



ANALYSIS

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Schedule

An Act to amend the Income Tax Act 1976

[19 December 1989]

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

1. Short Title and commencement—(1) This Act may be cited as the Income Tax Amendment Act (No. 4) 1989, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).

(2) Except as this Act otherwise provides, this Act shall come into force on the day on which it receives the Royal assent.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “herd livestock” (as inserted by section 3 of the Income Tax Amendment Act (No. 4) 1986 and amended by section 5 (1) of the Income Tax Amendment Act (No. 2) 1987), and substituting the following definition:

“ ‘Herd livestock’, in relation to any taxpayer, means any animal, being specified livestock, that,—

“(a) In relation to any of the classes of livestock set out in column 3 of the Twelfth Schedule to this Act is—

“(i) An animal of that class; and

“(ii) Owned by that taxpayer and used or intended to be used by that taxpayer or any other person primarily for the purposes of the production of progeny or wool or milk or velvet or fibre or primarily for any combination of those purposes; or

“(b) In relation to any class of male livestock not included in any of the classes set out in column 3 of the Twelfth Schedule to this Act, is owned by the taxpayer and used or intended to be used by the taxpayer or another person, where it has been shown to the satisfaction of the Commissioner that such male livestock is to be held for its useful life and is owned primarily for the purposes of the production of wool or velvet or fibre:”.

(2) The Income Tax Amendment Act (No. 2) 1987 is hereby consequentially amended by repealing section 5.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

3. Meaning of term “dividends”—(1) Section 4 (6) (a) (ii) of the principal Act (as substituted by section 31 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the word “issue”, the words “less, in the case of a taxable bonus issue made to a shareholder where an amount of resident withholding tax is deducted in respect of that taxable bonus issue in accordance with Part IXA of this Act, that amount of resident withholding tax”.

(2) This section shall come into force on the 1st day of October 1989.

4. Incomes wholly exempt from tax—(1) Section 61 of the principal Act is hereby amended by inserting in paragraph (12), after the words “Federal Republic of Germany”, the words “or the Republic of Austria”.

(2) Section 61 of the principal Act is hereby further amended by adding the following paragraph:

“(61) Any income derived by any person on or after the 1st day of October 1988 and before the 1st day of April 1989 from the Adverse Event Family Income Support Scheme where that income is provided under the South Island drought relief package:”.

(3) Section 61 of the principal Act is hereby further amended by adding the following paragraph:

“(62) Payments made to any person as compensation pursuant to the First Schedule (except clause 3 (b)) to the Crown Forest Assets Act 1989.”

(4) Section 60 (1) of the principal Act is hereby consequentially amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Adverse Event Family Income Support Scheme’ means a payment made by the Department of Social Welfare on behalf of the Ministry of Agriculture and Fisheries to farming families who are facing financial difficulties because of drought conditions:

“ ‘South Island drought relief package’ means a package approved by Cabinet for the relief of hardship due to the drought conditions that occurred during the 1988 and 1989 years which affected parts of Marlborough, Canterbury, and Otago and resulted in the parts so affected being designated by the Minister of Agriculture as a drought affected area:”.

(5) The Crown Forest Assets Act 1989 is hereby amended by repealing section 43.

(6) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

(7) Subsections (3) and (5) of this section shall be deemed to have come into force on the 25th day of October 1989.

5. Income and expenditure where financial arrangement redeemed or disposed of—(1) Section 64_F of the principal Act (as inserted by section 2 of the Income Tax Amendment Act 1987) is hereby amended by inserting, after subsection (7_B) (as inserted by section 3 of the Income Tax Amendment Act (No. 3) 1987), the following subsection:

“(7c) Where—

“(a) A person has been released from the obligation to make payment of an amount—

“(i) Under a financial arrangement by operation of section 114 of the Insolvency Act 1967; or

“(ii) Of tax or duty which is remitted or waived under any of the Inland Revenue Acts or section 114 of the Accident Compensation Act 1982; and

“(b) That amount would, but for this subsection, be taken into account in determining the assessable income of that person pursuant to sections 64_B to 64_M of this Act,—

that amount shall, for the purpose of determining the assessable income of that person, and notwithstanding the provisions of the said sections 64_B to 64_M of this Act (other than this subsection), be deemed to have been paid under that financial arrangement when the obligation to make payment has been so released.”

(2) This section 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.

6. New start grants for farmers—(1) Section 64_{FB} (1) of the principal Act (as inserted by section 37 of the Income Tax Amendment Act 1989) is hereby amended by inserting, before the definition of the term “business of farming”, the following definition:

“ ‘Adverse event’ means—

“(a) The drought conditions that occurred during the 1988 and 1989 years which affected parts of Marlborough, Canterbury, and Otago and resulted in the parts so affected being designated by the Minister of Agriculture as a drought affected area; and

“(b) The extreme rainfall conditions that occurred during the month of January 1989, which affected—

“(i) Land within a 15 kilometre radius of Kerikeri:

“(ii) Land situated outside the 15 kilometre radius which has been designated by a local arbitration committee established by the Minister of Agriculture as having been subjected to extreme rainfall conditions:”.

(2) Section 64^{FB}(1) of the principal Act (as so inserted) is hereby further amended by omitting from the definition of the term “new start grant” the words “drought relief”, and substituting the words “an adverse event”.

(3) Section 64^{FB}(2)(a) of the principal Act (as so inserted) is hereby amended by omitting the words “drought relief”, and substituting the words “an adverse event”.

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

7. Post facto adjustment—(1) Section 64^I(3)(a) of the principal Act (as inserted by section 2 of the Income Tax Amendment Act 1987) is hereby amended by omitting the expression “64c (1) (a) and (b)”, and substituting the expression “64c (1)”.

(2) This section shall be deemed to have come into force on the 16th day of December 1985 and 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.

8. Income credited in account or otherwise dealt with—(1) Section 75 (3) of the principal Act is hereby repealed.

(2) The Wool Industry Act 1977 is hereby consequentially amended by repealing so much of the First Schedule as relates to the Income Tax Act 1976.

9. Amounts remitted to be taken into account in computing income—(1) Section 78 (4) (b) of the principal Act (as inserted by section 39 of the Income Tax Amendment Act 1989) is hereby amended by omitting the words “drought relief”, and substituting the words “an adverse event (as defined by section 64^{FB} of this Act)”.

(2) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in the next 2 subsequent years.

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

“(b) In accordance with section 86A of this Act,—

“(i) Where the taxpayer has elected under subsection (2A) of this section not to value classes of immature livestock under the herd scheme, be in respect of all classes of mature herd livestock of that type owned by that taxpayer; or

“(ii) Where the taxpayer has not made an election under subsection (2A) of this section, be in respect of all classes of herd livestock of that type owned by that taxpayer.”

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

“(2A) Where any taxpayer who, before the income year commencing on the 1st day of April 1990, has elected to adopt the herd livestock scheme as provided for by section 86A of this Act,—

“(a) The taxpayer may elect for the income year that commenced on the 1st day of April 1989 and every subsequent year not to include any immature livestock classes in the herd scheme; and

“(b) Application under the provisions of this subsection shall be made in writing and furnished with the return of income for the income year that commenced on the 1st day of April 1989; and

“(c) Any election so made may be revoked in any subsequent income year and shall then be irreversible.”

