



ANALYSIS

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1991, No. 47

An Act to amend the Income Tax Act 1976

[28 June 1991

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

1. Short Title and commencement—(1) This Act may be cited as the Income Tax Amendment Act (No. 3) 1991, 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 otherwise provided in this Act, this Act shall come into force on the day on which it receives the Royal assent.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “herd livestock” (as inserted by section 3 of the Income Tax Amendment Act (No. 4) 1986 and substituted by section 2 (1) of the Income Tax Amendment Act (No. 4) 1989), and substituting the following definition:

“‘Herd livestock’, in relation to any taxpayer and any livestock owned by the taxpayer, means any animal (being specified livestock) that is of a class set out in column 2 of the Twelfth Schedule to this Act.”

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “retirement tax” (as inserted by section 2 (1) of the Income Tax Amendment Act (No. 3) 1989).

(3) Section 2 of the Income Tax Amendment Act (No. 3) 1989 is hereby consequentially repealed.

(4) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

3. Incomes wholly exempt from tax—Section 61 of the principal Act is hereby amended by adding the following paragraph:

“(65) Income derived by any person from any allowance that is—

“(a) Payable by the Department of Labour under the Community Taskforce scheme; and

“(b) Designated by the Minister of Labour as a Community Taskforce allowance.”

4. Accruals in relation to income and expenditure in respect of financial arrangements—(1) Section 64c (1) of the principal Act (as inserted by section 2 (1) of the Income Tax Amendment Act 1987) is hereby amended by omitting the expression “subsections (2), (3), and (4)”, and substituting the expression “subsections (2) to (4)”.

(2) Section 64c of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (2), the following subsections:

“(2A) Notwithstanding subsection (2) of this section, but subject to the other provisions of this section, where in any income year the total value of all financial arrangements of which a person is a holder or an issuer has on no day within that income year exceeded \$1,000,000 or such greater amount

as the Governor-General may, from time to time, by Order in Council declare for the purposes of this section,—

“(a) The person may calculate income or expenditure for that income year in respect of those financial arrangements by using the straight line method so as to result in the allocation to that income year and subsequent years of amounts that are fair and reasonable in respect of those arrangements; and

“(b) Where the straight line method is used under paragraph (a) of this subsection, that method shall be used by the person in respect of all financial arrangements of which the person was the holder or issuer during that income year; and

“(c) Where the person has in accordance with this subsection calculated income or expenditure using the straight line method in respect of a financial arrangement for any income year, the person shall, unless otherwise authorised in writing by the Commissioner, continue to use that method for calculating income or expenditure in respect of that financial arrangement for any subsequent year, until the maturity, remittance, sale, or other transfer of the arrangement, notwithstanding that the total value of all financial arrangements of which the person is holder or issuer may at any time in any such subsequent year exceed \$1,000,000 or such other amount as may be declared for the purposes of this section,—

and any amount calculated in respect of a financial arrangement in accordance with this subsection shall be income deemed to be derived by or expenditure deemed to be incurred by the person in respect of the financial arrangement for the relevant income year.

“(2B) For the purposes of subsection (2A) of this section—

“(a) The value of any financial arrangement to be taken into account in determining whether the total value of all financial arrangements of which a person is the holder or issuer on any day exceeds \$1,000,000 or such other amount as may be declared for the purposes of this section shall be—

“(i) In the case of a fixed principal financial arrangement, the nominal or face value of the arrangement; and

“(ii) In the case of a variable principal debt instrument, the amount owing by or to the person pursuant to the arrangement on the relevant day:

“(b) In the first income year for which income or expenditure is calculated pursuant to subsection (2A) of this section in respect of a financial arrangement that—

“(i) Was acquired or issued by the person in a previous income year; and

“(ii) Continues to be held or issued by the person at the end of the first income year for which income or expenditure is calculated pursuant to subsection (2A) of this section,—

the amount of income or expenditure of the person in respect of that financial arrangement for that first income year shall be an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

“a is the sum of all amounts that would have been income derived by the person in respect of the financial arrangement if the straight line method referred to in subsection (2A) of this section had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year; and

“b is the sum of all amounts that would have been expenditure incurred by the person in respect of the financial arrangement if the straight line method referred to in subsection (2A) of this section had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year; and

“c is the sum of all amounts of income deemed to have been derived by the person in respect of the financial arrangement before the commencement of that first income year; and

“d is the sum of all amounts deemed to have been expenditure incurred by the person in respect of the financial arrangement before the commencement of that first income year;—

and any amount so calculated shall, if a positive amount, be deemed to be income derived by the person in that first income year and, if a negative amount, be deemed to be expenditure incurred by the person in that first income year.”

(3) Section 64c (3) of the principal Act (as so inserted) is hereby amended by inserting, after the words “subsection (2) of this section” where they first occur, the words “or (in a case to which subsection (2A) applies) the straight line method as provided for in subsection (2A) of this section”.

(4) Section 64c (5) of the principal Act (as so inserted) is hereby amended by omitting the expression “Subsections (2), (3), and (4)”, and substituting the expression “Subsections (2) to (4)”.

(5) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

5. Cash basis holder—(1) Section 64D (1) of the principal Act (as inserted by section 2 (1) of the Income Tax Amendment Act 1987) is hereby amended—

(a) By omitting from paragraph (a) (i) the expression “\$50,000”, and substituting the expression “\$70,000”;

(b) By omitting from paragraph (a) (ii) the expression “\$400,000”, and substituting the expression “\$600,000”.

