ANALYSIS

1995, No. 73

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—This Act may be cited as the Income Tax Act 1994 Amendment Act (No. 4) 1995, and shall be read together with and deemed part of the Income Tax Act 1994 (hereinafter referred to as the principal Act).

PART I

AMENDMENTS TO INCOME TAX ACT 1994

2. Non-profit bodies' and charities' exempt income—(1) Section CB 4 (1) (e) of the principal Act is amended by omitting from the second proviso the expression "CG 1, and CH 1", and substituting the expression "and CG 1".

(2) This section applies with effect from the commencement of the principal Act.

3. Certain compensation, benefits, and other payments included in assessable income—(1) Section CC 1 of the principal Act is amended by adding the following paragraph:

"(f) All pensions."

(2) Section CC 1 is further amended by adding the following subsection (and consequentially numbering the existing section as subsection (1)):

"(2) In this section, 'pensions' includes any *ex gratia* payment received by any taxpayer from any person (that person being referred to in this subsection as the principal person) for whom the taxpayer, or a person who is or has been a spouse or a dependant of the taxpayer, has rendered past services, being a payment which, in the opinion of the Commissioner, would not have been made by the principal person if those past services had not been rendered by, as the case may be, the taxpayer or that parent or that child or that person who is or has been a spouse or a dependant; but does not include a payment received by any taxpayer from the principal person as a consequence of and within 12 months immediately succeeding the date of the death of that spouse or that child or that person who is or has been a spouse or a dependant of the taxpayer."

(3) This section applies with effect from the commencement of the principal Act.

4. Profits or gains from land transactions—(1) Section CD 1 (3) (b) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) Any land, being a dwellinghouse acquired and occupied, or erected and occupied,—

"(i) By the taxpayer primarily and principally as a residence for the taxpayer and any member of the taxpayer's family living with the taxpayer; or

"(ii) Where the taxpayer is a trustee of a trust, by some or all of the beneficiaries of the trust primarily and principally as a residence,—

together with any land reserved for the occupation and enjoyment of the taxpayer or the beneficiaries with that dwellinghouse, being an area of land not exceeding 4,500 square metres or such larger area as, in the opinion of the Commissioner, is required for the reasonable occupation and enjoyment of that dwellinghouse,—".

(2) This section is deemed to have come into force on 17 August 1995.

5. Meaning of term "dividends"—(1) Section CF 2 (1) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

"(e) The making available by the company, not being a flat-owning company, of any property of the company for the benefit of any shareholder of the company to the extent that the value of the benefit enjoyed by the shareholder exceeds the amount or value of any consideration provided to the company by the shareholder for provision of the benefit:".

(2) Section CF 2 (9A) (as inserted by section 6 of the Income Tax Act 1994 Amendment Act (No. 2) 1995) is amended by omitting the expression "paragraph (l)", and substituting the expression "paragraph (k)".

(3) Section CF 2 (11) is amended by repealing paragraph (c), and substituting the following paragraph:

"(c) Subject to subsection (12), in any case where the making available of any property is a loan then, in relation to any quarter, the amount of the dividend (if any) shall be the amount by which the amount of interest that would have accrued on that loan in respect of that quarter had that interest been calculated on the daily balance of that loan at the rate of interest specified in subsection (12) for that quarter exceeds—

"(i) The amount of interest that accrued in that quarter in respect of that loan to the shareholder; or

"(ii) Where appropriate having regard to the nature of the loan, the amount of income, if any, that would have accrued to the benefit of the company in that quarter if the income from that loan, being a financial arrangement, were calculated using the yield to maturity method."

(4) Section CF 2 (15) (a) (ii) is amended by inserting, after the expression "clause 5", the expression "of Part A".

(5) Section CF 2 is further amended by adding the following subsection:

"(21) In this section, 'flat-owning company' means 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."

(6) Subsections (1), (2), and (5) of this section apply with effect from the commencement of the principal Act.

(7) Subsection (3) applies with respect to dividends arising on or after 1 January 1996.

(8) Subsection (4) applies with effect from the commencement of the principal Act.

6. Exclusions from term "dividends"—(1) Section CF 3 (1)(b) of the principal Act is amended—

(a) By repealing subsubparagraph (D) of subparagraph (i), and substituting the following subsubparagraph:

"(D) The relevant cancellation is not part of a pro rata cancellation and the company is an unlisted trust; and":

(b) By repealing subsubparagraph (A) of subparagraph (iv), and substituting the following subsubparagraph:

"(A) In any case where the company is an unlisted trust and the share is issued on such terms that its redemption is subject to this subsubparagraph, the available subscribed capital per share; and".

(2) Section CF 3 (1) is further amended by repealing paragraphs (i) and (j), and substituting the following paragraphs:

"(i) Any amount distributed by a statutory producer board where the Commissioner is satisfied that the distribution is of any part of a levy charged specifically for capital development where the

distribution of that levy is made in the course of dissolution of the statutory producer board:

"(ia) Any amount distributed by a statutory producer board in respect of an income year, where the Commissioner is satisfied that—

"(i) The amount is distributed to a person who was a member of the board at any time during that income year; and

"(ii) The amount distributed to each such person, relative to the total amount distributed by the board under this paragraph in respect of that income year, is based on any of the methods described in subparagraphs (i), (ii), and (iii) of section ME 30 (2) (a), applied to that income year; and

"(iii) The amount distributed is in respect of part of an amount deemed under section ME 33 to have been a dividend for which a member of the board has been assessable and liable for tax:

"(j) Any amount distributed by a co-operative company in respect of an income year, where the Commissioner is satisfied that—

"(i) The amount is distributed to a person who was a shareholder of the co-operative company at any time during that income year; and

"(ii) The amount distributed to each such person, relative to the total amount distributed by the co-operative company under this paragraph in respect of that income year, is based on the method described in section ME 35 (2) (a), applied to that income year; and

"(iii) The amount distributed is in respect of part of an amount deemed under section ME 38 to have been a dividend for which a shareholder of the co-operative company has been assessable and liable for tax:".

(3) Section CF 3 (2) is amended by repealing paragraph (c), and substituting the following paragraph:

"(c) If, in a case where the company is an unlisted widely-held trust not resident in New Zealand, the shareholder cannot obtain sufficient information to calculate the available subscribed capital per share,—

"(i) The share will be deemed to have been issued on the terms referred to in subsection (1)(b)(iv)(A); and

"(ii) The available subscribed capital per share will be deemed to be equal to the amount paid to the trust in respect of the issue of the share."

(4) Section CF 3 (4) is amended by inserting, after the expression "paragraph (i)", the expression "or paragraph (ia)".

(5) Section CF 3 (14) is amended by inserting, after the definition of the term "ten percent capital reduction", the following definition:

" 'Unlisted trust' means a unit trust or group investment fund, the units or interests in which are not quoted, at the relevant time, on the official list of any recognised exchange:".

(6) Subsections (1), (3), and (5) of this section come into force on 1 April 1996.

(7) Subsections (2) and (4) apply with respect to the tax on income derived in the 1995–96 income year and subsequent years.

7. Branch equivalent income calculation—(1) Section CG 11 of the principal Act is amended—

(a) By omitting from subsection (6)(c) the expression "DZ 5, DZ 6", and substituting the expression "DZ 3, DZ 4":

(b) By inserting in subsection (7)(a), after the expression "CE 2", the expression ", CJ 1,":

(c) By inserting in subsection (7), after paragraph (b), the following paragraph:

"(ba) Section EG 18; and":

(d) By omitting from subsection (9) the expression "CB 11 and CZ 5", and substituting the expression "CB 10 and CZ 4".

(2) This section applies with effect from the commencement of the principal Act.

8. Pensions—(1) The principal Act is amended by repealing section CH 1.

(2) This section applies with effect from the commencement of the principal Act.

