

[AS REPORTED FROM THE FINANCE AND EXPENDITURE
COMMITTEE]

House of Representatives, 19 March 1987

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. R. O. Douglas

INCOME TAX AMENDMENT (NO. 2)

Title	ANALYSIS
1. Short Title and application	
2. New sections inserted relating to accruals	64F. Income and expenditure where financial arrangement redeemed or disposed of
<i>Accrual Treatment of Income and Expenditure</i>	64G. Accrued income written off
64B. Interpretation	64H. Inter-related arrangements
64C. Accruals in relation to income and expenditure in respect of financial arrangements	64I. Adjustments to estimated accruals of income and expenditure in respect of financial arrangements
64D. Cash basis holder	64J. Financial arrangements not at arm's length
64E. Determinations	

A BILL INTITULED

An Act to amend the Income Tax Act 1976

1. **Short Title and application**—(1) This Act may be cited as the Income Tax Amendment Act (No. 2) 1986, and shall be read together with and deemed part of the Income Tax Act 1976* (hereinafter referred to as the principal Act).

(2) Except where this Act otherwise provides, this Act shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1985 and in every subsequent year.

*R.S. Vol. 12, p.1

Amendments: 1983, No. 4; 1983, No. 10; 1983, No. 139; 1984, No. 10; 1985, No. 1; 1985, No. 59; 1985, No. 146; 1986, No. 3; 1986, No. 7; 1986, No. 41

No. 96—2

Price \$4.50

incl. GST \$4.95

2. New sections inserted relating to accruals—(1) The principal Act is hereby amended by inserting, after section 64A (as inserted by section 11 of the Income Tax Amendment Act (No. 2) 1985), the following subheading and sections:

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“Accrual Treatment of Income and Expenditure

“64B. Interpretation—(1) For the purposes of this section and sections 64C to 64J of this Act—

“ ‘Acquisition price’, in relation to a financial arrangement, means— 10

“ (a) Where the parties to the financial arrangement are dealing with each other at arm’s length, the value of all consideration paid or given in relation to the acquisition of the financial arrangement:

“ (b) In any other case, the amount determined pursuant to section 64J of this Act: 15

“ ‘Arrangement’ means any contract, agreement, plan, or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect: 20

“ ‘Cash basis holder’ means a holder to whom section 64D (1) of this Act applies:

“ ‘Excepted financial arrangement’ means any of the following arrangements:

“ (a) An annuity where the annuitant is a natural person: 25

“ (b) A life insurance policy or superannuation scheme:

“ (c) A debenture to which section 192 or section 195 applies: 30

“ (d) A hire purchase agreement (as defined in section 2 of the Hire Purchase Act 1971) or an assignment of such an agreement:

“ (e) A short term trade credit:

“ (f) A specified preference share to which section 194 of this Act applies: 35

“ (g) A redeemable preference share,— except where the arrangement is part of a financial arrangement:

“ ‘Financial arrangement’ means— 40

“ (a) Any debt instrument; and

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5 “(b) Any arrangement (whether or not such
arrangement includes an arrangement that is a debt
instrument, or an excepted financial arrangement)
whereby a person obtains, or persons obtain, money,
the right to money (including the deferral of any
obligation to pay money) or the right to a debt
instrument or an excepted financial arrangement in
10 consideration for a payment or promise to pay
money at some future time or times, or upon the
happening of some future event or events (including
the giving of notice); and

15 “(c) Any arrangement which is of a substantially
similar nature (including, without restricting the
generality of the foregoing provisions of this
paragraph, sell-back and buy-back arrangements),—
but shall not include any excepted financial
arrangement:

20 “ ‘Fixed principal financial arrangement’ means any
financial arrangement other than a variable principal
debt instrument:

25 “ ‘Holder’, in relation to a financial arrangement at a
particular time, means the person who, if the amount
or amounts payable under the financial arrangement
were due and payable at that time, would be entitled
to receive payment of the amount or amounts so
payable:

30 “ ‘Implementation date’ means—
“(a) In the case of—
“(i) Forward or future contracts including, but
not limited to, contracts for—
“(A) Foreign exchange:
“(B) Commodities:
“(C) Financial arrangements:
35 “(D) Excepted financial arrangements; and
“(ii) Futures contracts; and
“(iii) Trade credits; and
“(iv) Annuities; and
“(v) Convertible notes to which **section 196** of this
40 Act applies,—
8.00 p.m. New Zealand Standard Time on the 23rd
day of October 1986; and

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- “(b) In every other case, 8.30 p.m. New Zealand Standard Time on the 31st day of July 1986:
- “ ‘Issue’, in relation to a financial arrangement, means the act of creating the financial arrangement, and ‘issued’ has a corresponding meaning: 5
- “ ‘Issuer’, in relation to a financial arrangement at a particular time, means the person who, if the amount or amounts payable under the financial arrangement were due and payable at that time, would be liable to pay the amount or amounts so payable: 10
- “ ‘Maturity’, in relation to a financial arrangement, means the date on which the last payment under the financial arrangement is due and payable:
- “ ‘Money’ includes money’s worth: 15
- “ ‘Short term trade credit’ means any debt for payment of goods or services where payment may be required by the vendor within 61 days after the supply of the goods or services:
- “ ‘Superannuation scheme’ means any superannuation fund and any superannuation category 3 scheme: 20
- “ ‘Trade credit’ means any debt for payment of goods or services where the payment may be required by the vendor after a stipulated period after the supply of the goods or services, but does not include a short term trade credit: 25
- “ ‘Variable principal debt instrument’ means a bank deposit account or other instrument where it is contemplated that the holder may—
- “(a) Advance further sums to the issuer; or 30
- “(b) Require the return of sums advanced to the issuer,—
- in either case upon demand or call, and where all such sums form part of that bank deposit account or other instrument. 35
- “(2) Every reference in **subsection (1)** of this section and **sections 64c to 64J** of this Act to an income year shall, where a taxpayer furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case, those provisions shall, with any necessary modifications, apply accordingly. 40

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“64C. Accruals in relation to income and expenditure in respect of financial arrangements—(1) Subject to this section,—

5 “(a) In respect of any financial arrangement, acquired by any person on or after the implementation date for the financial arrangement, the amount of income derived by the holder shall be an amount calculated by the holder using the yield to maturity method so
10 as to result in the allocation to each income year of an amount of income that is fair and reasonable, and such amounts of income so allocated to any income year shall be deemed to be income derived by the holder in that income year:

15 “(b) In respect of any financial arrangement, issued by any person on or after the implementation date for the financial arrangement, the amount of expenditure incurred by the issuer in respect of that financial arrangement shall be an amount calculated by the
20 issuer using the yield to maturity method so as to result in the allocation to each income year of an amount of expenditure that is fair and reasonable, and such amounts of expenditure so allocated to any income year shall be deemed to be expenditure
25 incurred by the issuer in that income year:

“Provided that the Commissioner may accept an alternative method to the yield to maturity method, that has regard to accrual or market valuation, where it—

30 “(c) Conforms with commercially acceptable practice; and
 “(d) Is adopted by the taxpayer and is or is intended to be consistently applied for financial reporting purposes; and

35 “(e) Results in the allocation to each income year of amounts that are not materially different from amounts that would be calculated but for this proviso.

