ANALYSIS

1994, No. 76

An Act to amend the Income Tax Act 1976

[*14 September 1994*

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

1. Short Title, commencement, and application—(1) This Act may be cited as the Income Tax Amendment Act 1994, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).

(2) Except as provided in section 23 (2) of this Act, Part I of this Act shall be deemed to have come into force on the 1st day of July 1994.

(3) The provisions of Part II of this Act shall apply in the manner specified in those provisions.

PART I

INCOME TAX—COMPANIES

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "attributed repatriation", the following definition:

" 'Available subscribed capital per share' means, in respect of a share in a company at any relevant time, the amount calculated by dividing the available subscribed capital (as defined in section 4A (3) of this Act) at the relevant time of all shares of the same class (as defined in section 4A (2) of this Act) as the share by the numbers of shares of the class on issue at the relevant time:".

(2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term "charitable purpose", the following definition:

" 'Close company' means, at any time, a company in respect of which at that time there are 5 or fewer natural persons (with any natural person and all natural persons who are associated at the time with the natural person being treated as one natural person for this purpose)—

"(a) The aggregate of whose voting interests in the company exceeds 50 percent; or

"(b) In any case where at the time a market value circumstance exists in respect of the company, the aggregate of whose market value interests in the company exceeds 50 percent;—

but does not include a special corporate entity (as defined in section 8B of this Act):".

(3) Section 2 of the principal Act is hereby further amended—

(a) By omitting from paragraph (d) of the definition of the term "director" the expression "1955", and substituting the expression "1993":

(b) By repealing paragraphs (a) (i) and (d) of the definition of the term "expenditure on account of an employee".

(4) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term "life insurance", the following definition:

" 'Liquidation', in relation to a company, includes—

"(a) Removal of the company from the register of companies under the Companies Act 1955 or the Companies Act 1993; and

"(b) Dissolution of the company under the Companies Act 1955; and

"(c) Termination of the company's existence under any other procedure of New Zealand or foreign law;—

and—

"(d) 'Liquidate' has a corresponding meaning; and

"(e) References in this Act to anything occurring upon liquidation include anything occurring—

"(i) During the period which commences with any step legally necessary to achieve liquidation (including the appointment of a liquidator or a request of the type referred to in section 318 (1) (d) of the Companies Act 1993); and

"(ii) For the purpose of enabling liquidation:".

(5) Section 2 of the principal Act is hereby further amended—

(a) By omitting from the definition of the term "major shareholder" the words "private company (as defined in section 2 of the Companies Act 1955)", and substituting the words "close company":

(b) By omitting from that definition the word "private", in the 3 other places where it appears:

(c) By repealing the definitions of the terms "proprietary company" and "winding-up".

(6) Section 30 of the Income Tax Amendment Act (No. 5) 1988 is hereby consequentially amended by repealing subsections (1), (3), and (4).

3. Bonus issues—(1) Section 3 (1) of the principal Act is hereby amended by repealing the definition of the term "bonus issue", and substituting the following definition:

" 'Bonus issue' means—

"(a) The issue of shares in the company; or

"(b) The giving of credit in respect of or forgiveness of the whole or part of the amount unpaid on any shares in the company,—

where the company receives no consideration (other than an election by the shareholder not to receive money or money's worth as an alternative to the issue) for the issue, crediting, or forgiveness, except to the extent to which, in respect of any issue or crediting on or before the 20th day of August 1985, such issue or crediting was excluded from the

meaning of the term 'bonus issue' in accordance with subsection (3) or subsection (4) of this section as those subsections applied from time to time before their repeal by section 31 (1) of the Income Tax Amendment Act (No. 5) 1988:".

(2) Section 3 (1) of the principal Act is hereby further amended by repealing the definition of the term "non-taxable bonus issue", and substituting the following definition:

" 'Non-taxable bonus issue' means any bonus issue—

"(a) That the company elected under—

"(i) Subsection (3) (a) (ii) of this section (as in force before its repeal by section 3 (4) of the Income Tax Amendment Act 1994); or

"(ii) Section 4 (5) (a) (ii) of this Act (as in force before its repeal by section 4 (4) of the Income Tax Amendment Act (No. 2) 1992)—

to be a bonus issue that is not to be treated as a dividend for the purposes of this Act; or

"(b) In respect of which the company fails to make any election under subsection (3) of this section (or failed to make an election under the provisions referred to in paragraph (a) of this definition):".

(3) Section 3 of the principal Act is hereby further amended—

(a) By omitting from the definition of the term "taxable bonus issue" the expression "subsection (3) (a) (i)", and substituting the expression "subsection (3) (a)":

(b) By repealing the definition of the term "ten year bonus issue".

(4) Section 3 of the principal Act is hereby further amended by repealing subsections (2) and (3), and substituting the following subsection:

"(3) Where a company proposes to make a bonus issue, other than a bonus issue in lieu,—

"(a) The company may elect, by—

"(i) Resolving, upon the making of the bonus issue,—

"(A) That the bonus issue will be a taxable bonus issue; and

"(B) The amount (being greater than nil) which will be treated as a dividend in respect of the bonus issue; and

"(ii) Notifying the Commissioner of the election and the amount, under section 13A of this Act,—

that the bonus issue will be a taxable bonus issue (in which case the bonus issue will be treated as a dividend under section 4 (1) (f) of this Act); and

"(b) If the company fails to make an election under paragraph (a) of this subsection, the bonus issue shall be deemed to be a non-taxable bonus issue."

4. Meaning of the term "dividends"—(1) Section 4 (1) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the words "or that are specified payments":

(b) By repealing subparagraph (ii) of paragraph (ba), and substituting the following subparagraph:

"(ii) The shareholder has been released from the obligation to pay that amount by the operation of the Insolvency Act 1967, the Companies Act 1955, the Companies Act 1993, or the laws of a country or territory other than New Zealand or by any deed or agreement of composition with the shareholder's creditors; or":

(c) By omitting from paragraph (f), the words "(as defined in subsection (3) of this section)".

(2) Section 4 (1) of the principal Act is hereby further amended by repealing paragraph (g), and substituting the following paragraph:

"(g) All amounts (whether in money or money's worth) distributed in any manner and under any name from and in respect of any—

"(i) Acquisition by the company of shares in the company; or

"(ii) Redemption or other cancellation of shares in the company; or

"(iii) Other reduction in or return of share capital of the company:".

(3) Section 4 (1) of the principal Act is hereby further amended by omitting from paragraph (k) the words "proprietary company", and substituting the words "close company".

(4) Section 4 (2) of the principal Act is hereby amended by inserting, after the words "were a shareholder", the words ", the investor's interest in the group investment fund were a share".

(5) Section 4 (3) of the principal Act is hereby amended by repealing the definition of the term "specified payments".

(6) Section 4 of the principal Act is hereby further amended by repealing subsection (6), and substituting the following subsection:

"(6) The amount of the dividend arising in respect of—

"(a) A bonus issue in lieu shall be the amount of the money or money's worth offered as an alternative to the bonus issue less, in the case of a bonus issue made to a shareholder where an amount of resident withholding tax is deducted in respect of the bonus issue in accordance with Part IXA of this Act, that amount of resident withholding tax; and

"(b) Any other taxable bonus issue shall be such amount per share as the company elects when resolving upon the bonus issue."

(7) Section 4 of the principal Act is hereby further amended by inserting, after subsection (7), the following subsection:

"(7A) Where and to the extent that any dividend paid or provided by a company to a shareholder is subsequently recovered by the company from the shareholder under section 56 of the Companies Act 1993 (or the equivalent provision of any company legislation of a country or territory other than New Zealand),—

"(a) The Commissioner shall, if notified in writing of the recovery—

"(i) Notwithstanding anything in section 25 of this Act, amend any assessment of the shareholder for income tax, any determination of loss or loss carried forward of the shareholder, any assessment of the shareholder made under Part XIIB of this Act, or any assessment of the company made under Parts IX, IXA, and XIIA of this Act or by virtue of section 308A (3) of this Act; and

"(ii) Notwithstanding anything in section 394ZO or section 409 of this Act, but otherwise subject to this Act, refund to the shareholder any income tax, dividend withholding payment (as defined in section 394ZK of this Act), or dividend withholding payment penalty tax (as defined in section 394ZZG of this Act), and to the company any non-resident withholding tax or resident withholding tax; and

"(b) A credit or debit (as the case may be) shall arise, as at the date of recovery, to be recorded in the imputation credit account (as defined in section 394A of this Act) of the company or (in any case where the shareholder is an imputation credit account

company (as so defined) or dividend withholding payment account company (as defined in section 394ZK of this Act)) the imputation credit account or dividend withholding payment account of the shareholder—

to such extent as is necessary in order, for the purposes of this Act, to disregard the dividend and any imputation credit (as defined in section 394A (1) of this Act) or dividend withholding payment credit (as defined in section 394ZK (1) of this Act) attached to the dividend and take into account the resultant refunds."

(8) Section 4 of the principal Act is hereby further amended by repealing subsection (15), and substituting the following subsection:

"(15) Subject to section 198 of this Act, where any amount (whether in money or money's worth) is derived by a person from and in respect of the acquisition, redemption, or other cancellation (referred to in this subsection as the cancellation) by a company of a share in the company, for the purposes of this Act in calculating the amount of assessable income of the person under section 65 (2) (a) or section 65 (2) (e) or any other provision of this Act (other than the other subsections of this section and section 65 (2) (j)) in respect of the cancellation,—

"(a) The consideration derived by the person from the company in respect of the cancellation shall be deemed to be reduced (to an amount not less than nil) by the amount of any dividend (exclusive of any imputation credit, as defined in section 394A (1) of this Act, or dividend withholding payment credit, as defined in section 394ZK (1) of this Act, attached to the dividend) derived by the person in respect of the cancellation, other than a dividend to the extent to which the person was—

"(i) Exempt from income tax in respect of the dividend under section 63 of this Act; and

"(ii) Not required by section 394ZL of this Act to deduct from the dividend an amount by way of dividend withholding payment (which extent is to be calculated by deducting from the dividend the amount which is equal to any dividend withholding payment (if any) required by section 394ZM (1) of this Act to be deducted multiplied by a fraction of which the numerator is 1 and the denominator is the rate of resident companies tax, expressed as a percentage, stated in clause 7 of the First Schedule

to this Act and applying in respect of the income year that is concurrent with the imputation year in which occurred the quarter in which the dividend was paid); and

"(b) Any profit or gain derived by the person from the cancellation (as calculated subject to paragraph (a) of this subsection) may be assessable income of the person notwithstanding that such profit or gain may be an amount excluded from the meaning of the term 'dividend' by section 4A of this Act."

(9) Section 3 of the Income Tax Amendment Act (No. 4) 1989 is hereby consequentially repealed.

5. Exclusion from term "dividends"—(1) Section 4A (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraphs:

"(c) Any amount distributed upon the acquisition, redemption, or other cancellation (in whole but not in part) by the company of any share in the company (referred to in this paragraph as the relevant cancellation) where—

"(i) If the share is not a non-participating redeemable share (as defined in subsection (3) of this section),—

"(A) The relevant cancellation is part of a pro rata cancellation (as so defined) where the company has a fifteen percent capital reduction (as so defined); or

"(B) The relevant cancellation is part of a pro rata cancellation (as so defined) where the company has a ten percent capital reduction (as so defined) and, upon application to the Commissioner by the company in such form as the Commissioner may specify, the Commissioner notifies the company in writing that the Commissioner has no reasonable grounds to conclude (having regard to the factors specified in subparagraph (iv) (A) to (D) of this paragraph) that either the whole or any part of the relevant cancellation is made in lieu of the payment of dividends; or

"(C) The relevant cancellation is not part of a pro rata cancellation but the shareholder

suffers a fifteen percent interest reduction (as so defined); or

"(D) The company is an unlisted widely-held trust; and

"(ii) The relevant cancellation is not an on-market acquisition; and

"(iii) The Commissioner has given, in respect of the relevant cancellation, the notice referred to in subparagraph (i) (B) of this paragraph or otherwise is satisfied that neither the whole nor any part of the relevant cancellation was made in lieu of the payment of dividends, having regard to—

"(A) The nature and amount of dividends paid by the company prior or subsequent to the relevant cancellation; and

"(B) The issue of shares in the company subsequent to the relevant cancellation; and

"(C) The expressed purpose or purposes of the relevant cancellation; and

"(D) Any other relevant factor; and

"(iv) To the extent that the amount distributed does not exceed—

"(A) In any case where the company is an unlisted widely-held trust, the available subscribed capital per share; and

"(B) In any other case, the available subscribed capital per share cancelled (as defined in subsection (3) of this section):

"(ca) Any amount distributed in respect of any share in the company upon the liquidation of the company to the extent that the amount distributed does not exceed the aggregate of—

"(i) The available subscribed capital per share cancelled; and

"(ii) The excess return amount (as defined in subsection (3) of this section):

"(cb) Subject to subsection (4A) of this section, any amount paid upon the acquisition by the company of any share in the company where—

"(i) The acquisition is deemed, under section 67A (1) of the Companies Act 1993 or under any Act of New Zealand relating to co-operative companies, not to result in the cancellation of the share; and

"(ii) The acquisition is not part of a pro rata cancellation or an event which, in the opinion of the Commissioner, could reasonably be regarded as, or as part of, a pro rata cancellation in substance:

"(cc) Any amount distributed upon an on-market acquisition, to the extent that it does not exceed the available subscribed capital per share cancelled:

"(cd) Except for the purposes of sections 4 (7A) and 394E (1) (ab) and (2) (ab) of this Act, any amount distributed upon an on-market acquisition, to the extent that it exceeds the available subscribed capital per share cancelled:".

