Part E
Timing and quantifying rules

Subpart EA—Matching rules: revenue account property, prepayments, and deferred payments

Contents

EA 1 Trading stock, livestock, and excepted financial arrangements

Property subject to matching rules

(1) The matching rules described in this section apply to each of the following kinds of property:

(a) trading stock valued under **subpart EB** (Valuation of trading stock (including dealer's livestock)):

(b) livestock valued under **subpart EC** (Valuation of livestock):

(c) excepted financial arrangements that are revenue account property valued under **subpart ED** (Valuation of excepted financial arrangements):

(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in **paragraph (c).**

Application of section CH 1

(2) When a person has any of those kinds of property at the end of an income year, its value is income of the person in the income year under **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements).

Application of section DB 50

(3) When a person has any of those kinds of property at the start of an income year, they are allowed a deduction for its value in the income year under **section DB 50** (Adjustment for opening

values of trading stock, livestock, and excepted financial arrangements).

Determination of values

(4) The values are determined under—

(a) **section EB 3** (Valuation of trading stock); and

(b) **section EC 2** (Valuation of livestock); and

(c) **section ED 1** (Valuation of excepted financial arrangements).

Defined in this Act: deduction, excepted financial arrangement, income, income year, original share, pay, revenue account property, share-lending right, share supplier, trading stock

Compare: 2004 No 35 s EA 1

EA 2 Other revenue account property

When this section applies

(1) This section applies to revenue account property that is not—

(a) trading stock valued under **subpart EB** (Valuation of trading stock (including dealer's livestock)):

(b) livestock valued under **subpart EC** (Valuation of livestock):

(c) an excepted financial arrangement valued under **subpart ED** (Valuation of excepted financial arrangements):

(d) a film or a film right to which **sections EJ 4 to EJ 8** (which relate to films) apply:

(e) a specified lease or a lease to which **section EJ 10** (Personal property lease payments) applies:

(f) property that arises as a result of petroleum development expenditure or petroleum exploration expenditure to which **sections EJ 12 to EJ 20** (which relate to petroleum mining) apply:

(g) a financial arrangement valued under **subpart EW** (Financial arrangements rules).

Timing of deduction

(2) A deduction for the cost of revenue account property of a person is allocated to the earlier of—

(a) the income year in which the person disposes of the property; and

(b) the income year in which the property ceases to exist.

Defined in this Act: deduction, excepted financial arrangement, film, film right, financial arrangement, income year, lease, pay, petroleum development expenditure, petroleum exploration expenditure, revenue account property, specified lease, trading stock

Compare: 2004 No 35 s EA 2

EA 3 Prepayments

When this section applies

(1) This section applies when—

(a) a person has been allowed a deduction for expenditure under this Act or an earlier Act; and

(b) the expenditure was not incurred on the items described in **subsection (2)**; and

(c) some or all of the expenditure is unexpired under **subsections (4) to (7)** at the end of the person's income year.

Exclusions

(2) This section does not apply to expenditure incurred on—

(a) revenue account property to which **section EA 2** applies:

(b) trading stock valued under **subpart EB** (Valuation of trading stock (including dealer's livestock)):

(c) livestock valued under **subpart EC** (Valuation of livestock):

(d) an excepted financial arrangement valued under **subpart ED** (Valuation of excepted financial arrangements):

(e) a film or a film right to which **sections EJ 4 to EJ 8** (which relate to films) apply:

(f) a specified lease or a lease to which **section EJ 10** (Personal property lease payments) applies:

(g) property that arises as a result of petroleum development expenditure or petroleum exploration expenditure to which **sections EJ 12 to EJ 20** (which relate to petroleum mining) apply:

(h) a financial arrangement valued under **subpart EW** (Financial arrangements rules).

Unexpired portion

(3) The unexpired portion of a person's expenditure at the end of an income year—

(a) is income of the person in the income year under **section CH 2** (Adjustment for prepayments); and

(b) is an amount for which the person is allowed a deduction in the following income year under **section DB 51** (Adjustment for prepayments).

(Determination of values)Unexpired portion: expenditure on goods

(4) An amount of expenditure on goods is unexpired at the end of an income year if, by the end of the income year,—

(a) the person has not used up the goods in deriving income; and

(b) the goods are not destroyed or rendered useless for the purpose of deriving income.

Unexpired portion: expenditure on services

(5) An amount of expenditure on services is unexpired at the end of an income year if the services have not been performed by the end of the income year.

Unexpired portion: expenditure on choses in action

(6) An amount of expenditure on a chose in action is unexpired at the end of an income year if the amount relates to a period of enforceability of the chose in action falling after the income year.

Allowances reimbursing employees

(7) In the case of expenditure subject to **sections CW 17** (Expenditure on account, and reimbursement, of employees) and **CW 18** (Allowance for additional transport costs), this section applies on the basis that the relevant services were performed in the income year in which the employee's expenditure is expected to occur.

Commissioner's discretionary relief

(8) The Commissioner may excuse a person from complying with this section under section 91AAC of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, deduction, employee, film, film right, goods, income, income year, pay, revenue account property, services

Compare: 2004 No 35 s EA 3

EA 4 Deferred payment of employment income

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction in an income year for an amount of expenditure on employment income; and

(b) the person has not paid the amount at the end of—

(i) the 63rd day after the end of the income year; or

(ii) the period described in **subsection (3)**, for employment income paid to a shareholder-employee.

Unpaid amount

(2) The unpaid amount is—

(a) income of the person in the income year under **section CH 3** (Adjustment for deferred payment of employment income); and

(b) an amount for which the person is allowed a deduction in the following income year under **section DB 52** (Adjustment for deferred payment of employment income).

Extension of payment period for shareholder-employee

(3) For employment income paid to a shareholder-employee, the 63 day period for payment in **subsection (1)(b)(i)** is extended until the last date by which the person could file a return of income for the income year if the time for filing were extended to its maximum under section 37(5) of the Tax Administration Act 1994.

Sale of business: obligations transferred to non-associates

(4) For the purposes of this section, a person (the **seller**) who sells a business, or a part of a business, to another person (the **buyer**) is treated as paying, at the time of the sale, an amount of employment income of an employee working in the business if—

(a) the seller and the buyer are not associated persons at the time of the sale; and

(b) the seller has incurred the obligation to pay the amount in the course of their business, whether or not it remains a contingent obligation at the time of sale; and

(c) the employee becomes an employee of the buyer under the sale arrangements; and

(d) the seller and the buyer agree in writing, under the sale arrangements, that—
 (i) the buyer assumes the obligation to pay an amount of employment income to the employee; and
 (ii) the consideration payable by the buyer for the business, or the part of the business, reflects the buyer's assumption of the seller's provision for the obligation.

Sale of business: obligations transferred to associates

(5) If **subsection (4)** would have applied but for the fact that the seller and the buyer are associated at the time of the sale,—
 (a) the amount of employment income is not treated as income of the seller in any income year following the sale, despite **subsection (2)(a)** and **section CH 3**; and
 (b) the seller is denied a deduction for the amount of employment income in any income year following the sale, despite **subsection (2)(b)** and **section DB 52**; and
 (c) the buyer may be allowed a deduction under **section DC 10(3)** (Sale of business: transferred employment income obligations).

No sale: obligations transferred to associates

(6) If **section DC 11** (Transfers of employment income obligations to associates) applies,—
 (a) the amount of employment income is not treated as income of the transferor (**person A**) in any income year following the sale, despite **subsection (2)(a)** and **section CH 3**; and
 (b) the transferor is denied a deduction for the amount of employment income in any income year following the sale, despite **subsection (2)(b)** and **section DB 52**; and
 (c) the transferee (**person B**) may be allowed a deduction under **section DC 11**.

Accounting treatment of transferred obligations

(7) For the purposes of this section, the buyer of a business, or a part of a business, who assumes at the time of the sale an obligation to pay an amount of employment income—

(a) may account for the amount in a way that treats the relevant employee individually or treats the buyer's employees as a group; and

(b) must account for the amount in the same way in each relevant income year.

Defined in this Act: amount, arrangement, associated person, business, deduction, employee, employment income, income, income year, pay, return of income, shareholder-employee, time of the sale

Compare: 2004 No 35 s EA 4

Subpart EB—Valuation of trading stock (including dealer's livestock)

Contents

Introductory provisions

EB 1 When this subpart applies

This subpart applies when a person who owns or carries on a business has trading stock for the purpose of selling or exchanging it in the ordinary course of the business.

Defined in this Act: business, trading stock

Compare: 2004 No 35 s EB 1

EB 2 Meaning of trading stock

Meaning

(1) **Trading stock** means property that a person who owns or carries on a business has for the purpose of selling or exchanging in the ordinary course of the business.

Inclusions

(2) **Trading stock** includes—
- (a) work of the following kinds that would be trading stock under **subsection (1)** if it were completed:
  - (i) partly completed work:
  - (ii) work in progress:
- (b) materials that the person has for use in producing trading stock:
- (c) property on which the person has incurred expenditure, when the property would, if they had it, be trading stock under **subsection (1)** or **paragraph (a) or (b)**:
- (d) property leased under a hire purchase agreement when the property—
  - (i) is treated as having been acquired by the lessor under **section FA 15** (Treatment when agreement ends: seller acquiring property); and
  - (ii) is an asset of a business that the lessor carries on.

Exclusions

(3) **Trading stock** does not include—

(a) land:

(b) depreciable property:

(c) a financial arrangement to which the financial arrangements rules or the old financial arrangements rules apply:

(d) an excepted financial arrangement that a life insurer has:

New (unanimous)

(db) an excepted financial arrangement held by a person if **section CX 54** (Proceeds from certain disposals by portfolio investment entities) applies to the income of the person from a disposal of the excepted financial arrangement:

(e) livestock not used in a dealing business:

(f) consumable aids to be used in the process of producing trading stock:

(g) a spare part not held for sale or exchange.

Defined in this Act: business, depreciable property, excepted financial arrangement, financial arrangement, hire purchase agreement, income, land, lessor, life insurer, trading stock

Compare: 2004 No 35 s EB 2

EB 3 Valuation of trading stock

Valuation method

(1) A person who carries on a business must determine the value of their trading stock at the end of each income year by a method that is available under this subpart for them to use.

Use of value

(2) The value determined under **subsection (1)** is—

(a) the closing value of the trading stock for the income year for the purposes of **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and

(b) the opening value of the trading stock for the next income year for the purposes of **section DB 50** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Excepted financial arrangements valued at cost

(3) Despite anything in this subpart, the value of any trading stock that is an excepted financial arrangement must be determined under **subpart ED** (Valuation of excepted financial arrangements).

Defined in this Act: business, excepted financial arrangement, income year, trading stock

Compare: 2004 No 35 s EB 3

EB 4 Trading stock valuation methods

Standard valuation

(1) The standard valuation methods for trading stock are—
- (a) cost:
- (b) discounted selling price:
- (c) replacement price:
- (d) market selling value.

Low-turnover valuation

(2) A person who is a low-turnover trader may value closing stock by a method described in **section EB 14**.

Low value trading stock

(3) In certain circumstances, a person may value closing stock under **section EB 23**.

Defined in this Act: closing stock, cost, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 4

EB 5 Transfers of trading stock within wholly-owned groups

When this section applies

(1) This section applies in an income year to trading stock held by a company that is part of a wholly-owned group of companies, when—
- (a) a group company (**company A**) originally acquires and holds the trading stock; and

(b) from the time it is acquired to the end of the income year, the trading stock is held within the group by a company or companies that are resident in New Zealand; and

(c) through transfers within the group, another group company (**company B**) holds the trading stock at the end of the income year; and

(d) company A and company B remain part of the group at the end of the income year; and

(e) either—

 (i) the income years of company A and company B end on the same date; or

 (ii) they end on different dates, and the Commissioner has approved both dates as corresponding to the end of a business cycle and as necessary to avoid material distortion of net income that would occur if the income years ended on the same date.

Choice of treatment

(2) Company B may choose to value the closing stock at the cost of the trading stock to company A.

When company stops being part of group

(3) If the companies stop being part of the same wholly-owned group, company B is treated as disposing of and reacquiring the trading stock for its market value at the time. If the market value of the trading stock cannot be determined separately from other property, its market value at the time company B acquired it is treated as its value.

Defined in this Act: business, closing stock, Commissioner, company, cost, income year, market value, net income, resident in New Zealand, trading stock, wholly-owned group of companies

Compare: 2004 No 35 s EB 5

Standard valuation

EB 6 Cost

Valuation at cost

(1) A person may determine the value of their closing stock at cost. If the person chooses this method, they must include and allocate costs under generally accepted accounting practice.

Whether valuation correct

(2) For the purposes of **subsection (1)**, the person has not complied with generally accepted accounting practice if the value of closing stock is materially different from the value obtained by applying, to the closing stock, Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place.

Defined in this Act: closing stock, cost, generally accepted accounting practice

Compare: 2004 No 35 s EB 6

EB 7 Cost allocation: cost-flow method

When this section applies: first case

(1) This section applies when a person who determines the value of their closing stock at cost has items of trading stock that are not separately identifiable.

Compulsory use of cost-flow method

(2) The person must use 1 of the cost-flow methods described in **subsection (5)** to identify the items of trading stock included in closing stock and to determine the cost of the items.

When this section applies: second case

(3) This section also applies when a person who determines the value of their closing stock at cost has items of trading stock that are separately identifiable.

Discretionary use of cost-flow method

(4) The person may use 1 of the cost-flow methods described in **subsection (5)** to determine the cost of the items of trading stock.

Cost-flow methods

(5) The cost-flow methods of allocating costs are—
- (a) the first-in first-out cost method; and
- (b) the weighted average cost method.

Consistent use

(6) A person who determines the value of their closing stock at cost must use the same cost-flow method of allocating costs as they use in their financial statements for the income year.

Defined in this Act: closing stock, cost, financial statements, income year, trading stock

Compare: 2004 No 35 s EB 7

EB 8 Cost allocation: budgeted method or standard cost method

When this section applies

(1) This section applies when a person—
- (a) has a business of manufacturing or producing trading stock; and
- (b) determines the value of their closing stock at cost; and
- (c) allocates costs by—
  - (i) a budgeted method; or
  - (ii) a standard cost method; and
- (d) is not a low-turnover trader to whom **section EB 17(3)** applies.

Apportionment of difference required

(2) If any difference arises between the estimated costs of production included in the financial statements of the business for the income year and the actual costs of production, the person must apportion the difference between the cost of trading stock sold during the income year and the closing stock.

Defined in this Act: business, closing stock, cost, financial statements, income year, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 8

EB 9 Discounted selling price

Valuation at discounted selling price

(1) A person may determine the value of their closing stock at its discounted selling price if they use discounted selling price for their trading stock in their financial statements.

Retailers

(2) If the person is a retailer, the discounted selling price for each department or category of goods is the total of the retail selling prices of the goods minus the normal gross profit margin for the department or category of goods. This subsection is overridden by **subsection (4)**.

Normal gross profit margin for purposes of subsection (2)

(3) For the purposes of **subsection (2)**, the person must—
  (a) calculate the normal gross profit margin for the department or category of goods under Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place; and
  (b) calculate the normal gross profit margin for each income year for each department or category of goods; and
  (c) include all costs that **sections EB 6 to EB 8** require to be included.

Retailers with turnover of $1,000,000 or less

(4) A trader who is a retailer whose turnover is $1,000,000 or less may determine the discounted selling price of all closing stock valued under this method in an income year by discounting the total of the retail selling prices of the stock by the average gross profit margin for all closing stock valued under this method in the income year.

Increase in specified sum

(5) The Governor-General may make an Order in Council increasing the sum specified in **subsection (4)**.

Not retailers

(6) If the person is not a retailer, the discounted selling price for each category of goods is the total market selling value of the

goods minus the normal gross profit margin for the category of goods.

Normal gross profit margin for purposes of subsection (6)

(7) For the purposes of **subsection (6)**, the person must—

(a) calculate the normal gross profit margin for each income year for each category of goods; and

(b) include all costs that **sections EB 6 to EB 8** require to be included.

Defined in this Act: closing stock, cost, financial statements, income year, trading stock, turnover

Compare: 2004 No 35 s EB 9

EB 10 Replacement price

Valuation at replacement price

(1) A person may determine the value of their closing stock at its replacement price if they use replacement price for their trading stock in their financial statements.

Establishing replacement price

(2) The replacement price—

(a) is—

(i) the market value of the trading stock on the last day of the income year; or

(ii) if there is no such market value, the last price that the person paid during the income year to acquire equivalent trading stock; and

(b) does not include an amount of input tax for the supply of the replacement trading stock to the person.

Defined in this Act: closing stock, financial statements, income year, input tax, trading stock

Compare: 2004 No 35 s EB 10

EB 11 Market selling value

Valuation at market selling value

(1) A person may determine the value of their closing stock at its market selling value if the market selling value is less than the cost of the stock.

Establishing market selling value

(2) The market selling value of closing stock is found by taking the amount that the person would normally expect to receive in the ordinary course of business from the sale of the trading stock and subtracting the following costs:
- (a) the estimated costs of completion; and
- (b) the expected costs of selling it.

Expected costs of selling

(3) For the purposes of **subsection (2)(b)**, the expected costs of selling the stock are the costs that the person usually incurs for the following:
- (a) transport:
- (b) insurance:
- (c) sales commissions:
- (d) discounts to buyers.

Expected costs of selling: financial statements

(4) For the purposes of **subsection (3)**, if the person prepares financial statements, the costs must have been taken into account in the statements in calculating net realisable value.

Substantiating market selling value

(5) If the person uses market selling value to value closing stock, they must be able to substantiate that value. If they cannot, they must use 1 of the following to value their closing stock:
- (a) cost, as described in **sections EB 6 to EB 8 or EB 15 to EB 18**; or
- (b) discounted selling price, as described in **section EB 9 or EB 19**; or
- (c) replacement price, as described in **section EB 10 or EB 20**.

Defined in this Act: amount, business, closing stock, cost, financial statements, trading stock

Compare: 2004 No 35 s EB 11

EB 12 Valuing closing stock consistently

In determining the value of closing stock at cost, discounted selling price, or replacement price, a person must comply with the consistency and disclosure requirements of Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place.

Defined in this Act: closing stock, cost

Compare: 2004 No 35 s EB 12

Low-turnover valuation

EB 13 Low-turnover valuation

Options

(1) A person who is a low-turnover trader may value closing stock—

(a) by a standard valuation method, as described in **sections EB 6 to EB 12**; or

(b) by a low-turnover valuation method, as described in **sections EB 14 to EB 22**; or

(c) as low value trading stock, in the circumstances described in **section EB 23**.

Meaning of low-turnover trader

(2) In this subpart, **low-turnover trader** means a person who carries on a business when, in an income year, the total of the turnover of the business and the turnover of associated persons, as defined in **sections YB 2 and YB 8** (which contain definitions of associated persons), is no more than the greater of—

(a) $3,000,000; and

(b) the sum specified by the Governor-General by Order in Council.

Increase in specified sum

(3) The Governor-General may make an Order in Council increasing the sum specified in **subsection (2)(a)**.

Defined in this Act: associated person, business, closing stock, income year, low-turnover trader, turnover

Compare: 2004 No 35 s EB 13

EB 14 Low-turnover valuation methods

The low-turnover valuation methods are—

(a) cost for low-turnover traders; and

(b) discounted selling price for low-turnover traders; and

(c) replacement price for low-turnover traders; and

(d) market selling value for low-turnover traders.

Defined in this Act: cost, low-turnover trader

Compare: 2004 No 35 s EB 14

EB 15 Cost for low-turnover traders

A low-turnover trader may determine the value of their closing stock at cost. If the low-turnover trader chooses this method, they must include and allocate costs under—

(a) generally accepted accounting practice; or

(b) **section EB 16**; or

(c) **section EB 17**; or

(d) **section EB 18**.

Defined in this Act: closing stock, cost, generally accepted accounting practice, low-turnover trader

Compare: 2004 No 35 s EB 15

EB 16 Cost allocation: cost-flow method for low-turnover traders

Section EB 7(1) to (5) applies to a low-turnover trader.

Defined in this Act: cost, low-turnover trader

Compare: 2004 No 35 s EB 16

EB 17 Costs: manufactured or produced stock of low-turnover traders

When this section applies

(1) This section applies when a low-turnover trader—

(a) has a business of manufacturing or producing trading stock; and

(b) determines the value of their closing stock at cost.

Costs to be included

(2) In determining the value of their closing stock, the low-turnover trader must include the following costs of production:

(a) direct and indirect material costs:

(b) direct and indirect labour costs:

(c) utilities costs:

(d) costs of repairing and maintaining factory plant:

(e) costs of rent of factory plant:

(f) amounts of depreciation loss on factory plant:

(g) costs additional to those described in **paragraphs (a) to (f)**, if—
  (i) they are costs of production; and
  (ii) the low-turnover trader includes them in the financial statements for the income year.

Apportionment of difference not required

(3) If the low-turnover trader allocates costs by a budgeted method or a standard cost method, and if any difference arises between the estimated costs of production included in the financial statements of the business for the income year and the actual costs of production, the low-turnover trader is not required to apportion the difference between the cost of trading stock sold during the income year and the closing stock.

Defined in this Act: amount, business, closing stock, cost, depreciation loss, financial statements, income year, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 17

EB 18 Costs: other stock of low-turnover traders

When this section applies

(1) This section applies when a low-turnover trader—
  (a) acquires trading stock other than by manufacture or production; and
  (b) determines the value of their closing stock at cost.

Costs to be included

(2) In determining the value of their closing stock, the low-turnover trader must include the following costs:
  (a) the purchase price; and
  (b) any direct transport and insurance costs that they incur in bringing the stock to the place and condition in which they have it.

Defined in this Act: closing stock, cost, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 18

EB 19 Discounted selling price for low-turnover traders

Financial statements prepared

(1) A low-turnover trader who prepares financial statements may determine the value of their closing stock at its discounted

selling price if they use discounted selling price for their trading stock in their financial statements.

Financial statements not prepared

(2) A low-turnover trader who does not prepare financial statements may determine the value of their closing stock at its discounted selling price.

Retailers with turnover of more than $1,000,000

(3) If the low-turnover trader is a retailer whose turnover is more than $1,000,000, the discounted selling price for each department or category of goods is the total of the retail selling prices of the goods minus the normal gross profit margin for the department or category of goods.

Normal gross profit margin for purposes of subsection (3)

(4) For the purposes of **subsection (3)**, the low-turnover trader must—

(a) calculate the normal gross profit margin for the department or category of goods under Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place; and

(b) calculate the normal gross profit margin for each income year for each department or category of goods; and

(c) include all costs that **sections EB 16 to EB 18** require to be included.

Not retailers

(5) If the low-turnover trader is not a retailer, the discounted selling price for each category of goods is the total market selling value of the goods minus the normal gross profit margin for the category of goods.

Normal gross profit margin for purposes of subsection (5)

(6) For the purposes of **subsection (5)**, the low-turnover trader must—

(a) calculate the normal gross profit margin for each income year for each category of goods; and

(b) include all costs that **sections EB 16 to EB 18** require to be included.

Defined in this Act: closing stock, cost, financial statements, income year, low-turnover trader, trading stock, turnover

Compare: 2004 No 35 s EB 19

EB 20 Replacement price for low-turnover traders

Financial statements prepared

(1) A low-turnover trader who prepares financial statements may determine the value of their closing stock at its replacement price if they use replacement price for their trading stock in their financial statements.

Financial statements not prepared

(2) A low-turnover trader who does not prepare financial statements may determine the value of their closing stock at its replacement price.

Establishing replacement price

(3) The replacement price is—
(a) the market value of the trading stock on the last day of the income year; or
(b) the last price that the low-turnover trader paid during the income year to acquire equivalent trading stock.

Defined in this Act: financial statements, income year, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 20

EB 21 Market selling value for low-turnover traders

Valuation at market selling value

(1) A low-turnover trader may determine the value of their closing stock at its market selling value, whether that value is higher or lower than cost. However, if the value is higher than cost, the trader must be consistent from 1 income year to the next in their use of market selling value to determine the value of closing stock.

Establishing market selling value

(2) **Section EB 11(2) to (4)** applies to a low-turnover trader.

Defined in this Act: closing stock, cost, income year, low-turnover trader

Compare: 2004 No 35 s EB 21

EB 22 Valuing closing stock consistently for low-turnover traders

Traders complying with generally accepted accounting practice

(1) In determining the value of closing stock at cost, discounted selling price, or replacement price, a low-turnover trader who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1983 or an equivalent standard issued in its place.

Other traders

(2) A low-turnover trader who does not comply with generally accepted accounting practice must be consistent from 1 income year to the next in—

(a) their choice of valuing closing stock at cost, discounted selling price, or replacement price; and

(b) their use of market selling value, if it is greater than cost; and

(c) their use of a cost-flow method of allocating costs under **section EB 7(1) to (5)**; and

(d) the extent to which they include indirect costs in the cost of trading stock that they manufacture or produce; and

(e) their method of calculating discounted selling price.

When changes allowed

(3) A low-turnover trader to whom **subsection (2)** applies may make changes in relation to the matters described in the subsection if—

(a) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or

(b) the change is required by another provision in this subpart.

Records

(4) A low-turnover trader who makes a change as described in **subsection (3)** must keep sufficient details of the change, and the reasons for the change, under section 22 of the Tax Administration Act 1994.

Defined in this Act: closing stock, cost, generally accepted accounting practice, income tax liability, income year, low-turnover trader, trading stock

Compare: 2004 No 35 s EB 22

Low value trading stock

EB 23 Valuing closing stock under $5,000

When this section applies

(1) This section applies when a person, including a low-turnover trader,—

(a) has a turnover of $1,300,000 or less in an income year; and

(b) reasonably estimates that the value of their closing stock for the income year is less than $5,000.

Closing value

(2) The person may use the opening value of their trading stock as the value of their closing stock for the income year.

Defined in this Act: closing stock, income year, low-turnover trader, trading stock, turnover

Compare: 2004 No 35 s EB 23

Disposal of business assets

EB 24 Apportionment on disposal of business assets that include trading stock

When this section applies

(1) This section applies when a person disposes of trading stock together with other assets of a business to another person. This section applies also if a person disposes of an interest in trading stock together with other assets of a business or an interest in those other assets.

Apportionment

(2) The total amount received on disposal must be apportioned between the trading stock and the other assets in a way that reflects their respective market values.

Purchase price

(3) The amount apportioned to the trading stock under **subsection (2)** is treated as the price paid for it by the buyer.

Disposals of **(***trading stock***)** *timber*

(4) For the purposes of this section, a disposal of timber is treated as—
- (a) including the creation or grant of a right to take timber:
- (b) including a disposal of land with standing timber except to the extent to which the timber is any of the following:
  - (i) trees that are ornamental or incidental, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994; or
  - (ii) timber subject to a forestry right, as defined in section 2 of the Forestry Rights Registration Act 1983, registered under the Land Transfer Act 1952; or
  - (iii) timber subject to a profit a prendre granted before 1 January 1984.

Transfers under settlement of relationship property

(5) A disposal under this section includes a transfer under a settlement of relationship property.

Defined in this Act: amount, business, dispose, financial arrangement, financial arrangements rules, land, market value, registered bank, right to take timber, settlement of relationship property, timber, trading stock

Compare: 2004 No 35 ss FB 4, FF 13(1)

Subpart EC—Valuation of livestock

Contents

Introductory provisions

Introductory provisions

EC 1 Application of this subpart

What this subpart does

(1) This subpart sets out the rules for valuing livestock not used in a dealing business.

Groups of livestock

(2) For the purposes of this subpart, livestock is divided into—
(a) specified livestock:
(b) non-specified livestock:
(c) high-priced livestock:
(d) bloodstock.

Defined in this Act: bloodstock, business, high-priced livestock, non-specified livestock, specified livestock

Compare: 2004 No 35 s EC 1

EC 2 Valuation of livestock

Valuation method

(1) A person must determine the value of their livestock at the end of each income year by a method that is available under this subpart for them to use.

Use of value

(2) The value determined under **subsection (1)** is—

(a) the closing value of the livestock for the income year for the purposes of **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and

(b) the opening value of the livestock for the next income year for the purposes of **section DB 50** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: income year

Compare: 2004 No 35 s EC 2

EC 3 Livestock valuation methods

Specified livestock

(1) The value of specified livestock is determined under **sections EC 6 to EC 27**.

Non-specified livestock

(2) The value of non-specified livestock is determined under **sections EC 28 to EC 31**.

High-priced livestock

(3) The value of high-priced livestock is determined under **sections EC 32 to EC 37**.

Bloodstock

(4) The value of bloodstock is determined under **sections EC 38 to EC 48**.

Defined in this Act: bloodstock, high-priced livestock, non-specified livestock, specified livestock

Compare: 2004 No 35 s EC 3

EC 4 Transfers of livestock within wholly-owned groups

When this section applies

(1) This section applies in an income year to livestock held by a company that is part of a wholly-owned group of companies, when—

(a) a group company (**company A**) originally acquires and holds the livestock; and

(b) from the time it is acquired to the end of the income year, the livestock is held within the group by a company or companies that are resident in New Zealand; and

(c) through transfers within the group, another group company (**company B**) holds the livestock at the end of the income year; and

(d) company A and company B remain part of the group at the end of the income year; and

(e) either—

(i) the income years of company A and company B end on the same date; or

(ii) they end on different dates, and the Commissioner has approved both dates as corresponding to the end of a business cycle and as necessary to avoid material distortion of net income that would occur if the income years ended on the same date.

Choice of treatment

(2) Company B may choose to value the livestock at the cost of the livestock to company A.

When company stops being part of group

(3) If the companies stop being part of the same wholly-owned group, company B is treated as disposing of and reacquiring the livestock for its market value at the time. If the market value of the livestock cannot be determined separately from other property, its market value at the time company B acquired it is treated as its value.

Defined in this Act: business, Commissioner, company, income year, net income, resident in New Zealand, wholly-owned group of companies

Compare: 2004 No 35 s EC 5

EC 5 Transfer of livestock because of self-assessed adverse event

When this section applies

(1) This section applies to livestock that is donated, or supplied for consideration with a value that is less than the market value of the livestock, to a recipient—

(a) for use in a farming or agricultural business that is affected by a self-assessed adverse event; and
(b) by a donor or supplier who is not associated with the recipient.

Treatment by donor or supplier

(2) The donor or supplier must treat the livestock as having, on the day of the transfer of the livestock,—
(a) no value, if the livestock is donated to the recipient:
(b) the value of the consideration provided by the recipient.

Treatment by recipient

(3) The recipient must treat the livestock as having, on the day of the transfer of the livestock,—
(a) no value, if the livestock is donated to the recipient:
(b) the value of the consideration provided by the recipient.

Defined in this Act: market value, self-assessed adverse event

Compare: 2004 No 35 s EC 5B

Valuation of specified livestock

EC 6 Application of sections EC 7 to EC 27

Sections EC 7 to EC 27 set out the rules for valuing specified livestock.

Defined in this Act: specified livestock

Compare: 2004 No 35 s EC 6

EC 7 Valuation methods

Methods

(1) The methods available for valuing specified livestock are—
(a) the herd scheme described in **sections EC 14 to EC 21**:
(b) the national standard cost scheme described in **sections EC 22 to EC 24**:
(c) 1 of the cost price, replacement price, or market value methods described in **section EC 25**:
(d) the method described in **section EC 26**.

Person chooses

(2) A person must choose which method to use, making their election by using the method chosen in their return of income for the income year.

Election continues

(3) When a person chooses a valuation method, that method continues to apply in the following income years unless they choose another method that is available to them.

Commissioner's determination

(4) If a person chooses a valuation method that is not available to them and they later make no effective election, the Commissioner must determine the method to be used. In doing so, the Commissioner must consult the person.

Restrictions

(5) Restrictions apply to the use of valuation methods, as described in **sections EC 8 to EC 10**, and the making of elections, as described in **section EC 11**.

Defined in this Act: Commissioner, cost price, herd scheme, income year, national standard cost scheme, return of income, specified livestock

Compare: 2004 No 35 s EC 7

EC 8 Restrictions on use of herd scheme

Herd scheme: first restriction on use of other method

(1) A valuation method other than the herd scheme is not available to a person, in an income year, for animals of a class for which they use the herd scheme if the animals remaining to be valued under the herd scheme would be reduced to a number smaller than the number of any animals of the class that the person valued under the herd scheme at the end of the previous income year.

Herd scheme: second restriction on use of other method

(2) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income

year, they also value any livestock of that type under the national standard cost scheme or under the cost price method.

Defined in this Act: class, cost price, herd scheme, income year, national standard cost scheme, type

Compare: 2004 No 35 s EC 8

EC 9 Restrictions on use of national standard cost scheme

National standard cost scheme: first restriction on use of scheme

(1) The national standard cost scheme is not available to a person to value specified livestock in an income year if they value any specified livestock in the income year under the cost price method.

National standard cost scheme: second restriction on use of scheme

(2) The national standard cost scheme is not available to a person to value specified livestock if, in the income year before the income year in which their election under **section EC 7(2)** is to apply, they have valued specified livestock under the cost price method, and have not given at least 2 income years' notice in the way described in **section EC 11** to the Commissioner of their election to value specified livestock under the national standard cost scheme.

National standard cost scheme: third restriction on use of scheme

(3) The national standard cost scheme is not available to a person to value a type of specified livestock in an income year if they have made specified livestock available to another person under a profit-sharing arrangement and, in the income year, the other person, or another person has also made livestock of the type available under the profit-sharing arrangement, values any livestock of the type under the cost price method.

National standard cost scheme: fourth restriction on use of scheme

(4) The national standard cost scheme is not available to a person to value specified livestock in an income year if—

(a) they have bailed the livestock to another person under a long-term bailment not made under a profit-sharing arrangement; or

(b) they have leased the livestock to another person under a long-term bailment not made under a profit-sharing arrangement.

National standard cost scheme: fifth restriction on use of scheme

(5) The national standard cost scheme is not available to a person to value specified livestock in an income year if a determination made under **section EC 24** precludes the use of the national standard cost scheme for the livestock.

Defined in this Act: Commissioner, cost price, income year, lease, long-term bailment, national standard cost scheme, profit-sharing arrangement, specified livestock, type

Compare: 2004 No 35 s EC 9

EC 10 Restrictions on use of cost price method

Cost price method: first restriction on use of method

(1) The cost price method is not available to a person to value specified livestock in an income year if the person values other specified livestock in the income year under the national standard cost scheme.

Cost price method: second restriction on use of method

(2) The cost price method is not available to a person to value specified livestock if, in the income year before the income year in which their election under **section EC 7(2)** is to apply, they have valued specified livestock under the national standard cost scheme and have not given 2 income years' notice in the way described in **section EC 11** to the Commissioner of their election to value specified livestock under the cost price method.

Cost price method: third restriction on use of method

(3) The cost price method is not available to a person to value specified livestock in an income year if they have bailed or leased their specified livestock to another person, unless the livestock is bailed or leased under a profit-sharing arrangement.

Cost price method: fourth restriction on use of method

(4) The cost price method is not available to a person to value specified livestock in an income year if they have bailed or leased their specified livestock to another person—

(a) under a long-term bailment; or

(b) under a short-term bailment made between associated persons in which the consideration paid to the bailee is not a fair market value.

Cost price method: fifth restriction on use of method

(5) The cost price method is not available to a person to value a type of specified livestock in an income year if they have made specified livestock available to another person under a profit-sharing arrangement and, in the income year, the other person, or another person has also made livestock of the type available under the profit- sharing arrangement, values any livestock of the type under the national standard cost scheme.

Defined in this Act: associated person, Commissioner, cost price, income year, lease, long-term bailment, national standard cost scheme, profit-sharing arrangement, short-term bailment, specified livestock, type

Compare: 2004 No 35 s EC 10

EC 11 Restrictions on making of elections

Forms of notice

(1) This section specifies the 2 forms of notice that a person must give to the Commissioner and when each must be used. When a person notifies the Commissioner of an election under this section, the election is irrevocable in the first income year in which it applies.

When notice in same year required

(2) For the elections described in this subsection, a person must give notice by the date of filing their return of income for the income year in which the election is first to apply. The elections are—

(a) an election to value livestock of a particular type under the herd scheme, as described in **section EC 14**; and

(b) an election to adopt a herd value ratio or the Chatham Islands adjustment to the herd value ratio for livestock of any type when the income year is the first income year in which the particular livestock is valued under the herd scheme, as described in **sections EC 17 to EC 19**.

When 2 years' notice required

(3) For the elections described in this subsection, a person must give notice by the date of filing their return of income for an income year that is at least 2 income years before the income year in which the election is first to apply. The elections are—
(a) an election to stop valuing specified livestock of a particular type under the herd scheme, except when the person continues to value some livestock of that type under the herd scheme or when another valuation method is available, as described in **section EC 14(2)**; and
(b) an election, after the herd scheme has been adopted, to adopt a herd value ratio or recalculated herd value ratio or the Chatham Islands adjustment for any livestock type, as described in **sections EC 17 to EC 19**; and
(c) an election to value specified livestock under the national standard cost scheme when the person has, in the income year before the application of the new election, valued the same livestock under the cost price method; and
(d) an election to value specified livestock under the cost price method when the person has, in the year before the application of the new election, valued the same livestock under the national standard cost scheme.

Information for notices of election

(4) A notice of election must state—
(a) the income year in which the election is first to apply; and
(b) the type, class, or other description of the applicable livestock; and
(c) the existing and proposed methods of valuing the applicable livestock; and
(d) for an election to use a herd value ratio or recalculated herd value ratio under **section EC 17**,—
(i) the value assessed under **section EC 17(4)** of an average animal of each applicable class of livestock; and
(ii) the date on which the valuation of each animal was made; and

(iii) the name and address of the valuer.

Defined in this Act: class, Commissioner, cost price, herd scheme, herd value ratio, income year, national standard cost scheme, notice, notify, return of income, specified livestock, type

Compare: 2004 No 35 s EC 11

EC 12 Interests in livestock

Joint election of valuation method

(1) When specified livestock is owned jointly by 2 or more persons, the owners must choose a valuation method. For the election to be effective, it must be made jointly by all the owners.

Ineffective election

(2) If there is no effective election, specified livestock owned jointly is valued as follows:

(a) if the owners bail or lease the livestock to another person during the income year, under the market value method; or

(b) if the owners enter into a profit-sharing arrangement for the livestock, under the market value method; or

(c) in any other case, under the national standard cost scheme.

Profit-sharing arrangements

(3) If the method used in an income year to calculate the value of livestock under a profit-sharing arrangement is the national standard cost scheme or the cost price method, all the following are treated as the single owner of the livestock:

(a) the person who owns the livestock; and

(b) the person who has the use of the livestock; and

(c) any other person who has made livestock of the same type available to the person referred to in **paragraph (b)** under a profit-sharing arrangement.

Partnerships interests

(4) For the purpose of an election under this section, a person's interest in a partnership that owns livestock is treated separately from any other interest that the person has in livestock. Separate elections are required for the person's partnership interest and for their other livestock interests. The person is

not required to choose the same valuation method in both cases.

Defined in this Act: cost price, income year, lease, national standard cost scheme, profit-sharing arrangement, specified livestock, type

Compare: 2004 No 35 s EC 12

EC 13 Changes in partnership interests

When this section applies

(1) This section applies when—

(a) a partnership owns specified livestock (the **old partnership**); and

(b) a new partnership is formed (the **new partnership**); and

(c) at the end of the income year in which the new partnership is formed, more than 50% of the property of the new partnership is owned by persons who, during that income year or in the previous income year,—

(i) owned all the property of the old partnership; and

(ii) derived income in either income year from specified livestock of the same type as that owned by the new partnership.

Valuation

(2) The value of specified livestock owned by the new partnership must be taken into account in the way the old partnership determines the value of livestock of the particular type at the end of the income year in which the new partnership is formed. If the old partnership has no specified livestock of the type on hand at the end of the income year, the value is taken into account as the old partnership would have determined it, had it owned specified livestock of that type.

Defined in this Act: income, income year, specified livestock, type

Compare: 2004 No 35 s EC 13

Herd scheme

EC 14 Herd scheme

Election to use herd scheme

(1) A person may choose to value specified livestock of any type and class under the herd scheme.

Election of other method

(2) A person who has chosen to value livestock of a particular type under the herd scheme may nevertheless value livestock of that type by another method, subject to the restrictions described in **section EC 8**.

Election to leave herd scheme

(3) A person who wishes to stop valuing livestock of a particular type under the herd scheme must give 2 income years' notice to the Commissioner in the way described in **section EC 11**. However, notice is not required if the person values livestock of that type by another method that is available for use in conjunction with the herd scheme.

Defined in this Act: class, Commissioner, herd scheme, income year, notice, specified livestock, type

Compare: 2004 No 35 s EC 14

EC 15 Determining national average market values

Determined by Commissioner

(1) The Commissioner must determine a **national average market value** for an income year for each class of specified livestock set out in **schedule 17, column 2** (Types and classes of livestock).

Application to income year

(2) The value applies to the income year for which it is determined, whether the income year started before, on, or after the date on which the determination is made.

Defined in this Act: class, Commissioner, income year, national average market value, specified livestock

Compare: 2004 No 35 s EC 15

EC 16 Valuation under herd scheme

Closing value of herd livestock

(1) The closing value of herd livestock in an income year is either its herd value for the income year or, if a herd value ratio is adopted, its herd value multiplied by its herd value ratio.

Opening value of herd livestock

(2) The opening value of herd livestock in an income year is determined under **subsection (3)** if a person—

(a) has valued the livestock under the herd scheme in the previous income year; and

(b) has the livestock on hand at the start of the income year; and

(c) has not chosen to value the livestock by a different method for the income year.

Determining opening value

(3) The opening value of herd livestock in an income year is either its herd value for the income year or, if the person has adopted a herd value ratio, its herd value for the income year multiplied by its herd value ratio for the previous income year. This subsection overrides **section DB 50(5)** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: herd livestock, herd scheme, herd value, herd value ratio, income year

Compare: 2004 No 35 s EC 16

EC 17 Herd value ratio

Adoption of herd value ratio

(1) A herd value ratio is available for a person to use in determining the value of specified livestock in the herd scheme. A person may adopt a herd value ratio for herd livestock of a particular type by giving notice in the way described in **section EC 11**. A person may also adopt a recalculated ratio by giving notice in the same way.

Chatham Islands livestock

(2) Herd value ratios calculated under **subsection (5)** do not apply to livestock on the Chatham Islands. The Chatham Islands adjustment to the herd value ratio is dealt with in **section EC 19**.

When herd value ratio applies

(3) When a person adopts a herd value ratio for livestock of a particular type, the ratio applies in the income year specified in the notice and in later income years until—

(a) the income year in which it is superseded by a recalculation of the ratio; or

(b) the income year in which the person stops valuing, under an election, livestock of that type under the herd scheme; or

(c) the income year following 2 consecutive income years in which the person has not valued livestock of that type under the herd scheme.

Assessment of average value

(4) For the purpose of calculating a herd value ratio, a person must obtain from a recognised livestock valuer an assessment of the value of an average animal of that person in each applicable class of livestock. The value is determined as at the 30 April that is closest to the day on which the national average market values are set.