40 “(2) Where it is not possible to calculate an amount of income or expenditure in respect of a financial arrangement to which sections 64B to 64J of this Act apply using the yield to maturity method as provided for in subsection (1) of this section, an amount of income or expenditure for each income year shall be calculated by the taxpayer for any such financial arrangement,—

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- “(a) Using the method, if any, prescribed by the Commissioner for the financial arrangement in a determination made under **section 64E (1) (b)** of this Act: 5
- “(b) In the absence of any such determination, by applying a method that satisfies **paragraphs (c) to (e)** of the proviso hereto and that results in the allocation to each income year of an amount that, having regard to the tenor of **section 64c (1)** of this Act, is fair and reasonable and reflects the taxpayer’s income or expenditure in relation to the financial arrangement,— 10
- and the amount of income or expenditure so calculated shall be deemed to be income derived or, as the case may be, expenditure incurred by the taxpayer in the income year: 15
- “Provided that the Commissioner may accept an alternative method for calculating income and expenditure to the method prescribed in any determination made under **section 64E (1) (b)** of this Act if the alternative method— 20
- “(c) Has regard to accrual or market valuation; and
- “(d) Conforms with commercially acceptable practice; and
- “(e) Is adopted by the taxpayer and is or is intended to be consistently applied for financial reporting purposes; and 25
- “(f) Results in the allocation among income years of amounts that are not materially different from the amounts that would be calculated, but for this proviso, using the method prescribed in the applicable determination made by the Commissioner under **section 64E (1) (b)** of this Act. 30
- “(3) **Subsections (1) and (2)** of this section shall not apply—
- “(a) Where **subsection (1) or subsection (2) of section 64D** of this Act applies:
- “(b) Where the issue or acquisition of the financial arrangement is pursuant to a binding contract in existence before the implementation date in relation to that financial arrangement; or 35
- “(c) Where the issue or acquisition of the financial arrangement is pursuant to and in terms of a roll-over or extension provided for before the implementation date in relation to the financial arrangement; or 40

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- “**(d)** To the determination of—
- 5 “**(i)** Income of or expenditure incurred by a person not resident in New Zealand in relation to a financial arrangement where and to the extent that the financial arrangement does not relate to a business carried on by that person through a fixed establishment in New Zealand; or
- 10 “**(ii)** Non-resident withholding income.
- 10 “**(4)** To the extent that any provision of this Act, other than section 99, conflicts with **sections 64B to 64J** of this Act that provision shall apply subject to the treatment of income and expenditure in relation to financial arrangements prescribed by the said **sections 64B to 64J**.
- 15 “**64D. Cash basis holder**—(1) Subject to this section, a natural person shall be exempt from the provisions of **section 64c** of this Act, in relation to all financial arrangements acquired on or after the implementation date, and held by the person in any income year, where—
- 20 “**(a)** The income derived by that person in that income year from those financial arrangements, calculated in accordance with **section 64c** of this Act, does not exceed \$50,000 (or such greater amount as the Governor-General may from time to time, by Order in Council, declare); or
- 25 “**(b)** The total value of financial arrangements held by the person in the income year does not exceed at any time in the income year \$400,000 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare), the value in respect of each financial arrangement being—
- 30 “**(i)** In the case of fixed principal financial arrangements, the greater of—
- 35 “**(A)** The acquisition price of the arrangement; or
“**(B)** The nominal or face value of the arrangement:
- “**(ii)** In the case of variable principal debt instruments, the amount of money owing to the person pursuant to the arrangement.
- 40 “**(2)** Where any person holds fixed principal financial arrangements acquired in an income year in which the person was a cash basis holder, income from those arrangements shall be calculated as if the person were a cash basis holder.

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“(3) Notwithstanding subsection (1) of this section, where a cash basis holder holds fixed principal financial arrangements which that person acquired in an income year in which the person was not a cash basis holder, income from those arrangements shall be calculated as if that person was not a cash basis holder. 5

“(4) For the purposes of subsection (1) of this section,—

“(a) All income from financial arrangements issued or acquired on or after the implementation date and assessable as trustees’ or beneficiaries’ income under sections 227 to 239 of this Act shall be disregarded, as shall the value of all such financial arrangements producing such income; and 10

“(b) Section 64c of this section shall apply to such trustees’ and beneficiaries’ income. 15

“(5) For the purposes of subsection (1) of this section—

“(a) Financial arrangements held; and

“(b) Income required to be returned from such arrangements under section 10 of this Act,— 20

by a partnership shall be treated as being held or, as the case may be, derived by each partner to the extent of the partner’s share in the partnership assets or, as the case may be, the income of the partnership from financial arrangements.

“64E. **Determinations**—(1) For the purposes of section 64c of this Act, the Commissioner may from time to time determine the following matters: 25

“(a) How the yield to maturity method shall be applied to any financial arrangement or class thereof within section 64c (1) (except the proviso thereto) of this Act: 30

“(b) The method for determining income or expenditure in relation to any financial arrangement or class thereof within section 64c (2) (except the proviso thereto) of this Act that results in the allocation to each income year of an amount that, having regard to the tenor of section 64c (1) of this Act, is fair and reasonable and reflects the taxpayer’s income or expenditure in relation to such financial arrangements: 35

“(c) The method or methods that may be applied in determining income or expenditure in relation to any class of financial arrangements pursuant to the provisos to sections 64c (1) and 64c (2) of this Act— 40

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and any determination made under paragraph (a) or paragraph (b) of this subsection shall be followed by taxpayers for the purposes of subsections (1) and (2) of section 64c of this Act.

5 “(2) Where a person who issues or holds a financial arrangement, in respect of which the Commissioner has made a determination in accordance with subsection (1) of this section, is dissatisfied with the determination, the person may object to the determination by delivering or posting to the
10 Commissioner, within one month after the date on which notice of the determination has been published or otherwise given by the Commissioner, a written notice of objection, stating shortly the grounds of that person’s objection.

“ (3) For the purposes of this section, Part III of this Act, excepting section 36, shall, in relation to any objection under this section, apply in the same manner and to the same extent as if the said objection were an objection made under section 30 (1) or, in the case of a late objection, section 30 (2) of this Act.

20 “(4) Where the Commissioner is satisfied that a determination made under subsection (1) of this section should be varied or rescinded, or restricted or extended in scope, he may from time to time make a fresh determination which shall be effective to vary, rescind, restrict, or extend the determination first mentioned in this subsection:

25 “Provided that no such fresh determination shall be required to be applied by any person in relation to financial arrangements acquired or issued by that person prior to the notification of or publication by the Commissioner of that fresh determination.

30 “64F. **Income and expenditure where financial arrangement redeemed or disposed of**—(1) Notwithstanding section 64c of this Act, where, in relation to any person, a financial arrangement issued or acquired by the person on or after the implementation date matures or is sold or otherwise trans-
35 ferred by the person in any income year, the amount of the base price adjustment in relation to that income year, that person, and that financial arrangement shall be an amount calculated in accordance with the following formula:

$$a - (b + c)$$

40 where—

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- a is the amount of all consideration which has and will become payable to the holder or payable by the issuer in relation to the financial arrangement; and
- b is the acquisition price of the financial arrangement in relation to that taxpayer; and
- c is all amounts treated as assessable income (other than income written off as a bad debt) or deductible expenditure of that taxpayer from that financial arrangement under section 64c of this Act in all previous income years since the acquisition (in the case of a holder) or issue (in the case of an issuer) of the financial arrangement.

“(2) Where, in relation to a cash basis holder, a financial arrangement acquired by that person on or after the implementation date matures, or is sold or otherwise transferred by that person in any income year, the amount of the cash base price adjustment in relation to that income year, that person, and that financial arrangement shall be an amount calculated in accordance with the following formula:

$$a - (b + c)$$

where—

- a is the amount of all consideration derived in relation to the financial arrangement by the taxpayer; and
- b is the acquisition price of the financial arrangement; and
- c is all amounts treated as assessable income of that person from that financial arrangement in all previous income years since the acquisition.