(2) Section 4A (1) of the principal Act is hereby further amended—

(a) By repealing paragraph (h):

(b) By inserting in paragraph (m) (i), before the word "winding-up", the words "liquidation or".

(3) Section 4A (2) of the principal Act is hereby amended—

(a) By omitting, from each place in the definition of the term "capital gain amount" where the words appear, the words "winding up", and substituting in each case the word "liquidation":

(b) By omitting from paragraph (d) of that definition the expression "subsection (1) (c)", and substituting the expression "subsection (1) (ca)".

(4) Section 4A (2) of the principal Act is hereby further amended by repealing the definition of the term "non-qualifying capital", and substituting the following definition:

" 'On-market acquisition' means an acquisition by a company of a share in the company where—

"(a) The company acquires the share in a transaction occurring on a recognised exchange, per medium of a broker or some other similar agent independent of the company; and

"(b) Prior to that transaction, no arrangement existed between the shareholder and the company for the company to acquire the share; and

"(c) Except where and to the extent that subsection (4A) of this section applies, paragraph (cb) of subsection (1) of this section does not apply to the acquisition:".

(5) Section 4A (2) of the principal Act is hereby further amended by inserting, after the definition of the term "qualifying share premium", the following definition:

" 'Recognised exchange' has the meaning assigned to that term by section 8B of this Act:".

(6) Section 4A (2) of the principal Act is hereby further amended by repealing subparagraphs (ii), (iii), and (iv) of paragraph (b) of the definition of the term "shares of the same class", and substituting the following subparagraph:

"(ii) Distributions of assets of the company on any acquisition, redemption, or other cancellation by the company of its shares or other reduction in or return of share capital of the company, whether on its liquidation or otherwise:".

(7) Section 4A (2) of the principal Act is hereby further amended by repealing paragraph (c) of the definition of the term "shares of the same class", and substituting the following paragraph:

"(c) In the case of any shares of the company (in this paragraph referred to as the nominated shares) where—

"(i) The company elects to treat the nominated shares as a separate class by notice in writing to the Commissioner in such form as the Commissioner may approve; and

"(ii) The company can at all times from the time of issue of those shares identify and distinguish the nominated shares from any other shares in the company,—

either—

"(iii) The amount paid per share in respect of issue of the nominated shares is the same; or

"(iv) The nominated shares are held by the same person:".

(8) Section 4A (2) of the principal Act is hereby further amended by repealing the definition of the term "specified payments".

(9) Section 4A of the principal Act is hereby further amended by repealing subsections (3), (3A), and (4), and substituting the following subsections:

"(3) For the purposes of this subsection and paragraphs (c) to (cd) of subsection (1) of this section, in relation to a share in a company at any relevant time,—

" 'Amount' includes an amount in money's worth:

" 'Available subscribed capital' means the amount calculated in accordance with the following formula

in respect of all shares of the same class (referred to in this subsection as the specified class) as the share:

$$a + b - c$$

where—

"a is—

"(i) In the case of any company which existed before the 1st day of July 1994, the transitional capital amount; and

"(ii) In any other case, nil; and

"b is the aggregate amount of consideration received by the company on or after the 1st day of July 1994 and before the relevant time, in respect of the issue of all shares in the company of the specified class, including as consideration—

"(i) In the case of any bonus issue in lieu made on or after the 1st day of July 1994, the amount of money or money's worth offered as an alternative to such bonus issue; and

"(ii) In the case of any taxable bonus issue (other than a bonus issue in lieu) made on or after the 1st day of July 1994, the amount of the dividend arising in respect of the taxable bonus issue; and

"(iii) In the case of any shares of the specified class issued upon the conversion, or in consideration for the release, of any debt claim against the company, the amount (calculated at the date of conversion or release) of the debt claim so converted or released; and

"(iv) In respect of any shares in an amalgamated company (as defined in section 191WD (2) of this Act) existing at the time of an amalgamation which occurs under section 222 (2) of the Companies Act 1993 or section 209D (2) of the Companies Act 1955, an amount equal to the available subscribed capital of all shares of an equivalent class (not being shares held at the time directly or indirectly by an amalgamating company) in the amalgamating company (as so defined) or

companies, as if it were consideration received in respect of those shares in the amalgamated company at the time of the amalgamation,—

but not including—

"(v) Any amount in respect of a bonus issue other than a bonus issue to which paragraph (i) or paragraph (ii) of this item b applies; or

"(vi) Any amount in respect of any taxable bonus issue (except to the extent fully credited) made to a shareholder who was exempt from income tax in respect of the bonus issue under section 63 of this Act; or

"(vii) Any consideration received by the company which is primarily attributable, directly or indirectly, to the payment by the company of a dividend (except to the extent fully credited) to a shareholder who was—

"(A) Exempt from income tax under section 63 of this Act; and

"(B) Not required by section 394ZL of this Act to deduct an amount by way of dividend withholding payment,—

in respect of the dividend; or

"(viii) Any consideration received by the company which is primarily attributable, directly or indirectly, to the payment by the company of a dividend—

"(A) At a time when the company was a controlled foreign company (as defined in section 245C of this Act); and

"(B) To another controlled foreign company; and

"(C) Whether or not either controlled foreign company is at the time resident (within the meaning of section 245Q of this Act) in a country or territory specified in the Fifteenth Schedule to this Act; or

"(ix) The amount of any consideration received by the company (other than on an amalgamation), directly or indirectly and whether by one or a series of transactions, in the form of shares in another company to the extent that such consideration exceeds the aggregate available subscribed capital per share (calculated after deducting the ineligible capital amount, if any) in respect of such shares in the other company at the date of the receipt; or

"(x) The amount of any consideration received by the company (being an amalgamated company) on an amalgamation, in the form of the agreement of shareholders in an amalgamating company to the amalgamation and the resultant acquisition by the amalgamated company of the amalgamating company's property, to the extent that such consideration exceeds the aggregate available subscribed capital per share of the shares in the amalgamating company of those shareholders at the date of the amalgamation; or

"(xi) Any amount included in calculating the transitional capital amount in respect of the company; or

"(xii) The amount of any consideration received by the company in respect of the transfer of a share taken into account under subsection (4A) of this section to determine that the amount paid on the prior acquisition of a share by the company is deemed not to constitute an on-market acquisition; and

"c is the aggregate of amounts distributed—

"(i) Upon the acquisition, redemption, or other cancellation by the company of shares in the company of the specified class; and

"(ii) On or after the 1st day of July 1994 and before the relevant time; and

"(iii) Excluded from the meaning of the term 'dividends' by paragraph (c) or paragraph (cc) of subsection (1) of this section (or, in the case of an acquisition deemed under section 394E (1A) of this Act to be an on-market acquisition, which would have been so excluded by paragraph (cc) of subsection (1) if the acquisition had in fact been an on-market acquisition); and

"(iv) Not recovered, before the relevant time, by the company from the relevant shareholder under section 56 of the Companies Act 1993 (or the equivalent provision of any company legislation of a country or territory other than New Zealand):

" 'Available subscribed capital per share cancelled' means the amount calculated by dividing the available subscribed capital by the aggregate number of shares of the specified class (including the share) acquired, redeemed, or otherwise cancelled by the company, or cancelled upon liquidation of the company, at the relevant time:

" 'Excess return amount' means the amount calculated by multiplying the excess (if any) of the total amount received by the shareholder upon the liquidation of the company in respect of the share over the available subscribed capital per share cancelled by the following fraction:

$$\frac{d + e}{f - g}$$

where—

"d is the aggregate of capital gain amounts of the company available for distribution to shareholders at the time of the liquidation; and

"e is the total market value of capital assets of the company received by shareholders at the time of the liquidation, to the extent such total market value exceeds the aggregate of—

"(i) The total cost to the company of such assets; and

"(ii) The total capital losses arising from the realisation of capital assets (other than realisations to which subsection (9) of this section applies) incurred in the income year in which the capital assets were received by the shareholders, in any subsequent income year or in any preceding income year (being a preceding income year that is the 1994–95 or any later income year), not being losses already taken into account under subsection (11) of this section in calculating capital gain amounts; and

"f is the aggregate of all amounts received by shareholders upon the liquidation; and

"g is the aggregate available subscribed capital per share of all shares in the company at the time of the liquidation:

" 'Fifteen percent capital reduction' means, in respect of any company and any pro rata cancellation (referred to in this definition as the relevant cancellation), the circumstance where the aggregate amount paid by the company on account of the relevant cancellation (or paid by the company at the same time on account of any other pro rata cancellation of shares other than non-participating redeemable shares) is equal to or greater than 15 percent of the market value of all shares (not being non-participating redeemable shares) in the company at the time the company first notified shareholders of the proposed relevant cancellation (or, in any case where no advance notice was given, the time of the relevant cancellation):

" 'Fifteen percent interest reduction' means, in respect of any company and any acquisition, redemption, or other cancellation (referred to in this definition as the relevant cancellation) by the company of any share of a shareholder in the company, the circumstance where, as a result of the relevant cancellation (together with any other acquisitions, redemptions, or other cancellations by the company of shares (other than non-participating redeemable shares) in the company occurring at the same time),—

"(a) The aggregate direct voting interests (as defined in section 8B of this Act) in the company immediately after the relevant cancellation of the shareholder and all persons associated with the

shareholder (not being persons associated with the shareholder merely by virtue of being relatives of the shareholder, unless a spouse or minor child of the shareholder or a trustee for such spouse or minor child) (the counted associates being referred to in this definition as the relevant associates) do not exceed 85 percent of the aggregate direct voting interests in the company of the shareholder and the relevant associates immediately before the relevant cancellation; and

"(b) In any case where at the time of the relevant cancellation a market value circumstance exists in respect of the company, the aggregate direct market value interests (as defined in section 8B of this Act) in the company of the shareholder and the relevant associates immediately after the relevant cancellation do not exceed 85 percent of the aggregate direct market value interests of the shareholder and the relevant associates immediately before the relevant cancellation:

" 'Fully credited' means, in respect of any dividend, that part of the dividend which is calculated by multiplying the dividend (exclusive of any imputation credit, as defined in section 394A (1) of this Act, or dividend withholding payment credit, as defined in section 394ZK (1) of this Act, attached to the dividend) by the lesser of 1 and the following fraction:

$$\frac{h}{i}$$

where—

"h is the aggregate of the combined imputation ratio (as defined in section 394A (1) of this Act) and dividend withholding payment ratio (as defined in section 394ZK (1) of this Act) of the dividend; and

"i is the maximum imputation ratio specified in section 394G (1) of this Act:

" 'Ineligible capital amount' means, in any case where a company (referred to in this definition as the acquiring company) issues shares for consideration received, directly or indirectly and whether by one or a series of transactions, in the form of shares in another company (referred to in this definition as the acquired company), the amount (if any) of the

aggregate available subscribed capital per share of those shares in the acquired company which is equal to the lesser of—

"(a) The aggregate available subscribed capital per share of those shares in the acquired company which is attributable to shares (except to the extent those shares are a fully credited taxable bonus issue) issued in anticipation of the acquisition by the acquiring company of shares in the acquired company; and

"(b) The consideration (if any), provided or to be provided by the acquiring company in consideration for the acquisition of those shares in the acquired company, which is not in the form of shares in the acquired company:

" 'Non-participating redeemable share' means a share where—

"(a) The share is issued, in accordance with the company's constitution, on terms whereby the share is required or permitted to be redeemed or repaid (including, in the case of a co-operative company, upon surrender to the company) before liquidation of the company; and

"(b) The share is either—

"(i) A share of the type referred to in—

"(A) Section 66 of the Companies Act 1955; or

"(B) Section 68 of the Companies Act 1993; or

"(C) Any equivalent provision of any company legislation of a country or territory other than New Zealand; or

"(D) Section 192 or section 195 of this Act; or

"(E) Any Act of New Zealand relating to co-operative companies; or

"(ii) A unit in a unit trust which is not a widely-held trust; and

"(c) Either—

"(i) The share is a fixed rate share (as defined in section 8B of this Act); or

"(ii) The only amount payable by the company in respect of the redemption, repayment (including upon surrender), or other cancellation of the share does not exceed

the available subscribed capital per share; and

"(d) Except in any case where the company is established under any Act of New Zealand relating to co-operative companies, the holder of the share does not have, in respect of that share, any shareholder decision-making rights (as defined in section 8B of this Act) except to the extent of any such right which—

"(i) Arises only in circumstances where—

"(A) The position of the holder of the share may be altered to the holder's detriment; or

