



## ANALYSIS

Title	
1. Short Title	
PART 1	
AMENDMENTS TO INCOME TAX ACT 1994	
2. Income Tax Act 1994	
3. Double tax agreements	
4. Certain pensions, benefits, and other compensation exempt	
5. Certain compensation, benefits, and other payments are gross income	
6. Meaning of term "dividends"	
7. Branch equivalent income calculation	
8. Meaning of "fringe benefit"	
9. Interpretation of fringe benefit tax rules	
10. Patent expenses	
11. Expenditure on scientific research	
12. Formula for calculating depreciation deduction	
13. Fixed life intangible property	
14. Annual depreciation rate for fixed life intangible property	
15. Depreciation of depreciable property that can no longer be used	
16. Election that property not be depreciable	
17. Transfer of depreciable property between associated persons	
18. Disposition of depreciable property	
19. Sums received from sale of patent rights	
20. Sums received from sale of patent rights	
21. Sums received from sale of patent rights	
22. Depreciation deduction for assets acquired by taxpayer from associated person before a certain date	
23. Assignments or settlements of income	
24. Depreciable property	
25. Cross-border arrangement between associated persons	
26. Dividends from qualifying company	
27. Loss attributing qualifying companies	
28. Minority shareholders in loss attributing qualifying companies	
29. Revocation of loss attribution elections	
30. Loss carry forward and grouping by consolidated group and consolidated group members	
	31. Loss carry forward and grouping by consolidated group and consolidated group members
	32. Losses may be used to pay penalties
	33. Low income rebate
	34. Rebate in respect of gifts of money
	35. Commissioner to deliver credit of tax by instalments
	36. Credit of tax for imputation credit
	37. Credit of tax for imputation credit
	38. Credit of tax for imputation credit
	39. Credits in respect of tax paid in a country or territory outside New Zealand
	40. Dividend paid without deduction in full of foreign tax
	41. Underlying foreign tax credits
	42. Amount of provisional tax payable
	43. Election to be a provisional taxpayer
	44. Estimated provisional tax
	45. Provisional tax payable in instalments
	46. Amount of provisional tax instalments in transitional year
	47. Assessment and payment of terminal tax
	48. Payment of tax
	49. Payment of tax deductions to Commissioner
	50. Bond, etc., in lieu of tax deductions in case of certain non-resident employees
	51. Specified superannuation contribution withholding tax payment date
	52. Requirement for agents or trustees to make resident withholding tax deductions on receipt of payments
	53. Non-resident withholding tax imposed
	54. Non-resident withholding tax on dividends not paid in money
	55. Definitions
	56. Meaning of source deduction payment—shareholder-employees of close companies
	57. Meaning of qualifying company
	58. Modifications to measurement of voting and market interests
	59. Further definition of associated persons
	60. Source of dividends

- 61. Amendments to Schedule 1 Part A
- 62. Schedule replaced
- 63. Schedule 17—depreciable intangible property
- 64. Schedule 18 (State-Owned Enterprises)

## PART 2

## AMENDMENTS TO TAX ADMINISTRATION ACT 1994

- 65. Tax Administration Act 1994
- 66. Application
- 67. Interpretation
- 68. Interpretation
- 69. Construction of certain provisions
- 70. Dates by which annual returns to be furnished
- 71. Officers to maintain secrecy
- 72. Secrecy obligations not to prevent disclosure in arrangements for relief from double taxation and exchange of information
- 73. Determinations in relation to apportionment of interest costs
- 74. Taxation laws in respect of which binding rulings may be made
- 75. Commissioner to make private rulings on request
- 76. Commissioner may make product rulings
- 77. Assessment of further income tax
- 78. Time bar for amendment of assessments
- 79. Transitional provision affecting assessments
- 80. Commissioner may determine amount of provisional tax
- 81. Commissioner determination of provisional tax
- 82. Purpose of specific provisions
- 83. Instalments of and due dates for provisional tax
- 84. Variation to definition of date interest starts
- 85. Amount in nature of interest to be added to fringe benefit tax paid on annual income year basis
- 86. Interest on excess deductions of resident withholding tax
- 87. Certain rights of challenge not conferred
- 88. Challenging civil penalties
- 89. Late filing penalties
- 90. Underestimation penalty where income tax underestimated as at final instalment date
- 91. Underestimation penalty where income tax underestimated as at final instalment date
- 92. Tax shortfalls
- 93. Not taking reasonable care
- 94. Unacceptable interpretation
- 95. Gross carelessness
- 96. Commissioner to determine portions in which shortfall penalty payable by taxpayer and officers of taxpayer
- 97. New due date for payment of tax that is not a penalty

- 98. Due dates for payment of imputation penalty tax and dividend withholding penalty tax
- 99. Deduction of tax from payments due to defaulters
- 100. Power of the Commissioner in relation to small amounts of refunds or tax payable
- 101. Relief in cases of serious hardship
- 102. Remission of underestimation penalty tax
- 103. Relief from additional tax incurred due to default in payment of tax
- 104. Amendment to application date
  - 183A. Remission for reasonable cause
  - 183B. Cancellation of late payment penalties under instalment arrangement
  - 183C. Cancellation of interest
  - 183D. Remission consistent with collection of highest net revenue over time
- 105. Small amounts of penalties and interest not to be charged
- 106. Remission on written application
- 107. Refund of tax paid on income subsequently exempted by Order in Council

## PART 3

## AMENDMENTS TO GOODS AND SERVICES TAX ACT 1985

- 108. Goods and Services Tax Act 1985
- 109. Interpretation
- 110. Change in registered person's taxable period
- 111. Requirements for accounting on payments basis
- 112. Tax file number
- 113. Assessment of tax
- 114. Deduction of tax from payment due to defaulters
- 115. Group of companies

## PART 4

## AMENDMENTS TO INCOME TAX ACT 1976

- 116. Income Tax Act 1976
- 117. Gain or loss on disposal of depreciable property
- 118. Dividends from qualifying company

## PART 5

## AMENDMENTS TO VARIOUS OTHER ACTS

- 119. Estate and Gift Duties Act 1968
- 120. Gaming Duties Act 1971
- 121. Tax Administration Amendment Act (No. 2) 1996
- 122. Taxation Review Authorities Act 1994
- 123. Taxation (Income Tax Rates) Act 1997

## PART 6

## REMEDIAL AMENDMENTS ARISING FROM TAXATION (CORE PROVISIONS) ACT 1996

*Substantive Amendments to Income Tax Act 1994*

- 124. Income Tax Act 1994
- 125. Treatment of net loss

<p>126. Other exempt income  127. Exempt income—dividends  128. Meaning of fringe benefit  129. Cost of minerals, timber, or flax  130. New Subpart EQ inserted</p> <p style="text-align: center;">SUBPART Q—LIMITED ALLOCATION  OF DEDUCTIONS</p> <p>EQ 1. Allocation of allowable  deductions by section LE 3  holding company</p> <p>131. Interpretation  132. Tax in respect of Maori authorities with  20 or fewer beneficiaries  133. New Subpart ID inserted</p> <p style="text-align: center;">SUBPART D—APPLICATION OF PART  TO SCHEDULAR GROSS INCOME</p> <p>ID 1. No offset in calculating some  schedular income tax liabilities</p> <p>134. Specified activity net losses  135. Offsetting supplementary dividend  against net income  136. Policyholder net losses  137. Credit of tax for imputation credit  138. New Zealand income tax liability on for-  eign source income  139. Credits arising to imputation credit  account</p>	<p>140. Definitions  141. Various amendments to Income Tax  Act 1994</p> <p style="text-align: center;"><i>Amendments—Aids to Interpretation in Income  Tax Act 1994</i></p> <p>142. Aids to interpretation</p> <p style="text-align: center;"><i>Amendments to Tax Administration Act 1994</i></p> <p>143. Replacing sections in Tax Administra-  tion Act 1994</p> <p style="padding-left: 20px;">138j. Waiver of payment or  security</p> <p style="padding-left: 20px;">138k. Determination of challenge  not to affect other matters</p> <p>144. Various amendments to Tax Adminis-  tration Act 1994</p> <hr style="width: 10%; margin: 10px auto;"/> <p style="text-align: center;">SCHEDULES</p> <p style="padding-left: 20px;">Schedule 1  New Schedule 13 to Income Tax Act 1994</p> <p style="padding-left: 20px;">Schedule 2  Replacement Lists of Defined Terms in Part B</p> <p style="padding-left: 20px;">Schedule 3  Diagram Illustrating Process Used to Satisfy  Income Tax Liability</p>
---	--

## 1997, No. 74

**An Act to make remedial amendments respecting tax to  
various Acts** *[23 September 1997]*

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

**1. Short Title**—This Act may be cited as the Taxation (Remedial Provisions) Act 1997.

PART 1

AMENDMENTS TO INCOME TAX ACT 1994

**2. Income Tax Act 1994**—The Income Tax Act 1994 is amended by this Part.

**3. Double tax agreements**—Section BH 1 is replaced by:

**“BH 1. Double tax agreements**

**“Definition**

“(1) ‘Double tax agreement’ means a convention or agreement that has been

“(a) Negotiated for one or more of the purposes set out in subsection (2), and

- “(b) Agreed between either
  - “(i) The Government of any territory outside New Zealand and the Government of New Zealand, or
  - “(ii) The Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office, and
- “(c) Declared to have effect by the Governor-General by Order in Council under subsection (3), and that has entered into force according to its tenor.

### “Purposes

- “(2) The following are the purposes for which a double tax agreement may be negotiated:
  - “(a) To provide relief from double taxation;
  - “(b) To provide relief from tax;
  - “(c) To charge the income derived from any source in New Zealand by non-residents;
  - “(d) To determine the income to be attributed to non-residents or their agencies, branches or establishments in New Zealand;
  - “(e) To determine the income to be attributed to New Zealand residents who have special relationships with non-residents;
  - “(f) To prevent fiscal evasion;
  - “(g) To facilitate the exchange of information.

### “Overriding effect

- “(3) The Governor-General may declare, by Order in Council, that a convention or agreement negotiated in accordance with subsection (1)(a) and (b) has effect in relation to income tax notwithstanding anything in this Act or in any other enactment.

### “Meaning of profits

- “(4) A reference in a double tax agreement to the profits of an activity or business is to be read, if possible, as a reference to the amount that would be a taxpayer's net

income if that activity or business were the taxpayer's only activity or business.

**“Defined:** business, double tax agreement, income tax, New Zealand, New Zealand resident, net income, non-resident, tax, taxpayer, this Act”.

**4. Certain pensions, benefits, and other compensation exempt**—(1) Section CB 5 (1)(e) is replaced by:

“(e) Any monetary benefit derived by any person payable under Part I of the Social Security Act 1964, other than from any income-tested benefit.”.

(2) Section CB 5 (1)(f) is replaced by:

“(f) Any amount derived by any person from any overseas pension to the extent to which, under section 70 of the Social Security Act 1964, a deduction in respect of that amount is made by the Department of Social Welfare from the amount of any entitlement to any monetary benefit (other than New Zealand superannuation or veteran's pension) payable under Part I of that Act or under the Social Welfare (Transitional Provisions) Act 1990:”.

(3) Section CB 5 (1)(fa) is replaced by:

“(fa) Any amount derived by any person from an overseas pension to the extent to which the pension is subject to an arrangement under section 70 (3) of the Social Security Act 1964, but the equivalent amount of New Zealand superannuation, veteran's pension, or income-tested benefit paid under section 70 (3)(b) of the Social Security Act 1964 is not exempt income under this section:”.

(4) Subsection (1) applies to an amount derived on or after the date on which this Act receives the Royal assent.

(5) Subsection (2) applies to an amount derived on or after 1 April 1996.

(6) Subsection (3) applies to an amount derived on or after 1 April 1997.

**5. Certain compensation, benefits, and other payments are gross income**—(1) Section CC 1 (2) is replaced by:

“(2) In this section, ‘pensions’ includes any *ex gratia* payment received by any taxpayer from any person (that person being referred to in this subsection as the ‘principal person’) for whom the taxpayer or a parent or child of the taxpayer, or a person who is or has been a spouse or a dependant of the

taxpayer, has rendered past services, being a payment which, in the opinion of the Commissioner, would not have been made by the principal person if those past services had not been rendered by, as the case may be, the taxpayer or that parent or that child or that person who is or has been a spouse or a dependant; but does not include a payment received by any taxpayer from the principal person as a consequence of and within 12 months immediately succeeding the date of the death of that parent or that child or that person who is or has been a spouse or a dependant of the taxpayer.”.

(2) Subsection (1) is deemed to apply with respect to assessable income derived in the 1995–96 and 1996–97 income years and with respect to gross income derived in subsequent income years.

**6. Meaning of term “dividends”**—After section CF 2 (1), the following is inserted:

“(1A) In this Act, the term ‘dividends’, includes a payment, distribution, or transaction of any of the kinds in section CF 2 (1)(b) to (k) that is made to or with a non-executive director shareholder, solely in that person’s capacity as a non-executive director.”.

**7. Branch equivalent income calculation**—(1) Section CG 11 (3) is replaced by:

“(3) The branch equivalent income or loss of a controlled foreign company, for an accounting period, in relation to the calculation of the attributed foreign income or attributed foreign loss of a person, must be either—

“(a) Calculated in—

“(i) The currency in which the company prepares its financial accounts; or

“(ii) If the company does not prepare such accounts, the currency of the country or territory in which the company is resident,—

and converted into New Zealand currency at the average of the close of trading spot exchange rates for the 15th of each complete month falling within that period; or

“(b) Calculated in New Zealand currency, if the person in relation to whom the calculation of the attributed foreign income or attributed foreign loss is being made so elects.

“(3A) If—

“(a) In respect of any accounting period, attributed foreign income or attributed foreign loss of a person in relation to a controlled foreign company is, or is required to be, calculated; and

“(b) In respect of any subsequent accounting period, attributed foreign income or attributed foreign loss of the same person in relation to the same company is required to be calculated—

then for the purpose of calculating the attributed foreign income or attributed foreign loss of that person in relation to that company for the subsequent accounting period, the branch equivalent income or loss of the company for the subsequent accounting period must be calculated in the same currency as the currency in which the branch equivalent income or loss of the company was calculated for the most recent preceding accounting period that related to the calculation of attributed foreign income or attributed foreign loss of that person from that company.