“(3) Subject to subsection (5) of this section, the amount of the base price adjustment in relation to any financial arrangement and any income year shall—

“(a) In relation to a holder,—

“(i) Where it is a positive amount, be deemed to be income derived by the holder in the income year; and

“(ii) Where it is a negative amount, be deemed to be an allowable deduction in calculating the assessable income of the holder in the income year:

“(b) In relation to an issuer—

“(i) Where it is a positive amount, be deemed to be expenditure incurred by the issuer in the income year; and

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- “(ii) Where it is a negative amount, be deemed to be income derived by the holder in the income year.
- 5 “(4) Subject to **subsection (5)** of this section, the amount of the cash base price adjustment in relation to any financial arrangement and any income year shall,—
- “(a) Where it is a positive amount, be deemed to be income derived by the cash basis holder in the income year; and
- 10 “(b) Where it is a negative amount, be deemed to be an allowable deduction in calculating the assessable income of the cash basis holder in the income year.
- “(5) The amount of any deduction allowable under **subsection (3)** or **subsection (4)** of this section to a holder (including
- 15 a cash basis holder) in relation to a financial arrangement shall not exceed the amount of income derived or deemed to be derived from the financial arrangement by the holder, less any amounts written off as bad debts.
- “64G. **Accrued income written off**—**Section 106 (1) (b)** of
- 20 this Act shall apply to any amount of income calculated under **section 64c** of this Act but subsequently written off as if that amount were a bad debt.
- “64H. **Inter-related arrangements**—Where a financial arrangement issued or acquired on or after the implementation
- 25 date consists of 2 or more arrangements (such arrangements hereafter referred to in this section as related arrangements), all the persons who are party to that financial arrangement shall, in each year of its term, disclose to the Commissioner in the prescribed form and with each person’s annual return—
- 30 “(a) The existence of each of the related arrangements making up that financial arrangement and the parties thereto; and
- “(b) The amount of assessable income or deductible expenditure of that person in respect of that
- 35 financial arrangement; and
- “(c) Such other information in relation to that financial arrangement or related arrangement as the Commissioner may require.
- “64I. **Adjustments to estimated accruals of income and**
- 40 **expenditure in respect of financial arrangements**—Where a person, in calculating that person’s income or expenditure in accordance with **section 64c** of this Act, has made an estimate of

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an amount payable or receivable at some future time or times, then in the first income year in which the amount becomes known with certainty, if that amount differs from the estimated amount an adjustment shall be made in that first income year to the person's assessable income. 5

“64J. Financial arrangements not at arm's length—

(1) Where the Commissioner, having regard to any connection between the parties to the issue or transfer of a financial arrangement and to any other relevant circumstances, is satisfied that the parties were not dealing with each other at arm's length in relation to the issue or transfer he may, for the purpose of calculating the assessable income or expenditure of the parties under **section 64c** or **section 64F** of this Act, deem the consideration for the issue or transfer to be equal to the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer: 10 15

“Provided that this section shall not apply to any disposition of trading stock to which **section 91** of this Act applies. 20

“(2) If at any time a person not resident in New Zealand—

“(a) Commences to hold, whether temporarily or otherwise, a financial arrangement for the purposes of a business carried on through a fixed establishment in New Zealand, the person shall be deemed to have acquired the financial arrangement at that time: 25

“(b) Ceases to hold, whether temporarily or otherwise, a financial arrangement for the purposes of a business carried on through a fixed establishment in New Zealand, the person shall be deemed to have disposed of the financial arrangement at that time— 30

and that acquisition or, as the case may be, that disposal shall, for the purposes of **subsection (1)** of this section, be deemed to be a transfer between parties that were not dealing with each other at arm's length in relation to the transfer.” 35

(2) Section 2 of the principal Act is hereby amended by inserting in the definition of the term “paid” (as inserted by section 3 (1) of the Income Tax Amendment Act 1983), after the words “any redemption payment”, the words “and to any financial arrangement as defined in **section 64B** (1) of this Act”. 40

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(3) Section 65 (2) of the principal Act is hereby amended by inserting, after paragraph (ja) (as inserted by section 22 of the Income Tax Amendment Act 1978), the following paragraph:

5 “(jb) Income derived or deemed to be derived under sections 64c and 64f of this Act.”

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*“Accrual Treatment of Income and Expenditure Relating to
Financial Arrangements*

10 “64B. **Interpretation**—(1) For the purposes of this section and sections 64c to 64m of this Act—

“‘Acquisition price’, in relation to a financial arrangement, means—

15 “(a) Where section 64j of this Act applies, the amount determined pursuant to that section:

“(b) Where the financial arrangement is a trade credit—

20 “(i) The ‘cash price’ of the goods or services, as determined by section 2 (1) of the Credit Contracts Act 1981; or

“(ii) Where the acquisition price cannot be determined under subparagraph (i) of this paragraph, the price at which the goods or services could be purchased under a short term trade credit; or

25 “(iii) Where the acquisition price cannot be determined under subparagraph (i) or subparagraph (ii) of this paragraph, the discounted value of the amounts payable for the goods or services, as determined pursuant to a determination made by the Commissioner under section 64e (1) (f) of this Act:

30 “(c) Where section 64j of this Act does not apply, and the financial arrangement is not a trade credit, the value of all consideration provided by the holder in relation to the financial arrangement:

40 “‘Arrangement’ means any contract, agreement, plan, or understanding (whether enforceable or unenforceable), including all steps and transactions by which it is carried into effect:

New

- “‘Excepted financial arrangement’ means any of the following arrangements:
- “‘(a) An annuity where the annuitant is a natural person: 5
- “‘(b) A contract of insurance or membership of a superannuation scheme:
- “‘(c) A debenture to which section 192 or section 195 of this Act applies:
- “‘(d) A hire purchase agreement as defined in section 2 of the Hire Purchase Act 1971 or an assignment of such an agreement: 10
- “‘(e) A short term trade credit:
- “‘(f) A specified preference share to which section 194 of this Act applies: 15
- “‘(g) Shares, other than withdrawable shares (as defined in section 194A of this Act), or an option to buy shares, other than withdrawable shares (as so defined):
- “‘(h) A lease: 20
- “‘(i) A bet on any race, game of chance, lottery, New Zealand lottery, New Zealand prize competition or prize competition:
- “‘Financial arrangement’ means—
- “‘(a) Any debt or debt instrument; and 25
- “‘(b) Any arrangement (whether or not such arrangement includes an arrangement that is a debt or debt instrument, or an excepted financial arrangement) whereby a person obtains money in consideration for a promise by any person to provide money to any person at some future time or times, or upon the occurrence or non-occurrence of some future event or events (including the giving of, or failure to give, notice); and 30
- “‘(c) Any arrangement which is of a substantially similar nature (including, without restricting the generality of the foregoing provisions of this paragraph, sell-back and buy-back arrangements, debt defeasances and assignments of income),— 35
- but shall not include any excepted financial arrangement or that part of a financial arrangement that is attributable to an excepted financial arrangement, as determined pursuant to a 40

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determination (if any) made by the Commissioner under section 64E (1) (e) of this Act:

5 “‘Fixed principal financial arrangement’ means any financial arrangement other than a variable principal debt instrument:

10 “‘Holder’, in relation to a financial arrangement at any time, means a person who, if the amount or amounts payable under the financial arrangement were due and payable at that time, would be entitled to receive payment of the amount or amounts so payable, or any part of them and ‘hold’ has a corresponding meaning:

15 “‘Implementation date’ means—

“(a) In the case of—

“(i) Forward or future contracts including, but not limited to, contracts for—

“(A) Foreign exchange:

“(B) Commodities:

“(C) Financial arrangements:

“(D) Excepted financial arrangements;

and

“(ii) Futures contracts; and

“(iii) Trade credits; and

“(iv) Annuities; and

“(v) Convertible notes,—

8.00 p.m. New Zealand Standard Time on the 23rd day of October 1986; and

30 “(b) In the case of variable principal debt instruments the 1st day of April 1987; and

“(c) In every other case 8.30 p.m. New Zealand Standard Time on the 31st day of July 1986:

35 “‘Issue’, in relation to a financial arrangement, means the act of creating the financial arrangement, and ‘issued’ has a corresponding meaning:

40 “‘Issuer’, in relation to a financial arrangement at any time, means a person who, if the amount or amounts payable under the financial arrangement were due and payable at that time, would be liable to pay the amount or amounts so payable, or any part of them:

“‘Lease’ means any agreement pursuant to which a lessor conveys to a lessee for a term property or the right to possession of property in consideration for any

New

payment; and includes any contract of hire, bailment, licence, and any sublease:

“‘Money’ includes money’s worth and the right to money (including the deferral or cancellation of any obligation to pay money, whether in whole or in part): 5

“‘Short term trade credit’ means any debt for goods or services where payment is required by the vendor within 63 days after the supply of the goods or services: 10

“‘Superannuation scheme’ means any superannuation fund and any superannuation category 3 scheme:

“‘Trade credit’ means any debt for goods or services; but does not include a short term trade credit: 15

“‘Variable principal debt instrument’ means a bank deposit account or other financial arrangement where it is contemplated that the holder may—

“(a) Advance further sums to the issuer; or

“(b) Require the return of sums advanced to the issuer,— 20

in either case upon demand or call, and where all such sums form part of that bank deposit account or other instrument.