(3) Section 85A (3) (d) of the principal Act (as so inserted) is hereby amended by omitting subparagraph (i), and substituting the following subparagraph:

“(i) In relation to any notice of election made by any taxpayer, where that election is—

“(A) To first apply in relation to any income year in which the taxpayer commences or recommences to derive income from any type of specified livestock that the taxpayer has not owned at any time in either of the 2 income years immediately preceding that income year; or

“(B) Is an election to value any livestock of the taxpayer in accordance with the provisions of section 86A of this Act,—

within the time within which the return of income of the taxpayer for the income year in which the election is to first apply is required to be furnished or within such further time as the Commissioner, in the Commissioner’s discretion, may allow in any case or class of cases:”.

(4) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

11. Standard value of livestock—(1) Section 86 (1) of the principal Act is hereby amended by repealing the definition of the term “deductible excess” (as amended by section 20 (1) (a) of the Income Tax Amendment Act (No. 2) 1987), and substituting the following definition:

“ ‘Deductible excess’, in relation to any taxpayer and to any livestock of the taxpayer, other than specified livestock, that was purchased by the taxpayer in any income year, means an amount equal to two-thirds of the amount (if any) that remains after deducting, from the cost price of that livestock, the standard value of that livestock in relation to that income year:”.

(2) Section 86 of the principal Act is hereby further amended—

- (a) By repealing subsection (3):
- (b) By omitting from subsection (4), in both places where they occur, the words “or, as the case may be, subsection (3)”:
- (c) By omitting from subsection (4) the words “or, as the case may be, the said subsection (3)”:
- (d) By omitting from subsection (5) (a) the words “or from specified livestock”:
- (e) By omitting from subsection (5) (a), in both places where they occur, the words “, as the case may be,”:
- (f) By omitting from subsection (5) (a) the words “or specified livestock”.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

12. Valuation of herd livestock—(1) Section 86A of the principal Act (as inserted by section 8 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended by omitting from subsection (3) the word “type”, and substituting the word “class”.

(2) Section 86A of the principal Act (as so inserted) is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Notwithstanding anything in section 85 (3) of this Act and subsection (3) of this section, where—

“(a) Any taxpayer has elected, in accordance with the provisions of section 85A of this Act, that the value of any herd livestock of that taxpayer at the end of any income year is to be determined in accordance with the provisions of this section; and

“(b) During the income year the taxpayer ceases farming or dies and the herd livestock owned by that taxpayer is sold or otherwise disposed of prior to the 1st day of January immediately preceding the declaration of the average market values pursuant to section 86D of this Act for that income year; and

“(c) In the case of—

“(i) The deceased taxpayer, the return of income of the deceased taxpayer to date of death is furnished to the Commissioner before the declaration of the average market values pursuant to section 86D of this Act for that income year; and

“(ii) The taxpayer, not being a taxpayer referred to in subparagraph (i) of this paragraph, the taxpayer has elected, in writing, to the Commissioner, prior to the 1st day of January immediately preceding the declaration of the average market values pursuant to section 86D of this Act for that income year,—

the value to be taken into account for the herd livestock shall be calculated at the value that was determined pursuant to section 86D of the principal Act for the immediately preceding income year.”

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

13. Valuation of high-priced livestock—(1) Section 86c (1) of the principal Act (as inserted by section 8 (1) of the Income Tax Amendment Act (No. 4) 1986 and amended by

section 7 of the Income Tax Amendment Act (No. 2) 1988) is hereby amended by repealing the definition of the term “high-priced livestock”, and substituting the following definition:

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

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

“(b) Equal to or greater than the amount that is 3 times (or, where that specified livestock is a sheep or a goat, 4 times) the average market value of the class of livestock (being any one of the classes of livestock set out in column 2 of the Twelfth Schedule to this Act) in which that specified livestock is able to be classified at the end of that income year, declared in accordance with the provisions of section 86D of this Act for the income year immediately preceding the income year in which the specified livestock is purchased:”.

(2) Section 86c (1) of the principal Act is hereby amended by adding the following definition:

“ ‘Used for breeding purposes’ means, in respect of male livestock, that livestock used for insemination, and, in respect of female livestock, that livestock which has given birth.”

(3) Section 86c (4) (a) of the principal Act (as so inserted) is hereby further amended by inserting, after the word “year”, the words “and not used for breeding purposes”.

(4) Section 86c (4) of the principal Act (as so inserted) is hereby further amended by repealing paragraph (b), and substituting the following paragraph:

“(b) At the end of that income year, less than one year of age,—”.

(5) The Income Tax Amendment Act (No. 2) 1988 is hereby consequentially amended by repealing section 7.

(6) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

14. Branch equivalent income calculation—(1) Section 245j of the principal Act (as inserted by section 24 of the

Income Tax Amendment Act (No. 5) 1988) is hereby amended—

- (a) By inserting in subsection (1), after the words “any accounting period”, the words “, in relation to the calculation of the attributed foreign income or attributed foreign loss of any person,”;
- (b) By omitting from the proviso to subsection (3), paragraphs (a) and (b) of subsection (4), and paragraphs (a) and (b) of subsection (5) the words “that person”, and substituting in each case the words “the person in relation to whom the calculation of the attributed foreign income or attributed foreign loss is being made”;
- (c) By inserting in the proviso to subsection (9), after the words “the person” where it first occurs, the words “in relation to whom the calculation of the attributed foreign income or attributed foreign loss is being made”.

(2) This section shall be deemed to have come into force on the 1st day of April 1988, and shall apply with respect to income derived on or after that date.

15. Interpretation (excess retention tax)—(1) Section 246 (1) of the principal Act is hereby amended by repealing the definition of the term “distributable portion of the dividend income derived by a company in an accounting year” (as substituted by section 42 (1) of the Income Tax Amendment Act (No. 5) 1988), and substituting the following definition:

“‘Distributable portion of the dividend income derived by a company in an accounting year’ means the lesser of—

“(a) The total dividend income derived by the company in that accounting year, less an amount calculated in accordance with the following formula:

$$\frac{a + b}{c}$$

where—

- a is the amount of all imputation credits and dividend withholding payment credits attached to dividends derived by the company during the accounting year; and

- b is the sum of all amounts of dividend withholding payment (as defined in section 394zk of this Act) paid by the company during the accounting year; and
- c is the highest rate specified in Part B of the First Schedule to this Act for the income year to which the company's accounting year corresponds (being that rate expressed as a percentage):

“(b) The amount of dividends (exclusive of imputation credits and dividend withholding payment credits attached to those dividends) derived by the company during the accounting year, less the amount of dividends (exclusive of imputation credits and dividend withholding payment credits attached to those dividends) paid or credited by the company in the prescribed period in relation to that accounting year:

“Provided that, where a dividend has been credited by a company in the prescribed period in relation to an accounting year of the company, that dividend shall not again be taken into account for the purposes of this definition in ascertaining the total of the dividends paid or credited by the company in the prescribed period in relation to any subsequent accounting year.”.