(2) Section 64D (1) of the principal Act (as so inserted) is hereby further amended by repealing paragraph (b), and substituting the following paragraph:

“(b) The difference between the following amounts does not exceed \$20,000 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare):

“(i) The amount of income that would be calculated by the person for the income year—

“(A) Using, at the option of the person, either the yield to maturity method or the straight line method referred to in section 64c (2A) of this Act (regardless of whether or not the person is entitled or has opted to use that method) or, where it is not possible to calculate an amount of income or expenditure in respect of the financial arrangements by using either of those

methods, an alternative method approved by the Commissioner; and

“(B) Under section 64F of this Act,—
in respect of financial arrangements held by the person at the end of the income year:

“(ii) The amount of income that would be calculated by the person for the income year in respect of financial arrangements held by the person at the end of the income year if the person were a cash basis holder.”

(3) Section 64D (6) of the principal Act (as so inserted) is hereby amended by inserting, after the words “subsection (1) of this section”, the words “, but subject to subsections (7) and (7A) of this section,”.

(4) Section 64D of the principal Act (as so inserted) is hereby amended by inserting, after subsection (7), the following subsection:

“(7A) Where a deceased person was at the time of his or her death a cash basis holder,—

“(a) Nothing in subsection (6) of this section or in any requirement under this section that a cash basis holder be a natural person shall, in respect of the income year in which the death occurred and in each of the 4 immediately succeeding income years, apply to prevent the trustee of the estate of the deceased person from being a cash basis holder for the purposes of this Act in respect of financial arrangements issued or held by the estate, where the estate would otherwise qualify as a cash basis holder under this section; but

“(b) If at any time during those income years the estate ceases to so otherwise qualify as a cash basis holder, it shall not again qualify to become a cash basis holder by operation of paragraph (a) of this subsection;—

and for the purposes of subsections (3) and (4) of this section any trustee of an estate who is a cash basis holder under this subsection shall be deemed to be the same person as the deceased cash basis holder.”

(5) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

6. Determinations—Section 64E (1) of the principal Act (as inserted by section 2 (1) of the Income Tax Amendment Act

1987) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) How the straight line method is to be applied to any financial arrangement or class thereof for the purposes of section 64C (2A) of this Act.”.

7. Income derived from use or occupation of land—

(1) Section 74 of the principal Act (as substituted by section 4 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) In any case where a person derives a profit or gain from the sale of timber to an associated person (as defined in section 214E of this Act)—

“(a) The person shall be entitled to a deduction for the cost of the timber under subsection (2) (b) of this section only to the extent that the cost of the timber does not exceed the profit or gain derived from the sale of the timber; and

“(b) The cost of the timber to the associated person acquiring the timber shall for the purposes of this section be deemed to be the aggregate of—

“(i) The cost of the timber to the associated person; and

“(ii) The amount (if any) that, pursuant to paragraph (a) of this subsection, is not allowed as a deduction to the person selling the timber by reason of being in excess of the profit or gain derived from the sale of the timber.”

(2) Section 74 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) A person who carries on a forestry business on any land in New Zealand shall, in calculating the assessable income derived by the person in the income year commencing on the 1st day of April 1991 or in any subsequent year, be entitled to deduct any expenditure incurred by the person in that business in that income year, being expenditure that is not deductible otherwise than under this section, in the construction to or on the land of access tracks that are constructed for a specific operational purpose and are used for no longer than 12 months after construction.”

(3) Section 74 (8) of the principal Act (as so substituted) is hereby amended by inserting, after the expression “subsection (3)”, the expression “or subsection (3A)”.

(4) Section 74 (15) of the principal Act (as so substituted) is hereby amended—

(a) By omitting the words “(being an income year commencing not later than the 1st day of April 1990)”:

(b) By inserting, after the expression “subsection (3)”, the expression “or subsection (3A)”.

(5) Section 74 (16) of the principal Act (as so substituted) is hereby amended by adding the following paragraph:

“(e) In relation to any such expenditure incurred in the income year commencing on the 1st day of April 1991 or in any subsequent year, the full amount of that expenditure.”

(6) Subsection (1) of this section shall apply with respect to timber sold on or after the 1st day of April 1991.

(7) Subsections (2) to (5) of this section shall apply with respect to expenditure incurred in the income year commencing on the 1st day of April 1991 and in every subsequent year.

8. Income credited in account or otherwise dealt with—(1) Section 75 of the principal Act is hereby amended by adding the following subsections:

“(3) Notwithstanding anything in subsection (1) of this section, where, in calculating the assessable income derived by a company in any income year (being the income year commencing on the 1st day of April 1990 or any subsequent year), a deduction is allowed to the company in respect of expenditure incurred by way of monetary remuneration paid or payable to a person who in relation to the company is a shareholder-employee, the shareholder-employee shall for the purposes of this Act be deemed to have derived the monetary remuneration—

“(a) As to an amount equal to—

“(i) The amount of the deduction allowable to the company under this Act in respect of that income year and that expenditure; less

“(ii) Such amount (if any) of that expenditure as is treated as the unexpired portion of accrual expenditure by virtue of section 104A (2) (ba) of this Act,—

in the same income year as that in which the deduction was allowed to the company; and

“(b) As to the balance of the monetary remuneration, in such income year, or income years, as the expenditure of

the company in respect of the monetary remuneration ceases to be treated by virtue of section 104A (2) (ba) of this Act as the unexpired portion of accrual expenditure of the company.