“(2) For the purposes of sections 64c to 64M of this Act, where a person is a party to a variable principal debt instrument on the implementation date, the person shall be deemed to have acquired or, as the case may be, issued it on that day for a consideration equal to the amount of money that would be payable to the holder on that day if the amount or amounts payable under the financial arrangement were due and payable on that day. 25 30

“(3) For the purposes of this section—

“(a) The terms ‘game of chance’, ‘gaming machine’, ‘lottery’, ‘New Zealand lottery’, ‘New Zealand prize competition’, and ‘prize competition’, have the same meanings as defined in section 2 of the Gaming and Lotteries Act 1977: 35

“(b) The term ‘race’ has the same meaning as defined in section 2 of the Racing Act 1971. 40

“(4) Every reference in sections 64c to 64M of this Act to an income year shall, where a taxpayer furnishes a return of income under section 15 of this Act for an accounting year

New

ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case, those provisions shall, with any necessary modifications, apply accordingly.

“64c. **Accruals in relation to income and expenditure in respect of financial arrangements**—(1) For the purpose of calculating the amount that shall be deemed to be income or expenditure pursuant to **subsections (2), (3), and (4)** of this section, regard shall be had to—

“(a) All amounts of money contingent upon the implementation of the financial arrangement; and
“(b) All amounts of money directly related to the financial arrangement, but not contingent upon the implementation of the financial arrangement to the extent that the total of those amounts exceeds an amount equal to 2 percent of the acquisition price of the financial arrangement.

“(2) Subject to this section, in respect of any financial arrangement issued or held by any person the amount that shall be deemed to be income or expenditure of the person in any income year shall be an amount calculated using the yield to maturity method so as to result in the allocation to each income year of an amount that is fair and reasonable and such amount of income or expenditure so allocated to each income year shall be income deemed to be derived by or expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year:

“Provided that the Commissioner shall accept an alternative method to the yield to maturity method, that has regard to the principles of accrual accounting, and—

“(a) Conforms with commercially acceptable practice; and
“(b) Is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and
“(c) Results in the allocation to each income year of amounts that are not materially different from amounts that would be calculated but for this proviso.

“(3) Where it is not possible to calculate an amount that shall be deemed to be income or expenditure in respect of a financial arrangement using the yield to maturity method as provided for in **subsection (2)** of this section, the amount that

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shall be deemed to be income or expenditure of the person in any income year shall be an amount calculated by the person—

“(a) Using the method, if any, prescribed by the Commissioner for the financial arrangement in a determination made under **section 64E (1) (b)** of this Act: 5

“Provided that the Commissioner shall accept an alternative method to the method prescribed in any such determination that has regard to the principles of accrual accounting, and— 10

“(i) Conforms with commercially acceptable practice; and

“(ii) Is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and 15

“(iii) Results in the allocation to each income year of amounts that are not materially different from the amounts that would be calculated, but for this proviso: 20

“(b) In the absence of any such determination, by applying a method that satisfies **subparagraphs (i) and (ii)** of the proviso to **paragraph (a)** of this subsection and that results in the allocation to each income year of an amount that, having regard to the tenor of **subsection (2)** of this section, is fair and reasonable,— 25

and such amount of income or expenditure so allocated to each income year shall be income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in the income year. 30

“(4) Notwithstanding **subsections (2) and (3)** of this section, the Commissioner shall accept an alternative method for calculating the amount that shall be deemed to be income or expenditure of the person, in respect of a financial arrangement, to the methods provided for under **subsections (2) and (3)** of this section, if the alternative method has regard to market valuation and— 35

“(a) Conforms with commercially acceptable practice; and

“(b) Is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and 40

“(c) Either—

New

- “(i) The business of the person comprises dealing in such financial arrangements; or
- 5 “(ii) The financial arrangement is a forward or futures contract for foreign exchange, or a futures contract; and
- “(d) The method and the source of the information used to determine the market values have been approved by the Commissioner pursuant to a determination
- 10 issued under **section 64E (1) (d)** of this Act; and
- “(e) The person and any other person who is a holder (where the person is an issuer) or an issuer (where the person is a holder) of the financial arrangement are not associated persons,—
- 15 and such amount of income or expenditure so calculated shall be income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year:
- “Provided that where income or expenditure in respect of a
- 20 financial arrangement has been calculated by a person under this subsection, income or expenditure in respect of that financial arrangement shall continue to be calculated on that basis by that person until the maturity, remittance, sale, or other transfer of the arrangement.
- 25 “(5) **Subsections (2), (3), and (4)** of this section shall not apply—
- “**(a)** To a cash basis holder:
- “**(b)** In relation to a financial arrangement and a person, in any income year where **section 64F** of this Act applies to that person and to that financial arrangement.
- 30 “(6) For the purposes of this section the Commissioner may determine whether and to what extent any issuer or class of issuers shall not be required to comply with this section in relation to expenditure incurred in respect of any class of financial arrangements, having regard to—
- 35 “(a) The nature and amount of the expenditure regularly incurred by the issuer or class of issuers in respect of financial arrangements of that class:
- “**(b)** The costs of the issuer or class of issuers in complying with this section in relation to the class of financial arrangements:
- 40 “**(c)** Whether, in respect of that issuer or class of issuers and that class of financial arrangements, the difference between expenditure which is deductible under this

New

section (other than this subsection) and expenditure which would be deductible if the discretion given to the Commissioner under this subsection were exercised, is not a material amount. 5

“(7) The Commissioner may at any time cancel any determination made in respect of any person or class of persons under **subsection (6)** of this section.

“**64D. Cash basis holder**—(1) Subject to this section, a natural person shall be a cash basis holder in respect of financial arrangements held by that person in any income year, where— 10

“(a) Either—

“(i) The income derived by that person in that income year in respect of those financial arrangements, calculated in accordance with **section 64c or section 64F** of this Act, does not exceed \$50,000 (or such greater amount as the Governor-General may from time to time, by Order in Council, declare); or 15 20

“(ii) The total value of financial arrangements held by the person in the income year does not exceed at any time in the income year \$400,000 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare), the value in respect of each financial arrangement being,— 25

“(A) In the case of a fixed principal financial arrangement, the greater of the acquisition price of the arrangement or the nominal or face value of the arrangement; and 30

“(B) In the case of a variable principal debt instrument, the amount of money owing to the person pursuant to the arrangement; and 35

“(b) The difference between the income that would be calculated by the person for the year under **section 64c or section 64F** of this Act in respect of the financial arrangements held by the person at the end of the income year, and the income that would be calculated by the person in respect of those 40

New

5 arrangements and for the income year if the person were a cash basis holder, does not exceed \$15,000 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare).

“(2) Notwithstanding anything in subsection (1) of this section, the Commissioner may—

10 “(a) Where the Commissioner is satisfied, having regard to the tenor of section 64c (2) of this Act, that treatment of a class of financial arrangements other than under section 64c results in a fair and reasonable allocation of income or expenditure among income years, deem natural persons to be cash basis holders in respect of such financial arrangements:

15 “(b) Where the Commissioner is satisfied that a class of financial arrangements has been structured and promoted with the objective of postponing any liability to income tax which would have arisen had those financial arrangements not been so structured, deem natural persons not to be cash basis holders in respect of such financial arrangements.

25 “(3) In any income year where a person who was a cash basis holder in the previous income year ceases to be a cash basis holder, the person shall take into account, in calculating assessable income for the income year, an accruals basis adjustment, in respect of every financial arrangement (other than arrangements that are already dealt with according to section 64c of this Act or in respect of which the Commissioner

30 has exercised the discretion given under subsection (2) (a) of this section) acquired in a previous income year and held by the person at the end of the income year equal to an amount calculated in accordance with the following formula:

$$a - b - c + d$$

35 where—

40 a is the sum of all amounts which would have been assessable income derived by the person in respect of the financial arrangement from the date it was acquired to the end of the income year if the person had not been a cash basis holder at any time during that period; and

New

- b is the sum of all amounts that would have been deductible expenditure of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had not been a cash basis holder at any time during the period; and 5
- c is the sum of all amounts of assessable income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year; and 10
- d is the sum of all amounts that have been deductible expenditure of the person in respect of the financial arrangement since it was acquired to the end of the previous income year,— 15
- and the person shall not take into account in the income year any income or expenditure in respect of any such financial arrangement except that calculated under the accruals basis adjustment.