9. Benefit from share option or purchase schemes—(1) Section CH 2 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) The Commissioner may make such adjustment to the value of any benefit determined in accordance with this section as having regard to all the circumstances the Commissioner

considers equitable, and may alter any assessment accordingly notwithstanding the time bar, if—

"(a) Any of the following events occur:

"(i) In any case where the Commissioner has ascertained the value of the benefit without taking into account any restrictive provisions referred to in the first proviso to subsection (3), the taxpayer subsequently disposes of any of the shares at a time when the restrictive provisions still apply; or

"(ii) Further consideration must be paid for the shares acquired under the agreement; or

"(iii) The shares are reacquired from the taxpayer either without consideration or for a consideration not exceeding that paid by the taxpayer; and

"(b) The value of the benefit to the taxpayer, as previously determined under this section, is accordingly reduced."

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

10. Income from disposal of petroleum mining assets—(1) Section CJ 3 of the principal Act is amended by omitting the words "section 91 (2) of the Tax Administration Act 1994", and substituting the words "section CJ 4 (1)".

(2) This section applies with effect from the commencement of the principal Act.

11. Employer superannuation contributions not to be income of superannuation scheme trustee—(1) The principal Act is amended by repealing section CL 1, and substituting the following section:

"CL 1. Notwithstanding section HH 1 (7) or any other provision of this Act, no employer superannuation contribution shall be included in the assessable income of the trustees of the superannuation scheme to whom that contribution is made."

(2) This section applies with effect from the commencement of the principal Act.

12. Policyholder base income or loss—(1) Section CM 15 (1) of the principal Act is amended by inserting, after the words "Subject to", the words "this section and".

(2) Section CM 15 is further amended by adding the following subsections:

"(3) Where in any income year there is a transfer of a life insurance business to which subsection (4) applies,—

"(a) The transferor shall calculate the amount of policyholder income or policyholder loss in respect of that income year and that business of life insurance in accordance with the formula in subsection (1) as if, for the item v1 in that formula, there were substituted the following item:

'v1 is the aggregate of the actuarial reserves of the life insurer in respect of all policies of life insurance for which the life insurer was the insurer immediately before the transfer'; and

"(b) The transferee shall calculate the amount of policyholder income or policyholder loss in respect of that income year and that business of life insurance in accordance with the formula in subsection (1) as if, for the item v0 in that formula, there were substituted the following item:

'v0 is the aggregate of the actuarial reserves of the life insurer in respect of all policies of life insurance for which the life insurer was the insurer immediately after the transfer'.

"(4) Subsection (3) applies to a transfer of life insurance business only where—

"(a) The transferor and the transferee are in the year of transfer members of the same wholly-owned group of companies (whether or not resident in New Zealand); and

"(b) All of the life insurance business of the transferor or, if the transferor is not resident in New Zealand, all of the policies of life insurance offered or entered into in New Zealand that are held by the transferor, is or are transferred to the transferee; and

"(c) The Commissioner receives confirmation from the Government Actuary that—

"(i) The life insurance business being transferred comprises all of the life insurance business (or all of the New Zealand life insurance business, where appropriate) of the transferor; and

"(ii) No policyholder will be unduly disadvantaged as a result of the transfer; and

"(d) The Commissioner is satisfied that the transfer is being undertaken for genuine commercial reasons and that no undue tax advantage will arise to either the transferor or the transferee as a result of the transfer."

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

13. Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996—(1) Section CZ 4 of the principal Act is amended by adding the following subsections:

"(3) All units in a unit trust and interests in a group investment fund on issue on 1 April 1996 will, on and from that date, be deemed not to have been issued on terms that their redemption will be subject to section CF 3 (1)(b)(iv)(A).

"(4) All units or interests to which subsection (3) applies and in respect of which an election has been made relying upon paragraph (c) of the definition of the term 'shares of the same class' in section OB 1, will be treated on and from 1 April 1996 as if that election made in reliance upon paragraph (c) had never been made.

"(5) Subsections (3) and (4) will not apply to any units or interests if the manager or trustee of the unit trust or group investment fund so elects, by notice in writing to the Commissioner on or before 31 March 1996, in which case the relevant units or interests will, on and from 1 April 1996, be deemed to have been issued on terms that their redemption will be subject to section CF 3 (1)(b)(iv)(A)."

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

14. Certain deductions not permitted—(1) Section DB 1 (2)(c) of the principal Act is amended by omitting the words "or fringe benefit tax".

(2) This section applies with effect from the commencement of the principal Act.

15. No deduction in respect of acquisition and disposition by company of its shares—(1) The principal Act is amended by inserting, after section DJ 11, the following section:

"DJ 12. Any expenditure or loss incurred by a company in respect of the acquisition and disposition of any share in the company where the acquisition by the company was deemed, under section 67A (1) of the Companies Act 1993, not to result in cancellation of the share, shall not be deductible in calculating the assessable income of the company."

(2) This section applies with effect from the commencement of the principal Act.

16. New sections inserted—(1) The principal Act is amended by inserting, after section EB 3, the following sections:

"EB 4. **Interest from inflation-indexed instruments**—(1) The purpose of this section is to subject holders of inflation-indexed debt instruments to income tax annually, rather than only on a payments basis, in respect of the inflation-linked amounts.

"(2) This section applies if and to the extent that—

"(a) An amount of money lent is outstanding at the end of an income year (referred to in this section as the current income year); and

"(b) An amount is payable to a person (referred to in this section as the lender) in respect of the money lent in a future income year; and

"(c) The amount payable (referred to in this section as the indexed amount) is determined by a fixed relationship to one or more indices of general price inflation in New Zealand; and

"(d) The indexed amount accrued at the end of the current income year differs from the indexed amount (if any) accrued—

"(i) If the money was lent during the current income year, at the time of lending; and

"(ii) In any other case, at the end of the previous income year.

"(3) Subject to the following subsections, if the difference in the accrued indexed amount is an increase, it will be treated for the purposes of this Act as having been credited in account and capitalised by the borrower for the benefit of the lender on the day following the day on which the level of the relevant index at the end of the current income year becomes public knowledge.

"(4) Subsection (3) will not apply to deem an increase in the accrued indexed amount to be credited to the extent that—

"(a) An amount on account of the increase has previously been paid to the lender or credited to the lender or otherwise dealt with in the lender's interest; or

"(b) The money lent has previously been repaid.

"(5) Subsection (3) will not apply to deem an increase in the accrued indexed amount to be credited to the extent that—

"(a) Over a previous income year, there was a decrease in the accrued indexed amount; and

"(b) The increase simply represents a recovery of that decrease.

"(6) If the level of the relevant index is not calculated as at the end of any income year, this section will apply as if the date most closely preceding the end of the income year as at which the level was calculated were substituted for the end of the income year.

"(7) References in this section to an income year are references to the income year (whether standard or non-standard) of the lender.

"EB 5. **Credits in respect of inflation-indexed instruments constituting mere recoveries**—(1) If and to the extent that—

"(a) An amount (referred to in this section as the indexed amount) payable to a person (referred to in this section as the lender) in respect of money lent is determined by a fixed relationship to one or more indices of general price inflation in New Zealand; and

"(b) An amount on account of an increase in the indexed amount is actually credited to the lender's account by the borrower; and

"(c) The credit simply represents a recovery of a decrease in the indexed amount over a prior period, which decrease was previously debited in account,—

the credit will not be treated for the purposes of this Act as an amount of income derived by the lender.

"(2) For the avoidance of doubt, this section does not restrict the application of any provision in Part EH."

(2) This section applies with respect to money lent on or after 1 October 1995.

17. Pool method of depreciation—(1) Section EG 11 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)."

(2) Section EG 11 (4)(b) is amended by inserting, at the beginning of subparagraph (i), the words "Subject to subsection (4A),".

(3) Section EG 11 is further amended by inserting, after subsection (4), the following subsection:

"(4A) Where a pool consists solely of items of depreciable property permitted by the Commissioner to be accounted for at the end of the 1992–93 income year using the globo accounting method, the amount deemed to be assessable income under subsection (4)(b)(i) in respect of the pool in any income year shall not exceed the amount calculated in accordance with the following formula:

$$a - b$$

where—

"a is the aggregate of all amounts of depreciation allowed to the taxpayer in all previous income years in respect of all items in the pool (including amounts allowed before the 1993–94 income year under the globo accounting method); and

"b is the aggregate of all amounts deemed by subsection (4) (b)(i) to be assessable income in respect of the pool in any previous income year."