Calculation of herd value ratio

(5) The herd value ratio for livestock of a particular type is calculated by using the formula in **subsection (6)** and rounding the result of the calculation to the nearest of the following figures: 0.9, 1.0, 1.1, 1.2, 1.3.

Formula

New (unanimous)

(6) The formula is—

$$\frac{\Sigma(\text{average value} \times \text{number})}{\Sigma(\text{herd value} \times \text{number}).}$$

Definition of items in formula

(7) In the formula,—

(a) Σ is the total of the individual calculations for all applicable classes of livestock type valued under the herd scheme:

(b) **average value** is the average value of an animal in a class as described in **subsection (4)**:

(c) **number** is the number of all livestock of that class on hand at the end of the income year, including livestock that are not in the herd scheme, but not including high-priced livestock:

(d) **herd value** is the herd value of livestock for a class.

Defined in this Act: class, herd livestock, herd scheme, herd value, herd value ratio, high-priced livestock, income year, livestock on the Chatham Islands, national average market value, notice, specified livestock, type

Compare: 2004 No 35 s EC 17

EC 18 Inaccurate herd value ratio

The Commissioner may require a person who is using an inaccurate herd value ratio for a type of livestock in an income year to recalculate the herd value ratio. If the recalculation differs from the existing ratio for the income year, the Commissioner may amend the assessment of income tax for the income year and any later income year and may substitute the recalculated herd value ratio for that previously applied by the person.

Defined in this Act: assessment, Commissioner, herd value ratio, income tax, income year, type

Compare: 2004 No 35 s EC 18

EC 19 Chatham Islands adjustment to herd value

Adjustment for herd livestock on Chatham Islands

(1) A person may adopt an adjustment for herd livestock on the Chatham Islands by giving notice in the way described in **section EC 11**.

When adjustment applies

(2) When a person adopts a Chatham Islands adjustment as a herd value ratio, it applies as a herd value ratio to a particular type of livestock on the Chatham Islands at the end of the income year specified in the notice and in later income years until—

(a) the income year in which the person stops valuing, under an election, livestock of that type in the herd scheme; or

(b) the income year following 2 consecutive income years in which the person has not valued livestock of that type on the Chatham Islands under the herd scheme.

Setting adjustment

(3) The Commissioner must set and may vary from time to time the level of Chatham Islands adjustment to the herd value ratio that applies in an income year.

Defined in this Act: Commissioner, herd livestock, herd scheme, herd value, herd value ratio, income year, livestock on the Chatham Islands, notice, type

Compare: 2004 No 35 s EC 19

EC 20 Herd livestock disposed of before values determined

When this section applies

(1) This section applies when, in an income year, a person—
(a) stops deriving income from specified livestock; and
(b) disposes of herd livestock before the 1 February that precedes the determination of the national average market values for the income year; and
(c) gives notice to the Commissioner before that 1 February that they choose that this section applies to the valuation of the herd livestock.

Value of herd livestock

(2) The value of herd livestock that is disposed of is either the herd value of the livestock for the previous income year or, if the person has adopted a herd value ratio, the herd value multiplied by the herd value ratio applying in the previous income year.

Defined in this Act: Commissioner, herd livestock, herd value, herd value ratio, income, income year, national average market value, notice, specified livestock

Compare: 2004 No 35 s EC 20

EC 21 Herd livestock on death before values determined

When this section applies

(1) This section applies when—
(a) a person dies; and
(b) herd livestock owned by the person is disposed of before the 1 February that precedes the determination of the national average market values for the income year in which the person dies; and
(c) the person's return of income to the date of death is filed before the national average market values for the income year are determined.

Value of herd livestock

(2) The value of herd livestock that is disposed of is either the herd value of the livestock for the previous income year or, if the person has adopted a herd value ratio, the herd value multiplied by the ratio applying in the previous income year.

Defined in this Act: herd livestock, herd value, herd value ratio, income year, national average market value, return of income

Compare: 2004 No 35 s EC 21

National standard cost scheme

EC 22 National standard cost scheme

Election to use national standard cost scheme

(1) A person may choose to value specified livestock under the **national standard cost scheme**, subject to the restrictions described in **section EC 9**.

Closing value

(2) The closing value of the livestock is the cost of the livestock calculated under the determination made by the Commissioner under **section EC 24**.

Defined in this Act: Commissioner, national standard cost scheme, specified livestock

Compare: 2004 No 35 s EC 22

EC 23 Determining national standard costs

Determination of costs

(1) The Commissioner must determine national standard costs for each category of specified livestock in **schedule 18** (Categories of livestock for which national standard costs to be declared). The determination must take into account, as applicable,—

(a) the average breeding, rearing, and growing costs for animals in the category; and

(b) the average rearing and growing costs for animals in the category.

Application to income year

(2) The national standard costs apply to the income year for which they are determined, whether the income year started

before, on, or after the date on which the determination is made.

Defined in this Act: Commissioner, income year, specified livestock

Compare: 2004 No 35 s EC 23

EC 24 Methods for determining costs using national standard cost scheme

Determination of methods for calculation of cost

(1) The Commissioner must determine the methods for calculating the cost of livestock listed in **schedule 18, column 2** (Categories of livestock for which national standard costs to be declared).

Average cost

(2) For the purposes of **subsection (1)**, the determination must establish a process for finding an average cost to be applied to all specified livestock valued under the national standard cost scheme. The process must take into account—

(a) the number of homebred livestock that a person has on hand at any time in an income year, applying to the number the relevant national standard costs determined under **section EC 23**:

(b) in addition to **paragraph (a)**, the number in each category of livestock listed in **schedule 18, column 2** that a person has on hand at any time in an income year, applying to the number the relevant national standard costs determined under **section EC 23**:

(c) the number of livestock bought, applying to the number the purchase costs associated with the livestock.

Content of determination

(3) The matters that may be included in the determination are set out in section 91AAD of the Tax Administration Act 1994.

Defined in this Act: Commissioner, income year, national standard cost scheme, specified livestock

Compare: 2004 No 35 s EC 24

Other methods

EC 25 Cost price, replacement price, or market value

Election

(1) A person may choose to value specified livestock under the cost price method, subject to the restrictions described in **section EC 10**, or under the replacement price method, or under the market value method.

Changing to cost price method

(2) If a person chooses in an income year to change to the cost price method from another valuation method, the opening value of the affected livestock is the closing value of the livestock at the end of the previous income year determined under the method used in that previous income year.

Defined in this Act: cost price, income year, specified livestock

Compare: 2004 No 35 s EC 25

EC 26 Bailee's treatment of livestock

When this section applies

(1) This section applies when, under a bailment, lease, or other agreement,—
- (a) a person (**person A**) has the use of specified livestock; and
- (b) person A is required—
  - (i) to return the livestock to the person who made it available; or
  - (ii) to pay the person full compensation for it.

Closing livestock numbers

(2) Person A is treated as owning, and must take into account at the end of an income year, the total number for all classes calculated using the formula—

$$\text{total livestock} - \text{bailed livestock}.$$

Definition of items in formula

(3) In the formula,—
- (a) **total livestock** is all the livestock that person A has on hand in a class at the end of the income year, including—
  - (i) the livestock that they own; and

(ii) the livestock that they have the use of under the bailment, lease, or other agreement:

(b) **bailed livestock** is all the livestock in a class that person A has been given the use of under a bailment, lease, or other agreement that remains in force at the end of the income year.

Result of applying formula

(4) If the result of applying the formula in **subsection (2)** is positive, person A is treated as the owner of any surplus livestock. If the result is negative, person A must adjust the total number described in **subsection (2)** by treating it as a negative number.

Defined in this Act: class, income year, lease, pay, specified livestock

Compare: 2004 No 35 s EC 26

Definitions

EC 27 Some definitions

In this subpart,—

long-term bailment is a bailment or lease under which, at the time a person delivers livestock, the person does not expect to have the same livestock delivered back to them

short-term bailment is a bailment or lease under which,—

(a) at the time a person delivers livestock, the person expects to have the same livestock delivered back to them; and

(b) the bailee or lessee did not provide consideration to the person for the delivery of the livestock; and

(c) the term of the bailment or lease ends on or before the end of the income year following the income year in which the arrangement is made.

Defined in this Act: arrangement, income year, lease, long-term bailment, short-term bailment

Compare: 2004 No 35 s EC 27

Valuation of non-specified livestock

EC 28 Application of sections EC 29 to EC 31

Sections EC 29 to EC 31 set out the rules for valuing non-specified livestock.

Defined in this Act: non-specified livestock

Compare: 2004 No 35 s EC 28

EC 29 Determining standard values

Determined by Commissioner

(1) The Commissioner may determine a **standard value** for an income year for a type or category of non-specified livestock.

Application to income year

(2) A standard value applies to the income year for which it is determined, whether the income year started before, on, or after the date on which the standard value is determined.

Defined in this Act: Commissioner, income year, non-specified livestock, standard value, type

Compare: 2004 No 35 s EC 29

EC 30 Closing value methods

A person may choose 1 of the following methods to value non-specified livestock on hand at the end of an income year:

(a) its cost price:

(b) its replacement price:

(c) its market value:

(d) if the Commissioner agrees, its standard value.

Defined in this Act: Commissioner, cost price, income year, non-specified livestock, standard value

Compare: 2004 No 35 s EC 30

EC 31 Enhanced production

When this section applies

(1) This section applies when a person who derives income from non-specified livestock—

(a) enhances production in an income year by—

(i) starting, or restarting, to derive income from non-specified livestock; or

(ii) bringing land into production, or substantially increased production, for the purpose of deriving income from non-specified livestock; or

(iii) acquiring additional land for the purpose of deriving income from non-specified livestock; and

(b) as a result, in an income year or over the following 3 income years, buys more non-specified livestock that is not replacement livestock and that is valued at its standard value.

Closing value

(2) The closing value of the livestock bought is,—

(a) for the income year in which the livestock was bought, its standard value plus two-thirds of the difference between the cost price of the livestock and the standard value:

(b) for the following income year, its standard value plus one-third of the difference between the cost price of the livestock and the standard value:

(c) for other income years, its standard value.

Defined in this Act: cost price, income, income year, non-specified livestock, standard value

Compare: 2004 No 35 s EC 31

Valuation of high-priced livestock

EC 32 Application of sections EC 33 to EC 37

Sections EC 33 to EC 37

(1) **Sections EC 33 to EC 37** set out the rules for valuing high-priced livestock.

Person chooses valuation method

(2) A person may choose to use either the straight-line method or the diminishing value method to value high-priced livestock.

Diminishing value method

(3) If the person chooses to use the diminishing value method, they must give notice to the Commissioner that they are using the method at the time of filing their return of income for the

first income year in which the value of the high-priced livestock is determined under **section EC 34**. The person cannot revoke their election to use the diminishing value method for the livestock.

Defined in this Act: Commissioner, high-priced livestock, income year, notice, return of income

Compare: 2004 No 35 s EC 32

EC 33 Determining depreciation percentages

Determined by Commissioner

(1) The Commissioner must determine a **depreciation percentage** for an income year for each type, class, or category of high-priced livestock.

Purpose

(2) The percentage represents the average percentage decline in the value of livestock of the type, class, or category.

Factors

(3) The Commissioner must take into account—
   (a) the average cost of livestock of the type, class, or category; and
   (b) the estimated useful life of the livestock; and
   (c) the average estimated residual market value of the livestock.

Defined in this Act: class, Commissioner, depreciation percentage, estimated residual market value, estimated useful life, high-priced livestock, income year, type

Compare: 2004 No 35 s EC 33

EC 34 General rule

Value in income year of purchase and later income years

(1) The closing value of high-priced livestock at the end of the income year in which it is bought is its cost price minus the reduction applying in the income year. In a later income year, the value is its opening value minus the reduction applying in the income year until the value reaches or falls below the national average market value for the class to which the livestock belongs.

Straight-line method

(2) When a person has chosen to use the straight-line method, the reduction is calculated using the formula—

cost price × depreciation percentage.

Diminishing value method

(3) When a person has chosen to use the diminishing value method, the reduction is calculated as follows:

(a) in the first income year in which the election applies, the cost price multiplied by the diminishing value equivalent of the depreciation percentage for the income year:

(b) in later income years, the opening value of the livestock multiplied by the diminishing value equivalent of the depreciation percentage for the income year.

Meaning of diminishing value equivalent

(4) In this section, **diminishing value equivalent**, for a depreciation percentage, means the diminishing value depreciation rate in **schedule 12, column 1** (Old banded rates of depreciation) to which the amount in **column 2** equal to the depreciation percentage is the straight-line equivalent. Two qualifications are—

(a) if no amount in **column 2** is equal to the depreciation percentage, the amount closest to it is taken; and

(b) if 2 amounts in **column 2** are equidistant from the depreciation percentage, the depreciation percentage is rounded down.

Exclusions

(5) This section does not apply in the cases described in **sections EC 35 and EC 36**.

Defined in this Act: amount, class, cost price, depreciation percentage, diminishing value equivalent, high-priced livestock, income year, national average market value

Compare: 2004 No 35 s EC 34

EC 35 Livestock reaching national average market value and livestock no longer used for breeding

Livestock at or less than national average market value

(1) This section applies to a person's high-priced livestock whose value at the end of an income year is equal to or less than the

national average market value for the class to which the livestock belongs.

Livestock no longer used for breeding

(2) This section also applies to high-priced livestock that, in an income year, a person—

(a) does not expect to use for breeding for that or any later income year; and

(b) does not intend to dispose of to any other person to use for breeding.

Closing value

(3) The closing value of the high-priced livestock at the end of the income year is determined as follows:

(a) when the person values any specified livestock of that type under the herd scheme for the income year, the value of the animal under the herd scheme; and

(b) when the person values all specified livestock of that type that is older than 1 year under the national standard cost scheme or the cost price method, the national average market value for the income year of livestock of the class to which the animal belongs; and

(c) when the person values all specified livestock of that type that is older than 1 year under the market value method or the replacement price method, the market value or replacement price of the animal at the end of the income year.

Valuation in later income years

(4) In later income years, the animal that was high-priced livestock is treated as the person's specified livestock and is valued under the valuation method the person chooses for specified livestock of the type to which the animal belongs.

Entry into herd scheme in later income years

(5) This subsection applies if, in a later income year (**year A**), the person values any specified livestock of the same type as the animal under the herd scheme and, in the next year, values the

animal under the herd scheme. The animal is treated as if it were valued under the herd scheme at the end of year A.

Defined in this Act: class, cost price, herd scheme, high-priced livestock, income year, national average market value, national standard cost scheme, specified livestock, type, year

Compare: 2004 No 35 s EC 35

EC 36 Immature livestock and recently bought livestock

Immature livestock

(1) This section applies to high-priced livestock that is less than 1 year old at the end of the income year in which it is bought.

Recently bought livestock

(2) This section also applies to high-priced livestock that is bought within 6 months of the end of an income year and, during that time,—

(a) is not used for insemination, in the case of male livestock; and

(b) is not used for the collection of semen; and

(c) does not give birth; and

(d) does not have ova removed.

Closing value

(3) The closing value of the high-priced livestock at the end of the income year is its cost price.

Defined in this Act: cost price, high-priced livestock, income year, year

Compare: 2004 No 35 s EC 36

EC 37 Bailment

In **section EC 26**, references to specified livestock include high-priced livestock.

Defined in this Act: high-priced livestock, specified livestock

Compare: 2004 No 35 s EC 37

Valuation of bloodstock

EC 38 Application of sections EC 39 to EC 48

Sections EC 39 to EC 48 set out the rules for valuing bloodstock.

Defined in this Act: bloodstock

Compare: 2004 No 35 s EC 38

EC 39 First income year in breeding business

Bloodstock to which this section applies

(1) This section applies to bloodstock that is 2 years of age or older at the end of the first income year in which a person—
- (a) uses the bloodstock for breeding in their breeding business; or
- (b) forms the intention of using the bloodstock for breeding in their breeding business; or
- (c) buys the bloodstock, with the intention of using it for breeding in their breeding business.

Special group of broodmares to which this section applies

(2) This section also applies to a broodmare that is 2 years of age or older at the end of a person's first income year after 1 April 2001 in which the person—
- (a) first uses the broodmare for breeding in their breeding business; or
- (b) first forms the intention of using the broodmare for breeding in their breeding business; or
- (c) buys the broodmare, with the intention of using it for breeding in their breeding business.

Closing value

(3) The closing value of the bloodstock at the end of the first income year is its cost price minus the reduction applying in that income year.

Determination of reduction

(4) The reduction that applies is determined under **section EC 41, EC 42, EZ 5, or EZ 6** (which relate to bloodstock).

Defined in this Act: bloodstock, broodmare, business, cost price, income year, year

Compare: 2004 No 35 s EC 39

EC 40 Later income years in breeding business

What this section applies to

(1) This section applies to the income years that follow the first income year described in **section EC 39**.

Closing value

(2) The closing value of the bloodstock is its opening value minus the reduction applying in that income year.

Closing value not previously taken into account

(3) If the person has not taken the closing value of the bloodstock into account in the previous income year, the closing value is the cost price of the bloodstock minus the reduction applying in the income year in which the person makes the calculation.

Determination of reduction

(4) The reduction that applies is determined under **section EC 41, EC 42, EZ 5, or EZ 6** (which relate to bloodstock).

Defined in this Act: bloodstock, cost price, income year

Compare: 2004 No 35 s EC 40

EC 41 Reduction: bloodstock not previously used for breeding in New Zealand

Bloodstock to which this section applies

(1) This section applies to bloodstock that—

- (a) was not used for breeding in New Zealand before 16 December 1991; and
- (b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person, unless—
  - (i) the other person transferred the bloodstock to person A under a matrimonial agreement to which **section FB 18** (Bloodstock) applies; or
  - (ii) the other person and person A were companies in the same wholly-owned group at the time person A acquired the bloodstock from the other person.

Stallion

(2) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a stallion is 50% of the cost price of the stallion unless person A chooses to value the stallion by the reducing value method.

Stallion valued by reducing value method

(3) When person A chooses to value the stallion by the reducing value method, the reduction applying to the value of the

stallion is 75% of its cost price in the first income year and 75% of its opening value in each later income year. Person A must give notice to the Commissioner of their election in their return of income for the first income year.

Broodmare when first used on or after 1 April 2001

(4) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which **section EC 39(2)** applies is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{9 - \text{age of broodmare}}.$$

Definition of item in formula

(5) In the formula, **age of broodmare** is—

(a) 8 years of age; or

(b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Relationship with section EZ 5

(6) This section is overridden by **section EZ 5** (Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006).

Defined in this Act: bloodstock, broodmare, Commissioner, company, cost price, income year, matrimonial agreement, New Zealand, notice, return of income, stallion, wholly-owned group, year

Compare: 2004 No 35 s EC 41

EC 42 Reduction: bloodstock previously used for breeding in New Zealand

Stallion

(1) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a stallion to which **section EC 41** does not apply is 20% of its cost price.

Broodmare when first used on or after 1 April 2001

(2) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which **section EC 39(2)** applies and **section EC 41** does not apply is calculated using the formula—

$$\frac{\text{cost price of broodmare}}{9 - \text{age of broodmare}}.$$

Definition of item in formula

(3) In the formula, **age of broodmare** is—
(a) 8 years of age; or
(b) the actual age in years, for a broodmare that is 7 years of age or less at the end of the income year.

Relationship with section EZ 6

(4) This section is overridden by **section EZ 6** (Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006).

Defined in this Act: bloodstock, broodmare, cost price, income year, stallion, year

Compare: 2004 No 35 s EC 42

EC 43 Accident, birth deformity, or infertility

When this section applies

(1) This section applies when a person has bloodstock on hand at the end of an income year whose market value is, because of accident, birth deformity, or infertility, less than 50% of what its market value would have been if the accident, birth deformity, or infertility had not occurred.

Value

(2) The person may value the bloodstock at its market value.

Later income years

(3) If the person applies **subsection (2)**, the closing value of the bloodstock in later income years is its market value in the applicable income year.

Defined in this Act: bloodstock, income year

Compare: 2004 No 35 s EC 43

EC 44 Other bloodstock

If **sections EC 39 to EC 43** do not apply, the closing value of the bloodstock is its cost price.

Defined in this Act: bloodstock, cost price

Compare: 2004 No 35 s EC 44

EC 45 Residual value of bloodstock

If the closing value of any bloodstock would be less than $1 in the absence of this section, the closing value is $1.

Defined in this Act: bloodstock

Compare: 2004 No 35 s EC 45

EC 46 Use of bloodstock for racing

General treatment

(1) If in an income year a bloodstock owner uses bloodstock for racing, and they are in the business of breeding bloodstock for sale, the use of the bloodstock for racing is treated as use in the course of the business.

Bloodstock not used in business

(2) If bloodstock used in an income year for racing is not actually used in the course of a business of breeding bloodstock for sale, the bloodstock owner may apply to the Commissioner to have the use of the bloodstock treated other than under **subsection (1)**.

Non-breeding bloodstock

(3) If a bloodstock owner expects that bloodstock will not be able to be used for future breeding, the use in an income year of the bloodstock for racing is not treated as use in the course of a business of breeding bloodstock for sale. However, if the bloodstock owner uses the bloodstock in the course of their business of breeding bloodstock for sale, they may apply to the Commissioner to have the use of the bloodstock treated as use in the course of the business.

Application to Commissioner

(4) The application must be made in writing with the supporting information that the Commissioner requires within 1 month after the day on which the bloodstock is first prepared for racing by the bloodstock owner or the day on which it is first raced by the bloodstock owner, whichever is earlier.

Defined in this Act: bloodstock, business, Commissioner, income year

Compare: 2004 No 35 s EC 46

EC 47 Change of use of bloodstock in course of business

Use outside business

(1) If a bloodstock owner who is in the business of breeding bloodstock for sale starts to use bloodstock other than in the course of the business, they are treated as having disposed of the bloodstock. The disposal is treated as having occurred at market value on the day on which they changed the use of the bloodstock.

Use in business

(2) If a bloodstock owner who is in the business of breeding bloodstock for sale has been using bloodstock for other purposes, and they start to use the bloodstock in the course of the business, the bloodstock is treated as having been bought by the bloodstock owner. The purchase is treated as having occurred at market value on the day on which the bloodstock owner changed the use of the bloodstock.

Defined in this Act: bloodstock, business

Compare: 2004 No 35 s EC 47

EC 48 Replacement breeding stock

When this section applies

(1) This section applies when—
- (a) a bloodstock owner—
  - (i) disposes of bloodstock (the **breeding stock**) that they had previously used for breeding in the course of a business of breeding bloodstock for sale; and
  - (ii) buys replacement bloodstock (the **replacement breeding stock**) within the time limits set out in **subsections (6) and (7)**; or
- (b) a bloodstock owner—
  - (i) receives a payment of insurance, indemnity, or compensation for the loss or death of, or permanent injury to, breeding stock that they had previously used for breeding in the course of a business of breeding bloodstock for sale or that they had bought for use in the business; and
  - (ii) buys replacement breeding stock within the time limits set out in **subsections (6) and (7)**.

Amount determined

(2) The bloodstock owner may apply to the Commissioner to determine the amount that the bloodstock owner has applied in buying replacement breeding stock.

Maximum amount

(3) The amount must not be more than the net gain calculated using the formula—

gross proceeds – value of breeding stock.

Definition of items in formula

(4) In the formula,—

(a) **gross proceeds** is—

(i) the amount of the proceeds of disposing of the breeding stock; or

(ii) the amount paid by way of insurance, indemnity, or compensation for the breeding stock:

(b) **value of breeding stock** is the closing value of the breeding stock in the income year before the breeding stock was disposed of or was lost or died or was permanently injured.

Reduction in income

(5) The bloodstock owner may reduce their income by the amount determined under **subsection (2)**. If they reduce their income in this way, they must also reduce the cost of the replacement breeding stock by the same amount.

Time limit

(6) Replacement breeding stock must be acquired within 6 months after the end of the income year in which the amount determined under **subsection (2)** would otherwise be income or, if the Commissioner approves in a case or in a class of cases, a longer period.

Delay in replacing breeding stock

(7) In the case of lost, dead, or permanently injured breeding stock, the Commissioner may extend the time limit under **subsection (6)**. However, valid commercial reasons must exist for the delay in replacing the breeding stock and the replacement breeding stock must have been acquired before the end

of the second income year following the income year in which the loss, death, or permanent injury occurred.

Application to Commissioner

(8) An application under **subsection (2)** must be made in writing within the relevant time limits described in **subsections (6) and (7)**. The application must relate only to replacement breeding stock bought before the application is made.

Defined in this Act: amount, bloodstock, business, Commissioner, income, income year, pay

Compare: 2004 No 35 s EC 48

Subpart ED—Valuation of excepted financial arrangements

Contents

ED 1 Valuation of excepted financial arrangements

Valuation methods for excepted financial arrangements

(1) A person who has revenue account property that is an excepted financial arrangement must determine the value of the arrangement at the end of each income year at cost.

Valuation method for right to acquire share under share-lending arrangement

(2) Despite **subsection (1)**, a share supplier's share-lending right has the value at the end of each income year that is equal to the amount described in **subsection (4)**.

Valuation method for share acquired by share supplier under share-lending arrangement

(3) Despite **subsection (1)**, the original share or an identical share acquired by a share supplier from a share user under a share-lending arrangement has the value at the end of each income year that is equal to the amount described in **subsection (4)**.

Amount

(4) For **subsections (2) and (3)**, the amount is the value of the original share at cost, determined by applying this section to the share immediately before the share supplier's disposal of the share under the relevant share-lending arrangement.

Cost-flow methods

(5) The person must use 1 of the following cost-flow methods to allocate costs:
(a) the first-in first-out cost method; or
(b) the weighted average cost method.

Persons complying with generally accepted accounting practice

(6) A person who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993 or an equivalent standard issued in its place.

Other persons

(7) A person who does not comply with generally accepted accounting practice—
(a) must be consistent from 1 income year to the next in their choice of 1 of the cost-flow methods described in **subsection (5)**; and
(b) may change their cost-flow method if—
(i) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or
(ii) the change is required by another provision in this subpart; and
(c) must keep sufficient details of any such change, and the reasons for it, under section 22 of the Tax Administration Act 1994.

Worthless arrangements

(8) If an excepted financial arrangement has no present or likely future market value and has been written off as worthless, its closing value is zero.

Use of value

(9) The value determined under this section is—
   (a) the closing value of the excepted financial arrangement for the purposes of **section CH 1** (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and
   (b) the opening value of the excepted financial arrangement for the next income year for the purposes of **section DB 50** (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: excepted financial arrangement, generally accepted accounting practice, identical share, income tax liability, income year, original share, revenue account property, share-lending arrangement, share-lending right, share supplier, share user

Compare: 2004 No 35 s ED 1

ED 2 Transfers of certain excepted financial arrangements within wholly-owned groups

When this section applies

(1) This section applies when—
   (a) a company that is part of a wholly-owned group of companies (**company A**) transfers to another company in the same group (**company B**) an excepted financial arrangement that is revenue account property of company A; and
   (b) the transfer of the excepted financial arrangement is not made under a share-lending arrangement; and
   (c) both companies are resident in New Zealand on the date of the transfer; and
   (d) the market value of the excepted financial arrangement on the date of the transfer is less than its cost to company A.

Transfer at cost

(2) The consideration for the transfer is treated as being equal to the cost of the excepted financial arrangement to company A.

Company stops being part of group

(3) If company B stops being part of the wholly-owned group, the company is treated as disposing of and reacquiring the excepted financial arrangement at its market value at the time the company stops being part of the group.

Not dividend

(4) A transfer of an excepted financial arrangement to which this section applies does not give rise to a dividend.

Defined in this Act: company, dividend, excepted financial arrangement, resident in New Zealand, revenue account property, wholly-owned group of companies

Compare: 2004 No 35 s ED 2

Subpart EE—Depreciation

Contents

Introductory provision

EE 1 What this subpart does

Quantifying amounts of depreciation loss and depreciation recovery income

(1) This subpart—

(a) quantifies the amount of depreciation loss for which a person is allowed a deduction if the provisions of **Part D** (Deductions) are met; and

(b) quantifies the amount of depreciation recovery income that is income under **Part C** (Income).

When amount of depreciation loss arises

(2) A person has an amount of **depreciation loss** for an item for an income year if—

(a) the person owns an item of property, as described in **sections EE 2 to EE 5**; and

(b) the item is depreciable property, as described in **sections EE 6 to EE 8**; and

(c) the item is used, or is available for use, by the person in the income year; and

(d) the amount of depreciation loss is calculated for the person, the item, and the income year under **sections EE 9 to EE 11**.

When amount of depreciation recovery income arises

(3) A person has an amount of **depreciation recovery income** for an item for an income year if—

(a) the person owns an item of property, as described in **sections EE 2 to EE 5**; and

(b) the item is depreciable property, as described in **sections EE 6 to EE 8**; and

(c) the item is disposed of or an event of a kind described in **section EE 40** occurs; and

(d) the amount of depreciation recovery income is calculated for the person, the item, and the income year under any of **sections EE 22(5), EE 40((*4*)5), EE 50(1), EE 51(2), EE 53(3), and EE 54(3)**.

Amounts of loss incurred and income derived

(4) To avoid doubt,—

(a) an amount of depreciation loss is treated as being incurred in the income year for which it is calculated; and

(b) an amount of depreciation recovery income is treated as being derived in the income year for which it is calculated.

Allocation of deduction for depreciation loss

(5) A person who in an income year uses an item for research or development or for market development that gives rise to a deduction allocated under **section EJ 22** (Deductions for market development: product of research, development), and as a result has an amount of depreciation loss for the item for the income year, may choose to allocate all or part of the deduction for the depreciation loss—

(a) to an income year after the income year for which the person has the depreciation loss; and

(b) in the way required by **section EJ 23** (Allocation of deductions for research, development, and resulting market development).

Partial income-producing use

(6) **Subpart DE** (Motor vehicle expenditure) and **section EE 52** contain rules for calculating the amount of deduction available for depreciation loss in circumstances in which an item of property is only partly used or available for use in a way that satisfies the general permission.

Defined in this Act: amount, deduction, depreciable property, depreciation loss, depreciation recovery income, development, dispose, general permission, income, income year, own, property, research

Compare: 2004 No 35 s EE 1

Meaning of own

EE 2 Nature of ownership of item

Kinds of ownership

(1) **Own**, for the ownership of depreciable property,—

(a) means legal or equitable ownership; and

(b) includes ownership of the kinds described in **sections EE 3 to EE 5**.

Shared ownership

(2) When more than 1 person owns an item of depreciable property, **own** means the interest that the person has in the item.

Defined in this Act: depreciable property, own

Compare: 2004 No 35 s EE 2

EE 3 Ownership of goods subject to reservation of title

When this section applies

(1) This section applies when—

(a) a person (the **buyer**) enters into an unconditional contract to buy an item of depreciable property; and

(b) the contract is not a hire purchase agreement and the item is not a hire purchase asset that is the subject of a hire purchase agreement; and

(c) the contract is subject to the Sale of Goods Act 1908; and

(d) title to the item does not pass until the purchase price is paid in full; and

(e) the buyer takes possession of the item before title to it passes.

Buyer treated as owner

(2) The buyer is treated as owning, and the seller is treated as not owning, the item from the later of the following times:

(a) the time at which the buyer enters into the contract; and

(b) the time at which the buyer takes possession of the item.

Buyer ceases to be treated as owner

(3) **Subsection (2)** ceases to apply when 1 of the following occurs:

(a) title to the item passes to the buyer; or

(b) the seller repossesses the item.

Defined in this Act: depreciable property, hire purchase agreement, hire purchase asset, own

Compare: 2004 No 35 s EE 3

EE 4 Ownership of lessee's improvements: lessee

When this section applies

(1) This section applies when—

(a) a lessee of land incurs expenditure during the period during which the land is leased to the lessee in erecting a fixture on the land or making an improvement to the land; and

(b) the lessor owns the fixture or improvement.

Ownership of fixture or improvement

(2) The following apply to the ownership of the fixture or improvement:

(a) in the period during which the land is leased to the lessee,—

(i) the lessee is treated as owning the fixture or improvement; and

(ii) the lessor is treated as not owning the fixture or improvement; and

(iii) a person to whom the lessor disposes of the land during the period is treated as not owning the fixture or improvement; and

(b) after the period during which the land is leased to the lessee,—

(i) the lessor is treated as not owning the fixture or improvement, unless the lessor incurs a cost relating to it at the end of the period; and

(ii) a person to whom the lessor disposes of the land during the period is treated as not owning the fixture or improvement.

Defined in this Act: improvement, lessee, lessor, own

Compare: 2004 No 35 s EE 4

EE 5 Ownership of lessee's improvements: other person

When this section applies: first case

(1) This section applies when—

(a) a lessee of land incurs expenditure during the term of the lease in erecting a fixture on the land or making an improvement to the land; and

(b) the lessee has been allowed a deduction for an amount of depreciation loss for the fixture or improvement; and

(c) the lessee disposes of their interest in the lease to another person; and

(d) the other person pays the lessee for the fixture or improvement.

When this section applies: second case

(2) This section also applies when—

(a) a lessee of land has been allowed a deduction for an amount of depreciation loss for a fixture on the land, or an improvement to the land, that a previous lessee erected or made; and

(b) the lessee disposes of their interest in the lease to another person; and

(c) the other person pays the lessee for the fixture or improvement.

Other person treated as owner

(3) The other person is treated as owning the fixture or improvement from the time at which they pay the lessee for it.

Defined in this Act: amount, deduction, depreciation loss, dispose, improvement, lease, lessee, own, pay, term of the lease

Compare: 2004 No 35 s EE 5

Meaning of depreciable property

EE 6 What is depreciable property?

Description

(1) **Depreciable property** is property that, in normal circumstances, might reasonably be expected to decline in value while it is used or available for use—

(a) in deriving assessable income; or

(b) in carrying on a business for the purpose of deriving assessable income.

Subsections (2) (*and* ***(3)***) **to (4)** expand on this subsection.

Property: tangible

(2) An item of tangible property is depreciable property if—

(a) it is described by **subsection (1)**; and

(b) it is not described by **section EE 7**.

Property: intangible

(3) An item of intangible property is depreciable property if—

(a) it is within the definition of **depreciable intangible property**; and

(b) it is described by **subsection (1)**; and

(c) it is not described by **section EE 7**.

New (unanimous)

Property: geothermal wells

(4) For the purposes of this subpart, a person who owns a geothermal well is, for the geothermal energy proving period, treated as acquiring the well as property that declines in value and is to be available for use in carrying on a business for the purpose of deriving assessable income.

Defined in this Act: acquire, assessable income, business, depreciable intangible property, depreciable property, geothermal energy proving period, geothermal well, property

Compare: 2004 No 35 s EE 6

EE 7 What is not depreciable property?

The following property is not **depreciable property**:

(a) land, although buildings, fixtures, and the improvements listed in **schedule 13** (Depreciable land improvements) are depreciable property if they are described by **section EE 6(1)**:

(b) trading stock:

(c) livestock to which **subpart EB** (Valuation of trading stock (including dealer's livestock)) applies:

(d) financial arrangements:

(e) excepted financial arrangements:

(f) property that will not decline in value, as far as its owner is concerned, because, when they dispose of it, they have a right to be compensated for any decline in its value:

(g) property that its owner chooses, under **section EE 8**, to treat as not depreciable:

(h) property that its owner chooses, under **section EE 40**, to deal with under that section:

(i) property for whose cost a person other than the property's owner is allowed a deduction:

(j) property for whose cost a person is allowed a deduction under a provision of this Act outside this subpart or under a provision of an earlier Act, except for an asset to which **section DU 6(4)** (Depreciation) applies.

Defined in this Act: deduction, depreciable property, dispose, excepted financial arrangement, financial arrangement, own, property, trading stock

Compare: 2004 No 35 s EE 7

EE 8 Election that property not be depreciable

Item acquired

(1) A person may choose that an item of property they acquire not be depreciable property even though, in the absence of the election, it would be depreciable property.

Item changing use

(2) A person may choose that an item of property they own ceases to be depreciable property if—

(a) the use of the item changes; and

(b) before the use changes, the person was denied a deduction for an amount of depreciation loss for the item; and

(c) after the use changes, in the absence of the election, the person would have been allowed a deduction for an amount of depreciation loss for the item.

Retrospective election

(3) A person who has deducted none of the amounts of depreciation loss for which they were allowed a deduction for an item of property, in the income year in which they acquired it and in each later year, may retrospectively choose that the item not be depreciable property.

How elections made

(4) An election under this section is made as follows:

(a) a person makes an election under **subsection (1)** by giving the Commissioner notice of it in their return of income for the income year in which they acquire the item; and

(b) a person makes an election under **subsection (2)** by giving the Commissioner notice of it in their return of income for the income year in which the item's use changes; and

(c) a person makes an election under **subsection (3)** by giving the Commissioner notice of it in their return of income for any income year after they acquire the item, including an income year after they dispose of the item.

Effect of election

(5) An election under this section has effect for the person for—
(a) the income year for which they make the election; and
(b) all later income years until—
(i) the item is disposed of, although this reference to disposal does not include the disposal of an item of intangible property as part of an arrangement to replace it with an item of the same kind; or
(ii) an event described in **section EE 49** occurs involving the item.

Retrospective effect of election

(6) An election made under **subsection (3)** also has retrospective effect for the person for—
(a) the income year in which they acquire the property; and
(b) all intervening income years until the year in which they make the election.

Defined in this Act: acquire, amount, Commissioner, deduction, depreciable property, depreciation loss, dispose, income year, notice, property, return of income

Compare: 2004 No 35 s EE 8

How amounts of depreciation loss and depreciation recovery income are calculated

EE 9 Description of elements of calculation

Depreciation methods

(1) **Sections EE 12 to EE 24** deal with the methods of calculating an amount of depreciation loss. The methods are—
(a) the straight-line method, which is dealt with in **sections EE 13 to EE 19**; and
(b) the diminishing value method, which is also dealt with in **sections EE 13 to EE 19**; and
(c) the pool method, which is dealt with in **sections EE 20 to EE 24**.

Depreciation rates

(2) **Sections EE 25 to EE 38** deal with the rates of depreciation. The rates are—

(a) the economic rate, which is dealt with in **section EE 25**; and
(b) the annual rate, which is dealt with in **sections EE 30, EE 32, and EE 3(*6*)3**; and
(c) a special rate or a provisional rate, both of which are dealt with in **sections EE 37 and EE 38.**

Improvements, low value items, and items no longer used

(3) **Sections EE 39 to EE 41** deal with the cases of—
(a) an improvement made to an item of depreciable property; and
(b) an item of depreciable property that is of low value; and
(c) an item of depreciable property that is no longer used.

Transfers

(4) **Sections EE 42 to EE 45** deal with the transfer of items of depreciable property in certain amalgamations and between associated persons.

Disposals and similar events

(5) **Sections EE 46 to EE 54** deal with disposals of property and events that involve property and are similar to disposal.

Interpretation provisions

(6) **Sections EE 55 to EE 68** deal with the following interpretation matters:
(a) **section EE 55** deals with the effect of goods and services tax (GST) on cost; and
(b) **sections EE 56 to EE 61** deal with the meaning of **adjusted tax value**; and
(c) **sections EE 62 to EE 68** contain definitions.

Relationship with sections EZ 10 to EZ 29

(7) **Sections EZ 10 to EZ 29** (which relate to depreciation) deal with items acquired in periods before 24 September 1997.

Defined in this Act: adjusted tax value, amount, annual rate, associated person, depreciable property, depreciation loss, depreciation method, diminishing value method, dispose, economic rate, GST, improvement, pool method, property, provisional rate, special rate, straight-line method

Compare: 2004 No 35 s EE 9

EE 10 Calculation rule: item temporarily not available

An item of depreciable property is treated as being available for use while subject temporarily to repair or inspection, if it was used or available for use immediately before going for repair or inspection.

Defined in this Act: depreciable property

Compare: 2004 No 35 s EE 10

EE 11 Calculation rule: income year in which item disposed of

Generally no amount of depreciation loss

(1) A person does not have an amount of depreciation loss for an item of depreciable property for the income year in which they dispose of it.

Exclusion: building or petroleum-related depreciable property

(2) A person has an amount of depreciation loss for an item of depreciable property for the income year in which they dispose of it, if it is—
(a) a building; or
(b) an item of petroleum-related depreciable property.

Exclusion: empty pool

(3) A person has the amount of depreciation loss calculated under **section EE 22(4)(a)** for an income year for a disposal to which the subsection applies.

Exclusion: consideration less than adjusted tax value

(4) A person has the amount of depreciation loss calculated under **section EE 50(2)** for a disposal or event to which the subsection applies.

Exclusion: item partly used for business

(5) A person has the amount of depreciation loss calculated under **section EE 52(6)** for a disposal or event to which the subsection applies.

New (unanimous)

Exclusion: recent acquisition of item partly used for business

(6) A person has the amount of depreciation loss calculated under **section EE 52(9)** for a disposal or event to which the subsection applies.

Defined in this Act: adjusted tax value, amount, business, depreciable property, depreciation loss, dispose, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 11

Methods

EE 12 Depreciation methods

Meaning of depreciation method

Struck out (unanimous)

(1) **Depreciation method** means a method that a person may use to calculate an amount of depreciation loss, and includes a rate determined by the Commissioner under section 91AAF, 91AAG, or 91AAL of the Tax Administration Act 1994.

New (unanimous)

(1) **Depreciation method** means—
- (a) a method that a person may use to calculate an amount of depreciation loss:
- (b) a rate determined by the Commissioner under section 91AAF or 91AAG of the Tax Administration Act 1994:
- (c) a maximum pooling value determined by the Commissioner under section 91AAL of that Act.

Methods described

(2) The depreciation methods are—
- (a) the diminishing value method, which—
  - (i) may be used for any item of depreciable property except one referred to in **subparagraph (ii) or (iii)**; and

(ii) must not be used for an item of fixed life intangible property; and

(iii) must not be used for an item of property in the circumstances described in **section EZ 10** (Pool method for items accounted for by globo method for 1992–93 income year):

(b) the straight-line method, which—

(i) may be used for any item of depreciable property; and

(ii) must be used for an item of fixed life intangible property:

(c) the pool method, which—

(i) may be used for any item of poolable property except one referred to in **subparagraph (ii)**; and

(ii) must not be used for an item of fixed life intangible property; and

(iii) must be used for an item of property in the circumstances described in **section EZ 10**.

Person chooses

(3) A person chooses which of the depreciation methods they will use for each item of depreciable property they own.

How person chooses

(4) The person chooses the method by using the chosen method for the item in their return of income for the income year for which they make the election.

Diminishing value or straight-line method fixed for income year

(5) If the person chooses the diminishing value method or the straight-line method, they must use the method for the item and the income year and must not change the election for the income year.

Pool method fixed for income year and later income years

(6) If the person chooses the pool method, they must use the method for the item and the income year and must not change the election for—

(a) the income year; or

(b) a later income year in which the item is still poolable property that they own.

Defined in this Act: amount, depreciable property, depreciation loss, depreciation method, diminishing value method, fixed life intangible property, income year, own, pool method, poolable property, property, return of income, straight-line method

Compare: 2004 No 35 s EE 12

Amount of depreciation loss under diminishing value method or straight-line method

EE 13 Application of sections EE 14 to EE 19

Sections EE 14 to EE 19 apply to the calculation of the amount of depreciation loss that a person using the diminishing value method or the straight-line method has.