“(4) In any income year where a person who was not a cash basis holder in the previous income year becomes a cash basis holder, that person may take into account, in calculating assessable income for the income year, a cash basis adjustment, in respect of every financial arrangement (other than arrangements already treated on a cash basis) acquired in a previous income year and held by the person at the end of the income year, equal to an amount calculated in accordance with the following formula: 20 25

$$a - b - c + d$$

where— 30

- a is the sum of all amounts which would have been assessable income derived by the person in respect of the financial arrangement from the date it was acquired to the end of the income year if the person had been a cash basis holder in respect of the financial arrangement for the whole of that period; and 35
- b is the sum of all amounts which would have been deductible expenditure of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had been a cash basis holder in 40

New

- respect of the financial arrangement for the whole of the period; and
- 5 c is the sum of all amounts treated as assessable income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year; and
- 10 d is the sum of all amounts that have been deductible expenditure of the person in respect of the financial arrangement since it was acquired to the end of the previous income year,—
- and, where the cash basis adjustment has been taken into account, the person shall not take into account any income or expenditure in respect of any such financial arrangement in the
- 15 year except that calculated under the cash basis adjustment:
- “Provided that the person shall be deemed not to be a cash basis holder in relation to any financial arrangement in respect of which the person does not take into account a cash basis adjustment.
- 20 “(5) The amount of the accruals basis adjustment or the cash basis adjustment in respect of any financial arrangement and any income year shall,—
- “*(a)* Where it is a positive amount, be income deemed to be derived by the holder in the income year; and
- 25 “*(b)* Where it is a negative amount, be deemed to be an allowable deduction in calculating the assessable income of the holder in the income year.
- “*(6)* For the purposes of **subsection (1)** of this section—
- 30 “*(a)* All income in respect of financial arrangements assessable as trustees’ or beneficiaries’ income under sections 227 to 239 of this Act shall be disregarded, as shall the value of all such financial arrangements producing such income; and
- 35 “*(b)* No person who holds such financial arrangements shall be a cash basis holder in relation to such financial arrangements.
- “*(7)* **Subsection (6)** of this section shall not apply to financial arrangements held on a bare trust, or to income in respect of such financial arrangements and the financial arrangements
- 40 held and the income derived by the trustees shall be treated as being held or, as the case may be, derived by a beneficiary of the trust to the extent of the beneficiary’s share of the beneficial interest in the financial arrangement.

New

“(8) For the purposes of subsection (1) of this section—

“(a) Financial arrangements held; and

“(b) Income required to be returned in respect of such financial arrangements under section 10 of this Act,— 5

by a partnership shall be treated as being held or, as the case may be, derived by each partner to the extent of the partner's share in the financial arrangements held by the partnership or, as the case may be, the income of the partnership in respect of 10 financial arrangements.

“64E. **Determinations**—(1) For the purposes of sections 64B to 64M of this Act, the Commissioner may determine the following matters:

“(a) How the yield to maturity method shall be applied to any financial arrangement or class thereof for the purposes of section 64c (2) (except the proviso thereto) of this Act: 15

“(b) The method for determining income deemed to be derived or expenditure deemed to be incurred in relation to any financial arrangement or class thereof for the purposes of section 64c (3) (except the proviso thereto) of this Act that results in the allocation to each income year of an amount that has regard to the tenor of section 64c (2) of this Act: 20 25

“(c) The method or methods that may be applied in determining income deemed to be derived or expenditure deemed to be incurred in relation to any class of financial arrangements for the purposes of the provisos to sections 64c (2) and 64c (3) of this Act: 30

“(d) The method or methods and the source of information used to determine market values that may be used for the purposes of section 64c (4) of this Act:

“(e) The method for determining the amount that shall be attributed to an excepted financial arrangement which is part of a financial arrangement: 35

“(f) The method for determining the discounted value of amounts payable for goods or services under trade credits,—

and the class of persons by whom such determination may be applied: 40

New

“Provided that the acceptance by the Commissioner of a method pursuant to the provisos to **section 64c (2)** or **section 64c (3)** shall not constitute the making of a determination.

5 “(2) Any determination made under **paragraph (a)** or **paragraph (b)** or **paragraph (d)** or **paragraph (e)** or **paragraph (f)** of **subsection (1)** of this section shall be binding on persons for the purposes of **sections 64B to 64M** of this Act.

10 “(3) Any person who issues or holds, or who intends to issue or hold, a financial arrangement may apply to the Commissioner to exercise his discretion to make a determination pursuant to **subsection (1)** of this section and every such application shall be made in accordance with such procedure as may be prescribed by regulations made under
15 section 433 of this Act; or, if no such regulations have been made or the regulations do not provide for the eventuality that occurs, in accordance with such procedure as may be prescribed by the Commissioner.

20 “(4) Where a person who issues or holds, or intends to issue or hold, a financial arrangement, in respect of which the Commissioner has made a determination in accordance with **subsection (1)** of this section is dissatisfied with the determination, the person may object to the determination by delivering or posting to the Commissioner, within one month after the date
25 on which notice of the determination has been published by the Commissioner, a written notice of objection stating shortly the grounds of that person’s objection.

30 “(5) Except where it is otherwise expressly provided, Part III of this Act, except **section 36**, shall, in relation to any objection to a determination under this section, apply in the same manner and to the same extent as if the said objection were an objection made under **section 30 (1)** or, in the case of a late objection, **section 30 (2)** of this Act.

35 “(6) Where the Commissioner is satisfied that a determination made under **subsection (1)** of this section should be varied or rescinded, or restricted or extended in scope, he may make a fresh determination which shall be effective to vary, rescind, restrict, or extend the determination first mentioned in this subsection:

40 “Provided that no such fresh determination shall be required to be applied by any person in relation to financial arrangements acquired or issued by that person prior to the notification of, or publication by, the Commissioner of that

New

fresh determination until the expiry of 4 years from the notification of, or publication of, that fresh determination.

“(7) All determinations made by the Commissioner under subsection (1) of this section shall be published in the *Gazette* within 30 days of the making of the determination, in such form as may be specified by regulations made under section 433 of this Act. 5

“(8) For the purposes of this section a determination shall be deemed to be made when it is signed by the Commissioner. 10

“(9) Where a person applies a determination, the Commissioner shall assess the person in accordance with the determination made under subsection (1) of this section except where—

“(a) Since the date of the determination the legislation on which the determination was based has been repealed or amended to the detriment of the person relying on the determination; or 15

“(b) There was a material misrepresentation or omission in the application for the determination, whether intentional or not. 20

“64F. **Income and expenditure where financial arrangement redeemed or disposed of**—(1) For the purposes of this section—

“(a) The expression ‘holder’, in relation to a financial arrangement, includes a person who ceases to be a holder of the financial arrangement as provided in subsection (2) or subsection (3) of this section: 25

“(b) The expression ‘issuer’, in relation to a financial arrangement, includes a person who ceases to be an issuer of the financial arrangement as provided in subsection (2) of this section: 30

“(c) A financial arrangement shall be deemed to be remitted where—

“(i) The issuer has been discharged from making all remaining payments under that financial arrangement without fully adequate consideration; or 35

“(ii) The issuer has been released from making all remaining payments under that financial arrangement by the operation of the Bankruptcy Act 1908 or the Insolvency Act 1967 or the 40

New

Companies Act 1955 or by any deed of composition with its creditors; or

5 “(iii) All of the remaining payments under the financial arrangement have become irrecoverable or unenforceable by action through the lapse of time:

10 “(d) Where a person ceases to be a New Zealand resident any financial arrangement in relation to which that person is an issuer or a holder shall be deemed, in relation to the person, to have been transferred for its market value at that date:

15 “(e) The term ‘maturity’, in relation to a financial arrangement, means the date on which the last payment contingent upon the financial arrangement is made and the term ‘matures’ has a corresponding meaning:

20 “Provided that where a financial arrangement has not matured and where the amount which has not been paid is immaterial and the financial arrangement has been structured to avoid the application of this section, the financial arrangement shall be deemed to have matured.