“(3B) The Commissioner may permit a change, in accordance with subsection (3), in the currency in which the branch equivalent income or loss is calculated in relation to the attributed foreign income or attributed foreign loss of a person if the Commissioner is satisfied that the main purpose for the change is a commercial purpose, other than reducing tax, and the change does not have a purpose or effect of defeating the intent and application of the international tax rules.

“(3C) Subsections (3), (3A) and (3B) do not apply to the calculation of branch equivalent income or loss of a controlled foreign company for an accounting period to the extent that that income or loss is comprised of gross income or an allowable deduction in respect of a financial arrangement if—

“(a) The total value, calculated under section EH 1 (4)(a) of all financial arrangements of which the controlled foreign company is a holder or an issuer on any day during the accounting period exceeds \$1,000,000; or

“(b) The amount that would be the total net foreign exchange loss of the controlled foreign company for the accounting period, in respect of all financial arrangements of which the controlled foreign company is a holder or an issuer on any day within the accounting period, if that amount were calculated under subsections (3) to (3B), exceeds \$100,000.

“(3D) Subsection (3C) does not apply to a financial arrangement that is a variable principal debt instrument if—

“(a) All rights and obligations under the arrangement of all parties to the arrangement are expressed in the same currency as the currency in which the branch equivalent income or loss of the controlled foreign company is calculated under subsection (3); and

“(b) No party to the financial arrangement—

“(i) Is associated with the controlled foreign company; or

“(ii) Enters into the financial arrangement under an arrangement (including a collateral arrangement that involves a person associated with the controlled foreign company) which has a purpose or effect of defeating the limitation contained in this subsection.”.

(2) Subsection (1) applies with respect to accounting periods that end on or after 17 June 1997.

**8. Meaning of “fringe benefit”**—After section CI 1 (n), the following is added:

“(na) Any benefit to which section CF 2 (1A) applies.”.

**9. Interpretation of fringe benefit tax rules**—Section CI 2 (3) is replaced by:

“(3) Subsection (2) does not apply to any benefit to which section CF 2 (1A) applies.”.

**10. Patent expenses**—Section DJ 6 (1) is replaced by:

“DJ 6 (1) The Commissioner may allow a taxpayer such deduction as the Commissioner thinks fit for any income year in respect of any expenditure incurred by the taxpayer during that year in connection with the grant, maintenance, or extension of a patent acquired by the taxpayer before the date on which section 10 of the Taxation (Remedial Provisions) Act 1997 comes into force and used by the taxpayer in the derivation of the taxpayer’s gross income for that year.”.

**11. Expenditure on scientific research**—In section DJ 9 (1)(b), the expression “sections EG 17, EG 19” is replaced by the expression “sections EG 17, EG 19, EZ 11”.

**12. Formula for calculating depreciation deduction**—In section EG 2 (1)(e), subparagraphs (i) and (ii) are replaced by:

“(i) The property is, at any time during the income year, not wholly used or available for use by the taxpayer in deriving gross income or in carrying on a business for the purpose of deriving gross income; and

“(ii) Any use other than in deriving gross income or in carrying on a business for the purpose of deriving gross income is not subject to fringe benefit tax under this Act; and”.

**13. Fixed life intangible property**—After section EG 2 (2), the following is added:

“EG 2 (3) Where a taxpayer owns depreciable property that is fixed life intangible property and at any time in an income year the taxpayer incurs in relation to the property additional costs that are deductible only under Subpart EG, then for the purposes of Subpart EG, the cost of the property from the beginning of that income year is deemed to be the adjusted tax value of the property at the beginning of the year, plus the amount of additional costs incurred.”.

**14. Annual depreciation rate for fixed life intangible property**—In section EG 8, the portion after the formula is replaced by:

“where ‘legal life’ means:

“(a) Where section EG 2 (3) does not apply, the remaining legal life of the property from the time at which it was acquired by the taxpayer; and

“(b) Where section EG 2 (3) applies, the remaining legal life of the property from the beginning of the income year in which the additional costs referred to in that section are incurred.”.

**15. Depreciation of depreciable property that can no longer be used**—(1) In section EG 12 (1), “that can no longer be used” is replaced by “that is no longer used”.

(2) Section EG 12 (6) is replaced by:

“(6) When considering an application for a determination to deduct the remaining adjusted tax value of any depreciable property, the Commissioner must be satisfied—

“(a) That the property is no longer used by the taxpayer, and is not intended to be used by the taxpayer or a person associated with the taxpayer, in deriving gross income or in a business; and

“(b) That the costs of disposing of the property would exceed any consideration that could be derived from the disposition of the property.”.

**16. Election that property not be depreciable**—After section EG 16, the following is inserted:

“EG 16A. (1) A taxpayer may elect that property acquired by the taxpayer, that would in the absence of such an election be depreciable property, not be depreciable property.

“(2) A taxpayer may elect that property that, by virtue of a change of use, would, in the absence of such an election become depreciable property, not become depreciable property.

“(3) A taxpayer who, in the year in which and in each subsequent year since the taxpayer acquired property, has omitted to deduct all depreciation to which the taxpayer was entitled in relation to the property, may retrospectively elect that the property not be depreciable property.

“(4) To have effect, an election under this section must be made by notifying the Commissioner—

“(a) If the election is made under subsection (1), in the taxpayer’s return of income for the income year in which the property is acquired;

“(b) If the election is made under subsection (2), in the taxpayer’s return of income for the income year in which the use of the property changes;

“(c) If the election is made under subsection (3), in the taxpayer’s return of income for any income year (including a year after the disposition of the property) after the taxpayer acquired the property.

“(5) An election made under any of subsections (1), (2), and (3), and in accordance with subsection (4), has effect in relation to that taxpayer, in the income year the election is made in and all subsequent income years until—

“(a) The property is disposed of; or

“(b) If it were depreciable property, it would be deemed to be disposed of under section EG 19 (9).

“(6) An election made under subsection (3) also has retrospective effect in relation to that taxpayer and in relation to the income year in which the taxpayer acquired the property and to all intervening years until the year of election.”.

**17. Transfer of depreciable property between associated persons**—Section EG 17 is replaced by:

“EG 17. (1) Where a taxpayer has acquired property from an associated person—

“(a) Who was or, but for the application of section EG 1 (2), would have been allowed a depreciation deduction for the property in the year the acquisition occurs, or who was allowed a depreciation deduction for the property in the year preceding the year in which the acquisition occurs, or who, in either year, was allowed a deduction for the property under section EZ 6 (1); or

“(b) Who, had that associated person incurred a cost which was not otherwise deductible in relation to the property, would have been allowed a depreciation deduction for the property in the year the acquisition occurs but for the application of section EG 1 (2), or would have been allowed a depreciation deduction for the property in the year preceding the year in which the acquisition occurs, or in either year would have been allowed a deduction in relation to the property under section EZ 6 (1); or

“(c) Who, but for an election made under section EG 16A, would have been a person to whom paragraph (a) or paragraph (b) applied—

for the purposes of this Subpart, the cost of the property to the taxpayer is deemed to be—

“(d) If paragraph (a)(iii) of the definition of ‘adjusted tax value’ applied in relation to the associated person and the property, the lower of—

“(i) The market value of the property at the time that it first qualified for a tax deduction since it was owned by the associated person; and

“(ii) The cost of the property to the taxpayer; or

“(e) If paragraph (a)(iii) of the definition of ‘adjusted tax value’ did not apply in relation to the associated person and the property, the lower of—

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

“(ii) The cost of the property to the taxpayer.

“(2) The Commissioner may permit a deduction in respect of the depreciation of the property to be based on its cost to the taxpayer if the property is not depreciable intangible property and the Commissioner is of the opinion that such treatment is appropriate in the circumstances.

“(3) Subsection (1) does not apply—

“(a) If the cost to the taxpayer is gross income to the associated person (other than under section EG 19); or

“(b) If the taxpayer acquires the property in accordance with a matrimonial agreement to which section FF 16 (1) applies; or

“(c) If the Commissioner exercises the discretion conferred in subsection (2).

“(4) If a taxpayer acquires depreciable property (other than fixed life intangible property) from an associated person who was or, but for the application of section EG 1 (2), would have been allowed a depreciation deduction for the property in the year the acquisition occurs, or who was allowed a depreciation deduction for the property in the year preceding the year in which the acquisition occurs, the annual depreciation rate to be applied by the taxpayer in any year to the property—

“(a) If the taxpayer uses the same depreciation method as that used by the associated person in respect of the property, must not exceed the annual depreciation rate applied by the associated person;

“(b) If the taxpayer uses a depreciation method other than that used by the associated person in respect of the property, must not exceed a rate equivalent to that used by the associated person determined by reference to Schedule 10.

“(5) Subsections (1) and (4) apply whether property is acquired by a taxpayer directly or indirectly from an associated person.

“(6) Where the holder of management rights created under the Radiocommunications Act 1989, other than the Crown acting by and through the Secretary of Commerce, grants a licence right under that Act to an associated person, the cost price of the licence right shall for the purposes of this Subpart be deemed to be nil.

“(7) If a taxpayer on or after 1 July 1997 acquires, directly or indirectly, from an associated person depreciable intangible property that—

“(a) Was not depreciable property of the associated person because it was not of a kind listed in Schedule 17 at the time it was acquired by the associated person; and

“(b) Was not property the cost of which was allowed as a deduction to the associated person by virtue of an

amortisation or other similar deduction allowed under any section of this Act—  
no depreciation deduction is allowed to the taxpayer for that property.

“(8) Subsections (1) to (6) apply to property acquired after the date on which the Taxation (Remedial Provisions) Act 1997 receives the Royal assent.”.

**18. Disposition of depreciable property**—(1) Section EG 19 (5) is amended by inserting before, “irreparably damaged”, the words, “lost, stolen or”.

(2) In section EG 19, the following is inserted:

“(6A) Where property of a taxpayer is lost, stolen, or irreparably damaged, the consideration derived by the taxpayer on the disposition of the property is the amount of any insurance proceeds or indemnity payment or other consideration received in relation to that event, and subsection (7) does not apply.”.

(3) Subsection (2), in respect of property of a taxpayer that is irreparably damaged, applies in the 1995–96 income year or any subsequent income year, except where before 17 June 1997 the taxpayer has filed a return of income in which section EG 19 (7) of the Income Tax Act 1994 has been applied in respect of that property.

(4) In section EG 19, the following is inserted:

“(6B) Where any property that has been disposed of under subsection (9)(a)(viii) is recovered in a subsequent income year, and is still owned by the taxpayer and used or available for use by the taxpayer in deriving gross income or in carrying on a business for the purpose of deriving gross income—

“(a) The taxpayer is deemed to derive gross income equal to the amount of the deduction allowed under this section on the disposition of the property in either—

“(i) The year of disposal, if the taxpayer so chooses, or

“(ii) The year of recovery.

“(b) The taxpayer is deemed to have acquired the property, on the date of recovery, for its adjusted tax value at the beginning of the year of loss or theft.”.

(5) Section EG 19 (9)(a) is amended by adding:

“(viii) The loss or theft of the property, if the property is not recovered in the income year in which the loss or theft occurs.”.

**19. Sums received from sale of patent rights**—In section EN 2 (1), in the proviso, “before the date on which section 18 of the Taxation (Remedial Provisions) Act 1997 comes into force,” is inserted after “Commissioner may,”.

**20. Sums received from sale of patent rights**—Section EN 2 (3)(c) is replaced by:

“(c) Where the taxpayer acquired the patent rights on or after 1 April 1993, the total cost of the patent rights to the taxpayer less the aggregate of amounts allowed to the taxpayer as depreciation deductions in respect of the patent rights under this Act or under the Income Tax Act 1976.”.

**21. Sums received from sale of patent rights**—Section EN 2 (3A) is replaced by:

“(3A) Where subsection (3) applies, section EG 19 does not apply and the deduction allowed must be allocated to the income year in which the sum in respect of the sale is received by or becomes owed to the taxpayer.

“(3B) Where subsection (3) applies and there has been an allocation of gross income under the proviso to subsection (1), section EG 19 does not apply and the deduction allowed must be allocated to the income years to which, and in the same proportions as, the gross income is allocated.”.

**22. Depreciation deduction for assets acquired by taxpayer from associated person before a certain date**—After section EZ 10 the following is added:

“EZ 11.(1) Where a taxpayer has acquired any property (otherwise than in accordance with a matrimonial agreement in circumstances to which section FF 16(1) applies) from an associated person entitled to a deduction in respect of the depreciation of the property, irrespective of whether or not any deduction has in fact been allowed to that associated person, the Commissioner shall not allow to the taxpayer any greater deduction in respect of the depreciation of the property than that which would have been allowed to the associated person if the associated person had retained the property:

Provided that where any amount so allowed as a deduction to the associated person has been dealt with under section EG 19, the Commissioner may allow to the taxpayer a deduction in respect of the depreciation of the property based on the aggregate of the total of all amounts so dealt with and

the amount of that depreciated value of the property immediately before it was acquired by the taxpayer.

“(2) Subsection (1) does not apply,—

“(a) In the case of property listed in Schedule 17, if the acquisition price is gross income to the associated person:

“(b) In the case of all other property, where the Commissioner is of the opinion that the circumstances are such that a deduction in respect of the depreciation of the property based on the actual price or other consideration given for the property should be allowed.

“(3) Where the holder of management rights created under the Radiocommunications Act 1989, other than the Crown acting by and through the Secretary of Commerce, grants a licence right under that Act to an associated person, the cost price of the licence right shall for the purposes of this Subpart be deemed to be nil.

“(4) Subsections (1) to (3) apply to property acquired on or before the date on which the Taxation (Remedial Provisions) Act 1997 receives the Royal assent.”.

**23. Assignments or settlements of income**—(1) Section FC 11 is repealed.

(2) Subsection (1) comes into force on 1 April 1998.

**24. Depreciable property**—In section FF 16 (1), “section EG 17” is replaced by “section EG 17 (1) and EZ 11”.

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

“(5) Subsection (4) does not apply if the taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand, and—

“(a) The amount is an allowable deduction of the other party, and is interest, royalties, or an insurance premium; or

“(b) The amount is a dividend receivable on a fixed rate share.”.