(4) Subsection (1) of this section applies with effect from the commencement of the principal Act.

(5) Subsections (2) and (3) come into force on the day on which this Act receives the Royal assent.

18. Depreciation deduction where depreciated asset acquired by taxpayer from associated person—(1) Section EG 17 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Subsection (1) does not apply—

"(a) In the case of property listed in Schedule 17, if the acquisition price is assessable income to the associated person:

"(b) In the case of all other property, where the Commissioner is of the opinion that the circumstances are such that a deduction in respect

of the depreciation of the property based on the actual price or other consideration given for the property should be allowed."

(2) Section EG 17 is further 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 this Subpart be deemed to be nil."

(3) Subsection (1) of this section applies with respect to acquisitions of property occurring on or after the date on which this Act receives the Royal assent.

(4) Subsection (2) applies with effect from the commencement of the principal Act.

19. Gain or loss from disposition of depreciable property—(1) Section EG 19 (7) of the principal Act is amended by inserting, after the words "if the market value cannot be ascertained, for a consideration", the words "(which may be the adjusted tax value of the property to the vendor)".

(2) Section EG 19 (9) is amended by omitting the word "but" from the end of subparagraph (v) of paragraph (a) of the definition of "disposal", and also by inserting after that subparagraph the following subparagraph:

"(vi) Any distribution of property:".

(3) Subsection (1) of this section comes into force on the day on which this Act receives the Royal assent.

(4) Subsection (2) applies with effect from the commencement of the principal Act.

20. Accruals in relation to income and expenditure in respect of financial arrangements—(1) Section EH 1 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) For the purpose of calculating the amount deemed to be income or expenditure of any person under subsections (2) to (6), regard shall be had to—

"(a) If the person is 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 is 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."

(2) Subject to section EZ 10 of the principal Act (as inserted by section 22 of this Act), this section applies with respect to financial arrangements entered into during the 1996–97 income year or any subsequent year.

21. Relationship between accruals rules and rest of Act—(1) Section EH 8 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Where—

"(a) Property is transferred under a financial arrangement; and

"(b) The property or the consideration given for the property is relevant, under any provision of this Act other than the qualified accruals rules, for the purpose of calculating the person's assessable income,—

the property shall be treated for the purpose of that provision as having been transferred under the financial arrangement for an amount equal to the acquisition price of the property."

(2) This section applies with respect to financial arrangements entered into during the 1996–97 income year or any subsequent year.

22. Special rules in relation to financial arrangements entered into before 1996–97 income year—(1) The principal Act is amended by inserting, after section EZ 9, the following section:

"EZ 10. (1) Nothing in section EH 1 (1) of the principal Act (as in force before the enactment of section 20 of the Income Tax Act 1994 Amendment Act (No. 4) 1995) prevents 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 entered into in an income year earlier than the 1996-97 income year, from having regard to—

"(a) If the person is 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 is 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 consistently applies 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 is the holder or issuer of the financial arrangement.

"(2) Nothing in the accruals rules prevents a person who is the holder or issuer of a financial arrangement—

"(a) That is of a kind referred to in paragraph (c) of the definition of 'core acquisition price'; and

"(b) Under which the consideration payable is 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 paragraph (c) of the definition of 'core acquisition price' were to be determined in accordance with the rules set out in section OB 7 of this Act (as enacted by section 61 of the Income Tax Act 1994 Amendment Act (No. 4) 1995) notwithstanding that the financial arrangement was entered into in an income year earlier than the 1996–97 income year, provided that the person consistently applies those 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 is the holder or issuer of the financial arrangement."

(2) This section applies with effect from the commencement of the principal Act.

23. Valuation adjustments where company acquires its shares—(1) Section FC 4 (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 applies with effect from the commencement of the principal Act.

24. Acquisition of property by amalgamated company on a qualifying amalgamation—(1) Section FE 6 of the principal Act is amended by inserting, after subsection (3), the following subsections:

"(3A) Subsection (3) does not apply where the property is land that is (or may be) revenue account property of the amalgamating company only by virtue of the 10-year rule in any of paragraphs (b)(ii), (c)(ii), (d)(ii), and (e) of section CD 1 (2), 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 CD 1 (2) (subject to section CD 1 (3) to (13)).

"(3B) 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 CD 1 (2)) 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 applies with effect from the commencement of the principal Act.

25. Group investment funds—(1) Section HE 2 (3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) Any superannuation fund:".

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

26. Profits of mutual associations in respect of transactions with members—(1) Section HF 1 (9) of the

principal Act is amended by omitting from the definition of the term "rebate" the expression "section CF 3 (1)(i) or section CF 3 (1)(j)", and substituting the expression "any of paragraphs (i), (ia), and (j) of section CF 3 (1)".

(2) This section applies with respect to the tax on income derived in the 1995–96 income year and subsequent years.

27. Taxation of shareholders in qualifying companies—(1) Section HG 9 (3) of the principal Act is amended by inserting, after the words "which that shareholder", the words ", or any person associated with the shareholder,".

(2) Section HG 9 is further amended by inserting, after subsection (3), the following subsection:

"(3A) For the purposes of subsection (3), where the associated person is associated with more than one shareholder in the qualifying company, the amount of any non-cash dividends (other than taxable bonus issues) derived by that person from that company in the income year shall be apportioned among the shareholders associated with the person in proportion to the effective interest in the company held by each of those shareholders in the relevant income year."

(3) This section is deemed to have come into force on 17 August 1995.

28. Payment of qualifying company election tax—(1) Section HG 12 (1)(a) of the principal Act is amended by omitting the expression "section MB 10 (2)", and substituting the expression "section MC 1 (2)".

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

29. Dividends from qualifying company—(1) Section HG 13 (1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

"(aa) Section CB 10 shall not apply to exempt that dividend from tax; and".

(2) This section applies with effect from the commencement of the principal Act.

30. Interpretation—trusts—(1) Section HH 1 (6) of the principal Act is amended by omitting the expression "CH 1,".

(2) This section applies with effect from the commencement of the principal Act.

31. Government Superannuation Fund—(1) The principal Act is amended by repealing section HJ 1, and substituting the following section:

"HJ 1. Income tax is payable in respect of the Government Superannuation Fund in the same manner in all respects as if the Fund were a superannuation scheme that is a trust, and the custodian from time to time appointed under section 19A (1) of the Government Superannuation Fund Act 1956 were the trustee of that scheme."

(2) The Government Superannuation Fund Amendment Act 1995 is amended by repealing so much of the Fourth Schedule as relates to the Income Tax Act 1976.

(3) This section is deemed to have come into force on 1 October 1995.

32. Liability as agent of employer of non-resident taxpayer and employer's agent—(1) Section HK 24 (3) of the principal Act is amended by omitting the words "superannuation category 1 scheme or any superannuation category 2 scheme or any superannuation category 3 scheme", and substituting the words "superannuation scheme".

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

33. Carry forward of policyholder loss—(1) Section II 2 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) Where—

"(a) A life insurer transfers its life insurance business to another company; and

"(b) The transfer meets the requirements set out in paragraphs (a) to (d) of section CM 15 (4),—

the transferor life insurer may, by notification to the Commissioner in such form as the Commissioner may approve, elect that any policyholder loss incurred by it in the income year of transfer, or carried forward by it to that income year, be treated as a policyholder loss incurred in or carried forward to that income year by the transferee company and not by the transferor life insurer, and the provisions of this Act shall apply to any such loss accordingly."

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

34. Rebate in respect of gifts of money—(1) Section KC 5 (1) of the principal Act is amended by adding the following paragraph:

"(bq) Nelson Mandela Trust (New Zealand)."

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

35. Commissioner to deliver credit of tax by instalments—(1) Section KD 7 (3A) of the principal Act (as inserted by section 30 of the Income Tax Act 1994 Amendment Act (No. 2) 1995) is amended by inserting, after the expression "would be entitled to", the expression "under section KD 2".

