



INLAND REVENUE DEPARTMENT

PUBLIC INFORMATION BULLETIN

No. 16

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INTRODUCTION

- A public information bulletin on general matters has not been issued during November. Instead, Public Information Bulletin No. 16 contains explanatory notes on the legislation brought in by the various Amendment Acts.
- This bulletin will be of interest mainly to accountants and solicitors. It should be read together with the relevant Amendments Acts which will be obtainable at the Government Printer's bookshops.
- If you would like more information on any particular section please do not hesitate to get in touch with the nearest tax office. The Department will also supply, on request, a copy of the working notes issued to its staff. These notes give more detailed information and some examples.
- Public Information Bulletin No. 17 will be on general subjects and will give some details of the procedures connected with the withholding tax on non-residents including deduction of and accounting for the tax.

CONTENTS

- WE ARE NOT ALONE
- TAX ACTS PRODUCED ANNUALLY IN ONE VOLUME
- LAND AND INCOME TAX AMENDMENT ACT 1964
- ESTATE AND GIFT DUTIES AMENDMENT ACT 1964
- STAMP DUTIES AMENDMENT ACT 1964

WE ARE NOT ALONE

"I move, seconded by the hon. member for Charlevoix (Mr Belanger) that Bill C-95 be not now read a second time but that it be resolved that, in the opinion of this House, the said Bill should be redrafted by the counsels, advisers, experts, translators and drafters of the Department of Finance with a view to clarifying, elucidating, explicating, vulgarizing, clearing up, explaining and bringing within the understanding of all concerned the provisions of the said Bill, so as to improve the terminology, the lexicology, the phraseology and the punctuation thereof in order to avoid the complications, entanglements, uncertainties and ambiguities which tend to render the Department of National Revenue odious, despicable, despised and held in contempt by the public".

Hansard (Canada), Vol 108, No. 79, October 30, 1963, p. 4190.

Tax legislation in this country is said to be complex. While it could perhaps be cold comfort this problem is not confined to New Zealand as this extract shows.

Difficult Taxation Field

This year's Amendment Act enters a new and difficult field of taxation. The measures covered are complex but so are the circumstances with which they deal. Complex circumstances sometimes demand complex legislation.

Anyone who has a knowledge of -

- the intricacies of modern business,

OR

- the income tax laws of other countries as they affect our tax law,

would agree that effective income tax legislation must take into account a wide variety of circumstances and contingencies and define limits. Complexities arise when the legislation sets out the limits.

Legislation Simply Explained

Although some of our legislation appears to be complicated it can be set out in simple, easily understood ways. For instance Public Information Bulletin No. 10 sets out in a series of charts the complex field of tax incentives introduced in recent years. Here is an example taken from the Bulletin:

10 PER CENT INVESTMENT ALLOWANCE

WHAT IT IS	HOW IT WORKS	WHAT TO CLAIM	HOW TO CLAIM
An incentive to encourage the use of more modern equipment in agriculture and manufacturing	Permits an allowance of 10% of cost price (in addition to all other depreciation) on certain qualifying assets delivered to the taxpayers premises on or after 1 August 1963 and on or before 31 March 1966 for use by him in a manufacturing process, in certain specified activities or farming and agriculture	10% of the cost price of assets which are NEW, OWNED BY THE TAXPAYER MAKING THE CLAIM, and USED BY HIM primarily, principally and directly in manufacturing, in ancillary operations or in farming or agriculture	In tax return for year in which asset first used. Claim should be made outside books of account. Completed form IR 39A should accompany tax return for year in which allowance is claimed.

This approach will be used to explain specific aspects of the non-resident withholding tax legislation in later Public Information Bulletins. However, a simple explanation can only cover the subject in a general way. We must look to the Act for authority.

INCOME TAX ACTS NOW PRODUCED ANNUALLY IN ONE VOLUME

It is apparently not widely known that the Income Tax Acts are now produced annually in one volume complete with index. All new amendments are included in their right order within the sections. Public Information Bulletin No. 11 publicised this service which has been welcomed by accountants and students.

This service is equivalent to a consolidation and has the added advantage that if in future years it is necessary to refer to the law existing in an earlier year a ready and complete reference is available in one volume.

On Sale

The 1964 volume is on sale at the Government Printer's bookshops at Auckland, Hamilton, Wellington, Christchurch and Dunedin.

It includes -

- all amendment Acts up to and including the Land and Income Tax Amendment Act (No. 2) 1963,

AND

- an index for ready reference to the Acts

In that volume -

- new sections introduced by the Amendment Acts have been incorporated in proper order,

AND

- those sections repealed have been taken out

A 1965 Volume

Work will commence shortly on the 1965 volume. It will include new sections and amendments introduced by the extensive Land and Income Tax Amendment Act 1964. It is hoped to have this available by March 1965.

LAND AND INCOME TAX AMENDMENT ACT 1964

SECTION 1

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Short title.

APPLICATION OF ACT

SECTION 2 Except where otherwise provided, this Act relates to tax on income derived in the income year that commenced on 1 April 1964.

PART I

[Taxation of Non-Residents]

Part I of the Act consists of Sections 3 to 19.

Main Features

There are three main features -

- FIRSTLY - it increases the basic rate of ordinary income tax for non-resident companies.
- SECONDLY - it introduces a new tax - "non-resident withholding tax" - on income derived from New Zealand by non-residents.
- THIRDLY - it strengthens the tax law relating to the taxing of interest, royalties and other income arising in New Zealand.

ADDITIONAL DEFINITIONS

SECTION 3 gives definitions which are necessary to save repetition in later sections. The important definition is "FIXED ESTABLISHMENT" which sets out the conditions in which a taxpayer is deemed to carry on business in New Zealand, other than in a temporary manner.

Fixed Establishment defined

A "fixed establishment" means a fixed place of business in which substantial business is carried on by that person.