(2) This section applies with respect to tax on assessable income derived in the 1996–97 income year and with respect to gross income derived in subsequent income years.

**26. Dividends from qualifying company**—(1) After section HG 13 (1), the following is inserted:

“(1A) For the avoidance of doubt, a dividend that is paid by a qualifying company to any trustee shareholder, and that is, or that becomes, beneficiary income of a beneficiary resident in New Zealand, is exempt income of the beneficiary to the same extent as if the beneficiary were the shareholder referred to in section HG 13 (1)(a), and the company had paid the dividend to the beneficiary.”.

(2) Subsection (1) is deemed to have come into force on 1 April 1995, and to have applied with respect to assessable income derived in the 1995–96 and 1996–97 income years and with respect to gross income derived in subsequent income years.

**27. Loss attributing qualifying companies**—In section HG 14, “HG 15 (3)” is replaced by “HG 15”.

**28. Minority shareholders in loss attributing qualifying companies**—After section HG 14, the following is inserted:

“HG 14A. For the purposes only of section HG 14, the requirements of section HG 14 (c) are treated as fulfilled in respect of a shareholder who has not executed the notice of election, and who has an effective interest of less than 50% in a company at the time at which an election under section HG 14 (c) is made in respect of the company, if—

“(a) Any one or more other shareholders in the company whose effective interests in that company at that time aggregate 50% or more have executed the notice required by section HG 14 (c)(i); and

“(b) All the conditions required by section HG 14 for a company to be a loss attributing qualifying company are fulfilled except that the notice required by section HG 14 (c)(i) is not executed by each person who is *sui juris* and is at the date on which the notice is furnished a shareholder in the company.”.

**29. Revocation of loss attribution elections**—Section HG 15 is replaced by:

“HG 15. Sections HG 3 (4) and (5), HG 5, HG 6, and HG 7 apply to an election made under section HG 14 or section HG 14A, in respect of the revocation of that election, as if that election were, in the case of an election made by a director, an election made under section HG 3 (1), or in the

case of an election made by a shareholder, a shareholder election made under section HG 4 (1).”.

**30. Loss carry forward and grouping by consolidated group and consolidated group members**—Section IG 6 (1) is replaced by:

“IG 6. (1) Subject to this section, with respect to the tax on assessable income derived in the 1995–96 and 1996–97 income years, sections IE 1, IE 2, IF 1, IF 2, IG 1, IG 2, and IH 1 shall apply, with any necessary modifications, in respect of a consolidated group as if the consolidated group were a single company, and the assessable income of the consolidated group shall be determined accordingly.”.

**31. Loss carry forward and grouping by consolidated group and consolidated group members**—(1) After section IG 6 (1) as replaced by section 28, the following is inserted:

“(1A) Subject to this section, sections IE 1, IE 2, IE 3, IE 4, IF 1, IF 2, IG 1, IG 2, and IH 1 shall apply, with any necessary modifications, in respect of a consolidated group as if the consolidated group were a single company, and the taxable income of the consolidated group shall be determined accordingly.”.

(2) Subsection (1) is deemed to apply with respect to the tax on taxable income for the 1997–98 and subsequent income years.

**32. Losses may be used to pay penalties**—(1) After section IG 10 (1), the following is inserted:

“(1A) A wholly-owned group of companies may elect, in the manner provided in subsection (1), to apply a loss incurred by a company in the wholly-owned group in payment of a shortfall penalty imposed on any company in that group.”.

(2) Subsection (1) is deemed to apply with respect to the tax on taxable income for 1997–98 and subsequent income years.

**33. Low income rebate**—(1) In section KC 1 (1)(a), “New Zealand superannuitant” is replaced by “New Zealand superannuitant or a person in receipt of a veteran’s pension”.

(2) Subsection (1) is deemed to apply to the 1997–98 income year.

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

“(br) African Enterprise (New Zealand) Aid and Development Fund:”.

(2) This section applies with respect to the tax on taxable income for the 1998–99 and subsequent income years.

**35. Commissioner to deliver credit of tax by instalments**—(1) In section KD 7 (3A), “under section KD 2” is replaced by “under section KD 2 (2)”.

(2) After section KD 7 (3B), the following is inserted:

“(3C) Where in any income year the Director-General of Social Welfare ceases to pay to any person an income-tested benefit, the Commissioner may, on application by that person, pay to the person the amount of the credit of tax that the Commissioner determines the person would be entitled to under section KD 2 (3) for the period that—

“(a) Commences on the later of—

“(i) The first day of the income year; and

“(ii) The day following that on which the Director-General ceases payment of the income-tested benefit to the person; and

“(b) Ends on the day preceding the first day specified in a certificate of entitlement subsequently issued to the person under section KD 5.”.

**36. Credit of tax for imputation credit**—(1) In section LB 2 (3), paragraph (iii) of item ‘b’ is replaced by:

“(iii) In any other case, 25%.”.

(2) Subsection (1) is deemed to apply to the 1996–97 income year.

**37. Credit of tax for imputation credit**—(1) In section LB 2 (3), paragraph (iii) of item ‘b’, as replaced by section 33 of this Act, is replaced by:

“(iii) In any case where the taxpayer is a trustee (other than the Maori trustee), the basic rate of income tax for trustees, expressed as a percentage, stated in Schedule 1 Part A clause 4 and applying for the income year; and”.

(2) In section LB 2 (3), after paragraph (iii) of item ‘b’, the following paragraph is added:

“(iv) In any other case, 24%.”.

(3) Subsection (1) is deemed to apply to the 1997–98 and subsequent income years.

(4) Subsection (2) is deemed to apply to the 1997–98 income year.

**38. Credit of tax for imputation credit**—(1) In section LB 2 (3), paragraph (iv) of item ‘b’ is replaced by:

“(iv) In any other case, 21.75%.”.

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

**39. Credits in respect of tax paid in a country or territory outside New Zealand**—Section LC 1 (5) is replaced by:

“(5) This Subpart and sections BH 1, CF 6, and OE 6 of this Act, and sections 88, 115 to 118, 131, and 132 of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, shall, for the purposes of subsection (1) of this section, apply as if that subsection were a double tax agreement.”.

**40. Dividend paid without deduction in full of foreign tax**—Section LC 7 (1)(b) is replaced by:

“(b) Under the law of the territory in relation to which the double tax agreement referred to in that section has been made, the company paying the dividend to which the notice of election relates was authorised to deduct from the dividend an amount in respect of foreign tax; and”.

**41. Underlying foreign tax credits**—Section LF 1 (2)(a)(v) is replaced by:

“(v) A company resident in New Zealand, that is not a company that, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement; or”.

**42. Amount of provisional tax payable**—(1) In section MB 2 (1), “section MB 5,” is replaced by “section MB 5 or section MB 5A.”.

(2) Sections MB 2 (1)(aa) and (ab) are repealed.

(3) Section MB 2 (1)(b)(iv) is replaced by:

“(iv) Neither paragraph (c) nor paragraph (d) applies,—”.

(4) In section MB 2 (1)(c), “or is required to make” is omitted.

(5) In section MB 2 (2), paragraph (a) is repealed.

(6) In section MB 2 (3)(a), after “that year”, “not less than 30 days before the relevant instalment date” is added.

(7) Section MB 2 (3)(b) is replaced by:

“(b) Calculated on the basis of the taxpayer’s return of income for that preceding income year, where the taxpayer has on or before the relevant instalment date furnished such a return but the Commissioner has not yet issued a notice of assessment for that year, or where the Commissioner has issued an assessment for the preceding income year but the

assessment was issued within 30 days of the relevant instalment date.”.

(8) After section MB 2 (5), the following are added:

“(6) For the purposes of subsection (1)(a) and section 119 (3) of the Tax Administration Act 1994, the amount of a taxpayer’s residual income tax for the immediately preceding income year, where that year is a transitional year, shall be calculated in accordance with the following formula:

$$\frac{“a \times b}{c}$$

“where—

- “a is the residual income tax for the transitional year;  
and
- “b is the number of days in the current income year;  
and
- “c is the number of days in the transitional year.

“(7) For the purposes of subsection (1)(b), the amount of a taxpayer’s residual income tax for the income year before an immediately preceding income year, where the preceding income year is a transitional year, shall be calculated in accordance with the following formula:

$$\frac{“a \times b}{c}$$

“where—

- “a is the residual income tax for the transitional year;  
and
- “b is the number of days in the current income year;  
and
- “c is the number of days in the transitional year.”.

(9) Subsections (1) and (3) to (8) apply to the 1998–99 and subsequent income years.

**43. Election to be a provisional taxpayer—**(1) After section MB 2, the following is inserted:

“MB 2A. (1) In an income year, when first furnishing a tax return for the income year to which the election relates, a taxpayer may elect to be a provisional taxpayer if the taxpayer satisfies the Commissioner that—

“(a) On or before the third instalment date for that year, the taxpayer has paid provisional tax of \$2500 or more; and

“(b) On the day on which the first payment of provisional tax is made for an income year, the taxpayer had a reasonable expectation of being a provisional taxpayer in that income year, other than by this election.”.

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

**44. Estimated provisional tax**—(1) In section MB 3 (1), “an estimate or revised estimate” is replaced by “a fair and reasonable estimate or revised estimate”.

(2) Sections MB 3 (2) and (3) are repealed.

(3) Section MB 3 (4) is replaced by:

“(4) A provisional taxpayer who furnishes an estimate or revised estimate in accordance with the provisions of this section must—

“(a) Take reasonable care in making that estimate or revised estimate; and

“(b) If an estimate ceases to be fair and reasonable must, on or before the next instalment date, make a revised estimate for that income year.

“(5) In a transitional year, a taxpayer who furnishes an estimate or revised estimate must—

“(a) Before the date on which the Commissioner notifies a change of balance date, estimate the residual income tax as if no change in balance date will be approved; and

“(b) After the date on which the Commissioner notifies a change of balance date, re-estimate the residual income tax.

“(6) If a taxpayer makes an estimate of residual income tax and that estimate exceeds the provisional tax otherwise payable, the taxpayer is deemed to have taken reasonable care in making the estimate.”.

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

**45. Provisional tax payable in instalments**—(1) Section MB 4 (3)(b) is repealed.

(2) After section MB 4 (3), the following is added:

“(4) In a transitional year—

“(a) Provisional tax shall be payable in the number of instalments specified in Schedule 13 Part B, second column; and

“(b) Instalments of provisional tax must be calculated and due and payable in accordance with section MB 5A.”.

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

**46. Amount of provisional tax instalments in transitional year—**(1) After section MB 5, the following is inserted:

“MB 5A. (1) This section applies to instalments of provisional tax due in a transitional year if the Commissioner has notified a change of balance date.

“(2) Instalments (other than a final instalment) of provisional tax are due on—

“(a) The 7th day of the months specified in Schedule 13 Part B, third column unless January is specified; and

“(b) The 15th day of January, when Schedule 13 Part B, third column specifies that January is a month in which the instalment is due.

“(3) Payment of the final instalment is due on—

“(a) The 7th day of the final month in the transitional year; or

“(b) The 15th day of January where January is the final month.

“(4) For the purposes of subsection (2), no provisional tax shall be payable on—

“(a) The first instalment date, if the taxpayer is a taxpayer to whom section MB 4 (2) would have applied had the income year not been a transitional year; or

“(b) The first and second instalment dates, if the taxpayer is a taxpayer to whom section MB 4 (3) would have applied had the income year not been a transitional year; or

“(c) The first, second, and third instalment dates, if the taxpayer is a new provisional taxpayer whose first business day occurs on or after the day that is 30 days before the third instalment date.

“(5) If a taxpayer does not make an estimate of residual income tax for a transitional year prior to an instalment date and the instalment is not a final instalment, the amount

payable on an instalment date is calculated in accordance with the following formula:

$$\frac{p \times n}{3} - i$$

“where—

- “i is the amount of provisional tax previously due and payable for that year; and
- “n is the aggregate number, plus one, of instalments due in that year before the instalment date; and
- “p is the provisional tax payable for the transitional year.

“(6) If a taxpayer makes an estimate of residual income tax for a transitional year, the amount payable on an instalment date, other than a final instalment date, is calculated in accordance with the following formula:

$$\frac{((4 \times n) \times p)}{m} - i$$

“where—

- “i is the amount of provisional tax previously due and payable for that year; and
- “m is the number of months in the transitional year; and
- “n is the aggregate number, plus one, of instalments due in that year before the instalment date; and
- “p is the amount of provisional tax payable for the transitional year.

“(7) If a taxpayer has not made an estimate of the residual income tax for a transitional year, the amount payable on a final instalment date is calculated in accordance with the following formula:

$$\frac{p \times b}{c} - i$$

“where—

- “b is the number of days in the transitional year; and
- “c is the number of days in the immediately preceding income year; and
- “i is the amount of provisional tax previously due and payable for that year; and
- “p is the provisional tax payable for the transitional year.

“(8) If a taxpayer makes an estimate of the income tax for a transitional year, the amount payable on a final instalment date

is the amount of provisional tax payable less the amount of any instalment previously due and payable.

“(9) In this section and in Schedule 13 Part B, first column, the number of months in a transitional year must be determined in accordance with the following:

“(a) The first month in a taxpayer’s transitional year—

“(i) Is the first whole month in that transitional year; and

“(ii) For a new provisional taxpayer, is the month following the first business day of the taxpayer;

“(b) The final month in a transitional year is the month in which a taxpayer’s new return date (as defined in section 39 of the Tax Administration Act 1994) occurs;

“(c) Each month falling between the first and final months must be included in determining the length of the transitional year.”.

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

**47. Assessment and payment of terminal tax—**

(1) Section MC 1 (2) is replaced by:

“(2) Notwithstanding section NC 17 (2), terminal tax payable for an income year of a provisional taxpayer shall be due and payable on—

“(a) The 7th day of the month specified in Schedule 13 Part A for payment of terminal tax for that income year, unless January is specified; and

“(b) The 15th day of January, if January is specified in Schedule 13 Part A for payment of terminal tax for that income year.”.

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

**48. Payment of tax—**(1) Section MC 2 (2) is replaced by:

“(2) Terminal tax payable for an income year by a person (other than a company to which subsection (1) applies) shall be due and payable on—

“(a) The 7th day of the month specified in Schedule 13 Part A for payment of terminal tax for that income year, unless January is specified; and

“(b) The 15th day of January, if January is specified in Schedule 13 Part A for payment of terminal tax for that income year.”.