"(B) The company defaults on its obligations under the terms of the share; and

"(ii) Is granted to the holder only for the purpose of assisting the holder to prevent the alteration or remedy the default; and

"(iii) At the time of issue of the share is not expected to arise:

" 'Pro rata cancellation' means, in respect of any company and shares of the same class in the company, the acquisition, redemption, or other cancellation by the company of—

"(a) All the shares of the class; or

"(b) Part only of the shares of the class where—

"(i) The acquisition, redemption, or other cancellation does not alter the voting interest (or, in any case where at the time a market circumstance exists in respect of the company, market value interest) of any person in the company (determined as if the shares of that class were the only shares in the company); or

"(ii) The acquisition, redemption, or other cancellation occurs as a result (including by virtue of section 60(2) of the Companies Act 1993 or any equivalent provision of any company legislation of a country or territory other than New Zealand) of an offer by the company to all persons holding shares of the class to acquire, redeem, or otherwise cancel all or part only of each such person's shares of the class and, if each person were to

accept the offer, the resultant acquisition, redemption, or other cancellation would not alter the voting interest (or, in any case where at the time a market value circumstance exists in respect of the company, market value interest) of any person in the company (determined as if the shares of that class were the only shares in the company):

" 'Ten percent capital reduction' means, in respect of any company and any pro rata cancellation (referred to in this definition as the relevant cancellation), the circumstance where the aggregate amount paid by the company on account of the relevant cancellation (or paid by the company at the same time on account of any other pro rata cancellation of shares other than non-participating redeemable shares) is equal to or greater than 10 percent of the market value of all shares (not being non-participating redeemable shares) in the company at the time the company first notified shareholders of the proposed relevant cancellation (or, in any case where no advance notice was given, the time of the relevant cancellation):

" 'Transitional capital amount' means the amount calculated in accordance with the following formula:

$$\frac{j + k}{l} \times m$$

where—

"j is the aggregate amount of capital paid up before the 1st day of July 1994 in respect of shares of the specified class (whenever issued), not being—

"(i) An amount paid up by a bonus issue made after the 31st day of March 1982 and before the 1st day of October 1988, except where—

"(A) The date of the acquisition, redemption, other cancellation, or liquidation falls more than 10 years after the date of the bonus issue; or

"(B) The amount was paid-up by way of application of any amount of qualifying share premium; or

"(C) The relevant time is the time of liquidation of the company; or

"(ii) An amount paid up by a bonus issue (other than a taxable bonus issue) made on or after the 1st day of October 1988, except where the amount was paid up by way of application of any amount of qualifying share premium; and

"k is the aggregate of qualifying share premium paid to the company before the 1st day of July 1994 in respect of shares of the specified class (whenever issued), not being an amount subsequently (but before the 1st day of July 1994) applied to pay up capital on shares in the company; and

"l is the number of shares in the specified class ever issued before the close of the 30th day of June 1994; and

"m is the number of shares in the specified class on issue at the close of the 30th day of June 1994:

" 'Unlisted widely-held trust' means a widely-held trust the units or interests in which are not quoted, at the relevant time, on the official list of a recognised exchange:

" 'Widely-held trust' means a unit trust or group investment fund which has, at the relevant time,—

"(a) Not less than 100 unit holders or investors (treating, for the purposes of this definition, all persons associated with each other as one person); or

"(b) A lesser number of unit holders or investors where the Commissioner is satisfied that—

"(i) The unit trust or group investment fund could reasonably be regarded as a widely-held investment vehicle for direct investment by members of the public notwithstanding a lesser number of unit holders or investors; or

"(ii) The existence of a lesser number of unit holders or investors is due to unusual or temporary circumstances, such as the recent establishment or forthcoming termination of the unit trust or group investment fund; or

"(iii) The unit trust or group investment fund could reasonably be regarded as a vehicle primarily for investment by unit trusts, group investment funds, or superannuation funds that are widely-held vehicles for direct investment.

"(4) For the purposes of subsection (1) (c) to (cd) of this section, in determining the amount not included within the term 'dividends' on any acquisition, redemption, or other cancellation by the company of a share in the company or upon liquidation of the company,—

"(a) Where any consideration paid to the company (in money or money's worth) in respect of the issue of shares in the company is denominated and payable in a currency other than New Zealand currency, the consideration paid to the company shall be deemed to be equal to the consideration paid in the currency other than New Zealand currency converted into New Zealand currency as if that consideration had been paid on the date of the acquisition, redemption, other cancellation, or liquidation; and

"(b) Where, in a case where the company is not resident in New Zealand, the shareholder cannot obtain sufficient information to calculate either or both of the available subscribed capital per share cancelled (as defined in subsection (3) of this section) or the excess return amount (as so defined), the relevant amount shall be deemed to be nil; and

"(c) Where, 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, the available subscribed capital per share shall be deemed to be equal to the amount paid to the trust in respect of issue of the unit.

"(4A) Where—

"(a) Paragraph (cb) of subsection (1) of this section applies (subject to this subsection) to an acquisition by a company of a share in the company; and

"(b) The company is not established under an Act of New Zealand relating to co-operative companies; and

"(c) The company either—

"(i) Cancels the share before the first anniversary of the date of acquisition; or

"(ii) Does not, by the first anniversary of the date of acquisition, transfer a share of the same class either—

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

"(B) To a person associated with the company in a transaction occurring on a recognised exchange, per medium of a broker or some other similar agent independent of the company, where prior to that transaction no arrangement existed between the associate and the company for the associate to acquire the share,—

with each such transfer of a share being taken into account for this purpose only in respect of a single such acquisition of a share,—

then with effect from—

"(d) That cancellation or first anniversary (as the case may be), the available subscribed capital (as defined in subsection (3) of this section) of that class shall be reduced by that amount which would have been deducted had the acquisition been an on-market acquisition occurring on the cancellation or first anniversary to which paragraph (cc) of subsection (1) of this section applied; and

"(e) The time of acquisition, section 394E (1) (ab) and (2) (ab) of this Act shall apply as if the acquisition were an on-market acquisition but item a of the formula in section 394E (1) (ab) were equal to the excess of the amount received by the shareholder from the acquisition over the amount of reduction referred to in paragraph (c) of this subsection, except that the Commissioner shall remit any imputation penalty tax imposed under section 394N of this Act (and any additional tax imposed under section 394N (4) in respect of such imputation penalty tax) which would not have arisen had this paragraph applied only with effect from that cancellation or first anniversary (as the case may be)."

(10) Section 4A of the principal Act is hereby amended—

(a) By omitting from subsection (6) the expression "subsection (1) (c)", and substituting the expression "subsection (1) (ca)":

(b) By omitting from subsection (7) the expression "subsections (1) (c)", and substituting the expression "subsections (1) (ca)":

(c) By repealing subparagraph (ii) of subsection (8) (a), and substituting the following subparagraph:

"(ii) Has otherwise, in the opinion of the Commissioner, made a capital gain, including a capital gain by way of gift; and":

(d) By omitting from subsection (10) the words "private company within the meaning of the Companies Act 1955", and substituting the words "close company":

(e) By omitting from subsection (10) the words "winding up", and substituting the word "liquidation":

(f) By omitting from subsection (11) the expression "subsection (1) (c)", and substituting the expression "subsection (1) (ca)":

(g) By omitting from subsection (11) the words "a profit or gain which is not included in the assessable income of the company for any income year", and substituting the words "capital gain amounts".

(11) Section 4A of the principal Act is hereby further amended by inserting, after subsection (11), the following subsection:

"(11A) For the purposes of subsection (1) (ca) of this section in determining the excess return amount (as defined in subsection (3) of this section) in respect of the liquidation of a company, where and to the extent that—

"(a) The company has derived a capital gain amount (as defined in subsection (2) of this section); and

"(b) On or after the 1st day of October 1988, the capital gain amount was applied in paying up a bonus issue (other than a taxable bonus issue); and

"(c) The bonus issued share remains on issue at the time of the liquidation,—

the capital gain amount shall be treated as still being available for distribution."

(12) Section 5 of the Income Tax Amendment Act (No. 2) 1992 is hereby consequentially amended by repealing subsections (2), (9), (10), and (11) (b).

6. Meaning of term "source deduction payment"—(1) Section 6 of the principal Act is hereby amended by omitting, from each place where it appears, the word "private", and substituting in each place the word "close".

(2) Section 6 of the principal Act is hereby further amended by adding the following subsection:

"(4) In this section, in respect of any time before the 1st day of April 1997, the term 'close company' includes a private company registered under the Companies Act 1955."

7. New sections substituted—(1) The principal Act is hereby amended by repealing sections 7 and 8, and substituting the following sections:

"7. **Defining when a company is under the control of any persons**—(1) For the purposes of this Act, a company shall be deemed to be under the control at any time of the persons—

"(a) The aggregate of whose direct voting interests (as defined in section 8B of this Act) in the company at the time exceeds 50 percent; or

"(b) In any case where at the time a market value circumstance exists in respect of the company, the aggregate of whose direct market value interests (as so defined) in the company at the time exceeds 50 percent; or

"(c) Who have at the time control of the company by any other means whatsoever.

"(2) For the purposes of this section, where any person (referred to in this subsection as the nominee) holds any rights at any time on behalf of or to the order of another person, the rights shall be deemed to be held at the time by the other person, as well as by the nominee, as if the nominee, the other person, and all other such nominees of the other person were at the time a single person.

"8. **Defining when 2 persons are associated persons**—(1) For the purposes of this Act, unless the context otherwise requires, at any time associated persons or persons associated with each other are—

"(a) Two companies where at the time there is a group of persons—

"(i) The aggregate of whose voting interests in each company is equal to or exceeds 50 percent; or

"(ii) In any case where at the time a market value circumstance exists in respect of either company, the aggregate of whose market value interests in each company is equal to or exceeds 50 percent; or

"(iii) Who have control of both companies by any other means whatsoever; or

"(b) A company and any person (other than a company) where at the time—

"(i) The person has a voting interest in the company equal to or exceeding 25 percent; or

"(ii) In any case where at the time a market value circumstance exists in respect of the company, the person has a market value interest in the company equal to or exceeding 25 percent; or

"(c) Two persons who are at the time relatives; or

"(d) A partnership and any person who is—

"(i) At the time a partner in the partnership; or

"(ii) A person associated at the time (under any of the other provisions of this subsection) with a partner in the partnership.

"(2) For the purposes of subsection (1) (a) and (b) of this section, where any person (referred to in this subsection as the nominee) holds any rights at any time—

"(a) On behalf of or to the order of another person; or

"(b) Being a relative at the time of another person,—

the rights shall be deemed to be held at the time by the other person as well as by the nominee, as if the nominee, the other person, and all other such nominees of the other person were at the time a single person."

(2) Section 6 of the Income Tax Amendment Act (No. 3) 1983 is hereby consequentially repealed.

8. Interpretation—voting and market value interests—Section 8B of the principal Act is hereby amended by omitting from the definition of the term "shareholder decision-making rights" the word "winding-up", and substituting the word "liquidation".

9. Commissioner may in certain cases demand special returns, and make special assessments—Section 12 (1) (f) of the principal Act is hereby amended by omitting the words "wound up", and substituting the word "liquidated".

10. Incomes wholly exempt from tax—(1) Section 61 (34) of the principal Act is hereby amended by omitting the words "memorandum, articles of association", and substituting the word "constitution".

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

"(66) Income derived by any company from the disposition of any share in the company, where the acquisition by

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

11. Income and expenditure where financial arrangement redeemed or disposed of—Section 64F (1) (c) (ii) of the principal Act is hereby amended by omitting the words "or by any deed", and substituting the words "or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement".

12. Shareholder-employee and shareholder superannuation contributions, etc.—(1) Section 65A of the principal Act is hereby repealed.

(2) Section 6 of the Income Tax Amendment Act 1989 is hereby consequentially repealed.

13. Profits or gains from land transactions—(1) Section 67 (2) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

"(a) Any 2 companies where there is a group of persons—

"(i) The aggregate of whose voting interests in each company is equal to or exceeds 50 percent; or

"(ii) In any case where a market value circumstance exists in respect of either company, the aggregate of whose market value interests in each company is equal to or exceeds 50 percent; or

"(iii) Who have control of both companies by any other means whatsoever; or

"(b) A company and any person (other than a company) where—

"(i) The person; or

"(ii) Any spouse of the person; or

"(iii) Any infant child of the person; or

"(iv) Any trustee for such spouse or infant child,—

or any 2 or more of them have, when aggregated, a voting interest in the company equal to or exceeding 25 percent or, in any case where a market value circumstance exists in respect of the company, a

market value interest in the company equal to or exceeding 25 percent; or".

(2) Section 67 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

"(3) For the purposes of subsection (2) (a) and (b) of this section, where any person (referred to in this subsection as the nominee) holds, directly or indirectly, any rights at any time on behalf of or to the order of another person, the rights shall be deemed to be held by the other person as well as by the nominee, as if the nominee, the other person, and all other such nominees of the other person were at the time a single person."

(3) Section 11 (1) of the Income Tax Amendment Act (No. 3) 1993 is hereby consequentially repealed.

