



## ANALYSIS

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1988, No. 6

### An Act to amend the Income Tax Act 1976

[24 March 1988

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

**1. Short Title**—This Act may be cited as the Income Tax Amendment Act 1988, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).

**2. Rebates from tax in respect of overtime and shift work**—(1) Section 45 of the principal Act is hereby repealed.

(2) Section 57 (2) (b) of the principal Act is hereby consequentially repealed.

(3) This section shall come into force on the 1st day of April 1988.

**3. Overtime and Shift Work Recognition Authority**—(1) Section 46 of the principal Act is hereby repealed.

(2) Section 36(d) of the principal Act is hereby consequentially repealed.

(3) This section shall come into force on the 1st day of April 1988.

**4. Transitional tax allowance**—(1) Section 50c(2) of the principal Act (as inserted by section 5(1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by omitting from paragraph (a) of the proviso the expression “16”, and substituting the expression “15”.

(2) This section shall be deemed to have come into force on the 1st day of October 1986.

**5. Rebate in respect of gifts of money and payment of school fees**—(1) Section 56A(2) of the principal Act (as inserted by section 9(1) of the Income Tax Amendment Act (No. 2) 1977) is hereby amended by adding the following paragraph:

“(za) Alhay Buhay Foundation Trust.”

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1987 and in every subsequent year.

**6. Incomes wholly exempt from income tax**—(1) Section 61(53) of the principal Act is hereby amended by omitting from the proviso (as substituted by section 10 of the Income Tax Amendment Act (No. 3) 1983) the expression “\$25”, and substituting the expression “\$50”.

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

“(57) Income derived by any person from any allowance—

“(a) Payable by the Department of Labour or through a regional Employment Access Council as an Access training allowance and designated as such by that department; or

“(b) Payable directly by the Department of Maori Affairs or through the tribal and regional authorities as a Maori Access training allowance and designated as such by that department.”

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

“(58) Income derived by any person from any monetary annuity granted from the Consolidated Account by the Executive Council of New Zealand and not designated as subject to tax by the Executive Council.”

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

(5) Subsection (2) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1987 and in every subsequent year.

(6) Subsection (3) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1982 and in every subsequent year.

**7. Interpretation**—(1) Section 64B(1) of the principal Act (as inserted by section 2 of the Income Tax Amendment Act 1987) is hereby amended by inserting, after paragraph (c) of the definition of the term “implementation date”, the following paragraph:

- “(ca) In the case of a financial arrangement under which—
- “(i) The monetary obligations of the parties are expressed in New Zealand currency; and
  - “(ii) It is contemplated that the holder may, upon demand or call, require the return of sums advanced to the issuer; and
  - “(iii) It is not contemplated that the holder may advance further sums to the issuer upon demand or call pursuant to the financial arrangement,—
- the 1st day of April 1987; and”.

(2) Section 64B(1) of the principal Act (as so inserted) is hereby amended by repealing paragraph (b) of the definition of the term “variable principal debt instrument”, and substituting the following paragraph:

- “(b) Where the rights and obligations of the person under the financial arrangement are expressed in a currency other than New Zealand currency, require the return of sums advanced to the issuer,—”.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1985 and in every subsequent income year.

**8. Transitional provision for variable principal debt instruments**—(1) The principal Act is hereby amended by repealing section 64K (as inserted by section 2 of the Income Tax Amendment Act 1987 and as amended by section 16 of the Income Tax Amendment Act (No. 2) 1987), and substituting the following section:

“64k. (1) Notwithstanding anything in this Act, any person who holds a variable principal debt instrument on the 1st day of April 1987 and is not a cash basis holder in respect of that variable principal debt instrument shall be deemed—

“(a) To have derived, on that date, an amount of income equal to the amount of interest which accrued in respect of that variable principal debt instrument up to that date but which would not be derived but for this section; and

“(b) Not to have derived, in respect of the period before the 1st day of April 1987, any amount of income that is deemed to be assessable income under section 65 (2) (jb) of this Act.