(2) Section 246 (1) of the principal Act is hereby further amended by repealing the definition of the term “dividends”, in relation to a company deriving a dividend, and substituting the following definition:

“‘Dividends’, in relation to a company deriving a dividend, means dividends within the meaning of section 4 (1) (a), (f) to (j), and (m) of this Act.”.

(3) Section 246 (1) of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Dividend withholding payment credit’ has the same meaning as in section 394A of this Act:

“‘Imputation credit’ has the same meaning as in section 394A of this Act.”.

(4) Section 246 (2) of the principal Act (as added by section 42 (6) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “(as those terms are defined in section 394A of this Act)”.

(5) The Income Tax Amendment Act (No. 5) 1988 is hereby consequentially amended by repealing section 42 (1).

(6) Subsections (1), (3), (4), and (5) of this section shall apply with respect to the excess retention tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

(7) Subsection (2) of this section shall apply with respect to the excess retention tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

16. Income liable to excess retention tax—(1) The principal Act is hereby amended by repealing section 250 (as amended by section 42 (7) of the Income Tax Amendment Act (No. 5) 1988), and substituting the following section:

“250. Subject to section 254 of this Act, the distributable portion of the dividend income derived by a company in an accounting year shall be deemed to be an insufficient distribution of the dividend income by the company in that accounting year, and the company shall be assessable with and liable for excess retention tax on the amount of the insufficient distribution in accordance with this Part of this Act.”

(2) The Income Tax Amendment Act (No. 5) 1988 is hereby consequentially amended by repealing section 42 (7) (a).

(3) This section shall apply with respect to the excess retention tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

17. Dividends paid in excess of distributable portion of income—Section 253 (1) (b) of the principal Act is hereby amended by inserting, after the words “6 accounting years”, the words “, being an accounting year corresponding to an income year that commenced on or before the 1st day of April 1988,”.

18. Deductions for losses—(1) Section 255 of the principal Act (as amended by section 41 of the Income Tax Amendment Act (No. 2) 1977) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Any loss of the kind referred to in that section that is incurred by a company in an accounting year shall be deducted from or set off against any total dividend income:”.

(2) Section 255 of the principal Act (as so amended) is hereby further amended by inserting in paragraphs (b) and (c), after the word “total”, in both places where it occurs, the word “dividend”.

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

19. Power of Commissioner to grant relief from excess retention tax in special cases—(1) The principal Act is hereby amended by repealing section 257.

(2) This section shall apply with respect to the excess retention tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

20. Rates of retirement tax—(1) Section 257c of the principal Act (as inserted by section 3 (1) of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by repealing paragraph (a), and substituting the following paragraphs:

“(a) In the case of a company, the taxable income of that company, increased by the amount of any dividends received and reduced by the amount of any dividends paid by that company; and

“(aa) In the case of any other taxpayer, the taxable income of that taxpayer; and”.

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

21. Deduction of resident withholding tax—(1) Section 327c (1) of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) To the extent to which that payment consists of dividends (not being a taxable bonus issue), of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

a is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to this Act; and

- b is the amount of dividend paid (before the deduction of resident withholding tax); and
 c is—

“(i) In the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or

“(ii) In the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend withholding payment credit attached to the dividend; and

“(c) To the extent to which that payment consists of dividends being a taxable bonus issue, of an amount equal to the greater of the amounts calculated in accordance with the following formulae:

$$\text{“(i) } (a \times (b + c)) - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to this Act; and
 b is the amount of the money or money’s worth offered as an alternative to the bonus issue (before the deduction of resident withholding tax); and
 c is—

“(A) In the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or

“(B) In the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend

withholding payment credit
attached to the dividend; and

$$\text{"(ii) } \left(\frac{a}{1 - a} \times b \right) - c$$

where—

- a is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to this Act; and
- b is the amount capitalised in the making of the bonus issue; and
- c is—

“(A) In the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or

“(B) In the case of any other dividend, the aggregate of the amounts of any imputation credit attached to the dividend and any dividend withholding payment credit attached to the dividend.”.

(2) Section 327c of the principal Act (as so inserted) is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where any resident withholding tax deduction is required to be made by any person (hereafter in this subsection called ‘the first person’) in accordance with this Part of this Act in relation to any payment of resident withholding income, which resident withholding income is in a currency other than New Zealand currency, that resident withholding tax deduction may be made in that foreign currency and, if so,—

“(a) For the purposes of this Act, in calculating in relation to the person deriving the resident withholding income (hereafter in this subsection called ‘the second person’) the amount of resident withholding tax deduction to be credited against income tax assessed or treated as a dividend withholding payment in accordance with this Part of this Act, the resident withholding tax deduction shall be converted into

New Zealand currency at the option of the second person either at—

“(i) The close of trading spot exchange rate on the day on which the resident withholding tax deduction was made; or

“(ii) Such exchange rate as the Commissioner may specify for this purpose in relation to the month in which the resident withholding tax deduction was made; and

“(b) For the purposes of this Act, in calculating in relation to the first person the amount of resident withholding tax deduction required to be paid to the Commissioner, the amount of resident withholding tax deduction made by the first person shall be converted into New Zealand currency at the close of trading spot exchange rate on the first working day of the month succeeding the month in which the resident withholding tax deduction is made.”

(3) Section 327c of the principal Act (as so inserted) is hereby further amended by repealing subsection (5), and substituting the following subsection:

“(5) Notwithstanding subsection (4) (b) of this section, any person who makes a payment of resident withholding income, being interest, and—

“(a) Is either—

“(i) A person who does not hold at the time of payment a valid certificate of exemption; or

“(ii) A person who holds at the time of payment a certificate of exemption issued in accordance with paragraph (h) or paragraph (i) of section 327M (1) of this Act or in accordance with section 327M (12) of this Act; and

“(b) Has made payments of resident withholding income, being interest, totalling less than \$5,000 in the year immediately preceding the year during which the time of payment falls; and

“(c) Is a person who, but for the application of this subsection, would be liable to deduct resident withholding tax from that payment,—

shall be liable to deduct resident withholding tax from that payment only if that payment exceeds (when aggregated with earlier payments of resident withholding income, being interest, paid by that person in the year in which the time of payment falls) a total of \$5,000.”

(4) Section 327c(7) (as so inserted) is hereby further amended—

(a) By inserting in paragraph (c) (vi), before the words “The first person”, the words “In any case where the second person is a person to whom any of paragraphs (a) to (c) of section 327M(1) of this Act applies and the payment is not interest or dividends derived by the second person as trustee holding an asset on behalf of some third person,”;

(b) By inserting in paragraph (d), after the words “section 63(3) of this Act) and”, the words “, in any case where the second person is a person to whom any of paragraphs (a) to (c) of section 327M(1) of this Act applies and the payment is not dividends derived by the second person as trustee holding an asset on behalf of some third person,”.

(5) Section 327c(8) of the principal Act (as so inserted) is hereby amended by omitting the words “that the first person could not reasonably be expected to be aware that the payment constituted resident withholding income”, and substituting the following word and paragraphs:

“that—

“(c) The first person could not reasonably be expected to be aware that the payment constituted resident withholding income; or

“(d) In any case of a payment to the extent to which it is a redemption payment, the first person could not reasonably be expected to be aware of the extent to which the payment constituted resident withholding income.”