(2) Section KD 7 is further amended by inserting, after subsection (3A), the following subsection:

"(3B) Where in any income year the Director-General of Social Welfare ceases to pay to any person an income-tested benefit, the Commissioner may, on application by the person, pay to the person the amount of the credit of tax that the Commissioner determines the person would be entitled to under section KD 3 for the period that—

"(a) Commences on the later of—

"(i) The first day of the income year; and

"(ii) The day following that on which the Director-General ceases payment of the income-tested benefit to the person; and

"(b) Ends on the day preceding the first day specified in a certificate of entitlement subsequently issued to the person under section KD 5."

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

36. Credit of tax for dividend withholding payment credit in hands of shareholder—(1) Section LD 8 (1)(a) of the principal Act is amended by inserting, after the words "dividend withholding payment", the word "credit".

(2) This section is deemed to have come into force on 17 August 1995.

37. Amount of provisional tax payable—(1) Section MB 2 (3) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

"(c) Calculated on the basis of the Commissioner's assessment for that preceding income year, whenever that assessment may be made, if—

"(i) The taxpayer, despite being required under section 37 of the Tax Administration Act 1994 to furnish a return of income for that year on or before the relevant instalment date, fails to furnish the return on or before that date; or

"(ii) The taxpayer is not required under section 37 of the Tax Administration Act 1994 to furnish a return of income for that year on or before the relevant instalment date, and none of paragraphs (a), (b), and (d) of this subsection apply:".

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

38. Application of income tax or dividend withholding payments not refunded—(1) The principal Act is hereby amended by inserting, after section MD 3, the following section:

"MD 4. For the purposes of the imputation rules, the dividend withholding payment rules, and the consolidation rules, 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) Subject to Part MZ of the principal Act (as inserted by section 52 of this Act), this section applies with effect from the commencement of the principal Act.

39. Debits arising to imputation credit account—(1) Section ME 5 (1) of the principal Act is amended by adding the following paragraphs:

"(l) 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 (i) 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 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:

"(n) 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 (i) of this subsection; and

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

(2) Section ME 5 (2) is amended by adding the following paragraph:

"(k) In the case of a debit referred to in paragraph (l) or paragraph (m) or paragraph (n) 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 Part MZ of the principal Act (as inserted by section 52 of this Act), this section applies with effect from the commencement of the principal Act.

40. Further tax payable where end of year debit balance, or when company ceases to be imputation credit account company—(1) Section ME 9 (1) of the principal Act is amended by inserting, after the words "subsection (3), then", the words ", subject to subsection (7),".

(2) Section ME 9 (3) is amended by inserting, after the words "company, then", the words ", subject to subsection (7),".

(3) Section ME 9 is further amended by adding the following subsection:

"(7) If—

"(a) A qualifying company that is an imputation credit account company has been paid a refund of an amount of income tax; and

"(b) The amount of that refund has in any imputation year arisen as a debit to the company's imputation credit account,—

any amount that the company would otherwise be liable to pay by way of further income tax under subsection (1) or subsection (3) shall be reduced (so far as it extends) by an amount calculated in accordance with the following formula:

$$a-b$$

where—

"a is the sum of all such refunds of amounts of income tax paid to the company on or before the date on which the relevant debit balance giving rise to the liability for further income tax is determined; and

"b is the sum of any credits arising in accordance with sections ME 3 (2)(b)(i) and ME 4 (1) in the company's imputation credit account during the imputation year in which the amount of any such refund first arose as a debit to the company's imputation credit account and during any subsequent imputation year."

(4) This section applies in respect of any refund of income tax paid to a qualifying company during the imputation year commencing on 1 April 1995 or any subsequent year.

41. Credits arising to imputation credit account of group—(1) Section ME 11 (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 NH 6 (6) during the imputation year to be a credit to the group's imputation credit account:".

(2) Section ME 11 (2) 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 applies with effect from the commencement of the principal Act.

42. Debits arising to imputation credit account of group—(1) Section ME 12 (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); and

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

(2) Section ME 12 (1) is further amended by repealing paragraph (g).

(3) Section ME 12 (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 ME 12 (2) is amended by repealing paragraph (f).

(5) Section ME 12 (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) Subject in the case of subsections (3) and (5) of this section to Part MZ of the principal Act (as inserted by section 48 of this Act), this section applies with effect from the commencement of the principal Act.

43. Credits and debits arising to policyholder credit account of company—(1) Section ME 18 (1) of the principal Act is amended by adding the following paragraph:

"(c) Any amount forming all of the credit balance in another company's or person's policyholder credit account that that other company or person elects, in accordance with section ME 19A, to transfer as a credit to the policyholder credit account of the company along with the transfer of the other company's or person's life insurance business to the company."

(2) Section ME 18 (2) is amended by adding the following paragraph:

"(c) In the case of a credit referred to in paragraph (c) of that subsection, on the date of transfer of the life insurance business."

(3) Section ME 18 (3) is amended by adding the following paragraph:

"(c) The amount of the credit balance in the account that the company elects in accordance with section ME 19A to transfer as a credit to the policyholder credit account of another company or person along with the transfer of the company's life insurance business to that other company or person."

(4) Section ME 18 (4) is amended by adding the following paragraph:

"(c) In the case of a debit referred to in paragraph (c) of that subsection, on the date of transfer of the life insurance business."

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

44. Credit balance may be transferred on transfer of life insurance business—(1) The principal Act is amended by inserting, after section ME 19, the following section:

"ME 19A. (1) Where a policyholder credit account company or policyholder credit account person transfers its life insurance business to another company or person, the policyholder credit account company or person may, if—

"(a) The transfer meets the requirements set out in paragraphs (a) to (d) of section CM 15 (4); and

"(b) In the case of—

"(i) A policyholder credit account company, the company will not, following the transfer, be required by section ME 15 to maintain a policyholder credit account; or

"(ii) A policyholder credit account person, the person will not, following the transfer, be eligible to make an election under section ME 21 to maintain a policyholder credit account,—

elect to transfer the whole of the credit balance in its account at the time of transfer of the business to the policyholder credit account of the company or person to which its business is transferred.

"(2) A policyholder credit account company or person makes an election under subsection (1) by recording a debit in its policyholder credit account accordingly."

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

45. Credits and debits arising to policyholder credit account of person—(1) Section ME 23 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

"(1) There shall arise as credits to be recorded in the policyholder credit account of a policyholder credit account person—

"(a) Such amounts as would arise as credits if—

"(i) That policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and

"(ii) That policyholder credit account were an imputation credit account; and

"(iii) Section ME 4 (1) (d), (e), and (j) did not apply:

"(b) Any amount forming all of the credit balance in another company's or person's policyholder credit account that that other company or person elects, in accordance with section ME 19A, to transfer as a credit to the policyholder credit account of the

person along with the transfer of the other company's or person's life insurance business to the person.

"(2) Subject to subsection (3), any such credit shall arise—

"(a) In the case of a credit referred to in subsection (1) (a), on the date on which the credit would have arisen to the imputation credit account of the policyholder credit account person if—

"(i) That policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and

"(ii) That policyholder credit account were an imputation credit account:

"(b) In the case of a credit referred to in subsection (1) (b), on the date of transfer of the life insurance business."

(2) Section ME 23 (4) is amended by adding the following paragraph:

"(c) The amount of the credit balance in the account that the person elects in accordance with section ME 19A to transfer as a credit to the policyholder credit account of another company or person along with the transfer of the person's life insurance business to that other company or person."

(3) Section ME 23 (5) is amended by adding the following paragraph:

"(c) In the case of a debit referred to in paragraph (c) of that subsection, on the date of transfer of the life insurance business."

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

46. Statutory producer board may determine to attach imputation credit to certain distributions—(1) Section ME 30 (2) of the principal Act is amended by omitting the words "by notice in writing to the Commissioner,".

(2) Section ME 30 is further amended by adding the following subsection:

"(4) A statutory producer board that makes an election under subsection (2) must provide notice in writing to the Commissioner of the election not later than the time allowed in accordance with section 37 of the Tax Administration Act 1994 for providing its return of income for the year of determination."