Defined in this Act: amount, depreciation loss, diminishing value method, straight-line method

Compare: 2004 No 35 s EE 13

EE 14 Diminishing value or straight-line method: calculating amount of depreciation loss

Most depreciable property

(1) The amount of depreciation loss that the person has for an income year for an item of depreciable property is the lesser of the amounts dealt with in **sections EE 15 and EE 16**.

Exclusion: petroleum-related depreciable property

(2) The amount of depreciation loss that the person has for an income year for an item of petroleum-related depreciable property is the lesser of the amounts dealt with in **sections EE 15 and EE 17**.

Defined in this Act: amount, depreciable property, depreciation loss, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 14

EE 15 Amount of adjusted tax value

For the purposes of the comparison of amounts required by **section EE 14(1) and (2)**, the amount dealt with in this section is the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, income year

Compare: 2004 No 35 s EE 15

EE 16 Amount resulting from standard calculation

Amount

(1) For the purposes of the comparison of amounts required by **section EE 14(1)**, the amount dealt with in this section is calculated using the formula—

$$\text{annual rate} \times \text{value or cost} \times \frac{\text{months}}{12.}$$

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (5)**.

Annual rate

(3) **Annual rate** is the annual rate that, in the income year, applies to the item of depreciable property under the depreciation method that the person uses for the item. It is expressed as a decimal.

Value or cost

(4) **Value or cost** is,—

(a) when the person uses the diminishing value method, the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year:

Struck out (unanimous)

(b) when the person uses the straight-line method, the item's cost to the person, excluding expenditure for which the person is allowed a deduction under a provision of this Act outside this subpart; variations to **cost** are in **sections EE 18 and EE 19**.

New (unanimous)

(b) when the person uses the straight-line method,—
  (i) for a patent or plant variety rights in relation to which the person has been allowed a deduction for an amount of depreciation loss for the relevant application, the item's adjusted tax value at the start of the month in which the person acquires it:
  (ii) for other items, its cost to the person excluding expenditure for which the person is allowed a deduction under a provision of this Act outside this subpart:

(c) for the purposes of **paragraph (b)**, variations to **cost** are in **sections EE 18 and EE 19**.

Months: income year of normal length or shorter

(5) **Months**, for a person whose income year contains 365 days or fewer, or 366 days or fewer in a leap year, is the lesser of the following:
(a) 12; and
(b) the number of whole or part calendar months in the income year in which—
  (i) the person owns the item; and
  (ii) the person uses the item or has it available for use for any purpose.

Months: income year of longer than normal length

(6) **Months**, for a person whose income year contains more than 365 days, or more than 366 days in a leap year, is the number of whole or part months in the income year in which—
(a) the person owns the item; and
(b) the person uses the item or has it available for use for any purpose.

New (unanimous)

Months: patent applications

(7) For the purposes of **subsections (5) and (6)**, for a patent application, **months** refers to whole calendar months and whole months, as applicable.

Defined in this Act: adjusted tax value, amount, annual rate, deduction, depreciable property, depreciation loss, depreciation method, diminishing value method, income year, own, plant variety rights, straight-line method

Compare: 2004 No 35 s EE 16

EE 17 Amount resulting from petroleum-related depreciable property calculation

Amount

(1) For the purposes of the comparison of amounts required by **section EE 14(2)**, the amount dealt with in this section is calculated using the formula—

$$\text{annual rate} \times \text{value or cost} \times \frac{\text{days}}{365.}$$

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (5)**.

Annual rate

(3) **Annual rate** is the annual rate that, in the income year, applies to the item of depreciable property under the depreciation method that the person uses for the item. It is expressed as a decimal.

Value or cost

(4) **Value or cost** is,—

(a) when the person uses the diminishing value method, the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year:

(b) when the person uses the straight-line method, the item's cost to the person; a variation to **cost** is in **section EE 18**.

Days

(5) **Days** is the number of whole or part days in the income year on which—

(a) the person owns the item; and

(b) the person uses the item or has it available for use for any purpose.

Defined in this Act: adjusted tax value, amount, annual rate, deduction, depreciable property, depreciation loss, depreciation method, diminishing value method, income year, own, straight-line method

Compare: 2004 No 35 s EE 17

EE 18 Cost: change from diminishing value to straight-line method

When this section applies

(1) This section applies when a person changes from the diminishing value method to the straight-line method for an item of property for an income year.

How straight-line method applies

(2) For the purposes of the formulas in **sections EE 16 and EE 17**, the item's cost is treated as being the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, diminishing value method, income year, property, straight-line method

Compare: 2004 No 35 s EE 18

EE 19 Cost: fixed life intangible property

When this section applies

(1) This section applies when—

(a) a person owns an item of fixed life intangible property; and

(b) the person incurs additional costs in an income year for the item; and

(c) the person is denied a deduction for the additional costs other than a deduction for an amount of depreciation loss.

Additional costs for fixed life intangible property

(2) For the purposes of the formula in **section EE 16**, the item's cost at the start of the income year is treated as being the total of—

(a) the item's adjusted tax value at the start of the income year; and
(b) the additional costs the person incurs.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, fixed life intangible property, income year, own

Compare: 2004 No 35 s EE 19

Amount of depreciation loss under pool method

EE 20 Application of sections EE 21 to EE 24

Sections EE 21 to EE 24 apply to the calculation of the amount of depreciation loss that a person using the pool method has.

Defined in this Act: amount, depreciation loss, pool method

Compare: 2004 No 35 s EE 20

EE 21 Pool method: calculating amount of depreciation loss

Amount of depreciation loss subtracted from pool's value

(1) The amount of depreciation loss that a person has for an income year for a pool of depreciable property is—
(a) first, calculated under **subsection (2)**; and
(b) second, subtracted from the pool's adjusted tax value at the end of the income year.

Amount

(2) The amount of depreciation loss is calculated using the formula—

$$\text{rate} \times \frac{\text{starting adjusted tax value + ending adjusted tax value}}{2} \times \frac{\text{months}}{12}.$$

Definition of items in formula

(3) The items in the formula are defined in **subsections (4) to (8)**.

Rate

(4) **Rate** is the diminishing value rate. It is 1 of the following:
(a) if the same rate applies to all items depreciated in the pool in the income year, that rate; or
(b) if different rates apply to items depreciated in the pool in the income year,—

(i) the lower of the rates, if there are 2 items in the pool; or
(ii) the lowest of the rates, if there are 3 or more items in the pool.

Starting adjusted tax value

(5) **Starting adjusted tax value** is—
(a) the pool's adjusted tax value at the start of the income year; or
(b) zero, if the pool did not exist at the start of the income year.

A variation to **starting adjusted tax value** is in **section EE 22(2)(b)**.

Ending adjusted tax value

(6) **Ending adjusted tax value** is the pool's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the pool for the income year.

Months: income year of normal length or shorter

(7) **Months**, for a person whose income year contains 365 days or fewer, or 366 days or fewer in a leap year, is the lesser of the following:
(a) 12; and
(b) the number of whole or part months in the income year in which—
(i) the person owns the item; and
(ii) the person uses the item or has it available for use for any purpose.

Months: income year of longer than normal length

(8) **Months**, for a person whose income year contains more than 365 days, or more than 366 days in a leap year, is the number of whole or part months in the income year in which—
(a) the person owns the item; and
(b) the person uses the item or has it available for use for any purpose.

Defined in this Act: adjusted tax value, amount, deduction, depreciable property, depreciation loss, diminishing value rate, income year, own, pool

Compare: 2004 No 35 s EE 21

EE 22 Cases affecting pool

Acquired item included

(1) If a person chooses in an income year to include in a pool an item of poolable property that they acquire in the income year, the pool's adjusted tax value is increased by the item's cost.

Separately depreciated item included

(2) If a person chooses in an income year to include in a pool an item of poolable property that they depreciated separately in the previous income year,—
- (a) the pool's adjusted tax value is increased by the item's adjusted tax value on the date it is included in the pool; and
- (b) the item's adjusted tax value at the end of the previous income year is included in **starting adjusted tax value** in **section EE 21(5)**.

Item disposed of

(3) If a person disposes of an item included in a pool, any consideration they derive from the disposal is subtracted from the adjusted tax value of the pool in which the item was included on the date of the disposal.

All items disposed of

(4) If, on the last day of an income year, the adjusted tax value of a person's pool is positive but the person has disposed of all items that were in the pool,—
- (a) the amount of depreciation loss that the person has for the pool for the income year is the pool's adjusted tax value; and
- (b) on the first day of the following income year, the pool's adjusted tax value is zero.

Negative adjusted tax value

(5) If, on the last day of an income year, the adjusted tax value of a person's pool is negative,—
- (a) the amount by which the adjusted tax value is negative is an amount of depreciation recovery income of the person derived in the income year; and
- (b) on the first day of the following income year the pool's adjusted tax value is zero.

Relationship with section EZ 11

(6) **Section EZ 11** (Pool items accounted for by globo method for 1992–93 income year) limits the amount of income arising under **subsection (5)(a)** in the circumstances described in the section.

Defined in this Act: acquire, adjusted tax value, amount, depreciation loss, depreciation recovery income, dispose, income, income year, pool, poolable property

Compare: 2004 No 35 s EE 22

EE 23 Combined pools

Combining pools allowed

(1) A person using the pool method may at any time combine any number of pools to form a single pool.

Consequences

(2) When a person combines pools,—

(a) the new pool's adjusted tax value is the same as the sum of the adjusted tax values of the constituent pools; and

(b) the adjusted tax value of each of the constituent pools at the end of the income year in which the pools are combined is zero; and

(c) each of the constituent pools ceases to exist.

Defined in this Act: adjusted tax value, income year, pool, pool method

Compare: 2004 No 35 s EE 23

EE 24 Property ceasing to qualify for pool

If a person starts using an item of property included in a pool in such a way as to cause the item to cease to meet the requirements of **section EE 67(4)**, they must account for it as if, on the day they first used it in that way,—

(a) they disposed of it for its market value; and

(b) they immediately reacquired it for its market value.

Defined in this Act: acquire, dispose, pool, property

Compare: 2004 No 35 s EE 24

New (unanimous)

EE 24B Depreciation loss for plant variety rights application granted in 2005–06 or later income year

When this section applies

(1) This section applies when—
- (a) plant variety rights are granted to a person in their 2005–06 income year or a later income year; and
- (b) the rights are granted in relation to a plant variety rights application owned by the person; and
- (c) a deduction for expenditure is denied under another provision.

Calculation of deduction

(2) For the income year in which the plant variety rights are granted, the person is allowed a deduction for expenditure on the plant variety rights application of an amount calculated using the formula—

$$\text{cost} \times \frac{\text{months of ownership}}{\text{depreciation months.}}$$

Definition of items in formula

(3) In the formula,—
- (a) **cost** is the cost to the person of the plant variety rights application:
- (b) **months of ownership** is the number of whole calendar months for which the person owns the plant variety rights application:
- (c) **depreciation months** is the total of the number of months of ownership under **paragraph (b)** and the number of months in the term for which the plant variety rights are granted in relation to the plant variety rights application.

Defined in this Act: amount, deduction, depreciation, income year, plant variety rights

Compare: 2004 No 35 s EE 24B

Depreciation rates

EE 25 Setting of economic depreciation rate

Relevant provisions

(1) The economic depreciation rate that applies to a kind of item of depreciable property is set under—
- (a) **section EE 26**, for items that—
  - (i) are not buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is set under **section EE 28 or EE 29**; and
  - (ii) are acquired on or after 1 April 2005:
- (b) **section EE 27**, for items that are buildings and—
  - (i) are acquired on or after 19 May 2005; and
  - (ii) do not have an economic depreciation rate set under **section EZ 24** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005):
- (c) **section EE 28**, for certain aircraft and motor vehicles acquired on or after 1 April 2005:
- (d) **section EE 29**, for items that—
  - (i) have an estimated residual market value greater than 13.5% of cost:
  - (ii) would, in the absence of **section EE 29**, have an economic depreciation rate set under **section EE 26 or EE 27**:
- (e) **section EZ 24** for items that—
  - (i) are not buildings, fixed life intangible property, or excluded depreciable property and are acquired before 1 April 2005:
  - (ii) are buildings acquired before 19 May 2005:
  - (iii) are buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under **section EZ 24** or a corresponding provision.

No rate for fixed life intangible property or excluded depreciable property

(2) An economic depreciation rate must not be set for a kind of item of depreciable property that is fixed life intangible property or excluded depreciable property.

Overriding effect of election under section EE 31

(3) **Subsection (1)(a),** (*is subject to*)**(c)**, and **(d)** are overridden by **section EE 31**.

Defined in this Act: depreciable property, economic rate, estimated residual market value, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25

EE 26 Economic rate for certain depreciable property

What this section is about

(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property.

Exclusion

(2) This section does not apply to buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is set under **section EE 28 or EE 29**.

Rate set by Commissioner

(3) The Commissioner sets the rate from time to time by—
- (a) following the procedure set out in this section; and
- (b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(4) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—
- (a) obtains a figure by applying the formula in **subsection (5)** to items of that kind; and
- (b) rounds the figure up or down to the nearest rate specified in **schedule 11, column 1** (New banded rates of depreciation); and
- (c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

(i) the rate calculated for each kind; and
(ii) the reduction in compliance costs that is likely to be achieved.

Formula

(5) The formula is—

$$\frac{2}{\text{estimated useful life.}}$$

Definition of item in formula

(6) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25B

EE 27 Economic rate for buildings

What this section is about

(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property that is a building and for which an economic rate is not set under **section EE 29 or EZ 24** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005).

Rate set by Commissioner

(2) The Commissioner sets the rate from time to time by—
(a) following the procedure set out in this section; and
(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(3) To set the straight-line rate for a kind of item of depreciable property, the Commissioner—
(a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and
(b) rounds the figure up or down to the nearest rate specified in **schedule 11, column 4** (New banded rates of depreciation); and

(c) sets the same rate for some or all of the kinds of buildings that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—
  (i) the rate calculated for each kind; and
  (ii) the reduction in compliance costs that is likely to be achieved.

Formula

(4) The formula is—

$$\frac{1}{\text{estimated useful life.}}$$

Definition of item in formula

(5) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

Contracts existing at 19 May 2005

(6) Despite **subsection (1)**, a person who before 19 May 2005 enters into a binding contract for the purchase or construction of a building must apply to the building the economic rate for the kind of the building determined under **section EZ 24**.

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25C

EE 28 Economic rate for certain aircraft and motor vehicles

What this section does

(1) This section gives the economic depreciation rate for certain aircraft and motor vehicles.

Rate for certain aircraft

(2) The economic rate for an aircraft is a diminishing value rate of 10% or a straight-line rate of 7% if the aircraft—
(a) is self-propelled; and
(b) has fixed wings; and
(c) is not an international aircraft; and

New (unanimous)

(cb) is not used for top-dressing or spraying; and

(d) is not a helicopter.

Rate for certain motor vehicles

(3) The economic rate for a motor vehicle **(***having***)** <u>that is designed exclusively or mainly to carry persons and has</u> seats for no more than 12 persons is a diminishing value rate of 30% or a straight-line rate of 21% if the motor vehicle—

(a) is not available for hire:

(b) is available for hire for a hire period of more than 1 month:

(c) is a taxi:

(d) is a minibus.

Defined in this Act: diminishing value rate, economic rate, international aircraft, minibus, straight-line rate

Compare: 2004 No 35 s EE 25D

EE 29 Economic rate for plant, equipment, or building, with high residual value

What this section is about

Struck out (unanimous)

(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and

(b) the items are—

(i) plant or equipment acquired before 1 April 2005:

(ii) buildings acquired before 19 May 2005.

New (unanimous)

(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

New (unanimous)

(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and
(b) the estimated residual market value for the item is more than 13.5%; and
(c) the items are—
 (i) plant or equipment acquired on or after 1 April 2005:
 (ii) buildings acquired on or after 19 May 2005.

Rate set by Commissioner

(2) The Commissioner sets the rate from time to time by—
(a) following the procedure set out in this section; and
(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—
(a) obtains a figure by applying the formula in **subsection (4)** to items of that kind; and
(b) rounds the figure up or down to the nearest rate specified in **schedule 12, column 1** (Old banded rates of depreciation); and
(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—
 (i) the rate calculated for each kind; and
 (ii) the reduction in compliance costs that is likely to be achieved.

Formula

(4) The formula is—

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

Definition of items in formula

(5) In the formula,—

(a) **residual value** is the greater of—

(i) estimated residual market value, which is defined in **section EE 68**:

(ii) 13.5% of cost:

(b) **cost** is the cost of items of the kind to which the formula is applied:

(c) **estimated useful life** is defined in **section EE 64**.

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25E

EE 30 Annual rate for item acquired in person's 1995–96 or later income year

What this section is about

(1) This section is about the annual rate that applies to an item of depreciable property that a person acquires, other than under **section FL 2(2)** (Treatment of emigrating companies and their shareholders), in their 1995–96 income year or a later income year (not including fixed life intangible property or excluded depreciable property, for which rates are set in **sections EE 32 and EZ 16** (Annual rate for excluded depreciable property: 1992–93 tax year)).

Rate

(2) The rate is 1 of the following:

(a) the item's economic rate, for an item not described in either **paragraph (b) or (c)**:

(b) the item's economic rate multiplied by 1.2, for an item that—

(i) has not been used or held for use in New Zealand as an item of depreciable property before the date on which the person acquires it; and

(ii) is not a building; and

(iii) is not a used imported car; and

(iv) is not an international aircraft:

(c) a diminishing value rate of 15% or a straight-line rate of 10%, for an international aircraft.

Defined in this Act: acquire, annual rate, depreciable property, diminishing value rate, economic rate, excluded depreciable property, fixed life intangible property, income year, international aircraft, New Zealand, straight-line rate

Compare: 2004 No 35 s EE 26

EE 31 Election in relation to certain depreciable property acquired on or after 1 April 2005

When this section applies

(1) This section applies when a person acquired an item of depreciable property that is not a building—
- (a) on or after 1 April 2005; and
- (b) before the commencement of the person's income year corresponding to the 2006–07 tax year.

Election to use economic depreciation rate determined under section EZ 24

(2) The person may choose to calculate the depreciation loss for the item of depreciable property for income years corresponding to the 2005–06 tax year and later tax years in accordance with the economic depreciation rate determined for the kind of item under **section EZ 24** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005).

Election to be made in return of income

(3) The person must make an election under **subsection (2)** in the person's return of income for the 2005–06 tax year.

Defined in this Act: depreciable property, depreciation loss, economic depreciation rate, income year, return of income, tax year

Compare: 2004 No 35 s EE 26B

EE 32 Annual rate for fixed life intangible property

What this section is about

(1) This section is about the annual rate that applies to an item of fixed life intangible property, not including—
- (a) an item of excluded depreciable property for which a rate is set in **section EZ 16** (Annual rate for excluded depreciable property: 1992–93 tax year):

Struck out (unanimous)

(b) a patent or patent application for which a rate is set in **sections EE 33 or EE 35**:

(c) plant variety rights for which a rate is set in **section EE 36**.

New (unanimous)

(b) a patent for which a rate is set in **section EE 33.**

Rate

(2) The rate is the rate calculated using the formula—

$$\frac{1}{\text{legal life.}}$$

Definition of item in formula

(3) In the formula, **legal life** is,—

(a) if **section EE 19** applies, the item's remaining legal life from the start of the income year in which a person incurs the additional costs referred to in that section:

(b) if **section EE 19** does not apply, the item's remaining legal life from the time at which a person acquires it.

How rate expressed

(4) The rate given by the formula is expressed as a decimal and rounded to 2 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down.

Defined in this Act: acquire, annual rate, excluded depreciable property, fixed life intangible property, income year, legal life

Compare: 2004 No 35 s EE 27

Struck out (unanimous)

EE 33 Annual rate for patents: applications lodged with complete specifications before 1 April 2005

When this section applies

(1) This section applies when—

Struck out (unanimous)

(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and

(b) the application is lodged with the complete specification before 1 April 2005; and

(c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

Income years for which usual rate applies

(2) The rate given by **subsection (3)** applies for the patent for an income year that begins—

(a) after the date on which the patent is granted; and

(b) before the date that is 240 months after the patent application date.

Usual rate

(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

Rate for first income year of use

(4) For the patent and the income year that includes the date on which the patent is granted, the rate is found by adding together the following rates:

(a) the rate calculated using the formula—

$$\frac{\text{months before grant}}{\text{depreciation months}}:$$

(b) the rate calculated for the income year under **subsection (3)**.

Effect of change in ownership of patent application

(5) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rates calculated under **subsections (3) and (4)** for the person depend on the period between the date on which the person acquires the application and the date on which the patent is granted.

Struck out (unanimous)

Definition of items in formulas in subsections (3) and (4)

(6) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (7) to (9)**.

Months

(7) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—

(a) in which the patent is used or is available for use; and

(b) that include or begin after the date on which the patent is granted; and

(c) that end before the date that is 240 months after the patent application date.

Depreciation months

(8) **Depreciation months** is,—

(a) if **subsection (5)** does not apply, 240:

(b) if **subsection (5)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—

(i) include or begin after the patent application date; and

(ii) end before the date on which the person acquires the application.

Months before grant

(9) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that,—

(a) if **subsection (5)** does not apply,—

(i) include or begin after the patent application date; and

(ii) end before the date on which the patent is granted:

(b) if **subsection (5)** applies—

(i) include or begin after the date on which the person acquires the application; and

Struck out (unanimous)

(ii) ~~end before the date on which the patent is granted.~~

Defined in this Act: amount, income year, patent application date

Compare: 2004 No 35 s EE 27B

EE 34 Annual rate for patent applications lodged with complete specifications on or after 1 April 2005

When this section applies

(1) This section applies when—

(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and

(b) the application is lodged with the complete specification on or after 1 April 2005.

Income years for which rate applies

(2) The rate given by **subsection (3)** applies for a patent application for an income year that—

(a) includes or begins after the patent application date; and

(b) begins before the date on which—

(i) the patent is granted; or

(ii) the patent application is refused or withdrawn.

Rate

(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

Definition of items in formula

(4) The items in the formula are defined in **subsections (5) and (6)**.

Months

(5) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—

(a) include or begin after the patent application date; and

(b) end before the date on which—

(i) the patent is granted; or

Struck out (unanimous)

(ii) the patent application is refused or withdrawn.

Depreciation months

(6) **Depreciation months** is,—

(a) if **subsection (6)** does not apply, 240:

(b) if **subsection (6)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—

(i) include or begin after the patent application date; and

(ii) end before the date on which the person acquires the application.

Effect of change in ownership of patent application

(7) If the person who owns the patent application when the patent is granted, or when the patent application is refused or withdrawn, is not the person who lodges the application for the patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between the patent application date and the date on which the person acquires the application.

Defined in this Act: acquire, amount, income year, patent application date

Compare: 2004 No 35 s EE 27C

EE 35 Annual rate for patents: applications lodged with complete specifications on or after 1 April 2005

When this section applies

(1) This section applies when—

(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and

(b) the application is lodged with the complete specification on or after 1 April 2005; and

(c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

Struck out (unanimous)

Income years for which rate applies

(2) The rate calculated under **subsection (3)** applies for a patent for an income year that—

(a) includes or begins after the date on which the patent is granted; and

(b) begins before the date that is 240 months after the patent application date.

Rate

(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

Definition of items in formula

(4) The items in the formula are defined in **subsections (5) and (6)**.

Months

(5) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—

(a) include or begin after the date on which the patent is granted; and

(b) end before the date that is 240 months after the patent application date.

Depreciation months

(6) **Depreciation months** is,—

(a) if **subsection (7)** does not apply, 240:

(b) if **subsection (7)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—

(i) include or begin after the patent application date; and

(ii) end before the date on which the person acquires the application.

Struck out (unanimous)

Effect of change in ownership of patent application

(7) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between the patent application date and the date on which the person acquires the application.

Defined in this Act: acquire, amount, income year, patent application date

Compare: 2004 No 35 s EE 27D

EE 36 Annual rate for plant variety rights

When this section applies

(1) This section applies when—

(a) a plant variety right is given provisional protection; and

(b) the plant variety right is granted to a person in an income year that corresponds to the 2005–06 or a later tax year.

Income years for which usual rate applies

(2) The rate calculated under **subsection (3)** applies for the plant variety right for an income year that begins—

(a) after the date on which the plant variety right is granted; and

(b) before the date on which the plant variety right expires.

Usual rate

(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

Rate for first income year of use

(4) For the plant variety right and the income year that includes the date on which the plant variety right is granted, the rate is found by adding together the following rates:

(a) the rate calculated using the formula—

$$\frac{\text{months before grant}}{\text{depreciation months}}:$$

(b) the rate calculated for the income year under **subsection (3)**.

Struck out (unanimous)

Definition of items in formulas in subsections (3) and (4)

(5) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (6) to (8)**.

Months

(6) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—

(a) in which the plant variety right is used or available for use; and

(b) that end before the date on which the plant variety right expires.

Depreciation months

(7) **Depreciation months** is,—

(a) if **subsection (9)** does not apply, the number of months in the period for which the plant variety right is granted plus the number of months, beginning on or a whole number of months after the beginning of an income year of the person,—

(i) in which the plant variety right has provisional protection; and

(ii) ending before the date on which the plant variety right is granted:

(b) if **subsection (9)** applies, the number of months referred to in **paragraph (a)** reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—

(i) include or begin after the date on which the plant variety right is given provisional protection; and

(ii) end before the date on which the person acquires the application.

Months before grant

(8) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that,—

(a) if **subsection (9)** does not apply,—

Struck out (unanimous)

(i) include or begin after the date on which the plant variety right is given provisional protection; and

(ii) end before the date on which the plant variety right is granted:

(b) if **subsection (9)** applies,—

(i) include or begin after the date on which the person acquires the application; and

(ii) end before the date on which the plant variety right is granted.

Effect of change in ownership of application for plant variety right

(9) If the plant variety right is granted to a person who does not lodge the application for the plant variety right, the rates calculated under **subsections (3) and (4)** for the person depend on the period between the date on which the person acquires the application and the date on which the plant variety right is granted.

Defined in this Act: amount, income year, plant variety right

Compare: 2004 No 35 s EE 27E

New (unanimous)

EE 33 Annual rate for patent granted in 2005–06 or later income year

When this section applies

(1) This section applies to an item that is a patent when the patent is acquired by a person in their 2005–06 income year or a later income year.

Rate

(2) The rate is the rate calculated using the formula—

$$\frac{1}{\text{legal life.}}$$

New (unanimous)

Definition of item in formula

(3) In the formula, **legal life** is set out in whichever of **subsections (4) to (7)** applies to the patent.

Fixed life intangible property

(4) If the patent is an item of fixed life intangible property to which **section EE 19** applies, **legal life** is the patent's remaining legal life from the start of the income year in which the person incurs the additional costs referred to in that section.

No depreciation loss for patent application

(5) If **section EE 19** does not apply to the patent and the person has been denied a deduction for an amount of depreciation loss for the patent application, **legal life** is the patent's remaining legal life from the time at which the person acquires the patent.

Depreciation loss for patent application

(6) If **section EE 19** does not apply to the patent, and has not applied to the patent application while the person has owned it, and the person has been allowed a deduction for an amount of depreciation loss for the patent application, **legal life** is the remaining legal life of the patent application from the start of the income year in which the person acquires the patent application.

When section EE 19 applied to patent application

(7) If **section EE 19** does not apply to the patent, but has applied to the patent application while the person has owned it, and the person has been allowed a deduction for an amount of depreciation loss for the patent application, **legal life** is the remaining legal life of the patent application from the start of the income year in which the person acquires the patent.

How rate expressed

(8) The rate calculated using the formula is expressed as a decimal and rounded to 2 decimal places, with numbers at the

New (unanimous)

midpoint or greater being rounded up and other numbers being rounded down.

Defined in this Act: acquire, amount, deduction, depreciation loss, income year, legal life

Compare: 2004 No 35 s EE 27B

EE 37 Special rate or provisional rate

Rate set for item of depreciable property

(1) A special rate or a provisional rate is set for an item of depreciable property under sections 91AAG to 91AAJ of the Tax Administration Act 1994.

No special rate for excluded depreciable property

(2) A special rate may not be set for an item of excluded depreciable property.

No provisional rate for fixed life intangible property or excluded depreciable property

(3) A provisional rate may not be set for an item of fixed life intangible property or an item of excluded depreciable property.

Defined in this Act: depreciable property, excluded depreciable property, fixed life intangible property, provisional rate, special rate

Compare: 2004 No 35 s EE 28

EE 38 Using economic rate or provisional rate instead of special rate

Allowed to use economic or provisional rate

(1) A person may depreciate an item to which a special rate applies by applying, instead, the economic rate applicable to the item or a provisional rate applicable to the item. This subsection is overridden by **subsection (2)**.

Not allowed to use economic or provisional rate

(2) The person must not depreciate the item by applying the economic rate or the provisional rate, if—

(a) a special rate applies to the item; and

(b) the special rate is higher than the economic rate; and

(c) the person applies the special rate to the item for an income year; and

(d) in a later income year, the item's market value declines at a rate equal to or greater than the special rate; and

(e) it is a reasonable conclusion from all the circumstances of the case that the person's purpose, or 1 of the person's purposes, in wanting to change from the special rate to the economic rate or the provisional rate for the later income year is to enable the person to defer the deduction that the person is allowed for the amount of depreciation loss for the item's decline in value.

Defined in this Act: amount, deduction, depreciation loss, economic rate, income year, provisional rate, special rate

Compare: 2004 No 35 s EE 29

Improvements, items of low value, or items no longer used

EE 39 Improvements

When this section applies

(1) This section applies when a person makes an improvement to an item of depreciable property.

Income year in which improvement made

(2) In the income year in which the person makes the improvement, the provisions of this subpart apply to the improvement, as if it were a separate item of depreciable property, in the period that—

(a) starts at the start of the month in which the person first uses the improvement or has it available for use; and

(b) ends at the end of the income year.

Following income years

(3) For income years following the income year in which the person makes the improvement,—

(a) a person who uses the diminishing value method or the straight-line method for the item that was improved may choose to apply **subsection (4) or (5)**:

(b) a person who uses the pool method for the item that was improved must apply **subsections (6) and (7)**.

Improvement treated as separate item

(4) For the purposes of **subsection (3)(a)**, a person may choose to treat the improvement as a separate item of depreciable property.

Improvement treated as part of item

(5) For the purposes of **subsection (3)(a)**, a person may choose to treat the improvement as part of the item of depreciable property that was improved. They must do 1 of the following for the first income year, after the income year in which they made the improvement, in which they use the improvement or have it available for use:

(a) if they use the diminishing value method for the item, add the improvement's adjusted tax value at the start of the income year to the item's adjusted tax value at the start of the income year:

(b) if they use the straight-line method for the item,—

(i) add the improvement's adjusted tax value at the start of the income year to the item's adjusted tax value at the start of the income year; and

(ii) add the improvement's cost to the item's cost.

Pool method

(6) For the purposes of **subsection (3)(b)**, a person who uses the pool method for the item that was improved must treat the improvement as a separate item of depreciable property. If its cost is equal to or less than its maximum pooling value, they must include it in a pool in the first income year, after the income year in which they made the improvement, in which they use the improvement or have it available for use.

Adjustment of pool's value

(7) When an improvement is included in a pool under **subsection (6)**,—

(a) the pool's adjusted tax value is increased by the improvement's adjusted tax value on the date it is included in the pool; and

(b) the improvement's adjusted tax value at the end of the previous income year is included in **starting adjusted tax value** in **section EE 21(5)**.

Defined in this Act: adjusted tax value, depreciable property, diminishing value method, improvement, income year, maximum pooling value, pool, pool method, straight-line method

Compare: 2004 No 35 s EE 30

EE 40 Items of low value

When this section applies

(1) This section applies for an item of property that a person acquires, in an income year, when—

(a) the total cost for the item is equal to or less than the threshold value given for the item by **subsection (2)**; and

(b) the person uses the item, or has the item available for use, in the income year; and

(c) the item would be depreciable property if the person did not deal with it under this section; and

(d) the item has not been and will not become part of any other property that is depreciable property; and

(e) the person is denied a deduction for the cost of the item if the person does not deal with the item under this section; and

(f) when the item is one of a group of items, acquired at the same time and from the same supplier, to which the same depreciation rate would apply if they were all treated as items of depreciable property,—

(i) if **subparagraph (ii)** does not apply, the total cost for all the items in the group is equal to or less than the threshold value given for the item by **subsection (2)**:

(ii) if the items generally constitute the person's trading stock, the total cost for all the items in the group not treated by the person solely as trading stock is equal to or less than the threshold value given for the item by **subsection (2)**.

Threshold value for item

(2) The threshold value for an item is—

(a) $200, if the item is acquired before 19 May 2005:

(b) $500, if the item is acquired on or after 19 May 2005.

Amount of depreciation loss

(3) If the person chooses to deal with the item under this section, the amount of depreciation loss that the person has for the item for the income year is the item's cost.

How election made

(4) The person makes the election by claiming, in their return of income for the income year for which the election is made, a deduction for the amount of depreciation loss described in **subsection (3)**.

Amount of depreciation recovery income

(5) If the person disposes in an income year of an item for which they have been allowed a deduction on a claim under **subsection (3)**, the consideration they derive from the disposal is an amount of depreciation recovery income for the income year.

Change of use treated as disposal

(6) **Subsection (7)** applies when—
- (a) a person has been allowed a deduction on a claim under **subsection (3)** for an item; and
- (b) at a later time, the person stops using the item, or having the item available for use, mainly in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and
- (c) the use to which the item is put at the later time is not subject to fringe benefit tax.

Disposal

(7) The person is treated as having disposed of the item for its market value at the later time.

Increase in specified sum

(8) The Governor-General may make an Order in Council increasing the sum specified in **subsection (1)(a) and (f)**.

Defined in this Act: acquire, amount, assessable income, business, deduction, depreciable property, depreciation loss, depreciation recovery income, dispose, fringe benefit tax, income year, property, return of income, trading stock

Compare: 2004 No 35 s EE 31

EE 41 Items no longer used

When this section applies

(1) This section applies when a person in an income year has an item of depreciable property that—

(a) is no longer used or, because the geothermal energy proving period has ended, becomes unavailable for use under **section EE 6(4)**; and

(b) is not a building, unless the item meets the requirements of **subsection (2);** and

(c) has not been depreciated using the pool method.

Buildings

(2) This section applies to a building that meets the requirements of **subsection (1)(a) and (c)** if—

(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and

(b) the damage occurs—

(i) in the 2005–06 income year or a **(***subsequent***)** later income year:

(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:

(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and

(c) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

Amount of depreciation loss under this section

(3) The person has an amount of depreciation loss under this section and under no other provision of this subpart.

Circumstances

(4) The person has an amount of depreciation loss if—

(a) they no longer use the item in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(b) neither they nor a person associated with them intends to use the item in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(c) the costs of disposing of the item would be more than any consideration they could derive from disposing of it.

Amount

(5) The amount of depreciation loss is the item's adjusted tax value at the start of the income year.

Adjusted tax value at end of year

(6) The item's adjusted tax value at the end of the income year is zero.

Defined in this Act: adjusted tax value, amount, assessable income, associated person, business, depreciable property, depreciation loss, dispose, geothermal energy proving period, income year, pool method

Compare: 2004 No 35 s EE 32

Struck out (unanimous)

Transfers of depreciable property: first, certain amalgamations and, second, associated persons

EE 42 Transfer of depreciable property in certain amalgamations on or after 14 May 2002

When this section applies

(1) This section applies when, on or after 14 May 2002, a person acquires, directly or indirectly, an item of property from an amalgamating company as part of an amalgamation that is not a resident's restricted amalgamation.

Cost of item to person

(2) For the purposes of determining the amount of depreciation loss that the person has, the cost of the item to them is treated as 1 of the following:

(a) if **section EE 59** applies for the amalgamating company and the item, the lesser of—

Struck out (unanimous)

(i) the value given by **section FO 15** (Financial arrangements: amalgamation other than a resident's restricted amalgamation); and

(ii) the item's market value at the time at which a person was first allowed a deduction for it after the amalgamating company acquired it; or

(b) if **section EE 59** does not apply for the amalgamating company and the item, the lesser of—

(i) the value given by **section FO 15**; and

(ii) the cost of the item to the amalgamating company.

Exclusions

(3) **Subsection (2)** does not apply—

(a) if—

(i) the item is not depreciable intangible property; and

(ii) the Commissioner decides that it is appropriate to use the cost of the item to the person for the purposes of determining the amount of depreciation loss that the person has for the item; or

(b) if the cost to the person is income of the amalgamating company, other than under **section EE 50(1)**; or

(c) if the person acquires the item under a relationship agreement in circumstances to which **section FB 21** (Depreciable property) applies.

Rate

(4) The annual rate that the person applies to the item must be 1 of the following, not including an item of fixed life intangible property, for which the rate is set in **section EE 32**:

(a) if the person uses the same depreciation method for the item as that used by the amalgamating company for it, the annual rate that the person applies to it must not be more than the annual rate that the amalgamating company applied to it; or

(b) if the person uses a depreciation method for the item different from the method that the amalgamating company used for it, the annual rate that the person applies

Struck out (unanimous)

to it must not be more than a rate equivalent to the rate that the amalgamated company applied to it, as determined by **schedule 10** (Straight-line equivalents of diminishing value rates of depreciation).

Defined in this Act: acquire, amalgamation, amalgamating company, amount, annual rate, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, property, relationship agreement, resident's restricted amalgamation

Compare: 2004 No 35 s EE 33

EE 43 Transfer of depreciable property on or after 24 September 1997

When this section applies

(1) This section applies when, on or after 24 September 1997, a person (**person A**) acquires, directly or indirectly, an item of property from an associated person to whom 1 of the paragraphs in **subsection (2)** applies. The income year referred to in the paragraphs is the income year of the associated person.

Associated person

(2) The associated person must be a person to whom 1 of the following paragraphs applies:

(a) the associated person is allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquires it:

(b) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if **section EE 11(1)** had not applied:

(c) the associated person was allowed a deduction for an amount of depreciation loss for the item for the income year before the income year in which person A acquired it:

(d) the associated person has been allowed a deduction for the item under **section DZ 9** (Premium paid on land leased before 1 April 1993) for the income year in which person A acquired it:

Struck out (unanimous)

(e) the associated person has been allowed a deduction for the item under **section DZ 9** for the income year before the income year in which person A acquired it:

(f) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction and if **section EE 11(1)** had not applied:

(g) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction:

(h) the associated person would have been allowed a deduction for the item under **section DZ 9** for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction:

(i) the associated person would have been allowed a deduction for the item under **section DZ 9** for the income year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction:

(j) the associated person would have been a person to whom any of **paragraphs (a) to (i)** applied, if the associated person had not made an election under **section EE 8**.

Cost of item to person A

(3) For the purpose of determining the amount of depreciation loss that person A has, the cost of the item to person A is treated as 1 of the following:

(a) if **section EE 59** applies for the associated person and the item, the lesser of—

(i) the cost of the item to person A; and

Struck out (unanimous)

(ii) the item's market value at the time at which a person was first allowed a deduction for it after the associated person acquired it; or

(b) if **section EE 59** does not apply for the associated person and the item, the lesser of—

(i) the cost of the item to person A; and

(ii) the cost of the item to the associated person.

Exclusions

(4) **Subsection (3)** does not apply—

(a) if—

(i) the item is not depreciable intangible property; and

(ii) the Commissioner decides that it is appropriate to use the cost of the item to person A for the purposes of determining the amount of depreciation loss that person A has for the item:

(b) if the cost to person A is income of the associated person, other than under **section EE 50(1)**:

(c) if person A acquires the item under a relationship agreement to which **section FB 21** (Depreciable property) applies.

Rate

(5) The annual rate that person A applies to the item must be 1 of the following, not including an item of fixed life intangible property, for which the rate is set in **section EE 32**:

(a) if person A uses the same depreciation method for the item as that used by the associated person for it, the annual rate that person A applies to it must not be more than the annual rate that the associated person applied to it:

(b) if person A uses a depreciation method for the item different from the method that the associated person used for it, the annual rate that person A applies to it must not be more than a rate equivalent to the rate that the associated person applied to it, as determined by **schedule 10** (Straight-line equivalents of diminishing value rates of depreciation).

Struck out (unanimous)

Link with subpart FC

(6) If a disposal of property to which **subpart FC** (Distribution, transmission, and gifts of property) applies is at market value, this section does not apply to the bequest of property.

Defined in this Act: acquire, amount, annual rate, associated person, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, property, relationship agreement

Compare: 2004 No 35 s EE 34

New (unanimous)

Transfers of depreciable property: associated persons and certain amalgamations

EE 42 Transfer of depreciable property on or after 24 September 1997

When this section applies

(1) This section applies when, on or after 24 September 1997, a person (**person A**) acquires, directly or indirectly, an item of property from an associated person to whom any of **subsections (2) to (6)** applies. The income year referred to is the income year of the associated person.

Deduction for depreciation loss allowed in year of acquisition

(2) The associated person is allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquires it, or would have been allowed the deduction if **section EE 11(1)** had not applied.

Deduction for depreciation loss allowed in year before acquisition

(3) The associated person was allowed a deduction for an amount of depreciation loss for the income year before that in which person A acquired it.

New (unanimous)

When section DZ 9 applies

(4) The associated person has been allowed a deduction for the item under **section DZ 9** (Premium paid on land leased before 1 April 1993)—
(a) for the income year in which person A acquired it; or
(b) for the income year before that in which person A acquired it; or
(c) would have been allowed a deduction in either income year if they had incurred a cost for the item for which they were denied any other deduction.

If costs incurred for which deduction denied

(5) The associated person would have been allowed a deduction for an amount of depreciation loss for the item—
(a) for the income year in which person A acquired it, if they had incurred a cost for the item for which they were denied any other deduction and if **section EE 11(1)** had not applied; or
(b) for the income year before that in which person A acquired it, if they had incurred a cost for the item for which they were denied any other deduction.

When section EE 8 applies

(6) The associated person would have been a person to whom any of **subsections (2) to (5)** applied, if they had not made an election under **section EE 8**.

Cost of item to person A

(7) For the purposes of determining the amount of depreciation loss that person A has, the cost of the item to person A is treated as 1 of the following:
(a) if **section EE 59** applies to set a base value for the item, the lesser of—
(i) the cost of the item to person A:
(ii) the item's market value when the associated person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

New (unanimous)

(b) if **section EE 59** does not apply, the lesser of—
  (i) the cost of the item to person A:
  (ii) the cost of the item to the associated person.

Exclusions

(8) **Subsection (7)** does not apply if—
  (a) the item is not depreciable intangible property, and the Commissioner decides that it is appropriate to use the cost of the item to person A for the purposes of determining the amount of depreciation loss that person A has for the item:
  (b) the cost to person A is income of the associated person, other than under **section EE 50(1)**:
  (c) person A acquires the item on a settlement of relationship property to which **section FB 21** (Depreciable property) applies.

Rate

(9) The annual rate that person A applies to the item must be 1 of the following:
  (a) when person A uses the same depreciation method for the item as that used by the associated person for it, the annual rate must be no more than the annual rate that the associated person applied to it:
  (b) when person A uses a depreciation method for the item that is different from the method the associated person used for it, the annual rate must be no more than a rate equivalent to the rate that the associated person applied to it, as determined by **schedule 10** (Straight-line equivalents of diminishing value rates of depreciation).