“(4) For the purposes of subsection (3) of this section,—

“(a) Where a company referred to in that subsection furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, the term ‘the same income year’ means the income year to which the accounting year in which the deduction was allowed corresponds:

“(b) Where the shareholder-employee referred to in that subsection furnishes a return of income under section 15 of this Act for an accounting year with an annual balance date other than the 31st day of March, the term ‘the same income year’ means the accounting year of the shareholder-employee that corresponds to the income year—

“(i) In which the deduction was allowed to the company; or

“(ii) To which the accounting year of the company in which the deduction was allowed corresponds (where the company is of a kind referred to in paragraph (a) of this subsection):

“(c) The terms ‘paid’ and ‘shareholder-employee’ have the meanings assigned to those terms in section 104A (1) of this Act.”

(2) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

(3) Subsection (4) of this section shall apply to any person (being a shareholder-employee of a company) whose assessable income in the income year commencing on the 1st day of April 1990 includes both—

(a) Monetary remuneration that, pursuant to section 75 (3) (a) of the principal Act (as enacted by subsection (1) of this section), is deemed to be derived by that person in that income year; and

(b) Monetary remuneration derived by that person in that income year in respect of which a deduction has been allowed to the company in an earlier income year.

(4) For the purposes of determining—

(a) Under section 377 (1) of the principal Act the amount of provisional tax payable by a person to whom

subsection (3) of this section applies in respect of income derived in the income year commencing on the 1st day of April 1991; or

- (b) Under section 381 (2) of the principal Act the amount of the first and second instalments of provisional tax payable by such a person in respect of income derived in the income year commencing on the 1st day of April 1992,—

the amount of residual income tax of that person in respect of income derived in the income year commencing on the 1st day of April 1990 shall be deemed to be an amount (not being less than nil) calculated as follows:

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

where—

- a is the amount of residual income tax (as defined in section 375 of the principal Act) of the person for the income year commencing on the 1st day of April 1990; and
- b is the amount of monetary remuneration referred to in subsection (3) (a) of this section; and
- c is the amount of tax payable by the person in respect of income derived in the income year commencing on the 1st day of April 1990; and
- d is the amount of assessable income derived by the person in the income year commencing on the 1st day of April 1990.

9. Livestock valuation elections—(1) Section 85A (2) of the principal Act (as inserted by section 6 of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by repealing paragraph (b) (as substituted by section 10 (1) of the Income Tax Amendment Act (No. 4) 1989), and substituting the following paragraph:

“(b) In accordance with section 86A of this Act, be in respect of all classes of herd livestock of that type owned by the taxpayer other than any class that the taxpayer has elected in accordance with subsection (2A) or subsection (2B) of this section not to value under the herd scheme.”

(2) Section 85A of the principal Act (as so inserted) is hereby amended by inserting, after subsection (2A), the following subsection:

“(2B) Where any taxpayer has, for any income year before the income year commencing on the 1st day of April 1991, elected to adopt the herd livestock scheme as provided for in section 86A of this Act,—

“(a) The taxpayer may elect for the income year commencing on the 1st day of April 1991 and every subsequent year to exclude from the herd scheme any 1 or more of those classes of livestock specified in column 2 of the Twelfth Schedule to this Act that are not also specified in column 3 of that Schedule; and

“(b) An election under this subsection shall be made in writing and furnished with the return of income for the income year commencing on the 1st day of April 1991; and

“(c) Any election so made may be revoked by the taxpayer in any subsequent income year, and any such revocation shall be irreversible.”

10. Standard value of livestock—(1) Section 86 (1) of the principal Act is hereby amended by omitting the expression “; and” from the end of paragraph (a) (ii) (C) of the definition of the term “standard value” (as substituted by section 6 of the Income Tax Amendment Act (No. 2) 1988), and substituting the expression “; or”.

(2) That definition (as so substituted) is hereby further amended by adding to paragraph (a) the following subparagraph:

“(iii) In the case only of the income year commencing on the 1st day of April 1990, whichever is the lesser of the amounts determined under subparagraphs (i) and (ii) of this paragraph for the immediately preceding income year; and”.

(3) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990.

11. Valuation of high-priced livestock—(1) Section 86c (1) of the principal Act (as inserted by section 8 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by repealing the definition of the term “high-priced livestock”

(as substituted by section 13 (1) of the Income Tax Amendment Act (No. 4) 1989), and substituting the following definition:

“‘High-priced livestock’, in relation to any taxpayer, means any specified livestock purchased by that taxpayer during any income year where the livestock was, at the time of purchase, capable of being used for breeding or expected to be capable of being used for breeding upon reaching maturity, and the livestock was purchased for a cost—

“(a) Equal to or greater than \$100; and

“(b) Equal to or greater than the amount that is 3 times (or, where the specified livestock is a sheep or a goat, 4 times) the greater of—

“(i) The average market value of that class of livestock for that income year; and

“(ii) The average market value of the same class of livestock for the income year immediately preceding that income year,—

that is declared pursuant to section 86D for the class of livestock (being any one of the classes of livestock set out in column 2 of the Twelfth Schedule to this Act) in which that livestock is able to be classified at the end of the income year in which the livestock was purchased:”.

