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93. Taxation (Accrual Rules and Other Remedial Matters) Act 1999

1999, No. 98

**An Act to make remedial amendments under the Inland Revenue Acts** [*8 September 1999*

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

**1. Short Title**—This Act may be cited as the Taxation (Remedial Matters) Act 1999.

PART 1

AMENDMENTS TO INCOME TAX ACT 1994

**2. Income Tax Act 1994**—This Part amends the Income Tax Act 1994.

**3. Public and local authorities' exempt income**—(1) Section CB 3 (a)(iii) is replaced by:

"(iii) Any State enterprise:".

(2) Subsection (1) applies to the 1995-96 and subsequent income years.

**4. Meaning of term "dividends"**—(1) After section CF 2 (13), the following is inserted:

"(13A) Despite subsection (13), subsection (1)(k) applies to dividends to which section FC 3 applies."

(2) Subsection (1) applies after 20 May 1999.

**5. Transfer of excepted financial arrangement within wholly-owned group**—(1) After section EE 14 (2), the following is inserted:

"(2A) Subsection (2) applies only if the transferor and the transferee are resident in New Zealand on the date that the excepted financial arrangement is sold, disposed of or distributed."

(2) Subsection (1) applies to the sale, disposal or distribution of excepted financial arrangements on and after 20 May 1999.

**6. Relationship with rest of Act**—(1) In section EH 26 (3), "until a paragraph applies" is added after "alphabetical order".

(2) Subsection (1) applies on and after 20 May 1999.

**7. Election to use spreading method**—(1) After section EH 31 (5), the following is inserted:

"**Revocation of election**

"(6) A person may revoke their election by giving notice to the Commissioner. The revocation will apply to financial arrangements entered into after the income year in which notice is given.

"**How to revoke**

"(7) A person must give notice to the Commissioner with their return of income and within the time that the return must be furnished under section 37 of the Tax Administration Act 1994."

(2) In the list of defined terms for section EH 31—

(a) "Commissioner," is inserted after "cash basis person,"; and

(b) "notice," is inserted after "income year,".

(3) Subsections (1) and (2) apply on and after 20 May 1999.

**8. Consideration**—(1) Section EH 48 (2) is replaced by:

"**Consideration includes property or services**

"(2) For an original party to a finance lease, a hire purchase agreement, an agreement for the sale and purchase of property or services or a specified option, not being an agreement or an option that has lapsed or does not proceed, if the consideration includes property or services, the value of the property or services is determined by applying subsection (3)(a) to (d) in alphabetical order until a paragraph applies."

(2) In section EH 48 (3), "if payment was required" is replaced by "if payment would have been required".

(3) Subsections (1) and (2) apply on and after 20 May 1999.

**9. Non-residents**—(1) After section EH 50 (1), the following is inserted:

"**Person becoming resident in New Zealand**

"(1A) If a non-resident is a party to a financial arrangement and becomes a resident in New Zealand, the person is treated as having acquired the financial arrangement on the date that the person becomes a resident in New Zealand."

(2) In section EH 50 (3), "subsection (2)" is replaced by "subsections (1A) or (2)".

(3) Subsections (1) and (2) apply on and after 20 May 1999.

**10. Deduction to lessee under operating lease**—(1) In section EO 2A (2), the portion before the formula is replaced by:

"(2) The amount of expenditure incurred by a lessee in making lease payments under an operating lease is calculated using the formula:".

(2) Subsection (1) applies on and after 20 May 1999.

**11. Costs of acquiring any film or any right in any film**—(1) After section EO 3 (2), the following is inserted:

"(2A) For the purpose of the amendments to the definitions of 'film owner' and 'right' in section 50 of the Taxation (Remedial Matters) Act 1999, this section applies to expenditure incurred on and after 7 July 1999.

"(2B) For the purpose of subsection (2A), expenditure incurred includes the portion of a depreciation loss or an allowance for depreciation that is attributable to the period on and after 7 July 1999."

(2) Subsection (1) applies on and after 7 July 1999.

**12. Cost of producing films**—(1) After section EO 4 (3), the following is inserted:

"(3A) For the purpose of the amendments to the definitions of 'film owner' and 'right' in section 50 of the Taxation (Remedial Matters) Act 1999, this section applies to expenditure incurred on and after 7 July 1999.

"(3B) For the purpose of subsection (3A), expenditure incurred includes the portion of a depreciation loss or an allowance for depreciation that is attributable to the period on and after 7 July 1999."

(2) Subsection (1) applies on and after 7 July 1999.

**13. Arrangement for expenditure on film and sale of property**—(1) Section EO 4A (2) is replaced by:

"(2) This section applies to a person and an arrangement if:

"(a) The person may incur expenditure under the arrangement and the expenditure would be—

"(i) Deductible under section EO 3 or EO 4; or

"(ii) Otherwise deductible under section BD 2 if the expenditure is for a right in or in relation to a film; and

"(b) The person or an associated person may dispose of property—

"(i) Under the arrangement; or

"(ii) Under a right given by the arrangement to the person or to an associated person; or

"(iii) In meeting an obligation of the person or of the associated person that arises from a right given by the arrangement; and

"(c) All or some of the consideration for the property would not be income from a film under section CJ 2.

"(2A) This section does not apply to a person who incurs expenditure in relation to a film under an arrangement that is entered into on or before 30 June 2001 if—

"(a) The film is either—

"(i) A New Zealand film; or

"(ii) A film for which the New Zealand Film Commission has issued a provisional certificate, unless materially incorrect information was provided to the Commission in obtaining the certificate; and

"(b) To the extent that the expenditure is incurred on depreciable intangible property of a type listed in Schedule 17, the expenditure is an amount paid to another person—

"(i) Who at all times in the income year in which the payment is made—

"(A) Is resident in a country or territory specified in Schedule 3, Part A; and

"(B) Is liable to income tax in that country or territory by reason of domicile, residence, place of incorporation or place of management in that country or territory; and

"(C) Has calculated its income liable to income tax in that country or territory without applying a feature of the taxation law of that country or territory specified in Schedule 3, Part B; or

"(ii) Which is gross income of the other person; and

"(c) All expenditure to which subsection (2)(a) applies incurred by persons (as if no person satisfied the other paragraphs of this subsection) is not more than 140% of the physical cost of production of the film; and

"(d) Without in any way limiting the application of section BG 1, on the date that the arrangement is entered into, there is an expectation based on

reasonable commercial assumptions that the gross income to be derived by the person as a result of the expenditure will be at least equal to the sum of—

"(i) All expenditure incurred by the person under the arrangement; and

"(ii) A return on each amount of expenditure that is equivalent to the return on 5-year Government stock measured on the date that the arrangement is entered into.

"(2B) Subsection (2A) applies only if—

"(a) One or more contracts have been entered into before 7 July 1999 for the supply of goods or services in New Zealand in relation to the film; and

"(b) At least $1,000,000 of expenditure has been incurred under the contract or contracts before 7 July 1999; and

"(c) The film has not been completed before 7 July 1999; and

"(d) Any person who has entered into a contract referred to in paragraph (a) notifies the Commissioner in writing on or before 1 November 1999 that paragraphs (a) to (c) are satisfied."

(2) In section EO 4A (3), in items "a" and "c", in section EO 4A (4), in item "a" and in section EO 4A (5), "under section EO 3 or EO 4" is omitted.

(3) After section EO 4A (6), the following is added:

"(7) In this section, a loss attributing qualifying company and a shareholder in the loss attributing qualifying company are associated persons.

"(8) In this section—

" 'Government stock' means any stock issued under Part VI of the Public Finance Act 1989; and

" 'Physical cost of production" means all expenditure incurred in producing a film, whether incurred in New Zealand or elsewhere, but does not include—

"(a) Expenditure in marketing or selling the film; and

"(b) Expenditure on depreciable intangible property of a type listed in Schedule 17."

(4) Subsections (1) to (3) apply on and after 7 July 1999.

**14. Lease of lease asset treated as sale**—(1) Section FC 8A (a) and (b) is replaced by:

"(a) The lessor is treated as giving the lessee a loan for the lease asset; and

"(b) The lessee is treated as using the loan to purchase the lease asset."

(2) In section FC 8A, the following is added as subsections (2) and (3):

"(2) For the lessor, the loan's value is the lessor's disposition value.

"(3) For the lessee, the loan's value is the lessee's acquisition cost."

(3) Subsections (1) and (2) apply on and after 20 May 1999.

**15. Termination of finance lease**—(1) Section FC 8C (2) is repealed.

(2) Subsection (1) applies on and after 20 May 1999.

**16. Lessor's income**—(1) In section FC 8F, "For the purpose of this Act, income" is replaced by "Income".

(2) Subsection (1) applies on and after 20 May 1999.