Fixed life intangible property

(10) **Subsection (6)** does not apply to an item of fixed life intangible property whose rate is set in **section EE 32**.

Relationship with section EE 43 and subpart FC

(11) This section—
  (a) is overridden by **section EE 43**:

New (unanimous)

(b) does not apply to a bequest of property when **subpart FC** (Distribution, transmission, and gifts of property) applies to it and the property is disposed of at market value.

Defined in this Act: acquire, amount, annual rate, assessable income, associated person, business, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, property, settlement of relationship property

Compare: 2004 No 35 s EE 33

EE 43 Transfer of depreciable property on certain amalgamations on or after 14 May 2002

When this section applies

(1) This section applies when, on or after 14 May 2002, an amalgamated company acquires, directly or indirectly, an item of property from an amalgamating company, and—

(a) the amalgamated company's acquisition of the item is part of an amalgamation that is not a resident's restricted amalgamation; and

(b) the amalgamating company is an associated person of the amalgamated company, treating the amalgamating company as existing at the time that the amalgamated company is treated under **section FO 11(1)(b) or FO 15(3)** (which relate to property passing on certain amalgamations) as having acquired the property from the amalgamating company.

Cost of item to person

(2) For the purposes of determining the amount of depreciation loss that the amalgamated company has, the cost of the item to it is treated as 1 of the following:

(a) if **section EE 59** applies for the amalgamating company and the item, the lesser of—

(i) the value given under **section FO 11 or FO 15**, as applicable; and

(ii) the item's market value when the amalgamating company starts to use it, or to have it available for use, for the purpose of deriving assessable

New (unanimous)

income or carrying on a business for the purpose of deriving assessable income; or

(b) if **section EE 59** does not apply for the amalgamating company and the item, the lesser of—

(i) the value given under **section FO 11 or FO 15**, as applicable; and

(ii) the cost of the item to the amalgamating company.

Exclusions

(3) **Subsection (2)** does not apply if—

(a) the item is not depreciable intangible property, and the Commissioner decides that it is appropriate to use the cost of the item to the amalgamated company for the purposes of determining the amount of depreciation loss that it has for the item:

(b) the cost to the amalgamated company is income of the amalgamating company, other than under **section EE 50(1)**.

Rate

(4) The annual rate that the amalgamated company applies to the item must be 1 of the following:

(a) when the amalgamated company uses the same depreciation method for the item as that used by the amalgamating company for it, the annual rate that amalgamated company applies to it must be no more than the annual rate that the amalgamating company applied to it:

(b) when the amalgamated company uses a depreciation method for the item that is different from the method the amalgamating company used for it, the annual rate that the amalgamated company applies to it must be no more than a rate equivalent to the rate that the amalgamating company applied to it, as determined by **schedule 10** (Straight-line equivalents of diminishing value rates of depreciation).

New (unanimous)

Fixed life intangible property

(5) **Subsection (4)** does not apply to an item of fixed life intangible property whose rate is set in **section EE 32**.

Defined in this Act: acquire, amalgamated company, amalgamating company, amalgamation, amount, annual rate, assessable income, business, Commissioner, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, property, resident's restricted amalgamation

Compare: 2004 No 35 s EE 34

EE 44 Transfer of radiocommunications licence right on or after 24 September 1997

When this section applies

(1) This section applies when, on or after 24 September 1997, the holder of management rights created under the Radiocommunications Act 1989 grants a licence right under that Act to an associated person.

Exclusion

(2) This section does not apply when the Crown acting by and through the Secretary of Commerce is named as the manager under section 11(1) of the Radiocommunications Act 1989.

Cost of licence right

(3) For the purposes of determining the amount of depreciation loss that the associated person has, the cost of the licence right to the associated person is treated as zero.

Defined in this Act: amount, associated person, depreciation loss

Compare: 2004 No 35 s EE 35

EE 45 Transfer of depreciable intangible property on or after 1 July 1997

When this section applies

(1) This section applies when, on or after 1 July 1997, a person (**person A**) acquires, directly or indirectly, from an associated person an item of depreciable intangible property that—

(a) was not depreciable property of the associated person because it was not of a kind listed in **schedule 14** (Depreciable intangible property) at the time the associated person acquired it; and

(b) was not an item for whose cost the associated person was allowed a deduction, other than a deduction for an amount of depreciation loss, under a provision of this Act outside this subpart.

No amount of depreciation loss

(2) Person A does not have an amount of depreciation loss for the item.

Defined in this Act: acquire, amount, associated person, deduction, depreciable intangible property, depreciable property, depreciation loss

Compare: 2004 No 35 s EE 36

Disposals and similar events

EE 46 Application of sections EE 50 to EE 54

When sections apply

(1) **Sections EE 50 to EE 54** apply when a person derives consideration from the disposal of an item or from an event involving an item, if—

(a) the consideration is consideration of a kind described in **section EE 47**; and

(b) either—

(i) the item is an item of a kind described in **section EE 48**; or

(ii) the event is an event of a kind described in **section EE 49**.

Struck out (unanimous)

Exclusion

(2) **Sections EE 50 to EE 54** do not apply when a person disposes of an item of intangible property as part of an arrangement to replace it with an item of the same kind.

New (unanimous)

Exclusions

(2) **Sections EE 50 to EE 54** do not apply when—

(a) a person disposes of an item of intangible property as part of an arrangement to replace it with an item of the same kind:

(b) a person's patent application has concluded because a patent is granted to the person in relation to the application:

(c) a person's geothermal well becomes unavailable for use under **section EE 6(4)** because the geothermal energy proving period has ended.

Defined in this Act: arrangement, consideration, dispose, geothermal energy proving period, geothermal well, property

Compare: 2004 No 35 s EE 37

EE 47 Consideration for purposes of section EE 46

General rule: amount derived

(1) For the purposes of **section EE 46**, the **consideration** is the amount that the person derives, minus any amount that they incur in deriving it. Two qualifications are—

(a) if the person is a registered person, "the amount that the person derives" does not include any GST charged on a taxable supply they make:

(b) "any amount that they incur" does not include an amount for which the person is allowed a deduction, other than a deduction for an amount of depreciation loss, under a provision of this Act outside this subpart.

This subsection is overridden by **subsections (3) to (9)**.

Amount derived may be zero or negative

(2) For the purposes of **section EE 46**, an amount that a person derives as consideration may be zero or a negative amount.

Other than market value

(3) If the person derives a consideration that is not the item's market value, the consideration for the purposes of

section EE 46 is the item's market value. Three qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply:

(b) this subsection does not apply to a transfer under a relationship agreement; and

(c) this subsection does not apply in a case described in any of **subsections (5) to (9).**

Relationship with subpart FC

(4) **Subsection (3)** does not apply to a disposal of property to which any of **sections FC 3 and FC 4** (which relate to the distribution or transmission of property) applies.

Change of use or location of use

(5) The consideration that a person derives from the event described in **section EE 49(2)** is the item's market value. Two qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply:

(b) this subsection does not apply to a transfer under a relationship agreement.

Loss or theft

(6) The consideration that a person derives from the event described in **section EE 49(3)** is the amount of insurance, indemnity, or compensation they receive for the loss or theft (**amount A**). If the person is a registered person, amount A does not include the amount, if any, of GST charged on amount A to the extent to which amount A is treated as being consideration received for a supply of services by the registered person under section 5(13) of the Goods and Services Tax Act 1985.

New (unanimous)

Unused geothermal well brought into use

(6B) The consideration that a person derives from the event described in **section EE 49(5B)** is the amount of the deduction for depreciation loss allowed under **section EE 41(4).**

Irreparable damage

(7) The consideration that a person derives from the event described in **section EE 49(4)** is the amount of insurance, indemnity, or compensation they receive for the irreparable damage (**amount A**). If the person is a registered person, amount A does not include the amount, if any, of GST charged on amount A to the extent to which amount A is treated as being consideration received for a supply of services by the registered person under section 5(13) of the Goods and Services Tax Act 1985.

Repossession

(8) The consideration that a person derives from the event described in **section EE 49(5)** is the item's cost minus the net amount paid. Two qualifications are—

(a) if the person is a registered person, the "consideration that the person derives" does not include any GST charged on a taxable supply they make:

(b) "net amount paid" means the amount paid by the buyer to the seller for the item under the contract minus any amount refunded by the seller to the buyer.

Other items

(9) The consideration that a person derives from the disposal of an item along with any other item, or from the occurrence of an event involving an item that also involves other items, is the item's market value. Two qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply:

(b) this subsection does not apply to a transfer under a relationship agreement.

Item leaving New Zealand permanently

(10) The consideration that a person derives from the event referred to in **section EE 49(9)** is described in **section EZ 22(1)** (Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995).

Defined in this Act: amount, consideration, deduction, depreciation loss, dispose, geothermal well, GST, GST charged, New Zealand, registered person, relationship agreement, services, taxable supply

Compare: 2004 No 35 s EE 38

EE 48 Items for purposes of section EE 46

Items to which sections EE 50 to EE 54 apply

(1) For the purposes of **section EE 46**, an item of property to which **sections EE 50 to EE 54** apply is an item of depreciable property that a person owns, including—

(a) an item for which the person has been allowed a deduction for an amount of depreciation loss they have had under **section EE 32**; and

(b) an item to which **section CZ 11** (Recovery of deductions for software acquired before 1 April 1993) applies.

Exclusions

(2) **Sections EE 50 to EE 54** do not apply to—

(a) an item of property that, on the date on which the disposal or the event occurs, is accounted for in a pool; or

(b) an item of petroleum-related depreciable property; or

(c) an item of intangible property that is excluded depreciable property, other than software; or

(d) a land improvement that is excluded depreciable property of a kind for which no deduction for depreciation was allowed under section 108 of the Income Tax Act 1976.

Defined in this Act: amount, deduction, depreciable property, depreciation loss, excluded depreciable property, own, petroleum-related depreciable property, pool, property

Compare: 2004 No 35 s EE 39

EE 49 Events for purposes of section EE 46

Events to which sections EE 50 to EE 54 apply

(1) For the purposes of **section EE 46**, this section describes the events to which **sections EE 50 to EE 54** apply.

Change of use or location of use

(2) The first event is the change of use, or change of location of use, of an item of property, as a result of which a person is denied a deduction for an amount of depreciation loss for the item for the next income year. The event is treated as occurring on the first day of the next income year.

Loss or theft

(3) The second event is the loss or theft of an item of property, if the item is not recovered in the income year in which the loss or theft occurs.

Irreparable damage

(4) The third event is the irreparable damage of an item of property.

Repossession

(5) The fourth event is the seller's repossession of an item of property to which **section EE 3** applies because the buyer wholly or partly fails to pay the consideration. The event is treated as occurring on the date on which the item is repossessed.

New (unanimous)

Unused geothermal well brought into use

(5B) The fifth event is, for a person's geothermal well that is unavailable for use under **section EE 6(4)** because the geothermal energy proving period has ended, is when the person starts to—

(a) use the well in deriving assessable income or carrying on a business for the purpose of deriving assessable income:

New (unanimous)

(b) have the well available for use in deriving assessable income or carrying on a business for the purpose of deriving assessable income.

Statutory acquisition

(6) The **(***fifth***)** sixth event is the acquisition of an item of property by a person acting under statutory authority.

Cessation of ownership under section EE 4 or EE 5

(7) The seventh event is the cessation of ownership of a fixture or improvement—

(a) that a lessee is treated as having under **section EE 4(2)**; or

(b) that a person is treated as having under **section EE 5(3)**.

Cessation of rights in intangible property

(8) The eighth event is an occurrence that has the effect that the owner of an item of intangible property is no longer able, and will never be able, to exercise the rights that constitute or are part of the item.

Item leaving New Zealand permanently

(9) The ninth event is described in **section EZ 22(2)** (Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995).

Defined in this Act: amount, assessable income, business, deduction, depreciation loss, geothermal energy proving period, geothermal well, improvement, income year, lessee, New Zealand, own, pay, property

Compare: 2004 No 35 s EE 40

EE 50 Effect of disposal or event

Amount of depreciation recovery income

(1) For the purposes of **section EE 46**, if the consideration is more than the item's adjusted tax value on the date on which the disposal or the event occurs, the lesser of the following amounts is the amount of depreciation recovery income derived by the person for the income year in which the disposal or the event occurs:

(a) the amount by which the consideration is more than the item's adjusted tax value on the date on which the disposal or the event occurs; and
(b) the total of the amounts of depreciation loss for which the person has been allowed deductions for the item including, for an item to which **section CZ 11** (Recovery of deductions for software acquired before 1 April 1993) applies, any deduction allowed for its acquisition.

Amount of depreciation loss

(2) For the purposes of **section EE 46**, if the consideration is less than the item's adjusted tax value on the date on which the disposal or the event occurs, the person has an amount of depreciation loss, for the income year in which the disposal or the event occurs, that is the amount by which the consideration is less than the item's adjusted tax value on that date.

When this section does not apply

(3) **Subsection (2)** does not apply if the item is a building unless—
(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and
(b) the damage occurs—
(i) in the 2005–06 income year or a (*subsequent*) later income year:
(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:
(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and
(c) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

Defined in this Act: acquire, adjusted tax value, amount, consideration, deduction, depreciation loss, depreciation recovery income, dispose, income, income year

Compare: 2004 No 35 s EE 41

EE 51 Amount of depreciation recovery income when item partly used for business

Item to which this section applies

(1) This section applies to an item of property that—

(a) is an item to which this section applies, as described in **section EE 48**; and
(b) is, at any time during the period the person owns it, dealt with in—
  (i) **subpart DE** (Motor vehicle expenditure); or
  (ii) any applicable paragraph in **section EZ 12** (Amounts of depreciation recovery income and depreciation loss for part business use **(***in or before 1992–93***)** up to the 2004–05 income year); or
  (iii) **section EE 52**.

Depreciation recovery income

(2) If the consideration referred to in **section EE 46** is less than or equal to the cost of the item to the person, the amount of depreciation recovery income that the person has is an amount calculated using the formula in **subsection (3)**.

Formula

(3) The formula is—

$$\frac{\text{all deductions}}{(\text{base value} - \text{adjusted tax value})} \times \text{amount of depreciation recovery income.}$$

Definition of items in formula

(4) The items in the formula are defined in **subsections (5) to (8)**.

All deductions

(5) **All deductions** is all amounts of depreciation loss for which the person has been allowed a deduction for the item in each of the income years in which the person has owned the item.

Base value

(6) **Base value** has the applicable one of the meanings in **sections EE 58 to EE 60**.

Adjusted tax value

(7) **Adjusted tax value** is the item's adjusted tax value on the date on which the disposal or the event occurs.

Amount of depreciation recovery income

(8) **Amount of depreciation recovery income** is the amount described in **section EE 50(1)**.

Defined in this Act: adjusted tax value, amount, business, deduction, depreciation loss, depreciation recovery income, income year, own, property

Compare: 2004 No 35 s EE 42

EE 52 Amount of depreciation loss when item partly used to produce income

When subsection (2) applies

(1) **Subsection (2)** applies when—

(a) a person has an amount of depreciation loss for an item of depreciable property for an income year, other than an amount arising under **section EE 50(2)**; and

(b) at a time during the income year, the item is partly used, or partly available for use, by the person—

(i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(ii) in a way that is subject to fringe benefit tax; and

(c) at the same time, the item is partly used, or is partly available for use, by the person for a use that falls outside both **paragraph (b)(i) and (ii)**; and

(d) the item is not a motor vehicle to which **subpart DE** (Motor vehicle expenditure) applies.

Partial use: formula

(2) The deduction the person is allowed for the amount of depreciation loss must not be more than the amount calculated using the formula—

$$\text{depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days.}}$$

Definition of items in formula

(3) In the formula in **subsection (2)**,—

(a) **depreciation loss** is the amount of depreciation loss for the income year:

(b) **qualifying use days** is the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within **subsection (1)(b)(i) or (ii)**:

(c) **all days** is the number of days in the income year on which the person owns the item and uses it or has it available for use.

Other units of measurement

(4) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.

When subsection (6) applies

(5) **Subsection (6)** applies when—

(a) a person has an amount of depreciation loss for an item of depreciable property arising under **section EE 50(2)**; and

(b) the item was, at any time during the period the person owned it, dealt with in—

(i) **subsection (2)**; or

(ii) any applicable paragraph in **section EZ 12** (Amounts of depreciation recovery income and depreciation loss for part business use **(***in or before 1992–93***)** up to the 2004–05 income year); and

(c) the item is not a motor vehicle to which **subpart DE** applies.

Deduction for depreciation loss: formula

(6) The deduction the person **(***has***)**is allowed for the amount of depreciation loss is calculated using the formula—

$$\text{disposal depreciation loss} \times \frac{\text{all deductions}}{\text{(base value – adjusted tax value at date)}}.$$

Definition of items in formula

(7) In the formula in **subsection (6)**,—

(a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under **section EE 50(2)**:

(b) **all deductions** is all amounts of depreciation loss relating to the item for which the person has been allowed a deduction in each of the income years in which the person has owned the item:

(c) **base value** has whichever is applicable of the meanings in **sections EE 58 to EE 60**:

(d) **adjusted tax value at date** is the item's adjusted tax value on the date on which the disposal or event occurs.

New (unanimous)

When subsection (9) applies

(8) **Subsection (9)** applies when—

(a) a person has an amount of depreciation loss for an item of depreciable property for an income year arising under **section EE 50(2)**; and

(b) in the income year in which the amount of depreciation loss arises, the person starts to use the item, or have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(c) at a time during the income year, the item is partly used, or partly available for use, by the person—

(i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(ii) in a way that is subject to fringe benefit tax; and

(d) the item is not a motor vehicle to which **subpart DE** (Motor vehicle expenditure) applies.

Partial use: formula

(9) The deduction the person is allowed for the amount of depreciation loss is calculated using the formula—

$$\text{disposal depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}.$$

Definition of items in formula

(10) In the formula in **subsection (9)**,—

(a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under **section EE 50(2)**:

(b) **qualifying use days** is the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within **subsection (8)(c)(i) or (ii)**:

New (unanimous)

(c) **all days** is the number of days in the income year on which the person owns the item and uses it or has it available for use for any purpose.

Other units of measurement

(11) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.

Defined in this Act: adjusted tax value, amount, assessable income, business, deduction, depreciable property, depreciation loss, fringe benefit tax, income year, motor vehicle, property

Compare: 2004 No 35 s FB 7

EE 53 Amount of depreciation recovery income when lost or stolen items recovered

When this section applies

(1) This section applies when an item of property to which **section EE 49(3)** applies—
- (a) is recovered in a later income year; and
- (b) is still owned by the person; and
- (c) is still used or available for use by the person.

Person treated as acquiring item

(2) The person is treated as having acquired the item, on the date of recovery, for its adjusted tax value at the start of the income year in which it was lost or stolen.

Person treated as deriving income: amount

(3) The person is treated as deriving an amount of depreciation recovery income equal to the amount of depreciation loss that the person has under **section EE 50(2)** for which they have been allowed a deduction.

Person treated as deriving income: income year

(4) The income year in which the person derives the depreciation recovery income is—
- (a) the income year in which the item is lost or stolen, if the person chooses that year; or

(b) the income year in which the item is recovered, in any other case.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, depreciation recovery income, income year, own, property

Compare: 2004 No 35 s EE 43

EE 54 Amount of depreciation recovery income when compensation received

When this section applies

(1) This section applies when a person receives insurance, indemnity, or compensation for an item of property to which this section applies, as described in **section EE 48**, other than for an item that is lost, stolen, or irreparably damaged.

Compensation subtracted

(2) An amount must be subtracted from the item's adjusted tax value. The amount is the amount by which the insurance, indemnity, or compensation that the person receives is more than the expenditure that the person incurs because of the event for which the person receives the insurance, indemnity, or compensation.

Depreciation recovery income

(3) If the item's adjusted tax value becomes negative in an income year through the application of **subsection (2)**, the negative amount is an amount of depreciation recovery income derived by the person in the income year.

Defined in this Act: adjusted tax value, amount, depreciation recovery income, income year, property

Compare: 2004 No 35 s EE 44

New (unanimous)

EE 54B Unused geothermal well brought into use

When this section applies

(1) This section applies to a person when an event occurs to which **section EE 49(5B)** applies.

New (unanimous)

Person treated as acquiring well

(2) The person is treated as having acquired the geothermal well on the day on which the event occurs for the cost of the well under this subpart before the event occurs.

Defined in this Act: acquire, geothermal well

Compare: 2004 No 35 s EE 44B

Interpretation provisions

EE 55 Cost: GST

When this section applies

(1) This section applies when an amount of depreciation loss or an amount of depreciation recovery income is calculated by reference to the cost of an item of depreciable property to a person.

Cost reduced: input tax

(2) The item's cost is reduced by subtracting the amount, if any, of input tax applying to the supply of the item to the person. This subsection is overridden by **subsection (3)**.

Cost reduced: input tax

(3) This subsection applies to an item that was not acquired or produced for the principal purpose of making taxable supplies but is applied in an income year principally for that purpose. The item's cost is reduced by subtracting a proportion of the amount, if any, calculated under sections 21F and 21G, and deductible under section 20(3)(e), of the Goods and Services Tax Act 1985. The proportion is the proportion of the amount that arises from the application of the item in the income year principally for the purpose of making taxable supplies.

Cost increased: output tax

(4) This subsection applies to an item that was acquired or produced for the principal purpose of making taxable supplies but is applied in an income year other than for that purpose. The item's cost is increased by adding the amount, if any, of

output tax charged in the income year for the supply of the item because section 21 of the Goods and Services Tax Act 1985 applies to the supply.

Defined in this Act: amount, depreciable property, depreciation loss, depreciation recovery income, GST, income year, input tax, output tax, taxable supply

Compare: 2004 No 35 s EE 45

Adjusted tax value

EE 56 Meaning of adjusted tax value

Adjusted tax value means,—

(a) for an item of depreciable property, the amount calculated using the formula in **section EE 57**:

(b) for a pool, the total of the adjusted tax values of the items in the pool.

Defined in this Act: adjusted tax value, amount, depreciable property, pool

Compare: 2004 No 35 s EE 46

EE 57 Formula

Formula

(1) The formula referred to in **section EE 56** is—

$$\text{base value} - \text{total deductions}.$$

Definition of items in formula

(2) In the formula,—

(a) **base value** has the applicable meaning in **sections EE 58, EE 59, EE 60, and EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995):

(b) **total deductions** is defined in **section EE 61**.

Defined in this Act: deduction

Compare: 2004 No 35 s EE 47

EE 58 Base value in section EE 57 when none of sections EE 59, EE 60, and EZ 23(1) applies

When this section applies

(1) This section applies when none of **sections EE 59, EE 60, and EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995) applies.

Base value

(2) **Base value** is the cost of the item to the person.

Cost

(3) In this section, "cost" is qualified as follows:

(a) expenditure is excluded from it if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under **section EE 40((*2*)3) or EE 50(2)** or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(b) expenditure is not excluded from it if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under any other provision of this subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(c) expenditure is excluded from it if it is expenditure for which a person has been allowed a deduction under any other subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(d) expenditure—

(i) is not excluded from it if it is described in **section EZ 23(2)(a)**; and

(ii) is excluded from it if it is described in **section EZ 23(2)(b)**.

Defined in this Act: amount, deduction, depreciation loss

Compare: 2004 No 35 s EE 48

EE 59 Base value in section EE 57 when no previous deduction

When this section applies

(1) This section applies when all the following apply to the item:

(a) it is not a building; and

(b) it is not an item of petroleum-related depreciable property; and

(c) it is not an item that the person—

(i) acquired to use or have available for use in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(ii) first used for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(d) it has been, since the person acquired it and first used it or had it available for use for any purpose, an item for which the person could not in any income year have been allowed a deduction for an amount of depreciation loss, whether because of the nature of the person's use of the item or the person's non-residence or for any other reason; and

(e) in relation to the 1992–93 income year,—

(i) it was acquired by the person after the end of that income year; or

(ii) it was an item described in **section EZ 23(3)** (Base value and total deductions in section EE 57: before 1 April 1995).

Struck out (unanimous)

Base value

(2) **Base value** is the item's market value at the time the person was first allowed a deduction for an amount of depreciation loss for the item.

New (unanimous)

Base value

(2) **Base value** is the item's market value when the person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income.

Defined in this Act: acquire, amount, assessable income, business, deduction, depreciation loss, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 49

EE 60 Base value in section EE 57 when property is petroleum-related depreciable property

When this section applies

(1) This section applies when the item is an item of petroleum-related depreciable property to which both the following apply:

(a) **section EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995) does not apply to it; and

(b) the person (**person A**) acquires it from an associated person.

Base value

(2) **Base value** is the lesser of—

(a) the cost of the item to person A; and

(b) the total of the amounts described in **subsections (3) and (4)**.

First amount for purposes of subsection (2)(b)

(3) The amount is the cost of the item to—

(a) the associated person, if the associated person did not acquire the item from either person A or another person associated with person A; or

(b) whoever owned the item, whether person A or the associated person, at the start of an unbroken chain of ownership made up of person A and 1 or more persons associated with person A.

Second amount for purposes of subsection (2)(b)

(4) The amount is all expenditure incurred for the item by person A and the associated person or associated persons before the date on which person A acquired the item.

Cost and expenditure

(5) In this section, "cost" and "expenditure" are qualified as follows:

(a) expenditure is excluded from them if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under

section EE 40((*2*)3) or EE 50(2) or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(b) expenditure is not excluded from them if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under any other provision of this subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(c) expenditure is excluded from them if it is expenditure for which a person is allowed a deduction under any other subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(d) expenditure is excluded from them if it is expenditure for which a person would have been allowed a deduction under any other subpart if this Act had applied or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994 if the Act had applied.

Defined in this Act: acquire, amount, associated person, deduction, depreciation loss, own, petroleum-related depreciable property

Compare: 2004 No 35 s EE 50

EE 61 Total deductions in section EE 57

Total deductions

(1) **Total deductions** is the total, calculated as at a particular time, of—

(a) the amount described in **subsection (2)**; and

(b) the amount described in **subsection (3)**(.); and

New (unanimous)

(c) the amount of a deduction under **section EE 24B**.

First amount for purposes of subsection (1)

(2) The amount is all amounts that 1 or more of the following provisions has required to be subtracted from the item's adjusted tax value since the start of the 1993–94 income year:

(a) **section EE 54(2)**:

(b) section EE 44(2) of the Income Tax Act 2004:

(c) section EG 19(5) of the Income Tax Act 1994:

(d) the provision described in **section EZ 23(4)** (Base value and total deductions in section EE 57: before 1 April 1995).

Second amount for purposes of subsection (1)

(3) The amount is all deductions for amounts of depreciation loss, calculated using the method described in **subsection (4)**, that, in the period described in **subsection (5)**,—

(a) the person was allowed for the item and,—

New (unanimous)

(i) if the item is a patent, for the patent application in relation to which the item was granted:

(ii) if the item is a geothermal well that a person acquired under **section EE 54B(2)**, for the well before the person acquired it under that section; or

(b) the person would have been allowed if they had used the item wholly in deriving assessable income or carrying on a business for the purpose of deriving assessable income.

Method

(4) The method is—

(a) the depreciation method that the person used in each relevant income year; or

(b) the diminishing value method, if the person did not make deductions for amounts of depreciation loss for the item.

Period

(5) The period ends with the end of the income year before the income year in which the particular time occurs, and starts with,—

Struck out (unanimous)

(a) if **section EE 58** applies to the item, the date on which the person acquired the item; or

(b) if **section EE 59** applies to the item, the start of the month in which the person was first allowed a deduction for an amount of depreciation loss for the item; or

Struck out (unanimous)

(c) if **section EE 60** applies to the item, the date on which person A or the relevant associated person acquired the item; or

(d) if **section EZ 23(1)** applies to the item, the end of the 1992–93 income year.

New (unanimous)

(a) for an item to which **section EE 58** applies,—

(i) unless **subparagraph (ii) or (iii)** applies, the date on which the person acquired the item; or

(ii) if the item is a geothermal well that a person acquired under **section EE 54B(2)**, the earliest date on which the person acquired the well under **section EE 56(4)** or otherwise; or

(iii) if the item is a patent and the person acquired the patent application in relation to which the patent was granted, the date on which the person acquired the patent application; or

(b) for an item to which **section EE 59** applies,—

(i) unless **subparagraph (ii)** applies, the beginning of the month in which the person started to use the item, or to have it available for use for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(ii) if the item is a patent and the person acquired the patent application in relation to which the patent was granted, the beginning of the month in which the person acquired the patent application; or

(c) for an item to which **section EE 60** applies, the date on which person A or the relevant associated person acquired the item; or

(d) for an item to which **section EZ 23(1)** (Base value and total deductions in section EE 57: before 1 April 1995) applies to the item, the end of the 1992–93 income year.

Defined in this Act: acquire, adjusted tax value, amount, assessable income, associated person, business, deduction, depreciation loss, depreciation method, diminishing value method, geothermal well, income year

Compare: 2004 No 35 s EE 51

Definitions

EE 62 Meaning of annual rate

Meaning

(1) **Annual rate** means the annual depreciation rate applying to an item of depreciable property that a person owns. The rate is 1 of the rates described in **subsections (2) to (6)**.

1995–96 income year or later

(2) The rate is the rate set by **section EE 30(2)(a) or (b)** if both the following apply to the item:
- (a) the person acquires it in their 1995–96 income year or a later income year; and
- (b) the item is not dealt with in any of **subsections (3) to (6)**.

1995–96 income year or later: international aircraft

(3) The rate is the rate set by **section EE 30(2)(c)** if the item is an international aircraft that the person acquires in their 1995–96 income year or a later income year.

Fixed life intangible property

(4) The rate is the rate set by **section EE 32** if both the following apply to the item:
- (a) the item is an item of fixed life intangible property; and
- (b) the item is not an item of excluded depreciable property.

Patents, applications: complete specification before 1 April 2005

(5) The rate is the rate set by **section EE 33** if the item is a patent and **section EE 33** applies to the item and the person.

Struck out (unanimous)

Patent applications: lodged with complete specification on or after 1 April 2005

(6) The rate is the rate set by **section EE 34** if the item is a patent application and **section EE 34** applies to the item and the person.

Struck out (unanimous)

~~*Patents: application lodged with complete specification on or after 1 April 2005*~~

~~(7) The rate is the rate set by **section EE 35** if the item is a patent and **section EE 35** applies to the item and the person.~~

~~*Plant variety rights*~~

~~(8) The rate is the rate set by **section EE 36** if the item is a plant variety right and **section EE 36** applies to the item and the person.~~

1994–95 income year

(9) The rate is the rate set by **section EZ 14** (Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year) if all the following apply to the item:

(a) the person acquired it before the end of their 1994–95 income year; and

(b) the item is not an item of fixed life intangible property; and

(c) the item is not an item of excluded depreciable property.

Excluded depreciable property

(10) The rate is the rate set by **section EZ 16** (Annual rate for excluded depreciable property: 1992–93 tax year) if the item is an item of excluded depreciable property.

Defined in this Act: acquire, annual rate, depreciable property, excluded depreciable property, fixed life intangible property, income year, international aircraft, own

Compare: 2004 No 35 s EE 52

EE 63 Meaning of depreciable intangible property

Meaning

(1) **Depreciable intangible property** means the property listed in **schedule 14** (Depreciable intangible property).

Criteria for listing in schedule 14

(2) For property to be listed in **schedule 14**, the criteria are as follows:

(a) it must be intangible; and

(b) it must have a finite useful life that can be estimated with a reasonable degree of certainty on the date of its acquisition.

Schedule 14 prevails

(3) Property that is listed in **schedule 14** is depreciable intangible property even if the criteria are not met.

Defined in this Act: acquire, depreciable intangible property, property

Compare: 2004 No 35 s EE 53

EE 64 Meaning of estimated useful life

Meaning for item of depreciable property, except for copyright in sound recording

(1) **Estimated useful life**, for an item of depreciable property, other than a copyright in a sound recording, means the period over which the item might reasonably be expected to be useful in deriving assessable income or carrying on a business for the purpose of deriving assessable income, taking into account—

(a) the passage of time, likely wear and tear, exhaustion, and obsolescence; and

(b) an assumption of normal and reasonable maintenance.

Meaning for copyright in sound recording

(2) **Estimated useful life**, for a copyright in a sound recording, means the period from the time at which the copyright might reasonably be expected to be first useful in deriving assessable income until the end of the income year in which it might reasonably be expected that 90% of all the income that will be derived from it has been derived.

Defined in this Act: assessable income, business, depreciable property, estimated useful life, income year, sound recording

Compare: 2004 No 35 s EE 54

EE 65 Meaning of excluded depreciable property

Meaning

(1) **Excluded depreciable property** means, for a person,—

(a) depreciable property for whose purchase or construction the person entered into a binding contract before 16 December 1991; or

(b) depreciable property that the person used or had available for use for any purpose whatever within New Zealand, other than as trading stock, before 1 April 1993; or
(c) depreciable property that is an intangible item that the person used or had available for use before 1 April 1993; or
(d) depreciable property that is or has been a qualifying asset for the person; or
(e) depreciable property to the extent to which it is or has been a qualifying improvement for the person.

Exclusion

(2) **Excluded depreciable property** does not include property to which both the following apply:
(a) it existed at the end of the 1992–93 income year; and
(b) the Commissioner allowed it to be accounted for in that income year using the standard value method, the replacement value method, or the annual revaluation method.

Defined in this Act: Commissioner, depreciable property, excluded depreciable property, income year, New Zealand, property, qualifying improvement, qualifying asset, trading stock

Compare: 2004 No 35 s EE 55

EE 66 Meaning of maximum pooling value

Meaning

(1) **Maximum pooling value**, for an item of depreciable property, means the greater of—
(a) $2,000; and
(b) the value set in a determination issued under section 91AAL of the Tax Administration Act 1994 applying to the item.

Increase in specified sum

(2) The Governor-General may make an Order in Council increasing the sum specified in **subsection (1)(a)**.

Defined in this Act: depreciable property, maximum pooling value

Compare: 2004 No 35 s EE 56

EE 67 Meaning of poolable property

Meaning

(1) **Poolable property**, for an income year, means an item of depreciable property that a person owns to which **subsections (2) to (4)** apply.

Not a building

(2) The item is not a building.

Maximum pooling value or globo method

(3) The item—
- (a) is acquired in the income year for a cost equal to or less than its maximum pooling value; or
- (b) was previously accounted for separately but has, as at the start of the income year, an adjusted tax value equal to or less than its maximum pooling value; or
- (c) was accounted for at the end of the 1992–93 income year using, with the Commissioner's permission, the globo accounting method.

Wholly used or subject to fringe benefit tax

(4) The item—
- (a) is wholly used or available for use by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or
- (b) to the extent to which it is not wholly used or available for use by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income, is used in a way that is subject to fringe benefit tax.

Defined in this Act: acquire, adjusted tax value, assessable income, business, Commissioner, depreciable property, fringe benefit tax, income year, maximum pooling value, own, poolable property

Compare: 2004 No 35 s EE 57

EE 68 Other definitions

In this Act,—

depreciation method means a method described in **section EE 12**

diminishing value method means the method of calculating an amount of depreciation loss for an item of depreciable property by subtracting, in each income year, a constant percentage of the item's adjusted tax value from the item's adjusted tax value

diminishing value rate means the rate that a person using the diminishing value method applies to an item of depreciable property

economic rate means the economic depreciation rate of an item of depreciable property, set under **sections EE 26 to EE 29**

estimated residual market value means, for an item of depreciable property, its market value at the end of its estimated useful life, estimated reasonably as at the date of acquisition and based on an assumption of normal and reasonable maintenance over its estimated useful life

fixed life intangible property means property that—
(a) is depreciable intangible property; and
(b) has a legal life that could reasonably be expected, on the date of the property's acquisition, to be the same length as the property's remaining estimated useful life

improvement means an alteration, extension, or repair of an item of depreciable property that increases its capital value

international aircraft means a jet-engined aircraft that a person uses in an income year mainly in regular commercial service to transport passengers between New Zealand and any other place

Struck out (unanimous)

legal life means the number of years, months, and days for which an owner's interest in an item of intangible property exists under the contract or statute that creates the owner's interest, assuming that the owner exercises any rights of renewal or extension that are either essentially unconditional or conditional on the payment of predetermined fees

New (unanimous)

legal life,—
(a) for an item to which **paragraphs (b) and (c)** do not apply, means the number of years, months, and days for which

New (unanimous)

an owner's interest in an item of intangible property exists under the contract or statute that creates the owner's interest, assuming that the owner exercises any rights of renewal or extension that are either essentially unconditional or conditional on the payment of predetermined fees:

(b) for an item that is a patent application or a patent, means the legal life under **paragraph (a)** that a patent would have if granted when a patent application is first lodged:

(c) for an item that is plant variety rights, means the total of—
  (i) the legal life that the rights would have under **paragraph (a)**; and
  (ii) the number of whole calendar months during which the person owns the plant variety rights application in relation to which the rights are granted

petroleum-related depreciable property means depreciable property that is—
(a) petroleum drilling rigs; or
(b) support vessels for offshore petroleum drilling rigs; or
(c) support vessels for offshore petroleum production platforms

pool means items of depreciable property that a person chooses under **section EE 12** to depreciate as a pool using the pool method

pool method means the method of calculating an amount of depreciation loss set out in **section EE 21**

provisional rate means a provisional rate as described in **section EE 37**

special rate means a special rate as described in **section EE 37**

straight-line method means the method of calculating an amount of depreciation loss for an item of depreciable property by subtracting, in each income year, a constant percentage of the item's cost, to its owner, from the item's adjusted tax value

straight-line rate means the rate that a person using the straight-line method applies to an item of depreciable property.

Defined in this Act: acquire, adjusted tax value, amount, depreciable intangible property, depreciable property, depreciation loss, depreciation method, diminishing value method, diminishing value rate, economic rate, estimated residual market value, estimated useful life, fixed life intangible property, improvement, income year, international aircraft, legal life, New Zealand, own, pay, petroleum, petroleum-related depreciable property, plant variety rights, pool, pool method, property, provisional rate, special rate, straight-line method, straight-line rate

Compare: 2004 No 35 s EE 58

Subpart EF—Taxes and levies

Contents

EF 1 Fringe benefit tax

Fringe benefit tax for which a deduction is allowed may be deducted only in the income year in which the relevant fringe benefits are provided or granted, whether or not the tax actually becomes due and payable in the income year.

Defined in this Act: deduction, fringe benefit tax, income year, pay

Compare: 2004 No 35 s EF 1

EF 2 (*ESCT*)Employer's superannuation contribution tax

An amount of employer's superannuation contribution tax (ESCT) for which a deduction is allowed may be deducted only in the income year in which the employer's superannuation contributions to which the tax relates are made, whether or not the tax actually becomes due and payable in the income year.

Defined in this Act: deduction, employer's superannuation contribution, ESCT, income year, pay

Compare: 2004 No 35 s EF 2

EF 3 (*ACC*)Accident compensation levies and premiums

Timing of deduction

(1) A deduction that an employer or self-employed person is allowed for an Accident Compensation Corporation (ACC) levy or premium is allocated to the income year in which it becomes due and payable, except as provided in **subsection (2) or (3)**.

Earlier income year

(2) If a deduction for an ACC levy or premium has been allocated to an income year earlier than the income year in which the levy or premium becomes due and payable and, because of the time bar or for another reason, the Commissioner cannot lawfully amend the assessment for the income year, the deduction is allocated to the income year in which it was allowed.

Balance dates between 1 October and 6 April

(3) If a person's income year ends on a balance date falling between 1 October and 6 April (both dates inclusive), an ACC levy or premium that is due on a date in **schedule 3, part A, column H** (Payment of provisional tax and terminal tax) is treated as if it were due and payable on the relevant date in **schedule 3, part A, column G** for the person's corresponding income year.

References to dates in schedule 3

(4) For the purposes of **subsection (3)**, references to the date in **schedule 3, part A, columns G and H** (which refer to months only and not days) are references to the day in the relevant month that is fixed by the following:
(a) the definition of **instalment date** in **section YA 1** (Definitions); and
(b) **sections RA 3** (Terminal tax obligations), **RC 1(2), and RC 20 to RC 24** (which relate to provisional tax instalments in transitional years).

Meaning of ACC levy or premium

(5) In this section, **ACC levy or premium** means any of the following levies, premiums, or penalties:
(a) the following levy or premium:

(i) a levy to fund the **(***Employers'***)** Work Account under section 168 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or

(ii) an employer's premium to fund the Employers' Account under section 281B of the Accident Insurance Act 1998:

(b) a Residual Claims levy under—

(i) section 193 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or

(ii) section 304 of the Accident Insurance Act 1998:

(c) the following levy or premium:

(i) a levy to fund the **(***Self-employed Work Account under section 202***)** Work Account under section 168B or 211 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or

(ii) a premium to fund the Self-Employed Work Account under section 300 of the Accident Insurance Act 1998:

(d) the following levy or premium:

(i) a levy to fund the Earners' Account under section 219(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or

(ii) a premium to fund the Earners' Account under section 283(1) of the Accident Insurance Act 1998:

(e) the following levy:

(i) an Earners' Account Residual levy under section 219(2) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or

(ii) an Earners' Account levy under section 283(2) of the Accident Insurance Act 1998:

(f) a levy to meet the costs of the Regulator under section 236 of the Accident Insurance Act 1998:

(g) a contribution to the Insolvent Insurers Fund under section 246 or 247 of the Accident Insurance Act 1998:

(h) a levy or penalty payable to the Non-Compliers Fund under section 263 of the Accident Insurance Act 1998:

(i) a base premium under sections 466 to 470 of the Accident Insurance Act 1998.

Defined in this Act: ACC levy or premium, Commissioner, deduction, employer, income year, pay, time bar

Compare: 2004 No 35 s EF 3

EF 4 Use of money interest payable by Commissioner

Timing of income

(1) Income that is interest payable by the Commissioner to a person under Part 7 of the Tax Administration Act 1994 is allocated to the income year in which the Commissioner pays the interest. This subsection is overridden by **subsections (2) and (3)**.

Interest paid in same year as liability arises

(2) If the Commissioner pays the interest in the same tax year as that to which the original assessment relates, the income that is interest is allocated to the following income year.

Effect of amended assessment

(3) If the Commissioner amends the person's assessment, income that is interest payable, or overpaid interest repayable, by the Commissioner as a result of the amended assessment is allocated to the income year following the income year in which the Commissioner issues the notice of amended assessment.

Amended assessment in same year

(4) For the purposes of **subsection (3)**, if the Commissioner amends the person's assessment more than once in a tax year, only the last amended assessment is taken into account.

Defined in this Act: assessment, Commissioner, income, income year, interest, notice, pay, tax year

Compare: 2004 No 35 s EF 4

EF 5 Use of money interest payable by person

Timing of deduction

(1) A deduction for interest payable by a person to the Commissioner under Part 7 of the Tax Administration Act 1994 is allocated to the income year in which the person's original assessment is made. This subsection is overridden by **subsection (2)**.

Assessment made in same year as liability arises

(2) If the original assessment is made in the same tax year as that to which the income tax liability relates, the deduction is allocated to the following income year.