It includes -

- a branch, factory, shop or workshop where substantial business is carried on;
- a mine, quarry, oil well, or other place where natural resources are or can be exploited;
- an agricultural, pastoral or forestry property.

It excludes -

- the use of facilities solely for storing, displaying or delivering goods or merchandise belonging to the business;
- a fixed place of business maintained solely for purchasing goods or merchandise;
- a fixed place of business maintained solely for collecting information or advertising for the business.

COMPANY RATES OF ORDINARY INCOME TAX

SECTION 4 fixes the rates of tax payable by companies from the 1 April 1964. The basic rates for resident companies remain unchanged. The basic rates for companies not resident in New Zealand are increased by 5% in the £1. For non-resident companies the rate will commence at 3s6d in the £1, increasing by 1/100th of 1d on every £1 of income to £3,600 to reach the maximum rate of 9s6d on every £1 of income in excess of £3,600.

REBATES FOR NON-RESIDENT COMPANIES

SECTION 5 allows companies rebates from either

- the new 5% non-resident company tax,
- OR
- the withholding tax, in appropriate cases.

It inserts new sections 78C, 78D and 78E into the principal Act.

SECTIONS 78C AND 78D provide rebates from the 5% for -

- non-resident investment companies on income derived from development assets,

AND

- life insurance companies carrying on business in New Zealand.

These classes of taxpayer are subject to special methods of assessment which are preserved by allowing the rebates.

SECTION 78E provides for a rebate of the 15% dividend withholding tax or the 5% non-resident tax when the non-resident company in any year pays dividends to shareholders resident in New Zealand.

The following notes will assist in understanding the purpose and calculation of the rebate.

Five Points -

- The rebates apply only to NON - RESIDENT COMPANIES;
- The basic principle is that the *full* sum required for dividends paid to New Zealand resident shareholders is deemed to be met in the following order -
 - (a) out of *New Zealand dividends* derived;
 - (b) any excess over New Zealand dividends, out of *other New Zealand income*; so far as that income extends.
- In working out the rebates the 15% withholding tax on interest, royalties and "know-how" payments is deemed to include the 5% additional tax in all cases when the withholding tax is final.
- The rebate provisions cover cases when:
 - (a) the company's only New Zealand income is dividends.
 - (b) the company's New Zealand income is dividends plus other income.
 - (c) the company's New Zealand income is other than dividends.
- The purpose of the rebate is -

FIRSTLY - to rebate the 15% withholding tax deducted from New Zealand dividends on an amount equal to the dividends paid to New Zealand resident shareholders;

AND

SECONDLY - when there is any excess paid, to rebate an amount equal to 5% of the *pre - taxed* profits required to provide that excess.

"Grossing Up" Procedure

A "grossing-up" procedure is provided to arrive at the amount of pre-tax profits necessary to meet the dividend actually paid to the New Zealand resident shareholder.

When more than 50% of the non-resident company's share capital is held by New Zealand resident shareholders an alternative rebate procedure is available based on New Zealand held capital in relation to total capital.

Example of "Grossing Up"

Non-resident company derives £10,000 business income from New Zealand and pays £4,000 dividends to New Zealand resident shareholders.

Income before tax	=	£10,000
Tax -paid residue		
Ordinary income tax on £10,000 at resident company basic rate (instead of non-resident company basic rate)	=	£3,710
Social security income tax @ 1s 6d in £ on £10,000	=	£ 750
		£ 4,460
TAX PAID RESIDUE		£ 5,540

Grossing-up the £4,000 to its pre-tax figure.

<u>£4,000</u>	x	<u>10,000</u>	=	£7,220
1		5,540		

Rebate allowance would be 5% on £7,220 = £361

CONSEQUENTIAL AMENDMENTS

SECTION 6 makes amendments consequential to section 5. The effect of the amendments is to maintain the present tax position on -

- income derived by non-resident investment companies from investment in approved development projects
- reversionary bonuses paid to New Zealand policy holders by life insurance companies assessable under section 149.

The section also covers the special position of non-resident life insurance companies deriving income from New Zealand but not assessed under Section 149.

SPECIAL EXEMPTIONS FOR ABSENTEES

SECTION 7 withdraws the personal exemption of £468 at present allowed to non-resident individual taxpayers.

It will apply from 1 April 1965.

From that date, individual non-resident taxpayers will not be entitled to special exemptions, except against income earned from personal services performed on a visit to New Zealand.

Against this income they will be entitled to the proportion of all exemptions, except life insurance exemptions, based on the number of weeks for which pay was received during the income year.

A similar proportion of the £104 social security income tax exemption is also allowed.

INCOME EXEMPT FROM TAX

SECTION 8 ensures that tax will not be levied on interest from loans floated under an agreement or arrangement with the Government of New Zealand when exemption of the interest from New Zealand tax is one of the terms of the loan. It also continues the exemption of interest derived on Government Loans by non-residents when the interest is paid outside New Zealand.

ABSENTEES PAY NO SOCIAL SECURITY INCOME TAX IN SOME CASES

SECTION 9 provides that an absentee will not be liable to pay social security income tax on income from New Zealand, except income from personal services, unless he is personally present in New Zealand for more than 183 days in the year.

Previously an absentee could be liable on all income if he came to New Zealand and earned any income from personal services.

This section applies from 1 April 1965.

DIVIDENDS EXEMPT FROM INCOME TAX

SECTION 10 withdraws from 25 June 1964 the exemption from tax on dividends derived from New Zealand at present allowed to non-resident companies.

The following exemptions from the general liability are provided -

- when the dividend is declared before but derived after 26 June 1964 but is paid within a reasonable time,
- when the dividend is derived from the winding up of a company which commenced before 26 June 1964,
- when the dividend which is paid, before 31 March 1969, is from income derived up to 31 March 1964, e.g. is satisfied by a bonus issue of shares or by a credit for uncalled capital on existing shares, and the capital is to be used in the continuing interests of the business in New Zealand. This exemption may be reviewed where necessary in certain circumstances.