(6) Subsections (1), (4), and (5) of this section shall come into force on the 1st day of October 1989.

22. Requirement for agents or trustees to make resident withholding tax deductions on receipt of payments—(1) Section 327D(1) of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) The recipient of the payment either—

“(i) Holds at the time of that payment a valid certificate of exemption issued to the recipient; or

“(ii) Receives that payment wholly or partly in the course of or furtherance of a taxable activity carried on by that recipient; and”.

(2) Section 327D (1) of the principal Act (as so inserted) is hereby further amended by inserting, after the words “and section 327C of this Act”, the words “, with the exception of subsection (4) (b),”.

23. Payment of deductions of resident withholding tax to Commissioner—(1) Section 327E (1) of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended—

- (a) By inserting, after the word “estimate”, the words “in relation to any year”:
 - (b) By omitting the words “month of any year”, and substituting the words “month of that year”.
- (2) Section 327E (2) of the principal Act is hereby amended—
- (a) By omitting the words “will be required”, and substituting the words “will not be required”:
 - (b) By omitting the word “less”, and substituting the word “more”:
 - (c) By omitting the words “month of any year”, and substituting the words “month of that year”.

24. Resident withholding tax deduction reconciliation statements—Section 327I (3) of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by omitting the words “30 days” in both places where they appear, and substituting in each case the words “20 working days”.

25. Certificates of exemption—(1) Section 327M (1) of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by inserting in paragraph (d), after the words “Public Trustee”, the words “or any company that would be a member of the same specified group of companies (as defined in section 191 (4) of this Act) as the Public Trustee were the Public Trustee a company for the purposes of this Act”.

(2) Section 327M (1) of the principal Act (as so inserted) is hereby further amended by adding to paragraph (e) the following words and subparagraphs:

“or any person which is—

“(iii) A solicitors’ nominee company to which rules made by the Council of the New Zealand Law Society under section 17 (2) (g) of the Law Practitioners Act 1982 apply; or

“(iv) A broker’s nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply:”.

(3) Section 327M (1) of the principal Act (as so inserted) is hereby further amended by inserting, after paragraph (e), the following paragraph:

“(ea) Any solicitor in relation to the operations of that solicitor’s trust account, being a trust account maintained in accordance with section 89 of the Law Practitioners Act 1982:”.

(4) Section 327M (1) of the principal Act (as so inserted) is hereby further amended by omitting from paragraph (h) the words “paragraphs (2), (23), (24), (25), (26), (27), (28), (29), (30), (32), (33), and (44)”, and substituting the words “paragraphs (2), (2A), (23), (24), (25), (26), (27), (28), (29), (30), (32), (33), (41), (44), and (50)”.

(5) Section 327M (11) of the principal Act (as so inserted) is hereby amended by omitting the expression “paragraph (f)”, and substituting the expression “paragraph (g)”.

(6) Section 327M (12) of the principal Act (as so inserted) is hereby amended by repealing paragraph (c).

(7) Notwithstanding any provision of Part IXA of the principal Act (as so inserted), where any person (hereafter in this subsection called the “first person”)—

(a) Is entitled by virtue of the foregoing provisions of this section to make application in accordance with section 327M of the principal Act for the issue of a certificate of exemption (as that term is defined in section 327A of the principal Act); and

(b) Makes such application on or before the 31st day of January 1990; and

(c) Is issued with a certificate of exemption as a result of such application,—

for the purposes of Part IXA of the principal Act in respect of any payment of resident withholding income made to the first person on or before the 31st day of January 1990—

(d) The first person shall be deemed to have held a certificate of exemption at all times from the 1st day of October 1989 until the 31st day of January 1990; and

(e) The payer of the payments shall be deemed to have sighted a certificate of exemption issued to the first person and to have taken reasonable steps to confirm that the first person is the person named in the certificate.

26. Amount of resident withholding tax deduction deemed to have been received—(1) Section 327ZA of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by inserting, at the beginning of paragraph (b), the words “In the case of any payment of interest or specified dividends,”.

(2) This section shall come into force on the 1st day of October 1989.

27. Disclosure of transactions in financial arrangements—Section 327ZB of the principal Act (as inserted by section 12 of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) Where, in relation to any year commencing on or after the 1st day of April 1990,—

“(a) Any person (hereafter in this section called ‘the exempt person’) holds at any time during that year a certificate of exemption; and

“(b) The exempt person, during that year,—

“(i) Acquires a financial arrangement from, or disposes of a financial arrangement to, any other person; or

“(ii) Makes a redemption payment to any other person in respect of a financial arrangement,— and that other person was not either—

“(iii) The issuer of that financial arrangement; or

“(iv) A person holding at the time of acquisition, disposition, or redemption, as the case may be, a valid certificate of exemption; and

“(c) The financial arrangement is one in relation to which interest is payable, which interest, if derived by the exempt person, would have been subject to resident withholding tax had the exempt person not held a certificate of exemption; and

“(d) In the case of a redemption payment, the redemption payment is a payment from which no deduction of resident withholding tax has been made pursuant to section 327c (8),—

the exempt person shall, in the return of income which that person is required under this Act to furnish in relation to that year, provide the Commissioner with the following information, in relation to each such other person (hereafter in this section called ‘the non-exempt person’) and each such acquisition, disposition, or redemption payment made during that year:

“(e) The full name and last known address of the non-exempt person:

“(f) The date of the acquisition, disposition, or redemption:

“(g) The consideration paid or received by the exempt person in respect of the acquisition, disposition, or redemption, exclusive of any fees:

“(h) The tax file number (if any) of the non-exempt person:

“(i) Such further information as the Commissioner may prescribe.

“(1A) For the purposes of subsection (1) of this section, except where the Commissioner otherwise requires, the information specified in paragraphs (f) to (i) of that subsection may, with respect to each such non-exempt person and that year, be provided in the form of—

“(a) Summary totals in relation to all such acquisitions:

“(b) Summary totals in relation to all such dispositions:

“(c) Summary totals in relation to all such redemptions.

“(2) Every non-exempt person who—

“(a) Enters into any acquisition or disposition of the type specified in paragraphs (b) and (c) of subsection (1) of this section; or

“(b) Receives a redemption payment of the type specified in paragraphs (b) and (d) of subsection (1) of this section,—

and who has a tax file number shall, within 10 working days of receiving any written request from the exempt person, provide the exempt person with the non-exempt person's tax file number.”

28. No right of action where obligation relieved—

Where any person (hereafter in this section referred to as the “first person”) has made a deduction from a payment in accordance with the provisions of Part IXA of the principal Act as applicable at the date of payment and by virtue of any provision of this Act the first person is relieved from the obligation to have made that deduction,—

(a) Section 327ZA of the principal Act shall apply as if that deduction were a deduction by way of resident withholding tax; and

(b) The recipient of that payment shall have no right of action against the first person as a result of such relief.

29. Determination of specified exemption—(1) Section 336BA (1) of the principal Act (as inserted by section 3 (1) of the

Income Tax Amendment Act 1985 and amended by section 69 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended—

(a) By inserting in paragraph (b), after the words “was at 50 percent of the married rate of national superannuation”, the words “by reason of the spouse of the national superannuitant being entitled to receive national superannuation,”:

(b) By inserting in paragraph (e) (iv), after the expression “paragraph (b),”, the expression “paragraph (ba),”:

(c) By inserting in paragraph (e) (v), after the expression “paragraph (b),”, the expression “paragraph (ba),”.

