LAND AND INCOME TAX AMENDMENT (No. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Land and Income Tax Act 1954.

Clause 1 relates to the Short Title.

Clause 2 provides that the Bill, except where otherwise provided therein, will apply with respect to tax on income derived in the income year that commenced on 1 April 1968, and in every subsequent year.

Clause 3 inserts a new section 2A in the principal Act, defining the term "non-resident investment company" for the purposes of that Act.

The term is at present defined in section 86A (2) (for the purposes of that section only) as meaning a company not resident in New Zealand which derives no income from New Zealand except interest and has no investments or other assets in New Zealand except the principal money from which that interest is derived, or which is a company whose investments or assets in New Zealand are being or are to be used wholly or principally for the purposes of a development project (declared to be such by an Order in Council under that section) and consist principally of principal money from which interest is derived by the company.

The new section 2A redefines the term for the general purposes of the principal Act. A non-resident investment company is now defined as being one not resident in New Zealand which—

(a) Derives no income from New Zealand except interest, and has no investments or other assets in New Zealand except the principal money from which the interest is derived; or

(b) Is a company more than 50 percent of the value of whose total assets in New Zealand at the end of the income year is attributable to development investments (as defined in *subsection (2)* of that section).

Clause 4: Section 3 (3) of the principal Act defines the circumstances in which two companies are deemed to consist substantially of the same shareholders. The subsection provides that they are deemed to consist of substantially the same shareholders if not less than 50 percent of the paid-up capital or of the nominal value of the allotted shares in each of them is held by shareholders in the other.

No. 66—1

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This clause makes the following amendments to section 3:

(a) It provides in a new *subsection (3A)* that two companies will be deemed to consist wholly of the same shareholders if the whole of the allotted shares (except shares bearing a fixed rate of dividend only) in each of them is held in the same proportions by the same shareholders. This subsection is relevant for the purposes of the new section 141 of the principal Act (substituted by *clause 25* of this Bill).

(b) It provides in a new *subsection (3B)* that for the purposes of the existing subsection (3) (which defines the test for determining whether two companies consist substantially of the same shareholders) and of the new *subsection (3A)* (referred to above), the Commissioner shall determine the proportion of the paid-up capital or of the nominal value of the allotted capital held by each shareholder in each of those companies; and, to the extent of the lower of those proportions, the paid-up capital or nominal value of the allotted shares in each of those companies shall be deemed to be held by a shareholder in the other. The Commissioner is given a discretion to disregard small amounts of paid-up capital or allotted shares.

Clause 5 inserts a new section 3A in the principal Act defining when persons are at arm's length for the purposes of certain provisions of that Act. The new section declares that a person shall be deemed to be at arm's length with another person except in the following cases:

(a) Where both persons are companies and are both included in the same group of companies. "Group of companies" has the meaning defined in section 141 of the principal Act (as substituted by *clause 25* of this Bill).

(b) Where one of those persons is a company and the other is not a company and at least 25 percent of the paid up capital of the company is held by or on behalf of that other person or of a group consisting of that other person and any relative or relatives of that other person. "Relative" is now defined in section 2 of the principal Act (as amended by *clause 3* of the Land and Income Tax Amendment Bill, at present before the House).

(c) Where one of those persons is a relative of the other.

A partnership is not at arm's length with any person if that person is not at arm's length with any one or more of the partners.

Clause 6: Section 20 of the principal Act provides for the arbitrary assessment of income tax in cases where a business controlled by non-residents appears to produce an amount of taxable income less than the amount which might be expected to arise from that business.

This clause provides that where an amount of income which under this section would be included in the taxable income of any person is included in a return made by any other person who is assessable for and liable to pay income tax on that amount of taxable income, the Commissioner is not to apply section 20 against the first-mentioned person in respect of that amount.

Clause 7 re-enacts in an amended form section 78B of the principal Act, which relates to ordinary income tax payable by non-resident investment companies in respect of income derived from development assets. Development assets are defined as being assets which are used wholly or principally for the purposes of a project which is declared to be a development project under section 86A (3) of the present Act.

Under the present section 78B, such companies are entitled to rebates from ordinary income tax otherwise payable in respect of such income, as follows:

(a) If the amount of ordinary income tax payable by the company in respect of any income (except interest to which section 150A applies or dividends) would exceed the amount of income tax that would be payable in respect of that income if the company had derived it from a source in the country where the company is resident, the company will be entitled to a rebate of that excess.

(b) If the amount of income tax, determined under section 203z, payable in respect of any dividends would exceed the amount of income tax that would be payable in respect of those dividends if the company had derived them from a source in the country in which it is resident, the company will be entitled to a rebate of that excess.

The new section 78B provides that a non-resident investment company will be entitled to the following rebates:

(a) In respect of ordinary income tax payable in respect of interest (except interest to which section 150A applies) derived from development investments (as defined in section 2A, inserted by *clause 3* of this Bill),—

(i) Where the company and the person paying the interest are not at arm's length (as defined in section 3A of the principal Act, inserted by *clause 5* of this Bill), a rebate at the existing rate:

(ii) Where the parties are at arm's length, a rebate at the existing rate or the amount by which the ordinary income tax on that amount of interest exceeds 15 percent of the gross amount of that interest, whichever is the greater.

(b) In respect of income tax payable in respect of dividends, a rebate at the existing rate.

Clause 8 re-enacts in an amended form section 78C of the principal Act, under which non-resident investment companies are entitled to a rebate of 5 percent of so much of their taxable income as consists of income from development assets.

The only changes in the new section are consequential on the new definition of "non-resident investment company" in section 2A of the principal Act (inserted by *clause 3* of this Bill).

Clause 9 inserts a new section 78F in the principal Act providing for certain rebates from income tax in respect of profits derived by non-resident companies from the carrying on in New Zealand of undertakings which are declared to be "special development projects" for the purposes of the section.

The new section 78F provides as follows:

(a) *Subsection (4)* provides that, where the Governor-General is satisfied that any industrial undertaking which is being, or is to be, carried on in New Zealand by a non-resident company and which consists of the processing of minerals (as defined in *subsection (1)*) to the primary metal stage is, or will be, of major importance in the development of New Zealand, he may, by Order in Council, declare that undertaking to be a "special development project" for the purposes of the section. For the purpose of deciding whether any particular undertaking is to be so declared, the Governor-General is required to have regard especially to the criteria set out in *subsection (5)*.

(b) The order will apply, and accordingly the undertaking will qualify as a "special development project", only in respect of such years as are specified in the order. The scheme of the section provides for two distinct periods, namely "the first specified period" and "the second specified period" which are defined in *subsection (1)*.

"The first specified period" will commence with the year in respect of which the order first applies, and will comprise such years, not exceeding 15 in number, as are specified in the order as constituting that period.

The order may provide that the only years to which it applies are those specified therein as constituting "the first specified period". On the other hand, the order may provide for its application to extend to further years, not exceeding ten in number, and in that case such further years will constitute "the second specified period".

(c) In regard to any year comprised in "the first specified period", the effect of the rebate provided in *subsection (2)* will be that the rate of income tax payable in New Zealand by the company in respect of the profits from the undertaking will be a rate equal to the sum of—

(a) A rate equal to the company's "effective rate of domestic income tax" (as defined in *subsection (1)*), in its country of residence for the relevant year; and

(b) A rate of 7½%,—

subject to a minimum rate of 42½%, and to a maximum of the effective New Zealand rate applicable to non-resident companies.

(d) In regard to any year comprised in "the second specified period", the effect of the rebate provided in *subsection (3)* will be that the rate of income tax payable in New Zealand in respect of the profits from the undertaking will be a rate equal to the rate applicable to companies which are resident in New Zealand.

Clause 10 inserts a new *section 78c* in the principal Act providing that where in any income year a taxpayer receives a lump sum payment of arrears of pay payable in respect of a period before the commencement of the income year and arising out of a determination of the Court of Arbitration, a Government wage-fixing tribunal, or other similar body, or a recommendation of the Advisory Committee on Higher Salaries in the State Services, or a decision of the Government or any Minister, or the provision of any Act in the case of persons whose remuneration is fixed by statute, or the renegotiation of awards, the taxpayer will be entitled, at his option, to a rebate as follows:

(a) A rebate of 6c in the dollar on the amount of the retrospective pay or on the amount of his taxable income for that year, whichever is the less; or

(b) A rebate of the difference between—

(i) The aggregate of the income tax payable by the taxpayer for the income year in which the retrospective pay was received and the earlier year or years to which it relates; and

(ii) The aggregate amount that would have been payable for those years if the retrospective pay was received in the year or years to which it relates. This rebate must not be less than the rebate calculated under (a) above.

Where the date from which the increase was granted was earlier than two years before the commencement of the income year in which the retrospective pay was received, so much of the retrospective pay as relates to a period before the commencement of that year is, for the purposes of calculating the rebate under (b) above, to be apportioned equally to those two years.

This clause arises from a recommendation in the report of the Taxation Review Committee (in this explanatory note referred to as the Ross Committee). See p. 224 of its report.

Copies of the report and of the supplementary report of the Committee have been laid before Parliament. See Parliamentary Papers B. 18 and B. 18A.

Clause 11: The first $60 of income from interest or investment society dividends derived by individual taxpayers is exempt from income tax.

This clause restricts that exemption to individuals who are resident in New Zealand.

Clause 12 exempts from income tax any income from money lent which is derived by an overseas pension fund if it is exempt from income tax in the overseas country. This exemption will not apply if the money lent is used for the purposes of a business which is owned or controlled either by the persons managing or controlling that non-resident pension fund or by persons who are not at arm's length with the persons managing or controlling that pension fund.

Clause 13 inserts a new *section 88c* in the principal Act declaring that for the purposes of section 88 (b) of that Act (which includes a provision that a person's assessable income includes all allowances), the term "allowances" includes any benefit conferred on him in respect of, or in the course of, or by virtue of his employment or service or future employment or service under any agreement to sell or issue to him shares in any company.

Subsection (2) of the new section specifies the method of ascertaining the amount of that allowance for tax purposes, as follows:

(a) Where the taxpayer has acquired shares under the agreement, the amount of the allowance will be the amount by which the value of the shares at the date of acquisition exceeds the amount paid or payable for them. This amount will be deemed to have been received by him in the year in which he received the shares.

(b) Where the taxpayer has disposed of rights to shares to a person with whom he was dealing at arm's length, the amount of the allowance will be the value of the consideration for the disposition. This amount will be deemed to have been received by him in the year in which he disposed of those rights.