Effect of amended assessment

(3) If the Commissioner amends the person's assessment, a deduction for interest payable, or overpaid interest repayable, to the Commissioner as a result of the amended assessment is allocated to the income year following the income year in which the Commissioner issues the notice of amended assessment. This subsection does not apply in the circumstances described in **subsection (4)**.

Terminal amended assessment

(4) If the Commissioner amends the person's assessment, a deduction for interest payable, or overpaid interest repayable, to the Commissioner as a result of the amended assessment is allocated to the income year in which the Commissioner issues the notice of amended assessment, in the following circumstances:

(a) the person dies, goes into liquidation, or otherwise ceases to exist before the income year following that in which the Commissioner issues the notice of amended assessment; and

(b) the person would have been allowed a deduction for the interest payable or repayable if it had been incurred in the income year in which the Commissioner issues the notice of amended assessment; and

(c) the person's executor or other representative asks the Commissioner.

Amended assessment in same year

(5) For the purposes of **subsection (4)**, if the Commissioner amends the person's assessment more than once in a tax year, only the last amended assessment is taken into account.

Defined in this Act: assessment, Commissioner, deduction, income tax liability, interest, income year, liquidation, notice, pay, tax year

Compare: 2004 No 35 s EF 5

EF 6 Different tax years

Sections EF 4 and EF 5 apply even though the income tax liability giving rise to the obligation to pay interest, and the period for the interest payment, may fall wholly or partly in a different tax year from that in which the obligation to pay interest arises under those sections.

Defined in this Act: income tax liability, interest, pay, tax year

Compare: 2004 No 35 s EF 6

Subpart EG—Recognition of accounting treatment

Contents

EG 1 Election to use balance date used in foreign country

When this section applies

(1) This section applies when—

(a) a person has foreign source income or foreign expenditure that is taken into account in determining the income tax, not merely the withholding tax, payable by them in a foreign country or territory; and

(b) the foreign source income or foreign expenditure has been included in 1 of their income tax returns in the country or territory; and

(c) the annual income tax balance date that is relevant for them for the income tax return in the country or territory falls in a period that is an income year for them; and

(d) if the person did not make an election under this section,—

(i) the foreign source income would be allocated to their previous income year; or

(ii) the foreign expenditure would be a deduction allocated to the previous income year if the only income of the person were foreign source income to which this section applies.

Election to allocate

(2) If the person has not already included the foreign source income or foreign expenditure in their return of income for the previous tax year, they may choose to allocate the foreign

source income or the foreign expenditure to the income year referred to in **subsection (1)(c)**.

How election made

(3) The person makes the election by including the foreign source income or foreign expenditure in their return of income for the income year referred to in **subsection (1)(c)**.

What election applies to

(4) The election applies to all the person's foreign source income and foreign expenditure to which **subsection (1)** applies, except for—

(a) income or expenditure under the financial arrangements rules, unless the Commissioner agrees in writing; or

(b) dividends, unless the Commissioner agrees in writing and the person is not a company; or

(c) attributed controlled foreign company (CFC) income; or

(d) foreign investment fund (FIF) income or income derived from an attributing interest; or

(e) in the case of foreign expenditure, foreign expenditure that would be allowed as a deduction if the only income of the person were income to which **paragraphs (a) to (d)** apply.

Timing of income

(5) The foreign source income and foreign expenditure to which the election applies is allocated to the income year referred to in **subsection (1)(c)**.

Election treated as continuing

(6) A person who has made an election is treated as making the same election for all later income years, unless—

(a) the Commissioner agrees in writing to allow the person to revoke the election; or

(b) the person's net income for the relevant income year would be more than $100,000 if their only income in the income year were foreign source income.

Net income of more than $100,000

(7) If **subsection (6)(b)** applies,—

(a) foreign source income and foreign expenditure is allocated to the income year referred to in **subsection (1)(c)** only if it was derived or incurred in that year; and

(b) foreign source income and foreign expenditure to which the election would have applied if **subsection (6)(b)** had not existed is allocated to the previous income year; and

(c) if necessary, the previous tax year's return is amended.

Factors considered

(8) In deciding whether to agree to an election applying to income or expenditure under the financial arrangements rules or dividends, the Commissioner must consider—

(a) whether the person is likely to incur significant compliance costs if the Commissioner does not agree to the election; and

(b) the risk to the revenue if the Commissioner agrees to the election; and

(c) any other factors the Commissioner considers relevant.

Person ceasing to be, or becoming, resident

(9) If the person ceases to be, or becomes, resident in New Zealand, this section applies in the same way as for other persons except that—

(a) it does not apply to income or expenditure that is allocated, other than under this section, to a period when the person is not resident in New Zealand; and

(b) if it allocates foreign source income derived or foreign expenditure incurred while the person is resident in New Zealand to a period after the person has ceased to be resident in New Zealand,—

(i) the foreign source income is assessable income in the income year in which the foreign source income is allocated under this section, despite **section BD 1(5)(c)** (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income); and

(ii) the foreign expenditure is allowed as a deduction in the income year to which the foreign expenditure is allocated under this section.

Some definitions

(10) In this section,—

annual income tax balance date includes a date that is substantially equivalent to an annual income tax balance date

foreign expenditure means expenditure that is incurred in deriving foreign source income

foreign source income means income that is not derived from New Zealand and that is not exempt income.

Defined in this Act: annual income tax balance date, assessable income, attributed CFC income, attributing interest, Commissioner, company, deduction, derived from New Zealand, dividend, exempt income, FIF income, financial arrangements rules, foreign expenditure, foreign source income, income, income tax, income year, net income, pay, resident in New Zealand, return of income, tax year

Compare: 2004 No 35 s EG 1

EG 2 Adjustment for changes to accounting practice

When this section applies

(1) This section applies in an income year (the **year of change**) when a person changes from—

(a) a cash accounting method to an accrual accounting method of calculating their income tax liability; or

(b) an accrual accounting method to a cash accounting method of calculating their income tax liability.

From cash to accrual accounting method

(2) If **subsection (1)(a)** applies,—

(a) an amount owed to the person on the last day of the income year before the year of change is income of the person in the year of change; and

(b) an amount owed by the person on the last day of the income year before the year of change is allowed as a deduction in the year of change.

From accrual to cash accounting method

(3) If **subsection (1)(b)** applies,—

(a) an amount equal to the total of all amounts owing by the person in the year of change that have been allowed as a deduction in **(***previous***)**earlier income years is income of the person in the year of change; and

(b) an amount equal to the total of all amounts owing to the person in the year of change that have been treated as income of the person in **(***previous***)**earlier income years is allowed as a deduction in the year of change.

Some definitions

(4) In this section,—

accrual accounting method means a method of accounting that is regarded as accrual accounting under generally accepted accounting practice

cash accounting method means a method of accounting by which the income tax liability of a person is calculated by reference to cash receipts or outgoings.

Defined in this Act: accrual accounting method, amount, cash accounting method, deduction, generally accepted accounting practice, income, income tax liability, income year

Compare: 2004 No 35 s EG 2

New (unanimous)

EG 3 Allocation of income and deductions by portfolio tax rate entity

When this section applies

(1) This section applies for the calculation of a portfolio tax rate entity's liability for income tax for a tax year.

Allocation shown in accounts

(2) Income and deductions of the portfolio tax rate entity are allocated—

(a) to portfolio allocation periods as—

(i) reflected in the entity's valuations of portfolio investor interests, if the entity makes such valuations; or

(ii) shown in the entity's financial statements, if **subparagraph (i)** does not apply:

(b) to portfolio investor classes and investors as—

(i) reflected in the entity's valuations of portfolio investor interests, if the entity makes such valuations; or

(ii) shown in the entity's financial statements, if **subparagraph (i)** does not apply.

Defined in this Act: deduction, financial statements, income, income tax, investor, portfolio allocation period, portfolio investor class, portfolio investor interest, portfolio tax rate entity, tax year

Compare: 2004 No 35 s EG 3

Subpart EH—Income equalisation schemes

Contents

Refunds: general provisions

Tax credit

Definitions

Adverse event income equalisation scheme

Application

Deposits and accounts

Interest

Deduction

Refunds: automatic

Refunds: on application

Introductory provisions

EH 1 Income equalisation schemes

Description

(1) An income equalisation scheme allows a person to reduce their income for a tax year by making a deposit with the Commissioner.

Three schemes

(2) The 3 income equalisation schemes are—
   (a) the **main income equalisation scheme**, described in **sections EH 3 to EH 36**:
   (b) the **adverse event income equalisation scheme**, described in **sections EH 37 to EH 62**:
   (c) the **thinning operations income equalisation scheme**, described in **sections EH 63 to EH 79**.

Meaning of terms

(3) Terms used in the 3 schemes are defined as follows:
   (a) terms used specifically in the main income equalisation scheme are defined in **sections EH 34 to EH 36**:
   (b) terms used specifically in the adverse event income equalisation scheme are defined in **sections EH 61 and EH 62**:
   (c) terms used specifically in the thinning operations income equalisation scheme are defined in **sections EH 78 and EH 79**.

Defined in this Act: adverse event income equalisation scheme, Commissioner, deposit, income, main income equalisation scheme, person, tax year, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 1

EH 2 Income Equalisation Reserve Account

Account

(1) There is a Crown Bank Account called the Income Equalisation Reserve Account that is operated under the Public Finance Act 1989.

Deposits paid into account

(2) Every deposit a person makes with the Commissioner under a scheme referred to in **section EH 1(2)**—
- (a) is public money; and
- (b) must be paid into the Income Equalisation Reserve Account.

Defined in this Act: Commissioner, deposit, person

Compare: 2004 No 35 s EH 2

Main income equalisation scheme

Application

EH 3 Persons to whom main income equalisation scheme applies

Meaning of farmer, fisher, and forester for main income equalisation scheme

(1) The main income equalisation scheme applies to—
- (a) a **farmer**, which means a person carrying on a farming or agricultural business on land in New Zealand; or
- (b) a **fisher**, which means a person carrying on a fishing business; or
- (c) a **forester**, which means a person who—
  - (i) derives income from forestry; and
  - (ii) is not a company, a public authority, a Maori authority, or an unincorporated body.

Meaning of person for main income equalisation scheme

(2) In the main income equalisation scheme, **person** means a farmer, fisher, or forester.

Defined in this Act: business, company, farmer, fisher, fishing business, forester, income from forestry, main income equalisation scheme, Maori authority, New Zealand, person, public authority

Compare: 2004 No 35 s EH 3

Deposits and accounts

EH 4 Main deposit

Deposit for business or forestry

(1) A person may make a payment to the Commissioner for entry in their main income equalisation account for a tax year as follows:
- (a) a farmer may make a payment for the farmer's farming or agricultural business:
- (b) a fisher may make a payment for the fisher's fishing business:
- (c) a forester may make a payment for the forester's income from forestry.

Upper limit of deposit

(2) A person must not make, for a tax year, deposits that in total are more than their main maximum deposit for the tax year.

Lower limit of deposit

(3) A person must not make, for a tax year, a deposit less than the lesser of—
- (a) $200; and
- (b) the difference between—
  - (i) the total of the deposits the person has previously made for the tax year; and
  - (ii) the person's main maximum deposit for the tax year.

Time of making deposit

(4) A person makes a deposit for a tax year by—
- (a) making the deposit during the tax year; or
- (b) doing both the following:
  - (i) making the deposit during the specified period for the tax year; and
  - (ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year; or
- (c) doing both the following:
  - (i) making the deposit within a time that is after the end of the specified period for the tax year but that is allowed by the Commissioner in a case or class of cases; and

(ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year.

Limit on making deposit

(5) If a refund has been made to a person for a tax year under **section EH 13 or EH 15**, the person may later make a deposit for that tax year only if the Commissioner is satisfied, before the deposit is made, that all the refund has been used to develop or expand a farmer's business, if the person is a farmer, or a fishing business, if the person is a fisher, or the means by which a forester derives income from forestry, if the person is a forester.

Defined in this Act: business, Commissioner, deposit, farmer, fisher, fishing business, forester, income from forestry, main deposit, main income equalisation account, main maximum deposit, notice, pay, person, specified period, tax year

Compare: 2004 No 35 s EH 4

EH 5 Main income equalisation account

Person's account

(1) The Commissioner must keep a main income equalisation account in the name of every person who makes a deposit with the Commissioner.

Deposits in account

(2) Every deposit a person makes with the Commissioner must be entered in the person's main income equalisation account.

Amounts in accounts

(3) The only amounts that may be entered in a person's main income equalisation account are—
   (a) deposits made by the person with the Commissioner; and
   (b) interest paid under **section EH 6**.

Amounts not available to others

(4) Despite **section FC 2** (Transfer at market value), amounts entered in a person's main income equalisation account must not, while they are in the account,—
   (a) be assigned or charged in any way; or

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation; or
(c) be assets for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation; or
(d) be assets for the payment of the debts or liabilities of a dead person's estate.

Amounts available only for refunds

(5) The only payments that may be made from a person's main income equalisation account are refunds under any of **sections EH 8, EH 10, EH 13, EH 15, EH 17, EH 19, EH 23, and EH 25**.

Defined in this Act: amount, Commissioner, deposit, interest, liquidation, main income equalisation account, pay, person

Compare: 2004 No 35 s EH 5

Interest

EH 6 Interest on deposits in main income equalisation account

No interest payable

(1) No interest is payable on a deposit in a main income equalisation account that is refunded within 1 year of the date of deposit.

Interest payable

(2) Interest is payable on every other deposit in a main income equalisation account.

Period

(3) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

Date to which accrues

(4) Interest on a deposit accrues until the earlier of—
(a) 31 March in each year; and
(b) the date the deposit is refunded.

Added to deposit

(5) Accrued interest on a deposit is added to the deposit.

Rate

(6) The interest rate is 3% a year.

Defined in this Act: deposit, interest, main income equalisation account, pay, year

Compare: 2004 No 35 s EH 6

Deduction

EH 7 Deduction of deposit

When this section applies

(1) This section applies when a person is allowed a deduction under **section DQ 1** (Main income equalisation scheme).

Amount of deduction

(2) The amount of the deduction is the lesser of—

(a) the total of the person's deposits for the tax year; and

(b) their main maximum deposit for the tax year.

Timing of deduction

(3) The person is allowed the deduction in the tax year.

Defined in this Act: amount, deduction, deposit, main maximum deposit, person, tax year

Compare: 2004 No 35 s EH 7

Refunds: automatic

EH 8 Refund of excess deposit

When this section applies

(1) This section applies when a person's deposits for a tax year are more than their main maximum deposit for the tax year.

Refund

(2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: Commissioner, date the deposit ends, deposit, main maximum deposit, person, tax year

Compare: 2004 No 35 s EH 8

EH 9 Income does not include excess deposit

A refund under **section EH 8** is excluded income under **section CX 50** (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 9

EH 10 Refund at end of 5 years

When this section applies

(1) This section applies when a deposit is in a person's main income equalisation account at the end of 5 years after the end of the tax year for which the deposit was made.

Refund

(2) The Commissioner must refund the deposit to the person. **Section EH 28** overrides this subsection.

Defined in this Act: Commissioner, deposit, main income equalisation account, person, tax year, year

Compare: 2004 No 35 s EH 10

EH 11 Income when refund given at end of 5 years

A refund under **section EH 10** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the refund is given.

Defined in this Act: income, person, tax year

Compare: 2004 No 35 s EH 11

Refunds: on application

EH 12 Application for refund by person, trustee of estate, Official Assignee, or liquidator

Who may apply

(1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's main income equalisation account:
- (a) the person may apply under **section EH 13, EH 15, or EH 17**:
- (b) the trustee of the person's estate may apply under **section EH 19**:
- (c) the Official Assignee having charge of the person's estate may apply under **section EH 23**:

(d) the liquidator appointed for the person may apply under **section EH 25**.

Application

(2) An application for a refund must—
(a) be in writing; and
(b) state the grounds on which it is made; and
(c) state the amount applied for.

Defined in this Act: amount, Commissioner, liquidation, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 12

EH 13 Refund on request

When this section applies

(1) This section applies when a person wants a refund of some or all of the amount in their main income equalisation account, and none of **sections EH 8, EH 10, EH 15, EH 17, EH 19, EH 23, and EH 25** applies.

Refund

(2) The Commissioner must refund to the person the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's main income equalisation account for at least 1 year before the date the deposit ends. **Section EH 28** overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, deposit, main income equalisation account, person, year

Compare: 2004 No 35 s EH 13

EH 14 Income when refund given on request

Year of income

(1) A refund under **section EH 13** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, **subsection (3)** applies instead of **subsection (1)** if—

(a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income, under **section CB 26**, in the tax year to which the specified period or the longer period relates.

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 14

EH 15 Refund for development or recovery

Refund for development: application of subsection (2)

(1) **Subsection (2)** applies when a person wants a refund of some or all of the amount in their main income equalisation account for either or both of the following purposes:

(a) to enable them to undertake, immediately after the refund is given, planned development or maintenance work for their farming or agricultural business, fishing business, or forestry operation:

(b) to enable them to buy, immediately after the refund is given, livestock for use in their farming business, other than livestock replacing livestock disposed of or lost as a result of a self-assessed adverse event.

Refund

(2) If the Commissioner is satisfied that the person will use the refund for either or both of the purposes, the Commissioner must refund to them the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in their main income equalisation account for at least 6 months before the date the deposit ends. **Section EH 28** overrides this subsection.

Refund for recovery: application of subsection (4)

(3) **Subsection (4)** applies when a person wants a refund of some or all of the amount in their main income equalisation account for 1 or more of the following purposes:

(a) to enable them to buy, immediately after the refund is given, livestock for use in their farming business to replace livestock disposed of or lost as a result of a self-assessed adverse event:

(b) to avoid them suffering serious hardship:

(c) to do anything else that the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

Refund

(4) If the Commissioner is satisfied that the person will use the refund for 1 or more of the purposes, the Commissioner must refund to them the amount applied for, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection.

Defined in this Act: amount, business, Commissioner, date the deposit ends, deposit, fishing business, main income equalisation account, person, self-assessed adverse event

Compare: 2004 No 35 s EH 15

EH 16 Income when refund given for development or recovery

Year of income

(1) A refund under **section EH 15** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, **subsection (3)** applies instead of **subsection (1)** if—

(a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income, under **section CB 26**, in the tax year to which the specified period or the longer period relates.

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 16

EH 17 Refund on retirement

When this section applies

(1) This section applies when a farmer or a fisher—

(a) has a main income equalisation account; and

(b) is neither a company nor a trustee; and

(c) retires from the farming or agricultural business or the fishing business.

Refund

(2) The Commissioner must refund to the person the amount that, on the date the deposit ends, is in their main income equalisation account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection.

Defined in this Act: amount, business, Commissioner, date the deposit ends, company, farmer, fisher, fishing business, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 17

EH 18 Income when refund given on retirement, and election to allocate amount to earlier year

Year of income

(1) A refund under **section EH 17** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which they retire.

When year of income may be different

(2) However, **subsection (3)** applies instead of **subsection (1)** if—

(a) the refund includes a deposit made for a tax year earlier than the tax year in which the person retires; and

(b) the person chooses to allocate some or all of the deposit to the earlier tax year.

Different year of income

(3) The amount allocated by the person to the earlier tax year is income, under **section CB 26**, derived by them in the tax year.

How election made

(4) A person makes an election under this section by giving the Commissioner notice within 1 of the following times:
(a) the time within which the person is required to file a return of income for the tax year in which they retire:
(b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return of income, tax year

Compare: 2004 No 35 s EH 18

EH 19 Refund on death

When this section applies

(1) This section applies when a person—
(a) has a main income equalisation account; and
(b) dies.

Refund

(2) Despite **section FC 2** (Transfer at market value), the Commissioner must refund to the trustee of the person's estate the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 19

EH 20 Income when refund given on death

Year of income

(1) A refund under **section EH 19** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before their death.

When year of income may be different

(2) However, **section EH 21 or EH 22** applies instead of **subsection (1)** if the circumstances described in **section EH 21(1) or EH 22(1)** apply in the person's case.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 20

EH 21 Income when refund given on death, and election to allocate amount to earlier year

When this section applies

(1) This section applies when—

(a) a refund under **section EH 19** includes a deposit made for a tax year earlier than the tax year in which the person dies; and

(b) the trustee of the person's estate chooses to allocate some or all of the deposit to the earlier tax year.

Different year of income

(2) The amount allocated by the trustee to the earlier tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.

How election made

(3) A trustee makes an election under this section by giving the Commissioner notice within 1 of the following times:

(a) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return of income, tax year, trustee

Compare: 2004 No 35 s EH 21

EH 22 Income when refund given on death, and election to allocate amount to later year or years

When this section applies

(1) This section applies when—

(a) the trustee of the person's estate does not make an election under **section EH 21**; and

(b) the trustee chooses to allocate some or all of the amount that is in the person's main income equalisation account on the date of the person's death to a tax year or years after that date.

Tax year or years referred to in subsection (1)(b)

(2) The tax year or years referred to in **subsection (1)(b)** must be within the earlier of—

(a) the 3 years after the date of the person's death; and

(b) the 5 years after the end of the tax year for which a deposit or a part of a deposit was made, if the amount that the trustee allocates to a later tax year or years includes the deposit or part of it.

Allocated amount remains in account

(3) An amount allocated by the trustee to a later tax year remains in the person's main income equalisation account until—

(a) it is refunded to the trustee in the tax year to which it is allocated; or

(b) it is not refunded because of the application of **section EH 28**.

Different year of income

(4) An amount allocated by the trustee to a later tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.

How election made

(5) A trustee makes an election under this section by a notice that—

(a) specifies—

(i) each amount allocated to a later tax year; and

(ii) the tax year to which each amount is allocated; and

(b) is given to the Commissioner within 1 of the following times:

(i) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(ii) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, main income equalisation account, notice, person, return of income, tax year, trustee, year

Compare: 2004 No 35 s EH 22

EH 23 Refund on bankruptcy

When this section applies

(1) This section applies when a person—
(a) has a main income equalisation account; and
(b) is bankrupt.

Refund

(2) The Commissioner must refund to the Official Assignee having charge of the person's estate the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. **Section EH 28** overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, main income equalisation account, person

Compare: 2004 No 35 s EH 23

EH 24 Income when refund given on bankruptcy

A refund under **section EH 23** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the bankruptcy starts.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 24

EH 25 Refund on liquidation

When this section applies

(1) This section applies when a person—
(a) has a main income equalisation account; and
(b) is put into liquidation.

Refund

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of

the length of time it has been in the account. **Section EH 28** overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, liquidation, main income equalisation account, person

Compare: 2004 No 35 s EH 25

EH 26 Income when refund given on liquidation

A refund under **section EH 25** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 26

Refunds: general provisions

EH 27 Amendment of assessment

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to **section EH 18 or EH 21 or EH 22**.

Defined in this Act: assessment, Commissioner, time bar

Compare: 2004 No 35 s EH 27

EH 28 Minimum refund

The Commissioner must not give a refund under any of **sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25** that is less than the lesser of—

(a) $200; and

(b) the balance in the person's main income equalisation account on the date the deposit ends.

Defined in this Act: Commissioner, date the deposit ends, main income equalisation account, person

Compare: 2004 No 35 s EH 28

EH 29 Deposits from which refunds come

Each refund a person is given is treated as coming from the total amount of their deposits in the order in which the person made the deposits.

Defined in this Act: amount, deposit, person

Compare: 2004 No 35 s EH 29

Tax credit

EH 30 When person entitled to tax credit

A person who is given a refund is entitled to a tax credit if—

(a) the refund is of the kind and amount described in **section EH 31**; and

(b) the person is of the kind described in **section EH 32**.

Defined in this Act: amount, **(***income tax,***)** person

Compare: 2004 No 35 s EH 30

EH 31 Kind and amount of refund that entitles person to tax credit

Kind

(1) A refund that entitles a person to a tax credit is 1 to which both the following apply:

(a) the refund is given under any of **sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25**; and

(b) the refund does not come from a deposit made for the tax year in which the refund is given; if the refund comes in part from a deposit made for the tax year in which the refund is given and in part from a deposit made for some other tax year, the refund that entitles the person to a tax credit is the part coming from the deposit for some other tax year.

Amount

(2) Once a refund qualifies under **subsection (1)** as a refund that entitles a person to a tax credit, the amount of the refund is the lesser of the following:

(a) the amount of the refund given to the person under any of **sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25**; and

(b) the total of the amounts by which the person's income was reduced in 1 or more **(***previous***)**earlier tax years by subtracting the deposit or deposits or parts of deposits from which the refund comes.

Defined in this Act: amount, deposit, income, income tax, person, tax credit, tax year

Compare: 2004 No 35 s EH 31

EH 32 Kind of person entitled to tax credit

A person in the following circumstances is entitled to a tax credit:

(a) the person's income in the tax year in question includes a refund of the kind described in **section EH 31(1)** and of the amount described in **section EH 31(2)**; and

(b) because of the refund, the person's income tax liability for the tax year is increased; and

(c) the amount by which the person's income tax liability for the tax year is increased because of the refund (the **extra tax**) is more than the total of the amounts by which the person's income tax liability for **(***a previous***)**an earlier tax year or years was decreased because of the subtraction of the deposit or deposits or parts of deposits from which the refund comes (the **tax saving**).

Defined in this Act: amount, deposit, income, income tax, income tax liability, person, tax credit, tax year

Compare: 2004 No 35 s EH 32

EH 33 Amount of tax credit

The amount of a tax credit to which a person is entitled under **section EH 30** is the amount by which the extra tax, as described in **section EH 32(c)**, is more than the tax saving, as described in **section EH 32(c)**.

Defined in this Act: amount, income tax, tax credit

Compare: 2004 No 35 s EH 33

Definitions

EH 34 Meaning of income from forestry

Income

(1) **Income from forestry** means income derived from either or both of the sales described in **subsection (2)** in the circumstances described in **subsection (3)**.

Sales

(2) The sales are—

(a) the sale of timber:

(b) the sale of a right to cut or remove timber.

Circumstances

(3) The circumstances are—

(a) the income is derived by a person who is the owner of land in New Zealand on which timber is grown, not including a person whose interest in the land is that of a licensee; and

(b) the timber the subject of the sale is standing or cut or fallen timber in its natural state grown on the land.

Defined in this Act: income, income from forestry, New Zealand, own, person, timber

Compare: 2004 No 35 s EH 34

EH 35 Meaning of main maximum deposit

Meaning

(1) **Main maximum deposit** means the maximum deposit that this section says a person may make to their main income equalisation account for a tax year.

Meaning of amount

(2) In **subsections (3) to (5)**, **amount** means an amount calculated without applying—

(a) any provision allocating income derived or expenditure incurred to a tax year other than the tax year in which the income was in fact derived or the expenditure was in fact incurred; or

(b) any provision of any of the income equalisation schemes referred to in **section EH 1(2)**.

Maximum deposit of farmer

(3) The maximum deposit that a farmer may make is—

(a) the amount determined by an Order in Council made under **subsection (6)**; or

(b) if no order is in force, an amount equal to the net income that the farmer would have in the tax year if—

(i) the farmer derived income only from the farming or agricultural business in the tax year; and

(ii) the farmer did not make a payment under **section EH 38** for the farming or agricultural business for the tax year.

Maximum deposit of fisher

(4) The maximum deposit that a fisher may make is an amount equal to the net income that the fisher would have in the tax year if the fisher derived income only from the fishing business in the tax year.

Maximum deposit of forester

(5) The maximum deposit that a forester may make is an amount equal to the net income that the forester would have in the tax year if the forester derived only income from forestry in the tax year.

Order in Council relating to farmers

(6) The Governor-General may make an Order in Council declaring that the maximum deposit a farmer may make for a tax year or for every tax year is—
- (a) an amount calculated in the manner specified in the order; or
- (b) an unlimited amount.

Defined in this Act: amount, business, deposit, farmer, fisher, fishing business, forester, income, main income equalisation account, main maximum deposit, net income, pay, person, tax year

Compare: 2004 No 35 s EH 35

EH 36 Other definitions

In the main income equalisation scheme,—

date the deposit ends means—
- (a) the date on which the refund is calculated, when **section EH 8** applies:
- (b) the date that is 5 years after the end of the tax year for which the deposit was made, when **section EH 10** applies:
- (c) the date on which the Commissioner receives the application for the refund, when **section EH 13 or EH 15** applies:
- (d) the date of the person's retirement, when **section EH 17** applies:
- (e) the date of the person's death, when **section EH 19** applies:
- (f) the date on which the Commissioner receives notice of the adjudication, when **section EH 23** applies:
- (g) the date on which the Commissioner receives notice of the liquidation, when **section EH 25** applies

deposit—
(a) means a main deposit; and
(b) includes, for the purposes of **sections EH 6(2) to (4) and EH 10 to EH 33**, interest that is added to a main deposit under **section EH 6(5)**

fishing business includes a business of—
(a) fish farming under a licence issued under the Freshwater Fish Farming Regulations 1983:
(b) mussel farming:
(c) rock oyster farming

main deposit means a payment made to the Commissioner under **section EH 4(1)**

main income equalisation account, for a person, means the account that the Commissioner keeps in the person's name under **section EH 5**

specified period, for a person's tax year, means the shorter of—
(a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and
(b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year.

Defined in this Act: business, Commissioner, date the deposit ends, deposit, fishing business, interest, liquidation, main deposit, main income equalisation account, main income equalisation scheme, pay, person, return of income, specified period, tax year, year

Compare: 2004 No 35 s EH 37

Adverse event income equalisation scheme

Application

EH 37 Persons to whom adverse event income equalisation scheme applies

Person described

(1) The adverse event income equalisation scheme applies to a person who, in a tax year,—

(a) carries on a farming or agricultural business on land in New Zealand; and
(b) sells livestock and does not replace it because of a self-assessed adverse event.

Meaning of person for adverse event income equalisation scheme

(2) In the adverse event income equalisation scheme, **person** means a person described in **subsection (1)**.

Defined in this Act: adverse event income equalisation scheme, business, New Zealand, person, self-assessed adverse event, tax year

Compare: 2004 No 35 s EH 38

Deposits and accounts

EH 38 Adverse event deposit

Deposit for adverse event

(1) A person may make a payment to the Commissioner for entry in their adverse event income equalisation account for a tax year in which, because of a self-assessed adverse event, they sell and do not replace livestock.

Upper limit of deposit

(2) A person must not make, for a tax year, deposits that in total are more than their adverse event maximum deposit for the tax year.

Lower limit of deposit

(3) A person must not make, for a tax year, a deposit less than the lesser of—
(a) $200; and
(b) the difference between the total of all the deposits they have previously made for the tax year and their adverse event maximum deposit for the tax year.

Time of making deposit

(4) A person makes a deposit for a tax year by—
(a) making the deposit during the tax year; or

(b) making the deposit during the month after the end of the tax year.

Defined in this Act: adverse event deposit, adverse event income equalisation account, adverse event maximum deposit, Commissioner, deposit, pay, person, self-assessed adverse event, tax year

Compare: 2004 No 35 s EH 39

EH 39 Adverse event income equalisation account

Person's account

(1) The Commissioner must keep an adverse event income equalisation account in the name of every person who makes a deposit with the Commissioner.

Deposits in accounts

(2) Every deposit a person makes with the Commissioner must be entered in their adverse event income equalisation account.

Amounts in accounts

(3) The only amounts that may be entered in a person's adverse event income equalisation account are—
- (a) deposits made by the person with the Commissioner; and
- (b) interest paid under **section EH 40**.

Amounts not available to others

(4) Amounts entered in a person's adverse event income equalisation account must not, while they are in the account,—
- (a) be assigned or charged in any way; or
- (b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation; or
- (c) be assets for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation; or
- (d) be assets for the payment of the debts or liabilities of a dead person's estate.

Amounts available only for refunds

(5) The only payments that may be made from a person's adverse event income equalisation account are refunds under any of **sections EH 42, EH 45, EH 47, EH 49, EH 53, and EH 55**.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, deposit, interest, liquidation, pay, person

Compare: 2004 No 35 s EH 40

Interest

EH 40 Interest on deposits in adverse event income equalisation account

Interest payable

(1) Interest is payable on every deposit in an adverse event income equalisation account.

Period

(2) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

Date to which accrues

(3) Interest on a deposit accrues until the earlier of—

(a) 31 March in each year; and

(b) the date the deposit is refunded.

Added to deposit

(4) Accrued interest on a deposit is added to the deposit.

Rate

(5) The interest rate is the rate set in regulations made by the Governor-General from time to time.

Defined in this Act: adverse event income equalisation account, deposit, interest, pay, year

Compare: 2004 No 35 s EH 41

Deduction

EH 41 Deduction of deposit

When this section applies

(1) This section applies when a person is allowed a deduction under **section DQ 2** (Adverse event income equalisation scheme).

Amount of deduction

(2) The amount of the deduction is the lesser of—
(a) the total of their deposits for the tax year; and
(b) their adverse event maximum deposit for the tax year.

Timing of deduction

(3) The person is allowed the deduction in the tax year.

Defined in this Act: adverse event maximum deposit, amount, deduction, deposit, person, tax year

Compare: 2004 No 35 s EH 42

Refunds: automatic

EH 42 Refund of excess deposit

When this section applies

(1) This section applies when a person's deposits for a tax year are more than their adverse event maximum deposit for the tax year.

Refund

(2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: adverse event maximum deposit, Commissioner, date the deposit ends, deposit, person, tax year

Compare: 2004 No 35 s EH 43

EH 43 Income does not include excess deposit

A refund under **section EH 42** is excluded income under **section CX 50** (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 44

Refunds: on application

EH 44 Application for refund by person, trustee of estate, Official Assignee, or liquidator

Who may apply

(1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's adverse event income equalisation account:

(a) the person may apply under **section EH 45 or EH 47**:

(b) the trustee of the person's estate may apply under **section EH 49**:

(c) the Official Assignee having charge of the person's estate may apply under **section EH 53**:

(d) the liquidator appointed for the person may apply under **section EH 55**.

Application

(2) An application for a refund must—

(a) be in writing; and

(b) state the grounds on which it is made; and

(c) state the amount applied for.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, liquidation, person, trustee

Compare: 2004 No 35 s EH 45

EH 45 Refund on request

When this section applies

(1) This section applies when a person wants a refund of some or all of the amount in the person's adverse event income equalisation account, and none of **sections EH 47, EH 49, EH 53, and EH 55** applies.

Refund

(2) The Commissioner must refund to the person the amount applied for.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, person

Compare: 2004 No 35 s EH 46

EH 46 Income when refund given on request

A refund under **section EH 45** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund.

Defined in this Act: Commissioner, income, person, tax year

Compare: 2004 No 35 s EH 47

EH 47 Refund on retirement

When this section applies

(1) This section applies when a person—

(a) has an adverse event income equalisation account; and

(b) is neither a company nor a trustee; and

(c) retires from the farming or agricultural business.

Refund

(2) The Commissioner must refund to the person the amount that, on the date the deposit ends, is in their adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, business, Commissioner, company, date the deposit ends, person, trustee

Compare: 2004 No 35 s EH 48

EH 48 Income when refund given on retirement, and election to allocate amount to earlier year

Year of income

(1) A refund under **section EH 47** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which they retire.

When year of income may be different

(2) However, **subsection (3)** applies instead of **subsection (1)** if—

(a) the refund includes a deposit made for a tax year earlier than the tax year in which the person retires; and

(b) the person chooses to allocate some or all of the deposit to the earlier tax year.

Different year of income

(3) The amount allocated by the person to the earlier tax year is income, under **section CB 26**, derived by them in the tax year.

How election made

(4) A person makes an election under this section by giving the Commissioner notice within 1 of the following times:
- (a) the time within which the person is required to file a return of income for the tax year in which they retire:
- (b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return of income, tax year

Compare: 2004 No 35 s EH 49

EH 49 Refund on death

When this section applies

(1) This section applies when a person—
- (a) has an adverse event income equalisation account; and
- (b) dies.

Refund

(2) Despite **section FC 2** (Transfer at market value), the Commissioner must refund to the trustee of the person's estate the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, person, trustee

Compare: 2004 No 35 s EH 50

EH 50 Income when refund given on death

Year of income

(1) A refund under **section EH 49** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before their death.

When year of income may be different

(2) However, **section EH 51 or EH 52** applies instead of **subsection (1)** if the circumstances described in **section EH 51(1) or EH 52(1)** apply in the person's case.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 51

EH 51 Income when refund given on death, and election to allocate amount to earlier year

When this section applies

(1) This section applies when—
  (a) a refund under **section EH 49** includes a deposit made for a tax year earlier than the tax year in which the person dies; and
  (b) the trustee of the person's estate chooses to allocate some or all of the deposit to the earlier tax year.

Different year of income

(2) The amount allocated by the trustee to the earlier tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.

How election made

(3) A trustee makes an election under this section by giving the Commissioner notice within 1 of the following times:
  (a) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:
  (b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: amount, Commissioner, deposit, income, notice, person, return, tax year, trustee

Compare: 2004 No 35 s EH 52

EH 52 Income when refund given on death, and election to allocate amount to later year or years

When this section applies

(1) This section applies when—
  (a) the trustee does not make an election under **section EH 51**; and
  (b) the trustee chooses to allocate some or all of the amount that is in the person's adverse event income equalisation account on the date of the person's death to a tax year or years after that date.

Tax year or years for purposes of subsection (1)(b)

(2) For the purposes of **subsection (1)(b)**, the tax year or years must be within the earlier of—

(a) the 3 years after the date of the person's death; and

(b) the 5 years after the end of the tax year for which a deposit or a part of a deposit was made, if the amount that the trustee allocates to a later year or years includes the deposit or part of it.

Amount allocated remains in account

(3) An amount allocated by the trustee to a later tax year remains in the person's adverse event income equalisation account until it is refunded to the trustee in the tax year to which it is allocated.

Different year of income

(4) An amount allocated by the trustee to a later tax year is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year.

How election made

(5) A trustee makes an election under this section by a notice that—

(a) specifies—

(i) each amount allocated to a later tax year; and

(ii) the tax year to which each amount is allocated; and

(b) is given to the Commissioner within 1 of the following times:

(i) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(ii) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, deposit, income, notice, person, return, tax year, trustee, year

Compare: 2004 No 35 s EH 53

EH 53 Refund on bankruptcy

When this section applies

(1) This section applies when a person—

(a) has an adverse event income equalisation account; and
(b) is bankrupt.

Refund

(2) The Commissioner must refund to the Official Assignee having charge of the person's estate the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, person

Compare: 2004 No 35 s EH 54

EH 54 Income when refund given on bankruptcy

A refund under **section EH 53** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the bankruptcy starts.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 55

EH 55 Refund on liquidation

When this section applies

(1) This section applies when a person—
(a) has an adverse event income equalisation account; and
(b) is put into liquidation.

Refund

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, liquidation, person

Compare: 2004 No 35 s EH 56

EH 56 Income when refund given on liquidation

A refund under **section EH 55** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 57

Refunds: general provisions

EH 57 Amendment of assessment

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to any of **sections EH 48, EH 51, and EH 52**.

Defined in this Act: assessment, Commissioner, time bar

Compare: 2004 No 35 s EH 58

EH 58 Minimum refund

The Commissioner must not give a refund under any of **sections EH 45, EH 47, EH 49, EH 53, and EH 55** that is less than the lesser of—

(a) $200; and

(b) the balance in the person's adverse event income equalisation account on the date the deposit ends.

Defined in this Act: adverse event income equalisation account, Commissioner, date the deposit ends, person

Compare: 2004 No 35 s EH 59

EH 59 Deposits from which refunds come

Each refund a person is given is treated as coming from the total amount of their deposits in the order in which they made the deposits.

Defined in this Act: amount, deposit, person

Compare: 2004 No 35 s EH 60

Transfers

EH 60 Transfer of deposit

Transfer from adverse event to main income equalisation account

(1) A deposit that is in a person's adverse event income equalisation account on the day 1 year after the date on which the deposit was made must be transferred to their main income equalisation account as soon as practicable.

Date of deposit in main income equalisation account

(2) The date on which a transferred deposit is treated as having been deposited in the person's main income equalisation account is as follows:

(a) the date on which it was transferred, for the purpose of computing interest payable under **section EH 6**:

(b) the date on which it was deposited in the adverse event income equalisation account, for any other purpose.

No deduction

(3) A transferred deposit is not an amount for which a deduction is allowed under **section DQ 1** (Main income equalisation scheme).

Ceasing of deposit in adverse event income equalisation account

(4) A transferred deposit ceases to be a deposit in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, deduction, deposit, interest, main income equalisation account, pay, person, year

Compare: 2004 No 35 s EH 61

Definitions

EH 61 Meaning of adverse event maximum deposit

Meaning

(1) **Adverse event maximum deposit** means the maximum deposit that this section says a person may make to their adverse event income equalisation account for a tax year.

Maximum deposit

(2) The maximum deposit a person may make is an amount equal to the net income that the person would have in the tax year if, because of the self-assessed adverse event,—

(a) the only income derived by the person in the tax year were income from their selling the livestock; and

(b) the only amount for which the person was allowed a deduction in the tax year were the cost of the livestock sold.

Cost of livestock sold: matters excluded

(3) The cost of the livestock sold is an amount determined under **subsection (4) or (5)**—

(a) without applying any provision allocating income derived or expenditure incurred to a tax year other than the tax year in which the income was in fact derived or the expenditure was in fact incurred; and

(b) applying **sections DQ 1** (Main income equalisation scheme), **EH 7 to EH 33, and FB 15 to FB 17** (which relate to livestock).

Cost of livestock sold: person having livestock of class sold at end of previous tax year

(4) This subsection applies when, at the end of the tax year before the tax year in which the livestock is sold, the person had livestock of the class that is sold in which the livestock would, if unsold, have been included at the end of the tax year in which it is sold. Under this subsection, the cost of livestock sold is determined using the previous tax year's closing value for the class of livestock in which the livestock sold would have been included.

Cost of livestock sold: other cases

(5) This subsection applies when **subsection (4)** does not. Under this subsection, the cost of livestock sold is calculated using the formula—

$$\frac{\text{number at start} \times \text{value} + \text{number bought} \times \text{price}}{\text{number at start} + \text{number bought.}}$$

Definition of items in formula

(6) In the formula,—

(a) **number at start** is the number of livestock of the class sold that the person has at the start of the tax year in which the livestock is sold:

(b) **number bought** is the number of livestock of the class sold that the person buys in the tax year in which the livestock is sold, before the sale:

(c) **price** is the average purchase price of the number bought:

(d) **value** is the opening value of the number at the start, determined without applying **section EC 16(2)** (Valuation under herd scheme).