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

**49. Payment of tax deductions to Commissioner**—(1) In section NC 15 (1)(b), “(or 15th January where December is the month of the deduction)” is inserted after “5th of the month”.

(2) In section NC 15 (1)(i), “20 April in each year” is replaced by “the date in each year on which the employer is required to pay unpaid tax deductions to the Commissioner”.

(3) Subsection (1) comes into force on 1 April 1998.

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

**50. Bond, etc., in lieu of tax deductions in case of certain non-resident employees**—Section NC 18 (1)(a) is replaced by:

“(a) A double tax agreement; or”.

**51. Specified superannuation contribution withholding tax payment date**—(1) Section NE 4 (b), is replaced by the following paragraph:

“(b) Subject to paragraph (c), where the employer has made that deduction during the second PAYE period, not later than—

“(i) The 5th of the month following the month in which the deduction was made; or

“(ii) The 15th of January where the month in which the deduction was made is December.”.

(2) Subsection (1) comes into force on 1 April 1998.

**52. Requirement for agents or trustees to make resident withholding tax deductions on receipt of payments**—(1) In section NF 3 (1), “14th” is replaced by “20th”.

(2) Subsection (1) is deemed to have come into force on 1 April 1997.

**53. Non-resident withholding tax imposed**—(1) Section NG 2 (1)(a) is replaced by:

“(a) At the rate of 30% of so much of that non-resident withholding income that consists of dividends, other than investment society dividends or supplementary dividends payable as a result of Subpart LE, to the extent the dividends are neither fully imputed nor fully dividend withholding payment credited.”.

(2) Section 59 of the Taxation (Remedial Provisions) Act 1996 is repealed.

(3) Subsection (1) is deemed to apply with respect to dividends paid on or after 2 September 1996.

**54. Non-resident withholding tax on dividends not paid in money**—(1) In section NG 9 (1)(b), the portion of the definition of item “f” before subparagraph (i) is replaced by:

“f is the amount of the dividends calculated under section CF 2 (6) together with the amount of any dividend withholding payment credit attached to the dividends—”.

(2) Subsection (1) applies with respect to dividends paid on or after the date on which this Act receives the Royal assent.

**55. Definitions**—(1) In section OB 1, the following are inserted:

“‘Copyright in a sound recording’, in Schedule 17, means the copyright in the version of the recording of which copies have been sold or offered for sale to the public.”

“‘Final instalment’, in the provisional tax rules, means the last instalment due in a transitional year.”

“‘Non-executive director shareholder’ means a shareholder in a company who is an employee of the company only as a non-executive director and who provides no services to the company as an employee other than the formal occupation of the role of non-executive director and compliance with the statutory obligations imposed upon persons performing that role.”

“‘Sound recording’ has the same meaning as in the Copyright Act 1994.”

“‘Transitional year’, in the provisional tax rules, means the period in respect of which a taxpayer furnishes a return pursuant to section 39 of the Tax Administration Act 1994.”.

(2) In section OB 1:

(a) In the definition of “associated person”—

(i) In paragraph (c), “EG 17” is omitted and “and EZ 9” is replaced by “, EZ 9 and EZ 11”.

(ii) In paragraph (d), “paragraph (iv) of the item by (base value) in paragraph (a) of the definition of ‘adjusted tax value’ and in Part LF” is replaced by “Parts EG and LF”;

- (b) In the definition of “close company”, paragraph (b) is replaced by:

“(b) In section OB 2 (2) includes any company with 25 or fewer shareholders that is not a special corporate entity.”;

- (c) The definition of “completed” is replaced by:

“‘Completed’ in the definition of ‘film production expenditure’ and in sections EO 3 and EO 4, in relation to a film, means the completion of the film to the double head finecut stage of production or equivalent production stage:”;

- (d) The definition of “continuity provisions” is replaced by:

“‘Continuity provisions’ means sections GC 2, GC 4, IE 1, IF 1, IG 2 (1), and (2)(e), LE 2 (7), ME 5 (1)(i), MF 4 (1)(e), MF 4 (3)(d), and MG 5 (1)(i):”;

- (e) The definition of “credit account continuity provisions” is replaced by:

“‘Credit account continuity provisions’ means sections ME 5 (1)(i), MF 4 (1)(e), MF 4 (3)(d), and MG 5 (1)(i):”;

- (f) In the definition of “depreciable property”, in paragraph (b), the following is added:

“(ix) Property that the taxpayer elects under section EG 16A to treat as not depreciable:”;

- (g) The definition of “double tax agreement” is replaced by:

“‘Double tax agreement’ has the meaning given in section BH 1:”;

- (h) Paragraph (a) of the definition of “eligible company” is replaced by:

“(a) A company that, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement; or”;

- (i) The definition of “estimated useful life” is replaced by:

“‘Estimated useful life’ means—

“(a) In respect of any depreciable property other than a copyright in a sound recording, or any high-priced livestock, the period over which such property might reasonably be expected to be useful in deriving gross income or carrying on a business in New Zealand, having regard to such factors as likely wear and tear, the passage of time, exhaustion, and obsolescence and based upon an assumption of normal and reasonable maintenance:

- “(b) In respect of a copyright in a sound recording, the period from the time such a copyright might reasonably be expected to be first useful in deriving gross income until the end of the income year in which it might reasonably be expected that 90% of all the gross income that will be derived from such a copyright has been derived.”;
- (j) The definition of “first business day” is replaced by:  
“‘First business day’, in the provisional tax rules, in relation to a taxable activity, means in the case of a provisional taxpayer—  
“(a) Who is not a natural person, the first day in an income year on which gross income is derived or expenditure incurred as a result of carrying on that taxable activity; and  
“(b) Who is a natural person, the day following the last day in an income year on which the taxpayer ceased to derive income from employment.”;
- (k) The definition of “first instalment date” is replaced by:  
“‘First instalment date’, in the provisional tax rules, in relation to a taxpayer and an income year, means—  
“(a) The 7th day of the month specified in Schedule 13 Part A for payment of the first instalment of provisional tax for that income year, unless January is specified; and  
“(b) The 15th day of January if January is specified in Schedule 13 Part A for payment of the first instalment of provisional tax for that income year.”;
- (l) In the definition of “foreign company”, paragraph (a)(ii) is replaced by:  
“(ii) Is resident in New Zealand but, under a double tax agreement under which all or part of its income is not subject to tax, is treated as not being resident in New Zealand for the purposes of the double tax agreement.”;
- (m) In the definition of “foreign company”, paragraph (b)(ii) is replaced by:  
“(ii) Is resident in New Zealand but, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement.”;
- (n) The definition of “income” is repealed;
- (o) In the definition of “insurance”, paragraph (a) is replaced by:

- “(a) In paragraph (b) of the definition of ‘premium’ and in sections CN 4 and OE 4, means insurance or guarantee against any loss, damage, event, happening, contingency, or risk of any kind, not being life insurance.”;
- (p) In the definition of “market value”, in paragraph (b), the expression “OD 4,” is inserted between “and in sections” and “OD 5 and OD 6”;
- (q) In the definition of “market value”, paragraph (c) is replaced by:  
 “(c) Is defined in section CG 23 (9) for the purposes of certain provisions of that section.”;
- (r) The definition of “new provisional taxpayer” is replaced by:  
 “‘New provisional taxpayer’, in the provisional tax rules, in relation to an income year, means a provisional taxpayer who—  
 “(a) In the case of a taxpayer who is not a natural person:  
 “(i) First commenced to derive gross income from a taxable activity in that income year; and  
 “(ii) In none of the 4 preceding years derived gross income from a taxable activity; and  
 “(b) In the case of a taxpayer who is a natural person:  
 “(i) In none of the 4 preceding years had residual income tax of more than \$2500; and  
 “(ii) In the current income year has residual income tax of \$30,000 or more; and  
 “(iii) In the current income year has both ceased to derive income from employment and following that cessation commenced to derive gross income from a taxable activity.”;
- (s) Paragraph (b) of the definition of “prescribed period” is repealed;
- (t) The definition of “provisional taxpayer” is replaced by:  
 “‘Provisional taxpayer’, in relation to an income year, means a taxpayer—  
 “(a) Whose residual income tax for the income year is \$2500 or more; or  
 “(b) Who is entitled to make an election under section MB 2A—

but does not include—

“(c) A company that does not have a fixed establishment in New Zealand and is not deemed to be resident in New Zealand; or

“(d) A taxpayer to whom section 33A of the Tax Administration Act 1994 applies; or

“(e) A non-resident contractor within the meaning of regulation 2 of the Income Tax (Withholding Payments) Regulations 1979 who has not been issued with an exemption certificate by the Commissioner for that income year under regulation 5 of those regulations.”;

(u) In the definition of “qualifying amalgamation”, paragraph (a)(i) is replaced by:

“(i) a company which, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement; or”;

(v) The definition of “second instalment date” is replaced by:

“‘Second instalment date’, in the provisional tax rules, in relation to a taxpayer and an income year, means—

“(a) The 7th day of the month specified in Schedule 13 Part A for payment of the second instalment of provisional tax for that income year, unless January is specified; and

“(b) The 15th day of January if January is specified in Schedule 13 Part A for payment of the second instalment of provisional tax for that income year.”;

(w) Paragraph (a) of the definition of “settlement” is repealed;

(x) Paragraph (a) of the definition of “settlor” is repealed;

(y) The definition of “tax credit advantage” is replaced by:

“‘Tax credit advantage’ is defined in section GC 22 (9) for the purposes of that section.”;

(z) The definition of “terminal tax date” is replaced by:

“‘Terminal tax date’, in relation to an income year and a taxpayer, means—

“(a) The 7th day of the month specified in Schedule 13 Part A for payment of terminal tax for that income year, unless January is specified; and

“(b) The 15th day of January unless January is specified in Schedule 13 Part A for payment of terminal tax for that income year;—

or such other date as may be specified—

“(c) By the Commissioner under section MC 1 (3) in relation to a particular provisional taxpayer; or

“(d) In section MC 2 (1);”;

(aa) The definition of “third instalment date” is replaced by:

“‘Third instalment date’, in the provisional tax rules, in relation to a taxpayer and an income year, means—

“(a) The 7th day of the month specified in Schedule 13 Part A for payment of the third instalment of provisional tax for that income year, unless January is specified; and

“(b) The 15th day of January if January is specified in Schedule 13 Part A for payment of the third instalment of provisional tax for that income year.”;

(bb) Paragraph (b) of the definition of “transferor” is repealed.

(3) The definitions of “copyright in a sound recording” and “sound recording” in subsection (1) and subsection (2) (a) come into force on 1 July 1997.

(4) The definitions of “final instalment” and “transitional year” in subsection (1) and subsection (2) (j), (k), (r), (t), (v), (z), and (aa) apply to the 1998–99 and subsequent income years.

(5) Subsection (2) (b), (n), (s), (w), (x), and (bb) come into force on 1 April 1998.

**56. Meaning of source deduction payment—shareholder-employees of close companies—**(1) Section OB 2 is replaced by:

“OB 2. (1) In this Act, except as provided in subsection (2), ‘source deduction payment’ means a payment by way of salary or wages, an extra emolument, or a withholding payment.

“(2) If a taxpayer is a shareholder in and an employee of a close company and in the taxpayer’s income year (or in the taxpayer’s corresponding accounting year)—

“(a) The taxpayer does not derive as an employee of the company—

“(i) Salary or wages of a regular amount for regular pay periods of one month or less regularly throughout that year; or

“(ii) Salary or wages, by way of regular payments throughout that year of a regular amount for regular pay periods, that are in total at least two-thirds of the total gross income which the taxpayer derives in that year as an employee of the company;

or

“(b) Any amount is paid or credited to the taxpayer, or applied on the taxpayer’s account, in anticipation or in respect of any income that may subsequently be allocated to the taxpayer as an employee of the company,

for the purposes of this Act, except the FBT rules;

“(c) All gross income that the taxpayer derives as an employee of the company in every subsequent year is deemed to be gross income derived otherwise than from source deduction payments; and

“(d) If the taxpayer so chooses, all gross income that the taxpayer derives from the company in that year as an employee of the company is deemed to be gross income derived otherwise than from source deduction payments.”.

(2) Subsection (1) comes into force on 1 April 1998.

**57. Meaning of qualifying company**—Section OB 3 (1)(c)(ii) is replaced by:

“(ii) A trustee of a trust in respect of which all dividends, that are not non-cash dividends other than taxable bonus issues, derived by the trustee from the company during the income year are beneficiary income of beneficiaries who are not trustees or companies other than qualifying companies; or”.

**58. Modifications to measurement of voting and market interests**—In section OD 5 (10), in the definition of “limited attribution foreign company”, paragraph (a)(ii) is replaced by:

“(ii) A company resident in New Zealand which, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement; and”.

**59. Further definition of associated persons**—(1) In section OD 8 (3):

(a) In the portion before paragraph (a), “paragraph (iv) of the item by (base value) in the definition of ‘adjusted tax value’, and in the international tax rules, Parts FG and LF, and sections CG 8, EG 17, EL 7 (3)(b), EZ 9” is replaced by “the international tax rules, Parts EG,

FG, and LF, and sections CG 8, EL 7 (3)(b), EZ 9, EZ 11”;

(b) In the proviso to paragraph (a), “except in item bv (base value) in the definition of ‘adjusted tax value’ and in Parts FG” is replaced by: “Parts EG, FG”.

(2) Subsection (1) comes into force on 1 July 1997.

**60. Source of dividends**—Section OE 6 is replaced by:

“OE 6. If a company is not resident in New Zealand, and for the purposes of a law of another territory in relation to which a double tax agreement has been made, is resident in that territory, and that law imposes foreign tax, a dividend paid by the company is deemed to be derived from a source in the other territory for the purposes of the double tax agreement.”.

**61. Amendments to Schedule 1 Part A**—(1) Clause 4 is replaced by:

“4. **Trustee income**—On the taxable income of a trustee, (whether or not the trustee is a company or a corporation) where such taxable income is not included within any of the provisions of clauses 3, 7, or 8, the basic rate of income tax shall be 33 cents for every \$1 of that taxable income.”.

(2) Clause 6 is repealed.