**17. Adjustment required for consecutive or successive leases**—(1) In section FC 8H (1), at the end of paragraph (b), "life." is replaced by "life; and", and the following is inserted:

"(c) Their lease is for more than 75% of the lease asset's estimated useful life."

(2) Subsection (1) applies on and after 20 May 1999.

**18. Taxation of hire purchase agreements**—(1) In section FC 10 (6A), "For the purpose of this Act, income" is replaced by "Income".

(2) Subsection (1) applies on and after 20 May 1999.

**19. Rule for dividends that represent recovery of share's purchase price**—(1) In section FC 3 (1), the portion before the proviso is replaced by:

"(1) If a taxpayer holds shares that are revenue account property, a dividend derived by the taxpayer or an associated person from the shares after their acquisition which the Commissioner considers—

"(a) Constitutes a realisation or recovery of the price at which the taxpayer acquired those shares; and

"(b) Is a dividend, the declaration, payment or distribution of which was in any way—

"(i) Controlled or directed by the taxpayer; or

"(ii) Part of or associated with a scheme which includes the acquisition of those shares and the payment or distribution of the dividend—

"is deemed to be received by the taxpayer as consideration or part consideration on the sale of the shares, whether or not the shares have been or will be sold, and is gross income in the year in which the dividend is derived:".

(2) Subsection (1) applies after 20 May 1999.

**20. Rule for calculating group excess interest allocation amount**—(1) In section FH 5, in item "GIFD", "sections FH 4 and FH 5" is replaced by "sections FH 3 and FH 4".

(2) Subsection (1) applies to the 1998–99 and subsequent income years.

**21. Rule for calculating individual excess interest allocation amount**—(1) In section FH 7, item "BC" of the formula is replaced by:

"BC is the total of—

"(a) The amount able to be credited by the company against its income tax liability for the income year under section MF 5 (4); and

"(b) The amount credited by another company in the same group of companies against the company's income tax liability for the income year under section MF 5 (4).

Both amounts are determined as if the amount of rebate calculated under section KH 1 were nil:".

(2) Subsection (1) applies to the 1998–99 and subsequent income years.

**22. Rules for applying surplus group excess interest allocation amount to increase income tax and dividend withholding payment**—(1) Section FH 8 (5) is replaced by:

"(5) A conduit tax relief company will have a conduit tax relief account adjustment of an amount calculated as follows:

"FDAA × TR

"where—

"FDAA is the company's foreign dividend adjustment amount for the income year:

"TR is the rate of income tax stated in Schedule 1, Part A, clause 5 for the income year."

(2) Subsection (1) applies to the 1998–99 and subsequent income years.

**23. Cost of producing films**—(1) Section GD 12 (1) is replaced by:

"(1) Subsection (1A) applies if, in relation to an income year, a taxpayer and a film, the Commissioner is satisfied, having regard to any connection between the taxpayer and a person who supplied goods to, or provided services for, the taxpayer in relation to the film, or to any other circumstances that the Commissioner considers relevant, that—

"(a) The taxpayer and the person were not dealing with each other at arm's length when the goods were supplied or the services provided; and

"(b) Either—

"(i) The taxpayer incurred film production expenditure which is more than the amount that the taxpayer would have incurred if the taxpayer and the person had been dealing with each other at arm's length; or

"(ii) The taxpayer incurred any other expenditure for a right in or in relation to the film which is more than the amount that the taxpayer would have incurred if the taxpayer and the person had been dealing with each other at arm's length.

"(1A) The amount of film production expenditure or other expenditure incurred by the taxpayer is treated as being the amount that the Commissioner considers might have been expected to have been incurred if the taxpayer and the person had been dealing with each other at arm's length."

(2) Subsection (1) applies on and after 7 July 1999.

**24. Cross-border arrangement between associated persons**—(1) Section GD 13 (5)(a) is replaced by:

"(a) The amount is an allowable deduction of the other party, (or, in the case of an interest-free loan, would be an allowable deduction but for the application of Part FG if an arm's length amount of interest were substituted), and is interest, royalties or an insurance premium; or".

(2) Subsection (1) applies to the 1996-97 and subsequent income years.

**25. New Subpart inserted**—(1) After section GD 13, the following is inserted:

"SUBPART E—NON-MARKET TRANSACTIONS—SPECIFIC

"GE 1. **New Zealand Raspberry Marketing Council**—(1) This section applies upon the making of regulations to dissolve the New Zealand Raspberry Marketing Council, the

Raspberry Marketing Export Authority and the District Raspberry Marketing Committees, established under the Raspberry Marketing Regulations 1979.

"(2) In this section, 'Council', 'current grower', 'District Committee' and 'grower' have the meaning set out in the Raspberry Marketing Authorities (Dissolution) Regulations 1999.

"(3) When the Raspberry Marketing Authorities (Dissolution) Regulations 1999 are made, the making and coming into force does not give rise to—

"(a) Gross income for growers, current growers or the District Committees under section BD 1; or

"(b) A dividend for the purpose of section CF 2.

"(4) When the Cold Storage Nelson Limited shares owned by the Nelson Raspberry Marketing Committee vest in Rubus Investments Nelson Limited, the vesting—

"(a) Is treated as the consideration received by Rubus Investments Nelson Limited for the issue of its shares to the current growers of the Nelson Raspberry Marketing Committee in accordance with the formula in the Raspberry Marketing Authorities (Dissolution) Regulations 1999; and

"(b) Does not give rise to—

"(i) Gross income for Rubus Investments Nelson Limited under section BD 1; or

"(ii) A dividend for the purpose of section CF 2.

"(5) The issue of shares to the current growers of the Nelson Raspberry Marketing Committee by Rubus Investments Nelson Limited in accordance with the formula in the Raspberry Marketing Authorities (Dissolution) Regulations 1999 is treated as a distribution having been made by the Nelson Raspberry Marketing Committee itself on dissolution.

"(6) A distribution made by the Council to the District Committees on dissolution is treated as a distribution made by a company to its shareholders on dissolution.

"(7) A distribution made by any one of the Committees to a grower or a current grower on dissolution is treated as a distribution made by a company to its shareholders on dissolution."

(2) Subsection (1) applies on and after the date the Raspberry Marketing Authorities (Dissolution) Regulations 1999 are made.

**26. Taxation on election to become qualifying company**—(1) After section HG 11 (1), the following is inserted:

"(1A) If a company is not a qualifying company and ceases to exist when it amalgamates with a qualifying company, the amalgamated company is liable to pay a special tax by way of income tax known as qualifying company election tax.

"(1B) If subsection (1A) applies, subsection (2) applies to the amalgamated company as if—

"(a) The reference to 'the "relevant time" ' were read as referring to the time at which the amalgamating company ceases to exist; and

"(b) All references to the time or income year in which the company became a qualifying company, however expressed, were read as referring to the time at which the amalgamating company ceases to exist."

(2) After section HG 11 (3), the following is inserted:

"(3A) If a company that is not a qualifying company amalgamates with a qualifying company and ceases to exist on amalgamation during an income year (referred to as the 'relevant year'), the amalgamated company is not entitled by virtue of any of sections IE 1, IE 3, IE 4, IF 1 and IF 3 to carry forward to the relevant year or a later income year any net losses of the amalgamating company that ceases to exist for income years before the relevant year."

(3) Subsections (1) and (2) apply after 20 May 1999.

**27. Rebate in respect of gifts of money**—(1) After section KC 5 (1)(bu), the following is added:

"(bv) Karunai Illam Trust."

(2) Subsection (1) applies to the 2000–2001 and subsequent income years.

**28. Allowance of credit of tax in end of year assessment**—(1) Section KD 4 (2)(a) and (b) is replaced by:

"(a) Issues a person with a certificate of entitlement for the income year because an interim instalment of estimated entitlement to a credit of tax was paid to the person during the income year; or

"(b) Finds out, otherwise than by way of a certificate of entitlement, that an interim instalment of estimated entitlement to a credit of tax has been paid to, or for the benefit of, or dealt with in the interest of, the person for the income year,—".

(2) After section KD 4 (2), the following is inserted:

"(2A) The Commissioner must not apply subsection (2)(c) or (2)(d) so as to allow a credit of tax in respect of a child if the

person does not provide the Commissioner with the tax file number of the child for whom the credit is claimed."

(3) Section KD 4 (3) is repealed.

(4) In section KD 4 (5), "and every such other person" is omitted.

(5) Subsections (1), (3) and (4) apply on and after the date this Act receives the Royal assent.

(6) Subsection (2) applies to the 2000–2001 and subsequent income years.

**29. Credit of tax by instalments**—(1) After section KD 5 (2), the following is inserted:

"(2A) A person continues to be entitled to a credit of tax under section KD 2, or sections KD 2 and KD 3, for specified periods after the specified period for which an application was made until the Commissioner withdraws the certificate of entitlement under either subsection (10) or (12)."