(2) Section 336BA (2) of the principal Act (as so inserted and as amended by section 2 (3) of the Income Tax Amendment Act (No. 4) 1985) is hereby amended by inserting, after the words “item c in paragraph (b),”, the words “item i in paragraph (ba),”.

(3) This section shall apply to the national superannuitant surcharge in respect of the other income of every national superannuitant for the income year that commenced on the 1st day of April 1989 and in every subsequent year.

30. Fringe benefit tax imposed—(1) Section 336s (2) of the principal Act (as inserted by section 57 of the Income Tax Amendment Act 1989 and amended by section 5 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by omitting the expression “clause 14”, and substituting the expression “clause 14 (b)”.

(2) This section shall apply to fringe benefit tax on fringe benefits provided or granted on or after the 1st day of April 1990.

31. Payment period—(1) Section 336zc of the principal Act (as substituted by section 6 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended—

(a) By inserting in paragraph (a), before the word “Where”, the words “Subject to paragraph (c) of this section,”:

(b) By inserting in paragraph (b), before the word “Where”, the words “Subject to paragraph (c) of this section,”.

(2) Section 336zc of the principal Act (as so substituted) is hereby further amended by adding the following paragraph:

“(c) Notwithstanding paragraphs (a) and (b) of this section, where the employer is required to pay tax deductions to the Commissioner in accordance with section 353 (1) (ac) of this Act, not later than the 5th

day of the month following the month in which that deduction was so made.”

(3) This section shall apply with respect to deductions of specified superannuation contribution withholding tax made on or after the 1st day of May 1990.

32. Furnishing of statement—(1) Section 336ZD (1) of the principal Act (as substituted by section 7 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended—

(a) By inserting in paragraph (a), before the word “Where”, the words “Subject to paragraph (c) of this subsection,”:

(b) By inserting in paragraph (b), before the word “Where”, the words “Subject to paragraph (c) of this subsection,”:

(c) By omitting from paragraph (b) the word “made,—”, and substituting the words “made; and”.

(2) Section 336ZD (1) of the principal Act (as so substituted) is hereby further amended by adding the following paragraph:

“(c) Notwithstanding paragraphs (a) and (b) of this subsection, where the employer is required to pay tax deductions to the Commissioner in accordance with section 353 (1) (ac) of this Act, not later than the 5th day of the following month in which the deduction was so made,—”.

(3) This section shall apply with respect to deductions of specified superannuation contribution withholding tax made on or after the 1st day of May 1990.

33. Failure to deduct tax—(1) Section 336ZF (b) of the principal Act (as substituted by section 8 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended—

(a) By inserting in subparagraph (i), before the word “Where”, the words “Subject to subparagraph (iii) of this paragraph,”:

(b) By inserting in subparagraph (ii), before the word “Where”, the words “Subject to subparagraph (iii) of this paragraph,”.

(2) Section 336ZF (b) of the principal Act (as so substituted) is hereby amended by adding the following subparagraph:

“(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph, where the employer is required to pay tax deductions to the Commissioner in accordance with section 353 (1) (ac) of this Act, on

the 5th day of the month following the month in which that contribution was so made.”

(3) This section shall apply with respect to deductions of specified superannuation contribution withholding tax made on or after the 1st day of May 1990.

34. Payment of tax deductions to Commissioner—

(1) Section 353 (1) of the principal Act (as substituted by section 23 (1) of the Income Tax Amendment Act (No. 2) 1986 and amended by section 9 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended—

(a) By inserting in paragraph (a), before the words “Not later than the 20th day of any month”, the words “Subject to paragraph (ac) of this subsection,”;

(b) By inserting in paragraph (ab), before the words “Not later than the 5th day of the month following a month”, the words “Subject to paragraph (ac) of this subsection,”.

(2) Section 353 (1) of the principal Act (as so substituted and amended) is hereby further amended by adding the following paragraph:

“(ac) Notwithstanding paragraphs (a) and (ab) of this subsection, where—

“(i) The employer was an employer in the preceding year, and gross tax deductions payable in that preceding year were less than \$50,000; or

“(ii) The employer was not an employer in the preceding year, until such time as gross tax deductions in the current year exceed \$50,000,—

not later than the 5th day of the month following a month in which the employer has made any such deductions (referred to hereafter in this paragraph as the deduction month), pay to the Commissioner the amount of the tax deductions, reduced by the amount of any of the credits of tax paid to employees in respect of the deduction month in accordance with section 374H of this Act, and deliver to the Commissioner a remittance certificate signed by the employer, being a certificate in a form authorised by the Commissioner and showing—

“(iii) The total amount of all source deduction payments made by the employer to employees in the deduction month before making any tax deductions; and

“(iv) The total amount of all tax deductions made from those payments; and

“(v) The total amount of all credits of tax (if any) paid to employees in the deduction month in accordance with section 374H of this Act.”

(3) Section 353 of the principal Act (as so amended) is hereby further amended by inserting, after subsection (5), the following subsections:

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

“(a) Two or more companies where the Commissioner is satisfied that, at any time during an income year, shares in any of those companies (each of those companies being referred to hereafter in this paragraph as an associated company) carrying between them—

“(i) The right to exercise not less than $66\frac{2}{3}$ percent of the voting power in the associated company; and

“(ii) The right to receive not less than $66\frac{2}{3}$ percent of any distribution of paid up capital of the associated company,—
were held directly, or through any one or more interposed companies, by or on behalf of the same persons; and

“(b) All partners in a partnership; and

“(c) All persons in whom property has become vested or to whom the control of property has passed in the case of each estate of a deceased person, or each trust or each company in liquidation or each assigned estate or each other case where property is vested or controlled in a fiduciary capacity,—

shall be deemed to be one employer.

“(5B) For the purposes of subsection (1) (ac) of this section, where at any time during an income year an employer ceases business and begins a new business, or operates 2 or more businesses simultaneously, the gross tax deductions relating to all businesses carried on by the employer shall be aggregated.”

(4) Section 353 (6) of the principal Act (as inserted by section 9 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by adding the following definition:

“‘Gross tax deductions’, in relation to any employer, means tax deductions payable by that employer in accordance with this Part of this Act in respect of source deduction payments, before deducting any

credits of tax paid to employees in accordance with section 374H of this Act.”

(5) Section 366 (1) of the principal Act (as amended by section 11 of the Income Tax Amendment Act (No. 3) 1989) is hereby consequentially amended by inserting, after the expression “paragraphs (a) and (ab)”, the expression “and (ac)”.

(6) This section shall apply with respect to tax deductions made on or after the 1st day of May 1990.

35. Employee to pay deductions to Commissioner—

(1) Section 355 of the principal Act (as amended by section 10 (1) of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Not later than the 5th day of the month next after the month in which payment of the source deduction payment or payments was made, furnish to the Commissioner a return in the prescribed form of the source deduction payment or payments; and

“(b) Unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Commissioner an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Commissioner on the 5th day of the month next after the month in which payment of the source deduction payment or payments was made.”