Defined in this Act: adverse event income equalisation account, adverse event maximum deposit, amount, deduction, deposit, income, net income, person, self-assessed adverse event, tax year

Compare: 2004 No 35 s EH 62

EH 62 Other definitions

In the adverse event income equalisation scheme,—

adverse event deposit means a payment made to the Commissioner under **section EH 38(1)**

adverse event income equalisation account, for a person, means the account that the Commissioner keeps in the person's name under **section EH 39**

date the deposit ends means—

(a) the date on which the refund is calculated, when **section EH 42** applies:

(b) the date on which the Commissioner receives the applications for the refund, when **section EH 45** applies:

(c) the date of the person's retirement, when **section EH 47** applies:

(d) the date of the person's death, when **section EH 49** applies:

(e) the date on which the Commissioner receives notice of the adjudication, when **section EH 53** applies:

(f) the date on which the Commissioner receives notice of the liquidation, when **section EH 55** applies:

(g) the date on which the Commissioner transfers the deposit, when **section EH 60(1)** applies

deposit—

(a) means an adverse event deposit; and

(b) includes, for the purposes of **sections EH 40(2) and (3) and EH 44 to EH 60**, interest that is added to an adverse event deposit under **section EH 40(4)**

specified period, for a person's tax year, means the shorter of—

(a) the period of 6 months after the end of the tax year; and

(b) the period from the end of the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the tax year.

Defined in this Act: adverse event deposit, adverse event income equalisation account, adverse event income equalisation scheme, Commissioner, date the deposit ends, deposit, interest, liquidation, pay, person, return of income, specified period, tax year

Compare: 2004 No 35 s EH 64

Thinning operations income equalisation scheme

Application

EH 63 Persons to whom thinning operations income equalisation scheme applies

Person described

(1) The thinning operations income equalisation scheme applies to a company that, in a tax year,—
(a) carries on a forestry business on land in New Zealand; and
(b) derives income from carrying out thinning operations on the land.

Meaning of person for thinning operations income equalisation scheme

(2) In the thinning operations income equalisation scheme, **person** means a person described in **subsection (1)**.

Defined in this Act: business, company, income, New Zealand, person, thinning operations, thinning operations income equalisation scheme, tax year

Compare: 2004 No 35 s EH 65

Deposits and accounts

EH 64 Thinning operations deposit

Deposit for thinning operations

(1) A person may make a payment to the Commissioner for entry in their thinning operations income equalisation account for a tax year in which they derive income from carrying out thinning operations.

Upper limit of deposit

(2) A person must not make, for a tax year, deposits that in total are more than their thinning operations maximum deposit for the tax year.

Lower limit of deposit

(3) A person must not make, for a tax year, a deposit that is less than the lesser of—
(a) $200; and

(b) the difference between the total of all the deposits the person has previously made for the tax year and their thinning operations maximum deposit for the tax year.

Time of making deposit

(4) A person makes a deposit for a tax year by—
(a) making the deposit during the tax year; or
(b) doing both the following:
(i) making the deposit during the specified period for the tax year; and
(ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year; or
(c) doing both the following:
(i) making the deposit within a time that is after the end of the specified period for the tax year but that is allowed by the Commissioner in a case or class of cases; and
(ii) at the time of making it, giving the Commissioner notice that the deposit is for the tax year.

Limit on making deposit

(5) If a refund has been made to a person for a tax year under **section EH 71 or EH 73,** the person may later make a deposit for the tax year only if the Commissioner is satisfied, before the deposit is made, that all the refund has been used to expand or develop the person's business.

Defined in this Act: business, Commissioner, deposit, income, notice, pay, person, specified period, tax year, thinning operations, thinning operations deposit, thinning operations income equalisation account, thinning operations maximum deposit

Compare: 2004 No 35 s EH 66

EH 65 Thinning operations income equalisation account

Person's account

(1) The Commissioner must keep a thinning operations income equalisation account in the name of every person that makes a deposit with the Commissioner.

Deposits in accounts

(2) Every deposit a person makes with the Commissioner must be entered in their thinning operations income equalisation account.

Amounts in accounts

(3) The only amounts that may be entered in a person's thinning operations income equalisation account are—

(a) deposits made by the person with the Commissioner; and

(b) interest paid under **section EH 66**.

Amounts not available to others

(4) Despite **section FC 2** (Transfer at market value), amounts entered in a person's thinning operations income equalisation account must not, while they are in the account,—

(a) be assigned or charged in any way; or

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person has been put into liquidation; or

(c) be assets for the payment of the person's debts or liabilities, except when the person has been put into liquidation.

Amounts available only for refunds

(5) The only payments that may be made from a person's thinning operations income equalisation account are refunds under any of **sections EH 68, EH 71, EH 73, and EH 75**.

Defined in this Act: amount, Commissioner, deposit, interest, liquidation, pay, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 67

Interest

EH 66 Interest on deposits in thinning operations income equalisation account

No interest payable

(1) No interest is payable on a deposit in a thinning operations income equalisation account that is refunded within 1 year of the date of deposit.

Interest payable

(2) Interest is payable on every other deposit in a thinning operations income equalisation account.

Period

(3) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

Date to which interest accrues

(4) Interest on a deposit accrues until the earlier of—
(a) 31 March in each year; and
(b) the date the deposit is refunded.

Added to deposit

(5) Accrued interest on a deposit is added to the deposit.

Rate

(6) The interest rate is 3% a year.

Defined in this Act: deposit, interest, pay, thinning operations income equalisation account, year

Compare: 2004 No 35 s EH 68

Deductions

EH 67 Deduction of deposit

When this section applies

(1) This section applies when a person is allowed a deduction under **section DQ 3** (Thinning operations income equalisation scheme).

Amount of deduction

(2) The amount of the deduction is the lesser of—
(a) the total of the person's deposits for the tax year; and
(b) their thinning operations maximum deposit for the tax year.

Timing of deduction

(3) The person is allowed the deduction in the tax year.

Defined in this Act: amount, deduction, deposit, person, tax year, thinning operations maximum deposit

Compare: 2004 No 35 s EH 69

Refunds: automatic

EH 68 Refund of excess deposit

When this section applies

(1) This section applies when a person's deposits for a tax year are more than their thinning operations maximum deposit for the tax year.

Refund

(2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: Commissioner, date the deposit ends, deposit, person, tax year, thinning operations maximum deposit

Compare: 2004 No 35 s EH 70

EH 69 Income does not include excess deposit

A refund under **section EH 68** is excluded income under **section CX 50** (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 71

Refunds: on application

EH 70 Application for refund by person or liquidator

Who may apply

(1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's thinning operations income equalisation account:

(a) the person may apply under **section EH 71 or EH 73**:

(b) the liquidator appointed for the person may apply under **section EH 7(*7*)5**.

Application

(2) An application for a refund must—

(a) be in writing; and

(b) state the grounds on which it is made; and

(c) state the amount applied for.

Defined in this Act: amount, Commissioner, liquidation, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 72

EH 71 Refund on request

When this section applies

(1) This section applies when a person wants a refund of some or all of the amount in the person's thinning operations income equalisation account, and neither **section EH 73 nor EH 75** applies.

Refund

(2) The Commissioner must refund to the person the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's thinning operations income equalisation account for at least 1 year before the date the deposit ends.

Defined in this Act: amount, Commissioner, date the deposit ends, deposit, person, thinning operations income equalisation account, year

Compare: 2004 No 35 s EH 73

EH 72 Income when refund given on request

Year of income

(1) A refund under **section EH 71** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the tax year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, **subsection (3)** applies instead of **subsection (1)** if—
- (a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and
- (b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income under **section CB 26** in the tax year to which the specified period or the longer period relates.

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 74

EH 73 Refund for development or recovery

Refund for development: application of subsection (2)

(1) **Subsection (2)** applies when a person wants a refund of some or all of the amount in their thinning operations income equalisation account for the purpose of enabling them to undertake, immediately after the refund is given, planned development or maintenance work for their forestry business.

Refund

(2) If the Commissioner is satisfied that the person will use the refund for the purpose, the Commissioner must refund to them the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's thinning operations income equalisation account for at least 6 months before the date the deposit ends.

Refund for recovery: application of subsection (4)

(3) **Subsection (4)** applies when a person wants a refund of some or all of the amount in their thinning operations income equalisation account for either or both of the following purposes:
   (a) to avoid them suffering serious hardship:
   (b) to do anything else that the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

Refund

(4) If the Commissioner is satisfied that the person will use the refund for either or both of the purposes, the Commissioner must refund to them the amount applied for, regardless of the length of time it has been in the account.

Defined in this Act: amount, business, Commissioner, date the deposit ends, deposit, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 75

EH 74 Income when refund given for development or recovery

Year of income

(1) A refund under **section EH 73** is income, under **section CB 26** (Income equalisation schemes), derived by the person in the

tax year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, **subsection (3)** applies instead of **subsection (1)** if—

(a) the Commissioner receives the application for a refund in the specified period for a tax year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the tax year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income under **section CB 26** derived in the tax year to which the specified period or the longer period relates.

Defined in this Act: Commissioner, income, person, specified period, tax year

Compare: 2004 No 35 s EH 76

EH 75 Refund on liquidation

When this section applies

(1) This section applies when a person—

(a) has a thinning operations income equalisation account; and

(b) is put into liquidation.

Refund

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's thinning operations income equalisation account on the date, regardless of the length of time it has been in the account.

Defined in this Act: amount, Commissioner, date the deposit ends, liquidation, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 77

EH 76 Income when refund given on liquidation

A refund under **section EH 75** is income, under **section CB 26** (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 78

Refunds: general provisions, and tax credits

EH 77 Sections of main income equalisation scheme that apply to thinning operations income equalisation scheme

Sections EH 28 to EH 33 apply, with the necessary amendments, to the thinning operations income equalisation scheme.

Defined in this Act: main income equalisation scheme, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 79

Definitions

EH 78 Meaning of thinning operations maximum deposit

Meaning

(1) **Thinning operations maximum deposit** means the maximum deposit that this section says a person may make to their thinning operations income equalisation account for a tax year.

Maximum deposit

(2) The maximum deposit that a person may make is an amount equal to the income derived by them during the tax year from carrying out thinning operations on the land on which they carry on their forestry business.

Meaning of amount

(3) In **subsection (2)**, **amount** means an amount calculated without applying—

(a) any provision allocating income derived or expenditure incurred to a tax year other than the tax year in which the income was in fact derived or the expenditure was in fact incurred:

(b) any provision of any of the income equalisation schemes referred to in **section EH 1(2)**.

Defined in this Act: amount, business, deposit, income, person, tax year, thinning operations, thinning operations income equalisation account, thinning operations maximum deposit

Compare: 2004 No 35 s EH 80

EH 79 Other definitions

In the thinning operations income equalisation scheme,—

date the deposit ends means—

(a) the date on which the refund is calculated, when **section EH 68** applies:

(b) the date on which the Commissioner receives the application for the refund, when **section EH 71 or EH 73** applies:

(c) the date on which the Commissioner receives notice of the liquidation, when **section EH 75** applies

deposit—

(a) means a thinning operations deposit; and

(b) includes, for the purposes of **sections EH 66(2) to (4) and EH 70 to EH 77**, interest that is added to a thinning operations deposit under **section EH 66(5)**

specified period, for a person's tax year, means the shorter of—

(a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and

(b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year

thinning operations means operations in which some trees in an immature stand of trees are felled for the purpose of improving the growth and form of the remaining trees and not for the purpose of permanently breaking the canopy

thinning operations deposit means a payment made to the Commissioner under **section EH 64(1)**

thinning operations income equalisation account, for a person, means the account that the Commissioner keeps in the person's name under **section EH 65**.

Defined in this Act: Commissioner, date the deposit ends, interest, liquidation, pay, person, return of income, specified period, tax year, thinning operations, thinning operations deposit, thinning operations income equalisation account, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 81

Subpart EI—Spreading of specific income

Contents

Farming and forestry

EI 1 Spreading backward of income from timber

When this section applies

(1) This section applies when a person derives income under **section CB 24** (Disposal of timber or right to take timber) or **CB 25** (Disposal of land with standing timber).

Timing of income

(2) The person may allocate the income between the income year in which they derive it and any 1 or more of the previous 3 income years.

Application

(3) A person who wants to make an allocation under **subsection (2)** must apply in writing to the Commissioner no later than 1 year

after the end of the income year in which they derive the income.

Defined in this Act: Commissioner, income, income year, timber, year

Compare: 2004 No 35 s EI 1

Inflation-indexed instruments

EI 2 Interest from inflation-indexed instruments

When this section applies

(1) This section applies when—
- (a) an amount of money lent is outstanding at the end of the lender's current income year; and
- (b) an amount is payable to the lender for the money lent, in a future income year of the lender; and
- (c) the amount payable is determined by a fixed relationship to 1 or more indices of general price inflation in New Zealand; and
- (d) the amount payable that has accrued at the end of the lender's current income year differs from any amount payable that had accrued—
  - (i) at the time the money was lent, if it was lent during the lender's current income year; or
  - (ii) at the end of the lender's previous income year, if it was lent before the lender's current income year.

Increase treated as credited

(2) If the difference is an increase, the increase is treated as having been credited in account and capitalised by the borrower for the benefit of the lender on—
- (a) the day following the day on which the level of the relevant index at the end of the lender's current income year becomes public knowledge; or
- (b) if the level of the relevant index is not calculated for the end of the lender's current income year, the last date before the end of the income year for which the level is calculated.

This subsection is overridden by **subsection (3)**.

Increase not treated as credited

(3) An increase is not treated as having been credited to the extent to which—

(a) the money lent has been repaid:

(b) an amount on account of the increase has already been paid to the lender:

(c) the increase represents a recovery of a decrease in the amount payable over **(***a previous***)**an earlier income year of the lender.

Defined in this Act: amount, income year, interest, money lent, New Zealand, pay

Compare: 2004 No 35 s EI 2

Intellectual property

EI 3 Assigning or granting copyright

When this section applies

(1) This section applies when a person—

(a) is the author of a literary, dramatic, musical, or artistic work; and

(b) made the work over a period of more than 1 year; and

(c) receives consideration from—

(i) assigning some or all of the copyright in the work; or

(ii) granting an interest in the copyright by licence.

Timing of income: lump sum payment

(2) If some or all of the consideration is a lump sum payment that would be income in 1 tax year, the person may allocate the income equally between the income year in which they receive it and—

(a) the income year before that income year, if they made the work over a period of 2 years or less; or

(b) the 2 income years before that income year, if they made the work over a period of more than 2 years.

Timing of income: other payments

(3) If some or all of the consideration is not a lump sum payment, would be income in 1 tax year, and is received by the person

within 2 years after the first publication of the work, the person may allocate the income equally between the income year in which they receive it and the previous income year.

Self-publication

(4) **Subsection (3)** applies to income that the person derives from being the publisher of their work.

Application

(5) The following provisions apply to an allocation for the purposes of **subsections (2) and (3)**:

(a) for an allocation under **subsection (2)**, the person must apply in writing to the Commissioner no later than 6 years after the end of the income year in which they receive the payment; and

(b) for an allocation under **subsection (3)**, the person must apply in writing to the Commissioner no later than 8 years after the first publication of the work.

Some definitions

(6) In this section,—

author includes a joint author

first publication means the first occasion on which the work or a reproduction of it is published, performed, or exhibited

lump sum payment includes an advance on account of royalties.

Defined in this Act: author, Commissioner, first publication, income, income year, lump sum payment, pay, royalty, tax year, year

Compare: 2004 No 35 s EI 3

New (unanimous)

EI 3B Spreading income from patent rights

When this section applies

(1) This section applies when a person derives income under **section CB 29** (Sale of patent applications or patent rights).

New (unanimous)

Timing of income

(2) The person may allocate the income equally between the income year in which they derive it and the following 2 income years.

Defined in this Act: income, income year, patent right

Compare: 2004 No 35 s EI 3B

Land

EI 4 Amount paid to lessor for non-compliance with covenant for repair

When this section applies

(1) This section applies when a lessor receives an amount of income under **section CC 2** (Non-compliance with covenant for repair).

Timing of income: if election made

(2) The lessor may choose to allocate the income between the income year in which they receive the amount and any 1 or more of the following 4 income years.

Timing of income: if election not made

(3) Any part of the amount that the lessor does not allocate as described in **subsection (2)** is allocated to the fourth income year following the income year in which they receive the amount.

Notice

(4) The following provisions apply to an allocation for the purposes of **subsection (2)**:

(a) the lessor must give a notice to the Commissioner that specifies how the income has been allocated; and

(b) the lessor must give the notice within the time required to file a return of income for the income year to which the income is allocated or within a longer time if the Commissioner agrees; and

(c) the lessor must not revoke the election.

Relationship with sections CC 2 and EI 5

(5) This section overrides **section CC 2(2)** and is overridden by **section EI 5**.

Defined in this Act: amount, Commissioner, income, income year, notice, return of income

Compare: 2004 No 35 s EI 4

EI 5 Amount paid for non-compliance: when lessor ceases to own land

When this section applies

(1) This section applies when a lessor—
- (a) allocates income under **section EI 4** to more than 1 income year; and
- (b) ceases to own the land to which the income relates before the end of the third tax year following the tax year in which they receive the income.

Timing of income

(2) If the lessor has not allocated a part of the income, the part is allocated to the income year in which the lessor ceases to own the land.

Ownership of part of land ceasing

(3) If the lessor ceases to own part of the land to which the income relates,—
- (a) this section applies to the part of the land that the lessor ceases to own; and
- (b) **section EI 4** applies to the part of the land that the lessor continues to own.

Defined in this Act: amount, income, income year, own, tax year

Compare: 2004 No 35 s EI 5

EI 6 Leases: income derived in anticipation

When this section applies

(1) This section applies when a person derives, in a tax year, income in anticipation from fines, premiums, a payment of goodwill on the grant of a lease, or in another similar way.

Timing of income

(2) The Commissioner may allocate the income between the income year in which the person derives it and any 5 later income years.

Notice

(3) The following provisions apply to an allocation for the purposes of **subsection (2)**:

(a) the person must give a notice to the Commissioner requesting the Commissioner to make the allocation:

(b) the person must give the notice in the tax year following the tax year to which the income year of derivation corresponds:

(c) the Commissioner may cancel the allocation at any time.

Cancellation of allocation

(4) If the Commissioner cancels the allocation, the income allocated to the income year in which the cancellation occurs and to future income years is allocated to the income year before the income year in which the cancellation occurs.

Defined in this Act: Commissioner, income, income year, lease, notice, pay, tax year

Compare: 2004 No 35 s EI 6

EI 7 Disposal of land to the Crown

When this section applies

(1) This section applies when a person derives income from disposing of any of their land to the Crown.

Timing of income

(2) The person may choose to allocate the income between the income year in which they derive it and any 3 later income years.

Timing of deduction

(3) If the person allocates income to 2 or more income years, they must allocate part of any deduction allowed for the cost of the land to the same income years. The part must bear the same proportion to the total deduction as the allocated income bears to the total amount of income.

Application

(4) The following provisions apply to an allocation for the purposes of **subsection (2)**:
- (a) the person, or another person for them, must make a written application to the Commissioner:
- (b) the application must be made within 1 year after the end of the tax year in which the person derives the income or within a longer time if the Commissioner agrees:
- (c) the person must arrange to meet all income tax liabilities relating to the income:
- (d) the Commissioner may cancel the allocation at any time.

Cancellation of allocation

(5) If the Commissioner cancels the allocation,—
- (a) the whole of the income or deduction, as applicable, is allocated to the income year before the income year in which the cancellation occurs:
- (b) the cancellation does not affect income or a deduction that has been allocated to **(***a previous***)**an earlier income year.

Defined in this Act: amount, Commissioner, deduction, income, income tax liability, income year, tax year, year

Compare: 2004 No 35 s EI 7

Shareholder-employees

EI 8 Matching rule for employment income of shareholder-employee

Matching if company allowed deduction

(1) If a company is allowed a deduction for expenditure on employment income that is paid or is payable to a shareholder-employee under **section CE 1** (Amounts derived in connection with employment), the income is allocated in the way set out in **subsections (2) and (3)**.

Allocation to deduction year unless unexpired

(2) The income is allocated to the income year to which the deduction allowed to the company is allocated, except for an amount equal to any unexpired portion for the income year of

the company's expenditure under **section EA 4** (Deferred payment of employment income).

Allocation when no longer treated as unexpired

(3) The remaining income is allocated to the income year or years in which the corresponding amount of the company's expenditure on the income is no longer treated as an unexpired portion.

Defined in this Act: amount, company, deduction, employment income, income year, pay, shareholder-employee

Compare: 2004 No 35 s EI 8

Subpart EJ—Spreading of specific expenditure

Contents

Farming and forestry

EJ 1 Spreading backward of deductions for costs of timber

When this section applies

(1) This section applies when a person derives income under **section CB 24** (Disposal of timber or right to take timber) or **CB 25** (Disposal of land with standing timber).

Timing of deduction

(2) The person must allocate every amount allowed as a deduction for a cost of timber to the income years to which the income is allocated under **section EI 1** (Spreading backward of income from timber), and in the same proportions as it is allocated.

Defined in this Act: amount, deduction, income, income year

Compare: 2004 No 35 s EJ 1

EJ 2 Spreading forward of deductions for repairs to fishing boats

When this section applies: generally

(1) This section applies when a person who carries on a fishing business in New Zealand is allowed a deduction for expenditure incurred in making repairs or alterations required by Part 10 of the Maritime Transport Act 1994 to the equipment, hull, or machinery of a fishing boat used wholly for the purposes of the business.

When subsection (3) applies

(2) **Subsection (3)** applies when the person does not cease to carry on the business before the end of the fourth tax year following the tax year in which the expenditure is incurred.

Business not ceasing within 4 years

(3) The person may do 1 of the following to the total amount of expenditure allowed as a deduction:
- (a) deduct it in the income year in which the expenditure is incurred; or
- (b) allocate it to any 1 of the 4 income years following the income year in which the expenditure is incurred, and deduct it in that income year; or
- (c) allocate parts of it over some or all of the 4 income years following the income year in which the expenditure is incurred, and deduct each part allocated in the income year to which it is allocated; or
- (d) deduct it, or any part of it that has not already been deducted, in the fourth income year following the income year in which the expenditure is incurred.

When subsection (5) applies

(4) **Subsection (5)** applies when the person ceases to carry on the business before the end of the fourth tax year following the tax year in which the expenditure is incurred.

Business ceasing within 4 years

(5) The person may do 1 of the following to the total amount of expenditure allowed as a deduction:
- (a) deduct it, or any part of it that has not already been deducted, in the income year in which the person ceases to carry on the business; or
- (b) allocate it, or any part of it that has not already been deducted, equally to the income year in which it is incurred and the following income years in which the person continues to carry on the business.

Some definitions

(6) In this section,—

fishing boat—

(a) means a boat registered as a fishing boat under Part 4 of the Fisheries Act 1983; and

(b) includes a small boat belonging to any boat that is so registered

fishing business means a business of catching or taking fish, including crustaceans and shellfish, for the purposes of sale.

Defined in this Act: amount, business, deduction, fishing boat, fishing business, income year, New Zealand, tax year

Compare: 2004 No 35 s EJ 2

EJ 3 Spreading forward of fertiliser expenditure

When this section applies

(1) This section applies when—

(a) a person carries on a farming or agricultural business on land in New Zealand; and

(b) the person incurs expenditure in buying fertiliser or lime or applying fertiliser or lime to some or all of the land; and

(c) the expenditure is expenditure for which the person is allowed a deduction.

Timing of deduction: if election made

(2) The person may choose to allocate the expenditure by allocating some or all of it, in the proportions they choose, to any 1 or more of the 4 income years following the income year in which they incur the expenditure.

Timing of deduction: if election not made

(3) The person is allowed a deduction in the fourth income year following the income year in which they incur the expenditure for any part of the expenditure—

(a) for which they do not claim a deduction in the income year in which they incur the expenditure; or

(b) that they do not allocate under **subsection (2)**.

Timing of deduction: business ceasing within 4 years

(4) If the person ceases to carry on the business before the end of the fourth income year following the income year in which they incurred the expenditure, they must choose 1 of the following ways to deal with any part of the expenditure that has not so far been deducted:

(a) the part is to be deducted in the income year in which the person ceases to carry on the business; or

(b) the part is to be allocated equally to the income year in which they incurred the expenditure and the following income years in which the person carried on the business.

Notice

(5) The following provisions apply to an allocation for the purposes of **subsections (2) and (4)**:

(a) for **subsection (2)**, the person must give the Commissioner notice of the allocation within the time within which the person is required to file a return of income for the income year to which they allocated the expenditure:

(b) for **subsection (4)**, the person must give the Commissioner notice of the allocation within the time within which the person is required to file a return of income for the income year in which the person ceases to carry on the business:

(c) for **subsection (2) or (4)**, the Commissioner may allow a longer time in any case or class of cases:

(d) for **subsection (2)**, the person must not revoke the allocation.

Personal representative

(6) An election under **subsection (4)** may be made by a deceased's personal representative.

Defined in this Act: business, Commissioner, deduction, income year, New Zealand, notice, return of income

Compare: 2004 No 35 s EJ 3

Films

EJ 4 Expenditure incurred in acquiring film rights in feature films

Feature films

(1) A deduction under **section DS 1** (Acquiring film rights) for expenditure that a person incurs in acquiring a film right is allocated under this section, if the film is a feature film.

Timing of deduction: retention of film right

(2) If the person has the film right at the end of an income year, the deduction that is allocated to the income year is the lesser of—

(a) the greater of—

(i) an apportioned amount of the deduction, calculated for the income year under **subsection (3)**; and

(ii) the amount of film income derived in the income year; and

(b) the remaining deduction.

Calculation of apportioned amount

(3) The apportioned amount is calculated for the income year using the formula—

$$\frac{\text{completed months}}{\text{non-completed months}} \times \text{deduction.}$$

Definition of items in formula

(4) In the formula,—

(a) **completed months** is the number of months in the income year, including a part of a month, for which the film is completed:

(b) **non-completed months** is 24, reduced by the number of complete months in the period that—

(i) starts on the first day of the month in which the film is completed; and

(ii) ends on the last day of the income year before the income year referred to in **subsection (2)**:

(c) **deduction** is the remaining deduction.

Timing of deduction: disposal of film right

(5) If the person disposes of the film right during an income year, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

Meaning of remaining deduction

(6) In this section, **remaining deduction** means, for an income year, the amount of the deduction for expenditure incurred

before the end of the income year that has not been allocated to (*a previous*)<u>an earlier</u> income year.

Defined in this Act: amount, completed, deduction, feature film, film, film income, film right, income year, remaining deduction

Compare: 2004 No 35 s EJ 4

EJ 5 Expenditure incurred in acquiring film rights in films other than feature films

Films other than feature films

(1) A deduction under **section DS 1** (Acquiring film rights) for expenditure that a person incurs in acquiring a film right is allocated under this section, if the film is not a feature film.

Timing of deduction: retention of film right

(2) If the person has the film right at the end of an income year,—
- (a) the deduction that is allocated to the income year in which the film right is acquired or the film is completed, whichever is later, is—
  - (i) 50% of the deduction; or
  - (ii) if the film income derived in the income year is more than 50% of the deduction, the lesser of the amount of film income and the total amount of the deduction; and
- (b) the deduction that is allocated to the next income year is the remaining deduction.

Timing of deduction: disposal of film right

(3) If the person disposes of the film right during an income year, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

Meaning of remaining deduction

(4) In this section, **remaining deduction** means, for an income year, the amount of the deduction that has not been allocated to (*a previous*)<u>an earlier</u> income year.

Defined in this Act: amount, completed, deduction, feature film, film, film income, film right, income year, remaining deduction

Compare: 2004 No 35 s EJ 5

EJ 6 Certification of New Zealand films

Certification of New Zealand films

(1) The New Zealand Film Commission may certify that a film is a New Zealand film, if the Commission is satisfied that the film has, or will on completion have, a significant New Zealand content, as determined under section 18 of the New Zealand Film Commission Act 1978.

Final and provisional certificates

(2) The certificate issued by the New Zealand Film Commission must be—

(a) a provisional certificate, if the film is not completed:

(b) a final certificate, if the film is completed.

Applications for certification of New Zealand films

(3) An application to the New Zealand Film Commission for a certificate that a film is a New Zealand film must be in writing and must provide the information that the Commission requires.

Notice of certificate to Commissioner

(4) The New Zealand Film Commission must send a copy of the provisional certificate or the final certificate to the Commissioner immediately after issuing it.

Revocation of certificate

(5) The New Zealand Film Commission may revoke a provisional certificate or a final certificate if the Commission is satisfied that the certificate should not remain in force, whether because an incorrect statement was made in the provision of information for the purpose of obtaining a certificate or for any other reason.

Effect of revocation

(6) A revoked certificate is void from the time the certificate was issued.

Notice of revocation to Commissioner

(7) The New Zealand Film Commission must give notice to the Commissioner immediately after revoking a provisional certificate or a final certificate.

Defined in this Act: Commissioner, completed, film, New Zealand, notice

Compare: 2004 No 35 s EJ 6

EJ 7 Film production expenditure for New Zealand films

New Zealand films

(1) A deduction under **section DS 2** (Film production expenditure) for film production expenditure is allocated under this section, if the film has a final certificate under **section EJ 6**.

Timing of deduction: up to completion of film

(2) A deduction for film production expenditure incurred in or before the income year in which the film is completed is allocated to the income year in which the film is completed.

Timing of deduction: after completion of film

(3) A deduction for film production expenditure incurred after the film is completed is allocated to the income year in which it is incurred.

Defined in this Act: completed, deduction, film, film production expenditure, income year, New Zealand

Compare: 2004 No 35 s EJ 7

EJ 8 Film production expenditure for films other than New Zealand films

Films other than New Zealand films

(1) A deduction under **section DS 2** (Film production expenditure) is allocated under this section, if the film does not have a final certificate under **section EJ 6**.

Timing of deduction: up to completion of film

(2) If the person has a film right at the end of the income year in which the film is completed, the deduction for film production expenditure incurred in or before the income year is allocated as follows:

(a) to the income year in which the film is completed,—

(i) 50% of the deduction; or

(ii) if the film income derived in the income year is more than 50% of the deduction, the lesser of the amount of film income and the total amount of the deduction; and

(b) to the next income year, the remaining deduction.

Timing of deduction: after completion of film

(3) If the person has a film right in an income year after the film is completed, a deduction for film production expenditure incurred after the film is completed is allocated to the income year in which it is incurred.

Timing of deduction: disposal of film right

(4) If the person disposes of a film right in the income year in which the film is completed, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

Meaning of remaining deduction

(5) In this section, **remaining deduction** means, for an income year, the amount of the deduction for film production expenditure that has not been allocated to **(***a previous***)**an earlier income year.

Defined in this Act: amount, completed, deduction, film, film income, film production expenditure, film right, income year, New Zealand, remaining deduction

Compare: 2004 No 35 s EJ 8

EJ 9 Avoidance arrangements

The allocation of a deduction under any of **sections EJ 4, EJ 5, EJ 7, and EJ 8** may be subject to adjustment under—

(a) **section GB 18** (Arrangements to acquire film rights or incur **(***film***)** production expenditure):

(b) **section GB 19** (When film production expenditure payments delayed or contingent).

Defined in this Act: deduction, film production expenditure, film right, pay

Compare: 2004 No 35 ss GC 11B, GD 12A, GD 12B

Leases

EJ 10 Personal property lease payments

What this section applies to

(1) This section applies to a lease that—
  (a) is of a personal property lease asset; and
  (b) is not a finance lease; and
  (c) is not a specified lease.

Payments

(2) Personal property lease payments are treated as being paid for the term of the lease.

Formula

(3) The expenditure that the lessee incurs is allocated to income years using the formula—

$$\frac{\text{part of term}}{\text{term of the lease}} \times \text{total of payments.}$$

Definition of items in formula

(4) In the formula,—
  (a) **part of term** is the part of the term of the lease that falls within the income year:
  (b) **term of the lease** has the meaning given in **section YA 1** (Definitions):
  (c) **total of payments** is the total amount of the personal property lease payments.

Defined in this Act: finance lease, income year, lease, lessee, pay, personal property lease asset, personal property lease payment, specified lease, term of the lease

Compare: 2004 No 35 s EJ 9

EJ 11 Amount paid by lessee for non-compliance with covenant for repair

When this section applies

(1) This section applies when a lessee of land is allowed a deduction under **section DB 22** (Amounts paid for non-compliance with covenant for repair).

Timing of deduction

(2) The lessee may choose to allocate some or all of the amount of the deduction to any 1 or more of the 3 income years before the income year in which the amount is paid or recovered. The lessee may make an allocation only to an income year in which they used the land for deriving income.

Effect of allocation

(3) If the lessee makes an allocation,—
 (a) they are denied a deduction for the allocated amount in the income year in which the amount of the deduction is paid or recovered; and
 (b) they are allowed a deduction for the allocated amount in the income year to which it is allocated.

Notice

(4) The following provisions apply to an allocation for the purposes of **subsection (2)**:
 (a) the lessee makes the election by giving a notice to the Commissioner that specifies how the amount of the deduction has been allocated; and
 (b) the lessee must give the notice within the time required to file a return of income for the tax year in which the amount was paid or recovered or within a longer time if the Commissioner agrees; and
 (c) the lessee must not revoke the allocation.

Defined in this Act: amount, Commissioner, deduction, income, income year, lessee, notice, return of income, tax year

Compare: 2004 No 35 s EJ 10

Petroleum mining

EJ 12 Petroleum development expenditure

General rule

(1) A deduction under **section DT 5** (Petroleum development expenditure) is allocated in equal amounts over a period of 7 income years.

Start of period for offshore development

(2) For petroleum development expenditure in an offshore development, the period of 7 income years starts with the income year in which the expenditure is incurred.

Start of period for onshore development

(3) For petroleum development expenditure in an onshore development, the period of 7 income years starts with the later of—

(a) the income year in which commercial production starts; and

(b) the income year in which the expenditure is incurred.

Relationship with other petroleum mining provisions

(4) **Sections EJ 13 to EJ 16** override **subsection (1)**. **Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5** (which relate to petroleum miners) override this section.

Defined in this Act: amount, commercial production, deduction, income year, offshore development, onshore development, petroleum development expenditure

Compare: 2004 No 35 s EJ 11

EJ 13 Relinquishing petroleum mining permit

When this section applies

(1) This section applies when a petroleum miner relinquishes a petroleum **(***mining***)** permit.

Amount of deduction

(2) The amount of the deduction that the miner is allowed on relinquishing the permit is the difference between—

(a) the amount of the deduction allowed under **section DT 5** (Petroleum development expenditure) and attributable to—

(i) the permit; or

(ii) an asset of the kind described in **section CT 7(1)(b) or (c)** (Meaning of petroleum mining asset) held solely in connection with the permit; and

(b) any part of the deduction allocated to earlier income years under **section EJ 12(1).**

Timing of deduction

(3) The deduction is allocated to the income year in which the miner relinquishes the permit.

Defined in this Act: amount, deduction, income year, petroleum miner, petroleum (*mining*) permit

Compare: 2004 No 35 s EJ 12

EJ 14 Spreading deduction backwards

When this section applies

(1) This section applies when a petroleum miner has a deduction whose amount has been reduced under **section IS 5** (Petroleum miners' tax losses).

Spreading backwards

(2) The petroleum miner may allocate the amount of the deduction to the tax year before that in which the net loss arises, or allocate parts of it to earlier tax years.

Amending returns

(3) The petroleum miner may amend their returns of income for the relevant tax years despite the operation of the time bar.

Defined in this Act: amount, deduction, petroleum miner, return of income, tax year, time bar

Compare: 2004 No 35 s IH 3(1)

EJ 15 Disposal of petroleum mining asset

When this section applies

(1) This section applies when a petroleum miner disposes of a petroleum mining asset.

Amount, and timing, of deduction

(2) Part of a deduction under **section DT 5** (Petroleum development expenditure) is allocated to the income year in which the miner disposes of the asset. The part is that to which both the following apply:

(a) it is attributable to the asset; and

(b) it has been allocated under **section EJ 12** to the income year in which the miner disposes of the asset and to 1 or more later income years.

Allocation to more than 1 year

(3) If the petroleum miner's income from disposing of the asset is derived in 2 or more income years,—

(a) the amount of the deduction is allocated among the income years in which the miner derives the income; and

(b) the amount allocated to each income year bears the same relation to the total amount of the deduction as the income that the miner derives in that income year bears to the total amount of income that the miner derives from the disposal.

Relationship with section EJ 16

(4) This section is overridden by **section EJ 16**.

Defined in this Act: amount, deduction, dispose, income, income year, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s EJ 13

EJ 16 Disposal of petroleum mining asset to associate

When this section applies

(1) This section applies when, in an income year, a petroleum miner disposes of a petroleum mining asset to—

(a) a person associated with the miner:

(b) a person who holds the asset for the miner:

(c) a person who holds the asset for a person associated with the miner.

Amount of deduction

(2) The maximum amount that may be allocated under **section EJ 15** to the income year is the amount that would be the net income of the petroleum miner in the income year if their only income were from the disposal.

Defined in this Act: amount, associated person, dispose, income, income year, net income, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s EJ 14

EJ 17 Partnership interests and disposal of part of asset

In **sections EJ 12 to EJ 16**, unless the context requires otherwise,—

(a) a partner is treated as having a share or interest in a petroleum **(***mining***)** permit or other property of a partnership to the extent of their interest in the income of the partnership:

(b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: dispose, income, petroleum **(***mining***)** permit

Compare: 2004 No 35 s EJ 15

EJ 18 Petroleum mining operations outside New Zealand

Sections EJ 12 to EJ 17, EJ 19, and EJ 20 apply with any necessary modifications to a petroleum miner undertaking petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by **sections EJ 12 to EJ 17, EJ 19, and EJ 20**.

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s EJ 16

Definitions

EJ 19 Meaning of offshore development

Meaning

(1) In **section EJ 12**, **offshore development** means a place to which both the following apply:

(a) 1 or more of the activities described in **subsection (2)** is carried out there; and

(b) the major part of the facilities for extracting, producing, treating, processing, and separating petroleum are situated in the sea or in an area of foreshore on the seaward side of the mean high-water mark.

Activities: inclusions

(2) The activities are those carried out in connection with—

(a) developing a permit area for producing petroleum:

(b) producing petroleum:

(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:

(d) removal or restoration operations.

Activities: exclusions

(3) The activities do not include further treatment to which all the following apply:

(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and

(b) it is done—

(i) by liquefaction or compression; or

(ii) for the extraction of constituent products; or

(iii) for the production of derivative products; and

(c) it is not treatment at the production facilities.

Defined in this Act: offshore development, permit area, petroleum, removal or restoration operations

Compare: 2004 No 35 s EJ 17

EJ 20 Meaning of onshore development

Meaning

(1) In **section EJ 12**, **onshore development** means a place to which both the following apply:

(a) 1 or more of the activities described in **subsection (2)** is carried out there; and

(b) the major part of the facilities for extracting, producing, treating, processing, and separating petroleum are situated neither in the sea nor in an area of foreshore on the seaward side of the mean high-water mark.

Activities: inclusions

(2) The activities are those carried out in connection with—

(a) developing a permit area for producing petroleum:

(b) producing petroleum:

(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:

(d) removal or restoration operations.

Activities: exclusions

(3) The activities do not include further treatment to which all the following apply:

(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and

(b) it is done—
  (i) by liquefaction or compression; or
  (ii) for the extraction of constituent products; or
  (iii) for the production of derivative products; and
(c) it is not treatment at the production facilities.

Defined in this Act: onshore development, permit area, petroleum, removal or restoration operations

Compare: 2004 No 35 s EJ 18

Superannuation contributions

EJ 21 Contributions to employees' superannuation schemes

When this section applies

(1) This section applies when an employer is allowed a deduction for a superannuation contribution to an employee's superannuation scheme under **section DC 7** (Contributions to employees' superannuation schemes).

Timing of deduction

(2) The employer may choose to allocate the deduction to the income year for which the contribution was required by the superannuation scheme to be made, or for which the amount of the contribution was calculated taking into account the earnings paid to employees who were members of the scheme during the income year, if the employer makes the contribution within 63 days after the end of the income year.

Election

(3) The employer must make the election before filing a return of income for the income year or within a longer time if the Commissioner agrees.

Defined in this Act: amount, Commissioner, deduction, employee, employer, income year, return of income, superannuation contribution, superannuation scheme

Compare: 2004 No 35 s EJ 19

Research, development, and resulting market development

EJ 22 Deductions for market development: product of research, development

When this section applies

(1) This section applies when a person is allowed a deduction for expenditure under **section DB 35** (Research or development) that is not interest and is incurred—
- (a) on market development for a product that has resulted from expenditure incurred by the person on research or development; and
- (b) before the person begins commercial production or commercial use of the product.

Choice for allocation of deduction

(2) The person may choose to allocate under **section DB 35(7)** all or part of the deduction to an income year—
- (a) after the income year in which the person incurs the expenditure; and
- (b) in the way required by **section EJ 23**.

Defined in this Act: deduction, development, income year, research

Compare: 2004 No 35 s EJ 20

EJ 23 Allocation of deductions for research, development, and resulting market development

When this section applies

(1) This section applies when a person has—
- (a) a deduction for expenditure incurred on research or development that the person chooses to allocate under **section DB 35(7)** (Research or development):
- (b) a deduction for an amount of depreciation loss for an item used for research or development, that the person chooses to allocate under **section EE 1(5)** (What this subpart does):
- (c) a deduction for expenditure incurred on market development for a product that has resulted from expenditure incurred on research or development that the person chooses to allocate under **section EJ 2~~0~~2(2)**.

Timing of deduction

(2) The person must allocate the deduction to an income year—

(a) in which the person derives an amount of income that is assessable income that the person would not have derived but for—

(i) expenditure that gives rise to a deduction that may be allocated under this section:

(ii) the use or disposal of an item for which the person has an amount of depreciation loss that may be allocated under this section:

(b) to which under **Part I** (Treatment of tax losses) a loss balance is carried forward for the income year in which the expenditure or depreciation loss was incurred.

Struck out (unanimous)

Deduction allocated to income year

(3) The person must allocate to an income year an amount of deductions referred to in **subsection (1)** that is equal to or greater than the lesser of—

(a) the amount of assessable income referred to in **subsection (2)(a)** that the person derives in the income year:

(b) the amount of the deductions that has not been allocated to earlier income years.

New (unanimous)

Minimum amount of deduction allocated to income year

(3) The person must not allocate to an income year (the **current year**) an amount of deductions referred to in **subsection (1)** that is less than the lesser of—

(a) the amount of assessable income referred to in **subsection (2)(a)** that the person derives in the current year:

(b) the amount of the deductions that have not been allocated to an income year before the current year.

New (unanimous)

Maximum amount of deduction allocated to income year

(4) The person must not allocate to an income year (the **current year**) an amount of deductions referred to in **subsection (1)** that is more than the greater of—

(a) the amount of assessable income referred to in **subsection (2)(a)** that the person derives in the current year:

(b) the amount of the deductions that—

(i) arise in other income years from which a loss balance may be carried forward under **Part I** to the current year; and

(ii) have not been allocated to income years before the current year.

Defined in this Act: amount, assessable income, deduction, depreciation losses, development, income year, loss balance, research

Compare: 2004 No 35 s EJ 21

Subpart EK—Environmental restoration accounts

Contents

EK 1 Environmental Restoration Funds Account

Account

(1) There is a Crown Bank Account called the Environmental Restoration Funds Account that is operated under the Public Finance Act 1989.

Payments from person paid into account

(2) Every payment a person makes to the Commissioner under **section EK 2**—
- (a) is public money; and
- (b) must be paid into the Environmental Restoration Funds Account.