(2) Section KD 5 (3) is replaced by:

"(3) If an application is not accompanied by the tax file number of each child for whom a credit of tax is claimed and if the Commissioner is otherwise satisfied of the person's entitlement, the Commissioner must—

"(a) Issue the person with a certificate of entitlement; and

"(b) Pay to the person interim instalments of a credit of tax under section KD 2, or sections KD 2 and KD 3, for a period of 8 weeks.

"(3A) If the person or their spouse does not provide the tax file number of a child for whom a credit of tax is claimed within the 8-week period, the Commissioner must stop paying the credit of tax for the child until the tax file number is provided."

(3) Subsections (1) and (2) apply to the 2000–2001 and subsequent income years.

**30. Transitional rates for interim instalments during period 1 July 1997 to 30 June 1998**—(1) Section KD 5AB is repealed.

(2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**31. Transitional rates for interim instalments during period 1 January 1998 to 30 June 1998**—(1) Section KD 5AC is repealed.

(2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**32. Commissioner to deliver credit of tax by instalments**—(1) Section KD 7 (2) is replaced by:

"(2) If the Commissioner makes a payment in accordance with this section to a person or to their spouse on their behalf during an income year, the Commissioner must deliver to the person a certificate in the prescribed form showing the total of all the credits of tax paid by instalments under a certificate of entitlement for that income year, together with such other information the Commissioner may prescribe.

"(2A) The Commissioner must deliver the certificate—

"(a) On or before 20 April next following the last day of the income year in which the payment is made for persons to whom section 33A (5) of the Tax Administration Act 1994 does not apply; and

"(b) On the same date that the Commissioner issues the person with an income statement for the income year in which the payment is made for persons to whom section 33A (5) of the Tax Administration Act 1994 applies."

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**33. Conduit tax relief**—(1) Section KH 1 (1) is replaced by:

"(1) A company is allowed an income tax rebate as calculated under subsection (2), for an income year corresponding with an imputation year for which it is a conduit tax relief company, if it is still a conduit tax relief company at the time it files its return of income for the income year."

(2) In section KH 1 (2), item "BC" of the formula is replaced by:

"BC is the total of—

"(a) The amount able to be credited by the company against its income tax liability for the income year under section MF 5 (4); and

"(b) The amount credited by another company in the same group of companies against the company's income tax liability for the income year under section MF 5 (4).

Both amounts are determined as if the amount of rebate calculated under this section were nil:".

(3) Subsections (1) and (2) apply to the 1998–99 and subsequent income years.

**34. Calculation of percentage of shareholders not resident**—(1) Section KH 2 (2) is replaced by:

"(2) If a company to which subsection (1) applies is a listed company, the company may use:

"(a) The record date (the date on which entitlement to a dividend is determined) for a dividend instead of the date on which the dividend is paid; or

"(b) Any date in the income year on which the company, for whatever commercial reason, calculates the percentage of non-resident shareholders.

"(2A) If, in respect of a company, there is a conduit tax relief group member, subsection (1) (as modified, if applicable, by subsection (2)) applies as if the company referred to in that subsection were the company—

"(a) In which one or more non-residents have a direct voting interest; and

"(b) That has a 100% voting interest (calculated as if section OD 3 (3)(d) did not apply to deem the company's interests to be held by others) in the company first mentioned in this subsection."

(2) Subsection (1) applies to the 1998–99 and subsequent income years.

**35. Provisional tax of consolidated group members**— (1) Section MB 7 (2) is replaced by:

"(2) Subsection (3) applies if a company is—

"(a) A member of a consolidated group for all or part of an income year; and

"(b) Not a member of the consolidated group for all or part of the immediately succeeding income year.

"(3) The company must make an estimate of residual income tax on or before the third instalment date for the immediately succeeding income year, and the company is treated as a provisional taxpayer to whom section MB 3 applies for the purpose of its estimate.

"(4) The consolidated group, in the case of the company that is a member of another consolidated group, must make an estimate of residual income tax on or before the third instalment date for the immediately succeeding income year, and the consolidated group is treated as a provisional taxpayer to whom section MB 3 applies for the purpose of its estimate.

"(5) If a company ceases to be a member of the consolidated group during the immediately succeeding income year, the company's estimate applies only to instalments of provisional tax payable after the date of cessation."

(2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**36. Debits arising to imputation credit account of group**—(1) After section ME 12 (1)(m), the following is added:

"(n) The amount calculated under subsection (3) or (4) for an income year and transferred to the group's dividend withholding payment account on account of net foreign attributed income."

(2) After section ME 12 (2)(k), the following is added:

"(l) In the case of a debit referred to in paragraph (n)—

"(i) On the last day of the imputation year that corresponds to the income year, to the extent that the debit is not more than the amount of provisional tax payments made for the income year on or before that day; and

"(ii) To the extent that subparagraph (i) does not apply, on the date the return of income for the income year is filed."

(3) After section ME 12 (2), the following is added:

"(3) If a consolidated group maintains both a dividend withholding payment account and a conduit tax relief account for the imputation year corresponding to the income year, the amount to be transferred under subsection (1)(n) is calculated by applying sections KH 1 and KH 2, with any necessary modifications and as if the amount were conduit tax relief for the year, but:

"(a) Substituting the percentage of resident shareholders for the quantity NRS in sections KH 1 (2) and KH 1 (3); and

"(b) Calculating the percentage of resident shareholders by deducting the quantity NRS from 100%.

"(4) If a consolidated group maintains a dividend withholding payment account for the imputation year corresponding to the income year but does not maintain a group conduit tax relief account for the imputation year, the amount to be transferred under subsection (1)(n) is calculated by applying section KH 1 as if each member of the group were a conduit tax relief company and quantity NRS were 100%.

"(5) If neither subsection (3) nor subsection (4) applies, no amount is to be transferred under subsection (1)(n)."

(4) Subsections (1) to (3) apply to the 1998–99 and subsequent imputation years.

**37. Rule for calculating company's excess interest allocation percentage**—(1) In section MG 8 (5), "that is a policyholder credit account company" is replaced by "that is a

policyholder credit account company but not a conduit tax relief company".

(2) Subsection (1) applies to the 1998–99 and subsequent imputation years.

**38. Credits arising to group dividend withholding payment account**—(1) After section MG 14 (1)(e), the following is added:

"(f) The amount debited to the group's imputation credit account under section ME 12 (1)(n) on account of net foreign attributed income."

(2) After section MG 14 (2)(c), the following is added:

"(d) In the case of a debit referred to in paragraph (f), on the date the debit arises in the group's imputation credit account."

(3) Subsections (1) and (2) apply to the 1998–99 and subsequent imputation years.

**39. New section inserted**—(1) After section MG 16, the following is inserted:

"MG 16A. **Application of specific dividend withholding provisions to consolidated groups**—(1) Section MG 8 applies, with any necessary modifications, to a consolidated group as if it were a single company, but for the purpose of section MG 8 (2) to (4), dividends paid by one member of the consolidated group to another member of the consolidated group are not taken into account.

"(2) Section MG 9 and sections 103, 104, 139B, 140C, 140D and 181 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated group and its dividend withholding payment account as if—

"(a) The consolidated group were a single company; and

"(b) Each reference to a provision of this Act were a reference to the equivalent provision that applies to consolidated groups; and

"(c) Each reference to the liability of a company for further dividend withholding payment, late payment penalty or dividend withholding payment penalty tax were, subject to the application of section HB 1 (2) to (5), a reference to a joint and several liability of each company which is a member of the group at the time the liability becomes payable.

"(3) Sections GC 22 and MG 12 apply, with any necessary modifications, to the dividend withholding payment account of a consolidated group, as if—

"(a) The consolidated group were a single company; and

"(b) Each reference to a provision of this Act were a reference to the equivalent provision that applies to the accounts of a consolidated group."

(2) Subsection (1) applies to the 1999-2000 and subsequent imputation years.

**40. Company may elect to be a conduit tax relief company and maintain conduit tax relief account**—(1) Section MI 2 (4) is replaced by:

"(4) The company must maintain a conduit tax relief account from the beginning of the imputation year and for every subsequent imputation year until revocation under subsection (5) takes effect."

(2) After section MI 2 (5), the following is inserted:

"(5A) A revocation of an election is effective from the beginning of the imputation year immediately succeeding the imputation year in which the revocation is made."

(3) After section MI 2 (6), the following is inserted:

"(6A) A company is treated as having revoked its election if it elects to cease to be a dividend withholding payment account company under section MG 2 (4)."

(4) Subsections (1) to (3) apply to the 1998-99 and subsequent imputation years.