(3) This section applies with respect to the tax on income derived in the 1995–96 income year and subsequent years.

47. Notional distribution deemed to be dividend—(1) Section ME 33 (3)(b) of the principal Act is amended by omitting the expression "section CF 3 (1)(i)", and substituting the expression "paragraph (i) or paragraph (ia) of section CF 3 (1)".

(2) This section applies with respect to the tax on income derived in the 1995–96 income year and subsequent years.

48. New heading and section inserted—(1) The principal Act is amended by inserting, after section ME 40, the following heading and section:

"*Imputation Credit Accounts—Unit Trusts and Group Investment Funds*

"ME 41. **Special debits arising to imputation credit account of unit trust or group investment fund**—(1) Notwithstanding anything in this Part, a debit will arise to the imputation credit account of a company or a consolidated group in respect of any dividends derived in an income year by the company or any company in that group if—

"(a) The dividend is derived by a company resident in New Zealand which is either—

"(i) The manager of a unit trust; or

"(ii) The trustee or manager of a group investment fund,—

(such manager or trustee being in this subsection referred to as the 'manager'); and

"(b) The dividend is derived in respect of the redemption or other cancellation of—

"(i) Units in the unit trust; or

"(ii) Interests of investors in the group investment fund; and

"(c) These units or interests were acquired by the manager from unit holders or investors—

"(i) In the ordinary course of the manager's activities in respect of the unit trust or group investment fund; and

"(ii) In accordance with the terms upon which units in the unit trust or interests in the group investment fund were offered to potential unit holders or investors.

"(2) The amount of the debit referred to in subsection (1) will be the greater of—

"(a) The aggregate of the amounts of imputation credits and dividend withholding payment credits attached to the dividends; and

"(b) The amount calculated in accordance with the following formula:

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

where—

"a is the aggregate amount of the dividends paid (including any imputation and dividend withholding payment credits attached to the dividends); and

"b is the total assessable income of the company or, as the case may be, the consolidated group for the income year in which the dividends are derived; and

"c is the total tax paid by the company or, as the case may be, the consolidated group for the income year (including by way of crediting under Part L).

"(3) The debit referred to in subsection (1) will arise on the date on which the company or nominated group company files a return of income for the income year in which the dividends are derived."

(2) This section comes into force on 1 April 1996.

49. New sections substituted—(1) The principal Act is amended by repealing sections MF 8 to MF 10, and substituting the following sections:

"MF 8. **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 imputation 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 LC 4, LC 5, and LC 16 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; 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 IG 2 (2), 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 5 of Part A of Schedule 1 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 MF 10 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 NH 4 to the extent that the refund is in respect of any 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 MF 4 (1)(e) 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) 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 MF 10 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 MF 4 (1)(e).

"(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 MF 10 (1) to use to reduce an amount of dividend withholding payment deductible under sections NH 1 and NH 2 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), 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 MF 4 (3)(d) 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) 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 NH 3 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 MF 4 (3)(d).

"(6) Section MF 6 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.

"MF 9. **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.

"MF 10. **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 NH 1 and NH 2 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 will be reduced by the amount of the credit balance so elected.

"(2) Notwithstanding subsection (1), 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 MF 8 (1)(a) (determined by applying the procedure set out in section MF 4 (6)), 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 MF 8 (1)(b) (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) 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); 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 MF 8 (2)(a) (but applying as if item e were nil)."

(2) This section applies with effect from the commencement of the principal Act.

50. Debits arising to dividend withholding payment account—(1) Section MG 5 (1) of the principal Act is amended by adding the following paragraph:

"(k) 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 (i) of this subsection; and

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

(2) Section MG 5 (2) is amended by adding the following paragraph:

"(i) In the case of a debit referred to in paragraph (k) 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 Part MZ of the principal Act (as inserted by section 52 of this Act), this section applies with effect from the commencement of the principal Act.

51. Debits arising to group dividend withholding payment account—(1) Section MG 15 (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 MG 15 (2) 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 Part MZ of the principal Act (as inserted by section 52 of this Act), this section applies with effect from the commencement of the principal Act.

52. New Subpart added to Part M—(1) The principal Act is amended by inserting, after Part MH, the following Subpart:

"SUBPART Z—TERMINATING PROVISIONS

"MZ 1. **Savings for certain credits arising 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 17 August 1995; and

"(b) That windfall credit has been—

"(i) Offset by a debit in accordance with section MZ 2; or

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

then that credit shall not be denied to the company or consolidated group by reason of the enactment of section 38 of the Income Tax Act 1994 Amendment Act (No. 4) 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 ME 5 (1)(l) to (n), ME 12 (1)(l) and (m), MG 5 (1)(k), and MG 15 (1)(l) 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 17 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) 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."

"MZ 2. **Ordering rule for purposes of section MZ 1**—For the purposes of determining under section MZ 1 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 ME 3 or section ME 10 or section MG 3 or section MG 13 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 17 August 1995, and not as a separate account for each imputation year; and

"(ii) Sections ME 3 (2)(b), ME 10 (2)(b), MG 3 (2)(b), and MG 13 (3)(b) shall not apply; and

"(iii) Sections MD 4, ME 5 (1)(l) to (n), ME 12 (1)(l) and (m), MG 5 (1)(k), and MG 15 (1)(l) of this Act shall apply as if the relevant amendments of or inserting those provisions enacted by the Income Tax Act 1994 Amendment Act (No. 4) 1995 had not come into force before 17 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).

"MZ 3. **Transfers of dividend withholding payment credit balance to imputation credit account**—(1) If—

"(a) A credit in a company's imputation credit account arises from an election under section MG 11 made by a company before 17 August 1995; and

"(b) The corresponding debit to the company's dividend withholding payment account is attributable in accordance with section MG 11 to a credit which—

"(i) In accordance with the law that was in force before enactment of the Income Tax Act 1994 Amendment Act (No. 4) 1995, was recorded in the company's dividend withholding payment account before 17 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 section MZ 1, the credit to the company's imputation credit account shall be deemed to be a credit which qualifies for the relief provided by section MZ 1.

"(2) Subsection (1) 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 NH 6 (6), the nominated company for the group elects to be a credit in the group's imputation credit account."

(2) This section applies with effect from the commencement of the principal Act.

53. Payment of deductions of non-resident withholding tax to Commissioner—(1) The principal Act is amended by repealing section NG 11, and substituting the following section:

"NG 11. (1) Except as otherwise provided in this section, every person who makes deductions of non-resident withholding tax from payments consisting of non-resident withholding income shall pay the deductions to the Commissioner on a monthly basis, with the deductions made during any month being paid to the Commissioner not later than the 20th of the following month.

"(2) Subject to subsections (3) and (4), a person who estimates in relation to any year that the person will not be required by the NRWT rules to make non-resident withholding tax deductions of $500 or more in aggregate may pay the deductions to the Commissioner in 2 instalments as follows:

"(a) The first instalment shall be due and payable on 20 October in that year, and shall consist of the amount of all deductions required by the NRWT rules to be made from payments of non-resident withholding income made by the person during the period 1 April to 30 September (both dates inclusive) in the year:

"(b) The second instalment shall be due and payable on 20 April in the following year, and shall consist of the amount of all deductions required by the NRWT rules to be made from payments of non-resident withholding income made by the person during the period 1 October to 31 March (both dates inclusive) in the year.

"(3) Where the $500 aggregate referred to in subsection (2) is reached at any time during a year,—

"(a) The person shall pay to the Commissioner, not later than the 20th of the month following that in which the $500 aggregate is reached, all non-resident withholding tax deductions made by the person between the beginning of the year and the end of the month in which the aggregate is reached; and

"(b) The person shall for the remainder of the year pay all non-resident withholding tax deductions to the Commissioner on a monthly basis in accordance with subsection (1).

"(4) Where in any month a person—

"(a) Ceases to carry on a taxable activity in respect of which the person has been required to make any non-resident withholding tax deductions; or

"(b) Ceases to carry on any such taxable activity in New Zealand,—

the person shall pay to the Commissioner, not later than the 20th of the following month, all non-resident withholding tax deductions made by the person with respect to the taxable activity and not earlier paid to the Commissioner.