(3) Subsections (1) and (2) are deemed to apply to the 1997–98 and subsequent income years.

**62. Schedule replaced**—(1) Schedule 13 to the Income Tax Act 1994 is replaced by the new Schedule 13 set out in Schedule 1 to this Act.

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

**63. Schedule 17—depreciable intangible property**—In Schedule 17 the following item is added:

“10. The copyright in a sound recording, if the copyright was produced or purchased by the taxpayer on or after 1 July 1997, and copies of the recording have been sold or offered for sale to the public.”.

**64. Schedule 18 (State-Owned Enterprises)**—In Schedule 18:

(a) The item “Crown Forestry Management Limited” is moved into alphabetical order;

(b) The following items are inserted:

“Coal Corporation of New Zealand Ltd”

- “Government Property Services Ltd”;
- (c) Paragraph (b) is deemed to apply, in respect of each company, on and after the beginning of the company’s 1995–96 income year;
- (d) The following items are omitted:  
 “Air New Zealand Limited”  
 “New Zealand Steel Limited”;
- (e) Paragraph (d) is deemed to have come into force, in respect of each company, at the beginning of the company’s 1992–93 income year;
- (f) The following item is omitted:  
 “Bank of New Zealand Limited”;
- (g) Paragraph (f) is deemed to have come into force on 5 November 1992;
- (h) The following item is omitted:  
 “National Provident Management Company Limited”;
- (i) Paragraph (h) is deemed to have come into force on 17 April 1992;
- (j) The following items are omitted:  
 “Broadcasting Corporation of New Zealand”  
 “Geothermal Development and Investment Limited”  
 “Government Life Insurance Corporation Limited”  
 “New Zealand Export-Import Corporation”.

## PART 2

### AMENDMENTS TO TAX ADMINISTRATION ACT 1994

**65. Tax Administration Act 1994**—The Tax Administration Act 1994 is amended by this Part.

**66. Application**—(1) Sections 67, 68 (1), 68 (2), 68 (4), 68 (5), 69, 71, 82, 84, 85, 86, 88, 90, 92, 93, 94, 95, 96, 97, 101, 105, and 106 of this Act are deemed to have come into force on 1 April 1997 as they relate to—

- (a) Tax on taxable income in the 1997–98 or subsequent income years; and
- (b) Supplies made in taxable periods commencing on or after 1 April 1997; and
- (c) Gifts made on or after 1 April 1997; and
- (d) Races run, lotteries drawn, dutiable games played by means of a gaming machine, and casino wins to which the Gaming Duties Act 1971 applies that occur on or after 1 April 1997; and
- (e) Instruments of conveyance executed, bills of exchange made, drawn or prepaid under sections 81, 82, or 83

of the Stamp and Cheque Duties Act 1971 and liable transactions entered into on or after 1 April 1997.

(2) Sections 73, 74 (1), 77, and 78 apply on and after 1 October 1996.

(3) Sections 68 (3), 68 (6), 80, 83, 98, and 102 of this Act apply to the 1998–99 and subsequent income years.

(4) Section 87 of this Act is deemed to have applied on and after 1 April 1995.

**67. Interpretation**—In section 3 (1), the following is inserted before the definition of “accounting period”:

“‘Acceptable interpretation’, in sections 141A and 141C of this Act means an interpretation that is not an unacceptable interpretation.”.

**68. Interpretation**—(1) In section 3 (1), the definition of “civil penalty” is replaced by the following:

“‘Civil penalty’ means—

“(a) A late filing penalty; or

“(b) A late payment penalty; or

“(c) A shortfall penalty.”.

(2) In section 3 (1), the definition of “late payment penalty” is replaced by the following:

“‘Late payment penalty’ means,—

“(a) A civil penalty imposed under section 139B for not paying on time a tax calculated or assessed as payable under a tax law; and

“(b) For the purposes of sections 157, 183A, 183B, and 183D, includes:

“(i) Additional tax imposed on unpaid tax under section 139 of the Tax Administration Act 1994 for the 1996–97 or earlier income years:

“(ii) Additional tax imposed on any tax remaining unpaid under section 41 of the Goods and Services Tax Act 1985 in relation to supplies made in taxable periods which commenced before 1 April 1997:

“(iii) Interest on gift duty imposed under section 84 of the Estate and Gift Duties Act 1968 in relation to gifts made before 1 April 1997:

“(iv) A penalty imposed in relation to unpaid stamp duty under section 58 of the Stamp

and Cheque Duties Act 1971 or any interest imposed under section 86E on unpaid credit card duty in relation to—

“(A) An instrument of conveyance executed; and

“(B) A bill of exchange made, drawn, or prepaid under sections 81 to 83 of that Act; and

“(C) A liable transaction entered into— before 1 April 1997:

“(v) Interest on unpaid totalisator duty under section 8 of the Gaming Duties Act 1971 in relation to all betting profits required to be calculated under section 4 of the Gaming Duties Act 1971 before 1 April 1997:

“(vi) Interest on unpaid racing duty under section 12 of the Gaming Duties Act 1971 in relation to lotteries drawn before 1 April 1997:

“(vii) Interest on unpaid gaming machine duty under section 12F of the Gaming Duties Act 1971 in relation to dutiable games played by means of gaming machines before 1 April 1997:

“(viii) Interest on unpaid casino duty under section 12Q of the Gaming Duties Act 1971 in relation to casino wins before 1 April 1997.”

(3) In section 3 (1), the definition of “tax position” is amended by adding the following:

“(k) The estimation of the provisional tax payable.”

(4) In section 3 (1), the definition of “tax shortfall” is replaced by the following:

“‘Tax shortfall’, for a return period, means the difference between the tax effect of—

“(a) A taxpayer’s tax position for the return period; and

“(b) The correct tax position for that period,— when the taxpayer’s tax position results in too little tax paid or payable by the taxpayer or another person or overstates a tax benefit, credit, or advantage of any type or description whatever by or

benefiting (as the case may be) the taxpayer or another person.”.

(5) In section 3 (1), the definition of “taxpayer’s tax position” is replaced by the following:

“Taxpayer’s tax position’ means—

“(a) Unless paragraph (b) applies, a tax position taken by a taxpayer in or in respect of—

“(i) A tax return; or

“(ii) A due date:

“(b) If—

“(i) The tax is income tax; and

“(ii) The taxpayer alters a tax position taken in a return before the earlier of—

“(A) The issue of an assessment in respect of the tax; and

“(B) The due date for payment of the tax—

the tax position the taxpayer takes in the last amended tax return received by the Commissioner before the issue of the assessment or before the due date, whichever applies.”.

(6) In section 3 (1), the definition of “underestimation penalty” is repealed.

**69. Construction of certain provisions—**(1) In section 4A (2)(c), “or paragraph (b)” is inserted after “paragraph (a)”.

(2) In section 4A (2)(d), “or paragraph (b)” is inserted after “paragraph (a)”.

(3) Section 4A (4) is replaced by:

“(4) Where a taxpayer required to provide a return under any of sections NC 15, NF 4, NG 11, and NH 3 of the Income Tax Act 1994—

“(a) Furnishes a return that shows a liability to pay tax under that section; and

“(b) The tax is required to be paid by a due date for a return period; and

“(c) The liability shown in the return is greater than the tax that the taxpayer paid by the due date—

the taxpayer’s tax position in respect of the due date is the tax paid and not the amount of tax shown as payable in the tax return.”.

**70. Dates by which annual returns to be furnished—**Section 37 (3) is amended by omitting “in that behalf made in writing”.

**71. Officers to maintain secrecy—**After section 81 (6), the following is added:

“(7) In this section ‘tax or duty’, ‘taxes or duties’, and ‘tax and duty’ include any financial support within the meaning of the Child Support Act 1991 and any amount payable under the Student Loan Scheme Act 1992.”.

**72. Secrecy obligations not to prevent disclosure in arrangements for relief from double taxation and exchange of information—**Section 88 is replaced by:

“88. Notwithstanding any obligation of secrecy imposed by any enactment, the Commissioner may disclose such information as is required to be disclosed under a double tax agreement to a person authorised to receive such information under the law of the territory in relation to which the double tax agreement has been made.”.

**73. Determinations in relation to apportionment of interest costs—**(1) Section 90A (4) and (5) are repealed.

(2) Subsection (1) is deemed to have come into force on 1 October 1996.

**74. Taxation laws in respect of which binding rulings may be made—**(1) In section 91C (1)(e)(v), “or section EL 9 (3)” is omitted.

(2) After section 91C (1)(e)(v), the following is added:

“(vi) Section EL 9 (3) of the Income Tax Act 1994 in relation to non-specified livestock; or”.

(3) In section 91C (1) (e), after subparagraph (i), the following is inserted:

“(iA) Section 90A of this Act in relation to the extent (if any) to which a financial arrangement provides funds to the issuer for the purposes of Subpart FG of the Income Tax Act 1994; or”.

(4) Subsection (3) is deemed to have come into force with respect to tax on assessable income derived in the 1996–97 income year and taxable income for the 1997–98 and subsequent income years.

**75. Commissioner to make private rulings on request**—(1) In section 91E (3)(b), “, challenge,” is inserted after “objection”.

(2) Subsection (1) is deemed to have come into force on 1 October 1996.

(3) Section 91E (4) (d) (ii) is replaced by:

“(ii) Is being dealt with, or in the Commissioner’s opinion should be dealt with, by one or both competent authorities of the parties to a double tax agreement; or”.

(4) Subsection (3) comes into force on the date on which this Act receives the Royal assent.

**76. Commissioner may make product rulings**—(1) In section 91F (3)(b), “, challenge,” is inserted after “objection”.

(2) Subsection (1) is deemed to have come into force on 1 October 1996.

(3) Section 91F (4) (d) is replaced by:

“(d) The matter on which the ruling is sought is being dealt with, or in the Commissioner’s opinion should be dealt with, by one or both competent authorities of the parties to a double tax agreement; or”.

(4) Subsection (3) comes into force on the date on which this Act receives the Royal assent.

**77. Assessment of further income tax**—Section 101 (3) is replaced by:

“(3) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax and Part VIIIA of this Act shall apply, so far as may be, to a challenge to an assessment made under this section as if the terms ‘income tax’ and ‘tax’ in that Part included the further income tax for which a company may be chargeable under section ME 9 of the Income Tax Act 1994.”.

**78. Time bar for amendment of assessments**—(1) After section 107, the following is inserted:

“107A. (1) When any person has made returns and has been assessed for income tax for any year, it shall not be lawful for the Commissioner to alter the assessment so as to increase its amount after the expiration of 4 years from the end of the year in which the notice of original assessment was issued.

“(2) Notwithstanding subsection (1), in any case where, in the opinion of the Commissioner, the returns so made are fraudulent or wilfully misleading or omit all mention of income

which is of a particular nature or was derived from a particular source, and in respect of which a return is required to be made, it shall be lawful for the Commissioner to alter the assessment (being an assessment made on or after 1 April 1958) at any time so as to increase the amount of the assessment.

“(3) Subsections (1) and (2) apply to a return filed in the period between 1 October 1996 and 31 March 1997, and, for such a return, a reference to section 108 of this Act is deemed to be a reference to this section.”

(2) Subsection (1) is deemed to have come into force on 1 October 1996.

#### **79. Transitional provision affecting assessments—**

(1) After section 109, the following is inserted:

“109A. A notice of assessment issued on or after 1 April 1995 and relating to return periods before that date shall be deemed to have been made under the Tax Administration Act 1994.”

(2) Subsection (1) is deemed to have come into force on 1 April 1995.

#### **80. Commissioner may determine amount of provisional tax—**(1) Section 119 (1)(d) is replaced by:

“(d) The Commissioner considers that any estimate of residual income tax furnished by a taxpayer pursuant to section MB 3 of the Income Tax Act 1994 was not fair and reasonable—

“(i) At the time the estimate was furnished; or

“(ii) On any instalment date.”

(2) Section 119 (2)(a) is repealed.

(3) Section 119 (3) is replaced by:

“(3) An amount of provisional tax determined by the Commissioner under subsection (1) shall not exceed the amount of provisional tax that would be payable if the taxpayer had not estimated.”

#### **81. Commissioner determination of provisional tax—**Section 119 (2)(b) is replaced by:

“(b) The Commissioner considers, by reason of any of sections HK 26 (2), HK 26 (3), LC 1, LC 4, and LC 5 of the Income Tax Act 1994, or by reason of any double tax agreement, that the provisional tax that would be payable by the person is excessive.”

**82. Purpose of specific provisions**—In section 120J, “sections 120K to 120U”, whenever it occurs, is replaced by “sections 120K to 120V”.

**83. Instalments of and due dates for provisional tax**—(1) Section 120K (1) is replaced by:

“120K. (1) Except where this section requires otherwise, in an income year, other than a transitional year, the income tax liability of a provisional taxpayer is due and payable in equal instalments on each of the 3 instalment dates of the income year.”.

(2) In section 120K (3), “, other than in a transitional year,” is inserted after “The income tax liability of a new provisional taxpayer”.

(3) Section 120K (4) is replaced by:

“(4) The income tax liability of a provisional taxpayer who is a natural person, other than in that person’s capacity as trustee, with residual income tax not exceeding \$30,000 for that income year and—

“(a) Has not provided an estimate of the person’s residual income tax under section MB 3 of the Income Tax Act 1994; and

“(b) Has not, at any time during the income year, held a valid certificate of exemption issued under section NF 9 (12) of the Income Tax Act 1994—  
is due and payable in one instalment on the taxpayer’s terminal tax date.

“(4A) In a transitional year, the income tax liability of a provisional taxpayer, other than a natural person to whom subsection (4) applies, is due and payable as follows:

“(a) On the instalment date or dates determined in accordance with section MB 5A of the Income Tax Act 1994;

“(b) Subject to paragraph (c), the amount payable on the instalment dates determined in paragraph (a) is calculated according to the following formula:

$$\frac{4 \times i}{m}$$

“where—

“i is the income tax liability for the transitional year; and

“m is the number of months in the transitional year:

“(c) The amount payable on a final instalment date is determined in accordance with section MB 5 (11) of the Income Tax Act 1994, being the amount of the income tax liability for the income year less any amount of income tax liability treated as due on an instalment date determined under paragraph (b).