(2) The Income Tax Amendment Act (No. 3) 1989 is hereby consequentially amended by repealing section 10 (1).

(3) This section shall apply with respect to source deduction payments made on or after the 1st day of May 1990.

36. Family support credit of tax—(1) Section 374D (3) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986 and amended by section 12 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended—

(a) By omitting the words “each of the said eligible person and the other person”, and substituting the words “the eligible person”;

(b) By omitting the expression “50 percent of”.

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

37. Guaranteed minimum family income credit of tax—(1) Section 374E of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986 and amended by section 13 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by omitting from subsections (3) and (4) the expression “\$13,936” wherever it occurs, and substituting in each case the expression \$14,456”.

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

38. Employer to deliver credit of tax—(1) Section 374H (1) of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act 1986 and amended by section 14 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by inserting, after subsection (1A), the following subsection:

“(1B) Notwithstanding anything in subsection (1A) of this section, where any employer is required to pay tax deductions to the Commissioner in accordance with section 353 (1) (ac) of this Act, and in any month makes to any person a payment that is, or payments that, in the aggregate, are in excess of the payment or, as the case may be, the aggregate of the payments that, pursuant to the certificate of entitlement, should have been made by the employer to the person during any month, the employer and the person shall be jointly and severally liable to pay to the Commissioner an amount (referred to hereafter in this subsection as the overpayment) equal to the amount of the said excess, and the overpayment shall be deemed to have become due and payable to the Commissioner on the 5th day of the month next after the month in which the said excess arose; and to the extent of the amount of so much of any such overpayment as is paid to the Commissioner under this subsection, there shall be deemed, for the purposes of section 374F of this Act, not to have been paid to the person, during the month in relation to which the said excess arose, an amount by way of credit of tax.”

(2) Section 374H (4) of the principal Act (as so inserted and amended) is hereby amended—

(a) By inserting, after the expression “paragraph (a) or paragraph (ab)”, the expression “or paragraph (ac)”:

(b) By inserting, after the words “period (as defined in section 353 (6) of this Act)”, the words “or, as the case may be, month”.

(3) Section 374H (5) of the principal Act (as so inserted and amended) is hereby amended—

(a) By inserting, after the expression “paragraph (a) or paragraph (ab)”, the expression “or paragraph (ac):

(b) By inserting, after the words “period (as defined in section 353 (6) of this Act)”, the words “or, as the case may be, month”.

(4) Section 374H (7) of the principal Act (as so inserted and amended) is hereby amended by inserting, after the words “period (as defined in section 353 (6) of this Act)”, the words “or, as the case may be, month”.

(5) This section shall apply to payments made on or after the 1st day of May 1990 in relation to certificates of entitlement.

39. Credits arising to imputation credit account—

(1) Section 394D (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding, after paragraph (j), the following paragraph:

“(k) The amount of any resident withholding tax deduction deemed, pursuant to section 327ZA (b) of this Act, to have been derived by the company during the imputation year.”

(2) Section 394D (1) (i) of the principal Act (as so inserted) is hereby amended by adding the words “, except to the extent that the debit arises in respect of a credit arising pursuant to section 394ZZP (1) (b)”.

(3) Section 394D (2) of the principal Act (as so inserted) is hereby amended by adding, after paragraph (g), the following paragraph:

“(h) In the case of a credit referred to in paragraph (k) of that subsection, on the date that the resident withholding tax is deducted from the resident withholding income.”

(4) Subsections (1) and (3) of this section shall come into force on the 1st day of October 1989.

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

40. Debits arising to imputation credit account—

(1) Section 394E (1) (b) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988 and amended by section 62 of the Income Tax Amendment Act 1989) is hereby amended by adding the following subparagraph:

“(iv) Where the refund is in respect of income tax paid prior to the date that a debit arises under paragraph (g) of this subsection, a debit shall not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date.”.

(2) Section 394E (1) (c) of the principal Act (as so inserted) is hereby amended by adding the words “, except, to the extent that the refund is in respect of excess retention tax paid prior to the date that a debit arises under paragraph (g) of this subsection, a debit shall not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date”.

(3) Section 394E (1) (f) of the principal Act (as so inserted) is hereby amended by omitting the expression “section 394ZZP”, and substituting the expression “section 394ZZP (1) (a)”.

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

41. Further tax payable where end of year debit balance, or when company ceases to be an imputation credit account company—(1) Section 394L (4A) of the principal Act (as inserted by section 39 (3) of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by omitting the words “the sum of all such refundable excesses paid to the company on or before the date on which the relevant debit balance giving rise to the liability to further income tax is determined”, and substituting the following words “an amount calculated in accordance with the following formula:

$$a - b$$

where—

- a is the sum of all such refundable excesses paid to the company on or before the date on which the relevant debit balance giving rise to the liability for further income tax is determined; and
- b is the sum of any credits arising, in accordance with section 394C (2) (b) (i) and section 394D (1) of this Act, in the company’s imputation credit account during the imputation year in which the amount of any such refundable excess first arose as a debit to the company’s imputation credit account and during any subsequent imputation year”.

(2) This section shall be deemed to have come into force on the 1st day of April 1989.

42. Interpretation—Section 394ZK (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the definition of the term “allocation deficit debit”, the following definition:

“‘Close of trading spot exchange rate’ has the meaning assigned to that term by section 245A of this Act.”.

43. Amount of dividend withholding payment to be deducted—Section 394ZM of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the following subsection:

“(5) Where any dividend withholding payment deduction is required to be made in accordance with this Part of this Act in relation to any amount of foreign withholding payment dividend and that foreign withholding payment dividend is in a currency other than New Zealand currency, for the purposes of calculating the amount of dividend withholding payment required to be deducted and paid to the Commissioner in accordance with this Part of this Act, that foreign withholding payment dividend shall be converted into New Zealand currency either at—

“(a) The close of trading spot exchange rate on the day upon which the dividend withholding payment deduction is required to be made or, where the company required to make the dividend withholding payment deduction so elects, on the next succeeding day; or

“(b) Where the foreign withholding payment dividend has been converted for the purposes of payment into New Zealand currency at an exchange rate which is a market rate for transactions entered into at arm’s length, that exchange rate.”

44. Payment and recovery of dividend withholding payment, etc.—Section 394ZN (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the word “receives”, and substituting the words “is paid”.

45. Avoidance arrangements—The principal Act is hereby amended by inserting, after section 394zs, the following section:

“394zsa. Where the Commissioner is satisfied that an arrangement has been entered into between persons for the purpose of, or for purposes including the purpose of, avoiding

the application of this Part of this Act or of any provision of this Part, the Commissioner may, notwithstanding the arrangement, deem a payment or part of a payment that is the subject of the arrangement to be a foreign withholding payment dividend for the purposes of this Part of this Act.”

46. Credits arising to dividend withholding payment account—(1) Section 394zv of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the following subsection:

“(3) For the purposes of subsection (1) of this section, a credit shall not arise where, in accordance with section 394zn (2) of this Act, payment of all or part of a dividend withholding payment is satisfied by reducing a loss.”