ITEMS INCLUDED IN ASSESSABLE INCOME

SECTION 11 inserts a new paragraph (ee) into section 88 of the principal Act to include as assessable income "know-how" payments. It will apply to all payments made from 1 April 1964 for the supply of scientific, technical, industrial or commercial knowledge or assistance in the carrying on of a business. Any payment which is wholly a reimbursement of expenses incurred by the recipient is excluded from the scope of the section.

COMMISSIONER MAY DETERMINE AMOUNT PAID FOR "KNOW-HOW"

SECTION 12 inserts a new section 88A into the principal Act to provide that when any payment is made partly for "know-how" and partly for any other purpose, the Commissioner may determine what part of the payment is assessable income. Many payments of the type mentioned in the previous section are included with payments which reimburse expenditure incurred by the recipient.

REBATE IN PROPRIETARY ASSESSMENTS

SECTION 13 provides a rebate to ensure that the 5% non-resident tax is not charged on proprietary income derived by a non-resident company from a New Zealand company. Any dividend from the proprietary company will now be subject to withholding tax and the purpose of this rebate is to avoid double taxing.

ASSESSMENT OF LIFE INSURANCE COMPANIES

SECTION 14 preserves the special method of assessment applied by section 149 of the principal Act to life insurance companies carrying on business in New Zealand, by continuing to allow the deduction of dividends derived against assessable income.

Without this section these dividends would have become liable for tax.

INCOME DEEMED TO BE DERIVED IN NEW ZEALAND

SECTION 15 amends section 167 of the principal Act so that interest on money lent outside New Zealand will have a source in New Zealand when lent to a non-resident of New Zealand provided the money is to be used in a business carried on through a fixed establishment in New Zealand and when lent to a resident except when used in a fixed establishment outside New Zealand.

Exceptions are made in the case of money lent in a banking business or in a business comprising borrowing and lending money. That profit is taxable in New Zealand as business income.

Royalties and "know-how" payments are given a source in New Zealand when paid by a resident of New Zealand except in respect of a business carried on through a fixed establishment outside New Zealand, or by a non-resident if deducted in arriving at his income which is assessable for New Zealand tax.

ASSESSMENT OF INSURANCE UNDERWRITERS

SECTION 16 preserves the rates of tax at present applicable to insurance underwriters.

PART VII C - NON-RESIDENT WITHHOLDING TAX

SECTION 17 inserts a new Part VIIC in the principal Act. This part deals exclusively with the new non-resident withholding tax and consists of new sections 203 R to 203 ZK.

DEFINITIONS

SECTION 203 R contains definitions

APPLICATION SECTION

SECTION 203 S is the application section for Part VIIC and uses the new term non-resident withholding income in describing dividends, interest and royalties derived by non-residents and subject to withholding tax.

Non-resident Companies

Dividends, interest and royalties derived by a non-resident company after 26 June 1964 are subject to withholding tax.

Non-resident Individuals

In the case of a non-resident, other than a company, these types of income derived before 1 April 1965 are not subject to withholding tax.

Annual Assessment in some Cases

When interest is derived by either a company or an individual who carries on business in New Zealand through a fixed establishment, the withholding provisions will not apply and the income will be subject to annual assessment.

More Exemptions

Further exemptions from withholding provisions are also provided for

- exempt income
- income from hiring films
- income derived by life insurance companies to which Section 149 applies
- income derived by certain mining companies
- income derived by "non-resident investment companies" from "development projects"

NON-RESIDENT WITHHOLDING TAX

SECTION 203 T makes non-residents liable to withholding tax of 15% on the gross amount of non-resident withholding income.

DEDUCTION OF NON-RESIDENT WITHHOLDING TAX

SECTION 203 U sets out the responsibility to deduct withholding tax when the income is paid in cash.

Who Makes the Deduction

Any person in New Zealand who makes the payment to a non-resident is required to withhold tax,

OR

an agent or other person in New Zealand who receives a payment without deduction of tax or with a part deduction is required to withhold the tax or the balance of tax.

Provisions is also made for an agent or other person in New Zealand of the non-resident to be advised in writing when receiving the income, that withholding tax has been deducted.

WITHHOLDING TAX ON DIVIDENDS NOT PAID IN CASH

SECTION 203 V sets out the requirements when a dividend is not paid in cash.

The company paying the dividend or an agent in New Zealand may not pay the dividend to, or in the interests of the non-resident, until the withholding tax has been paid to the Commissioner.

The Commissioner is to give written notice of payment of the tax if required by the person who has paid the tax.

COMMISSIONER MAY GRANT RELIEF FROM OR VARY DEDUCTIONS

SECTION 203 W allows the Commissioner to grant relief from or to vary the amount of deduction required. It does not affect the ultimate liability for tax.

NON-RESIDENT WITHHOLDING TAX TO BE PAID TO COMMISSIONER

SECTION 203 X requires that withholding tax is to be accounted for by 20th of month following the month in which the deduction is made. Power is given to extend the time for accounting to meet special circumstances.

ANNUAL RECONCILIATION STATEMENTS

SECTION 203 Y provides for an end of year procedure.

A reconciliation statement and supporting withholding tax certificates will in general be required not later than 20th June following the year which ends on 31 March. The Department will be happy to discuss alternative procedures.

NON-RESIDENT WITHHOLDING TAX A FINAL TAX IN SOME CASES

SECTION 203Z stipulates that the withholding tax is to be a final tax on dividends and "culture" royalties.

This means that the liability of the non-resident will be finally and exclusively determined by the 15% withholding tax.