14. Amounts remitted to be taken into account in computing income—Section 78 (2) (b) of the principal Act is hereby amended by omitting the words ", or by any deed", and substituting the words "or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement".

15. Valuation of trading stock, including livestock—Section 85 (4F) (b) of the principal Act is hereby amended by omitting the words "wound up", and substituting the word "liquidated".

16. Valuation adjustments where company acquires its shares—The principal Act is hereby amended by inserting, after section 85, the following section:

"85A. Where—

"(a) A company acquires, redeems, or otherwise cancels a share in the company (referred to in this section as the cancellation); and

"(b) The cancellation is not an on-market acquisition (as defined in section 4A (2) of this Act); and

"(c) Any profit derived by the shareholder from the cancellation would be assessable income of the shareholder under section 65 (2) (a) or section 65 (2) (e) of this Act or any other provision of this Act (other than section 4 or section 65 (2) (j)); and

"(d) The shareholder continues to hold, after the cancellation, shares of the same class (as defined in section 4A (2) of this Act) as the share,—

then for the purposes of this Act—

"(e) In any case where—

"(i) The whole of the consideration derived by the shareholder is treated as a dividend for the purposes of this Act; and

"(ii) The requirements of subparagraphs (i) to (iii) of section 4A (1) (c) of this Act are not met in respect of the cancellation,—

the shareholder shall be deemed not to have disposed of the share (except for the purposes of determining whether the shareholder has derived a dividend) and an amount equal to the cost to the shareholder of the share shall be fairly divided amongst and added to the cost to the shareholder of the shareholder's remaining shares of the same class when taking into account, under section 85 (2) of this Act, this section, or otherwise, the cost of those remaining shares of the same class at any time after the cancellation; and

"(f) In any case where—

"(i) Paragraph (e) of this subsection does not apply; and

"(ii) The consideration payable by the company for the cancellation is less than the market value of the share at the time at which notice is first given by the company to the shareholder or, in any case where the cancellation is proposed by the shareholder, by the shareholder to the company proposing the cancellation (for any reason other than that the proposal requires the consideration to be equal to the market value of the share at the time of the cancellation),—

section 91 of this Act shall not apply but an amount (being not less than nil) calculated in accordance with the following formula:

$$a - \left(b \times \frac{c}{d} \right)$$

where—

"a is the cost to the shareholder of the share; and

"b is the aggregate cost to the shareholder of all the shareholder's shares of the same class immediately before the cancellation; and

"c is the consideration derived by the shareholder from the company in respect of the cancellation; and

"d is the market value of all the shareholder's shares of the same class immediately before the cancellation,—

shall be—

"(iii) Fairly divided amongst and added to the cost to the shareholder of the shareholder's remaining shares of the same class when taking into account, under section 85 (2) of this Act, this section, or otherwise, the cost of those remaining shares of the same class at any time after the cancellation; and

"(iv) In any case where the shares are not trading stock (as defined in section 85 (1) of this Act) of the shareholder, excluded from the cost of the share acquired, redeemed, or otherwise cancelled when calculating the shareholder's assessable income with respect to the acquisition, redemption, or other cancellation, so that the shareholder is not entitled to any deduction for that amount."

17. Payment of excess salary or wages, etc.—Section 97 (1) (a) of the principal Act is hereby amended by omitting the word "proprietary", and substituting the word "close".

18. Certain deductions not permitted—(1) Section 106 (1) of the principal Act is hereby amended by repealing paragraph (j), and substituting the following paragraph:

"(j) Any expenditure or loss to the extent to which it is of a private or domestic nature:".

(2) The following enactments are hereby consequentially repealed:

(a) Section 16 of the Income Tax Amendment Act 1986:

(b) Section 35 (1) of the Income Tax Amendment Act (No. 5) 1988:

(c) Section 2 (5) (d) of the Income Tax Amendment Act (No. 2) 1990.

19. Gifts of money by companies not closely held—Section 147 of the principal Act is hereby amended—

(a) By repealing subsection (1):

(b) By omitting from subsection (2), in each place where the words appear, the words "public company", and

substituting in each case the words "company (not being a close company)".

20. Contributions to employees' superannuation schemes—(1) Section 150 of the principal Act is hereby amended by repealing subsection (1) (d) and (e), subsection (2), and subsections (3) to (7).

(2) The following enactments are hereby consequentially repealed:

(a) Section 26 (3) and (5) of the Income Tax Amendment Act (No. 2) 1982:

(b) Section 10 (1), (3), (4), (5), (6), and (7) of the Income Tax Amendment Act 1989.

21. Pensions payable to former employees—Section 151 (2) of the principal Act is hereby amended by omitting the word "proprietary", and substituting the word "close".

22. Notional interest on loans made to employees under employee share purchase scheme—(1) Section 166 of the principal Act is hereby amended by repealing subsections (2) and (3).

(2) Section 27 of the Income Tax Amendment Act (No. 3) 1983 is hereby consequentially repealed.

23. Payments by certain dairy companies to rationalisation reserves—(1) Section 167 of the principal Act is hereby repealed.

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

24. Refund from income equalisation reserve account of company on winding up—Section 183 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "wound up", and substituting the word "liquidated":

(b) By omitting the words "winding up" from both subsection (1) and subsection (2), and substituting in each case the word "liquidation".

25. Losses incurred may be set off against future profits—Section 188 (6) of the principal Act is hereby amended by inserting, after the words "Companies Act 1955", the words "or the Companies Act 1993 or the laws of any country or territory other than New Zealand".

26. Excessive remuneration by proprietary company to shareholder, director, or relative—Section 190 of the principal Act is hereby amended by omitting the word "proprietary", and substituting the word "close".

27. Leaving a consolidated group—Section 191J of the principal Act is hereby amended—

(a) By omitting from paragraph (a) of the proviso to subsection (5) the words "wound up", and substituting the word "liquidated":

(b) By omitting from paragraph (b) of that proviso the words "winding up" where they twice occur, and substituting in each case the word "liquidation":

(c) By omitting from subsection (8) the words "wound up", and substituting the word "liquidated":

(d) By omitting from subsection (8) (a) the words "winding up", and substituting the word "liquidation".

28. Special provisions relating to dispositions of property—Section 191N of the principal Act is hereby amended by omitting from both subsection (6) (a) and subsection (9) (e) the words "wound up", and substituting in each case the word "liquidated".

29. New heading and section inserted—The principal Act is hereby amended by inserting, after section 191WC, the following heading and section:

"*Amalgamation*

"191WD. **Amalgamation of companies**—(1) Subject always to the express provisions of this section, this section is intended—

"(a) To specify certain taxation consequences of the amalgamation of companies; and

"(b) In the case of qualifying amalgamations, to permit certain property to be transferred to an amalgamated company on a concessional taxation basis and an amalgamated company to succeed to tax losses and imputation credit account and other credits of amalgamating companies, subject to tests of continuity and commonality of ownership being met; and

"(c) To apply notwithstanding anything to the contrary in section 225 (d) of the Companies Act 1993.

"(2) For the purposes of this section—

" 'Amalgamated company' means the one company which is the result of and continues after an amalgamation, which may be one of the amalgamating companies or a new company:

" 'Amalgamating company' means any company which amalgamates with one or more other companies under an amalgamation:

" 'Amalgamation' means any amalgamation under—

"(a) Part VA or Part VC of the Companies Act 1955; or

"(b) Part XIII or Part XV of the Companies Act 1993; or

"(c) Section 24A of the Co-operative Dairy Companies Act 1949; or

"(d) The law of any country or territory other than New Zealand which is to the same or similar effect,—

whereby 2 or more companies amalgamate and continue as one company:

" 'Attributed foreign loss' has the meaning assigned to that term by section 245A of this Act:

" 'Controlled foreign company tax credit' means a tax credit available for crediting under section 245K (1) of this Act:

" 'Financial arrangement' has the meaning assigned to that term by section 64B (1) of this Act:

" 'Foreign investment fund loss' has the meaning assigned to that term by section 245A of this Act:

" 'Issuer' has the meaning assigned to that term by section 64B (1) of this Act:

" 'Qualifying amalgamation' means any amalgamation where—

"(a) Each of the amalgamating companies and the amalgamated company is, at the time of the amalgamation, resident in New Zealand and is not—

"(i) A company which, pursuant to provisions of arrangements to which effect is given by an Order in Council made under section 294 of this Act, is treated as not being resident in New Zealand for the purpose of the arrangements; or

"(ii) A company which is exempt from income tax (including any local authority that is not a local authority trading enterprise); and

"(b) If the amalgamated company is, immediately after the amalgamation, a qualifying company (as defined in section 393B of this Act), each of the amalgamating companies is a qualifying company; and

"(c) If the amalgamated company is, immediately after the amalgamation, a loss attributing qualifying company (as defined in section 393N of this Act), each of the amalgamating companies is a loss attributing qualifying company; and

"(d) The amalgamating companies and the amalgamated company have not elected, by giving notice in writing to the Commissioner, signed for or on behalf of each company, as part of the notice referred to in subsection (3) of this section, that the amalgamation will not be a qualifying amalgamation:

" 'Revenue account property' means, in respect of any person, property which is trading stock of the person or otherwise property in respect of which any gain derived on disposition would be required to be taken into account (other than only by virtue of section 117 of this Act) in calculating the assessable income of the person:

" 'Trading stock' has the meaning assigned to that term by section 85 (1) of this Act.

"(3) Where an amalgamation occurs, the amalgamated company shall, within 63 working days of the date upon which—

"(a) Documents evidencing the amalgamation are delivered to the Registrar of Companies for registration under Part VA or Part VC of the Companies Act 1955 or Part XIII or Part XV of the Companies Act 1993; or

"(b) In the case of any amalgamation under section 24A of the Co-operative Dairy Companies Act 1949, the extraordinary resolution referred to in subsection (3) (g) of that section is passed; or

"(c) In the case of any amalgamation occurring under foreign law, the equivalent procedure occurs under foreign law,—

give notice in writing to the Commissioner, in such form as the Commissioner may approve, detailing—

"(d) The name and tax file number (if any) of each amalgamating company and the amalgamated company; and

"(e) The date upon which the amalgamation has effect; and

"(f) In any case where the amalgamated company has a non-standard balance date, the non-standard balance date; and

"(g) Such other information as the Commissioner may require.

"(4) Where—

"(a) An amalgamated company is one of the amalgamating companies; and

"(b) Any shares in that amalgamating company held by another amalgamating company are cancelled on an amalgamation,—

then for the purposes of this Act in calculating the available subscribed capital (as defined in section 4A (3) of this Act) of shares of the same class (as defined in section 4A (2) of this Act) remaining on issue after the amalgamation, the amount of item c in the definition of the term 'available subscribed capital' in section 4A (3) of this Act shall be increased by the amount calculated in accordance with the following formula:

$$a \times b$$

where—

"a is the number of shares cancelled; and

"b is the available subscribed capital per share of each such share immediately before the amalgamation.

"(5) Where an amalgamating company ceases to exist on a qualifying amalgamation,—

"(a) The amalgamated company shall be deemed, for the purposes of this Act, not to derive a dividend from the amalgamating company by virtue of—

"(i) Acquisition by the amalgamated company of any property of the amalgamating company; or

"(ii) Relief of the amalgamated company from any obligation owed to the amalgamating company; and

"(b) If the amalgamating company has capital gain amounts (as defined in section 4A (2) of this Act) available for distribution at the time of the amalgamation and which are not distributed to shareholders (other than the amalgamated company) in the amalgamating company in the course of the amalgamation, then for the purposes of this Act in calculating the excess return amount (as defined in section 4A (3) of this Act) of shares in the amalgamated company, the amalgamated company shall be deemed to derive, at the time of the

amalgamation, capital gain amounts equal to those capital gain amounts of the amalgamating company.

"(6) Where shares in any amalgamating company are—

"(a) Held by another amalgamating company; and

"(b) Cancelled on the amalgamation,—

then for the purposes of this Act, the shares shall be deemed to have been disposed of by the shareholder amalgamating company immediately before the amalgamation for a consideration equal to—

"(c) In the case of any shares held as trading stock by the shareholder amalgamating company at the beginning of the income year in which the amalgamation takes place, at the election of the amalgamated company—

"(i) The cost; or

"(ii) The market selling value; or

"(iii) The replacement cost,—

of the shares at the time of the amalgamation; and

"(d) In any other case, the cost to the shareholder amalgamating company of the shares.

"(7) Where any amalgamating company ceases to exist on an amalgamation, the amalgamated company shall, in accordance with section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993,—

"(a) Comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers and privileges of, the amalgamating company under the Inland Revenue Acts with respect to the income year in which the amalgamation occurs and all preceding income years; and

"(b) In particular but without limitation, make a return of income in respect of the amalgamating company and the income year in which the amalgamation takes place.

"(8) Where—

"(a) Any amalgamating company ceases to exist on a qualifying amalgamation; and

"(b) The amalgamated company in any period—

"(i) Writes off as a bad debt any debt acquired from the amalgamating company at the time of the amalgamation; or

"(ii) Incurs any expenditure, loss, or depreciation by virtue of anything done or not done by the amalgamating company; and

"(c) The amount of the bad debt, expenditure, loss, or depreciation would not be deductible in calculating the assessable income of the amalgamated company but for this subsection; and

"(d) The amount would have been deductible in calculating the assessable income of the amalgamating company but for the amalgamation,—

the amount shall be deductible in calculating the assessable income of the amalgamated company for the period.