(2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

12. Spreading of income arising on entry into herd scheme and on increase in size of herd—(1) The principal Act is hereby amended by inserting, after section 86D (as inserted by section 8 (1) of the Income Tax Amendment Act (No. 4) 1986), the following section:

“86DA. (1) For the purposes of this section,—

“‘Deferrable herd income’, in relation to any taxpayer and any income year, means—

“(a) In the case of the income year commencing on the 1st day of April 1990, the taxpayer’s homebred herdstock deferrable income for that income year:

“(b) In the case of the income year commencing on the 1st day of April 1991 and any subsequent year, the total of—

“(i) The taxpayer’s new herdstock deferrable income for that income year; and

“(ii) The taxpayer’s homebred herdstock deferrable income for that income year:

“ ‘Homebred herdstock deferrable income’ means, in relation to any taxpayer and any income year, an amount (not being less than nil) calculated in accordance with the following formula:

$$\frac{30}{100} \times (a - b - c)$$

where—

“a is the total herd value (as defined in section 86A of this Act) of all livestock that is—

“(a) Female; and

“(b) Of a class that is more than 1 year old at the end of the income year; and

“(c) Of a class that is valued by the taxpayer at the end of the income year in accordance with section 86A of this Act; and

“b is the cost of purchase or capture of all herd livestock purchased or captured during the income year, being livestock that is—

“(a) Female; and

“(b) Of a class that is more than 1 year old at the end of the income year; and

“(c) Of a class that is valued by the taxpayer at the end of the income year in accordance with section 86A of this Act; and

“c is the total value of all herd livestock on hand at the beginning of the income year, being livestock that is—

“(a) Female; and

“(b) Of a class that is more than 1 year old at the beginning of the income year; and

“(c) Of a class that is valued by the taxpayer at the end of the income year in accordance with section 86A of this Act;— such value to be calculated using the herd values (as defined in section 86A of this Act) declared for the income year:

“ ‘New herdstock deferrable income’, in relation to any taxpayer and any income year, means an amount (not being less than nil) calculated in accordance with the following formula:

$$d \times (e - f)$$

where—

- “d is, in relation to any class of herd livestock that is valued by the taxpayer in accordance with section 86A of this Act at the end of the income year but that was not so valued by the taxpayer at the end of the immediately preceding income year, the lesser of—
- “(a) The number of livestock of that class on hand at the beginning of the income year; and
- “ (b) The number of livestock of that class on hand at the end of the income year; and
- “e is the herd value (as defined in section 86A of this Act) declared in relation to an animal of that class of livestock for the income year; and
- “f is the average closing value of an animal of that class of livestock at the end of the immediately preceding income year, such value to be determined by dividing the total closing livestock value of animals of that class taken into account for the purposes of this Act at the end of that immediately preceding income year by the number of animals of that class that were on hand at the end of that immediately preceding income year.

“(2) Where any taxpayer derives an amount of deferrable herd income during an income year the taxpayer may, if the taxpayer so elects by notice in writing in the return of income for that income year, allocate one-third of that deferrable herd income to that income year and one-third to each of the 2 immediately succeeding income years, and in every such case the amount of income so allocated shall, subject to this section, be deemed to be income derived by the taxpayer in the income year to which it is so allocated.

“(3) Where in any income year a taxpayer dies or ceases farming, any amount of deferrable herd income of the taxpayer allocated to any later income year shall, notwithstanding subsection (2) of this section, be deemed to be income derived in the income year in which the taxpayer died or, as the case may be, ceased farming.

“(4) Any allocation made under subsection (2) of this section may at any time be cancelled by the Commissioner, and in

every such case the whole of the deferrable herd income so allocated shall be deemed to be derived by the taxpayer in the income year in respect of which that allocation was cancelled, except to the extent that the income has been allocated to and assessed for any earlier income year.

“(5) Every reference in this section to an income year shall, where the taxpayer furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and in every such case this section shall, with any necessary modifications, apply accordingly.”

(2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

13. Accrual expenditure—(1) Section 104A (1) of the principal Act (as inserted by section 11 of the Income Tax Amendment Act 1987) is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Paid’, in relation to any person, includes credited in account, or reinvested, or accumulated, or capitalised, or carried to any reserve, sinking, or insurance fund, or dealt with in the interest or on behalf of the person:

“‘Shareholder-employee’ means a person who receives or is entitled to receive income to which section 6 (2) of this Act applies.”

(2) Section 104A (2) of the principal Act (as so inserted) is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) Subject to subsection (2B) of this section, where the expenditure is incurred by way of monetary remuneration for services that have been performed, the amount of such expenditure that has not been paid in the income year or within such further period as is specified in subsection (2A) of this section.”

(3) Section 104A of the principal Act (as so inserted) is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) For the purposes of subsection (2) (ba) of this section monetary remuneration shall be deemed to have been paid by a person in a particular income year if—

“(a) In the case of any employee (other than a shareholder-employee) of the person, the monetary remuneration was paid to the employee—

“(i) In the income year; or

“(ii) Within 63 days after the end of the income year; or

“(b) In the case of any person who, in relation to the person (being a company) is a shareholder-employee, the monetary remuneration was paid to the shareholder-employee—

“(i) In the income year; or

“(ii) Not later than the 31st day of March that, in relation to the person (being a company) and the income year, is the latest date to which the time for the furnishing of the return for that income year may be extended pursuant to section 17 (6) of this Act.

“(2B) For the purposes of paragraph (ba) of subsection (2) of this section, no expenditure referred to in that paragraph shall be treated as accrual expenditure where that expenditure—

“(a) Is incurred in relation to any holiday pay to which an employee (not being a shareholder-employee) of the person incurring the expenditure is entitled or will become entitled; and

“(b) Was incurred in the income year commencing on the 1st day of April 1990.”

(4) Section 104A (5) of the principal Act (as so inserted) is hereby amended by inserting, after the words “in relation to any accrual expenditure”, the words “(not being expenditure incurred by way of monetary remuneration for services that have been performed)”.

(5) Section 104A of the principal Act (as so inserted) is hereby amended by adding the following subsection:

“(7) Every reference in this section to an income year shall, where a person furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and in every case this section shall, with any necessary modifications, apply accordingly.”