**41. Debits arising to conduit tax relief account**—(1) After section MI 5 (1)(i), the following is added:

"(j) The amount of a credit transferred to the conduit tax relief account of a consolidated group under section MI 19."

(2) Section MI 5 (2)(b) is replaced by:

"(b) In the case of a conduit tax relief adjustment, on the date on which the income tax return for the income year for which the adjustment is made is filed:".

(3) After section MI 5 (2)(h), the following is added:

"(i) In the case of a debit for an amount transferred to the conduit tax relief account of a consolidated group under section MI 19, on the date of transfer."

(4) Subsections (1) to (3) apply to the 1998-99 and subsequent imputation years.

**42. New sections added**—(1) After section MI 13, the following is added:

*"Consolidated groups*

"MI 14. **Consolidated group to maintain separate conduit tax relief account**—(1) A consolidated group must maintain a group conduit tax relief account for an imputation year if a company which is a member of the consolidated group is a conduit tax relief company at any time during the imputation year.

"(2) A group conduit tax relief account is a separate account from the conduit tax relief account of each company which is a member of the consolidated group.

"MI 15. **Consolidated group conduit tax relief account**—The opening balance of a consolidated group's conduit tax relief account is—

"(a) For the first imputation year the consolidated group maintains a group conduit tax relief account, nil; and

"(b) For subsequent income years, the closing balance of the account at the end of the preceding imputation year.

"MI 16. **Consolidated group member is conduit tax relief company**—A company is a conduit tax relief company, whether or not it has so elected under section MI 2, if it is a member of a consolidated group that is required to maintain a group conduit tax relief account for an imputation year.

"MI 17. **Credits arising to group conduit tax relief account**—(1) In an imputation year, a consolidated group's conduit tax relief account must be credited by the following amounts:

"(a) An income tax rebate allowed to the consolidated group under section KH 1:

"(b) A dividend withholding payment reduction allowed under section NH 7 for a dividend paid during the imputation year to a company that is a member of the consolidated group at the time of the reduction:

"(c) A conduit tax relief credit attached to a dividend derived by a company that is a member of the consolidated group at the time it derives the dividend:

"(d) The amount of a debit that previously arose under section MI 18 (1)(d), to the extent it is subsequently established that the relevant conduit tax relief credit was not part of an arrangement to obtain a tax advantage:

"(e) The amount transferred from a company's dividend withholding payment account under section MI 19:

"(f) A credit transferred from the group's dividend withholding payment account under section MI 20 (1).

"(2) The credits arise at the following times:

"(a) In the case of an income tax rebate credit—

"(i) On the last day of the imputation year that corresponds to the income year, to the extent of the amount calculated using the formula:

$$\text{"}\frac{\text{PROV} \times \text{CTR}}{\text{XFER}}$$

"where—

"PROV is the amount debited on the last day of the imputation year under section ME 12 (2)(l)(i); and

"XFER is the total amount to be transferred from the imputation credit account to the dividend withholding payment account under section ME 12 (1)(n); and

"CTR is the amount of income tax rebate to be credited under subsection (1)(a); and

"(ii) To the extent that subparagraph (i) does not apply, on the date the company files its return of income for the income year:

"(b) In the case of a dividend withholding payment reduction credit, on the date the company is required to pay the Commissioner the dividend withholding payment reduced by section NH 7:

"(c) In the case of a credit for a conduit tax relief credit attached to a dividend, on the date the dividend is paid:

"(d) In the case of a credit under section MI 17 (1)(d), on the date the relevant debit arose under section MI 18 (1)(d):

"(e) In the case of a credit transferred under section MI 19, on the date the credit was transferred:

"(f) In the case of a credit transferred under section MI 20 (1), immediately before the end of the imputation year.

"MI 18. **Debits arising to group conduit tax relief account**—(1) In an imputation year, a consolidated group's conduit tax relief account must be debited by the following amounts:

"(a) A conduit tax relief credit attached to a dividend paid during the imputation year by a company that is a member of the consolidated group at the time of payment:

"(b) The amount of conduit tax relief adjustment calculated under section FH 8 (5) for a company that is a member of the consolidated group on the last day of the income year for which the adjustment arises:

"(c) An allocation deficit debit arising under section MG 8, as applied by section MI 8, for a company that is a member of the consolidated group at the time the relevant dividend is paid:

"(d) A debit arising to the account under section GC 22, as applied by section MI 9:

"(e) A credit in the group account at any time (that has not previously been cancelled by a debit) if since the time that credit arose, there has been an increase of 34 or more percentage points in the percentage of the group's shareholders who are resident in New Zealand, as measured by applying section MI 5 (3) to the group as if the group were a conduit tax relief company:

"(f) The credit balance (if any) of the account if the consolidated group stops being required to maintain a group conduit tax relief account:

"(g) A credit transferred from the account to the company's dividend withholding payment account under section MI 20 (2).

"(2) The debits arise at the following times:

"(a) In the case of a dividend attachment debit, on the date the dividend is paid:

"(b) In the case of a conduit tax relief adjustment, on the date on which the income tax return for the income year for which the adjustment is made is filed:

"(c) In the case of an allocation deficit debit, at the end of the imputation year in which the debit arises:

"(d) In the case of a tax advantage arrangement debit, at the end of the imputation year in which the arrangement commenced:

"(e) In the case of a resident shareholder percentage debit, on the date that the 34 percentage point change threshold is first reached:

"(f) In the case of a termination debit, immediately before the consolidated group stops being required to maintain a conduit tax relief account:

"(g) In the case of a credit transfer debit, immediately before the end of the imputation year.

"(3) For the purpose of subsection (1)(e), in determining whether a credit has been cancelled by a subsequent debit—

"(a) Section MI 15 does not apply; and

"(b) A credit arising under section MI 17 (1)(e) is treated as arising on the date on which the corresponding credit arose in the conduit tax relief account of the group member; and

"(c) An amount of debit can cancel out a credit only once; and

"(d) A debit is offset against credits in the order in which the credits arise.

"(4) A debit arises under subsection (1)(e) if it would have arisen but for an arrangement that affects the shares of a company in the consolidated group, if a purpose or effect of the arrangement is to defeat the intent and application of subsection (1)(e).

"MI 19. **Debiting and crediting between group and individual conduit tax relief accounts**—(1) A credit does not arise to an individual company's conduit tax relief account if a credit arises to a consolidated group's conduit tax relief account for:

"(a) An amount of conduit tax relief arising under section KH 1 or NH 7; or

"(b) A conduit tax relief credit attached to a dividend derived.

"(2) A debit does not arise to an individual company's conduit tax relief account if a debit arises to a consolidated group's conduit tax relief account for:

"(a) The amount of conduit tax relief credit attached to a dividend paid; or

"(b) The amount of any conduit tax relief credit or tax credit refunded; or

"(c) Any amount of conduit tax relief adjustment calculated under section FH 8 (5); or

"(d) Any allocation debit arising under section MG 8, as applied by section MI 8.

"(3) Subject to subsection (5), if a company has a credit in its individual conduit tax relief account (referred to as the 'company credit') and is a member of a consolidated group at that time, the credit must be transferred to the consolidated group's conduit tax relief account to the extent that—

"(a) A debit arises under section MI 18 to be recorded in the consolidated group's conduit tax relief account at that time; and

"(b) That debit is not offset, determined by applying section MI 5 (5), against a credit in the consolidated group's conduit tax relief account which arose on or before the same date on which the company credit arose; and

"(c) The credit does not exceed the consolidated group's debit.

"(4) If credit amounts in the individual conduit tax relief accounts of 2 or more members of a consolidated group would, but for this subsection, be required to be transferred to the group's conduit tax relief account under subsection (3), those amounts must be transferred to the group account and must be credited—

"(a) So far as the relevant debit to the group's conduit tax relief account extends and no further; and

"(b) In the order in which those credits arose, determined by applying section MI 5 (5); and

"(c) If 2 or more credits arose at the same time—

"(i) In the order elected by the consolidated group in such manner as the Commissioner may allow; or

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

"(5) A debit does not arise to a company's conduit tax relief account but does arise to a consolidated group's conduit tax relief account to the extent that—

"(a) A debit would, but for this subsection, arise in the individual conduit tax relief account of a company that is a member of a consolidated group at the time the debit arises; and

"(b) The arising of the debit would result in or increase the debit balance in the individual company's conduit tax relief account.

"MI 20. **End of year clearing transfer to or from dividend withholding payment account**—(1) If immediately before the end of the imputation year and before a transfer is made under this subsection, but after a transfer from the imputation credit account is credited under section ME 12 (2)(l)(i) and an amount is credited to the conduit tax relief account under section MI 17 (2)(a)(i), a consolidated group's dividend withholding payment account is in credit and

its group conduit tax relief account is in debit, the consolidated group must:

"(a) Apply section MI 19 (3) as if the debit balance were the debit referred to in section MI 19 (3)(b); and

"(b) To the extent that the debit balance is not eliminated under paragraph (a), transfer from the dividend withholding payment account to the conduit tax relief account the lesser of:

"(i) The credit balance in the dividend withholding payment account; and

"(ii) The debit balance remaining in the conduit tax relief account after paragraph (a) has been applied.