25 “(2) Subject to **subsection (3)** of this section, where, in relation to any person, a financial arrangement matures or is remitted (other than by way of being written off as a bad debt), sold, or otherwise transferred by the person in any income year, the amount of the base price adjustment in relation to that income year, that person, and that financial arrangement shall be an amount calculated in accordance with the following formula:

30
$$a - (b + c)$$

where—

a is—

35 “(i) In the case of a holder, the sum of—
“(A) The amount of all consideration that has been paid, and all further consideration that has or will become payable, to the person; and

“(B) Any amounts that have been remitted by the person and that are not included in **subparagraph (A)** of this paragraph:

40 “(ii) In the case of an issuer, all amounts payable by the person—
in relation to the financial arrangement; and

New

b is the acquisition price of the financial arrangement in relation to the person; and

c is—

“(i) In the case of a holder, all amounts that are income derived, less the aggregate of amounts of expenditure deemed to be incurred under **section 64c** or **section 64d** or **section 64i** of this Act by the person; and

“(ii) In the case of an issuer, all amounts of expenditure incurred less the aggregate of amounts that are income deemed to be derived under **section 64c** or **section 64d** or **section 64i** of this Act by the person,— in respect of the financial arrangement in all previous income years since the acquisition (in the case of a holder) or issue (in the case of an issuer) of the financial arrangement.

“(3) Where, in relation to a financial arrangement, a person is a cash basis holder, the financial arrangement matures or is remitted (other than by way of being written off as a bad debt), sold or otherwise transferred by that person in any income year, the amount of the cash base price adjustment in relation to that income year, that person, and that financial arrangement shall be an amount calculated in accordance with the following formula:

$$a - (b + c)$$

where—

a is the sum of all consideration derived in respect of the financial arrangement by the person, and amounts remitted by the person; and

b is the acquisition price of the financial arrangement; and

c is the sum of all amounts treated as assessable income of the person in relation to the financial arrangement.

“(4) Subject to **subsection (6)** of this section, the amount of the base price adjustment in relation to any financial arrangement and any income year shall,—

“(a) In relation to a holder,—

“(i) Where it is a positive amount, be deemed to be income derived by the holder in the income year; and

“(ii) Where it is a negative amount, be deemed to be an allowable deduction in calculating the assessable income of the holder in the income year:

New

- “(b) In relation to an issuer,—
- 5 “(i) Where it is a positive amount, be deemed to be expenditure incurred by the issuer in the income year; and
- “(ii) Where it is a negative amount, be deemed to be income derived by the issuer in the income year.
- “(5) Subject to **subsection (6)** of this section, the amount of the cash base price adjustment in relation to any financial
- 10 arrangement and any income year shall,—
- “(a) Where it is a positive amount, be deemed to be income derived by the cash basis holder in the income year; and
- “(b) Where it is a negative amount, be deemed to be an
- 15 allowable deduction in calculating the assessable income of the cash basis holder in the income year.
- “(6) Notwithstanding anything in **section 64J (3)** of this Act, where a financial arrangement is sold or otherwise transferred by a person for a consideration influenced by—
- 20 “(a) A decline in the creditworthiness of the issuer between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or
- “(b) An increase in the possibility that the issuer may fail to meet any obligations under the financial arrangement between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or
- 25 “(c) The occurrence of any event reducing or cancelling the obligations of an issuer under the financial arrangement,—
- 30 there shall, in calculating the base price adjustment, be deemed to have become payable to the holder all amounts that would have been received but for the factors listed above:
- 35 “Provided that this subsection shall not apply where the business of the holder comprises dealing in financial arrangements of that class, and the issuer of the financial arrangement and the holder are not associated persons.”
- 40 “**64G. Accrued income written off**—(1) Notwithstanding anything in section 106 (1) (b) of this Act but subject to **subsection (2)** of this section where a person is deemed to derive income in respect of a financial arrangement under **section 64c** or

New

section 64b (3) or section 64f or section 64i of this Act a deduction shall be permitted in any income year for bad debts in relation to any amount owing or to become owing in respect of the financial arrangement only where and to the extent that— 5

“(a) The person has derived income under section 64c or section 64b (3) or section 64f (4) or section 64i of this Act in respect of the financial arrangement, which income is attributable to the amount in respect of which a deduction for a bad debt is claimed; and 10

“(b) The amount is proved to the satisfaction of the Commissioner to have been actually written off in the year in which the deduction is claimed:

“Provided that all amounts at any time received on account of any such bad debts shall be credited as income in the year in which they are received to the extent to which they have been deducted as bad debts under this section. 15

“(2) Where a person derives income in respect of a financial arrangement under section 64c or section 64b (3) or section 64f or section 64i of this Act, and the business of the person comprises dealing in such financial arrangements a deduction shall be permitted in any income year for bad debts in relation to any amount owing in respect of the financial arrangement where and to the extent that— 20

“(a) The amount is not deductible under subsection (1) of this section; and 25

“(b) The amount is proved to the satisfaction of the Commissioner to have been actually written off in the year in which the deduction is claimed; and

“(c) The issuer and the holder of the financial arrangement are not associated persons: 30

“Provided that all amounts at any time received on account of any such bad debts shall be credited as income in the year in which they are received to the extent to which they have been deducted as bad debts under this section. 35

“64H. **Inter-related arrangements**—(1) Subject to subsection (2) of this section, where a financial arrangement issued or acquired on or after the implementation date consists of 2 or more arrangements, whether or not those arrangements are themselves financial arrangements, (such arrangements hereafter referred to in this section as related arrangements), all the persons who are party to that financial arrangement 40

New

shall, in each year of its term, disclose to the Commissioner in the prescribed form and with each person's annual return—

- 5 “(a) The existence of each of the related arrangements making up that financial arrangement and the parties thereto; and
- “(b) The amount of assessable income or deductible expenditure of that person in respect of that financial arrangement; and
- 10 “(c) Such other information in relation to that financial arrangement or related arrangement as the Commissioner may require.
- “(2) Subject to **subsection (3)** of this section, the Commissioner may, if the Commissioner thinks fit, exempt a person or class
- 15 of persons from the requirements of **subsection (1)** of this section in respect of a particular financial arrangement or class of financial arrangements, where—
- “(a) The making of such financial arrangements is in the ordinary course of the person's or persons' business;
- 20 and
- “(b) The making of such financial arrangements is a generally accepted commercial practice.
- “(3) The Commissioner may at any time cancel any exemption granted to any person or class of persons under
- 25 **subsection (2)** of this section.

“64I. **Post facto adjustment**—(1) A financial arrangement shall be subject to the provisions of this section where—

- 30 “(a) Any of the amount or amounts payable under the financial arrangement are determined in the terms of the financial arrangement, as to whole or part, at the discretion of either the issuer or the holder, or both of them, or at the discretion of any other person where either the issuer or the holder and the other person are associated persons; and
- 35 “(b) The change in the amount or amounts payable under the financial arrangement upon the exercise of a discretion as provided for in **paragraph (a)** of this subsection does not reflect changes in economic, commodity, industrial, or financial indices or banking or general commercial rates; and
- 40 “(c) The making of such financial arrangements is not generally accepted commercial practice; and