"(9) Where—

"(a) Any amalgamating company ceases to exist on a qualifying amalgamation; and

"(b) Any person has borrowed money to acquire shares in the amalgamating company; and

"(c) Interest payable in any period after the amalgamation by the person in respect of the money borrowed would have been deductible under section 106 (1) (h) (ii) of this Act but for the amalgamation (including where the requirements of the second proviso to section 106 (1) (h) (ii) of this Act are not satisfied but would have been satisfied but for the amalgamation),—

the interest shall be deductible in calculating the assessable income of the person for the period.

"(10) Where any amalgamating company ceases to exist on an amalgamation during any income year,—

"(a) The unexpired portion of any amount of accrual expenditure (within the meaning of section 104A of this Act) of the amalgamating company for the income year shall be deemed to be the unexpired portion of an amount of accrual expenditure of the amalgamated company for the income year, and not of the amalgamating company; and

"(b) Any profit or gain derived by the amalgamated company at any time after the amalgamation which—

"(i) Is derived by virtue of anything done or not done by the amalgamating company; and

"(ii) Would have been assessable income of the amalgamating company but for the amalgamation,—

shall be assessable income at the time of the amalgamated company.

"(11) Where any amalgamated company, on an amalgamation other than a qualifying amalgamation, acquires

any property of an amalgamating company, or succeeds to any obligations of an amalgamating company in respect of a financial arrangement of which the amalgamating company was the issuer, for the purposes of this Act,—

"(a) The amalgamating company shall be treated as having disposed of the property or relieved itself of the obligations immediately before the amalgamation; and

"(b) The amalgamated company shall be treated as having acquired the property or assumed the obligations immediately after the amalgamation,—

for a consideration equal to the market value of the property, or market price for assuming such obligations, at the time.

"(12) Where any amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company, then for the purposes of this Act with effect from the date of acquisition and except where otherwise provided in the succeeding subsections of this section,—

"(a) The amalgamated company shall be deemed to have acquired the property on the date on which it was acquired by the amalgamating company; and

"(b) The amalgamated company shall, where the amalgamating company entered into a binding contract to purchase or construct any depreciable property before the 16th day of December 1991, be deemed to have entered into that binding contract on the same date as the amalgamating company; and

"(c) The amalgamated company shall be deemed to have acquired the property from the amalgamating company for consideration equal to,—

"(i) Except where the property forms all or part of a pool of property that is depreciated by the amalgamating company in accordance with section 108J of this Act, the aggregate of the following amounts of expenditure incurred by the amalgamating company in respect of the property before the amalgamation, being in every case expenditure in respect of which no deduction has been allowed under this Act (other than by way of a deduction in respect of the depreciation or amortisation of the acquisition cost of the property under any of sections 108, 137, and 142 of this Act or any other amortisation provisions of this Act):

"(A) The original purchase price of the property; and

"(B) Any expenditure incurred in purchasing or improving the property; and

"(C) Any expenditure incurred in securing or improving the legal rights of the amalgamating company in relation to the property:

"(ii) Where the property forms the whole of a pool of property that is depreciated by the amalgamating company in accordance with section 108J of this Act, the adjusted tax value (within the meaning of sections 107A and 108J of this Act) of the pool immediately before the amalgamation:

"(iii) Where the property forms part only of any such pool, the lesser of—

"(A) The market value of the property acquired by the amalgamated company; and

"(B) The adjusted tax value (within the meaning of sections 107A and 108J of this Act) of the whole of the pool immediately before the amalgamation.

"(13) Where an amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company which is trading stock for both the amalgamating company and the amalgamated company, for the purposes of this Act the amalgamating company shall be deemed to have disposed of the trading stock and the amalgamated company shall be deemed to have acquired the trading stock for a consideration equal to, at the option of the amalgamated company, the cost price, market selling value, or replacement cost of the trading stock at the time of the amalgamation.

"(14) Where an amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company which is revenue account property of the amalgamating company and is not revenue account property of the amalgamated company, for the purposes of this Act the amalgamating company shall be deemed to have disposed of the property and the amalgamated company shall be deemed to have acquired the property at the time of the amalgamation for a consideration equal to its market value at that time.

"(15) Where an amalgamated company, on a qualifying amalgamation, acquires property from an amalgamating company which was depreciating property (other than pooled

property) of the amalgamating company, then for the purposes of sections 108, 117, 137, 142, and any other amortisation provisions of this Act in respect of the calculation of the assessable income of the amalgamated company, the amalgamated company shall be deemed to have been allowed (as if in the calculating of that assessable income derived by the amalgamated company) deductions for depreciation or under section 137 or section 142 of this Act or any other amortisation provision of the same amounts as, in respect of or in relation to the property, have been allowed or deducted in calculating the assessable income derived by the amalgamating company.

"(16) Where and to the extent that in any income year—

"(a) An amalgamating company ceases to exist on a qualifying amalgamation; and

"(b) As a result, the amalgamated company acquires any land or business of the amalgamating company; and

"(c) But for the amalgamation, the amalgamating company would have been entitled to a deduction under any of sections 128A to 128C of this Act in respect of the land or business; and

"(d) After the amalgamation and for the remainder of the income year—

"(i) The land is held; or

"(ii) The business is carried on,—

by the amalgamated company,—

the deduction shall be allowed in calculating the assessable income of the amalgamated company for the income year.

"(17) Where any amalgamated company acquires during an income year, on a qualifying amalgamation, a financial arrangement of an amalgamating company to which sections 64B to 64L of this Act apply, then, notwithstanding section 64J of this Act, for the purposes of this Act—

"(a) In any case where—

"(i) The method of calculating the income or expenditure in respect of the financial arrangement under section 64C of this Act remains the same notwithstanding the amalgamation; and

"(ii) The amalgamated company so elects by filing accordingly its return of income for the income year; and

"(iii) The amalgamating company and the amalgamated company were members of the same wholly-owned group of companies at all times in the income year before the amalgamation; and

"(iv) The amalgamating company is not entitled, under section 188 of this Act, to claim to carry forward to the income year and deduct or set off any loss incurred by it in any preceding income year (except where the whole of such loss may be deducted from the assessable income of the amalgamated company for the income year under subsection (19) of this section),—

with respect to the income year in which the amalgamation takes place and each subsequent income year—

"(v) The amalgamating company shall be treated as if it had never held the financial arrangement before the amalgamation, with the result that section 64F of this Act does not apply to the amalgamating company with respect to the disposition by the amalgamating company of the financial arrangement; and

"(vi) The amalgamated company shall be treated as if it had—

"(A) Acquired the financial arrangement at the same time and for the same acquisition price as the amalgamating company; and

"(B) Incurred all other expenditure and derived all gains incurred or derived by the amalgamating company with respect to the financial arrangement before the amalgamation; and

"(C) Included in its returns of income under this Act the same amounts of income and expenditure with respect to the financial arrangement as were included by the amalgamating company; and

"(b) In any other case where the method of calculating income or expenditure in respect of the financial arrangement under section 64C of this Act remains the same notwithstanding the amalgamation, the consideration for which the disposition by the amalgamating company has taken place shall be deemed to be equal to such amount as will result in the base price adjustment in relation to the amalgamating company calculated in respect of the disposition under section 64F of this Act being such amount (whether negative, positive, or a nil amount) as will result effectively in a fair and reasonable

allocation, having regard to the tenor of section 64C of this Act, between the amalgamating company and the amalgamated company, of the income or expenditure which would have been deemed to be derived or incurred by the amalgamating company in respect of the financial arrangement in the income year in which the amalgamation takes place had the amalgamation not taken place; and

"(c) In any other case, the consideration for which the disposition takes place shall be deemed to be equal to the market value of the financial arrangement at the date of amalgamation.

"(18) Where any amalgamated company succeeds during an income year, on a qualifying amalgamation, to the obligations of an amalgamating company in respect of a financial arrangement to which sections 64B to 64L of this Act apply of which the amalgamating company was the issuer, then, notwithstanding section 64J of this Act, for the purposes of this Act—

"(a) In any case where—

"(i) The method of calculating expenditure or income in respect of the financial arrangement under section 64C of this Act remains the same notwithstanding the amalgamation; and

"(ii) The amalgamated company so elects by filing accordingly its return of income for the income year; and

"(iii) The amalgamating company and the amalgamated company were members of the same wholly-owned group of companies at all times in the income year before the amalgamation; and

"(iv) The amalgamating company is not entitled, under section 188 of this Act, to claim to carry forward to the income year and deduct or set off any loss incurred by it in any preceding income year (except where the whole of such loss may be deducted from the assessable income of the amalgamated company for the income year under subsection (19) of this section),—

then with respect to the income year in which the amalgamation takes place and each subsequent income year—

"(v) The amalgamating company shall be treated as if it had never been the issuer of the financial arrangement prior to the amalgamation, with the

result that section 64F of this Act does not apply to the amalgamating company with respect to the succession; and

"(vi) The amalgamated company shall be treated as if it had—

"(A) Issued the financial arrangement at the same time and for the same acquisition price as the amalgamating company; and

"(B) Incurred all expenditure and derived all other gains incurred or derived by the amalgamating company with respect to the financial arrangement before the succession; and

"(C) Included in its returns of income under this Act the same amounts of expenditure and income with respect to the financial arrangement as were included by the amalgamating company; and

"(b) In any other case where the method of calculating income or expenditure in respect of the financial arrangement under section 64C of this Act remains the same notwithstanding the amalgamation, the consideration for which the succession has taken place shall be deemed to be equal to such amount as will result in the base price adjustment in relation to the amalgamating company calculated in respect of the succession under section 64F of this Act being such amount (whether negative, positive, or a nil amount) as will result effectively in a fair and reasonable allocation, having regard to the tenor of section 64C of this Act, between the amalgamating company and the amalgamated company, of the expenditure or income which would have been deemed to be incurred or derived by the amalgamating company in respect of the financial arrangement in the income year in which the amalgamation takes place had the amalgamation not taken place; and

"(c) In any other case, the consideration for which the succession takes place shall be deemed to be equal to the market price for which an assumption of such obligations would have taken place at the date of amalgamation.

"(19) Where—

"(a) Any amalgamating company ceases to exist on a qualifying amalgamation; and

"(b) The amalgamating company, in respect of an income year, has incurred a loss, an attributed foreign loss, or a foreign investment fund loss, or has a controlled foreign company tax credit; and

"(c) The loss has not, under any of sections 188, 191A, 245M, 245N, 245RJ, and 245RK of this Act, been deducted from or set off against assessable income derived by the amalgamating company or any other company in any period prior to the amalgamation (including any part of the income year in which the amalgamation takes place) or the tax credit has not, under section 245K or section 245L of this Act, been credited against the income tax payable by any such company in respect of any such period; and

"(d) Under section 191A, section 245N, or section 245RK of this Act, the loss could have been deducted from, or set off against, assessable income (if there was sufficient such income) derived, in that part of the income year of the relevant company which ends with the date of the amalgamation, by each of the amalgamated company (unless it is a company incorporated only on the amalgamation) and any company which has, at any time before or during the income year in respect of which the loss is deducted or set off under this subsection, amalgamated with the amalgamated company or, under section 245L of this Act, the credit could have been credited against income tax payable (if any) in respect of such period by such companies,—

the loss shall be treated as if incurred by the amalgamated company and may be deducted from or set off against, under section 188, section 245M, or section 245RJ of this Act, or the tax credit shall be treated as a tax credit of the amalgamated company and may be credited, under section 245K of this Act, against income tax payable in respect of, assessable income derived by the amalgamated company in periods commencing on or after the amalgamation, but applying section 188 of this Act (and any other provisions of this Act the application of which is dependent upon the application of that provision) as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of

shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

"(20) Where losses incurred by or tax credits of 2 or more amalgamating companies are permitted under subsection (19) of this section to be deducted from, or set off against income tax payable in respect of, the assessable income derived in an income year by the amalgamated company, those losses or tax credits shall—

"(a) If incurred, or resulting from tax payable, in 2 or more income years, be deducted in the same order as incurred or arising; and

"(b) If incurred, or resulting from tax payable, in the same income year, be deducted or credited, so far as the assessable income or tax extends,—

"(i) In the order elected by the amalgamated company by notice to the Commissioner in such form as the Commissioner may allow; or

"(ii) If no such election is made, on a pro rata basis.