"(5) The Commissioner may extend the time for payment of any amount of non-resident withholding tax in such cases and to such extent as the Commissioner thinks fit."

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

54. Certificates of exemption—(1) Section NF 9 (1) (i) of the principal Act is amended by omitting the expression "section CB 5 (i)" and substituting the expression "section CB 5 (1) (i)".

(2) This section applies with effect from the commencement of the principal Act.

55. Failure to make deductions of non-resident withholding tax or to make payments to Commissioner—(1) Section NG 13 (1) of the principal Act is amended by omitting the words "on the 20th of the month following the month in which the payment consisting of that non-resident withholding income was made", and substituting the words "in accordance with section NG 11 as if the person had made the deduction".

(2) Section NG 13 (2) is amended by omitting the words "on the 20th of the month following that in which the payment consisting of that non-resident withholding income was made", and substituting the words "in accordance with section NG 11 as if the person had made a deduction of the relevant amount from that non-resident withholding income consisting of a dividend".

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

56. Refunds by Commissioner of excess deductions—(1) Section NG 16 (1) of the principal Act is amended by omitting the words "to the person who derived the amount from which deduction was made".

(2) Section NG 16 is further amended by inserting, after subsection (1), the following subsection:

"(1A) Any refund under subsection (1) shall be paid to—

"(a) The person deriving the amount from which the deduction was made; or

"(b) The person who made the excess deduction, if that person has paid the excess to the person deriving the amount from which the deduction was made and has not offset that amount under section NG 16A (2)."

(3) Section NG 16 is further amended—

(a) By inserting in subsection (3), after the words "the requirements of subsection (1)", the words "(and, where appropriate, subsection (1A)(b))":

(b) By inserting in subsection (4), after the words "any provision of this Act", the words "or the Tax Administration Act 1994":

(c) By omitting from subsection (5)(b) the words "7th of the month", and substituting the words "5th working day of the month".

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

57. Variation in non-resident withholding tax deductions to correct errors—(1) The principal Act is amended by inserting, after section NG 16, the following section:

"NG 16A. (1) Where a person required to make a deduction of non-resident withholding tax from any payment of non-resident withholding income has failed to make the deduction, or has failed to make it in full, the person may (except to the extent to which a deduction of non-resident withholding tax has already been made by any other person to correct the deficiency) either—

"(a) Deduct a sufficient amount to correct the deficiency from any subsequent payment of non-resident withholding income to the same person in the same year in which the first payment was made; or

"(b) Otherwise recover from that person a sufficient amount to correct the deficiency.

"(2) Where—

"(a) A person deducts from a payment of non-resident withholding income an amount on account of non-resident withholding tax that is in excess of the amount required to be deducted by the NRWT rules, and pays that excess deduction to the Commissioner; and

"(b) The excess deduction is due to an error on the part of the person making the deduction; and

"(c) The person has subsequently refunded the excess to the recipient of the non-resident withholding income,—

the person may either offset the amount of that excess against any tax deductions subsequently payable to the Commissioner under section NG 11, or apply for a refund of the excess under NG 16.

"(3) Where—

"(a) A person deducts from a payment of non-resident withholding income an amount on account of non-resident withholding tax that is in excess of the amount required to be deducted by the NRWT rules; and

"(b) The excess deduction is due to an act or omission on the part of the recipient of the payment,—

the person shall pay the full amount deducted to the Commissioner in accordance with section NG 11, and upon such payment shall not be liable to refund the amount of the excess to the recipient of the payment or any other person."

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

58. Definitions—(1) Section OB 1 of the principal Act is amended by omitting from paragraph (c) of the definition of the term "associated person" the expression "BB 5,".

(2) Section OB 1 is further amended by omitting from the definition of the term "available subscribed capital per share cancelled" the words "specified class", and substituting the words "same class as the share".

(3) Section OB 1 is further amended by inserting in the definition of the term "core acquisition price", after the words "lowest price" where they occur in paragraph (i) of item w of the formula in paragraph (c), the words "(determined in accordance with section OB 7, if the consideration payable under the relevant financial arrangement is denominated in a foreign currency)".

(4) Section OB 1 is further amended by inserting, after the definition of the term "dependent child", the following definition:

" 'Depreciable intangible property' means intangible property of a type listed in Schedule 17, which Schedule describes intangible property that has—

"(a) A finite useful life that can be estimated with a reasonable degree of certainty on the date of its creation or acquisition; and

"(b) If made depreciable, a low risk of being used in tax avoidance schemes:".

(5) Section OB 1 is further amended by repealing subparagraph (iv) of paragraph (b) of the definition of the term "depreciable property", and substituting the following subparagraph:

"(iv) Intangible property other than depreciable intangible property:".

(6) Section OB 1 is further amended by adding to paragraph (b) of the definition of the term "depreciable property" the following subparagraph:

"(viii) Property the cost of which was or is deductible to any other taxpayer under any of sections DO 3, DZ 2, DZ 3, and DZ 4 of this Act (or any of sections 127, 127A, and 128 of the Income Tax Act 1976 or sections 119, 119D, and 119G of the Land and Income Tax Act 1954):".

(7) Section OB 1 is further amended—

(a) By omitting from paragraph (a) of the definition of the term "dividend" the expression "and CF 3", and substituting the expression "CF 3, and CF 6":

(b) By omitting from paragraph (c) (ii) of that definition the expression "section HE 1 (5)", and substituting the expression "section HF 1 (5)".

(8) Section OB 1 is further amended by inserting, after the definition of the term "fixed rate share", the following definition:

" 'Flat-owning company' is defined in section CF 2 (21) for the purposes of subsection (1)(e) of that section:".

(9) Section OB 1 is further amended by inserting in paragraph (a) of the definition of the term "land", after the expression "CD 1,", the expression "FE 6 (3A) and (3B),".

(10) Section OB 1 is further amended by inserting in paragraph (b) of the definition of the term "life insurer", after

the expression "FBT rules", the expression "and section OD 5A".

(11) Section OB 1 is further amended by repealing subparagraph (iii) of paragraph (b) of the definition of the term "maximum deposit", and substituting the following subparagraph:

"(iii) On the basis that the cost of all livestock sold due to the effect of that adverse event is either—

"(A) Determined using the immediately preceding accounting year's closing value for the class or classes of livestock (in this subparagraph referred to as the relevant livestock) in which, had that livestock not been sold, the livestock would have been included at the end of the accounting year in which the livestock was sold; or

"(B) If no relevant livestock was on hand at the end of the immediately preceding accounting year, an amount calculated in accordance with the following formula:

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

where—

"a is the number of livestock of the class sold which was on hand at the beginning of the accounting year of sale; and

"b is the opening value (determined as if section EL 5 (2) did not apply) of livestock of the class sold which was on hand at the beginning of the accounting year of sale; and

"c is the number of livestock of the class sold which was purchased in the accounting year of sale, before the sale of that livestock; and

"d is the average purchase price of livestock of the class sold which was purchased in the accounting year of sale, before the sale of that livestock; and".

(12) Section OB 1 is further amended by omitting from the definition of the term "pensions" the expression "section CH 1 (2)", and substituting the expression "section CC 1 (2)".

(13) Section OB 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".

(14) Section OB 1 is further amended by adding to the definition of the term "property" the following paragraph:

"(c) For the purposes of Part EG, includes consents granted in or after the 1996–97 income year under the Resource Management Act 1991:".

(15) Section OB 1 is further amended by omitting from paragraph (a) of the definition of the term "relative" the words "a trustee for a relative", and substituting the words "a trustee of a trust under which a relative has benefited or is eligible to benefit".

(16) Section OB 1 is further amended by omitting from paragraph (e) of the definition of the term "salary and wages" the expression "section CH 1", and substituting the expression "section CC 1".

(17) Section OB 1 is further amended by omitting from the definition of the term "shares of the same class" the expression "and section FC 4", and substituting the expression ", section FC 4, and this section".