New

- “(d) The effect of the arrangement is to defeat the intent and application of **sections 64B to 64M** of this Act.
- “(2) Where a financial arrangement is subject to the provisions of this section, both the holder and the issuer of the financial arrangement shall be required to calculate a post facto adjustment in respect of the following income years: 5
- “(a) The income year in which the person ceases to be a holder or an issuer, as the case may be, in respect of the financial arrangement: 10
- “(b) Where the person has not ceased to be a holder or an issuer of the financial arrangement at the end of the fifth income year following the year of its issue or acquisition by the person, in that fifth income year: 15
- “(c) Until the person ceases to be an issuer or a holder in respect of the financial arrangement, in every fifth income year succeeding the income year in which the post facto adjustment was last required to be made under this section. 20
- “(3) In order to calculate the post facto adjustment, a person shall— 20
- “(a) Having regard to all amounts specified in **section 64c (1) (a) and (b)** of this Act which have been paid or are payable, in respect of the financial arrangement, since acquisition or issue of the financial arrangement by the person to the end of the income year in which the post facto adjustment applies, calculate amounts of income or expenditure from the arrangement for each income year using the yield to maturity method as prescribed in a determination made by the Commissioner for the purposes of **section 64c (2)** of this Act: 25
- “Provided that where the post facto adjustment is made at a time determined by **paragraph (b) or paragraph (c) of subsection (2)** of this section, the person shall, for the purpose of the post facto adjustment calculation, be deemed to have transferred the financial arrangement for an amount equal to its market value on the last day of the income year or, where there is no such market value, for such amount as the Commissioner determines; and 35
- “(b) Recalculate assessable income derived or loss incurred in each income year using the amounts calculated 40

New

under paragraph (a) of this subsection in substitution for the amounts previously calculated in respect of the financial arrangement for each income year.

5 “(4) Where a person has been required to calculate the post facta adjustment, the person shall be required to make a special return in respect of the post facta adjustment in the form required by the Commissioner, no later than the time at which that person is required to file an annual return for the year in
10 which the post facta adjustment is made.

“(5) Notwithstanding anything in section 25 of this Act, the Commissioner shall re-assess the person’s income derived in the income years to which the post facta adjustment relates in accordance with the alterations to that income as calculated by
15 the post facta adjustment.

“64J. **Non-market dispositions**—(1) Where the Commissioner, having regard to any connection between the parties to the issue or transfer of a financial arrangement and to any other relevant circumstances is satisfied that the parties were
20 dealing with each other in relation to the issue or transfer in a manner that has the effect of defeating the intent and application of sections 64B to 64M of this Act, the Commissioner may, for the purposes of calculating the assessable income or expenditure of the parties under section 64C or section 64D or section
25 64F or section 64I of this Act, deem the consideration for the issue or transfer to be equal to the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm’s length with each other in relation to the issue or transfer.

30 “(2) If at any time a person not resident in New Zealand—

“(a) Commences to hold, whether temporarily or otherwise, a financial arrangement for the purposes of a business carried on through a fixed establishment in New Zealand, the person shall be deemed to have
35 acquired the financial arrangement at that time; or

“(b) Ceases to hold, whether temporarily or otherwise, a financial arrangement for the purposes of a business carried on through a fixed establishment in New Zealand, the person shall be deemed to have
40 disposed of the financial arrangement at that time; or

New

“(c) Being a holder or an issuer of a financial arrangement, becomes a New Zealand resident the person shall be deemed to acquire or to issue the financial arrangement at the time at which the person becomes a New Zealand resident,— 5

and that acquisition or, as the case may be, that disposal shall be deemed to have been made for a consideration equal to the consideration that might reasonably be expected for the acquisition or disposal if the acquisition or disposal had been made at arm’s length. 10

“(3) Where any financial arrangement is sold or is otherwise transferred (including a transfer by way of distribution to shareholders), without consideration in money or for a consideration that is less than the market price or the true value thereof, and— 15

“(a) The transferor acquired the financial arrangement for the purpose of sale or disposal; or

“(b) The business of that holder comprises dealing in such financial arrangements,— 20

then the financial arrangement shall be deemed for the purposes of this Act to have been sold at and to have realised the market price thereof at the date of sale or other disposition, but, where there is no market price, shall be deemed to have been sold at and to have realised such price as the Commissioner determines. 25

“64K. **Transitional provision for variable principal debt instruments**—Any person who holds a variable principal debt instrument on the 1st day of April 1987 and is not a cash basis holder in respect of that variable principal debt instrument shall be deemed— 30

“(a) To have derived, on that date, an amount of income equal to the amount of interest which accrued in respect of that variable principal debt instrument up to that date but that would not be assessable but for this section; and 35

“(b) Not to have derived, in respect of the period before the 1st day of April 1987, any amount of income which is assessable under sections 64B to 64M of this Act.

“64L. **Relationship with rest of Act**—Notwithstanding any other provision in this Act, where a person is required to take 40

New

into account income or expenditure in respect of a financial arrangement under sections 64B to 64M of this Act, that income or expenditure shall be calculated pursuant to those sections.

5 “64M. **Application**—Sections 64B to 64L of this Act shall not apply,—

“(a) In relation to a person and a financial arrangement, where the financial arrangement was issued or acquired by the person before the implementation date for the financial arrangement; or

10 “(b) In relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is pursuant to a binding contract in existence before the implementation date in relation to that financial arrangement; or

15 “(c) In relation to a person and a financial arrangement, where the person acquired the financial arrangement in accordance with a matrimonial agreement and the transferor, in relation to the financial arrangement, was a person to whom paragraph (a) or paragraph (b) of this section applied; or

20 “(d) In relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is pursuant to and in terms of a roll-over, extension, or advance provided for before the implementation date in relation to the financial arrangement and the roll-over, extension, or advance occurs before the first day of April 1990; or

25 “(e) To the determination of—
 “(i) Income of or expenditure incurred by a person not resident in New Zealand in relation to a financial arrangement where and to the extent that the financial arrangement does not relate to a business carried on by that person through a fixed establishment in New Zealand; or

30 “(ii) Non-resident withholding income.”

35 **3. Interpretation**—Section 2 of the principal Act is hereby amended by inserting in the definition of the term “paid” (as inserted by section 3 (1) of the Income Tax Amendment Act

New

1983), after the words “by the person”, the words “and to any amount of money specified in section 64c (1) (a) and (b) of this Act”.

4. Powers of Taxation Review Authority on determination of objection or case stated—Section 32 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 5

“(1A) Notwithstanding subsection (1) of this section, where the objection relates to a determination made pursuant to section 64E (1) of this Act, the Authority shall not make a determination or alter the determination pursuant to subsection (1) (a) or subsection (1) (b) of this section but may direct the Commissioner to alter the determination to such extent as may be necessary to conform to the decision of the Authority and with such effect as provided in section 64E (6) of this Act: 10 15

“Provided that no such fresh determination shall be issued by the Commissioner before the resolution of the appeal procedures.” 20

5. When objection may be referred in first instance to High Court—Section 33 of the principal Act is hereby amended by inserting, after subsection (11), the following subsection:

“(11A) Notwithstanding subsection (11) of this section, where the objection relates to a determination made pursuant to section 64E (1) of this Act, the High Court shall not make a determination or alter the determination pursuant to subsection (11) (a) or subsection (11) (b) of this section, but may direct the Commissioner to alter the determination to such extent as may be necessary to conform to the decision of the High Court and with such effect as provided in section 64E (5) of this Act: 25 30

“Provided that no such fresh determination shall be made by the Commissioner before the resolution of the appeal procedures.” 35

6. Objections to which this Part of this Act does not apply—Section 36 of the principal Act is hereby amended by inserting, after paragraph (ea), the following paragraphs:

New

“(eb) Any determination of the Commissioner as to whether and to what extent any person or class of persons is not required to comply with **section 104A** of this Act; or

5 “(ec) Any determination of the Commissioner as to whether and to what extent any issuer or class of issuers is not required to comply with **section 64c** of this Act; or”.

10 **7. Items included in assessable income**—Section 65 (2) of the principal Act is hereby amended by inserting, after paragraph (ja) (as inserted by section 22 of the Income Tax Amendment Act 1978), the following paragraph:

15 “(jb) Income derived or deemed to be derived under **sections 64B to 64K** of this Act.”.

20 **8. Gains and losses due to exchange variations in respect of repayment of loans**—Section 71 of the principal Act (as amended by section 3 of the Income Tax Amendment Act 1986) is hereby amended by adding the following subsection:

 “(5) This section shall not apply in respect of any financial arrangement (as defined in **section 64B** of this Act) to which **sections 64B to 64K** of this Act apply.”