“(4B) For the purposes of this Part, the income tax liability of a provisional taxpayer who is a natural person and to whom sections 120k (1) or 120k (4) do not apply shall be treated as due and payable on the taxpayer’s terminal tax date.

“(4C) Notwithstanding section 59 (3), subsection (4B) is deemed to apply to the 1997-98 income year.”.

(4) In section 120k (5), the definition of “person incorrectly assumed to be a provisional taxpayer” is repealed.

**84. Variation to definition of date interest starts—**Section 120o is replaced by the following:

“120o. The definition of ‘date interest starts’ is to be construed as if the words ‘the later of the following days’ and subparagraph (ii) were omitted from paragraph (b) of that definition when—

“(a) A payment required by sections NC 15 (1)(b) or NC 15 (1)(i) of the Income Tax Act 1994 is due to be paid to the Commissioner no later than 5 April in a year:

“(b) A payment required by sections NC 15 (1)(c) or NC 15 (1)(i) of the Income Tax Act 1994 is due to be paid to the Commissioner no later than 20 April in a year:

“(c) A payment required by section NF 4 of the Income Tax Act 1994 is due to be paid to the Commissioner no later than 20 April in a year:

“(d) A payment required by section NG 11 of the Income Tax Act 1994 is due to be paid to the Commissioner no later than 20 April in a year:

“(e) A payment required by section NH 3 of the Income Tax Act 1994 is due to be paid to the Commissioner no later than 20 April in a year.”.

**85. Amount in nature of interest to be added to fringe benefit tax paid on annual income year basis—**After section 120s (3), the following is added:

“(4) In calculating interest on overpaid fringe benefit tax under this section, ‘date interest starts’ is to be construed as if ‘the later of the following days’ and subparagraph (ii) were omitted from paragraph (b).”.

**86. Interest on excess deductions of resident withholding tax**—After section 120U, the following is inserted:

“120v. If the Commissioner is required to make a refund of excess resident withholding tax under section NF 7 of the Income Tax Act 1994, no interest shall be payable by the Commissioner under section 120D (3) on the excess refunded.”.

**87. Certain rights of challenge not conferred**—(1) Section 138E (1)(e)(iii) is replaced by:

“(iii) Any of sections CF 6, HK 7, HK 11, HK 18, HK 24, HK 26, IB 1, LC 1 to LC 3, LC 7, LC 13 to LC 15, MD 1, and OB 2 of the Income Tax Act 1994 and sections 33, 89, 139 (insofar as it applies to unpaid tax for periods before 1 April 1997) and 184 of the Tax Administration Act 1994; or”.

(2) Section 138E (1) is amended by omitting from paragraph (e)(iv) “108.”.

**88. Challenging civil penalties**—Section 138L (2)(b) is replaced by:

“(b) The percentage applicable to the civil penalty.”.

**89. Late filing penalties**—After section 139A (4), the following is added:

“(5) Not less than 30 days before imposing a late filing penalty, the Commissioner must—

“(a) Send written notice to a taxpayer that a late filing penalty may be imposed if a return specified in the notice is not filed; or

“(b) Publicly notify that a late filing penalty may be imposed on taxpayers who omit to file the required return.”.

**90. Underestimation penalty where income tax underestimated as at final instalment date**—(1) Section 140A (1) is amended by omitting, wherever it occurs, “applicable”.

(2) Section 140A (2) is replaced by:

“(2) When the income tax is reassessed for an income year, the amount of an underestimation penalty imposed for that year shall not be increased beyond the amount of any underestimation penalty previously imposed for that year.”.

**91. Underestimation penalty where income tax underestimated as at final instalment date**—(1) Section 140A is repealed.

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

**92. Tax shortfalls**—(1) Section 141 (3) is replaced by:

“(3) A separate tax shortfall calculation is required—

“(a) For each return period; and

“(b) For each tax type; and

“(c) For each tax position taken by a taxpayer.”.

(2) Section 141 (5) is replaced by:

“(5) If, in a return period—

“(a) A taxpayer is liable to pay one or more shortfall penalties in respect of the same tax type; and

“(b) The taxpayer’s liability to the tax is overstated in one or more respects—

the tax shortfall for a tax type shall be calculated by—

“(c) Setting off the tax effects of the overstatements against the understatement, in the case of one tax shortfall; and

“(d) Setting off the tax effects of the overstatements pro-rated against the understatements, in the case of more than one tax shortfall.”.

(3) In section 141 (9), “If” is replaced by “If, in the application of subsection (6),”.

(4) After section 141 (13), the following is added:

“(14) For the purposes of determining the amount of a tax shortfall in relation to an instalment date and a provisional taxpayer, the tax shortfall shall be the difference between—

“(a) The lesser of—

“(i) The amount of provisional tax payable on the instalment date if an estimate had not applied at that instalment date; and

“(ii) The amount that would have been payable on that instalment date if the taxpayer’s provisional tax payable for the income year had been the taxpayer’s residual income tax liability for the income year; and

“(b) The amount of provisional tax payable on that instalment date as determined by the estimate applying as at that instalment date.”.

(5) Subsection (5) comes into force from the 1998-99 income year.

**93. Not taking reasonable care**—(1) In section 141A (1), whenever it occurs, “the taxpayer’s tax position” is replaced by “a taxpayer’s tax position”.

(2) Section 141A (3) is replaced by:

“(3) A taxpayer who, in taking a taxpayer’s tax position, has used an acceptable interpretation of the tax law is also a taxpayer who has taken reasonable care in taking the taxpayer’s tax position.”.

**94. Unacceptable interpretation**—(1) Section 141B (1), is replaced by:

“141B. (1) In relation to a tax position taken by a taxpayer, an unacceptable interpretation—

“(a) Is an interpretation or an interpretation of an application of a tax law; and

“(b) Viewed objectively, that interpretation or application fails to meet the standard of being about as likely as not to be correct.”.

(2) In section 141B (3), “on time” is omitted.

(3) In section 141B (3)(a), “, in the case of income tax,” is inserted after “before”.

(4) Section 141B (3)(b)(i)(A) is replaced by:

“(A) The net loss of a taxpayer in respect of the return period, ascertained in accordance with the provisions of the Income Tax Act 1994, are to be used in this subsection as if they had a positive value; and”.

**95. Gross carelessness**—(1) In section 141C (1), the words “the taxpayer’s tax position” are replaced by “a taxpayer’s tax position”.

(2) After section 141C (3), the following is added:

“(4) A taxpayer who, in taking a taxpayer’s tax position, has used an acceptable interpretation of tax law is also a taxpayer who has not been grossly careless in taking the taxpayer’s tax position.”.

**96. Commissioner to determine portions in which shortfall penalty payable by taxpayer and officers of taxpayer**—Section 141F is replaced by the following:

“141F. (1) If—

“(a) A taxpayer is required to make or account for a deduction or withholding of tax under a tax law; and

“(b) An officer of the taxpayer fails to make a deduction or withholding of tax under a tax law or applies or permits to be applied the amount of the deduction or withholding of tax other than in payment to the Commissioner,—

one shortfall penalty, calculated in accordance with this Part, may be imposed in respect of each tax position taken by the taxpayer.

“(2) If the Commissioner determines that a shortfall penalty is required to be imposed, the Commissioner may determine the portion that each of the taxpayer and the officers is to be liable for that penalty having regard to—

“(a) The acts or omissions of the taxpayer and the officers; and

“(b) Whether those acts or omissions were reasonable in the circumstances of the case.”.

**97. New due date for payment of tax that is not a penalty**—Section 142A (1)(b) is replaced by:

“(b) A taxpayer’s liability to pay tax on a due date is increased beyond the amount of tax the taxpayer calculated as payable in a return furnished in relation to the due date.”.

**98. Due dates for payment of imputation penalty tax and dividend withholding penalty tax**—Section 142E (3) is repealed.

**99. Deduction of tax from payments due to defaulters**—(1) Section 157 (1) is replaced by:

“157. (1) Where a taxpayer has made default in the payment to the Commissioner of any income tax (or a part of any income tax) or any interest under Part VII payable by the taxpayer or any civil penalty (or a part of any civil penalty) incurred by the taxpayer, the Commissioner may from time to time by notice in writing require any person to—

“(a) Deduct or extract, in one sum, from any amount that is, or becomes, an amount payable in relation to the taxpayer such sum as is equal to the lesser of—

“(i) The amount that, according to the notice, is required to be deducted or extracted:

“(ii) The amount that, at the time at which the deduction or extraction is required to be made in compliance with the notice, is the amount payable in relation to the taxpayer:

“(b) Subject to subsection (3), deduct or extract from time to time, by way of instalment, from any amount that is, or from time to time becomes, an amount payable in relation to the taxpayer such sum as is equal to the lesser of—

“(i) The amount that, at the time at which the deduction or extraction is required to be made in compliance with the notice, is the amount required to be so deducted or extracted:

“(ii) The amount that, at the time at which, according to the notice, the amount of the instalment is required to be deducted or extracted, is the amount payable,—

and require that person to pay to the Commissioner, within such time as is specified in the notice, every sum so deducted or extracted, to the credit of,—

“(c) To the extent that that sum is in respect of or in relation to income tax (or any part of any income tax) or any interest under Part VII assessed on an income tax liability, the taxpayer who has that income tax liability:

“(d) To the extent that that sum is in respect of or in relation to the whole or any part of a tax deduction or interest payable to the Commissioner or a civil penalty, an account maintained by the Commissioner in relation to that tax deduction or that interest or that civil penalty.

“(1A) A notice of amount to be deducted or extracted issued under subsection (1) may include a daily amount of interest as well as the amount required to be deducted or extracted.

“(1B) The daily amount of interest notified under subsection (1A) shall be calculated for each day, commencing on the date of the notice and ending on the day on which the sum required by the notice is deducted or extracted.”.

(2) In section 157 (10), in the definition of “income tax”, paragraph (a) is replaced by:

“(a) Income tax payable under the Income Tax Act 1994 and the Income Tax Act 1976:”.

(3) Subsection (1) is deemed to have come into force on 1 April 1997.

(4) Subsection (2) is deemed to have come into force on 1 April 1995.

**100. Power of the Commissioner in relation to small amounts of refunds or tax payable**—In section 174 (1)(a), “\$5” is replaced by “\$20”.

**101. Relief in cases of serious hardship**—After section 176 (6) the following is added:

“(7) In this section, ‘tax’ means ‘income tax’ as defined in section OB 6 (1)(a) of the Income Tax Act 1994.”

**102. Remission of underestimation penalty tax**—Section 178 is repealed.

**103. Relief from additional tax incurred due to default in payment of tax**—(1) Section 182, as repealed by section 60 of the Tax Administration Amendment Act (No. 2) 1996, is deemed to have been repealed on 1 April 1997.

(2) Notwithstanding subsection (1), a remission may be made under section 182 if the Commissioner considers that the request for the remission is received before the date on which this Act receives the Royal assent.

**104. Amendment to application date**—(1) Sections 183A to 183D are replaced by the following:

“183A. **Remission for reasonable cause**—(1) The Commissioner may remit a late filing penalty or a late payment penalty or an imputation penalty tax imposed under section 140B or a dividend withholding payment penalty tax imposed under section 140C if—

“(a) The Commissioner is satisfied that the late filing or late payment was caused by an event or circumstance beyond the control of the taxpayer that provides the taxpayer with a reasonable justification or excuse for not providing the tax return or paying the tax on time; and

“(b) The taxpayer files the required tax return or pays the unpaid tax as soon as practicable.

“(2) Without limiting the Commissioner’s discretion under subsection (1), an event or circumstance may include—

“(a) An accident or a disaster; or

“(b) Illness or emotional or mental distress.

“(3) An event or circumstance does not include—

“(a) An act or omission of an agent of a taxpayer, unless the Commissioner is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—

- “(i) That could not have been anticipated; and
- “(ii) The effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

“(b) A taxpayer’s financial position.

“183B. **Cancellation of late payment penalties under instalment arrangement**—(1) The Commissioner must cancel a taxpayer’s liability to pay—

“(a) 60% of an initial late payment penalty; or

“(b) An incremental late payment penalty.

“(2) The Commissioner must cancel a taxpayer’s liability under subsection (1) only if—

“(a) The tax to pay in respect of which the taxpayer would otherwise have had the liability is—

“(i) Tax payable in 2 or more instalments under an arrangement with the Commissioner; or

“(ii) Tax in respect of which deductions are to be made and paid to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any other similar tax law; and

“(b) The taxpayer complies with the taxpayer’s obligations under the arrangement; and

“(c) The liability would otherwise have arisen after—

“(i) The arrangement was entered into; or

“(ii) The Commissioner exercised powers available to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law.

“183C. **Cancellation of interest**—(1) Subject to subsection (3), a taxpayer’s liability to pay interest under Part VII is cancelled for the period from the date of a notice of assessment until the due date specified in the notice if—

“(a) The Commissioner issues the taxpayer with a notice of assessment; and

“(b) The tax assessed in the notice, together with any interest payable under Part VII in respect of the period before the date of the notice, is paid to the Commissioner by the due date for payment specified in the notice.

“(2) Where a taxpayer challenges an assessment by commencing proceedings under Part VIIIA, the taxpayer’s liability to pay interest under Part VII on non-deferrable tax is

cancelled for the period from the date of the notice until the due date specified in a notice of assessment if—

“(a) The Commissioner issues the taxpayer with a notice of assessment; and

“(b) The non-deferrable tax in relation to the tax assessed in the notice, together with any interest payable under Part VII in respect of that non-deferrable tax, is paid to the Commissioner by the due date for payment specified in the notice.

“(3) Where—

“(a) The Commissioner issues a notice of assessment to a taxpayer before the original due date for payment of the tax to which the assessment relates; and

“(b) The tax assessed in the notice, together with any interest payable under Part VII in respect of the period before the date of the notice, is paid to the Commissioner on or before the 30th day after the date on which the notice of assessment is issued—

the Commissioner shall cancel the taxpayer's liability to pay interest under Part VII for the period commencing on the day after the date on which the notice of assessment is issued and ending with the day on which payment is made, or the due date of the tax, whichever occurs first.