(c) Where the rights of the taxpayer under the agreement have, by one or more transactions between persons who were not dealing with each other at arm's length, become vested in any other person, and that person has acquired shares under the agreement, the amount of the allowance will be the amount by which the value of the shares on the date on which that person acquired them exceeded the amount paid or payable for them. That amount will be deemed to have been received by the taxpayer in the income year in which that person acquired the shares.

(d) Where the rights of the taxpayer under the agreement have become vested in a person with whom he was not dealing at arm's length, and that person has disposed of those rights to another person with whom he was dealing at arm's length, the amount of the allowance will be the value of the consideration for the disposition. That amount will be deemed to have been received by the taxpayer in the income year in which the rights were disposed of.

(e) *Subsection (3)* provides that in valuing shares to which the new section 88C applies, no account is to be taken by the Commissioner of any effect upon that value of any restrictive provisions in the agreement as to the sale or transfer of those shares.

Should the taxpayer subsequently sell any of those shares while those restrictive provisions still apply and be adversely affected, the Commissioner may make whatever adjustment is equitable to the amount of the benefit already determined and may alter an assessment at any time to give effect to the adjustment.

This section applies to benefits conferred on taxpayers under agreements entered into on or after 19 July 1968.

This clause arises from a recommendation of the Ross Committee. See Chapter 43 on p. 256 of its report, and recommendations Nos. 1 and 2 on pp. 261 and 262.

Clause 14: Section 98 (4) of the principal Act provides that the value of the trading stock of any taxpayer to be taken into account at the end of any income year shall be, at the option of the taxpayer, its cost price, its market selling value, or the price at which it can be replaced.

The effect of this clause is that where trading stock has been acquired by a company which is included in a group of companies from another company in the same group, that trading stock may, at the option of the first-mentioned company, be valued at whatever value could have been adopted by the other company.

In the new proviso to section 98 (4) added by this clause "group of companies" has the meaning defined in section 141 of the principal Act (as substituted by *clause 25* of this Bill).

Clause 15: Section 108 of the principal Act provides that contracts, agreements, or arrangements which have income tax avoidance as an objective are void. Doubts have arisen as to whether this means that they are void not only against the Commissioner but also as between the parties themselves.

The effect of this clause is that such contracts, agreements, or arrangements will be void for income tax purposes only.

This clause arises from a recommendation in the report of the Ross Committee. See para. 662 on p. 265, and a recommendation on p. 267 of the report.

Clause 16: Section 110 of the principal Act provides that, except as expressly provided in that Act, no deduction shall be made in respect of any expenditure or loss of any kind for the purpose of calculating the assessable income of any taxpayer.

This clause extends that provision to non-assessable income also.

Clause 17 inserts a new section 110A in the principal Act providing as follows:

(a) Expenditure or loss incurred in gaining or producing assessable income is to be deducted in calculating assessable income, and shall not be deducted in calculating non-assessable income.

(b) Expenditure or loss incurred in gaining or producing non-assessable income is to be deducted in calculating non-assessable income, and shall not be deducted in calculating assessable income.

(c) Assessable income is divided into two classes—dividends and income other than dividends. Any expenditure or loss incurred in gaining or producing income of one class must first be deducted in calculating assessable income of that class, and any balance shall be deducted in calculating assessable income of the other class.

Clause 18 inserts a new section 111A in the principal Act authorising the deduction of expenditure or loss incurred in gaining or producing non-assessable income.

Clause 19: Section 113 (1) of the principal Act includes a provision that, except where the principal Act otherwise provides, no deduction shall be made in respect of the repair of premises, or the repair, alteration, or supply of plant, machinery, or equipment used in the production of income, beyond the sum usually expended in any year for those purposes.

The effect of this clause is to exclude from that provision, so far as it relates to plant, machinery, or equipment, any expenditure incurred in the alteration or supply of plant, machinery, or equipment, and to limit it to expenditure incurred in repairs.

Clause 20 provides that in calculating the assessable income of any person no deduction shall be allowed in respect of any loss incurred by reason of the demolition or disposal of premises, other than temporary buildings that have been erected under a permit issued by a local authority or public authority subject to demolition or removal at the pleasure of the local authority or public authority, or have been erected at a construction site and are to be demolished or removed at or before the completion of the construction.

Clause 21 inserts a new section 114D in the principal Act enabling a special depreciation allowance to be claimed in respect of new hotels, or new extensions to existing hotels, erected to provide tourist accommodation. The allowance may not be claimed in respect of the cost of acquisition or development of land.

The allowance that may be claimed is 20 percent of the cost price, and is additional to an allowance for ordinary depreciation. Provision is made for the spread of the 20 percent allowance over 4 years.

In order to qualify for an allowance under this section, the hotel must be erected or extended pursuant to a project approved for the purposes of the section by the Minister of Finance on or after 19 July 1968 and before 1 April 1972 and before any contract has been let for the erection of the hotel or extension.

Clause 22: Section 117 (1) of the principal Act provides for the making of revised assessments where an asset in respect of which a depreciation deduction has been allowed is sold or disposed of for a consideration in excess of its depreciated value.

This clause re-enacts that subsection and adds a proviso that where the asset comprises a building (other than a temporary building, for which special provision is made by section 113 (1B), inserted by *clause 20* of this Bill), the subsection will apply only in respect of a deduction for depreciation allowed under section 114A of the principal Act, which provides for a depreciation allowance in respect of certain kinds of buildings.

Clause 23: Section 129c of the principal Act enables a taxpayer who owns shares in any company to which section 152 (mining companies) or section 153 (petroleum mining companies) of the principal Act applies to claim as a deduction, in calculating his assessable income for the income year that commenced on 1 April 1965 or any subsequent year, one-third of any amount paid by the taxpayer in that year in respect of the amount unpaid on those shares.

This clause extends those provisions to a taxpayer who owns shares in a company whose undertaking is, or is to be, in New Zealand and comprises, or is to comprise, solely or principally the activities of exploring or searching for, or mining any of the minerals referred to in section 152 or petroleum. Where the company has not within a reasonable time after the date of that payment by the taxpayer used the funds for the purposes of its business, the Commissioner may disallow the deduction and reopen the assessment at any time.

This clause is retrospective to the commencement of section 129c.

Clause 24: Subclause (1) redefines the term "residual taxable income" for the purposes of section 138 of the principal Act (which relates to proprietary companies). As the section no longer applies to shareholders other than companies, most of the existing paragraph (f) of subsection (1) has no application. The new clause also makes it clear that, in the case of such a company that is not resident in New Zealand, the term includes all income which would be included in the taxable income of the company if all the income of the company and all the income of any other proprietary company in which the first-mentioned company holds shares had been derived in New Zealand.

Subclause (3) enables relief to be given in respect of income tax paid by such a proprietary company in the country in which it is resident.

Subclause (6) provides that any objections to assessments made under section 138 in respect of income derived in any income year which ended not later than 31 March 1968 will be determined under the law in force before the passing of the Act.

Clause 25 re-enacts in an amended form section 141 of the principal Act. Under the present section 141, where two or more companies consist substantially of the same shareholders or are under the control of the same persons and the Commissioner is satisfied that the separate constitution or continuance of the companies was wholly or partly for the purpose of reducing their taxation, he may treat those companies as if they were a single company, and they will be jointly assessed and jointly and severally liable.

The new section 141 provides as follows:

(a) *Subsection (2)* defines as a group of companies two or more companies that consist wholly or substantially of the same shareholders or are under the control of the same persons.

(b) *Subsection (3)* provides that companies whose shareholders are related, but which are not in fact associated in any way and should not equitably be assessed jointly, are not to be assessed as group companies even though they come within the definition of group companies.

(c) By *subsection (4)*, income tax is payable by any company included in a group of companies at the rate applicable to a taxable income equal to the total of the taxable income and non-assessable income (excluding dividends received by one company in the group from another company in the group) of all the companies in the group.

Hon. Mr Muldoon

LAND AND INCOME TAX AMENDMENT (No. 2)

ANALYSIS

A BILL INTITULED

An Act to amend the Land and Income Tax Act 1954

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Land and Income Tax Amendment Act (No. 2) 1968, and shall be read together with and deemed part of the Land and Income Tax Act 1954* (hereinafter referred to as the principal Act).

2. Application—Except where this Act otherwise provides, this Act shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and sixty-eight, and in every subsequent year.

3. Meaning of expression "non-resident investment company"—(1) The principal Act is hereby amended by inserting, after section 2, the following section:

"2A. (1) For the purposes of this Act the expression 'non-resident investment company', in relation to any income year, means a company which is not deemed to be resident in New Zealand within the meaning or for the purposes of Part VI of this Act (not being a company of the kind referred to in subsection (1) of section 150 of this Act), and which—

"(a) Derives no income from New Zealand except interest, and has no investments or other assets in New Zealand except the principal money from which the interest is derived; or

"(b) Is a company more than fifty percent of the value of whose total assets in New Zealand at the end of the income year is attributable to development investments.

"(2) In paragraph (b) of subsection (1) of this section the expression 'development investments', in relation to a company, means investments—

"(a) Which consist—

"(i) Solely of principal money from which interest is derived by that company; or

"(ii) Of such principal money and shares in the capital of another company; and

*Reprinted 1967, Vol. 3, p. 1749
Amendment: 1968, No. 4

"(b) Which are being or are to be used wholly for the purpose of any undertaking, scheme, or work that pursuant to an Order in Council made under subsection (3) of this section is a development project for the purposes of this section; and

"(c) More than fifty percent of the total value of which is attributable to principal money from which interest is derived by that first-mentioned company.

"(3) Where the Governor-General is satisfied that any undertaking, scheme, or work (whether an industrial or commercial enterprise, the exploitation of natural resources, a building or construction project, an installation of equipment or machinery, or otherwise), or any class of undertaking, scheme, or work, is or is to be entered upon wholly or principally for the purpose of developing New Zealand or is or will be of importance in the development of New Zealand, he may, by Order in Council, declare that undertaking, scheme, or work, or, as the case may be, undertakings, schemes, or works of that class, to be a development project or, as the case may be, development projects for the purposes of this section.