"(2) If immediately before the end of the imputation year and before a transfer is made under this subsection, but after a transfer from the imputation credit account is credited under section ME 12 (2)(l)(i) and an amount is credited to the conduit tax relief account under section MI 17 (2)(a)(i), a consolidated group's dividend withholding payment account is in debit and its group conduit tax relief account is in credit, the consolidated group must transfer from the conduit tax relief account to the dividend withholding payment account the lesser of the two balances.

"MI 21. **Further dividend withholding payment payable in respect of conduit tax relief account debits**—(1) If a debit arises to a consolidated group's conduit tax relief account under section MI 18 (1)(c), (d) or (e), the group must pay to the Commissioner a further amount of dividend withholding payment equal to the debit not later than 20 days after the end of the quarter in which the debit arises.

"(2) The further amount of dividend withholding payment does not give rise to a credit in the group's dividend withholding payment credit account.

"(3) If a debit arises to a consolidated group's conduit tax relief account under section MI 18 (1)(f), the group must pay to the Commissioner an amount of dividend withholding payment equal to the debit not later than 20 days after the end of the quarter in which the debit arises.

"(4) If a credit balance is transferred from a consolidated group's conduit tax relief account to its dividend withholding payment account under section MI 20 (2), the consolidated group must pay to the Commissioner an amount of dividend withholding payment equal to the amount transferred by

20 June after the imputation year in which the transfer is made.

"(5) Subject to section 103A of the Tax Administration Act 1994, this Act and the Tax Administration Act 1994, other than the dividend withholding payment rules, so far as they are applicable and with any necessary modifications, apply to a dividend withholding payment for which a consolidated group is liable under this section as if it were income tax.

"MI 22. **Application of specific conduit tax relief account provisions to consolidated groups**— (1) Section MG 8, as applied by section MI 8, applies with any necessary modifications, to a consolidated group as if it were a single company, but for the purposes of section MG 8 (2) to (4), dividends paid by one member of the consolidated group to another member of the consolidated group are not taken into account.

"(2) Section MI 10 (5) and section 103A of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated group as if—

"(a) It were a single company; and

"(b) Each reference to a provision of this Act were a reference to the equivalent provision that applies to consolidated groups.

"(3) Section GC 22, as applied by section MI 9, applies with any necessary modifications, to the accounts of a consolidated group, as if—

"(a) The consolidated group were a single company; and

"(b) References to provisions of this Act were references to the equivalent provisions that apply to equivalent accounts.

"(4) If a credit balance is transferred to a consolidated group's conduit tax relief account from its dividend withholding payment account under section MI 20 (1)(b)—

"(a) The consolidated group is entitled to a refund of the amount of the transfer; and

"(b) The Commissioner must pay the refund to the consolidated group or apply the refund to satisfy an obligation of the consolidated group to pay an amount to the Commissioner at that time."

(2) Subsection (1) applies to the 1998-99 and subsequent imputation years.

**43. Applications of tax codes specified in tax code declarations or tax code certificates**—(1) In section NC 8 (1)(da), "clauses 6 and 7" is replaced by "clause 6".

(2) In the proviso to section NC 8 (1), "Sec" is replaced by "S".

(3) Subsection (1) applies to the 1999–2000 and subsequent income years.

(4) Subsection (2) applies to tax deductions from source deduction payments made on and after 1 April 1999.

**44. Cessation of transitional tax allowance for purposes of tax code**—(1) In section NC 9, "T" is replaced by "ML".

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**45. Employee using incorrect tax code**—(1) Section NC 12A (3) is replaced by:

"(3) An amended tax code specified by the Commissioner under subsection (1) does not apply on and after the date that the employee gives notice to the employer that the employee's circumstances have changed and a different tax code is applicable."

(2) Subsection (1) applies to tax deductions from source deduction payments made on and after 1 April 1999.

**46. Non-resident withholding tax imposed**—(1) After section NG 2 (1)(a), the following is inserted:

"(ab) If it is interest that is derived by 2 or more persons jointly and at least one of those persons is a New Zealand resident, at the rate of resident withholding tax that applies under section NF 2 (1)(a) as if the non-resident withholding income were resident withholding income from which the payer must deduct resident withholding tax and the other rules in section NF 2 do not apply:".

(2) Section NG 2 (1)(b)(i) is replaced by:

"(i) Interest, other than interest to which paragraph (ab) applies, paid by an approved issuer in respect of a registered security and derived by a person who is not an associated person of the approved issuer; or".

(3) Subsections (1) and (2) apply on and after the date this Act receives the Royal assent.

**47. Non-resident withholding tax to be minimum tax in certain cases**—(1) In section NG 4, "section NG 3 (1)(b)" and "section NG 3 (1)(c)" are replaced by "section NG 3 (1)(c)" and "section NG 3 (1)(b)" respectively.

(2) Subsection (1) applies to the 1997–98 and subsequent income years.

**48. Power of Commissioner to grant relief from or vary amount of deductions**—(1) After section NG 10 (1), the following is inserted:

"(1A) Subsection (1)(b) does not apply to non-resident withholding income to which section NG 2 (1)(ab) applies."

(2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**49. Reduction in liability under conduit tax relief**—(1) In section NH 7 (1), the portion before the formula is replaced by:

"(1) A company that is a conduit tax relief company at the time it is required to pay the Commissioner a dividend withholding payment may reduce the dividend withholding payment by the following amount:".

(2) In section NH 7 (2)(b), "receipt." is replaced by "receipt; or" and the following is added:

"(c) For a company incorporated after the second income year before the year of receipt, the last day of the quarter in which the dividend was received."

(3) Section NH 7 (3) is replaced by:

"(3) If a company to which subsection (2) applies is a listed company, the company may use:

"(a) The record date (the date on which entitlement to a dividend is determined) for a dividend instead of the date on which the dividend is paid; or

"(b) Any date in the income year on which the company, for whatever commercial reason, calculates the percentage of non-resident shareholders.

"(3A) If there is a conduit tax relief group member in respect of a company (referred to in this section as the 'first company'), subsection (2) (as modified, if applicable, by subsection (3)) applies as if the company referred to in that subsection were the company:

"(a) In which one or more non-residents have a direct voting interest; and

"(b) That has a 100% voting interest (calculated as if section OD 3 (3)(d) did not apply to deem the company's interests to be held by others) in the first company.

"(3B) Subsection (3A) does not apply if the date that would be determined for measuring non-resident shareholders under that subsection is before the date of incorporation of the first company."

(4) Subsections (1) to (3) apply to dividends paid on or after 1 April 1998.

**50. Definitions**—(1) This section applies to definitions in section OB 1.

(2) In the definition of "airport operator", "Minister of Civil Aviation and Meteorological Services" is replaced by "Minister of Transport".

(3) The definition of "allowable rebates" is replaced by:

" 'Allowable rebates' means the total of the rebates and credits of tax that a taxpayer is allowed in an income year under Part K, excluding rebates allowed under section KC 4 or KC 5:".

(4) In the definition of "available subscribed capital", after paragraph (ix) of item "b", the following is inserted:

"(ixa) Consideration received by a company if the consideration is the giving up of rights or interests of membership in the company, (or an associated company or a company that is in substance the same company) to the extent that the consideration is more than the total available subscribed capital per share for those foregone rights or interests of membership immediately before the date the rights or interests are given up. The aggregate available subscribed capital per share is calculated after deducting the ineligible capital amount, if any, and as if the foregone rights or interests were shares even if those rights and interests are not shares; or".

(5) The definition of "conduit tax relief company" is replaced by:

" 'Conduit tax relief company' means—

"(a) A company that has made an election under section MI 2, until the revocation of that election is effective:

"(b) A company that is a conduit tax relief company under section MI 16:".

(6) In paragraph (c) of the definition of "consideration", "FE 6 (b)(i)" is replaced by "FE 6 (6)(b)(i)".

(7) The definition of "film owner" is replaced by:

" 'Film owner'—

"(a) In the definition of 'cost of acquisition' and in sections EO 3 and GC 11, means the person who owns the film or a person who owns any rights in or in relation to the film:

"(b) In section CJ 2, means the person who owns the film:

"(c) In the definition of 'film production expenditure' and in sections EO 4 and GD 12, means the person who owns a film that has been completed or a person who owns any rights in or in relation to the film:".

(8) After the definition of "goods and services tax payable", the following definition is inserted:

" 'Government stock' is defined in section EO 4A (8) for the purpose of that section:".