NON-RESIDENT WITHHOLDING TAX A MINIMUM TAX IN SOME CASES

SECTION 203ZA provides that the 15% withholding tax on interest, industrial royalties and "know-how" payments will also be a final tax when

- the gross amount of interest and such royalties plus other taxable income derived by a company during the year does not exceed £500,

OR

- in the case of other companies and individual taxpayers the withholding income would not attract a greater tax liability when included in an end of year assessment.

Credit Allowed

When the withholding tax is not final, credit will be allowed for the withholding tax against further tax payable.

PERSON GETTING NON-RESIDENT WITHHOLDING INCOME TO PAY WITHHOLDING TAX

SECTION 203ZB states that if for any reason withholding tax is not deducted, provision is made for the non-resident to account for the tax by the 20th of month following payment.

The Commissioner may extend the due date for payment in special circumstances.

FAILURE TO DEDUCT

SECTION 203ZC deals with failure to deduct withholding tax.

When income is paid in cash without deduction of tax, the amount of this tax becomes a debt due by the payer to the Commissioner.

When a dividend not paid in cash is dealt with in favour of the non-resident recipient, the tax payable on the dividend becomes a debt due to the Commissioner by either the New Zealand company or agent who has not met his obligations.

The Commissioner is given dual powers to recover the tax either from the non-resident who receives the income or from the New Zealand resident mentioned above

ISSUE OF ASSESSMENTS FOR WITHHOLDING TAX

SECTION 203ZD gives authority to issue an assessment of withholding tax either to the person who receives the income or to the person who is liable to account for the tax to the Commissioner.

LATE PAYMENT PENALTY

SECTION 203ZE provides for the imposition of a 10% penalty against any person who knowingly fails to deduct withholding tax or who knowingly fails to account for this tax, or who fails to do so by the due date.

This 10% penalty is chargeable on the withholding tax not deducted or accounted for and is distinct and separate from any other penalties which might be imposed.

PENAL TAX

SECTION 203ZF provides for the imposition of penal tax up to three times the amount of the withholding tax not deducted or accounted for.

This penal tax ties in with the penal provisions in Section 231 of the principal Act. No penalty will be imposed when the circumstances are beyond the control of the taxpayer.

OFFENCES

SECTION 203ZG provides that offences are committed against the non-resident withholding provisions, when -

- there is deliberate failure to deduct withholding tax;
- OR
- withholding tax is knowingly applied for any purpose other than payment to the Commissioner

SHARES SOLD TO ASSOCIATED COMPANY

SECTION 203ZH ensures that a non-resident will not be able to avoid the dividend withholding tax by interposing a new New Zealand company between himself and an existing company, both of which are controlled by him.

INCOME DEEMED TO BE RECEIVED

SECTION 203ZI makes it clear that the person receiving the balance of income after deduction of withholding tax is deemed to have received the gross amount at the time the balance is paid to him.

APPLICATION TO PAYE LEGISLATION

SECTION 203ZJ applies to non-resident withholding tax with the necessary modifications, the provisions of the PAYE legislation relating to -

- recovery of tax;
- unpaid tax becoming a charge on property;
- agreements not to make deduction to be void

APPLICATION OF OTHER PARTS OF PRINCIPAL ACT

SECTION 203ZK is a machinery section which links the non-resident withholding tax provisions with the provisions for income tax levied under Section 77 of the principal Act.

TRANSITIONAL PROVISIONS FOR BRITISH SUBSISTING COMPANIES

SECTION 18 is a transitional provision relating to income derived by British "subsisting" companies from New Zealand in the 1965 income year.

The New Zealand/United Kingdom double tax agreement has been terminated with effect from the year of assessment commencing on 1 April 1965.

Because of the terms of the agreement dividends, royalties, and interest derived between 26 June 1964 and 31 March 1965 by such companies will not be subject to withholding tax. This income is, however, correctly taxable in New Zealand. It will be assessed after 31 March 1965 either at the equivalent of withholding tax or tax levied under Section 203 ZA.

While interest is not included in the terminated agreement it has been made subject to this assessment procedure to avoid confusion.

The following general notes should help you to understand the taxing of dividends, royalties and interest derived from New Zealand by United Kingdom residents during the year ended 31 March 1965.

SUBSISTING COMPANY RESIDENT IN UNITED KINGDOM

Dividends derived after 25 June 1964 became subject to assessment of the equivalent of withholding tax. The assessment will be issued after 1 April 1965.

The "source in New Zealand" rule (see Section 15) for royalties and interest is widened from 1 April 1964. They will be subject to assessment after 1 April 1965 but the taxing of royalties and interest derived after 25 June 1964 will be subject to the rules for withholding tax set out in Section 203 ZA.

PAYE COMPANIES AND INDIVIDUALS RESIDENT IN UNITED KINGDOM

The termination of the United Kingdom Double Tax Agreement becomes effective in respect of income deriving in the income year commencing on 1 April 1965. The Agreement therefore exempts dividends and royalties derived to 31 March 1965.

Interest received is not covered by the terminating agreement and is subject to tax as in past years. Individual taxpayers will be entitled to personal exemption of £468 against income derived to 31 March 1965.

The withholding provisions apply to dividends, royalties and interest derived by these taxpayers after 1 April 1965 and from that date the personal exemption is cancelled.

PAYMENTS MADE BEFORE ACT PASSED

SECTION 19 Provides that the withholding tax provisions will have no legal application to payments of non-resident withholding income between 26 June 1964 and the time when this Act became law.

The Commissioner is given full powers of recovery from the recipient of the income.

In practice the agency provisions in the principal Act may be used to issue assessments and recover dividend withholding tax from the payer in New Zealand.

Any person who has withheld tax is required to account for it by the 20th of the month after this Act became law.

MISCELLANEOUS AMENDMENTS TO PRINCIPAL ACT

SUPERANNUATION FUNDS – FARM WORKERS INCLUDE SHAREMILKERS

SECTION 20 deems sharefarmers more commonly known as sharemilkers to be "employees" for the purposes of approved superannuation funds such as the superannuation scheme for farm workers. An employer is also defined as the person engaging the share-milker.