"(4) For the purposes of this section the value of any asset (other than money) in New Zealand of a company at the end of an income year shall be calculated by ascertaining the cost of that asset to the company and deducting therefrom the amount of any depreciation properly allowable thereon under this Act to the company in that income year or in any earlier income year or years:

"Provided that—

"(a) Where the asset consists of trading stock within the meaning of section 98 of this Act, the value of that trading stock shall be calculated as the value thereof as taken into account at the end of that income year in calculating the assessable income of the company for that income year:

"(b) Where the asset consists of a debt, the value of that debt shall be deemed to be the amount of the principal sum thereof owing to the company at the end of that income year:

"(c) Where the asset consists of shares in the capital of another company, the value of those shares shall be deemed to be the amount paid up in respect thereof at the end of that income year.

"(5) Every reference in this section to an income year shall, where the company furnishes a return of income under section 8 of this Act for an accounting year ending with an annual balance date other than the thirty-first day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case, the provisions of this section shall, with any necessary modifications, apply accordingly.

"(6) Every Order in Council made under subsection (3) of section 86A of this Act and in force at the commencement of this section declaring any undertaking, scheme, or work, or undertakings, schemes, or works of any specified class, to be development projects for the purposes of the said section 86A shall continue in force after the commencement of this section as if it had been made under this section, and that undertaking, scheme, or work, or, as the case may be, undertakings, schemes, or works of that class shall, so long as the Order in Council continues in force, be deemed to be development projects for the purposes of this section."

(2) The following enactments are hereby consequentially repealed:

(a) Subsections (2) and (3) of section 86A of the principal Act (as inserted by section 83 of the Income Tax Assessment Act 1957 and amended by section 25 (2) of the Land and Income Tax Amendment Act (No. 2) 1958 and by subsections (2) and (3) of section 9 of the Land and Income Tax Amendment Act 1960):

(b) Subsection (2) of section 25 of the Land and Income Tax Amendment Act (No. 2) 1958:

(c) Subsections (2) and (3) of section 9 of the Land and Income Tax Amendment Act 1960.

4. Defining when two companies consist substantially or wholly of the same shareholders—Section 3 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections:

"(3A) For the purposes of this Act two companies shall be deemed to consist wholly of the same shareholders if the whole of the allotted shares (other than shares bearing a fixed rate of dividend only) in each of them is held in the same proportions by the same shareholders. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders of the last-mentioned company.

"(3B) For the purposes of subsections (3) and (3A) of this section, in determining whether two or more companies consist substantially or wholly of the same shareholders the Commissioner shall—

"(a) Determine the proportion of the paid-up capital or, as the case may be, of the nominal value of the allotted shares held by each shareholder in each of those companies; and, to the extent of the lowest of those proportions, the paid-up capital or, as the case may be, the nominal value of the allotted shares in each of those companies shall be deemed to be held by a shareholder in the other; and

"(b) Shall be entitled, in his discretion, to disregard a small amount of paid-up capital, or, as the case may be, of allotted shares held by any shareholder or two or more shareholders in those companies."

5. Defining when persons are at arm's length—(1) The principal Act is hereby further amended by inserting, after section 3, the following section:

"3A. (1) Subject to subsection (2) of this section, a person shall, for the purposes of section 78B, paragraph (kkk) of subsection (1) of section 86, and sections 88C and 203Z of this Act, be deemed to be at arm's length with any other person:

"Provided that they shall be deemed not to be at arm's length—

"(a) Where both persons are companies which are both included in the same group of companies:

"(b) Where—

"(i) One of those persons is a company and the other person is not a company; and

"(ii) Twenty-five percent or more of the paid-up capital of the company is held by or on behalf of that other person or of any group consisting of that other person and any relative or relatives of that other person:

"(c) Where one of those persons is a relative of the other.

"(2) For the purposes of section 78B, paragraph (kkk) of subsection (1) of section 86, and sections 88C and 203Z of this Act, a partnership shall be deemed not to be at arm's length with any person who pursuant to subsection (1) of this section is not at arm's length with any one or more of the partners.

"(3) For the purposes of this section, shares in one company held by another company shall be deemed to be held by the shareholders in the last-mentioned company."

6. Arbitrary assessment where business controlled by non-residents appears to produce insufficient taxable income—Section 20 of the principal Act is hereby amended by adding to subsection (1) the following proviso:

"Provided that where the Commissioner is satisfied that any amount that would, but for this proviso, be included in the taxable income of any person pursuant to the foregoing provisions of this subsection has been included in a return made by any other person who is assessable for and liable to pay income tax on that amount, the Commissioner shall not apply the said foregoing provisions in respect of the first-mentioned person in respect of that amount."

7. Income tax payable by non-resident investment companies—(1) The principal Act is hereby further amended by repealing section 78B (as inserted by section 4 of the Land and Income Tax Amendment Act 1959), and substituting the following section:

"78B. (1) Where the Commissioner is satisfied that if this section had not been passed the amount of ordinary income tax payable by a non-resident investment company in respect of any income, being income from interest (other than interest to which section 150A of the Act applies), derived by it from development investments within the meaning of section 2A of this Act would, after taking into account any rebate in respect of that ordinary income tax under section 78C of this Act, exceed the amount of income tax that would be payable by the company in respect of that income if the company had derived that income from a source in the country or territory in which the company is resident, the Commissioner shall allow, from the amount of ordinary income tax that would be payable by the company in respect of that income apart from the provisions of this section,—

"(a) In any case where the Commissioner is satisfied that the company and the person by whom that interest is paid have, at all relevant times, been persons at arm's length with each other, a rebate of—

"(i) The amount of that excess; or

"(ii) The amount by which that last-mentioned amount of ordinary income tax exceeds an amount equal to fifteen percent of the gross amount of that interest,—

whichever is the greater:

"(b) In any other case, a rebate of the amount of that excess.

"(2) Where the Commissioner is satisfied that if this section had not been passed the amount of income tax, as determined by the provisions of section 203z of this Act, payable by a non-resident investment company in respect of any dividends derived by it from development investments within the meaning of section 2A of this Act would, after taking into account any rebate in respect of that income tax under section 78E of this Act, exceed the amount of income tax that would be payable by the company in respect of those dividends if the company had derived those dividends from a source in the country or territory in which the company is resident, the Commissioner shall allow the amount of the excess as a rebate from the amount of income tax that would be payable by the company in respect of those dividends apart from the provisions of this section.

"(3) For the purposes of this section—

"'Dividend' means a dividend other than an investment society dividend:

"'Income tax' means, in respect of any country outside New Zealand, any tax which, in the opinion of the Commissioner, is substantially of the same nature as—

"(a) In relation to interest, ordinary income tax under this Act:

"(b) In relation to dividends, income tax as determined by the provisions of section 203z of this Act:

"'Paid', in relation to interest, includes credited or dealt with in the interest of or on behalf of a person."

(2) The following enactments are hereby consequentially repealed:

(a) Section 4 of the Land and Income Tax Amendment Act 1959:

(b) Subsections (1) and (4) of section 9 of the Land and Income Tax Amendment Act 1960:

(c) Paragraph (b) of subsection (1) and subsections (2) and (3) of section 6 of the Land and Income Tax Amendment Act 1964:

(d) Subsection (2) of section 32 of the Land and Income Tax Amendment Act 1966.

8. Rebate from tax payable by non-resident investment companies—The principal Act is hereby further amended by repealing section 78C (as inserted by section 5 (1) of the Land and Income Tax Amendment Act 1964), and substituting the following section:

"78C. In the assessment of every non-resident investment company, there shall be allowed from the amount of ordinary income tax that would, apart from the provisions of section 78B of this Act, be payable by the company in respect of the income derived by it in the income year, a rebate of a sum equal to five percent of so much of the taxable income of the company as consists of income from interest derived from development investments within the meaning of section 2A of this Act."

9. Rebate from tax payable by non-resident companies in respect of income from special development projects—(1) The principal Act is hereby further amended by inserting, after section 78E (as inserted by section 5 (1) of the Land and Income Tax Amendment Act 1964), the following section:

"78F. (1) For the purposes of this section—

" 'Accounting year', in relation to the income of a company, means a year ending with the date of the annual balance of the company's accounts in which that income has been derived by the company:

" 'Branch', in relation to a company which is not resident in New Zealand, means, where an agreement as defined in subsection (1) of section 203C of this Act has been made between the Government of New Zealand and the Government of the country or territory in which that company is resident, a branch which is a permanent establishment (as defined in that agreement) of that company:

" 'Effective rate of domestic income tax', in relation to a company that is not resident in New Zealand and to an accounting year, means the rate ascertained in accordance with the following formula:

$$\frac{a}{b}$$

where—

a is the total amount of income tax (expressed in terms of New Zealand currency at the rate of exchange in force on the last day of the accounting year of the company) payable by that company in the country or territory in which it is resident, in respect of the total amount of income derived by it in that accounting year, being the total amount of income upon which the total amount of income tax is levied; and

b is the total amount of income (expressed in terms of New Zealand currency at the rate of exchange aforesaid).

" 'Income tax' means,—

"(a) In respect of any country or territory outside New Zealand, any tax—

"(i) Which is payable to the central Government of that country or territory; and

"(ii) Which is, in the opinion of the Commissioner, substantially of the same nature as income tax imposed under this Part of this Act; and

"(iii) The amount of which is as calculated before the allowance of any rebates in respect of any income or of any class or classes of income and before the allowance of any credits in respect of tax paid or payable in any other country or territory;—

but does not include any additional tax for late payment of tax, or any interest or any penalty or additional tax imposed under the penal provisions of the laws of the first-mentioned country or territory:

"(b) In respect of New Zealand, income tax imposed under this Part of this Act; but does not include any additional tax for late payment of tax, or any interest or any penalty or additional tax imposed under this Act:

" 'Minerals' means—

"(a) Any of the minerals referred to in section 152 of this Act (including any mineral declared by the Minister of Finance pursuant to that section to be a qualifying mineral for the purposes of that section); and

"(b) Bauxite and alumina; and

"(c) Any other mineral from time to time declared by the Governor-General, by Order in Council, to be a mineral for the purposes of this section:

" 'The first specified period', in relation to an Order in Council made under subsection (4) of this section and to a company, means the period specified in that Order in Council as the first specified period, being a period—

"(a) Commencing with the accounting year of the company in respect of which that Order in Council first applies; and

"(b) Comprising such number of accounting years of the company, not exceeding fifteen, as are specified in that behalf in that Order in Council:

"Provided that where an undertaking which, pursuant to subsection (4) of this section, is declared to be a special development project for the purposes of this section is commenced during an accounting year and later than six months after the commencement of that accounting year, the reference to fifteen accounting years in paragraph (b) of this definition shall be deemed to be years additional to that accounting year in which the undertaking is commenced:

" 'The second specified period', in relation to an Order in Council made under subsection (4) of this section and to a company, means the period specified in that Order in Council as the second specified period, being a period—

"(a) Commencing with the accounting year of the company next succeeding the last accounting year of the company comprised in the first specified period in relation to that Order in Council; and

"(b) Comprising such number of accounting years of the company, not exceeding ten, as are specified in that behalf in that Order in Council.