"(21) Where—

"(a) An amalgamated company, in respect of an income year prior to the year in which the amalgamation takes place, has incurred a loss, an attributed foreign loss, or a foreign investment fund loss, or has a controlled foreign company tax credit; and

"(b) The loss has not, under any of sections 188, 191A, 245M, 245N, 245RJ, and 245RK of this Act, been deducted from or set off against assessable income derived by the amalgamated company or any other company in any period prior to the amalgamation (including any part of the income year in which the amalgamation takes place) or the tax credit has not, under section 245K or section 245L of this Act, been credited against the income tax payable by any such company in respect of any such period,—

the amalgamated company shall be entitled to carry forward the loss or tax credit into the income year in which the amalgamation takes place or any subsequent income year only if—

"(c) The amalgamated company satisfies the relevant requirements of section 188, section 245M, section 245K, or section 245RJ of this Act; and

"(d) Under section 191A, section 245N, or section 245RK of this Act, the loss could have been deducted from, or

set off against, assessable income (if there was sufficient such income) derived, in that part of the income year of the relevant company which ends with the date of the amalgamation, by each amalgamating company or, under section 245L of this Act, the tax credit could have been credited against income tax payable (if any) in respect of such period by each amalgamating company.

"(22) Where an amalgamated company is deemed under subsection (19) of this section to have—

"(a) Incurred a loss, attributed foreign loss, or foreign investment fund loss; or

"(b) A controlled foreign company tax credit,—

in respect of an amalgamating company which ceased to exist on the amalgamation, for the purposes of determining whether the loss may be deducted from or set off against, under any of sections 191A, 245N, and 245RK of this Act, or whether the tax credit may be credited, under section 245L of this Act, against income tax payable in respect of, assessable income derived by another company, the relevant section of this Act shall be applied as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

"(23) Where a company (referred to in this subsection as the loss company) has—

"(a) Incurred a loss, attributed foreign loss, or foreign investment fund loss; or

"(b) A controlled foreign company tax credit,—

in respect of a period which falls wholly or partly before an amalgamation, the loss may be deducted from or set off against, under section 191A, section 245N, or section 245RK of this Act, or the tax credit may be credited under section 245L of this Act against income tax payable in respect of, assessable income derived by the amalgamated company if and only if the loss can be so deducted or set off, or the tax credit can be so credited, by applying the commonality of ownership and other tests contained in the relevant provision of this Act severally to the loss company and the amalgamated company in respect of each company which has in the course of or before the amalgamation amalgamated with the amalgamated company, as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was

instead that amalgamating company with the same holders of shares and options over shares each holding the same number and class of shares and options over shares as they held at the time in the amalgamating company.

"(24) Where any amalgamating company ceases to exist on an amalgamation,—

"(a) If the amalgamating company pays fringe benefit tax on a quarterly basis under section 336T of this Act and the amalgamation occurs during a quarter, section 336s (3) of this Act shall apply with respect to the amalgamating company and the quarter as if the figure of $450 in that provision were reduced by the amount calculated by multiplying the figure by the following fraction:

$$\frac{a}{b}$$

where—

"a is the number of days in the quarter after the amalgamation occurs; and

"b is the number of days in the quarter; and

"(b) If an amalgamated company pays fringe benefit tax on a quarterly basis under section 336T of this Act, the amalgamation occurs during a quarter, and the amalgamated company is a new company established on the amalgamation, section 336s (3) of this Act shall apply with respect to the amalgamated company and the quarter as if the figure of $450 in that provision were reduced by the amount calculated by multiplying that figure by the following fraction:

$$\frac{a}{b}$$

where—

"a is the number of days in the quarter before the amalgamation occurs; and

"b is the number of days in the quarter; and

"(c) Paragraphs (a) and (b) of this subsection shall apply to an amalgamating company or an amalgamated company which pays fringe benefit tax on an annual basis under section 336TA of this Act as if any reference in those paragraphs—

"(i) To section 336s (3) were a reference to section 336s (4); and

"(ii) To a quarter were a reference to a year; and

"(iii) To the figure of $450 were to the figure of $1800; and

"(d) Sections 336TA (2) (a), 336TB (2) (a), and 353 (1) (ac) of this Act shall apply from the time of the amalgamation as if gross tax deductions (as defined in section 353 (6) of this Act) and specified superannuation contribution withholding tax deductions payable by the amalgamating company in the year preceding the year in which the amalgamation takes place were payable by the amalgamated company.

"(25) Where any amalgamating company ceases to exist on an amalgamation, the residual income tax of the amalgamated company in the income year preceding the income year in which the amalgamation takes place shall be deemed, for the purposes of Part XII of this Act (but only with respect to instalments of provisional tax payable after the amalgamation), to be equal to the amount which would have been such residual income tax had the amalgamating company and the amalgamated company always been one company.

"(26) Where any amalgamating company ceases to exist upon a qualifying amalgamation,—

"(a) If, immediately before the amalgamation, a credit or debit exists, determined by applying the procedure set out in section 394E (4), section 394ZW (4), or section 394ZZP (6) of this Act, in the amalgamating company's imputation credit account (as defined in section 394A of this Act), dividend withholding payment account (as so defined), branch equivalent tax account (as so defined) or policyholder credit account (as so defined), the credit or debit shall be treated with effect from the time of the amalgamation as a credit or debit in the equivalent account of the amalgamated company (or, if the amalgamated company does not have an equivalent account and except in the case of a branch equivalent tax account credit or debit, in its imputation credit account) and not as a credit or debit in the relevant account of the amalgamating company but applying sections 394E (1) (g), 394ZW (1) (f), and 394ZZP (1) (e) and (3) (d) of this Act as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the amalgamating

company with the same holders of shares and options over shares as the amalgamating company each holding the same number and class of shares and options over shares as they held in the amalgamating company; and

"(b) Any credit (not being a credit arising under section 394ZZP (1) (e) of this Act) or debit (not being a debit arising under section 394E (1) (g), section 394ZW (1) (f), or section 394ZZP (3) (d) of this Act) would have arisen, but for the amalgamation, to be recorded in the imputation credit account, dividend withholding payment account, or branch equivalent tax account of the amalgamating company on a date after the amalgamation, the credit or debit shall instead arise to be recorded in the equivalent account of the amalgamated company (or, if the amalgamated company does not have an equivalent account and except in the case of a branch equivalent tax account credit or debit, its imputation credit account); and

"(c) Sections 394M and 394ZO of this Act shall apply with effect from the time of the amalgamation, with any necessary modifications, in respect of any tax paid by the amalgamating company as if it and the amalgamated company were a single company.

"(27) Where a consolidated group ceases to exist on a qualifying amalgamation which involves all members of the consolidated group amalgamating (whether or not also amalgamating with any company outside the group)—

"(a) If, immediately before the amalgamation, a credit or debit exists, determined by applying the procedure set out in section 394E (4), section 394ZW (4), or section 394ZZP (6) of this Act, in the consolidated group's imputation credit account (as defined in section 394A of this Act), dividend withholding payment account (as so defined), branch equivalent tax account (as so defined) or policyholder credit account (as so defined), the credit or debit shall be treated with effect from the time of the amalgamation as a credit or debit in the equivalent account of the amalgamated company (or, if the amalgamated company does not have an equivalent account and except in the case of a branch equivalent tax account credit or debit, in its imputation credit account) and not as a credit or

debit in the relevant account of the consolidated group but applying sections 394E (1) (g), 394ZW (1) (f), and 394ZZP (1) (e) and (3) (d) of this Act as if, with respect to all times prior to the amalgamation, the amalgamated company did not separately exist and was instead the consolidated group with the same holders of shares and options over shares as the consolidated group each holding the same number and class of shares and options over shares as they held in the consolidated group; and

"(b) Any credit or debit (not being a debit arising under section 191SB (1) (h), section 191UB (1) (i), or section 191VA (4) of this Act) would have arisen, but for the amalgamation, to be recorded in the imputation credit account, dividend withholding payment account, or branch equivalent tax account of the consolidated group on a date after the amalgamation, the credit or debit shall instead arise to be recorded in the equivalent account of the amalgamated company (or, if the amalgamated company does not have an equivalent account and except in the case of a branch equivalent tax account credit or debit, its imputation credit account); and

"(c) Sections 394M and 394ZO of this Act shall apply with effect from the time of the amalgamation, with any necessary modifications, in respect of any tax paid by the consolidated group as if it and the amalgamated company were a single company."

30. Deduction for dividends paid on certain preference shares—Section 194 of the principal Act is hereby amended—

(a) By omitting from subsection (2) the words "private company (as defined in section 2 of the Companies Act 1955)", and substituting the words "close company":

(b) By omitting from subsection (5) the words "nominal value", and substituting the words "available subscribed capital per share":

(c) By omitting from subsection (5) the words "ordinary paid-up capital", and substituting the words "available subscribed capital per share of all the ordinary shares".

31. Interest on debentures issued in substitution for shares—Section 195 (2) of the principal Act is hereby amended—

(a) By omitting the words "nominal value or to the paid-up value", and substituting the words "available subscribed capital per share":

(b) By omitting the words "wound up", and substituting the word "liquidated".

32. Distribution of trading stock to shareholders of company—Section 197 (2) of the principal Act is hereby amended by omitting the words "winding up", and substituting the word "liquidation".

33. Primary producer co-operative companies—Section 197G (5) of the principal Act is hereby amended—

(a) By omitting from both paragraph (a) and paragraph (b) the words "paid-up value", and substituting in each case the words "available subscribed capital per share":

(b) By omitting the words "winding up", and substituting the word "liquidation".

34. Co-operative dairy, milk marketing, and pig marketing companies—Section 197H (7) (a) of the principal Act is hereby amended—

(a) By omitting the words "winding up", and substituting the word "liquidation":

(b) By omitting the words "paid-up value", and substituting the words "available subscribed capital per share".

35. Non-resident may elect to be treated as resident—Section 204M (3) of the principal Act is hereby amended by omitting the word "allotted", and substituting the word "issued".

36. Special partnerships—Section 211B (10) (b) of the principal Act is hereby amended by omitting the words ", or by any deed", and substituting the words "or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement".

37. Interpretation—petroleum mining—Section 214D (1) of the principal Act is hereby amended by omitting the words "and with the requirements of the Companies Act 1955" from both places where those words appear.

38. Associated persons—Section 214E (1) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

"(a) Any 2 companies where there is a group of persons—

"(i) The aggregate of whose voting interests in each company is equal to or exceeds 50 percent; or

"(ii) In any case where a market value circumstance exists in respect of either company, the aggregate of whose market value interests in each company is equal to or exceeds 50 percent; or

"(iii) Who have control of both companies by any other means whatsoever; or

"(b) A company and any person (other than a company) where—

"(i) The person has a voting interest in the company equal to or exceeding 50 percent; or

"(ii) In any case where a market value circumstance exists in respect of the company, the person has a market value interest in the company equal to or exceeding 50 percent; or".

39. Profit or gain from sale of mining shares by companies—Section 218 of the principal Act is hereby amended—

(a) By omitting from subsection (3) the word "allotted", and substituting the word "issued":

(b) By omitting from subsection (9) the words "winding up" from both places where those words appear, and substituting in each case the word "liquidation":

(c) By omitting from subsection (10) the word "allotted", and substituting the word "issued".

40. Interpretation—trusts—Section 226 (1) of the principal Act is hereby amended—

(a) By repealing the definition of the term "arrangement":

(b) By omitting from the definition of the term "disposition of property" the word "allotment", and substituting the word "issue".

41. Interpretation—Maori authorities—Section 234 (3) of the principal Act is hereby amended by inserting in the proviso, after the words "or winding up", the words "or liquidation".

42. Interpretation—attributed foreign income—Section 245A (1) of the principal Act is hereby amended by omitting from the definition of the term "accounting period" the words "winding up", and substituting the word "liquidation".

43. Definition of term "associated persons"—(1) Section 245B (a) of the principal Act is hereby amended by repealing subparagraphs (i) and (ii), and substituting the following subparagraph:

"(i) Any group of persons—

"(A) Has voting interests in each of those companies totalling in aggregate 50 percent or more; or

"(B) In any case where a market value circumstance exists in respect of either company, has market value interests in each of those companies totalling in aggregate 50 percent or more; or

"(C) Has control of each of those companies by any other means whatsoever; or".

(2) Section 245B (h) (ii) of the principal Act is hereby amended by omitting the words "25 percent or more of the paid-up capital of", and substituting the words "a direct voting interest (as defined in section 8B of this Act), or, where a market value circumstance exists in respect of the settlor, a direct market value interest (as so defined), of 25 percent or more in".

(3) Section 245B (i) (ii) of the principal Act is hereby amended by omitting the words "25 percent or more of the paid-up capital of", and substituting the words "a direct voting interest (as defined in section 8B of this Act), or, where a market value circumstance exists in respect of the other person, a direct market value interest (as so defined), of 25 percent or more in".

44. Calculation of control interest—(1) Section 245C (4) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraph:

"(a) The percentage of the total shares (measured by reference to the aggregate of their available subscribed capital per share) of the foreign company:".

(2) Section 245C (4) of the principal Act is hereby further amended by omitting from paragraph (e) the words "winding up", and substituting the word "liquidation".

45. Calculation of income interest—(1) Section 245D (2) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraph:

"(a) The percentage of the total shares (measured by reference to the aggregate of their available subscribed capital per share) of the foreign company:".

(2) Section 245D (2) of the principal Act is hereby further amended by omitting from paragraph (e) the words "winding up", and substituting the word "liquidation".