The "employee" can claim a special exemption for his contributions and the employer can deduct his subsidising contributions.

TAX FREE DISTRIBUTIONS FROM COMPANIES

SECTION 21 clarifies the original intention of Section 4 (3) of the principal Act relating to tax free distributions from companies,

This amendment provides that –

- Only a realised capital profit, or capital gain, may be distributed in cash and qualify as tax free.
- A cash tax free distribution cannot be made from a mere writing up of assets. To qualify, the distribution may only be made as bonus shares or by giving credit for unpaid capital.
- Goodwill is not an asset which may be written up for the purpose of a tax free distribution.

The Section also provides that a tax free distribution may be made only once from the writing up of the value of any capital asset. In any subsequent transaction which includes the same asset the cost is deemed to include the previous write up to the extent it has been previously distributed tax free. A further tax free distribution will be permitted only to the extent of a write up in excess of this national cost.

DONATIONS AND SCHOOL FEES

SECTION 22 At present a special exemption of up to £50 is allowed for school fees and donations paid to special schools for afflicted and handicapped children and to registered private schools. To qualify, the school must *not* be run for private profit.

Section 22 extends the exemption to include tuition fees (but not donations) paid to these schools where they are run for private profit of individuals.

A further amendment includes the Volunteer Service Abroad Incorporated, in the organisations whose funds are spent overseas and which qualify as donations limited to £25 for special exemptions.

INCREASED LIFE INSURANCE EXEMPTION

SECTION 23 provides that the maximum special exemption allowable for life insurance and superannuation contributions is increased from £250 to £325 for any person who is not a contributor to the Government Superannuation Fund, or a member of a subsidised superannuation fund.

The exemption may not exceed the lesser of the premium paid or 20% of the taxpayers assessable income.

SUPERANNUATION BENEFITS PAYABLE TO CERTAIN RESIDENTS OF COOK ISLANDS AND SAMOA

Benefits from the superannuation funds maintained by the Cook Islands and Western Samoan Public Service are paid from sources in New Zealand.

SECTION 24 provides that the Benefits, paid either to the retired public servant or his dependants, will not be liable to New Zealand tax while the recipient continues to reside in those territories.

ALLOWANCES TO MEMBERS OF LOCAL OR STATUTORY BOARDS EXEMPTED FROM TAX

The allowances paid to chairmen or members of committees or other bodies constituted by statutory authority invariably include reimbursement for expenses which relate directly to the remuneration.

SECTION 25 provides that the Commissioner may fix the respective proportions of income, and the expenditure to be exempted from tax in the same manner as he fixes allowances received by other employees.

SPREADING OF INCOME ON RETIREMENT FROM FARMING

SECTION 26 provides that when a farmer sells his livestock on retirement from farming and the price exceeds the standard values he has adopted he may elect to spread the excess income over the year of sale and the three succeeding years.

The manner in which to spread the excess is at the taxpayer's option. Power is given to the Commissioner to cancel this election in exceptional circumstances. For instance, if a taxpayer dies before the income spread is completed.

These provisions are an alternative to the present Section 103 which allows taxpayers to spread excess income to preceding years.

FORCED SALES OF LIVESTOCK

SECTION 27 rewrites Section 103A of the principal Act relating to forced sales of livestock.

Principal Changes

The changes made to the original section are -

- The "assessable Excess" is now defined as the difference between sale price or other disposal price and the standard value last in use.
- The word "disaster" is replaced by the phrase "adverse event".
- Notice in the Gazette is no longer necessary and a simpler procedure of declaration by the Minister of Finance is provided.
- Replacement of livestock may be made either by purchase or from progeny bred by the taxpayer.

The section will apply to cases when stock is sold in the normal course of business but cannot be replaced at the normal time because of an adverse event.

SPECIAL DEPRECIATION

SECTION 28 extends the 20% special depreciation allowance on plant and machinery and on buildings for employee accommodation by a further year to 31 March 1966.

Special depreciation is allowable as an alternative to initial depreciation on all new farm buildings, including new additions, extensions or capital alterations to existing buildings.

Residences are specifically excluded and will not qualify for special depreciation.

To qualify the buildings must be erected or altered before 1 April 1966.

ADDITIONAL DEPRECIATION ON CAPITAL IMPROVEMENTS TO EXPORT SLAUGHTER HOUSES

Certain overseas countries have now insisted on higher standards of hygiene and inspection in meat export slaughter houses and meat packing houses.

SECTION 29 provides for an allowance of accelerated depreciation at the rate of 30% on the cost of bringing buildings to the necessary standard.

This will normally be deducted by the taxpayer at the rate of 20% in the year of expenditure and 10% in the following year, but the Commissioner may vary this write off to meet special circumstances.

INITIAL DEPRECIATION

SECTION 30 extends the allowance of the 20% initial depreciation in exactly the same manner as for special depreciation in Section 28.

INVESTMENT ALLOWANCE ON NEW MANUFACTURING PLANT OR MACHINERY

SECTION 31 extends the 10% investment allowance on new manufacturing plant and machinery by a further year to the 31 March 1966.

INVESTMENT ALLOWANCE NEW FARMING AND AGRICULTURAL PLANT AND MACHINERY

SECTION 32 The 10% investment allowance on new farming, plant and machinery is also extended to 31 March 1966.

Vehicles used exclusively for spreading lime and fertiliser on land now qualify, although although road vehicles generally do not.

20% WEST COAST INVESTMENT ALLOWANCE

Special conditions apply in the re-development area of the West Coast of the South Island.

SECTION 33 extends the 20% investment allowance to secondhand plant, machinery, buildings, or extensions to buildings provided the asset is acquired or erected between 1 April 1964 and 31 March 1967.

This special West Coast allowance may be allowed once only on a particular asset.