(9) The definition of "financial statements" is replaced by:

" 'Financial statements', in Part EE, has the meaning set out in section 8 of the Financial Reporting Act 1993, but the reference to an 'entity' and to a 'reporting entity' is to be read as a reference to a 'taxpayer':".

(10) In the definition of "lease term", "paragraph (d)" is replaced by "paragraph (f)".

(11) In paragraph (c) of the definition of "member", "section LC 1 (5)" is replaced by "section LC 1 (6)".

(12) In the definition of "New Zealand film", "section EO 4" is replaced by "sections EO 4 and EO 4A".

(13) After the definition of "petroleum permit", the following definition is inserted:

" 'Physical cost of production' is defined in section EO 4A (8) for the purpose of that section:".

(14) In the definition of "portable New Zealand superannuation", "section 17" is replaced by "section 17, 17B".

(15) In the definition of "portable New Zealand superannuation", "section 17, 17B" is replaced by "section 17, 17BA".

(16) In the definition of "portable veteran's pension", "section 17" is replaced by "section 17, 17B".

(17) In the definition of "portable veteran's pension", "section 17, 17B" is replaced by "section 17, 17BA".

(18) In the definition of "property", the following is added after paragraph (d):

"(e) Is defined in section EH 14 for Part EH Division 1:".

(19) In paragraph (g) of the definition of "residual income tax", "section LE 2 (6)(b)" is replaced by "section LE 2 (4)(b)".

(20) The definition of "right" is replaced by:

" 'Right'—

"(a) In paragraph (a) of the definition of 'film' and paragraph (a) of the definition of 'film owner', in the definitions of 'copyright', 'cost of acquisition' and 'film production expenditure', and in sections CJ 2, EO 3, EO 4, FB 6 and GC 11, in relation to a film—

"(i) Means any copyright, any licence relating to the copyright and any other right which subsists in or attaches to the film (including any right to income or a share of income from sale, use, rental or other exploitation of that film):

"(ii) Includes an equitable right in the copyright in the film or in a licence under the copyright; and

"(b) In sections EO 4A 2(a)(ii) and GD 12, means a right to an amount that is dependent on or calculated by reference to income from the sale, use, rental or other exploitation of a film:".

(21) In paragraph (b) of the definition of "small taxpayer", "section OD 7" is replaced by "section OD 8 (1)(a) or OD 8 (1)(b)".

(22) In the definition of "special corporate entity", paragraph (c) is replaced by:

"(c) Any State enterprise:".

(23) The definition of "state-owned enterprise" is replaced by:

" 'State enterprise' means a person specified in Schedule 18:".

(24) Subsection (2) applies on and after 1 April 1995.

(25) Subsection (3) applies to the 1999–2000 and subsequent income years.

(26) Subsections (4), (6), (10), (11) and (18) apply on and after 20 May 1999.

(27) Subsections (5) and (21) apply to the 1998–99 and subsequent income years.

(28) Subsection (9) applies to the 1999–2000 and subsequent income years.

(29) Subsections (14), (16), (22) and (23) apply to the 1995–96 and subsequent income years.

(30) Subsections (15) and (17) apply on and after 1 October 1999.

(31) Subsection (19) applies to dividends paid on and after 12 December 1995.

(32) Subsections (7), (8), (12), (13) and (20) apply on and after 7 July 1999.

**51. Voting interests**—(1) In section OD 3 (3)(a)(ii)—

(a) "State-owned enterprise" is replaced by "State enterprise"; and

(b) "(including a voting interest deemed to arise under paragraph (d))" is added after "rights derived from those shares and options".

(2) Subsection (1) applies to the 1995–96 and subsequent income years.

**52. Market value interests**—(1) In section OD 4 (3)(a)(ii)—

(a) "State-owned enterprise" is replaced by "State enterprise"; and

(b) "(including a market value interest deemed to arise under paragraph (d))" is added after "rights derived from those shares and options".

(2) Subsection (1) applies to the 1995–96 and subsequent income years.

**53. Defining when 2 persons are associated persons**—(1) After section OD 7 (2), the following is added:

"(3) Section OD 7 (1)(a)(iii) does not apply to a company that is or was—

"(a) A State enterprise; or

"(b) A Crown research institute; or

"(c) A hospital or health service within the meaning of section 2 of the Health and Disability Services Act 1993; or

"(d) A Crown health enterprise; or

"(e) A member of the same group of companies as a company that meets any of paragraphs (a) to (d)."

(2) Subsection (1) applies to the 1995–96 and subsequent income years.

(3) Despite subsection (2), subsection (1) does not apply if a taxpayer has filed a return of income on or before 20 May 1999 on the basis that section OD 7 applied to the taxpayer.

**54. Further definitions of associated persons**—(1) In section OD 8 (3), in the proviso to paragraph (a), "sections

CG 8," is replaced by "sections CG 8, DM 1A, EH 7, EH 53, EL 7 (3)(b), EO 4A,".

(2) After section OD 8 (5), the following is added:

"(6) Section OD 8 (1)(a)(iii), OD 8 (3)(a)(i)(C), OD 8 (3)(a)(ii), OD 8 (3)(b) and OD 8 (4)(a)(iii) does not apply to a company that is or was—

"(a) A State enterprise; or

"(b) A Crown research institute; or

"(c) A hospital or health service within the meaning of section 2 of the Health and Disability Services Act 1993; or

"(d) A Crown health enterprise; or

"(e) A member of the same group of companies as a company that meets any of paragraphs (a) to (d)."

(3) Subsection (1) applies on and after 20 May 1999.

(4) Subsection (2) applies to the 1995–96 and subsequent income years.

(5) Despite subsection (4), subsection (2) does not apply if a taxpayer has filed a return of income on or before 20 May 1999 on the basis that section OD 8 applied to the taxpayer.

**55. Schedule 18—State enterprises**—(1) In Schedule 18, the heading "State-Owned Enterprises" is replaced by "State Enterprises".

(2) Subsection (1) applies to the 1995–96 and subsequent income years.

**56. Schedule 19—Basic tax deductions**—(1) In Schedule 19, Appendix A, in the table "Tax Deductions from Payments for Weekly Pay Periods", the tax using codes "T" and "G" are replaced by "ML" and "M" respectively.

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

## PART 2

### AMENDMENTS TO TAX ADMINISTRATION ACT 1994

**57. Tax Administration Act 1994**—This Part amends the Tax Administration Act 1994.

**58. Interpretation**—(1) In section 3, in the definition of "tax", the following is added after paragraph (a)(xi):

"(xii) Is a tax prescribed in section 173D:".

(2) Subsection (1) applies on and after 20 May 1999.

**59. Shareholder dividend statement to be provided by company**—(1) In section 29 (1), "conduit tax relief amount" is replaced by "conduit tax relief credit".

(2) After section 29 (1)(i), the following is inserted:

"(ia) When a conduit tax relief credit is attached to the dividend, the information required to be included in the shareholder dividend statement in accordance with section 30A:".

(3) Subsections (1) and (2) apply to dividends paid on or after 1 April 1998.

**60. Statement to shareholder when conduit tax relief credit attached to dividend**—(1) Section 30A (a) is repealed.

(2) Subsection (1) applies on 1 April 1998.

**61. Annual income tax returns not required**—(1) Section 33A (1) and (2) is replaced by:

"(1) A natural person is not required to furnish a return of income for an income year and will not receive an income statement from the Commissioner for the year if, in the year, the person—

"(a) Had annual gross income that was derived from—

"(i) Income from employment that is subject to the PAYE rules; or

"(ii) Interest or a dividend that is subject to the RWT rules; or

"(iii) Interest or a dividend that does not have a New Zealand source; and

"(b) Derives a total of $200 or less of—

"(i) Gross income that is subject to the PAYE rules in relation to which the person's obligations under those rules are not met; and

"(ii) Gross income that is subject to the PAYE rules and to a student loan repayment deduction under sections 19 and 20 of the Student Loan Scheme Act 1992, in relation to which the person's obligations under those rules are not met; and

"(iii) Income from employment from which the earner premium is not deducted correctly; and

"(iv) Interest, excluding interest for which a RWT deduction certificate did not have to be prepared under section 25 (7), from which RWT has been withheld at a rate other than that specified in Schedule 14, clause 1 (b) of the Income Tax Act

1994 if that person's annual gross income exceeds $38,000; and

"(v) Income from employment being extra emoluments from which tax has been withheld at a rate other than that specified in Schedule 19, clause 8 (b) of the Income Tax Act 1994, if that person's annual gross income exceeds $38,000; and

"(vi) Income from employment being secondary earnings from which tax has been withheld at a rate other than that specified in Schedule 19, clause (5A) of the Income Tax Act 1994, if that person's annual gross income exceeds $38,000; and

"(vii) Interest or dividends, if the person is required to pay financial support in the income year under the Child Support Act 1991; and

"(viii) Interest or dividends, if the person has an IRD loan balance (as defined in section 2 of the Student Loan Scheme Act 1992), other than a balance of nil on the last day of the income year, and income that is more than the student loan repayment threshold (as defined in section 2 of the Student Loan Scheme Act 1992) for that income year; and

"(ix) Salary or wages from employment as an election day worker, if the worker has used the 'EDW' tax code; and

"(x) Interest or a dividend that—

"(A) Does not have a New Zealand source; and

"(B) Was subject to a withholding tax at source; and

"(c) Does not receive income from employment from which a tax deduction is made and the amount of the tax deduction is determined in whole or in part by a special tax code certificate issued under section NC 14 of the Income Tax Act 1994; and

"(d) Is not issued a family certificate of entitlement for any part of the income year; and

"(e) Does not have a spouse who is issued with a family certificate of entitlement for any part of the income year; and

"(f) Or the spouse of the natural person, is not paid by the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 a Part KD credit under section

KD 2 of the Income Tax Act 1994 for which the amount of the family credit abatement is greater than nil; and

"(g) Is a person who in an income year has a nil IRD loan balance on the last day of the year.

