



ANALYSIS

Title

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| | 1. Short Title and commencement |
| | 2. Meaning of term "dividends" |

1985, No. 125

An Act to amend the Income Tax Act 1976

[21 August 1985]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Income Tax Amendment Act (No. 3) 1985, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 21st day of August 1985.

2. Meaning of term "dividends"—(1) Section 4 (1)(b) of the principal Act (as substituted by section 4 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by inserting, after the words "this subsection applies," the words "or to which the said paragraph (c) would have applied but for the proviso to that paragraph or, as the case may be, but for subsection (5) of this section,".

(2) The proviso to section 4 (1)(c) of the principal Act (as added by section 4 (2) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by inserting, after the words "any capital asset received by any shareholder", the words "(not being a shareholder that is a company that, where the

company first mentioned in this subsection is a specified company within the meaning of subsection (5A) of this section, is a person related thereto or that, if the said first-mentioned company were a specified company within the said meaning, would be a person related thereto)".

(3) Section 4 (1) of the principal Act (as so amended) is hereby further amended by omitting from the second proviso the words "to any shareholder", and substituting the words ", being a payment made upon the winding up of that company, to any shareholder (not being a shareholder that is a company that, where the company first mentioned in this subsection is a specified company within the meaning of subsection (5A) of this section, is a person related thereto or that, if the said first-mentioned company were a specified company within the said meaning, would be a person related thereto)".

(4) Section 4 of the principal Act (as so amended) is hereby further amended by repealing subsection (5), except the proviso, and substituting the following subsection:

"(5) Where—

"(a) Any capital asset of a company has been realised, whether voluntarily or involuntarily, and the Commissioner is satisfied that the whole or part of any profit arising from any such realisation in excess of the cost to the company of that asset (not being an amount that is required to be taken into account under this Act for the purpose of assessing income tax) is subsequently included in—

"(i) Any payment to, or other transaction with, a shareholder of the company (being a payment and being a transaction of a kind referred to in subsection (1) of this section) that is a payment made or, as the case may be, a transaction completed, on or before the 20th day of August 1985; or

"(ii) Any amount received by a shareholder of the company (not being a shareholder that is a company that, where the company first mentioned in this subsection is a specified company within the meaning of subsection (5A) of this section, is a person related thereto or that, if the said first-mentioned company were a specified company within the said meaning, would be a person related thereto) on or after the 21st day of August 1985, being an amount to which, but for this subsection, subsection (1) (c) (except the proviso) of this section would apply; or

“(b) The Commissioner is satisfied that a company has otherwise made a capital profit or a capital gain (not arising from specified payments), including a capital gain by way of gift, and that the whole or part of any such profit or gain (not being an amount that is required to be taken into account under this Act for the purpose of assessing income tax) is subsequently included in—

“(i) Any payment to, or other transaction with, a shareholder of the company (being a payment and being a transaction of a kind referred to in subsection (1) of this section) that is a payment made or, as the case may be, a transaction completed, on or before the 20th day of August 1985; or

“(ii) Any amount received by a shareholder of the company (not being a shareholder that is a company that, where the company first mentioned in this subsection is a specified company within the meaning of subsection (5A) of this section, is a person related thereto or that, if the said first-mentioned company were a specified company within the said meaning, would be a person related thereto) on or after the 21st day of August 1985, being an amount to which, but for this subsection, subsection (1) (c) (except the proviso) of this section would apply,—

the term ‘dividends’ shall, for the purposes of this Act, be deemed not to include that profit or gain to the extent to which that profit or gain exceeds any capital losses, being capital losses arising from the realisation of capital assets other than a realisation to which subsection (5A) of this section applies, incurred in the income year (or, as the case may be, the accounting year of the company corresponding with that income year) in which that profit or gain was made or in any subsequent income year (being losses not already taken into account under this subsection or under subsection (1) (c) of this section or under section 3 (3) of this Act or in calculating the assessable income of the company for any income year:”.

(5) Section 4 (5B) of the principal Act (as inserted by section 4 (3) of the Income Tax Amendment Act (No. 2) 1982) is hereby amended by omitting the words “and subsection (5A)”, and substituting the words “, the proviso to subsection (1) (c) of this section, the second proviso to subsection (1) of this section, and subsections (5) and (5A)”.

(6) Section 3 (3) of the principal Act (as amended by section 4 (1) of the Income Tax Amendment Act (No. 3) 1983 and

section 4 (6) of the Income Tax Amendment Act (No. 2) 1985) is hereby consequentially amended by inserting, after the words "transaction referred to in subsection (1) of this section", the words ", being a transaction completed on or before the 20th day of August 1985".

(7) Section 3 (4) of the principal Act is hereby consequentially amended by inserting, after the words "subsection (1) of this section", the words ", being a transaction completed on or before the 20th day of August 1985,".

(8) The following enactments are hereby consequentially repealed:

(a) Section 7 (1) of the Finance Act (No. 2) 1981:

(b) Section 5 (3) of the Income Tax Amendment Act (No. 3) 1983:

(c) Section 4 (5) of the Income Tax Amendment Act (No. 2) 1985.

This Act is administered in the Inland Revenue Department.