(6) This section shall apply with respect to expenditure incurred in the income year commencing on the 1st day of April 1990 and in every subsequent year.

14. Certain expenditure on land used for farming or agricultural purposes—(1) Section 127 of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by inserting, before subsection (1), the following subsection:

“(A1) Any taxpayer engaged in any farming or agricultural business on any land in New Zealand shall, in calculating the assessable income derived from that business in the income year commencing on the 1st day of April 1991 or in any subsequent year, be entitled to a deduction of the amount of any expenditure incurred by the taxpayer in that year, being expenditure that is not deductible otherwise than under this section or under section 128A of this Act, in—

- “(a) The destruction of weeds or plants detrimental to the land:
- “(b) The destruction of animal pests detrimental to the land:
- “(c) The clearing, destruction, and removal of scrub, stumps, and undergrowth:
- “(d) The repair of flood or erosion damage:
- “(e) The planting and maintaining of trees for the purpose of preventing or combating erosion:
- “(f) The planting and maintaining of trees for the purpose of providing shelter:
- “(g) The construction on the land of fences for agricultural purposes, including the purchase of wire or wire netting for the purpose of making new or existing fences rabbit-proof.”

(2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

15. Farmers' expenditure on tree planting—Section 134 (1) of the principal Act (as substituted by section 14 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by inserting, after the words “Forestry Encouragement Grants Regulations 1983,”, the words “or in respect of which a deduction is allowable under section 127 (A1) of this Act,”.

16. Losses incurred may be set off against future profits—(1) Section 188 of the principal Act is hereby amended by omitting from both subsection (7)(a) and subsection (7A) (as both substituted by section 40 (3) of the Income Tax Amendment Act 1980 and amended by section 11 (1) of the Income Tax Amendment Act (No. 2) 1990) the

words “(excluding any company having the liability of its members limited by its memorandum of association to the amount, if any, unpaid on the shares respectively held by them)”, and substituting in each case the words “(excluding any company other than a company that is a special corporate entity within the meaning of section 191 (1) (g) of this Act)”.

(2) Section 11 of the Income Tax Amendment Act (No. 2) 1990 is hereby consequentially repealed.

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

17. Companies included in a group of companies—

(1) Section 191 (1) of the principal Act is hereby amended by adding, after paragraph (f), the following paragraphs:

“(g) The term ‘special corporate entity’ means—

“(i) Any local authority as defined in section 2 of the Local Government Act 1974; or

“(ii) Any statutory producer board as defined in section 197E (1) of this Act; or

“(iii) Any statutory body established by Act of Parliament (whether in New Zealand or elsewhere), where the Commissioner, having regard to the terms of the statute by which the body is established, is satisfied that it would be appropriate to treat the body as a special corporate entity for the purposes of this section and of section 188 of this Act:

“(h) In relation to any company that is a special corporate entity within the meaning of paragraph (g) of this subsection,—

“(i) The entity shall be deemed to have—

“(A) Paid-up capital; and

“(B) Issued and allotted shares; and

“(ii) The members or directors (as the case may be) of the entity, in their collective capacity as such, shall be deemed to be shareholders in the entity and shall be deemed to hold—

“(A) The whole of the paid-up capital of the entity; and

“(B) All of the issued and allotted shares of the entity; and

“(C) Title to all of the profits of the entity; and

“(D) All of the voting power in relation to the entity; and

“(iii) The issued and allotted shares of the entity (being the shares referred to in subparagraph (i) (B) of this paragraph) shall be deemed—

“(A) Not to bear a fixed rate of dividend; and

“(B) To have a nominal value.”

(2) Section 191 (3) of the principal Act is hereby amended by substituting for the punctuation at the end of paragraph (b) the expression “; or”, and by inserting after that paragraph the following paragraph:

“(c) Those companies are deemed to constitute a specified group pursuant to subsection (6) (b) of this section,—”.

(3) Section 191 (6) of the principal Act is hereby amended—

(a) By omitting from paragraph (b) (iii) the words “group of companies”, and substituting the words “specified group”:

(b) By omitting from paragraph (b) the words “those companies shall be deemed to be companies included in a group of companies”, and substituting the words “those companies shall be deemed to be companies included in a specified group to which subsection (4) of this section applies”:

(c) By repealing paragraph (c).

(4) Section 191 of the principal Act is hereby further amended by inserting, after subsection (6), the following subsection:

“(6A) For the purpose of determining whether or not any 2 or more companies are a specified group to which subsection (4) of this section applies, or are deemed to be included in such a specified group pursuant to subsection (6) (b) of this section, the Commissioner may disregard—

“(a) A small amount of paid-up capital or a nominal value of shares; or

“(b) A small number of allotted shares—
held by a person in any such company.”

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

18. Trustee income—Section 228 (1) (c) of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the words “(otherwise than to the extent specified in subsection (7A) of that section in relation to the estate of a deceased person)”.

19. Excess retention tax abolished—(1) The principal Act is hereby amended by repealing Part V (sections 246 to 256).

(2) The following provisions are hereby consequentially repealed:

- (a) So much of the Third Schedule to the Income Tax Amendment Act (No. 2) 1977 as relates to sections 246 and 255 (a) of the principal Act:
- (b) Section 38 of the Income Tax Amendment Act 1978:
- (c) Section 36 of the Income Tax Amendment Act (No. 4) 1986:
- (d) Section 21 (9) of the Income Tax Amendment Act (No. 3) 1988:
- (e) Sections 42 to 44 of the Income Tax Amendment Act (No. 5) 1988:
- (f) Sections 15 to 18 of the Income Tax Amendment Act (No. 4) 1989.