ADDITIONAL DEDUCTION FOR FERTILISER AND LIME

SECTION 34 extends the incentive allowance of 150% of the cost of fertiliser and lime by a further year to 1965 income year. March 1965.

When a farm is purchased during one of the five preceding years the average cost of fertiliser and lime applied in the number of complete years during which the land was farmed by the taxpayer is used for comparison purposes.

Alternatively when the land was acquired by the particular taxpayer in the current year or in the preceding year, the actual total cost of the fertiliser and lime applied by any person in the preceding year will be the base average.

A further amendment permits the Commissioner to make adjustments in unusual circumstances.

EXPORT MARKET DEVELOPMENT AND TOURIST PROMOTION EXPENDITURE

SECTION 35 extends the period of incentive allowance of the export-market development and tourist promotion of 150% of cost by a further year, to the 31 March 1966.

INCREASED EXPORTS INCENTIVE

SECTION 35A makes it clear that the "assessable income" on which the calculation of the incentive deduction for increased exports is based is the assessable income from a business of businesses in which goods are sold and not necessarily the whole assessable income of the taxpayer.

LOSSES CARRIED FORWARD BY COMPANIES

Losses may normally be carried forward for a period of six years.

In the case of companies the carry forward applied provided there was a common shareholding of at least two thirds at the end of the years of loss and subsequent profit.

SECTION 36 reduces the requirement to a common shareholding of at least 40%.

EXCESSIVE REMUNERATION PAID BY PROPRIETARY COMPANY

SECTION 37 gives legislative effect to an administrative practice. It removes the irritations arising from restrictions placed for taxation purposes on remuneration to shareholders or directors of private companies.

The section will not apply when the remuneration is paid to an adult who is employed substantially full time and participates in management, and his remuneration is not influenced by the fact of his being a relative of a shareholder or director.

INTEREST ON CONVERTIBLE NOTES

SECTION 37A provides an alternative to the existing provisions that a company which is listed on the stock exchange may deduct interest paid on convertible notes.

The deduction will be permitted in future to any company which, although not officially listed on the stock exchange, has 250 or more shareholders holding ordinary shares.

REPEAL OF SECTION 144

SECTION 38 repeals an obsolete section which has never been used.

BONUS ISSUES FROM PRE-1958 PROFITS

SECTION 39 removes the requirement that bonus shares arising from pre-1958 profits and issued tax free must be separately classified in the company accounts.

SECTION 40 is related to the previous section and removes the provision that such bonus issues would attract tax if the capital they represent is distributed within ten years of the bonus issue.

ASSESSMENT OF SHAREHOLDERS IN CO-OP DAIRY OR CO-OP MILK MARKETING COMPANIES

SECTION 41. When any excess over paid up capital is received by a shareholder in a co-operative dairy company or a co-operative milk marketing company, on realisation of his shares and is treated as income it will be treated as ordinary assessable income and not as a dividend.

COMPANIES MINING FOR SPECIFIED MINERALS

SECTION 42 includes the minerals "Asbestos", "Halloysite" and "Kaolin" in section 152 of the principal Act.

The special code for assessment under that section is to be applied to companies mining for these minerals.

EXEMPTION OF CERTAIN MINING COMPANIES FROM EXCESS RETENTION TAX

SECTION 43 clarifies the practice that excess retention tax cannot apply to certain mining companies.

EXEMPTION FROM EXCESS RETENTION TAX

At present exemption from excess retention tax may be granted to a private company which satisfies the Commissioner that retention of more than 60% of tax paid profit was necessary to purchase productive assets.

This was found to be too restrictive.

SECTION 44 provides for exemption when retention beyond 60% is shown to be necessary for the purchase of any fixed asset.

This section applies to excess retention tax currently being assessed on income derived during the year ending 31 March 1963.

RELIEF FROM EXCESS RETENTION TAX

SECTION 45 deals with excess retention tax and details many of the factors which have given rise to anomalies.

They are removed by giving the Commissioner power to release the company from or defer liability arising from such factors.

This application is the same as the previous section.

ASSESSMENTS WITH SMALL BALANCES

Many assessments for very small amounts of tax, either debit or credit, arise every year.

SECTION 46 gives power for assessments not to be issued where tax is underpaid by £1 or less or overpaid by 5 s. or less.

AMENDMENTS TO INCOME TAX ASSESSMENT ACT 1957 APPLICATION SECTION

SECTION 47 is the application section for Part III and relates to provisional tax on income for the year commencing on 1 April 1964 and subsequent years.

DEFINITION OF PAY PERIOD TAXPAYER

SECTION 48 makes pay period taxpayers those who derive income principally from salary and wages, not exceeding £1,300 instead of £1,040 as previously.

Their tax is paid by deduction at source and they are not required to furnish returns of income, except to obtain refunds of tax overpaid or when because of wrong tax codes the Commissioner is required to collect under-deductions of tax.

Taxpayers retain their present right to apply for an adjustment of tax if so desired.

NON - RESIDENT WITHHOLDING INCOME NOT PROVISIONAL INCOME

SECTION 49 ensures that non-resident withholding income, will not be liable to provisional tax.

PAYMENT OF PROVISIONAL TAX

SECTION 50 provides that provisional tax which previously was payable by instalments of $\frac{1}{2}$ of the tax by 7 September and $\frac{1}{2}$ by 7 March, will become payable by instalments of $\frac{1}{3}$ and $\frac{2}{3}$ on the same dates.

In addition a taxpayer who -

- gets more than half of his assessable income from primary production,

AND

- has a balance date later than 31 March,

AND

- can show that at least half of his gross cash income is regularly received after 7 February,

may elect to postpone payment of one half of the second instalment ($\frac{1}{3}$ of the tax) to 7 May.

INTERIM RETURNS

SECTION 51 is a consequential amendment arising from the previous section and fixes similar provisional tax payments for taxpayers who have furnished interim returns.