"(2) Where the Commissioner is satisfied that, if this section had not been passed, the amount of income tax payable by a company that is not resident in New Zealand in respect of any taxable income derived by it from any industrial undertaking (being an undertaking that, pursuant to an Order in Council made under subsection (4) of this section, is a special development project for the purposes of this section) during any accounting year that is comprised in the first specified period in relation to that Order in Council, would, after taking into account any rebate in respect of that income tax under section 78E of this Act, exceed the sum of—

"(a) An amount ascertained in accordance with the following formula:

$$a \times b$$

where—

a is the amount of that taxable income; and

b is the company's effective rate of domestic income tax relating to that accounting year; and

"(b) An amount equal to seven and one-half percent of that taxable income,—

the Commissioner shall allow, from the amount of income tax that would be payable by the company in respect of that taxable income apart from the provisions of this section, a rebate of—

"(c) The amount of that excess; or

"(d) The amount by which that last-mentioned amount of income tax exceeds forty-two and one-half percent of that taxable income,—

whichever is the less.

"(3) Where the Commissioner is satisfied that, if this section had not been passed, the amount of income tax payable by a company that is not resident in New Zealand in respect of any taxable income derived by it from any industrial undertaking (being an undertaking that, pursuant to an Order in Council made under subsection (4) of this section, is a special development project for the purposes of this section) during any accounting year that is comprised in the second specified period in relation to that Order in Council would, after taking into account any rebate in respect of that income tax under section 78E of this Act, exceed the amount of income tax that would be payable by the company in respect of that taxable income if the company were resident in New Zealand, the Commissioner shall allow the amount of that excess as a rebate from the amount of income tax that would be payable by the company in respect of that taxable income apart from the provisions of this section.

"(4) Where the Governor-General is satisfied that any industrial undertaking (being an undertaking that consists of the processing of any minerals to the primary metal stage) carried on, or to be carried on, in New Zealand by a company that is not resident in New Zealand, through a branch of that company situated therein, is, or will be, of major importance in the development of New Zealand, he may, subject to subsection (5) of this section and upon such terms and conditions as he thinks fit, by Order in Council, declare that undertaking to be a special development project for the purposes of this section in respect of such accounting years of the company as he shall specify in that Order in Council, being—

"(a) Such accounting years, not exceeding fifteen, as he so specifies as comprising the first specified period in relation to that Order in Council; and

"(b) Such accounting years, if any, but in no case exceeding ten, as he so specifies as comprising the second specified period in relation to that Order in Council.

"(5) For the purpose of exercising his discretion under subsection (4) of this section in respect of any undertaking, the Governor-General shall have regard especially to—

"(a) The magnitude or projected magnitude of that undertaking:

"(b) The extent to which he is satisfied that—

"(i) There are, or will be, assured long-term export markets for the products of that undertaking:

"(ii) Substantial overseas exchange earnings or savings are being, or will be, effected through that undertaking:

"(iii) Substantial New Zealand resources are being, or will be, utilised in that undertaking:

"(iv) Substantial contribution to the economic and social welfare of New Zealand through desired regional development will be made by that undertaking:

"(v) A substantial source of long-term capital will be provided from outside New Zealand by that undertaking."

10. Rebate from tax payable in respect of retrospective pay—The principal Act is hereby further amended by inserting, after section 78F (as inserted by section 9 of this Act), the following section:

"78G. (1) In this section the expression 'retrospective pay', in relation to a taxpayer and to the income derived by a taxpayer in any income year, means income of any of the kinds referred to in paragraph (b) of section 88 of this Act which—

"(a) Was paid in respect of the employment or service of the taxpayer during any period or periods within any income year or years preceding the income year in which it was derived; and

"(b) Results from—

"(i) A determination made by the Court of Arbitration, the Government Service Tribunal, the Government Railways Industrial Tribunal, the Post and Telegraph Staff Tribunal, the Police Staff Tribunal, or any other similar body; or

"(ii) A recommendation of the Advisory Committee on Higher Salaries in the State Services; or

"(iii) A decision made by the Government or any Minister of the Crown in respect of any taxpayer in the service of the Crown to whom a determination or recommendation referred to in subparagraph (i) or subparagraph (ii) of this paragraph does not apply; or

"(iv) The provisions of any other enactment relating to any taxpayer whose remuneration is fixed by that enactment; or

"(v) The renegotiation of any award by any union registered under the Industrial Conciliation and Arbitration Act 1954 or the Labour Disputes Investigation Act 1913.

"(2) Subject to the provisions of this section, where the income derived by a taxpayer in any income year includes retrospective pay, there shall be allowed from the income tax payable (apart from the provisions of this section) in respect of that income a rebate of six cents for every complete dollar of either the retrospective pay or the taxable income of the taxpayer for that year, whichever is the less.

"(3) Where the taxpayer so elects, instead of the rebate calculated in accordance with subsection (2) of this section, there shall be allowed a rebate equal to—

"(a) The aggregate amount of income tax payable by the taxpayer (apart from the provisions of this section) in respect of the income derived by him in the income year in which the retrospective pay was derived and the income year or years to which that retrospective payment relates,—

less—

"(b) The aggregate amount of income tax that would be payable by the taxpayer (apart from the provisions of this section) in respect of the income derived by him in those income years if the retrospective pay had been derived in the income year or years to which it relates:

"Provided that the amount of the rebate allowed under this subsection shall in no case be less than the amount of the rebate allowed under subsection (2) of this section.

"(4) For the purposes of subsection (3) of this section—

"(a) Any retrospective pay relating to any income year earlier than the two income years immediately preceding the income year in which the retrospective pay was derived shall be deemed to relate to the said two income years, and shall be apportioned equally between those two income years:

"(b) The income tax payable or that would be payable shall be calculated as if it had been assessed under this Part of this Act."

11. Exemption of first $60 of interest and investment society dividends—(1) Section 86 of the principal Act is hereby amended by repealing paragraph (ii) of subsection (1) (as substituted by section 5 (1) of the Land and Income Tax Amendment Act 1961), and substituting the following paragraph:

"(ii) Income derived by any person (not being an absentee, or a company, or a public authority, or a Maori authority, or an unincorporated body, or a trustee assessable and liable for income tax under section 155B or section 155C or section 155D of this Act) from interest (not being interest that is exempt from income tax under any other provision of this section) or investment society dividends:

"Provided that the amount of the exemption under this paragraph in any income year shall not exceed sixty dollars of the aggregate of that income:".

(2) Section 5 of the Land and Income Tax Amendment Act 1961 is hereby consequentially repealed.

12. Certain income of overseas pension fund exempt from taxation—(1) Section 86 of the principal Act is hereby further amended by inserting in subsection (1), after paragraph (kk), the following paragraph:

"(kkk) Income derived by a non-resident pension fund which is exempt from income tax (being any tax which, in the opinion of the Commissioner, is substantially of the same nature as income tax imposed under this Part of this Act) in the country in which the persons managing or controlling the fund are resident, being income which is derived from interest:

"Provided that the exemption under this paragraph shall not apply to income derived from money lent (as defined in subsection (2) of section 167 of this Act), if the money is used for the purposes of a business which is owned or controlled either by the persons managing or controlling that non-resident pension fund or by persons who are not at arm's length with the persons managing or controlling the fund:".

(2) Section 86 of the principal Act is hereby further amended by adding to subsection (3) the following definition:

" 'Non-resident pension fund' means a provident, benefit, superannuation, or retirement fund which—

"(a) Was established and is maintained in a country or territory outside New Zealand for the sole purpose of providing superannuation benefits wholly or principally for persons who are not resident in New Zealand; and

"(b) Is managed and controlled outside New Zealand by persons who are not resident in New Zealand."

13. Benefit from share option or purchase schemes—(1) The principal Act is hereby further amended by inserting, after section 88B (as inserted by section 9 of the Land and Income Tax Amendment Act 1968), the following section:

"88C. (1) Without limiting the meaning of the term 'allowances' as used in paragraph (b) of section 88 of this Act, the said term shall include any benefit (determined in accordance with this section) conferred on any taxpayer in respect of, or in the course of, or by virtue of, his employment or service, or future employment or service, under any agreement to sell or issue shares in any company to the taxpayer.

"(2) For the purposes of this section, that benefit—

"(a) Shall, where the taxpayer has acquired shares under the agreement, be the amount by which the value of the shares on the date on which he acquired them exceeds the amount paid or to be paid therefor, and shall be deemed to have been received by him in the income year in which he acquired the shares:

"(b) Shall, where the taxpayer has transferred or otherwise disposed of rights under the agreement in respect of any or all of the shares to a person with whom he was at arm's length, be the value

of the consideration for the disposition, and shall be deemed to have been received by him in the income year in which he made the disposition:

"(c) Shall, where rights of the taxpayer under the agreement have, by one or more transactions between persons not at arm's length with each other, become vested in a person who has acquired shares under the agreement, be the amount by which the value of the shares on the date on which that person acquired them exceeds the amount paid or to be paid therefor, and shall be deemed to have been received by the taxpayer in the income year in which that person acquired the shares:

"(d) Shall, where rights of the taxpayer under the agreement have, by one or more transactions between persons not at arm's length with each other, become vested in a person who has transferred or otherwise disposed of rights under the agreement to a person with whom he was dealing at arm's length, be the value of the consideration for the disposition, and shall be deemed to have been received by the taxpayer in the income year in which that person made the disposition.

"(3) In determining the value of any shares to which this section applies, no account shall be taken by the Commissioner of the effect upon that value of any restrictive provisions, contained in the agreement under which the benefit is conferred, as to the alienation or transfer of those shares:

"Provided that where the taxpayer subsequently disposes of any of those shares at a time when those restrictive provisions still apply and is adversely affected thereby, the Commissioner may make such adjustment to the benefit determined in accordance with this section as, having regard to all the circumstances, he considers equitable, and may, notwithstanding anything to the contrary in section 24 of this Act, alter any assessment accordingly.

"(4) For the purposes of this section the term 'shares' includes any convertible note as defined in subsection (1) of section 143A of this Act.