(3) This section shall apply with respect to excess retention tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

20. Retirement tax—(1) The principal Act is hereby amended by repealing Part VA (sections 257A to 257C) and the Twentieth Schedule (as both inserted by section 3 of the Income Tax Amendment Act (No. 3) 1989).

(2) The First Schedule to the principal Act is hereby consequentially amended—

(a) In Part A, by—

(i) Omitting the footnote character “1” wherever it occurs in clauses 2, 2A, 3, 4, 5, 6, 7, 8, 9, 9A, 9C, 9D, and 13:

(ii) Repealing clause 14 and the heading “Retirement Tax” immediately preceding that clause:

(iii) Omitting the footnote:

(b) In Part B, by—

(i) Omitting the footnote character “1” in both places where it occurs:

(ii) Omitting the footnote.

(3) The following enactments are hereby consequentially repealed:

- (a) Sections 3 and 15 of the Income Tax Amendment Act (No. 3) 1989, and the Schedule to that Act:
- (b) Sections 20 and 54 of the Income Tax Amendment Act (No. 4) 1989:

(c) Section 33 of the Income Tax Amendment Act (No. 3) 1990, and the Schedule to that Act.

21. Payment of deductions of resident withholding tax—Section 15 (2) of the Income Tax Amendment Act 1991 is hereby amended by omitting the words “tax deductions made”, and substituting the words “tax payable”.

22. Application of other Parts—guaranteed retirement income earner surcharge—(1) Section 336M of the principal Act is hereby amended by omitting the words “or for the purposes of section 398A or section 413A of this Act” (as inserted by section 21 (13) of the Income Tax Amendment Act (No. 3) 1988).

(2) Section 21 (13) of the Income Tax Amendment Act (No. 3) 1988 is hereby consequentially repealed.

(3) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

23. Interpretation—fringe benefit tax—(1) Section 336N (1) of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by inserting, after the definition of the term “benefit”, the following definition:

“‘Charitable organisation’, in relation to any quarter or (where fringe benefit tax is payable on an income year basis pursuant to section 336TB of this Act) any income year, means any society, institution, association, organisation, trust, or fund (not being a local authority, a public authority, or a university) to which, in the quarter or income year, as the case may be, section 56A (2) of this Act applies.”

(2) Section 336N (1) of the principal Act (as so inserted) is hereby further amended by inserting in paragraph (db) of the definition of the term “fringe benefit” (as substituted by section 32 (4) of the Income Tax Amendment Act (No. 2) 1990), after the expression “employee,”, the words “any specified insurance premium or”.

(3) Section 336N (1) of the principal Act (as so inserted) is hereby further amended—

(a) By omitting from the definition of the term “fringe benefit” the words “a contribution to a designated fund, a specified insurance premium or a contribution to a non-designated fund,” (where those words

appear following paragraph (e)), and substituting the words “a contribution to a fund referred to in paragraph (da) of this definition, a specified insurance premium or a contribution to an insurance fund of a friendly society,”:

- (b) By inserting in that definition, before the words “or a benefit that is used” (where those words appear following paragraph (e)), the words “a contribution to a superannuation scheme,”.

(4) Section 336N (1) of the principal Act (as so inserted) is hereby further amended by inserting, after paragraph (gc) of the definition of the term “fringe benefit”, the following paragraph:

“(h) Any benefit that, in any quarter or (where fringe benefit tax is payable on an income year basis pursuant to section 336TB of this Act) any income year, is provided or granted by or on behalf of an employer, being a charitable organisation, to an employee of the employer:

“Provided that this paragraph shall not apply to any such benefit to the extent that the benefit is used, enjoyed, or received, whether directly or indirectly, primarily and principally in relation to, in the course of, or by virtue of, any employment, in relation to the employee, that consists of any activity or activities performed by the employee in the carrying on, by the employer, of a business:”.

(5) Section 336 (1) of the principal Act (as so inserted) is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Holder’, or ‘policyholder’, in relation to any policy of life insurance, means the person who is beneficially entitled to the rights of ownership of that policy:

“‘Life insurer’ means a person carrying on a business of providing life insurance:”.

(6) Section 336N of the principal Act (as so inserted) is hereby amended by repealing the subsection (9) that was added by section 32 (7) of the Income Tax Amendment Act (No. 2) 1990, and substituting the following subsections:

“(8A) Where—

“(a) Any person who is a holder of a policy of life insurance offered or entered into in New Zealand owes any loan to—

“(i) The life insurer who is the insurer of the policy; or

“(ii) Any person who, in relation to the life insurer, is an associated person; or

“(iii) Any person with whom the life insurer has entered into an arrangement in relation to the provision or grant of the loan; and

“(b) Either—

“(i) The loan was granted or is provided to the person having regard to the capacity or status of the person as a policyholder; or

“(ii) The interest chargeable on the loan is determined or depends on the capacity or status of the person as a policyholder,—

this Part of this Act shall apply as if—

“(c) The life insurer were an employer of the policyholder in relation to that loan; and

“(d) The policyholder were an employee of the life insurer in relation to the loan; and

“(e) The loan were an employment related loan.