“(4) Where—

“(a) The Commissioner issues a statement of account to a taxpayer after the original due date for payment of tax to which the statement of account relates; and

“(b) The tax referred to in the statement of account, together with any interest payable under Part VII in respect of the period before the date of the statement of account, is paid to the Commissioner on or before the 15th day after the date on which the statement of account is issued, or the due date of the tax, whichever occurs first,—

the Commissioner shall cancel the taxpayer's liability to pay interest under Part VII for the period commencing on the day after the date on which the statement of account is issued and ending with the day on which payment is made.

“(5) When the 30th day referred to in subsection (3) occurs on or before the 15th day referred to in subsection (4), the Commissioner shall cancel a taxpayer's liability to pay interest under Part VII for the period commencing on the date of issue of the notice of assessment and ending with the day on which payment is made.

**“183D. Remission consistent with collection of highest net revenue over time—**(1) The Commissioner may remit—

“(a) A late filing penalty; and

“(b) A late payment penalty; and

“(c) Interest under Part VII—

payable by a taxpayer if the Commissioner is satisfied that the remission is consistent with the Commissioner’s duty to collect over time the highest net revenue that is practicable within the law.

“(2) In the application of this section, the Commissioner must have regard to the importance of the late payment penalty, the late filing penalty, and interest under Part VII in promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts.

“(3) The Commissioner must not consider a taxpayer’s financial position when applying this section.”.

(2) Subsection (1) (except so far as it applies to section 183C (4) and (5)) is deemed to have come into force on 1 April 1997.

**105. Small amounts of penalties and interest not to be charged—**After section 183F (b), the following is inserted:

“(ba) A taxpayer is not liable to pay a late payment penalty or interest under Part VII on any amount of tax if the amount outstanding after the due date is \$100 or less.”.

**106. Remission on written application—**Section 183H is replaced by the following:

“183H. A taxpayer seeking the remission of an amount or of a liability to pay an amount of interest or tax must—

“(a) Write to the Commissioner requesting that the amount of tax or interest liability be remitted; and

“(b) Produce such information as the Commissioner requires in relation to the request.”.

**107. Refund of tax paid on income subsequently exempted by Order in Council—**Section 184 is replaced by:

“184. If a double tax agreement exempts from tax any income derived before the date of the Order in Council that gives effect to the double tax agreement, and the Commissioner is satisfied tax has been paid in relation to that income, and written application is made by or on behalf of the taxpayer at any time within 4 years after the date of the Order in Council, then notwithstanding anything in section MD 1 of

the Income Tax Act 1994 the Commissioner may refund the tax paid.”.

### PART 3

#### AMENDMENTS TO GOODS AND SERVICES TAX ACT 1985

**108. Goods and Services Tax Act 1985**—The Goods and Services Tax Act 1985 is amended by this Part.

**109. Interpretation**—Section 2 (1) is amended by inserting:

“‘Tax file number’ has the meaning assigned to that term by section OB 1 of the Income Tax Act 1994:”.

**110. Change in registered person’s taxable period**—(1) Section 15A (1)(b) is replaced by:

“(b) Following notification by the registered person under paragraph (c) or paragraph (ca) of section 53 (1) of this Act of a change of status; or”.

(2) Section 15A (5)(b) is replaced by:

“(b) That person has not, before the last day of the person’s immediately subsequent taxable period, notified the Commissioner of a change of status pursuant to section 53 (1)(ca) of this Act—”.

**111. Requirements for accounting on payments basis**—In section 19A (2), the portion before paragraph (a) is replaced by:

“(2) Where the Commissioner is satisfied (whether by a notification given by the registered person under section 53 (1)(cb) of this Act or otherwise) that a registered person who has been directed to account for tax payable on a payments basis has ceased to satisfy the conditions set out in paragraphs (a) to (c) of subsection (1) of this section, the Commissioner shall either—”.

**112. Tax file number**—Section 24 (2B) is replaced by:

“(2B) In any case where subsection (2A) of this section applies and the person who is deemed to be the supplier is not a registered person, the reference to the registration number of the supplier in paragraph (b) of subsections (3) and (4) of this section shall be read as if that reference were to the tax file number of the supplier.”.

**113. Assessment of tax**—(1) After section 27 (1)(c), the following is inserted:

“(ca) Any person who breaches a tax obligation (as defined in the Tax Administration Act 1994) that is required by this Act to be performed by the person; or”.

(2) Section 27 (2) is replaced by:

“(2) Subject to sections 108A and 108B and Part IVA of the Tax Administration Act 1994, the Commissioner may from time to time and at any time make all such alterations in or additions to an assessment made under this section as the Commissioner thinks necessary to ensure the correctness of the assessment, notwithstanding that tax already assessed may have been paid.”.

(3) Section 5 (1) (c) of the Goods and Services Tax Amendment Act 1996 is repealed.

(4) Subsections (1) and (2) are deemed to apply with respect to tax obligations, liabilities, and rights that are to be performed under or arise in relation to supplies made in respect of taxable periods commencing on or after 1 April 1997.

**114. Deduction of tax from payment due to defaulters**—(1) After section 43 (2), the following is inserted:

“(2A) A notice of amount to be deducted or extracted issued under subsection (1) may include a daily amount of interest as well as the amount required to be deducted or extracted.

“(2B) The daily amount of interest notified under subsection (2A) shall be calculated for each day, commencing on the date of the notice and ending on the day on which the sum required by the notice is deducted or extracted.”.

(2) Subsection (1) is deemed to have come into force on 1 April 1997.

**115. Group of companies**—Section 55 (5)(a) is replaced by:

“(a) That member or the representative member of that group of companies notifies the Commissioner of that cessation pursuant to section 53 (1)(d) of this Act; or”.

## PART 4

### AMENDMENTS TO INCOME TAX ACT 1976

**116. Income Tax Act 1976**—The Income Tax Act 1976 is amended by this Part.

**117. Gain or loss on disposal of depreciable property**—(1) Section 117 is amended by inserting:

“(6A) Where property of a taxpayer is irreparably damaged, the consideration derived by the taxpayer on the disposition of the property is the amount of any insurance proceeds or indemnity payment or other consideration received in relation to that event, and subsection (7) does not apply.”

(2) Subsection (1) applies in the 1993–94 and the 1994–95 income years, unless the taxpayer has before 17 June 1997 filed a return of income in which section 117 (7) of the Income Tax Act 1976 has been applied in respect of that property.

**118. Dividends from qualifying company**—(1) After section 393M (1), the following is inserted:

“(1A) For the avoidance of doubt, a dividend that is paid by a qualifying company to any trustee shareholder, and that is, or that becomes, beneficiary income of a beneficiary resident in New Zealand, is exempt income of the beneficiary to the same extent as if the beneficiary were the shareholder referred to in section 393M (1)(a), and the company had paid the dividend to the beneficiary.”

(2) Subsection (1) is deemed to have come into force on 1 April 1992.

## PART 5

### AMENDMENTS TO VARIOUS OTHER ACTS

**119. Estate and Gift Duties Act 1968**—(1) This section amends the Estate and Gift Duties Act 1968 (the “principal Act”).

(2) In section 95 of the principal Act, “1st day of October 1996” is replaced by “1st day of April 1997”.

(3) Subsection (2) is deemed to have come into force on 31 March 1997.

**120. Gaming Duties Act 1971**—(1) This section amends the Gaming Duties Act 1971 (the “principal Act”).

(2) Section 3 is amended by inserting the following:

“‘Officer of the Department’ means an officer of the department as defined in the Tax Administration Act 1994.”

(3) In section 12H (2) of the principal Act:

(a) The words “a District Commissioner” are replaced by “an officer of the Department”;

(b) “District Commissioner” is replaced by “an officer of the Department”.

(4) After section 12L (1), the following are inserted:

“(1A) A notice of amount to be deducted or extracted issued under subsection (1) may include a daily amount of interest as well as the amount required to be deducted or extracted.

“(1B) The daily amount of interest notified under subsection (1A) shall be calculated for each day, commencing on the date of the notice and ending on the day on which the sum required by the notice is deducted or extracted.”.

**121. Tax Administration Amendment Act (No. 2) 1996**—(1) Section 24 (2) (b) of the Tax Administration Amendment Act (No. 2) 1996 is repealed.

(2) Subsection (1) is deemed to have come into force on 1 October 1996.

**122. Taxation Review Authorities Act 1994**—(1) This section amends the Taxation Review Authorities Act 1994 (the “principal Act”).

(2) In section 17 (2c) of the principal Act, “subsection (1)” is replaced by “subsection (2A)”.

(3) In section 30 (2) of the principal Act, the following is added:

“(d) Prescribing the fees to be paid in respect of the filing of any proceedings brought under this Act.”.

**123. Taxation (Income Tax Rates) Act 1997**—(1) This section amends the Taxation (Income Tax Rates) Act 1997 (the “principal Act”).

(2) In section 16 (1), “51 (1) and (2)” is replaced by “51 (1)”.

(3) After section 16 (1) of the principal Act, the following subsection is inserted:

“(1A) In section 51 (2), ‘(as substituted by section 37 (2) of this Act)’ is omitted.”

(4) This section is deemed to come into force on 14 May 1997.

## PART 6

### REMEDIAL AMENDMENTS ARISING FROM TAXATION (CORE PROVISIONS) ACT 1996

#### *Substantive Amendments to Income Tax Act 1994*

**124. Income Tax Act 1994**—(1) Sections 125 to 142 amend the Income Tax Act 1994.

(2) Sections 125 to 140 are deemed to apply with respect to the tax on taxable income for the 1997–98 and subsequent income years.

**125. Treatment of net loss**—Section BC 6 (4)(a) is replaced by:

“(a) may offset it against net income in a future income year,  
or”

**126. Other exempt income**—(1) Section CB 9 (e) is replaced by:

“(e) An amount expressly exempted from income tax by any other Act, to the extent of the exemption so provided:”.

(2) In section 423 (9) of the Taxation (Core Provisions) Act 1996, “CB 9 (e)” is omitted.

**127. Exempt income—dividends**—Section CB 10 (2)(b) is replaced by:

“(b) Is so derived from a company that is neither a foreign company nor a company that is capable of deriving only exempt income (in this subsection and subsection (3) referred to as the ‘payer’)—”.

**128. Meaning of fringe benefit**—Section CI 1 (o)(i)(A) is replaced by:

“(A) Monetary remuneration to which section CH 3 applies; or”.

**129. Cost of minerals, timber, or flax**—(1) After section DJ 13, the following is inserted:

“DJ 13A. (1) This section applies to revenue account property for which an amount derived from the extraction, removal, or sale or other disposition of the revenue account property is gross income of a taxpayer under section CJ 1.

“(2) A taxpayer is allowed a deduction for the cost of revenue account property to which this section applies if the revenue account property:

“(a) Is a type of property able to be extracted or removed and is extracted or removed by the taxpayer; or

“(b) Is a type of property not able to be extracted or removed and is sold or otherwise disposed of by the taxpayer.

“(3) If subsection (2) allows a deduction to a taxpayer for the cost of revenue account property that is trading stock of the taxpayer, the deduction is allocated to the first income year in which the revenue account property is trading stock of the taxpayer.

“(4) If subsection (2) allows a deduction to a taxpayer for the cost of revenue account property that is not trading stock of the taxpayer, the deduction is allocated by section EF 2.”.

**130. New Subpart EQ inserted**—After Subpart EP, the following is inserted:

“SUBPART Q—LIMITED ALLOCATION OF DEDUCTIONS

**“EQ 1. Allocation of allowable deductions by section LE 3 holding company**—(1) If a taxpayer is a section LE 3 holding company and derives a supplementary dividend in an income year, the maximum aggregate amount of allowable deductions of the taxpayer that may be allocated to the income year is the amount calculated in accordance with the following formula:

$$\text{“AGI} - \frac{\text{NRC} + \text{CC} + \text{SDD}}{\text{T}}$$

“where—

“AGI is the taxpayer’s annual gross income; and

“NRC is the total amount of non-refundable credits that are available under Part L to be set off against the taxpayer’s income tax liability; and

“CC is the total amount of convertible credits that are available under Part L to be set off against the taxpayer’s income tax liability; and

“SDD is the total amount of supplementary dividends derived by the taxpayer in the income year; and

“T is the applicable basic tax rate.

“(2) If subsection (1) prevents an amount from being allocated to an income year, the section LE 3 holding company may:

“(a) Offset under Subparts IG and IH the amount or part of the amount as a net loss against the net income of another company for the income year; or

“(b) Carry forward to a later income year under Subparts IE and IF the amount or part of the amount as an available net loss.

“(3) If subsection (1) prevents an amount from being allocated to an income year, the section LE 3 holding company may not offset or carry forward the amount other than under subsection (2).

“(4) This section does not affect the calculation under Part L of the non-refundable credits and convertible credits of a section LE 3 holding company.”.

**131. Interpretation**—In section HH 1 (6), the portion before paragraph (a) is replaced by:

“(6) For the purposes of this section and the trust rules, no trust shall be a charitable trust in relation to any income year if, in that income year, a business is carried on by or on behalf of the trustees of that trust and, in the carrying on of that business, any benefit or advantage, whether or not in money or money’s worth, or any gross income of any of the kinds referred to in section CC 1, Subpart CD, and sections CE 1, CE 3, CF 1, CG 1, CH 3, FF 3, and FF 4 is able to be afforded to, or received, gained, achieved, or derived by any person—”.

**132. Tax in respect of Maori authorities with 20 or fewer beneficiaries**—In section HI 4 (2), “subclause (1)” is replaced by “subsection (1)”.

**133. New Subpart ID inserted**—Before Subpart IE, the following is inserted:

“SUBPART D—APPLICATION OF PART TO SCHEDULAR GROSS  
INCOME

“ID 1. **No offset in calculating some schedular income tax liabilities**—A taxpayer may not take an available net loss into account in calculating the schedular income tax liability relating to schedular gross income that is of a type described in any of paragraphs (a), (c), (ca), (cb), and (d) of the definition of ‘schedular gross income’.”.

**134. Specified activity net losses**—In section IE 2 (8), the definition of “income from personal exertion” is replaced by:

“‘Income from personal exertion’ means income of any of the kinds referred to in sections CD 3 and CH 3; but does not include income from any business of renting, or lending money, or making financial investments:”.