46. Variation in control or income interests—Section 245E (1) of the principal Act is hereby amended by repealing paragraphs (a) and (b) of the definition of the term "foreign company aggregates", and substituting the following paragraph:

"(a) The available subscribed capital per share of shares in the foreign company:".

47. Calculation and attribution of controlled foreign company repatriation—Section 245GA (13) of the principal Act is hereby amended by omitting all the words in item b of the formula that precede paragraph (c) of that item, and substituting the following words:

"b is the available subscribed capital of the controlled foreign company at the end of the accounting period, not being available subscribed capital resulting from—".

48. Branch equivalent income calculation—Section 245J (12) of the principal Act is hereby repealed.

49. Liability for tax payable by company left with insufficient assets—(1) Section 276 (1) of the principal Act is hereby amended by omitting from the definition of the term "director" the expression "Companies Act 1955", and substituting the expression "Companies Act 1993".

(2) Section 276 of the principal Act is hereby further amended—

(a) By omitting from subsection (8) the word "winding-up", and substituting the word "liquidation":

(b) By omitting the words "wound up" from each place in subsections (8) and (10) where those words appear, and substituting in each case the word "liquidated".

50. New interpretation provision in relation to non-resident withholding tax—Section 309 (2) (a) (ii) of the principal Act is hereby amended—

(a) By omitting the expression "section 4A (1) (c)", and substituting the expression "section 4A (1) (ca)":

(b) By omitting the words "winding up" in the 2 places where those words appear, and substituting in each case the word "liquidation".

51. Deduction of resident withholding tax—(1) Section 327C (1) of the principal Act is hereby amended by omitting from paragraph (c) the words "taxable bonus issue", and substituting the words "bonus issue in lieu".

(2) Section 327C (1) of the principal Act is hereby further amended by repealing paragraph (d), and substituting the following paragraph:

"(d) To the extent to which that payment consists of dividends being a bonus issue in lieu, the amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

"a is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to this Act; and

"b is the amount of the money or money's worth offered as an alternative to the bonus issue (before the deduction of resident withholding tax); and

"c is—

"(A) In the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or

"(B) In the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend withholding payment credit attached to the dividend:".

52. Records to be kept—Section 327P (6) (b) (iii) of the principal Act is hereby amended by omitting the words "wound-up and dissolved", and substituting the word "liquidated".

53. Interpretation—fringe benefit tax—Section 336N (1) of the principal Act is hereby amended—

(a) By omitting from the definition of the term "shareholder-employee" the words "private company (as defined in section 2 of the Companies Act 1955)", and substituting the words "close company":

(b) By omitting from paragraph (a) of that definition the word "private".

54. Payment of fringe benefit tax on income year basis in respect of shareholder-employees—Section 336TB (1) of the principal Act is hereby amended by omitting the words "private company as defined in section 2 of the Companies Act 1955", and substituting the words "close company".

55. Tax deductions to be credited against tax assessed—Section 362 (2) of the principal Act is hereby amended by omitting the words "private company within the meaning of the Companies Act 1955", and substituting the words "close company".

56. Recovery of tax deductions from employers—Section 365 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

"(b) Where the employer is a company, upon the liquidation of the company, the amount of the tax deduction shall have the ranking provided for in the Seventh Schedule to the Companies Act 1993 (whether or not the company has been incorporated or registered under that Act); and

"(c) Where the employer is a company, upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company, or upon possession being taken on behalf of the debenture holder of the property, the amount of the tax deduction shall have the ranking provided for in the Seventh Schedule to the Companies Act 1993 (whether or not the company has been incorporated or registered under that Act), as if the receiver were a liquidator."

57. Unpaid tax deductions, etc., to constitute charge on employer's property—Section 367 (1) of the principal Act is

hereby amended by inserted in paragraph (c), after the words "Companies Act 1955", the words "(including that Part IV as applied, where appropriate, by the Companies (Registration of Charges) Act 1993)".

58. Determination of assessable income—Section 374B (1) (g) of the principal Act is hereby amended by omitting the words "private company (as defined in section 2 of the Companies Act 1955)", and substituting the words "close company".

59. Guaranteed minimum family income credit of tax—Section 374E (1) of the principal Act is hereby amended by omitting from paragraph (c) of the definition of the term "employment" the words "private company (as defined in section 2 of the Companies Act 1955)", and substituting the words "close company".

60. Qualifying company regime—Section 393 of the principal Act is hereby amended by omitting the words "closely held".

61. Period of grace for new election—Section 393F (3) of the principal Act is hereby amended by omitting the expression "allotment,".

62. Taxation on election to become qualifying company—Section 393K (2) of the principal Act is hereby amended—

(a) By omitting the words "wound up", and substituting the word "liquidated":

(b) By repealing paragraph (iv) of item a of the formula, and substituting the following paragraph:

"(iv) Paragraph (i) of item j of the formula in the definition of the term 'transitional capital amount' in section 4A (3) of this Act were repealed; and".

63. Dividends from qualifying company—Section 393M (1) (a) of the principal Act is hereby amended by repealing subparagraph (ii), and substituting the following subparagraph:

"(ii) The amount of the dividend which would not be a dividend if paragraph (i) of item j of the formula in the definition of the term 'transitional capital amount' in section 4A (3) of this Act were repealed,—".

64. Loss attributing qualifying companies—Section 393N (b) (ii) of the principal Act is hereby amended by repealing subsubparagraphs (B), (C), and (D), and substituting the following subsubparagraph:

"(B) Distributions of assets of the company on any acquisition, redemption, or other cancellation by the company of its shares or other reduction in or return of share capital of the company, whether on its liquidation or otherwise—".

65. Revocation of loss attribution elections, and new elections—Section 393O (2) of the principal Act is hereby amended by omitting the words "or allotment".

66. Interpretation—full imputation—Section 394A (1) of the principal Act is hereby amended by omitting from the definition of the term "paid" the word "allotment", and substituting the word "issue".

67. Debits arising to imputation credit account—(1) Section 394E (1) of the principal Act is hereby amended by inserting, after paragraph (aa), the following paragraph:

"(ab) In the case of any on-market acquisition (as defined in section 4A (2) of this Act) by the company of a share in the company, the amount (not being less than nil) calculated in accordance with the following formula:

$$a \times \frac{b}{1 - b}$$

where—

"a is the amount distributed upon the on-market acquisition to the extent that it exceeds the available subscribed capital per share cancelled (as defined in section 4A (3) of this Act); and

"b is the rate of resident withholding tax, expressed as a percentage, stated in clause 2 of the Nineteenth Schedule to this Act and applying at the time the acquisition occurs:".

(2) Section 394E of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

"(1A) Where—

"(a) A share in a company is acquired by any person (referred to in this subsection as the associated person) associated with the company; and

"(b) The acquisition would have been an on-market acquisition (as defined in section 4A (2) of this Act) if the associated person had been the company; and

"(c) In the opinion of the Commissioner, the acquisition occurs under an arrangement between the company and the associated person for the associated person to make the acquisition in lieu of the company,—

then for the purposes of subsections (1) (ab) and (2) (ab) of this section and of paragraph (iii) of item c of the definition of the term 'available subscribed capital' in section 4A (3) of this Act, the acquisition will be deemed to be an on-market acquisition by the company."

(3) Section 394E (2) of the principal Act is hereby amended by inserting, after paragraph (aa), the following paragraph:

"(ab) In the case of a debit referred to in paragraph (ab) of that subsection, on the date the acquisition occurs:".

68. Limits on refunds of tax—Section 394M (4) of the principal Act is hereby amended by omitting the words "wound up", and substituting the word "liquidated".

69. Refund for overpayment and to company in loss—Section 394ZO (3A) (b) (ii) of the principal Act is hereby amended by omitting the words "wound up", and substituting the word "liquidated".

70. Debits arising to dividend withholding payment account—Section 394ZW (1) (c) of the principal Act is hereby amended by omitting the words "pursuant to section 394ZO of this Act".

71. Further dividend withholding payment payable, etc.—Section 394ZZF (5) of the principal Act is hereby amended by omitting the words "wound up", and substituting the word "liquidated".

72. Deduction of tax from payment due to defaulters—Section 400 (1) of the principal Act is hereby amended by repealing paragraphs (a), (b), and (c) of the definition of the term "bank".

73. Keeping of business records—Section 428 (4) of the principal Act is hereby amended by omitting the words "wound up and finally dissolved", and substituting the word "liquidated".

74. Keeping of returns where return information transmitted electronically—Section 428A (2) of the principal Act is hereby amended by omitting the words "wound up and finally dissolved", and substituting the word "liquidated".

PART II

MISCELLANEOUS AMENDMENTS

75. Accounting for goods and services tax—(1) Section 140B of the principal Act is hereby amended—

(a) By inserting in subsection (3) (a), after the words "input tax charged", the words ", levied, or calculated":

(b) By omitting from subsection (4) (d) the words "the first proviso to":

(c) By omitting from subsection (7) (d) the words "to which subsections (7) and (8) of section 117 refer", and substituting the words "in respect of any item of depreciable property (as defined in section 107A of this Act)".

(2) Subsection (1) (a) of this section shall apply with respect to any amount of input tax levied or calculated on or after the 1st day of October 1986, other than any amount of input tax that has been claimed as a deduction from assessable income in a tax return furnished to the Commissioner before the 2nd day of June 1994.

(3) Subsection (1) (b) and (c) of this section shall come into force on the day on which this Act receives the Royal assent.

76. Interpretation—attributed foreign income, etc.—(1) Section 245A of the principal Act is hereby amended by adding the following subsection:

"(4) Notwithstanding subsection (2) (e) of this section and section 245RF (2) of this Act, where—

"(a) An income interest in a controlled foreign company or an interest in a foreign investment fund is transferred from one person to an associated person on one or more occasions; and

"(b) The associated persons enter into an arrangement with respect to making or not making—

"(i) The election referred to in subsection (2) (e) of this section; or

"(ii) The election referred to in section 245RF (2) of this Act; or

"(iii) Any combination of 2 or more such elections; and

"(c) The arrangement has an effect of defeating the intent and application of this Part of this Act,—

the Commissioner may deem any one or more of such elections to have been made or not made to the extent appropriate to prevent the arrangement having such effect."

(2) This section shall apply—

(a) With respect to the calculation of the attributed foreign income or attributed foreign loss of any person, with respect to accounting periods of the controlled foreign company ending on or after the day on which this Act receives the Royal assent; and

(b) In any other case, subject to sections 245RL and 245Y of the principal Act, with respect to the tax on income derived—

(i) In the 1992–93 income year; and

(ii) In the 1991–92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

77. Calculation of control interest—(1) Section 245C (5) (a) of the principal Act is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

"(i) If there is only one group of persons resident in New Zealand whose control interest (or the aggregate of whose control interests) or power to control, under paragraph (a) or (b) of subsection (1) of this section, results in the first tier controlled foreign company being a controlled foreign company at that time, by that group; and".

(2) Section 38 (3) of the Income Tax Amendment Act (No. 2) 1993 is hereby amended by repealing subsection (3), and substituting the following subsection:

"(3) This section shall apply—

"(a) In the case of a foreign company—

"(i) Which has, in respect of the accounting period in which the 1st day of April 1993 falls, an annual balance date other than 31 March; and

"(ii) Which is, at any time during its accounting period in which the 1st day of April 1993 falls,—

"(A) Resident in a country or territory specified in Part A of the Seventeenth Schedule to this Act; or

"(B) Resident in a country or territory specified in Part B of the Seventeenth Schedule to this Act and is a company of the kind specified in the second column of that Part of that Schedule in relation to that country or territory,—

with respect to all accounting periods subsequent to the accounting period in which the 1st day of April 1993 falls; and

"(b) In any other case, with respect to all accounting periods ending on or after the 1st day of April 1993."

(3) Subsection (1) of this section shall apply with respect to accounting periods that end on or after the day on which this Act receives the Royal assent.

(4) Subsection (2) of this section shall apply with respect to accounting periods that end on or after the 1st day of April 1993.

78. Attribution of income and losses using branch equivalent method—(1) Section 245G of the principal Act is hereby amended by omitting from both subsection (5) and subsection (6) the words "of any person in relation to a controlled foreign company", and substituting in each case the words "of a controlled foreign company in relation to the calculation of the attributed foreign income or attributed foreign loss of any person".

(2) This section shall apply with respect to income derived on or after the 1st day of April 1988.

79. Attributed foreign losses—(1) Section 245M (1) (b) (ii) of the principal Act is hereby amended by adding the expression "; and".

(2) Section 245M (1) is hereby further amended by adding the following paragraph:

"(c) So far as it cannot then be deducted or set off, the loss be carried forward from that immediately succeeding year to the next succeeding income year and be deducted from or set off against attributed foreign income or foreign investment fund income of the taxpayer derived in that next succeeding year in respect of a controlled foreign company or foreign investment fund of a kind referred to in paragraph (b)

of this subsection, and so on for further succeeding income years."