“(8B) Where—

“(a) Any person is an associated person of a holder of a policy of life insurance offered or entered into in New Zealand; and

“(b) The person owes any loan to—

“(i) The life insurer who is the insurer of the policy of that policyholder; or

“(ii) Any person who, in relation to that life insurer, is an associated person; or

“(iii) Any person with whom the life insurer has entered into an arrangement in relation to the provision or grant of the loan; and

“(c) Either—

“(i) The loan was granted or is provided to the person having regard to the capacity or status of the policyholder as a policyholder of the life insurer; or

“(ii) The interest chargeable on the loan is determined or depends on the capacity or status of the policyholder as a policyholder of the life insurer,—

this Part of this Act shall apply as if—

“(d) That life insurer were an employer of the person in relation to the loan; and

“(e) The person were an employee of the life insurer in relation to the loan; and

“(f) The loan were an employment related loan.”

(7) Section 32 (7) of the Income Tax Amendment Act (No. 2) 1990 is hereby consequentially repealed.

(8) Section 17 (2) of the Income Tax Amendment Act (No. 2) 1988 is hereby consequentially repealed.

(9) Subsections (1) and (4) of this section shall apply with respect to fringe benefits provided on or after the 1st day of October 1990.

(10) Subsections (2), (3), and (8) of this section shall apply with respect to fringe benefits provided on or after the 15th day of December 1989.

(11) Subsections (5), (6), and (7) of this section shall apply with respect to loans owing on and after the 1st day of October 1990.

24. Regulations—Section 336w (2) of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985 and amended by section 38 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by adding the following subsection:

“(3) Notwithstanding subsection (2) of this section, where any regulation made pursuant to subsection (1) (a) of this section—

“(a) Reduces the rate of interest from the rate currently prescribed; and

“(b) Is made not less than 1 month before the expiry of any quarter,—

that regulation may apply for that quarter.”

25. Tax deductions to be credited against tax assessed—Section 362 (2) of the principal Act is hereby amended by inserting, after the words “and shall refund to the employee”, the words “in accordance with Part XIV of this Act”.

26. Determination of assessable income—(1) Section 374B (1) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended—

(a) By inserting in paragraph (d) (i), after the expression “84, ”, the expression “86DA, ”;

(b) By inserting in paragraph (e) (ii), after the expression “84, ”, the expression “86DA, ”.

(2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

27. Allowance of credit of tax in end of year assessment—Section 374F (1) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by omitting the words “refundable by the Commissioner to the person as if it were an amount of tax paid in excess”, and substituting the words “refunded to the person”.

28. Provisional tax to be credited against tax assessment—Section 389 (1) of the principal Act (as substituted by section 17 (1) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting, after the words “and shall refund to the taxpayer”, the words “in accordance with Part XIV of this Act”.

29. Debits arising to imputation credit account—(1) Section 394E (4) of the principal Act (as inserted by section 55 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Where shares are held by a company that is a special corporate entity within the meaning of section 191 (1) (g) of this Act, then, for so long as those shares continue to be held by that entity, they shall be deemed to be held by the same person, notwithstanding any change in the members or directors of the company and notwithstanding anything in section 191 (1) (b) of this Act.”.

(2) This section shall be deemed to have come into force on the 1st day of April 1988.

30. Debits arising to dividend withholding payment account—(1) Section 394zw (4) of the principal Act (as inserted by section 55 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Where shares are held by a company that is a special corporate entity within the meaning of section 191 (1) (g) of this Act, then, for so long as those shares continue to be held by that entity, they shall be deemed to be held by the same person, notwithstanding any change in the members or directors of the company and notwithstanding anything in section 191 (1) (b) of this Act.”.

(2) This section shall be deemed to have come into force on the 1st day of April 1988.

31. Credits and debits arising to branch equivalent tax account of company—(1) Section 394ZZP (6) of the principal Act (as inserted by section 55 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Where shares are held by a company that is a special corporate entity within the meaning of section 191 (1) (g) of this Act, then, for so long as those shares continue to be held by that entity, they shall be deemed to be held by the same person, notwithstanding any change in the members or directors of the company and notwithstanding anything in section 191 (1) (b) of this Act:”.

(2) This section shall be deemed to have come into force on the 1st day of April 1988.

32. Interest to be charged where residual income tax exceeds provisional tax—(1) Section 398A (1) of the principal Act (as substituted by section 19 (1) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting, before the definition of the term “residual income tax”, the following definition:

“ ‘Income tax payable’, in relation to any person and any income year,—

“(a) Includes any amount calculated pursuant to section 374F (2) (d) of this Act that is to be added to the amount of tax payable by the person for the income year:

“(b) Does not include any amount calculated pursuant to section 374F (2) (e) of this Act that is to be credited in payment of any tax payable by the person for the income year.”

(2) Section 398A of the principal Act (as inserted by section 19 (1) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Subject to this section, interest shall be imposed by the Commissioner on any amount of income tax payable by any person for any income year (whether already assessed or not) that remains unpaid at the commencement of any day in the period that—

“(a) Commences on the day immediately succeeding the day that—

“(i) In relation to that person and that income year, is the due date for payment of the third instalment of provisional tax; or

“(ii) In relation to that income year, would have been the due date for payment by the person of the third instalment of provisional tax had not the person been relieved by section 377 (2) of this Act of the obligation to pay provisional tax; and

“(b) Ends on the day that is, in relation to the person and the income year, the due date for payment of terminal tax.”

(3) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

33. Refund of excess tax—Section 409 of the principal Act is hereby amended by adding the following subsections:

“(3) Subject to sections 394M, 394ZO, 394ZZX, and 394ZZZJ of this Act and to subsection (4) of this section, where a person to whom a refund is payable in accordance with this section has failed to pay any tax or other amount that is due and payable by that person to the Commissioner under any provision of this Act or any other of the Inland Revenue Acts, the Commissioner may apply all or any part of the refund in satisfying, in such order or manner as the Commissioner may determine, the obligation of the person to pay the tax or other amount due.