"(5) For the purposes of this section, where any shares are held by a trustee for the benefit of a taxpayer or any relative of the taxpayer, whether absolutely or contingently, the taxpayer shall be deemed to have acquired the shares at the time when the trustee commenced to hold them.

"(6) This section shall apply whether or not the taxpayer is in the employment or service in respect of, or in the course of, or by virtue of which, the benefit was conferred, on the date on which the benefit is deemed to have been received by him."

(2) This section shall apply with respect to every benefit conferred on any taxpayer under an agreement entered into on or after the nineteenth day of July, nineteen hundred and sixty-eight.

14. Valuation of trading stock acquired from another company in the same group—Section 98 of the principal Act is hereby amended by adding to subsection (4) the following proviso:

"Provided that where the taxpayer is a company included in a group of companies, the value of the trading stock of the taxpayer to be taken into account at the end of any income year shall be, at the option of the taxpayer, the value which could have been adopted pursuant to this subsection if the group of companies were one company."

15. Agreements purporting to alter incidence of taxation to be void for income tax purposes—(1) Section 108 of the principal Act is hereby amended by omitting the words "absolutely void", and substituting the words "absolutely void as against the Commissioner for income tax purposes".

(2) This section shall apply with respect to every contract, agreement, or arrangement made or entered into whether before or after the passing of this Act.

16. No deductions unless expressly provided—(1) Section 110 of the principal Act is hereby amended by inserting, after the words "the assessable income" the words "or the non-assessable income".

(2) The principal Act is hereby further amended by inserting in the heading preceding section 110, after the word "Assessable", the words "or Non-assessable".

17. Apportionment of expenditure or loss—The principal Act is hereby further amended by inserting, after section 110, the following section:

"110A. (1) Subject to this section, any expenditure or loss which is deductible under this Act and is incurred in gaining or producing assessable income shall be deducted in calculating the assessable income, and shall not be deducted in calculating non-assessable income.

"(2) Any expenditure or loss which is deductible under this Act and is incurred in gaining or producing non-assessable income shall be deducted in calculating the non-assessable income, and shall not be deducted in calculating assessable income.

"(3) For the purposes of subsection (4) of this section, assessable income shall be divided into the following classes:

"(a) Dividends:

"(b) Assessable income other than dividends.

"(4) Where in any income year a taxpayer has incurred any expenditure or loss which is deductible under this Act and is incurred in gaining or producing assessable income of either of the classes referred to in subsection (3) of this section, that expenditure or loss shall first be deducted in calculating the assessable income of that class derived in that income year, so far as that income extends, and any balance shall be deducted in calculating the assessable income of the other class derived in that income year."

18. Expenditure or loss incurred in the production of non-assessable income—The principal Act is hereby further amended by inserting, after section 111, the following section:

"111A. Any expenditure or loss which is incurred in gaining or producing non-assessable income shall be deducted in calculating the non-assessable income, so far as that non-assessable income extends, in the same manner and to the same extent as expenditure or loss which is incurred in gaining or producing assessable income is deducted in calculating assessable income."

19. Deductions for repair, maintenance, and depreciation—Section 113 of the principal Act is hereby amended by omitting from subsection (1) the words "the repair, alteration, or supply", and substituting the words "the repair".

20. Loss on disposal of buildings—Section 113 of the principal Act is hereby further amended by inserting, after subsection (1A) (as inserted by section 9 (1) of the Land and Income Tax Amendment Act (No. 2) 1967), the following subsections:

"(1B) Notwithstanding anything to the contrary in this Act, in calculating the assessable income derived by any person from any source no deduction shall be allowed in respect of any loss incurred by reason of the demolition or disposal of any premises other than temporary building:

"Provided that in any case where, if a profit had been made from the demolition or disposal of any premises, the amount of the profit would have been assessable income pursuant to paragraph (c) of section 88 of this Act, this subsection shall not apply to any loss incurred in respect of the demolition or disposal of those premises.

"(1C) For the purposes of subsection (1B) of this section, the term 'temporary building' means any building which—

"(a) Has been erected pursuant to a permit issued by a local authority or public authority subject to its demolition or removal at the pleasure of the local authority or public authority; or

"(b) Has been erected at a construction site, and is to be demolished or removed on or before the completion of the construction."

21. Special depreciation allowance on buildings providing tourist accommodation—The principal Act is hereby further amended by inserting, after section 114C (as inserted by section 14 of the Land and Income Tax Amendment Act (No. 2) 1967), the following section:

"114D. (1) Subject to the provisions of this section and to section 117 of this Act, in calculating the assessable income of any taxpayer, being the owner of a new hotel erected or constructed pursuant to an approved project, the Commissioner may allow, in addition to the depreciation allowed as a deduction under section 113 of this Act, such deduction by way of special depreciation in accordance with this section as he thinks fit.

"(2) The amount of any deduction allowed under this section in respect of any new hotel shall not exceed in the aggregate twenty percent of the cost of the new hotel.

"(3) For the purposes of this section, the cost of a new hotel shall not include any costs incurred in the acquisition, preparation, or development of land, or in the construction of access roads, or any other costs in respect of which a deduction by way of depreciation is not allowed under section 113 of this Act.

"(4) Unless in any case the Commissioner otherwise determines, the amount of the deduction under this section in respect of the cost of a new hotel shall be allowed in respect of the income derived by the taxpayer during the income year in which the new hotel is first used to provide accommodation for the travelling public and the three income years next succeeding that income year, and shall be allowed at the following rates:

"(a) Ten percent of the cost in respect of the first year:
"(b) Five percent of the cost in respect of the second year:
"(c) Three percent of the cost in respect of the third year:
"(d) Two percent of the cost in respect of the fourth year.

"(5) Any expenditure in respect of which the taxpayer elects to receive a special depreciation allowance under section 114A of this Act shall not form part of the cost of a new hotel for the purposes of this section.

"(6) Without limiting the discretion of the Commissioner under this section, he may refuse to allow, in whole or in part, any deduction under this section in any case where he is not satisfied that complete and satisfactory accounts have been kept by or on behalf of the taxpayer.

"(7) Every reference in this section to an income year shall, where the taxpayer furnishes a return of income under section 8 of this Act for an accounting year ending with an annual balance date other than the thirty-first day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case, the provisions of this section shall, with any necessary modifications, apply accordingly.

"(8) For the purposes of this section—

" 'Approved project' means any project, plan, or scheme involving the erection or construction of a new hotel, for which the approval of the Minister of Finance has been granted for the time being for the purposes of this section, that approval having been granted—

"(a) On or after the nineteenth day of July, nineteen hundred and sixty-eight, and before the first day of April, nineteen hundred and seventy-two; and

"(b) Before any contract was let for the erection or construction of the new hotel:

" 'Hotel' means a building, or an extension, alteration, or improvement of a capital nature to an existing building, erected or constructed for the purpose of providing accommodation for the travelling public:

" 'New' means not having previously been either used by any person or acquired or held by any person for use by that person."

22. Revised assessments where assets sold after deduction of depreciation allowances—(1) Section 117 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) Where the Commissioner has, for any year of assessment (whether before or after the commencement of this subsection), allowed a deduction in respect of the depreciation of any asset (including a building), and the taxpayer at any time afterwards sells or otherwise disposes of that asset at a price or for a consideration in excess of the amount to which the value of the asset has been reduced by that allowance, the Commissioner may make a revised assessment for that or any subsequent year without allowing that deduction or without allowing such portion thereof as he thinks fit, and may recover the additional amount of income tax accordingly:

"Provided that in any case where the asset comprises a building (other than a temporary building within the meaning of subsection (1c) of section 113 of this Act) the foregoing provisions of this subsection shall apply only in respect of any deduction allowed by way of depreciation under section 114A of this Act."

(2) Section 15 of the Land and Income Tax Amendment Act 1959 is hereby consequentially repealed.

23. Deduction in respect of amounts paid on shares in certain mining companies—(1) Section 129C of the principal Act (as inserted by section 26 of the Land and Income Tax Amendment Act 1965) is hereby amended by repealing subsection (1), and substituting the following subsections:

"(1) Where a taxpayer has, on or after the first day of April, nineteen hundred and sixty-five, made any payment in respect of the whole or part of the amount unpaid on any shares owned by the taxpayer in a company which at the time of the payment is a company—

"(a) To which section 152 or section 153 of this Act applies; or

"(b) Whose undertaking is, or is to be, in New Zealand and comprises, or is to comprise, solely or principally the activities of exploring or searching for, or mining—

"(i) Any of the minerals referred to in section 152 of this Act, (including any mineral declared by the Minister of Finance pursuant to that section to be a qualifying mineral for the purposes of that section); or

"(ii) Where the company is a New Zealand company, petroleum,—

and the Commissioner is satisfied that the payment will be used for and is necessary for the purposes of that company, a deduction shall be allowed, subject to this section, of one-third of the amount of that payment in calculating the assessable income derived by the taxpayer in the income year in which the payment is made.

"(1A) Where, in any case, a deduction has been allowed under subsection (1) of this section in respect of any amount paid on shares in any company to which, at the date the amount was paid, paragraph (b) of subsection (1) of this section applied and, in the opinion of the Commissioner the company has not within a reasonable time after that date used the payment for the purposes of the company, the Commissioner may disallow the deduction and, notwithstanding anything to the contrary in section 24 of this Act, may alter any assessment accordingly."

(2) Subsection (1) of this section shall be deemed to have come into force on the seventeenth day of September, nineteen hundred and sixty-five (being the date of the passing of the Land and Income Tax Amendment Act 1965), and shall apply with respect to the tax on income derived in the income year that commenced on the first day of April, nineteen hundred and sixty-five, and in every subsequent year.

24. Assessment of income of proprietary companies—(1) Section 138 of the principal Act is hereby amended by repealing paragraph (f) of subsection (1), and substituting the following paragraph:

"(f) The term 'residual taxable income', in relation to any proprietary company and to any income year, means the amount of the taxable income (including taxable proprietary income) of that proprietary company for that income year:

"Provided that in the case of a proprietary company which is not resident in New Zealand the residual taxable income of that company shall be the amount which would have been the taxable income (including taxable proprietary income) of that company if all the income for that income year of that company, and all the income for that income year of any other proprietary company in which that first-mentioned proprietary company holds shares, had been derived from New Zealand:".

(2) Section 138 of the principal Act is hereby further amended by repealing paragraph (b) of subsection (3).