Defined in this Act: Commissioner, pay

Compare: 2004 No 35 s EK 1

EK 2 Persons who may make payment to environmental restoration account

A person may make a payment to the Commissioner for entry in the person's environmental restoration account for an income year if the person—
- (a) carries on a business in New Zealand; and
- (b) expects to incur, for a later income year, expenditure that—
  - (i) is not on revenue account property, other than land to which **section CB 8** (Disposal: land used for landfill, if notice of election) applies; and
  - (ii) is of a kind listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
  - (iii) is of a kind not listed in **schedule 19, part C**; and
- (c) makes a provision for such expenditure in financial statements that are—
  - (i) prepared for external reporting purposes; and

(ii) audited by an accountant who is a chartered accountant or has equivalent professional qualifications; and
(iii) given by the accountant a standard audit opinion, without qualifications on matters relating to the effect of this subpart.

Defined in this Act: business, Commissioner, environmental restoration account, income year, pay, revenue account property

Compare: 2004 No 35 s EK 2

EK 3 Payments to environmental restoration account

Upper limit of payment

(1) A person must not make a payment for an income year of more than the person's maximum payment for the income year.

Lower limit of payment

(2) A person must not make a payment for an income year of less than $1,000.

Time for making payment

(3) A payment made after the day that is 6 months after the end of an income year is not made for the income year unless—
(a) the Commissioner has allowed a longer period for the payment; and
(b) the payment is made within the period allowed by the Commissioner.

Defined in this Act: Commissioner, income year, maximum payment, pay

Compare: 2004 No 35 s EK 3

EK 4 Environmental restoration account

Person's account

(1) The Commissioner must keep an environmental restoration account in the name of every person who makes a payment to the Commissioner under **section EK 2**.

Payments in account

(2) Every payment under **section EK 2** that a person makes to the Commissioner must be entered in the person's environmental restoration account.

Amounts in account

(3) The only amounts that may be entered in a person's environmental restoration account are—

(a) payments made by the person to the Commissioner under **section EK 2**:

(b) transfers made to the account under **subsection (6)**:

(c) interest paid under **section EK 6**.

Amounts not available to others

(4) An amount entered in a person's environmental restoration account may not, while in the account,—

(a) be assigned or charged in any way:

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation:

(c) be an asset for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation:

(d) be an asset for the payment of the debts or liabilities of a dead person's estate.

Amounts not available except for refunds or transfers

(5) An amount entered in a person's environmental restoration account may not be removed from the environmental restoration account except by a refund under **section EK 9 or EK 12** or by a transfer under **subsection (6)**.

Transfers of amounts

(6) An amount may be transferred from the environmental restoration account of a person—

(a) to an environmental restoration account of a person to whom the amount has been transferred under **section EK 15 or EK 16(3)(b)**:

(b) to the department that is at the time responsible for administering the Environment Act 1986, if the amount has been transferred under **section EK 16(3)(a)**:

(c) to an environmental restoration account of an amalgamated company to which the amount has been transferred under **section EK 19**.

Commissioner may close empty account

(7) The Commissioner may close an environmental restoration account of a person if the amount in the environmental restoration account is zero.

Defined in this Act: amalgamating company, amount, Commissioner, environmental restoration account, interest, liquidation, pay

Compare: 2004 No 35 s EK 4

EK 5 Details to be provided with payment to environmental restoration account

Notice and details required

(1) A person making a payment to an environmental restoration account must provide the Commissioner with a notice, in a form prescribed by the Commissioner, giving—

(a) the name of the person; and

(b) the income year for which the payment is made; and

(c) a calculation of the maximum payment for the person and the income year; and

(d) any additional information that the Commissioner requires.

Time for providing information

(2) The person must provide the information required by **subsection (1)** within 2 working days from the day of the payment.

Defined in this Act: Commissioner, environmental restoration account, income year, maximum payment, pay, working day

Compare: 2004 No 35 s EK 5

EK 6 Interest on payments to environmental restoration account

Interest payable

(1) Interest is payable by the Commissioner on—

(a) a payment under **section EK 2** to an environmental restoration account:

(b) an amount that is treated under **section EK 15, EK 16, or EK 19** as being a payment to an environmental restoration account.

Period

(2) Interest is computed with daily rests from the day after the date of the payment until the day before the date on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 19**.

Date to which interest accrues

(3) Interest that has accrued on a payment is payable to the person who has the environmental restoration account on the earlier of—

(a) 31 March in each year:

(b) the day on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 19**.

Rate

(4) The interest rate is 3% per year.

Defined in this Act: Commissioner, environmental restoration account, interest, pay, year

Compare: 2004 No 35 s EK 6

EK 7 Deduction for payment

When this section applies

(1) This section applies when a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for a payment to their environmental restoration account under **section EK 2**.

Amount of deduction

(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{payment}}{\text{tax rate}}.$$

Definition of items in formula

(3) The items in the formula are defined in **subsections (4) and (5)**.

Payment

(4) **Payment** is the lesser of—

(a) the person's payment to the Commissioner under **section EK 2** for the income year; and

(b) the person's maximum payment for the income year.

Tax rate

(5) **Tax rate** is the highest rate of income tax on taxable income that—

(a) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); and

(b) would apply to the person for the tax year if the person had sufficient taxable income.

Timing of deduction

(6) The person is allowed the deduction for the income year for which the payment is made.

Defined in this Act: Commissioner, deduction, environmental restoration account, income tax, income year, maximum payment, pay, tax year, taxable income

Compare: 2004 No 35 s EK 7

EK 8 Deduction for transfer

When this section applies

(1) This section applies when a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for a transfer to their environmental restoration account under **section EK 15, EK 16, or EK 19**.

Amount of deduction

(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

Definition of items in formula

(3) The items in the formula are defined in **subsections (4) and (5)**.

Transfer

(4) **Transfer** is the amount of the transfer to the person's environmental restoration account that is treated as a payment by the person under **section EK 15(3), EK 16, or EK 19**.

Tax rate

(5) **Tax rate** is the highest rate of income tax on taxable income that—

(a) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); and
(b) would apply to the person for the tax year if the person had sufficient taxable income.

Timing of deduction

(6) The person is allowed the deduction for the income year for which the transfer is made.

Defined in this Act: deduction, environmental restoration account, income tax, income year, maximum payment, pay, tax year, taxable income

Compare: 2004 No 35 s EK 8

EK 9 Refund of payment if excess, lacking details

When this section applies

(1) This section applies when a person's payment under **section EK 2** for an income year is—
(a) more than the person's maximum payment for the income year:
(b) made without providing the details required by **section EK 5**.

Refund

(2) As soon as practicable after the date on which the payment is received, the Commissioner must refund to the person—
(a) the excess, if the payment is more than the person's maximum payment for the income year:
(b) the payment, if the payment is described by **subsection (1)(b)**.

No interest payable by Commissioner

(3) No interest is payable by the Commissioner under **section EK 6** on the amount of the payment.

Defined in this Act: Commissioner, income year, interest, maximum payment, pay

Compare: 2004 No 35 s EK 9

EK 10 Certain refunds not income

A refund under **section EK 9** is excluded income under **section CX 51** (Refund from environmental restoration account).

Defined in this Act: excluded income

Compare: 2004 No 35 s EK 10

EK 11 Application for refund

Who may apply

(1) A person may apply to the Commissioner for a refund under **section EK 12** of an amount in the person's environmental restoration account if the refund—

(a) corresponds to expenditure incurred by the person of a kind that is listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 19, part C**:

(b) represents an excess in the person's environmental restoration account over the maximum account balance for the person's environmental restoration account for the income year.

Application

(2) An application for a refund must—

(a) be in writing; and

(b) state the grounds on which the application is made; and

(c) provide evidence satisfactory to the Commissioner verifying the existence of the grounds; and

(d) state the amount of the refund that the applicant wants.

Defined in this Act: Commissioner, environmental restoration account, income year

Compare: 2004 No 35 s EK 11

EK 12 Refund if request or excess balance

When this section applies

(1) This section applies when—

(a) a person wants a refund of some or all of the amount in the person's environmental restoration account and none of **sections EK 9, EK 15, EK 16, and EK 19** applies:

(b) the amount in the person's environmental restoration account is more than the maximum account balance for an income year.

Refund if request made

(2) The Commissioner must make a refund under this section to a person if—

(a) the person applies for a refund and has incurred expenditure—

(i) of a kind that is listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 19, part C**; and

(ii) of an amount equal to or greater than the amount given by **subsection (3)** for the amount of the refund; and

(iii) after the first date on which the person made to the Commissioner a payment under **section EK 2** for entry in the person's environmental restoration account or a transfer under **section EK 15, EK 16, or EK 19** was made to the person's environmental restoration account:

(b) the maximum account balance for the latest complete income year for the person's environmental restoration account is less than the amount in the environmental restoration account at the end of that income year.

Minimum amount of expenditure incurred

(3) The amount of expenditure incurred that corresponds to the amount of a refund is calculated using the formula—

$$\frac{\text{amount}}{\text{tax rate}}.$$

Definition of items in formula

(4) In the formula,—

(a) **amount** is the amount of the refund:

(b) **tax rate** is the highest rate of income tax on taxable income that—

(i) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); and

(ii) would apply to the person for the tax year if the person had sufficient taxable income.

Amount of refund if expenditure incurred

(5) If a person is entitled to a refund under **subsection (2)(a)**, the amount that the Commissioner must refund to the person is the smallest of—

(a) the refund for which the person applies:

(b) the contents of the person's environmental restoration account at the time of the refund:

(c) the refund corresponding to the person's expenditure that meets the requirements of **subsection (2)(a)(i) to (iii)**.

Struck out (unanimous)

Amount of refund if maximum account balance decreases

(6) If a person is entitled to a refund under **subsection (2)(b)**, the amount that the Commissioner must refund to the person is the lesser of—

(a) the refund for which the person applies:

(b) the difference at the end of the latest complete income year between—

(i) the amount in the person's environmental restoration account, after any transfer under **section EK 15, EK 16, or EK 19** for the income year:

(ii) the person's maximum account balance for that income year.

New (unanimous)

Amount of refund if maximum account balance decreases

(6) If a person is entitled to a refund under **subsection (2)(b)**, the amount that the Commissioner must refund is the difference at the end of the latest complete income year between—

(a) the amount in the person's environmental restoration account after any transfer under **section EK 15, EK 16, or EK 19** for the income year:

(b) the person's maximum account balance for the income year.

Relationship with section EK 17

(7) **Section EK 17** overrides **subsections (5) and (6)**.

Defined in this Act: amount, Commissioner, environmental restoration account, income tax, income year, maximum account balance, pay, tax year, taxable income

Compare: 2004 No 35 s EK 12

EK 13 Income when refund given on request

A refund under **section EK 12** is income, of the amount given by **section CB 27** (Environmental restoration accounts), derived by the person in the income year in which the person receives the refund.

Defined in this Act: Commissioner, income, income year

Compare: 2004 No 35 s EK 13

EK 14 Application for transfer

Who may apply

(1) A person may apply to the Commissioner for a transfer under **section EK 15** from the amount in the person's environmental restoration account.

Application

(2) An application for a transfer must—
- (a) be in writing; and
- (b) state the grounds on which the application is made; and
- (c) state the amount of the transfer that the applicant wants.

Defined in this Act: Commissioner, environmental restoration account

Compare: 2004 No 35 s EK 14

EK 15 Transfer on request

When this section applies

(1) This section applies when—
- (a) a person applies under **section EK 14** for a transfer of some or all of the amount in their environmental restoration account to a person who is nominated in the application; and
- (b) the person has transferred to the nominated person the obligations to which the amount relates; and
- (c) none of **sections EK 9, EK 12, EK 16, and EK 19** applies.

Transfer if request made

(2) The Commissioner must make a transfer under this section to an environmental restoration account of the person nominated in the application.

Transfer treated as payment by nominated person

(3) A transfer under **subsection (2)** is treated as being a payment by the nominated person to the nominated person's environmental restoration account if the nominated person satisfies the Commissioner that—

(a) the obligations to which the transferred amount relates have been transferred to the nominated person; and

(b) in the absence of the transfer, the nominated person would be entitled to make a payment, of the amount of the transfer, to the nominated person's environmental restoration account.

Commissioner to reverse transfer if requirements of subsection (3) not met

(4) If the nominated person does not meet the requirements of **subsection (3)** in relation to an amount, the Commissioner must transfer the amount to the environmental restoration account of the person who made the application under **subsection (1)(a)**.

Timing of reversal

(5) The transfer under **subsection (4)** is treated as taking place at the time of the original transfer under **subsection (2)**.

Defined in this Act: Commissioner, environmental restoration account, pay

Compare: 2004 No 35 s EK 15

EK 16 Transfer on death, bankruptcy, or liquidation

When this section applies

(1) This section applies when a person—

(a) has an environmental restoration account; and

(b) does 1 of the following:

(i) dies:

(ii) becomes bankrupt:

(iii) is put into liquidation.

Transfer to other person

(2) **Subsection (3)** applies if the Commissioner is informed, by the administrator of the person's estate, the Official Assignee, or the person's liquidator, that the obligation to which the balance in the person's environmental restoration account relates has been transferred to another person.

Struck out (unanimous)

Transfer to Crown or other person

(3) The Commissioner must transfer the amount referred to in **subsection (4)** to—

(a) the department that is at the time responsible for administering the Environment Act 1986, if the transfer is to Her Majesty the Queen in right of New Zealand; or

(b) an environmental restoration account of the person to whom the obligation has been transferred, if **paragraph (a)** does not apply.

New (unanimous)

Transfer by Commissioner

(3) The Commissioner must transfer the amount referred to in **subsection (4)** to an environmental restoration account of the person to whom the obligation has been transferred.

Amount of transfer

(4) The Commissioner must transfer under **subsection (3)** the amount that is in the person's environmental restoration account on the date on which—

(a) the person dies, if **subsection (1)(b)(i)** applies:

(b) the person becomes bankrupt, if **subsection (1)(b)(ii)** applies:

(c) the person is put into liquidation, if **subsection (1)(b)(iii)** applies.

Relationship with section EK 17

(5) **Section EK 17** overrides **subsection (4)**.

New (unanimous)

Transfer treated as payment

(5B) A transfer to the environmental account of a person under **subsection (3)** is treated as a payment by the person to their environmental account.

Year of income

(6) The amount of a transfer under this section is income, under **section CB 27** (Environmental restoration accounts), derived by the person on the day before the day on which the amount of the transfer is determined under **subsection (4)**.

Defined in this Act: amount, Commissioner, environmental restoration account, income, liquidation, pay

Compare: 2004 No 35 s EK 16

EK 17 Minimum refund or transfer

The Commissioner must not give a refund or make a transfer under any of **sections EK 9, EK 12, EK 15, EK 16, and EK 19** that is less than the lesser of—

(a) $1,000; and

(b) the balance in the person's environmental restoration account on the date on which the refund or transfer is made.

Defined in this Act: Commissioner, environmental restoration account

Compare: 2004 No 35 s EK 17

EK 18 Payments from which refunds come

Each refund to a person is treated as coming from the total amount in the person's environmental restoration account in the order in which the person made the payments into the account.

Defined in this Act: amount, environmental restoration account, pay

Compare: 2004 No 35 s EK 18

EK 19 Environmental restoration account of amalgamating company

If an amalgamating company with an environmental restoration account ends its existence on an amalgamation during an income year,—

(a) the contents of the environmental restoration account of the amalgamating company are transferred to an environmental restoration account of the amalgamated company on the date of the amalgamation:

(b) the amalgamated company is treated as having—

(i) made to the amalgamated company's environmental restoration account the payments that the amalgamating company made before the amalgamation to the amalgamating company's environmental restoration account; and

(ii) made from the amalgamated company's environmental restoration account the transfers that the amalgamating company made before the amalgamation from the amalgamating company's environmental restoration account; and

(iii) received from the amalgamated company's environmental restoration account the refunds that the amalgamating company received before the amalgamation from the amalgamating company's environmental restoration account.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, environmental restoration account, income year, pay

Compare: 2004 No 35 s EK 19

EK 20 Environmental restoration account of consolidated group company

Company with environmental restoration account

(1) A company that is part of a consolidated group may have an environmental restoration account.

Struck out (unanimous)

Nominated company for group acting on behalf of company

(2) The nominated company for the consolidated group may make payments and applications and receive refunds under this subpart on behalf of the group company.

New (unanimous)

Nominated company for group acting on behalf of company

(2) The nominated company for the consolidated group may act on behalf of the group company under this subpart to—
(a) make payments, applications, and transfers:
(b) receive refunds and transfers.

Use of consolidated financial statements for group

(3) In making payments and applications under this subpart, the nominated company may rely on the audited consolidated financial statements for the consolidated group.

Use of consolidated figures for liabilities anticipated and expenditure incurred

(4) If the nominated company relies on the audited consolidated financial statements for the consolidated group, the consolidated figures for the anticipated liabilities and incurred expenditure of the consolidated group are attributed to the group companies on the basis of the individual obligations of the companies to incur expenditure of a kind listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 19, part C**.

Defined in this Act: consolidated group, environmental restoration account, nominated company, pay

Compare: 2004 No 35 s EK 20

EK 21 Notices in electronic format

The Commissioner may require a person to provide a notice under this subpart in an electronic format that the Commissioner prescribes under section 36BC of the Tax Administration Act 1994.

Defined in this Act: Commissioner, electronic format

Compare: 2004 No 35 s EK 21

EK 22 Meaning of maximum payment

Maximum payment

(1) In this subpart, **maximum payment** means the maximum payment that under **subsection (2)** a person may make to the person's environmental restoration account for an income year.

Amount of maximum payment

(2) The maximum payment that a person may make for an income year is the lesser of—

(a) the amount by which the maximum account balance for the income year for the environmental restoration account is more than the amount in the environmental restoration account at the end of the income year:

(b) the amount, if any, calculated under **subsection (3)** for the person and the income year.

Maximum payment for first 5 years of environmental restoration funds scheme

(3) If a person has a maximum account balance for the 2005–06 income year that is more than zero, the amount referred to in **subsection (2)(b)** for the person and for that income year, and for each of the later income years before the 2010–11 income year, is the amount calculated using the formula—

$$\text{level increase} + (\text{year} \times 0.2 \times \text{initial level}) - \text{contents}.$$

Definition of items in formula

(4) In the formula,—

(a) **level increase** is the greater of zero and the amount by which the maximum account balance for the income year is more than the maximum account balance for the 2005–06 income year:

(b) **year** is 1 for the 2005–06 income year and increases by 1 for each successive income year to a maximum of 5 for the 2009–10 income year:

(c) **initial level** is the maximum account balance for the 2005–06 income year:

(d) **contents** is the amount in the environmental restoration account at the end of the income year.

Defined in this Act: amount, business, environmental restoration account, income year, maximum payment, pay

Compare: 2004 No 35 s EK 22

EK 23 Other definitions

Meaning of maximum account balance

(1) In this subpart, **maximum account balance** for a person and an income year means—

(a) if the person does not meet the requirements of **section EK 2** for the income year, zero:

(b) if the person meets the requirements of **section EK 2** for the income year, the amount calculated using the formula—

$$\text{provision} \times \text{tax rate}.$$

Definition of items in formula

(2) In the formula,—

(a) **provision** is the provision in the person's financial statements for future expenditure that—

(i) is of a kind listed in **schedule 19, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and

(ii) is not of a kind listed in **schedule 19, part C**:

(b) **tax rate** is the highest rate of income tax on taxable income that—

(i) is set out in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits); and

(ii) would apply to the person for the tax year if the person had sufficient taxable income.

Meaning of environmental restoration account

(3) In this subpart, **environmental restoration account**, for a person, means the account that the Commissioner keeps in the person's name under **section EK 4**.

Defined in this Act: business, Commissioner, environmental restoration account, income tax, income year, taxable income

Compare: 2004 No 35 s EK 23

Subpart EW—Financial arrangements rules

Contents

Introductory provisions

EW 1 What this subpart does

Financial arrangements rules

(1) This subpart contains most of the financial arrangements rules.

Meaning of financial arrangements rules

(2) **Financial arrangements rules** means—

(a) the sections in this subpart; and

(b) **sections CC 3** (Financial arrangements), **DB 12 to DB 16** (which relate to financial arrangements adjustments), **EZ 51** (Transitional adjustment when changing to financial arrangements rules), **FB 9** (Financial arrangements rules), **GB 21** (Dealing that defeats intention of financial arrangements rules), **RA 11 and RA 12** (which relate to adjustments to correct errors); and

(c) sections 90AA to 90AD of the Tax Administration Act 1994.

Purposes of financial arrangements rules

(3) The purposes of the financial arrangements rules are—

(a) to require the parties to a financial arrangement to accrue over the term of the arrangement a fair and reasonable amount of income derived or expenditure incurred under the arrangement, and so to prevent the deferral of income or the advancement of expenditure; and

(b) to require the parties to a financial arrangement to disregard any distinction between capital and revenue amounts; and

(c) to require a party to a financial arrangement to calculate a base price adjustment when the rights and obligations of the party under the arrangement cease.

Defined in this Act: amount, financial arrangement, financial arrangements rules, income

Compare: 2004 No 35 s EW 1

EW 2 Relationship of financial arrangements rules with other provisions

Financial arrangements rules override other provisions

(1) The financial arrangements rules prevail over any other provision in relation to the timing and quantifying of income and expenditure under a financial arrangement to which the financial arrangements rules apply, unless the other provision expressly or by necessary implication requires otherwise.

Interest excluded from certain valuations

(2) Expenditure under a financial arrangement to which the financial arrangements rules apply is not included in—

(a) the cost of trading stock for low-turnover traders under **subpart EB** (Valuation of trading stock (including dealer's livestock)):
(b) the cost of livestock under **subpart EC** (Valuation of livestock):
(c) the cost of bloodstock under **subpart EC**:
(d) the cost of revenue account property:
(e) the cost of timber:
(f) the cost of acquiring a film or a film right:
(g) film production expenditure:
(h) petroleum development expenditure:
(i) petroleum exploration expenditure.

Defined in this Act: bloodstock, film, film production expenditure, film right, financial arrangement, financial arrangements rules, income, low-turnover trader, petroleum development expenditure, petroleum exploration expenditure, revenue account property, trading stock

Compare: 2004 No 35 s EW 2

Meaning of financial arrangement and excepted financial arrangement

EW 3 What is a financial arrangement?

Meaning

(1) **Financial arrangement** means an arrangement described in any of **subsections (2) to (4)**.

Money received for money provided

(2) A financial arrangement is an arrangement under which a person receives money in consideration for that person, or another person, providing money to any person—

(a) at a future time; or
(b) on the occurrence or non-occurrence of a future event, whether or not the event occurs because notice is given or not given.

Examples of money received for money provided

(3) Without limiting **subsection (2)**, each of the following is a financial arrangement:

(a) a debt, including a debt that arises by law:
(b) a debt instrument:
(c) the deferral of the payment of some or all of the consideration for an absolute assignment of some or all of a person's rights under another financial arrangement or under an excepted financial arrangement:
(d) the deferral of the payment of some or all of the consideration for a legal defeasance releasing a person from some or all of their obligations under another financial arrangement or under an excepted financial arrangement.

Excepted financial arrangement ceasing to be excepted

(4) For **sections EW 7 and EW 8**,—
(a) an excepted financial arrangement that ceases to be an excepted financial arrangement through the operation of **section EW 7** is a financial arrangement:
(b) an excepted financial arrangement that ceases to be an excepted financial arrangement for a party through the operation of **section EW 8** is a financial arrangement for the party.

Defined in this Act: consideration, excepted financial arrangement, financial arrangement, legal defeasance, money, pay

Compare: 2004 No 35 s EW 3

EW 4 What is not a financial arrangement?

Absolute assignment

(1) An absolute assignment of some or all of a person's rights under another financial arrangement or under an excepted financial arrangement is not a financial arrangement, except to the extent described in **section EW 3(3)(c)**.

Legal defeasance

(2) A legal defeasance releasing a person from some or all of their obligations under another financial arrangement or under an excepted financial arrangement is not a financial arrangement, except to the extent described in **section EW 3(3)(d)**.

Excepted financial arrangement

(3) An excepted financial arrangement is not a financial arrangement. The relationship between financial arrangements and excepted financial arrangements is dealt with in **section EW 6**.

Defined in this Act: excepted financial arrangement, financial arrangement, legal defeasance

Compare: 2004 No 35 s EW 4

EW 5 What is an excepted financial arrangement?

Meaning

(1) **Excepted financial arrangement** means an arrangement described in any of **subsections (2) to (25)**. However,—

(a) an arrangement described in any of **subsections (18) to (20)** may cease to be an excepted financial arrangement through the operation of **section EW 7**:

(b) an arrangement described in any of **subsections (21) to (25)** may cease to be an excepted financial arrangement for a party who makes an election under **section EW 8**.

Annuity

(2) Each of the following is an excepted financial arrangement:

(a) an annuity for a term contingent on human life:

(b) an annuity for a term not contingent on human life to which **section EY 8(2)(c)** (Meaning of life insurance) applies.

Bet

(3) A bet on any of the following is an excepted financial arrangement:

(a) a race, as defined in section 5 of the Racing Act 2003:

(b) a sporting event under a sports betting system administered under Part 6 of the Racing Act 2003:

(c) gambling, including a New Zealand lottery, as those terms are defined in section 4(1) of the Gambling Act 2003.

Employment contract

(4) An employment contract is an excepted financial arrangement.

Farm-out arrangement

(5) A farm-out arrangement is an excepted financial arrangement.

Group investment fund

(6) An interest in a group investment fund is an excepted financial arrangement.

Hire purchase: livestock or bloodstock

(7) A hire purchase agreement for livestock or bloodstock is an excepted financial arrangement.

Insurance contract

(8) An insurance contract is an excepted financial arrangement.

Lease not finance lease

(9) A lease that is not a finance lease is an excepted financial arrangement.

Loan in New Zealand currency

(10) A loan to which all the following apply is an excepted financial arrangement for the lender:
(a) the loan is in New Zealand currency; and
(b) the loan is interest-free; and
(c) the loan is repayable on demand.

Partnership or joint venture

(11) An interest in a partnership or a joint venture is an excepted financial arrangement.

Share-lending arrangement

(12) A share-lending arrangement is an excepted financial arrangement.

Share or option

(13) A share, or an option to acquire or to dispose of shares, is an excepted financial arrangement, if the share is acquired, or the person becomes a party to the option, on or after 20 May 1999. This subsection does not apply to a withdrawable share or to an option to acquire or to dispose of withdrawable shares.

Specified preference share

(14) A specified preference share to which section FZ 1 (Deduction for dividends paid on certain preference shares) of the Income Tax Act 2004 applies is an excepted financial arrangement.

Superannuation

(15) A membership of a superannuation scheme is an excepted financial arrangement.

Warranty

(16) A warranty for goods or services is an excepted financial arrangement.

Certain arrangements to which transitional resident is party

(17) An arrangement to which a transitional resident is a party is an excepted financial arrangement for the transitional resident if—

(a) no other party to the arrangement is a New Zealand resident; and

(b) the arrangement is not for a purpose of a business carried on in New Zealand by a party to the arrangement.

Loan in foreign currency: private or domestic purpose

(18) A loan to which all the following apply is an excepted financial arrangement for the borrower:

(a) the loan is in foreign currency; and

(b) the borrower is a cash basis person; and

(c) the borrower uses the loan for a private or a domestic purpose.

Option: private or domestic purpose

(19) An option to acquire or dispose of property, other than an interest in a financial arrangement, is an excepted financial arrangement for a person who becomes a party to the option for a private or a domestic purpose.

Private or domestic agreement for the sale and purchase of property or services

(20) An agreement for the sale and purchase of property or services entered into by a person, or a specified option granted to or by

a person, is an excepted financial arrangement for the person if,—

(a) first,—
   (i) the agreement is entered into by the person for a private or a domestic purpose; or
   (ii) the option is granted to or by the person for a private or a domestic purpose; and

(b) second, the subject matter of the agreement or option is—
   (i) real property whose purchase price is less than $1,000,000; or
   (ii) any other property whose purchase price is less than $400,000; or
   (iii) services whose purchase price is less than $400,000; and

(c) third,—
   (i) the agreement requires settlement of the property, or performance of the services, to take place on or before the 365th day after the date on which the agreement is entered into; or
   (ii) the option requires settlement of the property, or performance of the services, if an agreement is entered into as a result of the exercise of the option, to take place on or before the 365th day after the date on which the option is granted.

Agreement for the sale and purchase of property or services

(21) An agreement for the sale and purchase of property or services is an excepted financial arrangement, except for a party who makes an election under **section EW 8**, if—

(a) all a party’s sales or purchases under the agreement are prepaid; and

(b) for all the party’s agreements under which all sales and purchases are prepaid, the total value of prepayments, on every day in an income year, is $50,000 or less.

Short-term agreement for sale and purchase

(22) A short-term agreement for sale and purchase is an excepted financial arrangement, except for a party who makes an election under **section EW 8**.

Short-term option

(23) A short-term option is an excepted financial arrangement, except for a party who makes an election under **section EW 8**.

Travellers' cheques

(24) Travellers' cheques are excepted financial arrangements, except for a party who makes an election under **section EW 8**.

Variable principal debt instrument

(25) A variable principal debt instrument is an excepted financial arrangement, except for a party who makes an election under **section EW 8**, if the total value on every day in an income year of all variable principal debt instruments to which a person is a party is $50,000 or less.

Defined in this Act: agreement for the sale and purchase of property or services, arrangement, bloodstock, cash basis person, excepted financial arrangement, farm-out arrangement, finance lease, group investment fund, hire purchase agreement, income year, insurance contract, lease, New Zealand, New Zealand resident, non-resident, pay, property, share, share-lending arrangement, short-term agreement for sale and purchase, short-term option, superannuation scheme, transitional resident, variable principal debt instrument, withdrawable share

Compare: 2004 No 35 s EW 5

EW 6 Relationship between financial arrangements and excepted financial arrangements

Part of financial arrangement

(1) An excepted financial arrangement may be part of a financial arrangement.

Income or expenditure under specific excepted financial arrangements

(2) If an excepted financial arrangement described in any of **section EW 5(2) to (16)** is part of a financial arrangement, an amount solely attributable to the excepted financial arrangement is not an amount taken into account under the financial arrangements rules.

Income or expenditure under remaining excepted financial arrangements

(3) If an excepted financial arrangement described in any of **section EW 5(17) to (25)** is part of a financial arrangement, an

amount solely attributable to the excepted financial arrangement is an amount taken into account under the financial arrangements rules.

Defined in this Act: amount, excepted financial arrangement, financial arrangement, financial arrangements rules, income

Compare: 2004 No 35 s EW 6

EW 7 Change from private or domestic purpose

When this section applies

(1) This section applies when a person who is a party to an excepted financial arrangement described in any of **section EW 5(18) to (20)** stops using it for a private or a domestic purpose.

Excepted financial arrangement becomes financial arrangement

(2) On and after the date on which the person stops using the excepted financial arrangement for a private or a domestic purpose,—

(a) it ceases to be an excepted financial arrangement for the person; and

(b) the person becomes a party to a financial arrangement.

Defined in this Act: excepted financial arrangement, financial arrangement

Compare: 2004 No 35 s EW 7

EW 8 Election to treat certain excepted financial arrangements as financial arrangements

Election

(1) A person may choose to treat as financial arrangements all the excepted financial arrangements to which the person is a party that are described in any of **section EW 5(21) to (25)**.

Election for class of short-term agreements

(2) A person may choose to treat a class of short-term agreements for sale and purchase as financial arrangements. The person must identify the class by—

(a) the currency that applies to the agreements; or

(b) the term of the agreements; or

(c) both the currency and the term.

How election made

(3) The person makes an election by returning income derived or expenditure incurred under the chosen arrangements under the financial arrangements rules in their return of income.

How election revoked

(4) The person revokes the election by giving notice to the Commissioner with their return of income and within the time that the return must be filed under section 37 of the Tax Administration Act 1994.

Effect of revocation

(5) The revocation applies to financial arrangements the person enters into after the income year in which the notice is given.

Defined in this Act: Commissioner, excepted financial arrangement, financial arrangement, financial arrangements rules, income, income year, notice, return of income, short-term agreement for sale and purchase

Compare: 2004 No 35 s EW 8

Application of financial arrangements rules

EW 9 Persons to whom financial arrangements rules apply

Residents

(1) A person who is a party to a financial arrangement must calculate and allocate income or expenditure under the arrangement for an income year under the financial arrangements rules, if the arrangement is one to which the rules apply under **section EW 10**. This subsection is overridden by **subsection (2)**.

Non-residents

(2) **Subsection (1)** applies to a person who is not resident in New Zealand only if **subsection (3) or (4)** applies.

Non-resident with New Zealand fixed establishment

(3) **Subsection (1)** applies to a person who is not resident in New Zealand to the extent to which the person is a party to a financial arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand.

Non-resident trustee for New Zealand settlor

(4) **Subsection (1)** applies to a person who is not resident in New Zealand if—

(a) the person is a trustee for a settlor who is resident in New Zealand; and

(b) the trustee is not a person to whom **section HC 25** (Foreign-sourced amounts: non-resident trustees) apply.

Defined in this Act: financial arrangement, financial arrangements rules, fixed establishment, income, New Zealand, resident in New Zealand, trustee

Compare: 2004 No 35 s EW 9

EW 10 Financial arrangements to which financial arrangements rules apply

Entered into on or after 20 May 1999

(1) The financial arrangements rules apply to a financial arrangement that all its parties enter into on or after 20 May 1999.

Existing immediately before 20 May 1999

(2) The financial arrangements rules apply to a financial arrangement existing immediately before 20 May 1999 to the extent to which a person becomes a party to the arrangement on or after 20 May 1999.

Rollover, extension, or advance on or after 20 May 1999

(3) The financial arrangements rules apply to a financial arrangement that is rolled over or extended, or under which an advance is made, on or after 20 May 1999, under a binding contract entered into before 20 May 1999.

Binding contract before 20 May 1999

(4) However, the financial arrangements rules do not apply to a financial arrangement if—

(a) all its parties enter into it on or after 20 May 1999; and

(b) they enter into it under a binding contract entered into before 20 May 1999.

Transferred under relationship agreement

(5) The financial arrangements rules apply to a financial arrangement to which all the following apply, to the extent to which the transferee becomes a party to it:

(a) the transferor is a party to it before 20 May 1999; and

(b) it is rolled over or extended, or an advance is made under it, on or after 20 May 1999, under a binding contract entered into before 20 May 1999; and

(c) it is transferred under a relationship agreement on or after 20 May 1999.

Binding contract before 20 May 1999 and transfer under relationship agreement

(6) However, the financial arrangements rules do not apply to a financial arrangement if—

(a) all its parties enter into it on or after 20 May 1999; and

(b) they enter into it under a binding contract entered into before 20 May 1999; and

(c) it is transferred under a relationship agreement on or after 20 May 1999.

Defined in this Act: financial arrangement, financial arrangements rules, relationship agreement

Compare: 2004 No 35 s EW 10

EW 11 What financial arrangements rules do not apply to

The financial arrangements rules do not apply to—

(a) the calculation of resident passive income:

(b) the calculation of non-resident passive income:

(c) interest paid by the Commissioner under Part 7 of the Tax Administration Act 1994 for an overpayment of income tax:

(d) interest payable to the Commissioner under Part 7 of the Tax Administration Act 1994 for an underpayment of income tax.

Defined in this Act: Commissioner, financial arrangements rules, income tax, interest, non-resident passive income, pay, resident passive income

Compare: 2004 No 35 s EW 11

Calculation and allocation of income and expenditure over financial arrangement's term

EW 12 When use of spreading method required

A party to a financial arrangement must use 1 of the spreading methods to calculate an amount of income or expenditure under the arrangement for each income year over the arrangement's term, and to allocate it to the income year, unless **section EW 13** applies.

Defined in this Act: amount, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 12

EW 13 When use of spreading method not required

Base price adjustment year

(1) A person does not use any of the spreading methods for a financial arrangement in the income year in which **section EW 29** requires them to calculate a base price adjustment for it.

Trustee of personal injury compensation trust

(2) A trustee who holds a financial arrangement in trust to manage compensation paid for personal injury under the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1998, any of the former Acts, as defined in section 13 of the Accident Insurance Act 1998, the Workers Compensation Act 1956, or a court order does not use any of the spreading methods for the financial arrangement if—

(a) the trustee is a cash basis person; or

(b) the trustee would be a cash basis person if the trustee were a natural person.

Cash basis person

(3) A cash basis person is not required to use any of the spreading methods, but may choose to do so under **section EW 61**.

Defined in this Act: cash basis person, financial arrangement, income year, pay, spreading method, trustee

Compare: 2004 No 35 s EW 13

EW 14 What spreading methods do

Description

(1) The spreading methods are methods of calculating and allocating income and expenditure under a financial arrangement over the arrangement's term.

Methods

(2) A **spreading method** is 1 of the following:

(a) the yield to maturity method or an alternative, to which **sections EW 16, EW 19, and EW 23** are relevant; or

(b) the straight-line method, to which **sections EW 17 and EW 19** are relevant; or

(c) a market valuation method, to which **sections EW 18, EW 19, and EW 23** are relevant; or

(d) a determination method or an alternative, to which **sections EW 20 and EW 23** are relevant; or

(e) a financial reporting method, to which **sections EW 21 and EW 23** are relevant; or

(f) a default method, to which **section EW 22** is relevant.

Result

(3) The amount calculated for and allocated to the income year under a spreading method is—

(a) income, under **section CC 3** (Financial arrangements), derived by the person in the income year; or

(b) expenditure incurred by the person in the income year.

Defined in this Act: amount, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 14

EW 15 What is included when spreading methods used

Consideration and amounts

(1) A person using a spreading method must include, for the purpose of calculating and allocating income and expenditure under the financial arrangement,—

(a) all consideration that has been paid, and all consideration that is or will be payable, to the person for or under the financial arrangement, ignoring non-contingent fees; and

(b) all consideration that has been paid, and all consideration that is or will be payable, by the person for or under the financial arrangement, ignoring non-contingent fees; and

(c) all amounts that have been remitted, and all amounts that are to be remitted, by the person under the financial arrangement; and

(d) all amounts that would have been payable to the person under the financial arrangement if the amounts had not been remitted by law.

Consideration in particular cases

(2) If any of **sections EW 32 to EW 48** applies, the consideration referred to in **subsection (1)(a) and (b)** is adjusted under the relevant section.

Defined in this Act: amount, consideration, financial arrangement, income, non-contingent fee, pay, spreading method

Compare: 2004 No 35 s EW 15

EW 16 Yield to maturity method or alternative

Who may use yield to maturity method

(1) A person who is a party to a financial arrangement may use the yield to maturity method.

Who may use alternative

(2) A person who is a party to a financial arrangement may use an alternative to the yield to maturity method, but may do so only if the alternative—

(a) has regard to the principles of accrual accounting; and

(b) conforms with commercially acceptable practice; and

(c) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using the yield to maturity method; and

(d) is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although **section EW 23** may apply if the alternative is not used in this way.

Defined in this Act: amount, financial arrangement, income year

Compare: 2004 No 35 s EW 16

EW 17 Straight-line method

Who may use straight-line method

(1) A person who is a party to a financial arrangement may use the straight-line method if—

(a) the total value of all the financial arrangements to which the person is a party in an income year has been $1,500,000 or less on every day in the income year; and
(b) the person complies with **section EW 25(1)**.

Calculation of total value of financial arrangements

(2) When calculating total value, the person must—
(a) include every one of their financial arrangements, whether the financial arrangements rules or the old financial arrangements rules apply to it; and
(b) use the following values:
(i) for a fixed principal financial arrangement, its face value:
(ii) for a variable principal debt instrument, the amount owing by or to the person under the financial arrangement on the relevant day:
(iii) for a financial arrangement to which the old financial arrangements rules apply, the value determined under those rules.

Increase in specified sum

(3) The Governor-General may make an Order in Council increasing the sum specified in **subsection (1)**.

Defined in this Act: amount, financial arrangement, financial arrangements rules, fixed principal financial arrangement, income year, old financial arrangements rules, variable principal debt instrument

Compare: 2004 No 35 s EW 17

EW 18 Market valuation method

Who may use market valuation method

(1) A person who is a party to a financial arrangement may use, for the arrangement, a market valuation method if—
(a) either—
(i) the person's business includes dealing in financial arrangements of the class to which the arrangement belongs; or
(ii) the financial arrangement is an exchange-traded option, a forward contract for foreign exchange, or a futures contract; and
(b) the parties to the financial arrangement are not associated persons; and

(c) either—
(i) the Commissioner has approved the market, the method, and the source of information used to determine market values by a determination under section 90AC(1)(c) of the Tax Administration Act 1994; or
(ii) the person can demonstrate market prices that are reliable; and
(d) the method conforms with commercially acceptable practice; and
(e) the person complies with **section EW 25(4)**; and
(f) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although **section EW 23** may apply if the method is not used in this way.

Application of Tax Administration Act 1994

(2) Section 22A(1) of the Tax Administration Act 1994 applies to a person to whom **subsection (1)(c)(ii)** applies.

Defined in this Act: associated person, business, Commissioner, financial arrangement, forward contract, futures contract

Compare: 2004 No 35 s EW 18

EW 19 Choice among first 3 spreading methods

A person who may use the yield to maturity method or an alternative, the straight-line method, or a market valuation method for a financial arrangement may choose to use whichever of those methods the person can use for the arrangement.

Defined in this Act: financial arrangement, spreading method

Compare: 2004 No 35 s EW 19

EW 20 Determination method or alternative

Who may use determination method

(1) A person who is a party to a financial arrangement may use a determination method, that is, a method in a determination made by the Commissioner under section 90AC(1)(d) of the Tax Administration Act 1994 and applying to the arrangement, if—
(a) the person cannot use the yield to maturity method or an alternative; and

(b) the person—
   (i) may not use the straight-line method or a market valuation method; or
   (ii) may use the straight-line method or a market valuation method but chooses not to do so.

Who may use alternative

(2) A person who is a party to a financial arrangement may use an alternative to a determination method, but may do so only if—
(a) the person cannot use the yield to maturity method or an alternative; and
(b) the person—
   (i) may not use the straight-line method or a market valuation method; or
   (ii) may use the straight-line method or a market valuation method but chooses not to do so; and
(c) the alternative has regard to the principles of accrual accounting; and
(d) the alternative conforms with commercially acceptable practice; and
(e) the alternative results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using the determination method; and
(f) the alternative is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements. although **section EW 23** may apply if the alternative is not used in this way.

Defined in this Act: amount, Commissioner, financial arrangement

Compare: 2004 No 35 s EW 20

EW 21 Financial reporting method

A person who is a party to a financial arrangement may use a financial reporting method if—
(a) the person cannot use the yield to maturity method or an alternative; and
(b) the person—
   (i) may not use the straight-line method or a market valuation method; or

(ii) may use the straight-line method or a market valuation method but chooses not to do so; and

(c) the Commissioner has not made a determination for the financial arrangement under section 90AC(1)(d) of the Tax Administration Act 1994; and

(d) the method conforms with commercially acceptable practice; and

(e) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although **section EW 23** may apply if the method is not used in this way; and

(f) the method allocates a reasonable amount to each income year over the financial arrangement's term.