"(2) Subsection (1) does not apply to a natural person who, in an income year—

"(a) Is a non-resident; or

"(b) Is a provisional taxpayer; or

"(c) Is not a cash basis person; or

"(d) Received a withholding payment; or

"(e) Received interest or a dividend that did not have a New Zealand source and from which a withholding tax was not deducted at source; or

"(f) Received interest or dividends that—

"(i) Total more than $200; and

"(ii) Did not have a New Zealand source; and

"(iii) Had a withholding tax deducted at source; or

"(g) Received beneficiary income; or

"(h) Received gross income as a private domestic worker; or

"(i) Is required under section 44 to furnish a return of income; or

"(j) Made a net loss, other than a net loss under section LB 2 (3) of the Income Tax Act 1994; or

"(k) Has an available net loss; or

"(l) Died; or

"(m) Held a certificate of exemption under section NF 9 of the Income Tax Act 1994 at any time in that income year; or

"(n) Leaves New Zealand and contacts the Commissioner for an assessment to determine their income tax liability for the year; or

"(o) Is a person who the Commissioner considers should furnish a return of income."

(2) In section 33A (5), "person" is replaced by "natural person".

(3) Subsections (1) and (2) apply to the 1999–2000 and subsequent income years.

**62. Electronic filing exemption for new businesses**—(1) After section 36C, the following is inserted:

"36CA. (1) An employer who begins business after 1 April 1999 and who is required to furnish an employer monthly schedule electronically may furnish an employer monthly

schedule on the form prescribed by the Commissioner for the first six months of business.

"(2) The first six months of business begins on the date on which the employer begins business."

(2) Subsection (1) applies to employer monthly schedules that must be furnished on and after 1 April 1999.

**63. Returns to annual balance date**—(1) In section 38 (1), "section 33A" is replaced by "section 33A (1) or (5)".

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**64. Returns by person claiming housekeeper or charitable rebates**—(1) Section 41A (3) and (4) is replaced by:

"(3) The sum of the qualifying payments under section KC 4 of the Income Tax Act 1994 and gifts under section KC 5 of the Income Tax Act 1994 must not be more than a taxpayer's taxable income in the income year in which the qualifying payment or gift, or both the qualifying payment and gift, is made.

"(4) If subsection (3) applies, the Commissioner must, in equal portions, reduce the total amount of qualifying payments and gifts so that the total is not more than the taxpayer's taxable income in the income year in which the qualifying payment or gift, or both the qualifying payment and gift, is made."

(2) Section 41A (6) is replaced by:

"(6) A taxpayer with a standard balance date or an early balance date may apply for a refund for an income year only in the 6 months from 1 April to 30 September (both dates inclusive) next following the end of the taxpayer's income year. Late balance date taxpayers may apply for a refund for an income year only in the 6 months beginning on the first day of the taxpayer's next accounting year.

"(6A) Despite subsection (1), the Commissioner must not refund a rebate unless an application complies with subsections (2) and (3)."

(3) Subsections (1) and (2) apply to the 1999–2000 and subsequent income years.

**65. Notification required that taxpayer not subject to this Part**—(1) In section 80B (1), "or received interest or dividends" is replaced by "interest or dividends".

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**66. Natural person to request income statement**—(1) After section 80C (1), the following is inserted:

"(1A) Subsection (1) does not apply to a person who has received resident withholding income that had insufficient resident withholding tax deducted due to an error made by the payer."

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**67. Particulars to be included in income statement**—(1) Section 80E (1) is replaced by:

"(1) An income statement issued under this Part must contain the information specified in subsection (2) to the extent that the information is both available and applicable to the person's circumstances."

(2) After section 80E (2)(e), the following is inserted:

"(ea) For a person to whom a certificate of entitlement has been issued under section KD 5 of the Income Tax Act 1994, particulars relating to family support and family plus; and".

(3) After section 80E (2), the following is inserted:

"(3) Information required under subsection (2)(ea) may be placed on a separate form and still remain part of the income statement."

(4) Subsections (1) to (3) apply to the 1999–2000 and subsequent income years.

**68. Taxpayer obligations and assessment on receipt of income statement**—(1) After section 80F (6), the following is inserted:

"(6A) Subsection (6) does not apply if—

"(a) The taxpayer receives an income statement due to incorrect information held by the Commissioner; and

"(b) Section 33A (1) applies to the taxpayer; and

"(c) The taxpayer has not requested an income statement."

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**69. Income statement deemed return**—(1) In section 80G (2), "Except in sections 37 and 38" is replaced by "Except in section 37".

(2) Subsection (1) applies to the 1999–2000 and subsequent income years.

**70. Instalments of and due dates for provisional tax**—(1) In section 120K (4A)(c), "section MB 5 (11)" is replaced by "section MB 5A".

(2) Section 120K (4B) is replaced by:

"(4B) A provisional taxpayer to whom subsection (4) applies—

"(a) Is not liable for use of money interest under section 120D for unpaid tax from the due date for payment of provisional tax under either section MB 5 or section MB 5A until the terminal tax date (both dates inclusive); and

"(b) Is not entitled to use of money interest under section 120D for overpaid tax from the due date for payment of provisional tax under either section MB 5 or section MB 5A until the terminal tax date (both dates inclusive).

"(4BA) Subsection (4B) applies to the 1997-98 and subsequent income years, except if a taxpayer has notified the Commissioner in writing or filed a return of income before 23 August 1999 on the basis that section 120K (4B), as it was before the date on which the Taxation (Remedial Matters) Act 1999 received the Royal assent, applied to the taxpayer."

(3) Subsection (1) applies on and after the date this Act receives the Royal assent.

(4) Subsection (2) comes into force on the date this Act receives the Royal assent.

**71. New section inserted**—(1) After section 120P, the following is inserted:

"120PA. **Applying foreign investor tax credit to earlier income year**—If a taxpayer sets off a foreign investor tax credit against its income tax liability for an earlier income year under section LE 2 (4)(b) of the Income Tax Act 1994, the amount set off does not reduce the taxpayer's tax payable for that year for the purpose of this Part."

(2) Subsection (1) applies to the 1997-98 and subsequent income years.

**72. Obligation to pay tax where competent objection lodged**—(1) *After section 128 (4), the following is added:*

"(5) Part VII applies to interest calculated on deferrable and non-deferrable tax on and after 1 April 1997, irrespective of whether the competent objection or challenge relates to an income year before the 1997-98 income year.

"(6) If the competent objection or challenge relates to the 1996–97 or an earlier income year, interest must be calculated on deferrable or non-deferrable tax on and after the date that the period of deferral starts."

(2) Subsection (1) applies on and after 1 April 1997.

**73. Obligation to pay tax during challenge**—(1) After section 138I (3), the following is added:

"(4) Part VII applies to interest calculated on deferrable and non-deferrable tax on and after 1 April 1997, irrespective of whether the challenge relates to an income year before the 1997–98 income year.

"(5) If the challenge relates to the 1996–97 or an earlier income year, interest must be calculated on deferrable or non-deferrable tax on and after the date that the period of deferral starts."

(2) Subsection (1) applies on and after 1 April 1997.

**74. Non-electronic filing penalty**—(1) Section 139AA (2) is replaced by:

"(2) An employer is liable to a non-electronic filing penalty if the employer furnishes the employer monthly schedule in a format that is not prescribed."

(2) Subsection (1) applies to employer monthly schedules that must be furnished on and after the date this Act receives the Royal assent.