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

47. Debits arising to dividend withholding payment account—(1) Section 394zw (1) (c) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the words “, except, to the extent that the refund is in respect of a dividend withholding payment paid prior to the date that a debit arises under paragraph (f) of this subsection, a debit shall not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date”.

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

48. Credits and debits arising to branch equivalent tax account of company—(1) Section 394zzp of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988 and amended by section 74 of the Income Tax Amendment Act 1989) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) There shall from time to time arise as credits to be recorded in the branch equivalent tax account of a branch equivalent tax account company the following amounts:

“(a) An amount calculated in accordance with the following formula:

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

where—

- a is the amount of income tax payable by the company for any income year of the company (being an income year commencing on or after the 1st day of April 1988); and
- b is the amount of any foreign tax credit allowed in accordance with section 245k or section 245L of this Act in calculating the income tax payable by the company for that income year; and
- c is the amount that is the lesser of—
 - “(i) The amount of any attributed foreign income derived by the company during that income year; or
 - “(ii) The taxable income of the company for that income year; and
- d is the taxable income referred to in paragraph (ii) of item c of this formula:

“(b) Where a company offsets the amount of any attributed foreign income derived by the company during an income year against any loss incurred by the company, or against the loss of a company included in the same group of companies for that income year in accordance with section 191 (5) or section 191 (7) of this Act, an amount calculated in accordance with the following formula:

$$e \times f$$

where—

- e is the amount of any attributed foreign income derived by the company during that income year that is so offset; and
- f is the rate of resident companies income tax, expressed as a percentage, stated in clause 7 of the First Schedule to this Act and applying in respect of that income year.”

(2) Section 394ZZP (3) (c) of the principal Act (as so inserted) is hereby amended by adding the words “, except, to the extent that the refund is in respect of income tax paid prior to the date that a debit arises under paragraph (d) of this subsection, a debit shall not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date”.

(3) Section 394ZZP of the principal Act (as so inserted and amended) is hereby further amended by inserting, after subsection (4), the following subsection:

“(4A) Any debits arising in the branch equivalent tax account of a branch equivalent tax account company pursuant to section 394ZZP (3) (a) of this Act shall be deemed to be satisfied first by the reduction of any credit balance in the account arising pursuant to section 394ZZP (1) (b) of this Act, insofar as any such credit balance extends, and then by the reduction of any credit balance arising pursuant to section 394ZZP (1) (a) of this Act.”

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

49. Transfer of credit to company's imputation credit account, or use of credit to reduce dividend withholding payment—(1) Section 394ZZQ of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting at the beginning of subsection (1) the words “Subject to subsection (1A) of this section,”.

(2) Section 394ZZQ of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) The election provided under subsection (1) of this section shall not apply to all or any part of the credit balance in the branch equivalent tax account of a branch equivalent tax account company to the extent that at the time the election is made the credit balance consists of any credit arising under section 394ZZP (1) (b) of this Act.”

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

50. Credits and debits arising to branch equivalent tax account of person—(1) Section 394ZZU (3) (b) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the words “, except, to the extent that the refund is in respect of income tax paid prior to the date that a debit arises under paragraph (c) of this subsection, a debit shall not arise to the extent that the amount of the refund does not exceed the amount of the debit that arises on that date”.

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

51. Interest to be charged where residual income tax exceeds provisional tax—(1) Section 398A (3) of the principal Act (as inserted by section 19 of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(ab) Who did not hold a valid certificate of exemption pursuant to section 327M (12) of this Act; and”.

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

52. Relief in cases of serious hardship—(1) Section 414 (2A) of the principal Act (as inserted by section 75 of the Income Tax Amendment Act 1989) is hereby amended by omitting the words “drought relief”, and substituting the words “an adverse event (as defined in section 64FB of this Act)”.

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

53. Discretion to grant relief in cases of financial hardship—The principal Act is hereby amended by inserting, after section 414, the following section:

“414A. (1) Subject to this section, on application for relief made in writing by or on behalf of any taxpayer who—

“(a) Is, or is likely to become, liable for payment of—

“(i) Any amount of income tax levied under section 38 of this Act in respect of the income derived by that taxpayer (whether such income is income derived or deemed to be derived under sections 64B to 64M of this Act or otherwise); or

“(ii) Any amount of fringe benefit tax; and

“(b) Is at the time of the application in financial difficulties,—the Commissioner may, in the Commissioner’s discretion, if the Commissioner considers it necessary or desirable to do so in order to maximise the net present value (calculated as at the date of application) of any recovery or likely recovery from the taxpayer of that amount of income tax or fringe benefit tax, as the case may be, or any part thereof, grant relief to the taxpayer by either or both of—

“(c) The remission of the whole or part of that amount of income tax or fringe benefit tax, as the case may be; or

“(d) Entering into an arrangement with the taxpayer for the payment of the whole or part of that amount of

income tax or fringe benefit tax, as the case may be, in 2 or more instalments.

“(2) The Commissioner may, if the Commissioner thinks fit, at any time after receipt of the application referred to in subsection (1) of this section, require any taxpayer to whom this section applies to make a return of income derived from any specified transaction or transactions, or during any specified period, and may assess the taxpayer for income tax on the income so returned and shall give notice of the assessment to the person so assessed, and subsections (3) to (6) of section 12 of this Act shall apply to such an assessment as if it were an assessment made in accordance with subsection (2) of that section.

“(3) Where—

“(a) The Commissioner has reason to believe that the information provided by the taxpayer to the Commissioner for the purposes of application of this section is misleading in any respect to an extent which, in the opinion of the Commissioner, renders it inappropriate for the Commissioner to have granted the whole or part of any relief granted under this section; or

“(b) The Commissioner receives further information relating to the taxpayer’s affairs at the date relief was granted which, in the opinion of the Commissioner, renders it inappropriate for the Commissioner to have granted the whole or part of any relief granted under this section,—

the Commissioner may, in the Commissioner’s discretion, in relation to any amount of income tax or fringe benefit tax, cancel the whole or any part of any relief granted in accordance with subsection (1) of this section, and this Act shall apply as if such relief had never been granted.

“(4) There shall be no right of objection to any decision of the Commissioner—

“(a) To grant relief in accordance with subsection (1) of this section; or

“(b) To cancel relief in accordance with subsection (3) of this section.

“(5) No amount of income tax or fringe benefit tax in excess of \$50,000 in any case shall be remitted or be subjected to an arrangement for payment by instalments under this section except with the approval of the Minister, given either specifically with respect to that case, or generally with respect to any class or classes of cases.”

54. First Schedule amended—(1) Part A of the First Schedule to the principal Act (as amended by section 15 of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by repealing clause 14, and substituting the following clause:

“14. **Retirement tax**—On the amount of—

“(a) The taxable income derived by a taxpayer and any specified superannuation contribution made by an employer to a superannuation fund, the basic rate of retirement tax for every \$1 shall be 7.5c; and

“(b) The taxable value of any fringe benefit provided or granted by an employer, the basic rate of retirement tax for every \$1 shall be 11.2c.”

(2) Part A of the First Schedule to the principal Act (as so amended) is hereby further amended by omitting from the footnote the expression “clause 14”, and substituting the expression “clause 14 (a)”.

