.

29. References to income years in particular provisions—(1) Section OF 2 (2)(i) of the principal Act is amended by adding the following subparagraph:

"(iii) Part FG:".

(2) Section OF 2 (2)(m) is amended—

(a) By inserting, after subparagraph (ii), the following subparagraph:

"(iia) Part LE:":

(b) By repealing subparagraph (iv).

(3) Subsection (2) (a) of this section applies with respect to dividends paid on or after the day on which this Act receives the Royal assent.

30. Schedule 1 amended—(1) Part A of Schedule 1 to the principal Act is amended by repealing clauses 3 and 6.

(2) Part A of Schedule 1 is further amended by repealing clause 5, and substituting the following clause:

"5. **Companies**—On all income not included within any of the provisions of clauses 1 to 4, the basic rate of income tax on the taxable income derived by a company shall be 33 cents for every $1 of that taxable income."

31. Amendment to Student Loan Scheme Act 1992—Section 16 of the Student Loan Scheme Act 1992 is amended by omitting the expression "GC 1" (as substituted by section YB 1 of the Income Tax Act 1994).

This Act is administered in the Inland Revenue Department.