**75. Refund of tax paid in excess made by direct credit to bank account**—(1) After section 184A (5), the following is inserted:

"(6) This section applies to the direct crediting of a type of tax once an Order in Council has been promulgated specifying the date from which the type of tax may be refunded by direct credit."

(2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**76. Tax type that may be direct credited to bank account**—(1) After section 184A, the following is inserted:

"184B. The Governor General may, by Order in Council, specify the date from which a type of tax may be refunded by direct credit under section 184A to a bank account nominated by the taxpayer."

(2) Subsection (1) applies on and after the date this Act receives the Royal assent.

## PART 3

### AMENDMENTS TO GOODS AND SERVICES TAX ACT 1985

**77. Goods and Services Tax Act 1985**—This Part amends the Goods and Services Tax Act 1985.

**78. Meaning of term "financial services"**—(1) In section 3 (2), the definition of "life insurance contract" is replaced by:

" 'Life insurance contract' means a contract lawfully entered into to the extent that it places a sum or sums at risk upon the contingency of the termination or continuance of human life, marriage or the birth of a child, but not to the extent that it provides for entitlements under Schedule 1, Part 5 of the Accident Insurance Act 1998 (which relates to entitlements arising from fatal injuries):".

(2) Subsection (1) applies on and after 1 April 1999.

**79. Value of supply of goods and services**—(1) After section 10 (16), the following is inserted:

"(16A) Subsection (16) does not apply to a supply of services described in section 11 (2A)."

(2) After section 10 (17), the following is inserted:

"(17A) Subsection (17) applies to a supply of services described in section 11 (2A) which is in exchange for a token, stamp or voucher even if the monetary value of the token, stamp or voucher is stated thereon."

(3) Subsections (1) and (2) apply on and after 20 May 1999.

**80. Zero-rating**—(1) Section 11 (2)(d) is replaced by:

"(d) The services are physically performed outside New Zealand or are the arranging of services that are physically performed outside New Zealand; or".

(2) After section 11 (2), the following is inserted:

"(2A) Subsection (2)(e) does not apply to a supply of services under an agreement that is entered into, whether directly or indirectly, with a person (person A) who is not resident in New Zealand if—

"(a) The performance of the services is, or it is reasonably foreseeable at the time the agreement is entered into that the performance of the services will be, received in New Zealand by another person (person B), including—

"(i) An employee of person A; or

"(ii) If person A is a company, a director of the company; and

"(b) It is reasonably foreseeable, at the time the agreement is entered into, that person B will not receive the performance of the services in the course of making taxable or exempt supplies.

"(2B) For the purpose of subsection (2)(e) and (2)(fa), 'outside New Zealand', for a company or an unincorporated body that is not resident, includes a minor presence in New Zealand, or a presence that is not effectively connected with the supply."

(3) Subsections (1) and (2) apply on and after 20 May 1999.

## PART 4

### AMENDMENTS TO ESTATE AND GIFT DUTIES ACT 1968

**81. Estate and Gift Duties Act 1968**—This Part amends the Estate and Gift Duties Act 1968.

**82. New section inserted**—(1) After section 75C, the following is inserted:

"75D. **Exemption for dispositions by raspberry industry entities**—(1) This section applies upon the making of regulations to dissolve the New Zealand Raspberry Marketing Council, the Raspberry Marketing Export Authority and the District Raspberry Marketing Committees established under the Raspberry Marketing Regulations 1979.

"(2) In this section, 'current grower', 'District Committee' and 'grower' have the meaning set out in the Raspberry Marketing Authorities (Dissolution) Regulations 1999.

"(3) When the Raspberry Marketing Authorities (Dissolution) Regulations 1999 are made, the making and coming into force does not constitute a dutiable gift to District Committees, growers or current growers.

"(4) When the Cold Storage Nelson Limited shares owned by the Nelson Raspberry Marketing Committee vest in Rubus Investments Nelson Limited, the vesting does not constitute a dutiable gift to Rubus Investments Nelson Limited."

(2) Subsection (1) applies on and after the date that the Raspberry Marketing Authorities (Dissolution) Regulations 1999 are made.

## PART 5

### AMENDMENTS TO INCOME TAX ACT 1976

**83. Income Tax Act 1976**—This Part amends the Income Tax Act 1976.

**84. Interpretation**—(1) This section applies to definitions in section 2.

(2) In the definition of "portable New Zealand superannuation", "section 17" is replaced by "section 17, 17B".

(3) In the definition of "portable veteran's pension", "section 17" is replaced by "section 17, 17B".

(4) The definition of "state-owned enterprise" is replaced by:

" 'State enterprise' means a person specified in the Fourteenth Schedule:".

(5) Subsections (2) and (3) apply on and after 30 June 1993.

(6) Subsection (4) applies on and after 19 December 1986.

**85. Defining when 2 persons are associated persons**—(1) After section 8 (2), the following is added:

"(3) This section does not apply to a company that is or was—

"(a) A State enterprise; or

"(b) A Crown research institute; or

"(c) A Crown health enterprise; or

"(d) A member of the same group of companies as a company that meets any of paragraphs (a) to (c)."

(2) Subsection (1) applies on and after 1 July 1994.

(3) Despite subsection (2), subsection (1) does not apply if a taxpayer has filed a return of income on or before 20 May 1999 on the basis that section 8 applied to the taxpayer.

**86. Interpretation—Voting and market value interests**—(1) In section 8B, in the definition of "special corporate entity", paragraph (c) is replaced by:

"(c) Any State enterprise:".

(2) Subsection (1) applies on and after 19 December 1986.

**87. Voting interests**—(1) In section 8C (3)(a)(ii)—

(a) "State-owned enterprise" is replaced by "State enterprise"; and

(b) "(including a voting interest deemed to arise under paragraph (d))" is added after "rights derived from those shares and options".

(2) Subsection (1)(a) applies on and after 19 December 1986.

(3) Subsection (1)(b) applies to the 1992-93 and subsequent income years.

**88. Market value interests**—(1) In section 8D (3)(a)(ii)—

(a) "State-owned enterprise" is replaced by "State enterprise"; and

(b) "(including a market value interest deemed to arise under paragraph (d))" is added after "rights derived from those shares and options".

(2) Subsection (1)(a) applies on and after 19 December 1986.

(3) Subsection (1)(b) applies to the 1992–93 and subsequent income years.

**89. Profits or gains from land transactions**—(1) After section 67 (3), the following is inserted:

"(3A) Subsections (2) and (3) do not apply to a company that is or was—

"(a) A State enterprise; or

"(b) A Crown research institute; or

"(c) A Crown health enterprise; or

"(d) A member of the same group of companies as a company that meets any of paragraphs (a) to (c)."

(2) Subsection (1) applies on and after 1 July 1994.

(3) Despite subsection (2), subsection (1) does not apply if a taxpayer has filed a return of income on or before 20 May 1999 on the basis that section 67 applied to the taxpayer.

**90. Associated persons**—(1) After section 214E (2), the following is added:

"(3) This section does not apply to a company that is or was—

"(a) A State enterprise; or

"(b) A Crown research institute; or

"(c) A Crown health enterprise; or

"(d) A member of the same group of companies as a company that meets any of paragraphs (a) to (c)."

(2) Subsection (1) applies on and after 1 July 1994.

(3) Despite subsection (2), subsection (1) does not apply if a taxpayer has filed a return of income on or before 20 May 1999 on the basis that section 214E applied to the taxpayer.

**91. Definition of term "associated persons"**—(1) Section 245B is numbered as subsection (1), and the following is added:

"(2) This section does not apply to a company that is or was—

"(a) A State enterprise; or
"(b) A Crown research institute; or
"(c) A Crown health enterprise; or
"(d) A member of the same group of companies as a company that meets any of paragraphs (a) to (c)."

(2) Subsection (1) applies on and after 1 July 1994.

(3) Despite subsection (2), subsection (1) does not apply if a taxpayer has filed a return of income on or before 20 May 1999 on the basis that section 245B applied to the taxpayer.

**92. Fourteenth Schedule—State enterprises**—(1) In the Fourteenth Schedule, the heading "State-Owned Enterprises" is replaced by "State Enterprises".

(2) Subsection (1) applies on and after 19 December 1986.

## PART 6

## AMENDMENTS TO TAXATION (ACCRUAL RULES AND OTHER REMEDIAL MATTERS) ACT 1999

**93. Taxation (Accrual Rules and Other Remedial Matters) Act 1999**—(1) This Part amends the Taxation (Accrual Rules and Other Remedial Matters) Act 1999.

(2) Section 55 (36)(b) is repealed.

(3) Section 59 (1)(c) is repealed.

(4) Section 62 (1)(h) is repealed.

(5) Sections 106 and 109 are repealed.

(6) Subsections (2) to (5) apply on and after 20 May 1999.

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This Act is administered in the Inland Revenue Department.