“(4) Nothing in subsection (3) of this section authorises the Commissioner to apply in satisfaction of any tax or other amount due the amount of any refund that arises in terms of—

“(a) Any of sections 156A (6), 156B (4), 156D (8), 156E (4), 156F (4), and 156G (4) of this Act (which relate to credits of tax in respect of certain export incentives); or

“(b) Section 326A of this Act (which relates to refunds of excess non-resident withholding tax); or

“(c) Section 327G of this Act (which relates to refunds of excess resident withholding tax); or

“(d) Part XIA of this Act (which relates to family support credit of tax).”

34. Relief in cases of serious hardship—(1) Section 414 (2) of the principal Act is hereby amended by adding the following proviso:

“Provided that the Commissioner shall exercise this discretion in such a manner as to maximise the net present value of any recovery or likely recovery from the taxpayer of any current and future tax amounts.”

(2) Section 414 (5) of the principal Act is hereby amended by omitting the expression “\$5,000” (as substituted by section 42 (1) of the Income Tax Amendment Act (No. 4) 1986), and substituting the expression “\$50,000”.

(3) Section 42 (1) of the Income Tax Amendment Act (No. 4) 1986 is hereby consequentially repealed.

35. Tenth Schedule amended—(1) The Tenth Schedule to the principal Act (as inserted by section 34 (2) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by numbering the existing contents of that schedule as clause 1, and by inserting at the beginning of that clause the words “Subject to clause 3 of this Schedule,”.

(2) The Tenth Schedule to the principal Act (as so inserted) is hereby further amended by adding the following clauses:

“2. Subject to clause 3 of this Schedule, for the purpose of determining pursuant to clause 1 of this Schedule the value of a fringe benefit that consists of the private use or enjoyment of a motor vehicle,—

“(a) The cost price of any such vehicle shall include any goods and services tax paid on the acquisition of the vehicle by the person providing the benefit, or (as the case may require) that would have been payable had the vehicle been acquired at market value, and shall not be reduced by any amount of input tax in relation to the supply of the vehicle to that person:

“(b) The market value of any such vehicle that is leased or rented by the person providing the benefit from any other person shall include the amount of goods and services tax that would be payable had the vehicle been acquired by that other person at market value on the date on which the period of leasing or renting commenced.

“3. Notwithstanding clause 2 of this Schedule,—

“(a) A person who, in any quarter or (where fringe benefit tax is payable in respect of the vehicle on an income year basis pursuant to section 336TB of this Act) in any income year, provides a benefit that, but for this clause, would be valued in accordance with clauses 1 and 2 of this Schedule, may instead elect to value the motor vehicle concerned on the basis of a cost

price or market value that is exclusive of goods and services tax; and

“(b) Where the person so elects, clause 1 of this Schedule shall apply in respect of the motor vehicle as if—

“(i) The terms ‘cost price’ and ‘market value’ in that clause did not include any amount of goods and services tax payable or that would have been payable had the vehicle been acquired at market value on the relevant date; and

“(ii) The references in that clause to the expression ‘6 percent’ were references to a percentage calculated as follows:

$$6 + (6 \times a)$$

where *a* is equal to the rate of goods and services tax (expressed as a percentage) specified in section 8 (1) of the Goods and Services Tax Act 1985, being the rate that applies on the last day of the quarter in respect of which the election applies; and

“(iii) The references in that clause to the expression ‘24 percent’ were references to a percentage calculated as follows:

$$24 + (24 \times b)$$

where *b* is equal to the rate of goods and services tax (expressed as a percentage) specified in section 8 (1) of the Goods and Services Tax Act 1985, being the rate that applies on the last day (being the 31st day of March) of the income year in respect of which the election applies.”

(3) This section shall apply to fringe benefits provided on or after the 1st day of July 1991.

36. Thirteenth Schedule amended—(1) Part II of the Thirteenth Schedule to the principal Act (as inserted by section 12 (2) (a) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by repealing paragraph (e), and substituting the following paragraphs:

“(e) The construction of roads to or on the land, being roads which are formed and wholly or substantially metalled or sealed, and any culverts or bridges that are necessary for the purposes of that construction:

“(ea) The construction of roads to or on the land (including any culverts or bridges that are necessary for the purposes of that construction), being—

“(i) Roads which are formed and partially metalled or sealed; or

“(ii) Roads which are not metalled or sealed,—

and not being access tracks in respect of which a deduction may be claimed under section 74 (3A) of this Act:

20.”

(2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1991 and in every subsequent year.

37. No-declaration rate of resident withholding tax deductions—(1) The Nineteenth Schedule to the principal Act (as inserted by section 12 (2) of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by repealing clause 1, and substituting the following clause:

“1. For the purposes of section 327c of this Act, the rate of the resident withholding tax deduction from payments of resident withholding income, being interest, for every \$1 of those payments shall be—

“(a) A no-declaration rate of 33¢, where paragraph (b) of this clause does not apply:

“(b) A rate of 24¢, where the payer of the interest is supplied with the tax file number (as defined in section 327A of this Act) of—

“(i) The person to whom the interest is paid; or

“(ii) Any 1 of the persons to whom the interest is paid, where the payment is made to 2 or more persons.”

(2) Section 327c (1) (a) of the principal Act (as inserted by section 12 (1) of the Income Tax Amendment Act (No. 2) 1989) is hereby consequentially amended by inserting in item a, immediately before the word “rate”, the word “appropriate”.

(3) This section shall apply to any interest paid on or after the 1st day of April 1992.