(3) Section 138 of the principal Act is hereby further amended by repealing paragraph (c) of subsection (3), and substituting the following paragraphs:

"(c) Where the proprietary income of the shareholder or any portion thereof is taxable under this section and that income is also taxable (whether or not in New Zealand) as being income derived by a proprietary company, there shall be deducted from the ordinary income tax payable by the shareholder a sum equal to the aggregate of—

"(i) A sum equal to the ordinary income tax payable in New Zealand by the proprietary company in respect of that income; and

"(ii) A sum equal to the income tax payable by the proprietary company in any other country or territory in respect of that income (not being income tax in respect of which a credit has been allowed or is allowable under section 170 of this Act):

"(d) For the purpose of subparagraph (ii) of paragraph (c) of this subsection, the term 'income tax' has the same meaning as in subsection (1) of section 170 of this Act."

(4) Section 138 of the principal Act is hereby further amended by omitting from subsection (8) the words "or to the wife or husband of that taxpayer".

(5) The Third Schedule to the Income Tax Assessment Act 1957 is hereby consequentially amended by repealing so much thereof as relates to paragraph (f) of subsection (1) and subsection (3) of section 138 of the principal Act.

(6) Where any objection has been made, whether before or after the passing of this Act, to an assessment of income tax in respect of income derived in any income year which ended not later than the thirty-first day of March, nineteen hundred and sixty-eight, then, notwithstanding anything in any other enactment or in any rule of law relating to the interpretation of legislative enactments, nothing in subsections (1) to (5) of this section shall in determining that objection and every appeal against the determination thereof be construed as altering the law in force before the passing of this Act, and the objection and every appeal against the determination thereof shall be heard and determined as if subsections (1) to (5) of this section had not been enacted.

25. Two or more companies consisting wholly or substantially of the same shareholders or under the same control—(1) The principal Act is hereby further amended by repealing section 141, and substituting the following section:

"141. (1) Subject to the provisions of this section, every company included in a group of companies shall be assessable and liable for income tax in the same manner as if it were a company not included in a group of companies.

"(2) Where, in relation to any income year, the Commissioner is satisfied that two or more companies at any time during that income year—

"(a) Consist wholly of the same shareholders; or

"(b) Consist substantially of the same shareholders; or

"(c) Are under the control of the same persons,—

those companies (in this Act referred to as a group of companies) shall be assessed and liable for income tax in accordance with this section.

"(3) Notwithstanding that two companies consist wholly or substantially of the same shareholders or are under the control of the same persons, where in any case the Commissioner is satisfied that—

"(a) Any person who holds shares in one of those companies is, merely by reason of being a relative of any other person who holds shares in the other company, deemed to be a nominee of that other person, and, those companies would not otherwise be a group of companies or be included in the same group of companies; and

"(b) Those companies are not, in fact, associated in any way with each other; and

"(c) It would be inequitable for those companies to be assessed for income tax in accordance with the provisions of this section,—

those companies shall not be deemed for the purposes of this Act to be a group of companies or to be included in the same group of companies.

"(4) The income tax payable in respect of the income derived in any income year by any company included in a group of companies shall be calculated on the taxable income of that company at the rate that would have been applicable if that company had a taxable income for that year equal in amount to the total of—

"(a) The taxable income for that income year of all the companies included in the group; and

"(b) The non-assessable income for that income year of all the companies included in the group, other than dividends received by one company included in the group from any other company included in the group.

"(5) Where, by reason of any company being included in more than one group of companies, the income tax payable by any company included in any of those groups could be calculated at any of two or more different rates, it shall be calculated at the highest of those rates.

"(6) Where in respect of any income year all the companies included in a group of companies consist wholly of the same shareholders (whether or not that group is part of another group of companies)—

"(a) Any loss carried forward by any company included in the first-mentioned group, so far as that loss has not been deducted from or set off against the assessable income of that company for that income year pursuant to section 137 of this Act; and

"(b) Any loss (which would, apart from the provisions of this section, be carried forward pursuant to the provisions of section 137 of this Act) incurred by any company included in the first-mentioned group in that income year,—

shall be deducted proportionately from the assessable income derived by the other companies included in the first-mentioned group in that income year, so far as that income (after the deduction by each of those other companies of any loss which it is entitled to deduct under section 137 of this Act) extends, and the amount of the loss of any company so deducted from the assessable income derived by any other company shall not be carried forward in accordance with section 137 of this Act.

"(7) Where—

"(a) Any company makes a payment to another company under an agreement providing for the paying company to bear or share in losses or a particular loss of the payee company (being losses or a loss which are deductible under this Act); and

"(b) The payment would not (otherwise than under this subsection) be taken into account in calculating the assessable income of either company; and

"(c) Both companies are companies which are included in the same group of companies for the income year corresponding with the income year in respect of which the payment is made; and

"(d) The payment is made not later than twelve months after the end of the accounting period of the payee company; and

"(e) Both the payment and the receipt of the payment are fully disclosed in the accounts of both companies,—

the payment shall be deemed to be assessable income derived by the payee company on the last day of the accounting period in respect of which it is made, and to be deductible by the paying company as if it were expenditure necessarily incurred in the production of assessable income on that day.

"(8) The Commissioner may, in his discretion, make a joint assessment with respect to the tax on income derived in any income year by every company included in a group of companies, and in any such case every company shall be jointly and severally liable for that tax, with such rights of contribution or indemnity between themselves as is just."

(2) Section 138 of the principal Act is hereby amended by repealing paragraph (1) of subsection (1), and substituting the following paragraph:

"(1) Where any one or more companies included in a group of companies hold shares in another company, the companies included in the group shall be deemed to be one shareholder of that other company and, for the purposes of paragraph (a) of this subsection, to be one person."

(3) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "gross" (as inserted by section 3 of the Land and Income Tax Amendment Act 1964), the following definition:

"'Group of companies' has the meaning assigned to that term by subsection (2) of section 141 of this Act:".

26. Partial exemption in respect of interest derived from certain debentures—(1) The principal Act is hereby further amended by repealing section 150A (as inserted by section 32 (1) of the Land and Income Tax Amendment Act 1966), and substituting the following section:

"150A. (1) For the purposes of this section the term 'amount', in relation to a debenture, means the principal sum expressed to be secured by or owing under the debenture.

"(2) Where any company which is not resident in New Zealand and which carries on the business of life insurance (not being a company that is assessable for ordinary income tax under section 149 of this Act) derives interest from any debenture, being a debenture—

"(a) That was issued to the company before the twenty-sixth day of August, nineteen hundred and sixty-six; and

"(b) The amount of which has been, and is being, used wholly or principally for the purposes of any undertaking, scheme, or work that, pursuant to the provisions of subsection (6) of section 2A of this Act, is deemed to be a development project for the purposes of that section; and

"(c) The interest from which that was derived during any income year before the income year that commenced on the first day of April, nineteen hundred and sixty-six, has been assessed for income tax pursuant to the provisions of subsection (1) of section 150 of this Act (as in force before the commencement of the section for which this section was substituted by section 26 of the Land and Income Tax Amendment Act (No. 2) 1968),—

the amount of ordinary income tax payable by the company in respect of any interest derived by it from that debenture in any income year shall, unless otherwise provided in the annual taxing Act for any year, be nine-twentieths of the amount that would be payable by the company (after taking into account any rebate from ordinary income tax under section 78C or section 78E of this Act in respect of that interest) if this section had not been passed:

"Provided that the aggregate amount of ordinary income tax and social security income tax payable by the company in respect of that interest derived by the company in any income year shall not exceed fifteen percent of the gross amount of that interest.

"(3) For the purposes of this section, the provisions of subsection (2) of section 150 of this Act shall apply, as far as they are applicable."

(2) Section 32 of the Land and Income Tax Amendment Act 1966 is hereby consequentially amended by repealing subsection (1).

27. Companies engaged in mining for certain minerals or for petroleum—(1) The principal Act is hereby further amended by inserting, after section 152, the following section:

"152A. (1) In this section—

" 'Relevant period', in relation to any income year, means the period commencing on the first day of the fifth income year immediately preceding the first-mentioned income year, and ending with the last day of the first-mentioned income year:

" 'Specified funds', in relation to any company, means accumulated profits or accumulated income, or reserves created therefrom, other than profits, income, or reserves which—

"(a) Are held on the last day of the relevant period for the purpose of repaying the paid-up capital of the company; or

"(b) Are held on the last day of the relevant period for the purpose of being expended on exploring or searching for or mining in New Zealand (or any purposes incidental thereto) any of the minerals referred to in section 152 of this Act (including any mineral declared by the Minister of Finance pursuant to that section to be a qualifying mineral for the purposes of that section) or petroleum; or

"(c) Have during the relevant period been advanced to any person for the purpose of carrying out any of the purposes referred to in paragraph (b) of this definition; or

"(d) Have during the relevant period been expended by the company in—

"(i) The purchase or acquisition of assets; or

"(ii) The repayment of any loans or other liabilities; or

"(iii) Any other manner—

in each case in carrying out any of the purposes referred to in paragraph (b) of this definition; or

"(e) Have, during the relevant period or within six months after the end of that period, been expended by the company in the payment of dividends; or

"(f) Have been used during the relevant period in the payment of income tax or are required to be used in the payment of any income tax liability arising under section 152, or, as the case may be, section 153 of this Act, as a result of the payment of dividends during the relevant period or within six months after the end of that period.

"(2) Where the Commissioner is satisfied in respect of any income year that any company to which section 152 or section 153 of this Act applies had, on the first day of the relevant period, any specified funds, the Commissioner may, for the purposes of section 152 or, as the case may be, section 153 of this Act, deem the company to have paid on the last day of the relevant period a dividend to its shareholders of such amount as he considers reasonable; and the provisions of section 152, or, as the case may be, section 153 of this Act shall apply as if the first-mentioned amount were a dividend paid by the company to its shareholders on the last day of the relevant period.

"(3) Where the Commissioner is satisfied that any dividend in fact paid by any company to which section 152 or section 153 of this Act applies represents any amount which he has deemed to be a dividend under subsection (2) of this section, the dividend in fact paid, to the extent that it does not exceed that amount, shall not be taken into account for the purposes of section 152 or, as the case may be, section 153 of this Act."