ESTIMATION OF PROVISIONAL TAX

SECTION 52 allows taxpayers to estimate or re-estimate provisional income up to the last date for payment of any instalment of provisional tax.

UNDER ESTIMATION PENALTIES

Provision for a penalty for under estimation of provisional income, was related to tax payable and was found unnecessarily complicated.

SECTION 53 now links the penalty to income, not tax, and gives a much wider tolerance for estimation without penalty.

Before a penalty can arise the estimate must be -

- Less than the income of the preceding year,
and
- Less than 80% of the actual income for the year.

The penalty will be calculated at 10% of the difference between -

- Tax on 80% of the actual income for the year,
and
- Tax on the estimated income.

Adjustments will be made for source deduction income received in each case.

The penalty will not be imposed when the estimate or re-estimate was genuinely made and circumstances change later.

ESTIMATES OF FINAL TAX - PROVISIONS REPEALED

SECTION 54 repeals an obsolete procedure which required a taxpayer to estimate and pay final tax

LAND AND INCOME TAX (ANNUAL) (NO 2) ACT 1964

SHORT TITLE

SECTION 1 is the short title.

RATES OF INCOME TAX

SECTION 2 fixes the rates of ordinary income tax and social security income tax for the year commencing on 1 April 1964. Rates are specified in the accompanying schedule.

RATE OF EXCESS RETENTION TAX

SECTION 3 fixes the rate of excess retention tax.

SCHEDULE

The changes in rates are -

- The 10% rebate, limited to £100, from ordinary income tax payable by individual taxpayers is continued for the full year, from 1 April 1964 to 31 March 1965. This rebate was applicable to six months only, of the preceding year.
- The basic rate of ordinary income tax for companies is increased by 5% in the £1 for non-resident companies.

ESTATE AND GIFT DUTIES AMENDMENT ACT 1964.

This Act came into force on 18 November 1964. It provides reduced rates of duty and makes some important amendments to the estate duty laws.

REDUCED RATES OF ESTATE DUTY

SECTION 2 of the Act gives effect to the statement in the Budget that Government would reduce the rates of estate duty.

Four Important Features

The important features of the new scale of rates are -

- It applies to the estates of all persons who died, on or after 25 June 1964.
- It increases the exemption limit for small estates from £2,000 to £4,000.
- It reduces the previous rates on estates between the values of £4,000 and £48,000.
- It is the same as the previous scale on estates which exceed a value of £48,000.

Pamphlet Revised

A revised edition of the Department's pamphlet "ESTATE DUTY IN NEW ZEALAND" is being printed and copies will soon be available at all district offices. The pamphlet will include a table of the new rates and examples of how they apply.

DEFINITION OF "GENERAL POWER OF APPOINTMENT"

SECTION 3 of the Act repeals the definition of "General power of appointment" in the principal Act and defines those words in wider terms.

Wider Definition

Although the previous definition enabled property over which the deceased had a power to *appoint or dispose* for his own benefit to be included in the dutiable estate it was not wide enough to include property which the deceased had power to *obtain* for his own benefit. As now defined a general power of appointment will enable property to be included in the dutiable estate if the deceased had power to *obtain or appoint or dispose* of it or to charge any sum of money upon it for his own benefit. It also makes clear that such property can be included whether the power can be exercised in writing or in any other manner

JOINT PROPERTY

SECTION 4 of the Act simplifies the law under which jointly held property can be brought into a dutiable estate.

Two Ways

Under the previous law jointly held property could be included in either of two ways. It could be included to the extent that the deceased caused it to be vested in joint ownership and in such case it was valued as at the date it was vested. In the alternative it could be brought in to the extent that the deceased could have disposed of his beneficial interest in it prior to his death. In such case the value would be that at the date of death.

A simple example will illustrate how the previous law applied -

Example

- In 1940 'A' caused property worth £5,000 to be vested in himself and 'B' as joint tenants.
- When 'A' died the property was worth £7,000.
- The property was brought into 'A's' estate at its value when it was vested, that is £5,000.
- Had the property been valued at, say, £12,000 when 'A' died one half of that amount could have been brought into his estate instead of the £5,000.

Law Simplified

The two sections in the principal Act which deal with joint tenancies have been repealed. In their place one section has been substituted and this provides that jointly held property shall be included in a dutiable estate to the extent of the value of the deceased's share or interest immediately before his death. As it applies to the example given above this means that -

- When 'A' dies and the property is worth £7,000, only one half of that amount (£3,500) can be included in his estate.

Joint Family Homes Included

The new section also applies to *Joint Family Homes*. Under the previous law the value of a Joint Family Home could be included as a joint tenancy only when the settlor of the home was the first to die and it was then brought in at its value when settled less an exemption of £3,000. For example -

- In 1957 'A' settled a property worth £5,000 on himself and his wife as a Joint Family Home.
- When 'A' died the property was brought into his estate at £5,000 less the special exemption of £3,000.
- Had 'A's' wife predeceased him nothing would have been included in her estate in respect of the Joint Family Home.

How The New Section Will Work

Under the Joint Family Homes Act 1964 each joint tenant is deemed to have a half interest in the home. It also increases the special estate duty concession from £3,000 to £4,000. Read with the new provisions in the Estate and Gift Duties Amendment Act 1964 this means that interests in Joint Family Homes will be treated for estate duty purposes as illustrated by this example -

Example

- In 1957 'A' settled a property on himself and his wife 'B' as a Joint Family Home.
- On the death of either 'A' or 'B' whoever is the first to die if the property is then worth £9,000 one half of that sum will come into his or her estate. From that figure of £4,500 will be deducted the special concession of £4,000 which leaves the net sum of £500 in the estate in respect of the Joint Family Home.
- Nothing will come into the estate of the first 'A' or 'B' to die unless one half of the value of the Joint Family Home exceeds £4,000 at the date of death.