“(2) Where, before the 1st day of April 1987, a person is a holder or an issuer of a debt that is a variable principal debt instrument and that person continues to be the holder or the issuer of the debt on that date for the purpose of the income tax treatment of any unrealised exchange variation arising before that date, and for no other purpose,—

“(a) That person shall be deemed—

“(i) If a holder of the debt, to have received full repayment on the 1st day of April 1987 of any amount owing to that person under the debt:

“(ii) If an issuer of the debt, to have made full repayment on the 1st day of April 1987 of any amount owing by that person under the debt; and

“(b) The amount of the repayment shall be deemed to be equal to the amount for which, under section 64B (2) of this Act, the debt is deemed to have been acquired or issued on the 1st day of April 1987; and

“(c) Notwithstanding section 71 (5) of this Act, the amount of any exchange variation (as that expression is defined in section 71 of this Act) arising in relation to the repayment shall be dealt with according to section 71 of this Act.”

(2) Section 16 of the Income Tax Amendment Act (No. 2) 1987 is hereby consequentially repealed.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1985 and in every subsequent income year.

**9. Limitation of deduction for motor vehicles where insufficient records are kept—**(1) Section 106B (2) of the principal Act (as inserted by section 17 of the Income Tax

Amendment Act 1986) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Any person other than a company and other than a person who is subject to section 105 of this Act:”.

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

**10. Accounting for goods and services tax**—(1) Section 140B (6) (a) (ii) of the principal Act (as inserted by section 29 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by omitting the expression “section 20 (3) (a)”, and substituting the expression “section 20 (3) (e)”.

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1986 and in every subsequent year.

**11. Expenditure relating to determination of liability to tax**—(1) The principal Act is hereby amended by repealing section 165, and substituting the following section:

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

“‘Registered person’ and ‘taxable period’ have the same meanings as in section 2 of the Goods and Services Tax Act 1985:

“‘Taxable activity’ has the same meaning as in section 6 of the Goods and Services Tax Act 1985:

“‘Goods and services tax payable’—

“(a) Means an amount of goods and services tax calculated in accordance with sections 19 and 20 of the Goods and Services Tax Act 1985; and

“(b) Includes—

“(i) Any amount referred to in section 17 (2) or section 27 (6) of the Goods and Services Tax Act 1985:

“(ii) Any amount refundable by the Commissioner pursuant to section 19 or section 20 of the Goods and Services Tax Act 1985.

“(2) Subject to this section, in calculating the assessable income derived by any taxpayer in any income year, the Commissioner shall allow a deduction in respect of any expenditure incurred by the taxpayer during that income year in connection with—

“(a) The calculation or determination of the assessable income of the taxpayer for any income year:

- “(b) The calculation or determination of the goods and services tax payable by the taxpayer for any taxable period:
- “(c) The preparation, institution, or presentation of an objection to or an appeal against or in consequence of any determination or assessment made by the Commissioner in respect of the taxpayer under the Income Tax Act 1976 or the Goods and Services Tax Act 1985:
- “(d) Any contribution by the taxpayer towards the expenditure incurred by any other taxpayer where—
- “(i) That expenditure is allowable under this section in the calculation or determination of the assessable income of that other taxpayer and relates to any matter affecting the calculation or determination of the assessable income of, or any goods and services tax payable by, the first-mentioned taxpayer; and
- “(ii) The first-mentioned taxpayer has objected to or appealed against an assessment or determination made, in relation to the matter, by the Commissioner under the provisions of the Income Tax Act 1976 or the Goods and Services Tax Act 1985.
- “(3) Any amount received by the taxpayer at any time, whether by way of reimbursement, award of the Court, recovery, or otherwise howsoever in respect of an amount allowed as a deduction under this section, shall be deemed to be assessable income derived by the taxpayer in the income year in which it is received.
- “(4) No deduction shall be allowed under this section in respect of any expenditure incurred in connection with—
- “(a) Any matter or assessment arising from a return (being a return of income or a return furnished under the provisions of the Goods and Services Tax Act 1985) that, in the opinion of the Commissioner, was fraudulent or wilfully misleading:
- “(b) Any offence under any of the Inland Revenue Acts:
- “(c) Any assessment of penal tax assessed under the provisions of the Income Tax Act 1976 or the Goods and Services Tax Act 1985 (not being an assessment which is subsequently cancelled):
- “(d) Any objection or appeal which, in the opinion of the Commissioner, is of an inconsequential or frivolous nature:

“(e) Any matter or assessment arising under the provisions of the Goods and Services Tax Act 1985 where and to the extent that the matter or assessment is in respect of a taxable activity carried on by the registered person that does not constitute a business for the purposes of this Act.”

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1985 and in every subsequent year.

**12. Co-operative dairy companies**—(1) Section 201 (2) of the principal Act (as amended by section 25 of the Income Tax Amendment Act 1986) is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) Providing for the hearing and determination, by the Taxation Review Authority, of an objection:”.

(2) Section 201 (2) of the principal Act is hereby further amended by omitting from paragraph (f) the words “appeal authority”, and substituting the words “Taxation Review Authority:”.

(3) This section shall come into force on the 1st day of April 1988.

**13. Co-operative milk marketing companies**—

(1) Section 202 (3) of the principal Act (as amended by section 25 of the Income Tax Amendment Act 1986) is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) Providing for the hearing and determination, by the Taxation Review Authority, of an objection:”.

(2) Section 202 (3) of the principal Act is hereby further amended by omitting from paragraph (f) the words “appeal authority”, and substituting the words “Taxation Review Authority”.

(3) This section shall come into force on the 1st day of April 1988.

**14. Co-operative pig marketing companies**—(1) Section 203 (3) of the principal Act (as amended by section 25 of the Income Tax Amendment Act 1986) is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) Providing for the hearing and determination, by the Taxation Review Authority, of an objection:”.

(2) Section 203 (3) of the principal Act is hereby further amended by omitting from paragraph (f) the words “appeal authority”, and substituting the words “Taxation Review Authority”.

(3) This section shall come into force on the 1st day of April 1988.

**15. Value of fringe benefit**—(1) Section 336o (2) of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by omitting from paragraph (b) of the proviso the words “, by reason of express provision in the loan agreement,”.

(2) This amendment shall apply with respect to the fringe benefit tax on fringe benefits provided on or after the 1st day of April 1988.

**16. Family support credit of tax**—(1) Section 374D (1) (a) (i) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by omitting the expression “16”, and substituting the expression “15”.

(2) This section shall be deemed to have come into force on the 1st day of October 1986.

**17. Guaranteed minimum family income credit of tax**—(1) Section 374E (2) (a) (i) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by omitting the expression “16”, and substituting the expression “15”.

(2) This section shall be deemed to have come into force on the 1st day of October 1986.

**18. Credit of tax by instalments**—Section 374G (3) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by adding the following proviso:

“Provided that where a certificate of entitlement issued by the Commissioner, under paragraph (d) of this subsection, is a certificate requiring the Director-General to make payment of interim instalments by way of credit of tax, in accordance with section 374I (1) of this Act, the Commissioner may deliver that certificate to the Director-General and that certificate shall be deemed to have been issued by the Commissioner to the person and delivered, by the person, to the Director-General.”

**19. Additional tax to be charged if default made in payment of tax**—(1) Section 398 (2) of the principal Act (as substituted by section 40 of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by repealing paragraph (a) (as amended by section 40 (7) (a) of the Income Tax Amendment Act (No. 4) 1986), and substituting the following paragraph:

“(a) On the amount of any tax remaining unpaid at the expiry of the due date of that tax (whether assessed or not) or the date of demand of that tax, additional tax of 10 percent:”.

(2) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1986, and, in relation to the provisional tax of provisional taxpayers, the income year that commenced on the 1st day of April 1987, and in every subsequent year.

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This Act is administered in the Inland Revenue Department.

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