28. Assessment of petroleum mining companies—(1) Section 153 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsections:

"(5) For the purposes of this section the aggregate amount expended by a company and deemed to be irrecoverable shall, on any date, be taken to be the aggregate amount theretofore expended by the company in development work in New Zealand, in relation to prospecting or mining for petroleum, reduced by the sum of—

"(a) An amount equal to the selling value, as determined by the Commissioner, of assets (not including any petroleum that has not been recovered from the earth) resulting from the aggregate amount so expended; and

"(b) An amount equal to the selling value, as determined by the Commissioner, of any petroleum that has been recovered from the earth and not sold or otherwise disposed of at that date; and

"(c) An amount equal to the consideration received from the sale or other disposal of petroleum to the extent that that consideration exceeds any expenditure or loss (excluding any expenditure or loss incurred in connection with development work) of the company which would have been deducted from that consideration if the assessable income of the company had been calculated otherwise than in accordance with this section.

"(5A) For the purposes of subsection (5) of this section, if any difference arises between the Commissioner and any company as to whether any amount expended by the company was expended in development work in New Zealand, the difference shall be determined by the Commissioner."

(2) The Schedule to the Land and Income Tax Amendment Act 1960 is hereby consequentially amended by repealing so much thereof as relates to section 153 of the principal Act.

29. Assessment of companies holding shares in exploration companies—(1) Section 153A of the principal Act (as inserted by section 33 of the Land and Income Tax Amendment Act (No. 2) 1958) is hereby amended by repealing the definition of the term "petroleum exploration company" in subsection (1), and substituting the following definition:

" 'Exploration company' means a New Zealand company engaged in exploring or searching for or mining in New Zealand any one or more of the minerals referred to in section 152 of this Act (including any mineral declared by the Minister of Finance pursuant to that section to be a qualifying mineral for the purposes of that section) or petroleum:".

(2) Section 153A of the principal Act (as so inserted) is hereby further amended—

(a) By omitting the words "petroleum exploration company" wherever they subsequently occur, and substituting in each case the words "exploration company":

(b) By inserting in paragraph (a) of subsection (5), before the words "section 153," the words "section 152 or".

30. New sections (relating to trusts) substituted—The principal Act is hereby further amended by repealing section 155, and substituting the following sections:

"**155. Meaning of expression 'specified trust'**—For the purposes of this Act, the expression 'specified trust' means a trust created on or after the nineteenth day of July, nineteen hundred and sixty-eight; but does not include such a trust created—

"(a) By any will or codicil or an order of Court varying or modifying the provisions of any will or codicil; or

"(b) On any intestacy (including any partial intestacy), or by an order of Court varying or modifying, in relation to any estate, the application of the law relating to the distribution of intestate estates; or

"(c) By order of Court; or

"(d) By any enactment,—

or any other trust which is not carried on for the private pecuniary profit of any individual and whose funds are, in the opinion of the Commissioner, applied wholly or principally for benevolent, philanthropic, cultural, or public purposes within New Zealand.

"**155A. Special provisions with respect to income derived by beneficiaries under a trust**—(1) If and so far as the income derived by a trustee is also income derived by a beneficiary entitled in possession to the receipt thereof under the trust during the same income year, the trustee shall in respect thereof be deemed to be the agent of that beneficiary, and shall be assessable and liable for income tax accordingly, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly.

"(2) Where any income is as aforesaid so derived by a beneficiary subject to a condition, obligation, or trust requiring him to maintain or support any other person (whether out of the income so derived or otherwise) and that beneficiary would, apart from that condition, obligation, or trust, be entitled to a special exemption in respect of the maintenance and support provided by him for that other person, that beneficiary shall be entitled to the same special exemptions as if he were beneficially entitled to that income free from any such condition, obligation, or trust.

"(3) Where a trustee is required or empowered at his discretion to pay or apply income derived by him in any income year to or for the benefit of specified beneficiaries or to or for the benefit of some one or more of a number of specified beneficiaries or of a specified class of beneficiaries, a beneficiary in whose favour the trustee so pays or applies all or part of that income by a bona fide disposition made during that income

year or within six months after the end of that income year, being a disposition which places that income beyond the possession and control of the trustee, shall be deemed to be entitled in possession to the receipt of the amount of income paid to him or applied for his benefit:

"Provided that, to the extent that, at any time and in any form, that amount of income comes within the possession or under the control of the trustee of any trust and—

"(a) That trustee is not exempt from income tax in respect of the income derived by him; and

"(b) In any case where the beneficiary is not an infant, the beneficiary has a beneficial interest in the last-mentioned trust—

that amount shall be deemed not to have been paid to or applied for the benefit of that beneficiary, and the Commissioner may, notwithstanding anything to the contrary in section 24 of this Act, alter any assessment accordingly.

"(4) Where the income of the trustee of a trust other than a specified trust is also income derived by any beneficiary who is an infant but whose interest in that income is vested under the provisions of the trust and not by the exercise of any discretion by the trustee, the beneficiary shall for the purposes of this section be deemed to be entitled in possession to the receipt of that income under the trust during the same income year.

"(5) Where a trustee furnishes a return of income under section 8 of this Act for an accounting year ending with an annual balance date other than the thirty-first day of March, and any income derived by the trustee in that accounting year is also income derived by a beneficiary entitled or deemed to be entitled in possession to the receipt thereof under the trust during the same accounting year, the beneficiary shall, for the purposes of this Act, be deemed to have derived that income and to be entitled in possession to the receipt thereof under the trust during the same income year as that during which the trustee is, under section 8 of this Act, deemed to have derived that income.

"(6) Nothing in this section or in section 155B or section 155C or section 155D of this Act shall be so construed as to exempt a beneficiary from any income tax which would be payable by him had he derived the income to which he is entitled under the trust directly instead of through a trustee.

"155B. Special provisions with respect to income derived by trustees of specified trusts—(1) If and so far as the income derived by the trustee of any specified trust is not also income derived by any beneficiary entitled in possession to the receipt thereof in accordance with the provisions of section 155A of this Act, the trustee shall be assessable and liable for income tax on that income as if he were beneficially entitled thereto, except that—

"(a) The rate of tax shall, subject to section 155D of this Act, be calculated by reference to that income alone; and

"(b) The trustee shall not be entitled to any deduction by way of special exemption for the purpose of assessing either ordinary income tax or social security income tax.

"(2) The trustee of any specified trust shall in every case make a return of the whole income so derived by him as trustee of that trust, and each such return shall be separate and distinct from any return of income derived by him under any other trust (whether a specified trust or not) or in his own right.

"155C. Special provisions with respect to income derived by trustees of other trusts—(1) If and so far as the income derived by a trustee of any trust (other than a specified trust) is not also income derived by any beneficiary entitled in possession to the receipt thereof in accordance with the provisions of section 155A of this Act, the trustee shall be assessable and liable for income tax as if he were beneficially entitled thereto, except that—

"(a) The rate of tax shall, subject to section 155D of this Act, be calculated by reference to that income alone:

"(b) Where the trustee is a company or a corporation, any income assessable to the trustee shall be assessable at the rate applicable to a trustee other than a company or a corporation:

"(c) The trustee shall be entitled to a special exemption of four hundred dollars for the purpose of assessing ordinary income tax and shall not be entitled to any further deduction by way of special exemption for the purposes of assessing either ordinary income tax or social security income tax.

"(2) The trustee of every trust, other than a specified trust, shall in every case make a return of the whole income so derived by him as trustee of that trust, and each such return shall be separate and distinct from any return of income derived by him under any other trust or in his own right.

"**155D. Aggregation of income of trusts in certain cases**—(1) Where—

"(a) Either—

"(i) Two or more separate trusts have been created by the same person, or the whole or substantially the whole of the property subject to two or more separate trusts has been received from the same person, whether in either case the separate trusts are administered by the same or different trustees, and, in either case, the terms of the separate trusts are such that the whole, or substantially the whole, of the income of those trusts, whenever derived, is derived by, or will ultimately be derived by or accrue to, the same beneficiary or beneficiaries or the same group or class of beneficiaries; or

"(ii) The death of any person results in two or more separate trusts arising; and

"(b) The separate trusts are all specified trusts or, as the case may be, none of those trusts is a specified trust,—

then, for the purposes of this Act, the separate trusts shall be deemed to be one trust of which the income is the total income of the separate trusts and of which the trustees are the trustees of the separate trusts.

"(2) Where, in relation to any income year, two or more separate trusts are trusts to which the provisions of paragraph (a) of subsection (1) of this section apply, and one or more of those trusts are specified trusts, and one or more of those trusts are trusts other than specified trusts, the income tax payable in respect of the assessable income derived by the trustee of each of the separate trusts (not being income to which any beneficiary is entitled in possession to the receipt thereof in accordance with section 155A of this Act during that income year) shall be calculated in accordance with the following formula:

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

where—

a is the amount of that assessable income derived in respect of that income year by that trustee; and

b is an amount equal to the total of the assessable income derived in respect of that income year by all the trustees of all the separate trusts, other than income derived by any beneficiary entitled in possession to the receipt thereof in accordance with section 155A of this Act; and

c is the amount of income tax that would have been payable by that trustee under section 155B or section 155C of this Act, as the case may be, if he had derived in respect of that income year an assessable income equal in amount to item 'b' of this subsection."

31. Basic rate of tax payable by trustees of specified trusts—(1) The First Schedule to the principal Act (as substituted by section 22 (1) of the Decimal Currency Amendment Act 1965) is hereby amended by inserting in Part A, after clause 4, the following clause:

"**4A. Trustees of specified trusts**—On all income assessable to a trustee of a specified trust under section 155B or section 155D of this Act (whether or not the trustee is a company or a corporation), the basic rate of tax for every $1 of the taxable income shall be—

"(a) 35c; or

"(b) The effective rate of tax ascertained by calculating tax on that income in accordance with the rates of tax specified in Part D of this Schedule and dividing the tax so calculated by the number of dollars included in that income,—

whichever is the greater."

(2) The First Schedule to the principal Act (as so substituted) is hereby further amended by inserting in subclause (2) of clause 5 of Part A, after the words "companies and public authorities", the words "and trustees of specified trusts".

(3) For the year commencing on the first day of April nineteen hundred and sixty-eight, income tax payable by trustees of specified trusts shall be assessed, levied, and paid, pursuant to Part VI of the principal Act, at the rate specified in clause 4A of the First Schedule to that Act (as substituted as aforesaid and amended by subsection (1) of this section). For the purposes of section 78 of the principal Act, this subsection shall be deemed to be an annual taxing Act.

32. Amendments and repeals consequential on section 30—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "shareholder", the following definition:

" 'Specified trust' has the meaning assigned to that term by section 155 of this Act:".