In Force On 1 April 1965

The new provisions in respect of ALL joint tenancies come into force on 1 April 1965. This is the date that the Joint Family Homes Act 1964 also comes into force.

GROUP SUPERANNUATION FUNDS

SECTION 5 of the Act simplifies the law under which benefits from superannuation funds can be included in a dutiable estate. Liability under the section which now deals specifically with such property will depend simply on whether benefits out of or under a group superannuation scheme as defined are payable or granted on or in consequence of the death.

The concession of up to £500 a year for a widow's life or widowhood pension and the concessions for allowances made for children during minority are to continue. They will, in fact, be more widely applied because the term "group superannuation scheme" has been more widely defined. Moreover the concession for a widow's life or widowhood pension is also extended because it will now apply to a pension which arises if a husband has elected to surrender the whole or a part of his retirement allowance to provide such a pension. It is no longer necessary to have funds specially approved for the purposes of the Estate and Gift Duties Act 1955.

DISCLAIMERS NOT TO BE TREATED AS GIFT

SECTION 6 provides that a person who disclaims a gift or testamentary benefit does not thereby make a gift for the purposes of the Act. This accords with the present practice of the Department.

GIFT STATEMENTS

SECTION 7 provides that a gift statement shall be filed in respect of all gifts which exceeds £1,000 in value or which would exceed that value when aggregated with other gifts by the donor within 12 months. The previous figure was £500.

STAMP DUTIES AMENDMENT ACT 1964

This Act was passed on 18 November 1964. It effects two amendments to the present stamp duty laws. The first gives a concession on the first purchase of an "own your own" flat in circumstances where the purchaser acquires an undivided interest in the land on which the flats are built. Details of this concession were printed in Public Information Bulletin Number 7 and to help the public are reprinted in this issue. The second amendment enables sharebrokers to stamp certain transfers of shares with adhesive stamps and it is hoped that this will assist them when dealing with transfers of small lots.

STAMP DUTY ON PURCHASES OF "OWN YOUR OWN" FLATS

The concession extends that provided by Section 77 A of the Stamp Duties Act 1954 for purchases of newly erected dwelling-houses and will operate in similar manner.

Points to be noted are -

- *Scope of the Concession*

The concession applies where an undivided share of land is transferred for valuable consideration and is accompanied by an agreement which gives the purchaser a right of exclusive use and occupation of one of the flats erected or to be erected on the land.

- *Definition of "Flat" for Purposes of Concession*

For this purpose a flat is taken to mean a separate residence in a building or buildings erected or to be erected on the land *solely* as separate residences for each of more than one family. The building or buildings may include the usual appurtenances such as wash-houses or garages but must not include other large improvements such as shops or offices.

- *Purchaser Must Have First Use of Flat*

The flat must not have been lived in prior to the sale.

- *Only One Concession Can Be Allowed*

The concession cannot be granted more than once in respect of any particular flat.

- *Date From Which Concession Operates*

The concession will be given only if the date of the sale was on or after 1 December 1963. For this purpose the date of sale is taken as the date the instrument or earliest instrument of agreement of sale was executed or where there is no such instrument, the date of the instrument of transfer.

● *Evidence Required in Support of Application*

When a concession is sought the purchaser will be asked to give the Department a statutory declaration setting out -

- That under an agreement of sale (or Memorandum of Transfer as the case may be) which is dated he purchased from (vendor's name) an undivided share in the land described as (description in agreement or Transfer)
- That the building erected on the land is for separate residences only and that the only other improvements effected on the said land are (state briefly).
- That by virtue of the purchase he acquires the right of exclusive use and occupation of a separate residence in the said building being (specify).
- That such separate residence has not at any time prior to the sale been resided in by any person.
- That the unimproved value of the land as shown on the district valuation roll, a copy of which is annexed is £.....

STAMPING OF TRANSFERS OF SMALL LOTS OF SHARES BY SHAREBROKERS

Section 3 of the Amendment Act provides -

"The principal Act is hereby amended by inserting, after section 66, the following section:

66 A. Where shares are purchased through the agency of a sharebroker for full consideration of a value not exceeding twenty pounds, the instrument of transfer of those shares may either be presented for stamping by the Inland Revenue Department in accordance with Part II of this Act or be stamped with an adhesive stamp to be cancelled by that sharebroker or any of his employees within three months after and exclusive of the date of its execution."

Points to Watch

Points to be particularly noted are -

- The shares are to have been purchased through the agency of a sharebroker.
- The price is to be the full value of the shares and is not to exceed £20.
- The stamp is to be affixed within three months after the share transfer has been executed.
- The stamp is to be cancelled by the sharebroker or any of his employees.

The Rules for Cancellation of Stamps

The rules for cancelling adhesive stamps are set out in Section 45 of the Stamp Duties Act 1954. This section reads -

" 45. (1) An instrument the duty on which is required or permitted by law to be denoted by an adhesive stamp affixed otherwise than by the Inland Revenue Department is not to be deemed duly stamped unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2) When two or more adhesive stamps are used to denote the duty upon an instrument each of those stamps is to be cancelled in the manner aforesaid.

(3) Every person who, being so required by law to cancel an adhesive stamp, neglects or refuses duly and effectively to do so in the manner aforesaid shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding ten pounds."

Obligation on Company Secretaries

The authority given to sharebrokers to stamp certain transfers of shares with adhesive stamps will impose some obligation on company secretaries and others whose duty it is to register or record such transfers. This is imposed by Section 43 of the Stamp Duties Act 1954 which provides that, before transfers of shares or debentures are registered, the company and its officers must see that the transfers have been duly stamped.

The main point for company secretaries and others to observe is that transfers of shares may be stamped by a sharebroker with an adhesive stamp only if the shares have been sold through his agency for full value and for a price which does not exceed £20. The stamp duty involved in all such cases is 1/3.