(3) This section shall, subject to sections 245RL and 245Y of the principal Act, apply with respect to the tax on income derived—

(a) In the 1992-93 income year; and

(b) In the 1991-92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

80. Interpretation—foreign investment funds—(1) Section 245R (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

"(b) To the extent to which the person has acquired the property (referred to in this paragraph as the derivative property) by a share split, non-taxable bonus issue, or similar event (referred to in this paragraph as the share split) in respect of other property (referred to in this paragraph as the original property) then held by the person, which share split does not constitute assessable income to the person,—

"(i) Subject to subparagraph (ii) of this paragraph, the expenditure incurred on, or cost of, the original property shall be deemed to constitute expenditure incurred on acquisition of, or cost of, both the original property and the derivative property or (in any case where the original property ceases to exist on the share split) solely the derivative property, and no longer to constitute solely expenditure incurred on, or cost of, the original property,—

"(A) As if the person had acquired the derivative property at the time of acquiring the original property; and

"(B) On the basis of a fair allocation determined by reference to the relative market values of each item of the original property and of the derivative property, or (in any case where the original property ceases to exist on the share split) of each item of the derivative property alone, immediately after the share split; and

"(ii) For the purposes of determining the amount of item d of the formula in section 245RD of this Act (in respect of the comparative value method) and of paragraph (ii) of item a of the formula in section 245RE (1) of this Act (in respect of the deemed rate of return method) for the income year in which the share split occurs, the person shall be deemed not to have incurred any expenditure in acquiring the derivative property by virtue of the share split, whether under subparagraph (i) of this paragraph or otherwise; and".

(2) Section 245R (4) of the principal Act is hereby amended by omitting the words "foreign superannuation fund", and substituting the words "foreign superannuation scheme".

(3) This section shall, subject to sections 245RL and 245Y of the principal Act, apply with respect to the tax on income derived—

(a) In the 1992–93 income year; and

(b) In the 1991–92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

81. Calculation of foreign investment fund profit or loss—(1) Section 245RB (11) (a) of the principal Act is hereby amended by inserting, after the words "net after-tax accounting profits", the words "or losses".

(2) This section shall, subject to sections 245RL and 245Y of the principal Act, apply with respect to the tax on income derived—

(a) In the 1992–93 income year; and

(b) In the 1991–92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

82. Use of alternative methods—(1) Section 245RC (3) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

"(b) The person is a natural person and at no time during the income year does the aggregate of—

"(i) The book value, at the end of the previous income year, of interests in funds held by the person,—

"(A) If the person used for the previous income year the deemed rate of return method with respect to all interests in funds; and

"(B) To the extent to which the person held such interests at the end of the previous income year; and

"(ii) The market value of interests in funds held by the person, to the extent not valued at book value under subparagraph (i) of this paragraph—

exceed $100,000; or".

(2) Section 245RC (6) of the principal Act is hereby amended—

(a) By inserting in both paragraph (a) and paragraph (b), in each case before the word "period", the word "accounting":

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

"(ca) The net after-tax accounting profits or loss are calculated, in any case where the fund has one or more subsidiaries, on a consolidated basis:":

(c) By inserting in both paragraph (e) and paragraph (g), in each case after the words "net after-tax profits", the words "or losses".

(3) This section shall, subject to sections 245RL and 245Y of the principal Act, apply with respect to the tax on income derived—

(a) In the 1992–93 income year; and

(b) In the 1991–92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

83. Accounting profits method of calculation—(1) Section 245RF (2) of the principal Act is hereby amended—

(a) By omitting the words "Any person", and substituting the words "Subject to section 245A (4) of this Act, any person":

(b) By inserting, after the words "an interest in a fund in an income year", the words "(being an interest held by the person for a period exceeding one year)".

(2) This section shall, subject to sections 245RL and 245Y of the principal Act, apply with respect to the tax on income derived—

(a) In the 1992–93 income year; and

(b) In the 1991–92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

84. Branch equivalent method of calculation—(1) Section 245RG (1) of the principal Act is hereby amended by repealing subparagraph (iii) of item b of the formula, and substituting the following subparagraph:

"(iii) Subsection (25) of section 245J of this Act were to apply as if—

"(A) The person were the person referred to in that subsection in relation to whom the calculation of attributed foreign income or attributed foreign loss is being made; and

"(B) Section 245RA (2) (a) of this Act did not apply to exclude interests from being interests in a foreign investment fund because of the notional New Zealand residence of the fund as a notional controlled foreign company; and

"(C) The foreign investment fund income or foreign investment fund loss of the fund as a notional controlled foreign company also were to be calculated as if section 245RA (2) (a) of this Act did not apply."

(2) Section 245RG (2) (b) (i) of the principal Act is hereby amended by inserting, after the words "Any foreign investment fund income or loss", the words "(calculated as if section 245RA (2) (a) of this Act did not apply)".

(3) This section shall apply with respect to accounting periods of foreign investment funds ending after the 2nd day of June 1994.

85. Taxation on distributions from foreign investment funds—(1) Section 245RI (1) of the principal Act is hereby amended—

(a) By omitting the words "such gains derived by the person", and substituting the words "gains to which paragraph (d) of this subsection applies derived by the person from the foreign investment fund with respect to the interest":

(b) By inserting, after the word "incurred", the words "and excluding the foreign investment fund income

deemed to be derived under this section with respect to the period in which the time falls".

(2) This section shall, subject to sections 245RL and 245Y of the principal Act, apply with respect to the tax on income derived—

(a) In the 1992-93 income year; and

(b) In the 1991-92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

86. Credits in respect of dividends to non-resident portfolio investors—(1) Section 308A of the principal Act is hereby amended—

(a) By omitting the formula from subsection (2), and substituting the formula "(a − b) × c":

(b) By omitting from subsection (3) the expression "section 394E", and substituting the expression "section 394ZE".

(2) Section 308A (6) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

"(a) Under subsection (5) of this section, a person is deemed to be, at the time of payment of a dividend by a company, a non-resident portfolio investor; and

"(b) As a result the company became entitled, under subsection (2) of this section, to a credit against income tax with respect to the person and the dividend; and".

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

87. Interpretation—provisional tax—(1) Section 375 of the principal Act (as substituted by section 71 of the Income Tax Amendment Act (No. 2) 1993) is hereby amended by omitting from paragraph (d) of the definition of the term "residual income tax" the expression "section 245 (1)", and substituting the expression "section 245L (1)".

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

88. Estimated provisional tax—(1) Section 378 of the principal Act (as substituted by section 71 of the Income Tax

Amendment Act (No. 2) 1993) is hereby amended by repealing subsection (3), and substituting the following subsection:

"(3) Where—

"(a) The residual income tax of a provisional taxpayer for an income year exceeds $300,000; and

"(b) The taxpayer has not furnished an estimate under this section for that income year (whether or not required to do so by subsection (2) of this section),—

the taxpayer shall be deemed to have furnished a statement to the Commissioner and estimated, under subsection (1) or, as the case may be, subsection (2), of this section residual income tax for that income year equal to the amount of provisional tax, if any, paid by the taxpayer on or before the third instalment date."

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

89. Additional tax where residual income tax underestimated as at final instalment date—(1) Section 385 (1) (b) of the principal Act (as substituted by section 71 of the Income Tax Amendment Act (No. 2) 1993) is hereby amended by omitting the expression "section 378", and substituting the expression "section 379".

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

90. Remission of additional tax imposed on underestimation—(1) Section 386 (2) of the principal Act (as substituted by section 71 of the Income Tax Amendment Act (No. 2) 1993) is hereby amended by omitting the words "who has become liable to pay additional tax", and substituting the words "whose residual income tax for an income year exceeds $300,000 and who has become liable to pay additional tax in respect of that income year".

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

91. Qualifying companies—correction of cross-references—(1) The principal Act is hereby amended by omitting the expression "245R" from each of—

(a) Section 393K (3); and

(b) Section 393P (1) (c); and

(c) Section 393Q (1) (b); and

(d) Section 393Q (4) (a),—

and substituting in each case the expression "245RJ".

(2) This section shall apply with respect to the tax on income derived—

(a) In the 1992-93 income year; and

(b) In the 1991-92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after the 2nd day of July 1992,—

and in every subsequent year.

92. Credits arising to imputation credit account—(1) Section 394D (1) (aa) of the principal Act is hereby amended by omitting the expression "section 387 (3)", and substituting the expression "section 387 (5)".

(2) Section 71 (2) (c) of the Income Tax Amendment Act (No. 2) 1993 is hereby consequentially repealed.

(3) This section shall apply with respect to provisional tax payable on income derived in the 1994-95 income year and subsequent years.

93. Underlying foreign tax credits generally, and interpretation—(1) Section 394ZMA (3) of the principal Act is hereby amended by adding to paragraph (a) the following subparagraph:

"(v) A company resident in New Zealand, not being a company which, pursuant to provisions of arrangements to which effect is given by an Order in Council made under section 294 of this Act, is treated as not being resident in New Zealand for the purposes of the arrangements; or".

(2) This section shall apply with respect to dividends paid on or after the 28th day of September 1993.

94. Dividends from lower tier companies—(1) Section 394ZMD of the principal Act is hereby amended by adding the following subsection:

"(3) Notwithstanding any provision of section 394ZMC of this Act or the preceding provisions of this section, the amount of underlying foreign tax credit arising with respect to a foreign withholding payment dividend, including the notional credit calculated under the concluding phrase and 4 paragraphs of subsection (1) of this section, paid by a company resident in New Zealand which has ever been an imputation credit account

company shall not exceed the imputation credit attached to the dividend, and shall be nil if no imputation credit is attached."

(2) This section shall apply with respect to dividends paid on or after the 28th day of September 1993.

95. Interest paid in conduit financing arrangements—(1) Section 394ZMH of the principal Act is hereby amended by repealing paragraph (f), and substituting the following paragraph:

"(f) At the time at which—

"(i) The interest or consideration is paid; and

"(ii) The dividend is paid,—

the recipient (referred to in subparagraph (i) or subparagraph (ii) of paragraph (d) of this section) of the direct or indirect payment of interest or consideration (referred to in that paragraph) is not a controlled foreign company,—".

(2) This section shall apply with respect to dividends paid on or after the 28th day of September 1993.

96. Credits and debits arising to branch equivalent tax account of company—(1) Section 394ZZP (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(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 income tax payable by the company for any income year of the company (being the 1988–89 income year or a later year); and

"b is the amount of any foreign tax credit allowed in accordance with section 245K or section 245L of this Act in calculating the income tax payable by the company for that income year; and

"c is the amount that is the lesser of—

"(i) The amount of any attributed foreign income derived by the company during that income year; and

"(ii) The taxable income of the company for that income year; and

"d is the taxable income of the company for that income year; and

"e is the amount of income tax for the income year paid by the company by way of crediting the debit balance in the branch equivalent tax account of the company or any other company:".

(2) Where—

(a) A credit arose on the 28th day of September 1993, under section 97 (5) of the Income Tax Amendment Act (No. 3) 1993, in the imputation credit account of a company maintained under Part XIIA of the principal Act in respect of a credit balance existing at that date in the branch equivalent tax account of the company maintained under Part XIIc of the principal Act; and

(b) Any part or the whole of the credit balance in the branch equivalent tax account consisted of a credit arising under section 394ZZP (1) (b) of the principal Act, determined by applying the procedure set out in section 394ZZP (6) (c) of that Act (that part or whole being referred to in this section as the loss-related credit balance); and

(c) The credit arising on the 28th day of September 1993 continued to exist, in part or in whole, until the 28th day of March 1994, determined by applying the procedure set out in section 394ZZP (6) (c) of the principal Act (that part or whole being referred to in this section as the remaining transferred credit),—

a debit shall arise on the 28th day of March 1994 to be recorded in the imputation credit account of the company equal to the lesser of—

(d) The loss-related credit balance; and

(e) The remaining transferred credit.

(3) Subsection (1) of this section shall apply with effect on and after the 28th day of September 1993.

(4) Subsection (2) of this section shall be deemed to have come into force on the 28th day of March 1994.

97. Transfer of credit to company's imputation credit account, etc.—(1) Section 394ZZQ of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

"(3A) Notwithstanding subsection (3) of this section, a company shall only be entitled to elect to use a credit balance

in its branch equivalent tax account 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 394ZZP (1) (a) of this Act (determined by applying the procedure set out in section 394ZZP (6) of this Act), to the extent that the company 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 394ZZP (1) (b) of this Act (as so determined), where the Commissioner has made an assessment or a determination of loss for the income year in which the attributed foreign income is derived."

(2) Section 394ZZQ of the principal Act (as so inserted) is hereby further amended by adding to subsection (8) the words "(but applying as if item e were nil)".

(3) Subsection (1) of this section shall apply with respect to any amount of dividend withholding payment due on or after the day on which this Act receives the Royal assent.

(4) Subsection (2) of this section shall apply with effect on and after the 28th day of September 1993.

98. Debit election to offset income tax payable in respect of foreign dividend—(1) Section 394ZZV (3) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

"(c) The person has paid income tax (including provisional tax), for the income year in respect of which the credit arose to the person's branch equivalent tax account, equal to or exceeding the credit balance so credited in payment."

(2) This section shall apply with respect to income derived in the 1994–1995 income year and subsequent years.

This Act is administered in the Inland Revenue Department.