(2) The principal Act is hereby consequentially amended—

(a) By repealing section 84A (as inserted by section 24 of the Land and Income Tax Amendment Act (No. 2) 1958):

(b) By omitting from subsection (1) of section 159 the words "section 155", and substituting the words "section 155A or section 155B or section 155C or section 155D".

(3) Section 14 of the Income Tax Assessment Act 1957 is hereby consequentially amended—

(a) By repealing subparagraph (iv) of paragraph (c) of subsection (6), paragraph (d) of subsection (8), and paragraph (c) of subsection (9):

(b) Omitting from subsection (7) the words "or the child becomes entitled to a vested or contingent interest (not subject to any prior interest) in the income of a trust referred to in section 84A of the principal Act".

(4) The Income Tax Assessment Act 1957 is hereby consequentially further amended by omitting the words "paragraph (b) of section 155" from—

(a) Subparagraph (i) of paragraph (d) of subsection (1) of section 26A (as inserted by section 41 of the Land and Income Tax Amendment Act 1959); and

(b) Paragraph (i) of subsection (2) of section 44,—

and substituting in each case the words "section 155B or sections 155C or section 155D".

(5) The following enactments are hereby consequentially repealed:

(a) Section 24 and subsections (1) and (2) of section 44 of the Land and Income Tax Amendment Act (No. 2) 1958:

(b) Section 24 of the Land and Income Tax Amendment Act 1959:

(c) Subsection (2) of section 3 of the Land and Income Tax Amendment Act 1962.

33. Tax on income derived by Maori authorities for twenty or less beneficiaries—(1) Section 161 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

"(2) The income shall for the purpose of assessing ordinary income tax thereon be deemed to be income derived by the Maori authority as trustee for the Maori or Maoris, and also to be income derived by the Maori or Maoris as beneficiaries entitled in possession to the receipt thereof under the trust during the same income year within the meaning of section 155A of this Act. The Maori authority shall in respect of that income be deemed to be the agent of those beneficiaries, and shall be assessable and liable for ordinary income tax thereon accordingly, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly."

(2) The Third Schedule to the Income Tax Assessment Act 1957 is hereby consequentially amended by repealing so much thereof as relates to subsection (2) of section 161 of the principal Act.

34. Excess retention tax payable by privately controlled investment companies only—(1) Section 172BB of the principal Act (as substituted by section 37 (1) of the Land and Income Tax Amendment Act 1966) is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) In this Part of this Act the term 'privately controlled investment company' means any proprietary company which, in the opinion of the Commissioner, is established exclusively or principally for the investment of money or the holding of or dealings in shares, securities, investments, or estates and interests, whether freehold or chattel, in real property; but does not include—

"(a) A proprietary company in which all the shares are beneficially held by or on behalf of one or more companies none of which is a privately controlled investment company; or

"(b) A proprietary company which, in the opinion of the Commissioner, is established exclusively or principally for the holding of estates or interests, whether freehold or chattel, in real property in order to provide premises for the use of any other company or companies (not being a proprietary company or companies) which are included in the same group of companies as the proprietary company."

(2) Section 172B of the principal Act (as inserted by section 15 of the Land and Income Tax Amendment Act (No. 2) 1958) is hereby consequentially amended by repealing the definition of the term "privately controlled company" (as inserted by section 9 (2) of the Land and Income Tax Amendment Act 1961), and substituting the following definition:

" 'Privately controlled investment company' means a privately controlled investment company within the meaning of section 172BB of this Act:".

(3) Section 172C of the principal Act (as inserted by section 15 of the Land and Income Tax Amendment Act (No. 2) 1958 and amended by section 9 (3) of the Land and Income Tax Amendment Act 1961) is hereby further amended by omitting the words "This Part of this Act shall apply to every company which is a privately controlled company at the end of its accounting year, except companies of the following classes:", and substituting the words "This Part of this Act shall apply to every company which is a privately controlled investment company at the end of its accounting year, except companies of the following classes:".

(4) The following enactments are hereby consequentially repealed:

(a) Paragraphs (b), (c), and (cc) and subparagraph (iv) of paragraph (f) of section 172C and sections 172K, 172KK, and 172M of the principal Act:

(b) Section 28 of the Land and Income Tax Amendment Act 1959:

(c) Section 9 of the Land and Income Tax Amendment Act 1961:

(d) Section 24 of the Land and Income Tax Amendment Act (No. 2) 1963:

(e) Section 45 of the Land and Income Tax Amendment Act 1964:

(f) Section 38 of the Land and Income Tax Amendment Act 1966.

(5) Section 35 of the principal Act (as substituted by section 2 (1) of the Land and Income Tax Amendment Act 1960) is hereby consequentially amended by omitting from paragraph (i) the words "made under section 172M of this Act or".

(6) This section shall apply with respect to the tax for the year of assessment that commenced on the first day of April, nineteen hundred and sixty-eight, and for every subsequent year.

35. Application of Part VIIc of the principal Act—Section 203s of the principal Act (as inserted by section 17 of the Land and Income Tax Amendment Act 1964) is hereby amended by repealing paragraph (g) of subsection (2), and substituting the following paragraph:

"(g) Derived by way of interest by a non-resident investment company from any development investments within the meaning of section 2A of this Act."

36. Non-resident withholding tax to be final tax in certain cases—(1) The principal Act is hereby further amended by repealing section 203z (as inserted by section 17 of the Land and Income Tax Amendment Act 1964), and substituting the following section:

"203z. Notwithstanding anything to the contrary in this Act, non-resident withholding income that consists of—

"(a) A dividend (other than an investment society dividend); or

"(b) A royalty or other like payment of any of the kinds referred to in paragraph (e) of section 88 of this Act, being a royalty or payment that is for the use, production, or reproduction of, or for the privilege of using, producing, or reproducing, a literary, dramatic, musical, or artistic work in which copyright subsists; or

"(c) Interest or an investment society dividend, in any case where the Commissioner is satisfied that the person by whom that interest or, as the case may be, that investment society dividend is derived and the person by whom that interest or, as the case may be, that investment society dividend is paid have, at all relevant times, been persons at arm's length with each other,—

shall not be included in the assessable income of the person by whom that non-resident withholding income is derived, and the amount of income tax for which that person is liable in respect of the amount of that non-resident withholding income derived by him in any income year shall, subject to sections 78B and 78E of this Act, be determined exclusively and finally by the total amount of non-resident withholding tax for which that person is liable in accordance with section 203T of this Act in respect of that non-resident withholding income."

(2) Section 78E of the principal Act (as inserted by section 5 (1) of the Land and Income Tax Amendment Act 1964) is hereby amended by repealing paragraph (a) of the definition of the term "income before tax" in subsection (1), and substituting the following paragraph:

"(a) The gross amount of any non-resident withholding income derived by the company in the income year, being income consisting of—

"(i) Royalties or other like payments referred to in paragraph (b) of section 203z of this Act; or

"(ii) Interest or investment society dividends referred to in paragraph (c) of that section; and".

(3) Section 203ZA of the principal Act (as inserted by section 17 of the Land and Income Tax Amendment Act 1964) is hereby amended by inserting in subsection (1), after the words "that consists of interest, or of an investment society dividend", the words "(other than interest or an investment society dividend referred to in paragraph (c) of section 203z of the Act)".

37. Refund of excess tax—(1) Section 223 of the principal Act (as substituted by section 41 (1) of the Land and Income Tax Amendment Act 1966) is hereby amended by omitting from the proviso to subsection (1), and also from the proviso to subsection (2), the words "six years", and substituting in each case the words "eight years".

(2) Section 25 of the Income Tax Assessment Act 1957 (as substituted by section 44 (1) of the Land and Income Tax Amendment Act 1966) is hereby amended by omitting from the proviso the words "six years", and substituting the words "eight years".

(3) Subsection (1) of this section shall apply to any assessment made on or after the first day of April, nineteen hundred and sixty-two, or, in any case where the original assessment has been altered, to any altered assessment where the original assessment was made on or after the first day of April, nineteen hundred and sixty-two:

Provided that where an assessment has been altered so as to increase the amount of tax payable and the Commissioner is satisfied that by reason of that alteration tax has been paid in excess of the amount properly payable, this section shall apply to any such assessment which has been altered on or after the first day of April, nineteen hundred and sixty-two.

(4) Subsection (2) of this section shall apply to the tax deductions made from income derived in the income year commencing on the first day of April, nineteen hundred and sixty-two, and every subsequent income year.

38. Recovery of tax deductions from employers—(1) Section 31 of the Income Tax Assessment Act 1957 is hereby amended by repealing subsection (2), and substituting the following subsection:

"(2) Where a tax deduction has been made under this Part of this Act and the employer has failed to deal with the amount of the tax deduction or any part thereof in the manner required by subsection (1) of this section or the other provisions of this Part of this Act, the amount of the tax deduction for the time being unpaid to the Commissioner shall, in the application of the assets of the employer, rank as follows:

"(a) Where the employer is, or one of whom is, an individual, upon his bankruptcy or upon his making an assignment for the benefit of his creditors, the amount of the tax deduction shall rank without limitation in amount, and notwithstanding anything in any other Act, in order of priority immediately after preferential claims for wages or other sums payable to or on account of any servant or worker or apprentice or articled clerk, and in priority to all other claims:

"(b) Where the employer is a company, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company or upon possession being taken on behalf of that debenture holder of that property, the amount of the tax deduction shall rank immediately after the debts referred to in subsection (1) of section 308 of the Companies Act 1955, limited as provided in subsection (2) thereof, and so far as the assets of the company available for payment of general creditors are insufficient to meet the amount of that tax deduction, it shall have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

"(3) This section shall apply notwithstanding anything in any other Act and in particular section 308 of the Companies Act 1955 shall apply subject thereto."

(2) Section 32 of the Income Tax Assessment Act 1957 is hereby consequentially amended by adding the following subsection:

"(11) This section shall apply subject to section 31 of this Act."

(3) This section, so far as it relates to an employer who is, or one of whom is, an individual, shall apply with respect to an order of adjudication within the meaning of the Bankruptcy Act 1908 or an assignment for the benefit of creditors made on or after the fifth day of September, nineteen hundred and sixty-eight.

(4) This section, so far as it relates to an employer that is a company, shall apply with respect to liquidation under a winding-up order made on or after the fifth day of September, nineteen hundred and sixty-eight, or, as the case may be, the appointment of a receiver or the taking of possession of property on behalf of a debenture holder on or after that date.

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