25 **9. Valuation of trading stock, including livestock**—Section 85 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

 “(1) For the purposes of this section the term ‘trading stock’ includes—

30 “(a) Anything produced or manufactured; and

 “(b) Anything acquired or purchased for purposes of manufacture, sale, or exchange; and

 “(c) Livestock; and

35 “(d) Anything in respect of which expenditure is incurred after the 23rd day of October 1986 and which, if possession of that thing were taken, would be trading stock;—

but does not include—

 “(e) Land; and

New

“(f) Any financial arrangement (as defined in section 64b of this Act) to which sections 64b to 64l of this Act apply.”

10. Income derived from disposal of trading stock— 5
Section 90 (1) of the principal Act is hereby amended by adding the following paragraph and words:

“(e) Anything in respect of which expenditure is incurred after 8.30 p.m. New Zealand Standard Time on the 31st day of July 1986 and which, if possession of 10 that thing were taken, would be trading stock;— but does not include any financial arrangement (as defined in section 64b of this Act) to which sections 64b to 64l of this Act apply.”

11. Sale of trading stock for inadequate 15
consideration—Section 91 (1) of the principal Act is hereby amended by adding the following paragraph and words:

“(f) Anything in respect of which expenditure is incurred after 8.30 p.m. New Zealand Standard Time on the 31st day of July 1986 and which, if possession of 20 that thing were taken, would be trading stock;— but does not include any financial arrangement (as defined in section 64b of this Act) to which sections 64b to 64k of this Act apply.”

12. Accrual expenditure—The principal Act is hereby 25
amended by inserting, after section 104, the following section:

“104A. (1) For the purposes of this section—

“‘Accrual expenditure’, in relation to any person, means any amount of expenditure incurred on or after the 1st day of August 1986 by the person that is 30 deductible under this Act other than expenditure incurred—

“(a) In the purchase of trading stock; or

“(b) In respect of any financial arrangement; or

“(c) In respect of a lease to which sections 222A to 35 222D or section 222E of this Act apply; or

“(d) Pursuant to a binding contract entered into before 8.30 p.m. New Zealand Standard Time on the 31st day of July 1986; or”.

New

- “ ‘Financial arrangement’ has the same meaning as in section 64B (1) of this Act:
- 5 “ ‘Goods’ means all real or personal property; but does not include choses in action or money:
- “ ‘Services’ means anything which is not goods or money or a chose in action:
- “ ‘Trading stock’ has the same meaning as in section 85 of this Act.
- 10 “(2) The amount of the unexpired portion (if any) of any amount of accrual expenditure of any person to be taken into account in any income year shall be—
- “ (a) Where the expenditure relates to the purchase of goods, the amount of expenditure incurred on goods not
- 15 used in the production of assessable income:
- “ (b) Where the expenditure relates to payment for services, the amount of expenditure incurred on services not performed.
- “ (3) Where any person has incurred any accrual expenditure,
- 20 that expenditure shall be deductible when it is incurred in accordance with the provisions of this Act but the unexpired portion (if any) of that expenditure shall be taken into account in ascertaining the assessable income of the person for the income year in which that expenditure is incurred and
- 25 subsequent income years.
- “ (4) The amount of the unexpired portion of any amount of accrual expenditure of any person at the end of an income year shall be included in the assessable income of the person for the income year and such amount shall be deductible in the
- 30 following year.
- “ (5) For the purposes of this section the Commissioner may determine whether and to what extent any person or class of persons shall not be required to comply with this section in relation to any accrual expenditure incurred by the person,
- 35 having regard to—
- “ (a) The nature and amount of the kinds of accrual expenditure regularly incurred by the person or class of persons:
- “ (b) The nature and size of the activity giving rise to the item
- 40 or items of accrual expenditure incurred by the person or class of persons:

New

“(c) The costs of the person or class of persons in complying with this section in relation to the accrual expenditure incurred by the person or persons:

“(d) Whether, in respect of that person or class of persons and the item or items of accrual expenditure, the difference between expenditure that is determined under this section (other than this subsection) and expenditure that would be deductible if the discretion given to the Commissioner under this subsection were exercised, is not a material amount.

“(6) The Commissioner may at any time cancel any determination made in respect of any person or any class of persons under **subsection (5)** of this section.”

13. Certain deductions not permitted—(1) Section 106 (1) (a) of the principal Act is hereby amended by adding the words “the acquisition price of any financial arrangement (as defined in section 64B (1) of this Act) to which sections 64B to 64L of this Act applies:”.

(2) Section 106 (1) (a) of the principal Act is hereby further amended by adding the following proviso:

“Provided that this paragraph shall not deny a deduction in respect of any amount of expenditure deemed to be expenditure pursuant to **sections 64B to 64L** of this Act:”.

(3) Section 106 (1) (h) of the principal Act is hereby amended by adding the following proviso:

“Provided that for the purposes of this paragraph expenditure deemed to be incurred pursuant to **sections 64B to 64L** of this Act shall be deemed to be interest:”.

(4) Section 106 (1) of the principal Act is hereby further amended by adding the following paragraph—

“(o) Any amount in respect of which a deduction from assessable income has otherwise been made.”

14. Floating rate of interest on debentures—(1) Section 192 (1) of the principal Act is hereby amended by omitting the words “otherwise howsoever”, and substituting the words “the company’s profits, however measured”.

New

(2) Section 192 (3) of the principal Act is hereby amended by inserting, after the words “fixed relationship to”, the words “economic, commodity, industrial, or financial indices, or”.

- 5 (3) This section shall apply in relation to any debenture issued after 8.00 p.m. New Zealand Standard Time on the 23rd day of October 1986, other than a debenture issued pursuant to a binding contract entered into before that time.

15. Deduction of dividends paid on certain preference
10 **shares**—Section 194 (1) (a) of the principal Act is hereby amended by inserting, after the expression “1975”, the words “, pursuant to a binding contract entered into before 8.00 p.m. New Zealand Standard Time on the 23rd day of October 1986,”.

15 **16. Allowable deductions of building societies**—
(1) Section 194A (2) of the principal Act (as inserted by section 33 (1) of the Income Tax Act (No. 2) 1982) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

- 20 “(a) The amount of expenditure incurred by the building society in respect of money borrowed by way of withdrawable shares; and”.

(2) This section shall apply in respect of the tax on income derived in the income year that commenced on the 1st day of
25 April 1986 and in every subsequent year.

17. Interest on debentures issued in substitution for
shares—Section 195 (3) of this Act is hereby amended by omitting the words “and any other enactment”.

18. Amounts owing under convertible notes deemed to
30 **be share capital and holders deemed to be**
shareholders—Section 196 of the principal Act is hereby amended by adding the following subsection:

- 35 “(8) This section shall not apply to any convertible note issued after 8.00 p.m. New Zealand Standard Time on the 23rd day of October 1986, other than a convertible note issued pursuant to a binding contract entered into before that time.”

19. Distribution of trading stock to shareholders of
company—(1) Section 197 (1) of the principal Act is hereby

New

amended by omitting from paragraph (e) the word “applies”, and substituting the words “applies; and”.

(2) Section 197 (1) of the principal Act is hereby further amended by adding the following paragraph and words: 5

“(f) Anything in respect of which expenditure is incurred after 8.30 p.m. New Zealand Standard Time on the 31st day of July 1986 and which, if possession of that thing were taken, would be trading stock;— but does not include any financial arrangement (as defined in 10 section 64b of this Act) to which sections 64b to 64k of this Act apply”.

20. Application of this Part—Section 310 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph: 15

“(ca) Amounts which have already been included in a person’s income under sections 64b to 64l of this Act; or”.

21. Additional tax to be charged if default made in payment of tax—Section 398 (5) of the principal Act (as 20 inserted by section 40 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by adding the following proviso:

“Provided that this section shall not apply in relation to any assessment made pursuant to section 64l (5) of this Act.” 25

22. Regulations—Section 433 of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) Prescribing the procedure to be followed in applying for a determination and making any provision which 30 may be desirable in relation to the issuing or the publication of the determination or to enable the Commissioner to set fees for dealing with applications for determinations:”.