(3) Part B of the First Schedule to the principal Act (as so amended) is hereby amended by omitting from the footnote the expression “clause 14”, and substituting the expression “clause 14 (a)”.

(4) The Income Tax Amendment Act (No. 3) 1989 is hereby amended by repealing section 15 (2).

(5) This section shall apply to—

(a) The tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year; and

(b) Fringe benefit tax on fringe benefits provided or granted on or after the 1st day of April 1990; and

(c) Specified superannuation contribution withholding tax on specified superannuation contributions made to a superannuation fund on or after the 1st day of April 1990.

55. New Twelfth Schedule substituted—(1) The principal Act is hereby amended by repealing the Twelfth Schedule (as substituted by section 40 of the Income Tax Amendment Act (No. 2) 1987 and amended by section 23 of the Income Tax Amendment Act (No. 2) 1988), and substituting the new Twelfth Schedule set out in the Schedule to this Act.

(2) Section 40 of the Income Tax Amendment Act (No. 2) 1987 and the Schedule thereto and section 23 of the Income Tax Amendment Act (No. 2) 1988 are hereby consequentially repealed.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

56. Transitional provisions in relation to provisional tax for 1990 income year—(1) For the purposes of Part XII of the principal Act, in relation to the provisional tax payable in relation to the income derived in the income year that commenced on the 1st day of April 1989 by any person (not being a person holding at any time during that income year a valid certificate of exemption issued in terms of section 327M of the principal Act), the amount of residual income tax payable by that person in respect of the income derived in the immediately preceding income year, is deemed to be an amount equal to the positive amount (if any) that remains after deducting, from the amount of the residual income tax (within the meaning of section 375 of the principal Act) in relation to that person and that immediately preceding income year, an amount calculated in accordance with the following formula:

$$a + b - c$$

where—

- a is an amount equal to one-half of the amount of income being interest (not being interest of the kinds specified in section 327B (2) (a) (i) and (iii) to (vi) of the principal Act) derived by the person during the income year that commenced on the 1st day of April 1988 multiplied by the fraction 24/100; and
- b is an amount equal to one-half of the amount of income being dividends (not being dividends of the kinds specified in section 327B (2) (b) (i) to (iii) and (v) to (vii) of the principal Act) derived by the person during the income year that commenced on the 1st day of April 1988 multiplied by the fraction 33/100; and
- c is the aggregate of—
 - (i) Any dividend withholding payment credits attached to any of the dividends included in item b of this formula in accordance with section 394ZX of the principal Act; and
 - (ii) Any imputation credits attached to any of the dividends included in item b of this formula in accordance with section 394F of the principal Act.

(2) This section shall apply with respect to the provisional tax payable in respect of the income derived in the income year that commenced on the 1st day of April 1989.

Section 55 (1)

SCHEDULE

NEW TWELFTH SCHEDULE TO PRINCIPAL ACT

"TWELFTH SCHEDULE

TYPES AND CLASSES OF LIVESTOCK

Type of Livestock Column 1	Classes of Livestock Column 2	Herd Livestock Column 3
SHEEP	Ewe hoggets	Ewe hoggets
	Ram and wether hoggets	Two-tooth ewes
	Two-tooth ewes	Mixed-age ewes
	Mixed-age ewes (rising three-year and four-year old ewes)	Rising five-year and older ewes
	Rising five-year and older ewes	Mixed-age wethers
	Mixed-age wethers	Breeding rams
	Breeding rams	
	CATTLE	Beef breeds and beef crosses:
Rising one-year heifers		Rising one-year heifers
Rising two-year heifers		Rising two-year heifers
Mixed-age cows		Mixed-age cows
Rising one-year steers and bulls		
Rising two-year steers and bulls		
Rising three-year and older steers and bulls		
Breeding bulls		Breeding bulls
Friesian and related breeds:		
Rising one-year heifers		Rising one-year heifers
Rising two-year heifers		Rising two-year heifers
Mixed-age cows		Mixed-age cows
Rising one-year steers and bulls		
Rising two-year steers and bulls		
Rising three-year and older steers and bulls		
Breeding bulls		Breeding bulls
Jersey and other dairy breeds:		
Rising one-year heifers		Rising one-year heifers
Rising two-year heifers		Rising two-year heifers
Mixed-age cows		Mixed-age cows
Rising one-year steers and bulls		
Rising two-year and older steers and bulls		
Breeding bulls		Breeding bulls

SCHEDULE—*continued*NEW TWELFTH SCHEDULE TO PRINCIPAL ACT—*continued*“TWELFTH SCHEDULE—*continued*”TYPES AND CLASSES OF LIVESTOCK—*continued*

Type of Livestock Column 1	Classes of Livestock Column 2	Herd Livestock Column 3
DEER	Red deer:	
	Rising one-year hinds	Rising one-year hinds
	Rising two-year hinds	Rising two-year hinds
	Mixed-age hinds	Mixed-age hinds
	Rising one-year stags	
	Rising two-year and older stags (non-breeding)	Rising two-year and older stags (non-breeding)
	Breeding stags	Breeding stags
	Wapiti, elk, and related crossbreeds:	
	Rising one-year hinds	Rising one-year hinds
	Rising two-year hinds	Rising two-year hinds
	Mixed-age hinds	Mixed-age hinds
	Rising one-year stags	
	Rising two-year and older stags (non-breeding)	Rising two-year and older stags (non-breeding)
	Breeding stags	Breeding stags
	Other breeds:	
Rising one-year hinds	Rising one-year hinds	
Rising two-year hinds	Rising two-year hinds	
Mixed-age hinds	Mixed-age hinds	
Rising one-year stags		
Rising two-year and older stags (non-breeding)	Rising two-year and older stags (non-breeding)	
Breeding stags	Breeding stags	
GOATS	Angora and Angora crosses (mohair producing)	
	Rising one-year does	Rising one-year does
	Mixed-age does	Mixed-age does
	Rising one-year bucks (non-breeding)/wethers	
	Bucks (non-breeding)/wethers over one year	Bucks (non-breeding)/wethers over one year
	Breeding bucks	Breeding bucks
	Other fibre and meat producing goats (Cashmere or Cashgora producing)	

SCHEDULE—*continued*NEW TWELFTH SCHEDULE TO PRINCIPAL ACT—*continued*“TWELFTH SCHEDULE—*continued*”TYPES AND CLASSES OF LIVESTOCK—*continued*

Type of Livestock Column 1	Classes of Livestock Column 2	Herd Livestock Column 3
	Rising one-year does Mixed-age does Rising one-year bucks (non-breeding)/ wethers Bucks (non-breeding)/ wethers over one year Breeding bucks	Rising one-year does Mixed-age does Bucks (non-breeding)/ wethers over one year Breeding bucks
	Milking (dairy) goats: Rising one-year does Does over one year Breeding bucks Other dairy goats	Rising one-year does Does over one year Breeding bucks
PIGS	Breeding sows less than one year of age Breeding sows over one year of age Breeding boars Weaners less than 10 weeks of age (excluding sucklings) Growing pigs 10 to 17 weeks of age (porkers/ baconers) Growing pigs over 17 weeks of age (baconers)	Breeding sows less than one year of age Breeding sows over one year of age Breeding boars”

This Act is administered in the Inland Revenue Department.