(18) Section OB 1 is further amended by omitting from paragraph (a) of the definition of the term "taxable activity" the words "and the RWT rules", and substituting the words ", the RWT rules, and the NRWT rules".

(19) The definition of the term "transitional capital amount" in section OB 1 is amended—

(a) By omitting from item j in the formula the words "specified class (whenever issued)", and substituting the words "same class as the share (whenever issued and including the share)":

(b) By omitting from item k the words "the specified class (whenever issued)", and substituting the words "that class (whenever issued and including the share)":

(c) By omitting from both item l and item m the words "in the specified class", and substituting the words "of that class (including the share)".

(20) Section OB 1 is further amended by inserting, after the definition of the term "unit trust", the following definition:

" 'Unlisted trust' is defined in section CF 3 (14) for certain purposes of that section:".

(21) Except as provided in subsections (22) to (26), this section applies with effect from the commencement of the principal Act.

(22) Subsection (3) applies with respect to financial arrangements entered into during the 1996–97 income year or any subsequent year.

(23) Subsections (4), (5), (10), (11), and (18) come into force on the day on which this Act receives the Royal assent.

(24) Subsection (14) applies with respect to the tax on income derived in the 1996–97 income year and subsequent years.

(25) Subsection (15) is deemed to have come into force on 17 August 1995.

(26) Subsection (20) comes into force on 1 April 1996.

59. Meaning of "qualifying company"—(1) Section OB 3 (1) of the principal Act is amended by inserting, at the beginning of paragraph (c), the words "Subject to subsection (4),".

(2) Section OB 3 (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 OB 3 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) if—

"(a) As much of the dividend income of the kind specified in subsection (1)(c)(ii) 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 effect from the commencement of the principal Act.

60. Meaning of "income tax"—(1) Section OB 6 (1) (c) of the principal Act is amended by omitting the expression "section LC 3", and substituting the expression "section LC 1".

(2) This section applies with effect from the commencement of the principal Act.

61. Determination of "core acquisition price" where consideration for property denominated in foreign currency—(1) The principal Act is amended by inserting, after section OB 6, the following section:

"OB 7. (1) For the purposes of paragraph (c) of the definition of 'core acquisition price' in section OB 1, if the consideration payable under the relevant financial arrangement for the specified property is denominated in a foreign currency, the lowest price referred to in that paragraph must be the lowest price the parties would have agreed upon in that foreign currency converted into New Zealand dollars using, at the option of the taxpayer,—

"(a) The rate, on the day on which the financial arrangement was entered into (in this section referred to as the contract date), available to the taxpayer from a New Zealand registered bank for the exchange of New Zealand dollars for that foreign currency on the day on which the first right in the specified property is to be transferred (in this section referred to as the rights date); or

"(b) If the period between the rights date and the day on which final payment is to be made under the financial arrangement (in this section referred to as the settlement date) is not greater than 5 years, the rate, on the contract date, available to the taxpayer from a New Zealand registered bank for the exchange of New Zealand dollars for that foreign currency on the settlement date; or

"(c) An exchange rate approved by the Commissioner for adoption under this subsection in the circumstances applicable to the taxpayer in a determination issued under section 90 (1)(k) of the Tax Administration Act 1994.

"(2) The rate adopted by a taxpayer in relation to a financial arrangement under subsection (1) shall be consistently applied by that taxpayer in respect of that particular financial arrangement for the purposes of the qualified accrual rules for every income year during its term.

"(3) If the terms of the financial arrangement referred to in subsection (1) are such that the actual rights date is uncertain as at the contract date, then the rights date shall for the purposes of subsection (1) be the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that the first right in the specified property will be transferred; and

"(4) If the terms of the financial arrangement referred to in subsection (1) are such that the actual settlement date is uncertain as at the contract date, then the settlement date shall for the purposes of subsection (1) be the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that final payment will be made."

(2) Subject to section EZ 10 of the principal Act (as inserted by section 22 of this Act), this section applies with respect to financial arrangements entered into during the 1996–97 income year or any subsequent year.

62. Modifications to measurement of voting and market value interests in case of continuity provisions—(1) Section OD 5 (8) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) The failure, but for that application, to meet those requirements was not by reason only of—

"(i) The sale of shares in a company in the ordinary course of trading on a recognised exchange between persons; or

"(ii) The redemption or other cancellation of shares in a company which is a unit trust that falls within any of paragraphs (a), (b)(i), and (b)(ii) of the definition of the term 'widely-held trust' in section CF 3 (14), held by persons; or

"(iii) The redemption or other cancellation of shares in a company which is a unit trust that falls within any of paragraphs (a), (b)(i), and (b)(ii) of the definition of the term 'widely-held trust' in section CF 3 (14), which were acquired by the manager or trustee of the unit trust in the ordinary course of the manager's or trustee's activities in respect of the unit trust from persons—

whose direct voting interests or direct market value interests in the company or unit trust were at all relevant times interests to which subsection (5) of this section applied; and".

(2) This section comes into force on 1 April 1996.

63. Modifications to measurement of voting and market value interests in cases of continuity provisions and demutualisation of insurers—(1) The principal Act is amended by inserting, after section OD 5, the following section:

"OD 5A. (1) The provisions of this section will apply only to modify the provisions of sections OD 3, OD 4, and OD 5 for the purposes of the application of the continuity provisions in cases where an insurer ceases to be a special corporate entity as a result of demutualisation.

"(2) If—

"(a) A person acquires a voting interest or a market value interest in an insurer on the demutualisation of the insurer; and

"(b) Immediately prior to the insurer ceasing to be a special corporate entity on the demutualisation the person was a member of the insurer and the interest is acquired solely by virtue of that membership; and

"(c) The insurer ceases to be a special corporate entity as a result of the demutualisation,—

then, with effect from the date of acquisition but subject to section OD 5 (5), the person will be treated as having held the voting interest or market value interest at all times during the period prior to the demutualisation in which the insurer was a special corporate entity.

"(3) If—

"(a) A person acquires a voting interest or a market value interest in a life insurer on the demutualisation of the life insurer; and

"(b) The person is the trustee of a trust for the benefit of persons who were members of the life insurer immediately prior to the life insurer ceasing to be a special corporate entity on the demutualisation, which trust is established prior to the demutualisation process—

"(i) As an interim holding vehicle pending distribution to those members of all shares held by the trust; or

"(ii) To exercise voting rights on behalf of those members in relation to any holding company established prior to the demutualisation process which holds all the shares in the life insurer; and

"(c) The Commissioner is satisfied, and has notified the trustee in writing accordingly, that the trust falls within paragraph (b); and

"(d) The life insurer ceases to be a special corporate entity as a result of the demutualisation,—

then, with effect from the date of acquisition, the trustee will be treated as having held the voting interest or market value

interest at all times during the period prior to demutualisation in which the life insurer was a special corporate entity.

"(4) If and to the extent that—

"(a) Subsection (3) applies; and

"(b) The notional single person referred to in section OD 5 (5) acquires a voting interest or market value interest in the life insurer on—

"(i) The distribution by the trustee of the shares from the trust; or

"(ii) The issue of shares by the holding company; and

"(c) The persons referred to in section OD 5 (5)(a) and (b) whose direct voting interests or direct market value interests are deemed under section OD 5 (5) to be those of the notional single person resulting in the notional single person's interest in the life insurer—

"(i) Were members of the life insurer immediately prior to the life insurer ceasing to be a special corporate entity on the demutualisation, or are trustees for any such members; and

"(ii) Acquired their direct voting interests or direct market value interests by virtue of that membership,—

then, with effect from the date of the acquisition, the notional single person will be treated as having existed and having held the voting interest or market value interest at all times during—

"(d) The period prior to demutualisation in which the life insurer was a special corporate entity; and

"(e) The period of the trust prior to the acquisition by the notional single person.