**135. Offsetting supplementary dividend against net income**—Section IF 7 is replaced by:

“IF 7. (1) If a taxpayer is a section LE 3 holding company and derives a supplementary dividend in an income year, the maximum aggregate amount that the taxpayer may offset under section IE 1, IG 2 or IH 4 against its net income for that income year is the amount calculated in accordance with the following formula:

$$\text{“NI} - \frac{\text{NRC} + \text{CC} + \text{SDD}}{\text{T}}$$

“where—

“NI is the taxpayer’s net income;

“NRC is the total amount of non-refundable credits that are available under Part L to be set off against the taxpayer’s income tax liability;

“CC is the total amount of convertible credits that are available under Part L to be set off against the taxpayer’s income tax liability;

“SDD is the total amount of supplementary dividends derived by the taxpayer in the income year; and

“T is the applicable basic tax rate.

“(2) Subsection (1) does not affect the calculation under Part L of the non-refundable credits and convertible credits of a section LE 3 holding company for an income year.”.

**136. Policyholder net losses**—After section II 1 (2), the following is added:

“(3) Subject to section II 2, in calculating a policyholder base income tax liability for an income year, a life insurer may offset an available net loss by an amount no greater than the life insurer’s policyholder net loss.

“(4) To the extent that an available net loss consists of a policyholder net loss, the policyholder net loss may be offset only in calculating a life insurer’s policyholder base income tax liability.”.

**137. Credit of tax for imputation credit**—After section LB 2 (3), the following is inserted:

“(3A) A taxpayer who has calculated under subsection (3) a net loss in an income year may:

“(a) Offset under Subparts IG and IH the net loss wholly or partly against the net income of another company for the income year; or

“(b) Carry forward under Subparts IE and IF the net loss as an available net loss to a later income year.”.

**138. New Zealand income tax liability on foreign source income**—Section LC 14 (4) is replaced by:

“(4) For the purposes of this section, the ‘notional income tax liability’ of a taxpayer for an income year is the amount calculated in accordance with the following formula:

$$\text{“(g} - \text{h)} \times \text{i}$$

“where—

“g is the taxpayer’s net income;

“h is the amount (if any) of net losses that the taxpayer has offset against the net income in accordance with Subparts IE and IF; and

“i is the taxpayer’s applicable basic tax rate.”.

**139. Credits arising to imputation credit account**—In section ME 4 (1)(a), the portion before subparagraph (i) is replaced by:

“(a) The amount of any income tax paid by the company during the imputation year to meet a provisional tax obligation under the provisional tax rules or to satisfy an income tax liability under section BC 9, other than—”.

**140. Definitions**—In section OB 1:

(a) In the definition of “applicable basic tax rate”, the formula in paragraph (b) is replaced by:

$$\frac{365}{a} \times b;$$

(b) The definition of “assessable income” is replaced by:

“‘Assessable income’ means, in respect of the 1996–97 and a prior income year, the assessable income as defined for the purposes of that income year under this Act or the Income Tax Act 1976.”;

(c) The definition of “cost” is replaced by:

“‘Cost’ in the definition of ‘cost of timber’ and in sections CJ 1, DJ 13A, DL 1, and FF 7, in relation to the acquisition by a person of any timber or any right to take timber by virtue of a sale or disposition or distribution to which section FB 4 or section GD 1 or section GD 2 applies, means the amount that is deemed under the relevant one of those sections to be the price at which the timber or right was acquired by that person.”;

(d) In the definition of “income from employment”, the portion of paragraph (b) before subparagraph (i) is replaced by:

“(b) In section BD 2 (2)(c), section DE 1, and section DH 1 means—”;

(e) In the definition of “residual income tax”, the portion before paragraph (a) is replaced by:

- “Residual income tax’, in relation to any person and to any income year, means the positive amount (if any) that remains after deducting, from the sum for the income year of the person’s income tax liability and the amount of any refundable rebates of the person to which Subpart KD applies—”;
- (f) In the definition of “sale or other disposition”, the portion before paragraph (a) is replaced by:  
 “Sale or other disposition’ in the definition of ‘average market value’ and in sections CJ 1, DJ 13A, DL 1, EJ 1, and FF 7, includes—”;
- (g) In the definition of “schedular gross income”, the following is inserted after paragraph (c):  
 “(ca) Gross income derived under section CN 1 (by a non-resident shipper);  
 “(cb) Gross income derived under section CN 2 (by a non-resident film renter);”;
- (h) In the definition of “schedular gross income”, paragraph (d) is replaced by:  
 “(d) Gross income derived under section CN 4 by a non-resident general insurer.”;
- (i) The following is inserted:  
 “Section LE 3 holding company’ is defined in section LE 3 (2).”;
- (j) In the definition of “supplementary dividend”, the portion before paragraph (a) is replaced by:  
 “Supplementary dividend’, in respect of any company and any person deriving a dividend (referred to in this definition as the ‘first dividend’) from the company, means a dividend—”;
- (k) The following is inserted:  
 “This Act’ is defined in section AA 4 (1).”.

#### **141. Various amendments to Income Tax Act 1994—**

- (1) In section EZ 9 (2)(c), “section BB 5” is replaced by “section CE 4”.
- (2) In section LC 1, the second subsection (5) is renumbered as subsection (6).
- (3) Section LE 3 (10) is replaced by the following:  
 “(10) If in an income year, a section LE 3 holding company derives a supplementary dividend—  
 “(a) The maximum amount of net losses that the company may offset against its net income for the year is the amount calculated under section IF 7 (1); and

“(b) The maximum aggregate amount of allowable deductions that the company may allocate to the income year is the amount calculated in accordance with the formula in section EQ 1 (1)”.

(4) In sections NE 2 (1) and NE 5(a), “clause 9” is replaced by “clause 10”.

(5) In section NF 9 (1)(j), “section DJ 16” is replaced by “section DJ 17”.

(6) In paragraph (b) of the definition of ‘trading stock’ in section OB 1, after “EE 1” is inserted “EF 1”.

(7) Subsections (1) to (6) are deemed to apply to the 1997–98 and subsequent income years.

*Amendments—Aids to Interpretation in Income Tax Act 1994*

**142. Aids to interpretation**—(1) In Part B, the list of defined terms following a section specified in Schedule 2 is replaced by the list of defined terms for that section set out in Schedule 2.

(2) In Part B, the diagram “BC 9 Satisfaction of income tax liability” is replaced by the diagram set out in Schedule 3.

*Amendments to Tax Administration Act 1994*

**143. Replacing sections in Tax Administration Act 1994**—(1) This section amends the Tax Administration Act 1994.

(2) Sections 138j and 138k are replaced by:

“**138j. Waiver of payment or security**—The Commissioner may waive any requirement under section 138i for the payment of non-deferrable tax relating to any tax in dispute if the Commissioner considers that—

“(a) The payment of the tax (or the provision of security) before the end of the relevant period of deferral will unduly prejudice a taxpayer’s business or personal circumstances; and

“(b) There is no risk to the revenue in waiving the payment (or the provision of security) until after the challenge is determined.

“**138k. Determination of challenge not to affect other matters**—The determination of a challenge by a hearing authority under this Part—

“(a) Relates solely to the matter that is the subject of the disputable decision being challenged; and

“(b) Does not affect the right of the Commissioner to make a disputable decision relating to a different matter

and to amend the disputable decision being challenged in any way rendered necessary by the later disputable decision.”.

(3) Section 473 of the Taxation (Core Provisions) Act 1996 is repealed.

(4) Subsection (2) is deemed to have come into effect on 1 October 1996.

**144. Various amendments to Tax Administration Act 1994**—(1) In section 120R (a), “loss” is replaced by “net loss”.

(2) Section 120P is renumbered 120P (1) and the following subsection is added:

“(2) If gross income of a taxpayer is allocated to an income year under subsection (1) (b), the taxpayer shall allocate to the income year that proportion of deductions allowed in the allocation income year which the allocated gross income represents as a proportion of the gross income for the allocation income year calculated without allocation.”.

(3) Section 120R (2) is repealed.

(4) Subsections (1) to (3) are deemed to apply to the 1997–98 and subsequent income years.

---

## SCHEDULES

### SCHEDULE 1

Section 62

#### NEW SCHEDULE 13 TO INCOME TAX ACT 1994

#### “SCHEDULE 13

#### “PART A

“1. Month for payment of instalments of provisional tax under section MB 5 (1), (2) and (3) and months for payment of terminal tax under MC 1 whether the income year is a transitional year or not:

Month of Balance Date	Month for payment of First Instalment of Provisional Tax being the Month Preceding the Balance Date	Month for payment of Second Instalment of Provisional Tax being the Month Preceding the Balance Date	Month for payment of Third Instalment of Provisional Tax Being the Month Preceding the Balance Date	Month for payment of Terminal Tax Being the First Such Month Succeeding the Balance Date
October	February	June	October	September
November	March	July	November	October
December	April	August	December	November
January	May	September	January	December
February	June	October	February	January
March	July	November	March	February
April	August	December	April	February
May	September	January	May	February
June	October	February	June	February
July	November	March	July	February
August	December	April	August	February
September	January	May	September	February

“2. In Part A of this Schedule, ‘balance date’, in relation to income tax payable by any taxpayer in any income year or other period, means the date of the annual balance of the taxpayer’s accounts for that year or other period, being a year or other period in respect of which the taxpayer is required by this Act or the Tax Administration Act 1994 to furnish a return of income.

#### “PART B

Months for payments of instalments under section MB 5A:

<i>First column</i> Length of transitional year	<i>Second column</i> Number of instalments in transitional year	<i>Third column</i> Month or months in which instalments, other than a final instalment, are due
0 to 4 months	1	Only final instalment payable
5 to 8 months	2	Instalment due in 4th month
9 to 12 months	3	Instalments due in 4th and 8th months
13 to 16 months	4	Instalments due in 4th, 8th, and 12th months
17 to 20 months	5	Instalments due in 4th, 8th, 12th, and 16th months
21 to 24 months	6	Instalments due in 4th, 8th, 12th, 16th, and 20th months.

“Note: The Third column refers to the month(s) following a taxpayer’s balance date in the year before a transitional year.”

Section 142 (1)

## SCHEDULE 2

## REPLACEMENT LISTS OF DEFINED TERMS IN PART B

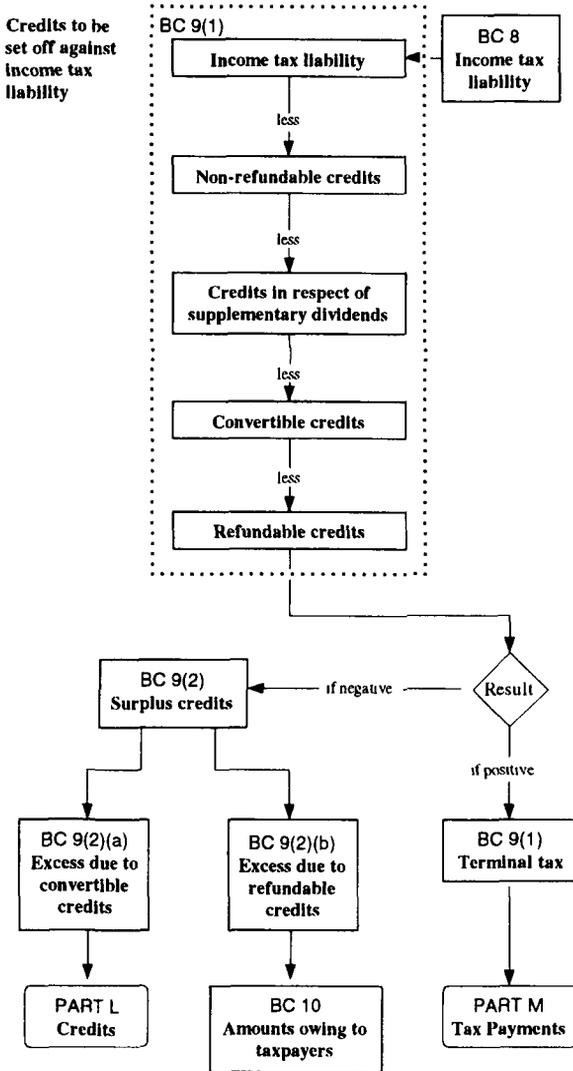
Section	Replacement list of defined terms
BB 1	income tax, tax, taxable income, this Act
BC 1	income tax liability, income year, non-filing taxpayer, person, schedular gross income, tax, taxpayer, terminal tax
BC 2	amount, annual gross income, gross income, income tax liability, income year, non-filing taxpayer, tax deduction, taxpayer
BC 3	gross income, income tax liability, income year, schedular gross income, schedular income tax liability, taxpayer
BC 4	annual gross income, gross income, income year, taxpayer
BC 6	annual allowable deduction, annual gross income, income year, net income, net loss, taxpayer, year
BC 8	allowable rebates, applicable basic tax rate, applicable surcharges, Commissioner, income year, income tax liability, non-filing taxpayer, refundable rebates, taxable income, taxpayer, unadjusted income tax liability
BC 9	Commissioner, convertible credit, income tax, income tax liability, income year, non-refundable credits, refundable credit, supplementary dividends, taxpayer, terminal tax
BC 10	amount, Commissioner, income year, person, surplus rebates, surplus refundable credits, taxpayer
BD 1	amount, foreign-sourced amount, gross income, non-resident, taxpayer
BD 2	allowable deduction, amount, business, gross income, income from employment, schedular gross income subject to final withholding, taxpayer
BD 3	amount, Commissioner, gross income, income year, taxpayer, timing regime
BD 4	allowable deduction, amount, Commissioner, income year, taxpayer, timing regime
BE 1	dividend withholding payment, dividend withholding payment rules, FBT rules, fringe benefit, fringe benefit tax, non-resident withholding income, NRWT rules, PAYE rules, person, resident withholding income, RWT rules, SSCWT rules, source deduction payment, specified superannuation contribution, specified superannuation contribution withholding tax, superannuation fund
BF 1	further dividend withholding payment, further income tax, income tax, person, non-qualifying trust, qualifying company, tax, taxable distribution, withdrawal tax
BG 1	Commissioner, income tax, person, tax avoidance arrangement

SCHEDULE 3

Section 142 (2)

DIAGRAM ILLUSTRATING PROCESS USED TO SATISFY INCOME TAX LIABILITY

**"BC 9 Satisfaction of income tax liability"**



*"This illustrates the process to be used by all taxpayers to satisfy income tax liability".*