"(5) If—

"(a) A person acquires a voting interest or a market value interest in an insurer on and solely by virtue of the demutualisation of the insurer; and

"(b) The person is the trustee of a community trust for the benefit of a community (or part of a community) which community (or part) generally includes persons who were members of the insurer immediately prior to the insurer ceasing to be a special corporate entity on the demutualisation; and

"(c) The Commissioner is satisfied, and has notified the trustee in writing accordingly, that the trust falls within paragraph (b); and

"(d) The insurer ceases to be a special corporate entity as a result of the demutualisation,—

then, with effect from the date of acquisition, the trustee will be treated as having held the voting interest or market value interest at all times during the period immediately prior to demutualisation in which the insurer was a special corporate entity.

"(6) If—

"(a) An insurer which is a special corporate entity undergoes the process of demutualisation; and

"(b) The insurer (or another member of the same group of companies, the relevant loss-making entity being referred to in this subsection as the loss company) incurred a loss in an income year prior to the 1992–93 income year; and

"(c) The loss company carried the loss forward to the 1992–93 income year in accordance with the Income Tax Act 1976; and

"(d) The loss has not been deducted from or set off against assessable income for any period prior to demutualisation,—

then, notwithstanding section IF 1 (6), for the purposes of Part I, with effect from the date on which the insurer ceases to be a special corporate entity on the demutualisation, the loss will be deemed to have been incurred on the first day of the loss company's 1992–93 income year and not to have been incurred in the earlier year.

"(7) If—

"(a) An insurer which is a special corporate entity undergoes the process of demutualisation; and

"(b) The insurer (or another member of the same group of companies) has, at the time of the commencement of the process of demutualisation, a credit in its imputation credit account, dividend withholding payment account, or branch equivalent tax account which arose before 1 April 1992,—

then, notwithstanding sections ME 5 (4)(e), MF 4 (6)(f), and MG 5 (4)(e), for the purposes of Part M, with effect from the date on which the insurer ceases to be a special corporate entity on the demutualisation, the credit will be deemed first to have arisen in the account on 1 April 1992 and not when it actually arose."

(2) This section applies on and after 1 August 1995.

64. Further definitions of associated persons—(1) Section OD 8 (1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:

"(g) A trustee of a trust and a person who has benefited or is eligible to benefit under that trust; or".

(2) Section OD 8 (3) is amended by omitting the expression "BB 5,".

(3) Section OD 8 (4)(b) is amended by repealing subparagraph (iv), and substituting the following subparagraph:

"(iv) Any trustee of a trust under which such person or spouse or infant child has benefited or is eligible to benefit,—".

(4) Section OD 8 (4) is further amended by repealing paragraph (c), and substituting the following paragraph:

"(c) Any 2 persons one of whom is the spouse or infant child of the other person, or is a trustee of a trust under which that spouse or infant child has benefited or is eligible to benefit; or".

(5) Subsections (1), (3), and (4) of this section are deemed to have come into force on 17 August 1995.

(6) Subsection (2) applies with effect from the commencement of the principal Act.

65. Classes of income deemed to be derived from New Zealand—(1) Section OE 4 (1)(i) of the principal Act is amended—

(a) By omitting from paragraph (i) the words "superannuation category 1 scheme or any superannuation category 2 scheme or any superannuation category 3 scheme", and substituting the words "superannuation scheme":

(b) By omitting from paragraph (j) the expression "section CH 1 (2)", and substituting the expression "section CC 1 (2)".

(2) Subsection (1) (a) of this section comes into force on the day on which this Act receives the Royal assent.

(3) Subsection (1) (b) of this section applies with effect from the commencement of the principal Act.

66. References to particular regimes in former Act, etc.—(1) Section OZ 1 (1) of the principal Act is amended—

(a) By adding to the definition of the term "accruals rules" the words "; and includes section NG 16A:":

(b) By adding to the definition of the term "dividend withholding payment rules" the words "; and includes Part MZ and section MD 4:":

(c) By adding to the definition of the term "imputation rules" the words "; and includes Part MZ and section MD 4:":

(d) By adding to the definition of the term "NRWT rules" the words "; and includes section NG 16A:".

(2) Section OZ 1 is further amended by inserting, after subsection (1), the following subsection:

"(1A) Unless the context otherwise requires, references in any term defined in subsection (1) of this section to any provision or group of provisions includes a reference to any provision substituted for, inserted in, or added to that provision or group of provisions by any enactment that amends the principal Act."

67. Schedule 3 amended—(1) Schedule 3 to the principal Act is amended by adding to Part A the following item:

"7. Norway."

(2) Schedule 3 is further amended by adding to Part B the following item:

"6. In the case of Canada, any special allowances, reliefs, or exemptions provided to non-resident owned investment corporations pursuant to section 133 of the Income Tax Act (Canada)."

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

68. Schedule 6 amended—(1) Schedule 6 to the principal Act is amended by omitting the item relating to Western Samoa.

(2) This section applies with effect from the commencement of the principal Act.

69. Schedule 8 amended—(1) Schedule 8 to the principal Act is amended by inserting in column 2, under the item "Rising one-year steers and bulls" where it occurs below the heading for Jersey and other dairy breeds, the item "Rising two-year and older steers and bulls".

(2) This section applies with effect from the commencement of the principal Act.

70. Schedule 17 amended—(1) Schedule 17 to the principal Act is amended by omitting from item 2 the words "property right", and substituting the words "property or right".

(2) Schedule 17 is further amended by adding the following item:

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

(3) Schedule 17 is further amended by adding the following item:

"9. A consent granted under the Resource Management Act 1991 to do something that otherwise would contravene sections 12 to 15 of that Act (other than a consent for a reclamation), being a consent granted in or after the 1996–97 income year."

(4) Subsections (1) and (2) apply with effect from the commencement of the principal Act.

(5) Subsection (3) applies with respect to the tax on income derived in the 1996–97 income year and subsequent years.

71. Schedule 18 amended—(1) Schedule 18 to the principal Act is amended by inserting, after the item "New Zealand Export-Import Corporation", the item "New Zealand Forestry Corporation Limited".

(2) Section 23 of the Finance Act (No. 2) 1988 is deemed never to have been repealed by section YB 3 of the principal Act, and section YB 2 (1)(b) of the principal Act shall apply as if that section 23 were an amending provision specified in section YB 2 (2) of the principal Act.

(3) This section applies with effect from the commencement of the principal Act.

72. Correction of errors in comparative tables of new and old provisions—(1) Part A of Schedule 23 to the principal Act is amended by omitting the expression "CF 2 (14),(15)" from the second column of the item relating to section 4 (13),(14) of the Income Tax Act 1976, and substituting the expression "CF 2 (13),(14)".

(2) Part C of Schedule 23 is amended by omitting the item relating to "associated person(s)" where the entry in the second column is "166" and the entry in the third column is "DF 7 (4)".

(3) Part D of Schedule 23 is amended by inserting in the first column, immediately below the reference to section ME 3 and on the same line as the expression "(1)(a)", the expression "ME 4".

(4) This section applies with effect from the commencement of the principal Act.

73. Correction of error in consequential amendment to Estate and Gift Duties Act 1968—(1) Section 74B of the Estate and Gift Duties Act 1968 (as inserted by section 2 of the Estate and Gift Duties Amendment Act (No. 2) 1992 and as amended by section 88 of the Income Tax Amendment Act (No. 2) 1993 and section YB 2 of the principal Act) is amended by omitting all the words following the words "for the purposes of", and substituting the words "the Income Tax Act 1994, or would constitute such a dividend but for the application of subsections (13) and (14) of section CF 2 of that Act".

(2) Schedule 20 to the principal Act is consequentially amended by repealing the second item relating to section 74B of the Estate and Gift Duties Act 1968.

(3) This section applies with effect from the commencement of the principal Act.

74. Regulations revoked—(1) The Income Tax (Foreign Investment Fund Determinations) Regulations 1989 (S.R. 1989/233) are revoked.

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

PART II

INCOME TAX (ANNUAL)

75. Rates of income tax for 1995–96 income year—For the 1995–96 income year, income tax shall be assessed, levied, and paid under Part B of the principal Act at the basic rates specified in Schedule 1 to that Act.

This Act is administered in the Inland Revenue Department.