Defined in this Act: amount, Commissioner, financial arrangement, income year

Compare: 2004 No 35 s EW 21

EW 22 Default method

A person who is a party to a financial arrangement may use a default method if—

(a) the person cannot use the yield to maturity method or an alternative; and

(b) the person—

(i) may not use the straight-line method or a market valuation method; or

(ii) may use the straight-line method or a market valuation method but chooses not to do so; and

(c) the person may not use a determination method or an alternative, or a financial reporting method; and

(d) the person—

(i) does not prepare financial accounts; or

(ii) does not report the income derived or expenditure incurred under a financial arrangement for financial reporting purposes; and

(e) the method conforms with commercially acceptable practice; and

(f) the method allocates a reasonable amount to each income year over the financial arrangement's term.

Defined in this Act: amount, financial arrangement, income, income year

Compare: 2004 No 35 s EW 22

EW 23 Failure to use method for financial reporting purposes

When this section applies

(1) This section applies when a person would be allowed to use a method but for the fact that the person does not comply with whichever is relevant of **sections EW 16(2)(d), EW 18(1)(f), EW 20(2)(f), and EW 21(e)**.

Person treated as complying

(2) The person is treated as complying with whichever is relevant of **sections EW 16(2)(d), EW 18(1)(f), EW 20(2)(f), and EW 21(e)** if the method that the person uses for each financial arrangement—

(a) is used for the financial arrangement, and each financial arrangement that are the same as, or similar to, the arrangements, for every income year over its term for the purposes of the financial arrangements rules; and

(b) appropriately reflects the dominant purpose for which the person entered into the financial arrangement; and

(c) is not used for the purpose of tax avoidance; and

(d) has been approved for use in circumstances applying to the person by the Commissioner, either by giving notice to the person or by making a determination under section 90AC(1)(f) of the Tax Administration Act 1994.

Qualification on subsection (2)(a)

(3) A method complies with **subsection (2)(a)**, even if it is a change from a previous method, as long as the Commissioner approves the change in method under the circumstances or conditions specified in a determination under section 90AC(1)(g) of the Tax Administration Act 1994.

Defined in this Act: Commissioner, financial arrangement, financial arrangements rules, income year, notice, tax avoidance

Compare: 2004 No 35 s EW 23

EW 24 Consistency of use of spreading method

Consistency required

(1) A person must use the same spreading method for financial arrangements that are the same as, or similar to, the arrangements for every income year. This subsection is overridden by **subsection (3)**.

Straight-line method and market valuation method

(2) **Section EW 25** sets out particular consistency requirements for the straight-line method and a market valuation method.

Change of spreading method

(3) **Section EW 26** sets out the circumstances in which a person may change their spreading method.

Defined in this Act: financial arrangement, income year, spreading method

Compare: 2004 No 35 s EW 24

EW 25 Consistency of use of straight-line method and market valuation method

Straight-line method for all financial arrangements

(1) A person using the straight-line method in an income year for a financial arrangement must use it for all financial arrangements—

(a) to which the person is a party at the end of the income year; and

(b) for which the person can use it.

Straight-line method for every income year of term

(2) A person who starts to use the straight-line method for a financial arrangement must use it over the arrangement's remaining term until **section EW 29** requires them to calculate a base price adjustment for the arrangement, unless **section EW 26(1)** applies.

Total value may be over $1,500,000

(3) **Subsection (2)** applies even if the total value of all the financial arrangements to which the person is a party is over $1,500,000 at any time in the arrangement's remaining term.

Market valuation method

(4) A person who starts to use a market valuation method for a financial arrangement must use it over the arrangement's remaining term until **section EW 29** requires them to calculate a base price adjustment for the arrangement, unless **section EW 26(1)** applies.

Increase in specified sum

(5) The Governor-General may make an Order in Council under **section EW 17(3)** increasing the sum specified in **subsection (3)**.

Defined in this Act: financial arrangement, income year

Compare: 2004 No 35 s EW 25

EW 26 Change of spreading method

Change of straight-line or market valuation method

(1) A person may change from the straight-line method or the market valuation method with the Commissioner's written authorisation.

Change of other method

(2) A person may change from any other spreading method if they have a sound commercial reason for doing so. The advancement, deferral, or reduction of an income tax liability is not a sound commercial reason.

Spreading method adjustment

(3) When a person changes their spreading method under **subsection (2)**,—

- (a) they must use the formula in **section EW 27** to calculate a spreading method adjustment for the income year in which they change the method; and
- (b) their only income or expenditure under the financial arrangement for the income year to which the formula is applied is the spreading method adjustment.

Positive or negative spreading method adjustment

(4) A spreading method adjustment calculated under **section EW 27** is,—

- (a) if positive, income, under **section CC 3** (Financial arrangements), derived by the person in the income year for which the calculation is made:
- (b) if negative, expenditure incurred by the person in the income year for which the calculation is made.

Application of Tax Administration Act 1994

(5) Section 22A(2) of the Tax Administration Act 1994 applies to a person to whom **subsection (2)** applies.

Defined in this Act: Commissioner, financial arrangement, income, income tax liability, income year, spreading method

Compare: 2004 No 35 s EW 26

EW 27 Spreading method adjustment formula

Calculation of spreading method adjustment

(1) A person calculates a spreading method adjustment using the formula in **subsection (3)**.

What formula applies to

(2) The person must apply the formula to each financial arrangement to which they—

(a) are a party at the end of the income year in which they change their spreading method; and

(b) were a party at the end of the previous income year.

Formula

(3) The formula is—

income (new method) – expenditure (new method)
– income (old method) + expenditure (old method).

Definition of items in formula

(4) The items in the formula are defined in **subsections (5) to (8)**.

Income (new method)

(5) **Income (new method)** is the amount that would have been income derived by the person under the financial arrangement if the new method had been used for the arrangement in the period starting on the date on which the person became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Expenditure (new method)

(6) **Expenditure (new method)** is the amount that would have been expenditure incurred by the person under the financial arrangement if the new method had been used for the arrangement in the period starting on the date on which the person

became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Income (old method)

(7) **Income (old method)** is income, under **section CC 3** (Financial arrangements), derived by the person under the financial arrangement in **(***previous***)**earlier income years.

Expenditure (old method)

(8) **Expenditure (old method)** is expenditure incurred by the person under the financial arrangement in **(***previous***)**earlier income years.

Defined in this Act: amount, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 27

Calculation and allocation of income and expenditure when rights and obligations under financial arrangement cease

EW 28 How base price adjustment calculated

A party to a financial arrangement who must calculate a base price adjustment, as described in **sections EW 29 and EW 30**, calculates it using the formula in **section EW 31**.

Defined in this Act: financial arrangement

Compare: 2004 No 35 s EW 28

EW 29 When calculation of base price adjustment required

Ceasing to be New Zealand resident

(1) A party to a financial arrangement who ceases to be a New Zealand resident must calculate a base price adjustment as at the date of the party's ceasing to be a New Zealand resident. This subsection is overridden by **section EW 30(1) and (2)**.

Ceasing to be party for purpose of New Zealand business

(2) A person who is not a New Zealand resident and who is a party to a financial arrangement for the purpose of a business the party carries on through a fixed establishment in New Zealand must calculate a base price adjustment as at the date

of the party's ceasing to be a party to the arrangement for that purpose.

Maturity

(3) A party to a financial arrangement must calculate a base price adjustment as at the date on which the arrangement matures.

Treated as maturity

(4) A financial arrangement that has not matured because an amount has not been paid is treated as if it had matured if—

(a) the amount not paid is immaterial; and

(b) the arrangement has been structured to avoid the application of **section EW 31**.

Disposal

(5) A party to a financial arrangement who disposes of the arrangement must calculate a base price adjustment as at the date of the disposal.

Absolute assignment

(6) A party to a financial arrangement who makes an absolute assignment of all the party's rights under the arrangement must calculate a base price adjustment as at the date of the absolute assignment.

Defeasance

(7) A party to a financial arrangement who makes a legal defeasance of all the party's obligations under the arrangement must calculate a base price adjustment as at the date of the legal defeasance.

Sale at discount to associated person

(8) A party to a financial arrangement that is a debt must calculate a base price adjustment as at the date on which the creditor sells the debt to a person associated with the debtor and at a discount in the circumstances described in **section EW 43(***(1) to (4)***)**.

Discharge without consideration

(9) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement

is discharged from making all remaining payments under the arrangement without fully adequate consideration.

Operation of law

(10) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is released from making all remaining payments under the arrangement under the Insolvency Act **(***1967***)** 2006 or the Companies Act 1993 or the laws of a country or territory other than New Zealand.

Composition with creditors

(11) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is released from making all remaining payments under the arrangement by a deed or agreement of composition with the party's creditors.

Lapse of time

(12) A party to a financial arrangement must calculate a base price adjustment as at the date on which all remaining payments under the arrangement become irrecoverable or unenforceable through the lapse of time.

Defined in this Act: amount, associated person, business, consideration, financial arrangement, fixed establishment, legal defeasance, maturity, New Zealand, New Zealand resident, pay

Compare: 2004 No 35 s EW 29

EW 30 When calculation of base price adjustment not required

Cash basis person who ceases to be temporary New Zealand resident

(1) A cash basis person who ceases to be a New Zealand resident before the first day of the fourth income year following the income year in which they first became a New Zealand resident does not calculate a base price adjustment for a financial arrangement to which they—

(a) were a party before first becoming a New Zealand resident; and

(b) are a party on the date on which they cease to be a New Zealand resident.

Other party who ceases to be New Zealand resident

(2) A party to a financial arrangement who ceases to be a New Zealand resident does not calculate a base price adjustment to the extent to which the arrangement relates to a business the party carries on through a fixed establishment in New Zealand.

Creditor when legal defeasance occurs

(3) A party who has a right to receive money under a financial arrangement the obligations of which are the subject of a legal defeasance does not calculate a base price adjustment on the date of the defeasance if the defeasance requires another person to meet the remaining obligations of the arrangement.

Debtor when legal defeasance occurs

(4) A party to a financial arrangement does not calculate a base price adjustment if—
- (a) their obligations under the arrangement are the subject of an absolute legal defeasance; and
- (b) some or all of the consideration for the defeasance is deferred.

Creditor when assignment occurs

(5) A party to a financial arrangement does not calculate a base price adjustment if—
- (a) their rights under the arrangement are the subject of an absolute assignment; and
- (b) some or all of the consideration for the assignment is deferred.

Defined in this Act: business, cash basis person, consideration, financial arrangement, fixed establishment, income year, legal defeasance, money, New Zealand, New Zealand resident

Compare: 2004 No 35 s EW 30

EW 31 Base price adjustment formula

Calculation of base price adjustment

(1) A person calculates a base price adjustment using the formula in **subsection (5)**.

When formula applies

(2) The person calculates the base price adjustment for the income year in which **section EW 29** applies to them.

Positive base price adjustment

(3) A base price adjustment, if positive, is income, under **section CC 3** (Financial arrangements), derived by the person in the income year for which the calculation is made. However, it is not income to the extent to which it arises from expenditure incurred by the person under the financial arrangement in **(***previous***)**earlier income years and for which a deduction was denied in those income years.

Negative base price adjustment

(4) A base price adjustment, if negative, is expenditure incurred by the person in the income year for which the calculation is made. The person is allowed a deduction for the expenditure under **section DB 12** (Negative base price adjustment).

Formula

(5) The formula is—

consideration – income + expenditure + amount remitted.

Definition of items in formula

(6) The items in the formula are defined in **subsections (7) to (11)**.

Consideration

(7) **Consideration** is all consideration that has been paid, and all consideration that is or will be payable, to the person for or under the financial arrangement, ignoring non-contingent fees, minus all consideration that has been paid, and all consideration that is or will be payable, by the person for or under the financial arrangement, ignoring non-contingent fees.

Consideration in particular cases

(8) If any of **sections EW 32 to EW 48** applies, the consideration referred to in **subsection (7)** is adjusted under the relevant section.

Income

(9) **Income** is—

(a) income, under **section CC 3**, derived by the person under the financial arrangement in (*previous*)earlier income years; and

(b) dividends derived by the person from the release of the obligation to repay the amount lent; and

(c) income derived under **section CF 2(2) and (3)** (Remission of specified suspensory loans).

Expenditure

(10) **Expenditure** is expenditure incurred by the person under the financial arrangement in (*previous*)earlier income years.

Amount remitted

(11) **Amount remitted** is an amount that is not included in the consideration paid or payable to the person because it has been remitted—

(a) by the person; or

(b) by law.

Defined in this Act: amount, consideration, deduction, dividend, financial arrangement, income, income year, non-contingent fee, pay

Compare: 2004 No 35 s EW 31

Consideration

Consideration when financial arrangement involves property or services

EW 32 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease

When this section applies

(1) This section applies when an original party to an agreement for the sale and purchase of property (*and*) or services, a hire purchase agreement, a specified option, or a finance lease pays or is paid consideration that includes property or services.

Value of property or services

(2) The value of the property or services is determined by applying **subsections (3) to (6)** in numerical order until a subsection applies.

Lowest price

(3) The value of the property or services is the lowest price the parties would have agreed on for the property or services, on the date the agreement, option, or lease was entered into, if payment had been required in full at the time the first right in the property was transferred or the services provided. Two qualifications are—

(a) this subsection does not apply to an agreement for the sale and purchase of property or services that is part of another financial arrangement:

(b) **section EW 34** applies if the consideration is in a foreign currency.

Cash price

(4) The value of the property or services is the cash price of the property or services to which the agreement, option, or lease relates, as determined by section 5 of the Credit Contracts and Consumer Finance Act 2003, if that Act applies to the agreement, option, or lease.

Future or discounted value

(5) The value of the property or services is the future value, or the discounted value, or a combination of both the future and discounted values, of the amounts paid or payable on the date on which the first right in the property is transferred or the services are provided, as determined by the Commissioner under a determination under section 90AC(1)(i) of the Tax Administration Act 1994.

Determined by Commissioner

(6) The value of the property or services is the amount determined by the Commissioner when either party to the arrangement applies to the Commissioner for a specific determination. Both parties must use this amount.

Exclusion

(7) This section does not apply if the agreement, option, or lease has lapsed or does not proceed.

Defined in this Act: agreement for the sale and purchase of property or services, amount, Commissioner, consideration, finance lease, financial arrangement, hire purchase agreement, pay, property, right, specified option

Compare: 2004 No 35 s EW 32

EW 33 Consideration for hire purchase agreement or finance lease

When this section applies

(1) This section applies when a party to a hire purchase agreement or a finance lease pays or is paid consideration for the agreement or lease.

Consideration

(2) The consideration for a hire purchase agreement or a finance lease includes expenditure or loss incurred by the lessor in preparing and installing the hire purchase asset or personal property lease asset for use to the extent to which it is not taken into account under **section EW 32**.

Defined in this Act: consideration, finance lease, hire purchase agreement, hire purchase asset, pay, personal property lease asset, lessor

Compare: 2004 No 35 s EW 33

EW 34 Consideration in foreign currency

When this section applies

(1) This section applies when the consideration payable under a financial arrangement to which **section EW 32(3)** applies is in a foreign currency.

Lowest price

(2) The lowest price referred to in **section EW 32(3)** is the lowest price the parties would have agreed on in the foreign currency, converted into New Zealand dollars using the rate that the original party applying **section EW 32(3)** selects from the rates in **subsection (4)**. The party may select the rate in **subsection (4)(b)** only if the period between the date on which the first right in the property is to be transferred and the date on which final payment is to be made is 5 years or less.

Consistent application of rate

(3) The party must apply the selected rate to the financial arrangement for every income year over its term.

Rates

(4) The rates are—

(a) the rate, on the date on which the parties enter into the financial arrangement, available to the party from a New Zealand registered bank for the exchange of New Zealand dollars for the foreign currency for 1 of the following dates:
   (i) the date on which the first right in the property is to be transferred; or
   (ii) if that date is uncertain on the date on which the parties enter into the financial arrangement, the date on which the parties reasonably expect, when entering into the arrangement, that the first right in the property will be transferred; or

(b) the rate, on the date on which the parties enter into the financial arrangement, available to the party from a New Zealand registered bank for the exchange of New Zealand dollars for the foreign currency for 1 of the following dates:
   (i) the date on which final payment is to be made; or
   (ii) if that date is uncertain on the date on which the parties enter into the financial arrangement, the date on which the parties reasonably expect, when entering into the arrangement, that final payment will be made; or

(c) an exchange rate approved by the Commissioner for this subsection in the circumstances applicable to the party in a determination under section 90AC(1)(k) of the Tax Administration Act 1994.

Defined in this Act: Commissioner, consideration, financial arrangement, income year, New Zealand, pay, property, registered bank, right, year

Compare: 2004 No 35 s EW 34

EW 35 Value relevant for non-financial arrangements rule

When this section applies

(1) This section applies when the value of property acquired or disposed of under a financial arrangement, or the consideration for it, is relevant in determining a person's income or deductions under any provision of this Act that is not a financial arrangements rule.

Value

(2) The person is treated as having acquired or disposed of the property for a value determined by applying **section EW 32(2)**.

Defined in this Act: consideration, deduction, financial arrangement, financial arrangements rules, income, property

Compare: 2004 No 35 s EW 35

Consideration treated as paid to person

EW 36 Consideration when person exits from rules: accrued entitlement

When this section applies

(1) This section applies when—
  (a) a person is a party to a financial arrangement; and
  (b) 1 of the following situations arises:
    (i) the person ceases to be resident in New Zealand and is not a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or
    (ii) the person, not resident in New Zealand, ceases to be a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or
    (iii) the person starts using the arrangement for a private or domestic purpose and so it becomes an excepted financial arrangement described in any of **section EW 5((*16*)18) to ((*18*)20)**; and
  (c) at the time the situation arises, the person has an accrued entitlement to be paid consideration under the arrangement.

Disposal and consideration

(2) The person is treated as having disposed of their accrued entitlement immediately before the situation arose and as having been paid the market value that the accrued entitlement had at that time.

Defined in this Act: accrued entitlement, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s EW 36

EW 37 Consideration when person enters rules: accrued obligation

When this section applies

(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued obligation to pay consideration under the arrangement, 1 or more of the following situations arise:

(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(b) the person is a non-resident who—

(i) becomes a New Zealand resident who is not a transitional resident; and

(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(c) the person is a transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(17)**:

(d) the person is a transitional resident who becomes a New Zealand resident who is not a transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(17)**:

(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of **section EW 5(18) to (20)**.

Assumption and consideration

(2) The person is treated as having assumed the accrued obligation immediately after the situation arose and as having been paid the market value that a contract to assume the obligation had at that time.

Defined in this Act: accrued obligation, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, New Zealand resident, non-resident, pay, transitional resident

Compare: 2004 No 35 s EW 37

EW 38 Consideration when disposal for no, or inadequate, consideration

When this section applies

(1) This section applies when—
  (a) a person is a party to a financial arrangement; and
  (b) the person has an accrued entitlement under the arrangement; and
  (c) the person disposes of the arrangement; and
  (d) the disposal of the accrued entitlement—
    (i) is not for monetary consideration; or
    (ii) is for a consideration that is less than the market value of the entitlement on the date of the disposal.

Consideration is market value

(2) The person is treated as having been paid the market value that the accrued entitlement had on the date of the disposal.

Defined in this Act: accrued entitlement, consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 38

EW 39 Consideration affected by unfavourable factors

When this section applies

(1) This section applies when—
  (a) a person is a party to a financial arrangement; and
  (b) the person has an accrued entitlement under the arrangement; and
  (c) the person disposes of the arrangement; and
  (d) the consideration for the disposal is affected by any of the following factors:
    (i) a decline in the other party's creditworthiness between the date on which the arrangement was entered into and the date of the disposal; or
    (ii) an increase, between the date on which the arrangement was entered into and the date of the disposal, in the possibility that the other party will not meet an obligation under the arrangement; or
    (iii) the occurrence of an event reducing or cancelling the other party's obligations under the arrangement.

Exclusion

(2) This section does not apply when—

(a) the person's business includes holding or dealing in financial arrangements of the class disposed of; and

(b) the parties to the arrangement disposed of are not associated persons.

Consideration is market value

(3) The person is treated as having been paid the market value that the accrued entitlement had on the date of the disposal, as if the consideration had not been affected by a factor described in **subsection (1)(d)**.

Defined in this Act: accrued entitlement, associated person, business, consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 40

Consideration treated as paid by person

EW 40 Consideration when person exits from rules: accrued obligation

When this section applies

(1) This section applies when—

(a) a person is a party to a financial arrangement; and

(b) 1 of the following situations arises:

(i) the person ceases to be resident in New Zealand and is not a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or

(ii) the person, not resident in New Zealand, ceases to be a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or

(iii) the person starts using the arrangement for a private or domestic purpose and so it becomes an excepted financial arrangement described in any of **section EW 5(18) to (20)**; and

(c) at the time the situation arises, the person has an accrued obligation to pay consideration under the arrangement.

Relief and consideration

(2) The person is treated as having been relieved of the accrued obligation immediately before the situation arose and as having paid the market value that a contract to assume the obligation had at that time.

Defined in this Act: accrued obligation, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s EW 41

EW 41 Consideration when person enters rules: accrued entitlement

When this section applies

(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued entitlement to receive consideration under the arrangement, 1 or more of the following situations arise:

(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(b) the person is a non-resident who—

(i) becomes a New Zealand resident who is not a transitional resident; and

(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(c) the person is a transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(17)**:

(d) the person is a transitional resident who becomes a New Zealand resident who is not a transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(17)**:

(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of **section EW 5(18) to (20)**.

Acquisition and consideration

(2) The person is treated as having acquired the accrued entitlement immediately after the situation arose and as having paid the market value that the accrued entitlement had at that time.

Defined in this Act: accrued entitlement, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, New Zealand resident, non-resident, pay, transitional resident

Compare: 2004 No 35 s EW 42

EW 42 Consideration when acquisition for no, or inadequate, consideration

When this section applies

(1) This section applies when—
- (a) a person becomes a party to a financial arrangement; and
- (b) the person acquires an entitlement under the arrangement—
  - (i) not for monetary consideration; or
  - (ii) for a consideration that is less than the market value of the entitlement on the date of the acquisition.

Consideration is market value

(2) The person is treated as having paid the market value that the entitlement had on the date of the acquisition.

Defined in this Act: consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 43

EW 43 Consideration when debt sold at discount to associate of debtor

When this section applies

(1) This section applies when a creditor sells a debt on or after 20 May 1999 to a person associated under the 1988 version provisions with the debtor and at a discount.

At a discount

(2) A creditor sells a debt at a discount if the creditor sells it for 80% or less of the market value of the debt.

Market value

(3) The market value of a debt affected by any of the following factors is determined as if its market value were not affected by the factor. The factors are—

(a) the occurrence of an event reducing or cancelling the debtor's obligations under the debt; or

(b) the occurrence of 1 of the following between the date on which the debt was entered into and the date of the disposal:

(i) a decline in the debtor's creditworthiness; or

(ii) an increase in the possibility that the debtor will not meet an obligation under the debt.

Consideration

(4) The debtor is treated as having paid the creditor the amount that the person associated with the debtor pays the creditor.

Defined in this Act: 1988 version provisions, amount, associated person, consideration, pay

Compare: 2004 No 35 s EW 45

EW 44 Consideration when debt forgiven for natural love and affection

When this section applies: first case

(1) This section applies when—

(a) a person is a debtor; and

(b) the creditor is a natural person; and

(c) the creditor forgives the debtor's debt because of the natural love and affection the creditor has for the debtor.

When this section applies: second case

(2) This section also applies when—

(a) a trust is a debtor; and

(b) the trust was established mainly to benefit 1 or both of the following:

(i) a natural person for whom the creditor has natural love and affection:

(ii) an organisation or a trust whose income is exempt under **section CW 40** (Charities: non-business income) or **CW 41** (Charities: business income); and

(c) the creditor is a natural person; and
(d) the creditor forgives the debtor's debt.

Two points about subsections (1) and (2)

(3) For the purposes of **subsections (1) and (2)**,—
(a) the debtor's debt includes an amount accrued and unpaid at the time of the forgiveness; and
(b) the means by which the debt is forgiven, whether in a will or otherwise, is immaterial.

Consideration

(4) The debtor is treated as having paid the debt on the date on which the creditor forgives it.

Defined in this Act: amount, consideration, income, pay

Compare: 2004 No 35 s EW 46

EW 45 Consideration when debtor released from obligation

When this section applies

(1) This section applies when—
(a) a person is released from the obligation to pay an amount owing under a financial arrangement; and
(b) the release occurs under—
(i) section (*114*)304 of the Insolvency Act (*1967*)2006; or
(ii) any of the Inland Revenue Acts; or
(iii) a loan described in **subsection (2)**.

Social assistance suspensory loan

(2) A loan referred to in **subsection (1)(b)(iii)** is a loan that—
(a) is made by a department or instrument of the executive government of New Zealand; and
(b) provides for the person's liability to pay to be wholly or partly remitted if they meet conditions intended to promote a social policy objective of the government of New Zealand; and
(c) is of a class declared by the Governor-General by Order in Council to be a social assistance suspensory loan.

Declaration as social assistance suspensory loan

(3) The Governor-General may make an Order in Council declaring a class of loan that meets the criteria in **subsection (2)** to be a social assistance suspensory loan.

Consideration

(4) The person is treated as having paid the amount owing on the date on which they are released from the obligation to pay it.

Defined in this Act: amount, consideration, financial arrangement, Inland Revenue Acts, New Zealand, pay

Compare: 2004 No 35 s EW 47

EW 46 Consideration when debtor released as condition of new start grant

When this section applies

(1) This section applies when, in an income year of a person,—
- (a) the person carries on a business of—
  - (i) animal husbandry:
  - (ii) poultry-keeping:
  - (iii) beekeeping:
  - (iv) breeding horses other than bloodstock:
  - (v) horticulture:
  - (vi) cropping; and
- (b) the person is paid a new start grant for the business for an event that is a qualifying event; and
- (c) the person incurs a liability to make a payment under a financial arrangement—
  - (i) in carrying on the business; and
  - (ii) before the declaration of the state of emergency that relates to the qualifying event; and
- (d) the liability referred to in **paragraph (c)(i)** is forgiven or otherwise remitted—
  - (i) as a prerequisite for the payment of the new start grant; and
  - (ii) before the date that is 18 months after the end of the state of emergency; and
- (e) in the absence of this section, the amount of the remitted liability would be income of the person.

Consideration

(2) The person is treated as having paid, on the date on which the liability is forgiven or remitted, the part of the amount owing that is the greater of zero and the amount calculated using the formula—

remitted amount – current loss – loss balance – other loss.

Definition of items in formula

(3) In the formula,—
- (a) **remitted amount** is the amount of the remitted liability:
- (b) **current loss** is the tax loss that the person would have for the income year in which the liability is remitted in the absence of this section:
- (c) **loss balance** is the amount of loss balance that the person may subtract from their net income for the income year in which the liability is remitted:
- (d) **other loss** is a loss that—
  - (i) is incurred by a person associated with the person who receives the new start grant; and
  - (ii) meets the requirements of **subsection (4)**.

Loss incurred by associated person from business or land

(4) The loss referred to in **subsection (3)(d)**—
- (a) is incurred by a person who—
  - (i) carries on or has carried on the business for which the new start grant is paid or owns or has owned an estate in fee simple or leasehold estate in land used in the business; and
  - (ii) in the opinion of the Commissioner, is under a substantial degree of control by the person; and
  - (iii) in the opinion of the Commissioner, has a substantial identity of interests with the person; and
- (b) is incurred in relation to—
  - (i) the business referred to in **paragraph (a)(i)**:
  - (ii) land that is used in the business; and
- (c) is, for the income year in which the liability is remitted,—
  - (i) a tax loss of the associated person:
  - (ii) a loss balance for the associated person; and

(d) is included in the calculation in **subsection (3)** to an extent to which the Commissioner determines, having regard to the interests of the associated person that are separate from those of the person.

Notice to associated person

(5) The Commissioner must give the associated person notice of a determination under **subsection (4)(d)**.

Defined in this Act: associated person, business, Commissioner, deduction, diminished value, income, income year, loss balance, notice, pay, qualifying event, tax loss

Compare: 2004 No 35 s EW 47B

Consideration when legal defeasance has occurred

EW 47 Legal defeasance

When this section applies

(1) This section applies when—

(a) the obligations of a financial arrangement were the subject of a legal defeasance that required another person to meet the remaining obligations of the arrangement; and

(b) the person who has a right to receive money under the arrangement is now required by **section EW 29** to calculate a base price adjustment for it.

Consideration

(2) The consideration received by the person who has a right to receive money under the arrangement is the total of—

(a) the amounts received from the original debtor; and

(b) the amounts received from the person required to meet the remaining obligations.

Defined in this Act: amount, consideration, financial arrangement, legal defeasance, money

Compare: 2004 No 35 s EW 48

Consideration when anti-avoidance provision applies

EW 48 Anti-avoidance provisions

When this section applies

(1) This section applies when it is necessary to determine the consideration that is paid to or by a person in a case to which any of the following provisions applies:

(a) **section GB 21** (Dealing that defeats intention of financial arrangements rules); or
(b) **section GC 7** (Excess amount payable by person); or
(c) **section GC 8** (Insufficient amount receivable by person).

Consideration

(2) The consideration is the amount determined under the relevant provision.

Defined in this Act: amount, consideration, pay

Compare: 2004 No 35 s EW 49

Income and deduction provisions specifically related to financial arrangements

EW 49 Income and deduction when debt sold at discount to associate of debtor

When this section applies

(1) This section applies when a creditor sells a debt on or after 20 May 1999 to a person associated under the 1988 version provisions with the debtor and at a discount.

At a discount

(2) A creditor sells a debt at a discount if the creditor sells it for 80% or less of the market value of the debt.

Market value

(3) The market value of a debt affected by any of the following factors is determined as if its market value were not affected by the factor. The factors are—
(a) the occurrence of an event reducing or cancelling the debtor's obligations under the debt; or
(b) the occurrence of 1 of the following between the date on which the debt was entered into and the date of the disposal:
(i) a decline in the debtor's creditworthiness; or
(ii) an increase in the possibility that the debtor will not meet an obligation under the debt.

Original debt replaced with interest-free loan

(4) The associated person is treated as having provided the debtor with an interest-free loan for the amount paid for the debt.

Repayment: income and deduction

(5) If the debtor later repays the person associated with the debtor more than the amount the associated person paid for the debt, the excess amount paid by the debtor is—

(a) income, under **section CC 3(1)** (Financial arrangements), of the person associated with the debtor; and

(b) a deduction that the debtor is allowed under **section DB 14(1)** (Repayment of debt sold at discount to associate of debtor).

Defined in this Act: 1988 version provisions, amount, associated person, deduction, income, pay

Compare: 2004 No 35 s EW 50

EW 50 Income when debt forgiven to trustee

When this section applies

(1) This section applies when—

(a) a trust is a debtor; and

(b) the trust was established mainly to benefit 1 or both of the following:

(i) a natural person for whom the creditor has natural love and affection; or

(ii) an organisation or a trust whose income is exempt under **section CW 40** (Charities: non-business income) or **CW 41** (Charities: business income); and

(c) the creditor is a natural person; and

(d) the creditor forgives the debtor's debt; and

(e) a trustee of the trust makes a distribution, including a distribution of beneficiary income, to a beneficiary; and

(f) the beneficiary is—

(i) not a natural person for whom the creditor has natural love and affection; and

(ii) not an organisation or a trust whose income is exempt under **section CW 40** or **CW 41**; and

(g) the distribution is made on or after 20 May 1999.

Exclusion

(2) This section does not apply when—
- (a) a trust (**trust A**) is a debtor; and
- (b) trust A was established mainly to benefit 1 or both of the following:
  - (i) a natural person for whom the creditor has natural love and affection; or
  - (ii) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**; and
- (c) the creditor is a natural person; and
- (d) the creditor forgives the debtor's debt; and
- (e) a trustee of the trust makes a distribution to another trust (**trust B**); and
- (f) at the time the distribution is made, trust B is also established mainly to benefit 1 or both of the following:
  - (i) a natural person for whom the creditor has natural love and affection; or
  - (ii) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**.

Two points about subsections (1) and (2)

(3) For the purposes of **subsections (1) and (2)**,—
- (a) the debtor's debt includes an amount accrued and unpaid at the time of the forgiveness; and
- (b) the means by which the debt is forgiven, whether in a will or otherwise, is immaterial.

Distribution is income of trustee

(4) The distribution is income of the trustee, under **section CC 3(2)** (Financial arrangements), to the extent to which it is less than or equal to the total amount of the debts of the trust forgiven to it by the creditor.

Distribution subtracted from total amount forgiven

(5) The distribution is subtracted from the total amount of the debts of the trust forgiven to it by the creditor as the total amount stands at the time of the distribution.

Timing

(6) The income is derived by the trustee in the income year in which the distribution is made.

Application of Tax Administration Act 1994

(7) Section 22B of the Tax Administration Act 1994 applies to a trustee to whom this section applies.

Defined in this Act: amount, beneficiary income, distribution, income, income year, pay, trustee

Compare: 2004 No 35 s EW 51

EW 51 Deduction for security payment

When subsection (2) applies: loss generally

(1) **Subsection (2)** applies when a person is allowed a deduction under **section DB 15(2)** (Security payment).

Amount of deduction

(2) The person is allowed a deduction no greater than the amount of the security payment.

When subsection (4) applies: share loss

(3) **Subsection (4)** applies when a person is allowed a deduction under **section DB 15(4)**.

Amount of deduction

(4) The person is allowed a deduction no greater than the amount of the security payment.

Defined in this Act: amount, deduction, pay, security payment

Compare: 2004 No 35 s EW 52

Treatment of original share acquired under financial arrangement

EW 52 Share supplier under share-lending arrangement

When this section applies

(1) This section applies to a person who—
- (a) acquires a share under a financial arrangement (the **original financial arrangement**); and
- (b) is the share supplier for a share-lending arrangement; and
- (c) disposes of the share to the share user as an original share under the share-lending arrangement.

Treatment of reacquisition of original share

(2) If the person reacquires the original share under the share-lending arrangement, for the purposes of applying the financial arrangements rules to the original financial arrangement,—

(a) the person did not dispose of the original share to the share user; and

(b) the person continued to own the original share until the time that the person reacquired the original share.

Treatment of acquisition of replacement share

(3) If the person acquires an identical share under the share-lending arrangement, for the purposes of the financial arrangements rules in relation to the original financial arrangement,—

(a) the identical share is the share that the person acquired under the original financial arrangement; and

(b) the person continued to own the identical share until the time that the person acquired the replacement share.

Defined in this Act: financial arrangement, financial arrangements rules, identical share, original share, share, share-lending arrangement, share supplier, share user

Compare: 2004 No 35 s EW 52B

One kind of avoidance

EW 53 Adjustment required

When this section applies

(1) This section applies when—

(a) the terms of a financial arrangement give either party, both parties, or an associated person the discretion to decide on an amount payable under the arrangement; and

(b) it is not generally accepted commercial practice to make financial arrangements containing such terms; and

(c) a change in the amount brought about by the exercise of the discretion does not reflect changes in commodity, economic, financial, or industrial indices, or in banking or general commercial rates; and

(d) the effect of the financial arrangement is to defeat the intention of the financial arrangements rules.

Parties to calculate adjustment

(2) Each person who is a party to the financial arrangement must calculate an adjustment for the income years specified in **subsection (3)** by following the steps in **subsections (4) to (6)**.

Income years

(3) The adjustment must be calculated for the following income years:

(a) until the person ceases to be a party, the fifth income year after the income year in which the parties entered into the financial arrangement and every fifth income year after that; and

(b) the income year in which the person ceases to be a party.

First step

(4) The first step the person takes is to calculate income or expenditure under the financial arrangement for each income year using the yield to maturity method in the manner prescribed by the Commissioner in a determination under section 90AC(1)(a) of the Tax Administration Act 1994.

Consideration and amounts to be included at first step

(5) The person must include the following amounts in the calculation:

(a) for every income year for which the calculation is made, as described in **subsection (3)**, the consideration and amounts described in **section EW 15** for the period starting on the date on which the person became a party to the financial arrangement and ending on the last day of the income year for which the calculation is made; and

(b) for every fifth income year, as described in **subsection (3)(a)**,—

(i) an amount equal to the financial arrangement's market value on the last day of the income year, as if the person had disposed of the arrangement for that amount; or

(ii) if the financial arrangement has no market value, the amount that might reasonably be expected to be paid on a disposal at arm's length.

Second step

(6) The second step the person takes is to calculate the income tax liability for each income year using the income or expenditure calculated under **subsections (4) and (5)** in substitution for the income or expenditure previously calculated for the financial arrangement for each income year.

Defined in this Act: amount, associated person, Commissioner, consideration, financial arrangement, financial arrangements rules, income, income tax liability, income year, pay, prescribed

Compare: 2004 No 35 s EW 53

Application of financial arrangements rules to cash basis persons

EW 54 Meaning of cash basis person

Who is cash basis person

(1) A **cash basis person** is—

(a) a natural person who meets the criteria in **section EW 56**:

(b) a trustee of a deceased's estate, whether or not a natural person, in the circumstances described in **section EW 60**.

Natural persons excluded by Commissioner

(2) A natural person may be excluded under **section EW 59** from being a cash basis person for a class of financial arrangements.

Defined in this Act: cash basis person, Commissioner, financial arrangement, trustee

Compare: 2004 No 35 s EW 54

EW 55 Effect of being cash basis person

Use of spreading method

(1) A cash basis person is not required to apply any of the spreading methods to any of their financial arrangements, but may choose to do so under **section EW 61**.

Calculation of base price adjustment

(2) The fact that a cash basis person does not use any of the spreading methods for the financial arrangement does not excuse them from the requirement to calculate a base price

adjustment when any of **section EW 29(1) to ((*13*)12)** applies to them.

Defined in this Act: cash basis person, financial arrangement, spreading method

Compare: 2004 No 35 s EW 55

EW 56 Natural person

Criteria for natural person as cash basis person

(1) A natural person is a cash basis person for an income year if—
  - (a) 1 of the following applies in the person's case for the income year:
    - (i) **section EW 57(1)**; or
    - (ii) **section EW 57(2)**; and
  - (b) **section EW 57(3)** applies in the person's case for the income year; and
  - (c) the person is not a trustee.

Financial arrangements, income, and expenditure relevant to application of criteria

(2) The calculations required by **section EW 57(1) to (3)** are done for the financial arrangements, or the income and expenditure, described in **section EW 58**.

Increase in specified sums

(3) The Governor-General may make an Order in Council increasing a sum specified in any of **section EW 57(1) to (3)**.

Defined in this Act: cash basis person, financial arrangement, income, income year, trustee

Compare: 2004 No 35 s EW 56

EW 57 Thresholds

Income and expenditure threshold

(1) For the purposes of **section EW 56(1)(a)(i)**, this subsection applies if the absolute value of the person's income and expenditure in the income year under all financial arrangements to which the person is a party is $100,000 or less.

Absolute value threshold

(2) For the purposes of **section EW 56(1)(a)(ii)**, this subsection applies if, on every day in the income year, the absolute value of all financial arrangements to which the person is a party added

together is $1,000,000 or less. The value of each arrangement is,—

(a) for a fixed principal financial arrangement, its face value:

(b) for a variable principal debt instrument, the amount owing by or to the person under the financial arrangement:

(c) for a financial arrangement to which the old financial arrangements rules apply, the value determined under those rules.

Deferral threshold

(3) For the purposes of **section EW 56(1)(b)**, this subsection applies if the result of applying the formula in **subsection (4)** to each financial arrangement to which the person is a party at the end of the income year and adding the outcomes together is $40,000 or less.

Formula

(4) The formula is—

$$(\text{accrual income} - \text{cash basis income}) + (\text{cash basis expenditure} - \text{accrual expenditure}).$$

Definition of items in formula

(5) The items in the formula are defined in **subsections (6) to (9)**.

Accrual income

(6) **Accrual income** is the amount that would have been income derived by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. It is calculated using 1 of the following methods, as chosen by the person:

(a) the yield to maturity method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(b) the straight-line method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(c) an alternative method approved by the Commissioner.

Cash basis income

(7) **Cash basis income** is the amount that would have been income derived by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Cash basis expenditure

(8) **Cash basis expenditure** is the amount that would have been expenditure incurred by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Accrual expenditure

(9) **Accrual expenditure** is the amount that would have been expenditure incurred under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. It is calculated using 1 of the following methods, as chosen by the person:

(a) the yield to maturity method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(b) the straight-line method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(c) an alternative method approved by the Commissioner.

Defined in this Act: absolute value, amount, cash basis person, Commissioner, financial arrangement, fixed principal financial arrangement, income, income year, old financial arrangements rules, spreading method, variable principal debt instrument

Compare: 2004 No 35 s EW 57

EW 58 Financial arrangements, income, and expenditure relevant to criteria

Inclusions in and exclusions from thresholds

(1) The calculations required by **section EW 57(1) to (3)** are done for every financial arrangement to which the natural person is a party or, as the relevant subsection requires, to income and expenditure under such an arrangement, whether the financial arrangements rules or the old financial arrangements rules apply to the arrangement. Two qualifications are—

(a) the calculations include an arrangement, or income and expenditure, to which **subsection (2) or (3)** applies only to the extent of the person's interest in it, as described in each subsection; and

(b) the calculations exclude the value of an arrangement, and income and expenditure, in which the person has the interest described in **subsection (4) or (5)**.

Natural person who is partner

(2) This subsection applies when a partnership required to make a joint return of income under section 42(1) of the Tax Administration Act 1994 is a party to a financial arrangement. A natural person who is a partner in the partnership—

(a) is a party to the arrangement to the extent of the partner's share in the arrangement; and

(b) derives income or incurs expenditure under the arrangement to the extent of the partner's share in the income or expenditure of the partnership.

Natural person who is beneficiary of bare trust

(3) This subsection applies when the trustee of a bare trust is a party to a financial arrangement. A natural person who is a beneficiary of the bare trust—

(a) is treated as a party to the arrangement to the extent of the beneficiary's share of the beneficial interest in the arrangement; and

(b) is treated as deriving income or incurring expenditure under the arrangement to the extent of the beneficiary's share of the beneficial interest in the arrangement.

Natural person who is beneficiary of trust other than bare trust

(4) This subsection applies when a natural person is a beneficiary of a trust, other than a bare trust, whose trustee is a party to a financial arrangement. The following are excluded from the calculations required by **section EW 57(1) to (3)**:

(a) the value of the arrangement, if it produces trustee income or beneficiary income under the trust rules; and

(b) income under the arrangement that is trustee income or beneficiary income under the trust rules.

Natural person who is trustee

(5) This subsection applies when a natural person is a party to a financial arrangement as a trustee. The following are excluded from the calculations required by **section EW 57(1) to (3)**:

(a) the value of the arrangement, if it produces trustee income or beneficiary income under the trust rules; and

(b) income under the arrangement that is trustee income or beneficiary income under the trust rules; and

(c) the value of the arrangement, if expenditure is incurred under it; and

(d) expenditure incurred under the arrangement.

Defined in this Act: beneficiary income, financial arrangement, financial arrangements rules, income, old financial arrangements rules, return of income, trust rules, trustee, trustee income

Compare: 2004 No 35 s EW 58

EW 59 Exclusion by Commissioner

The Commissioner may treat a natural person who would otherwise be a cash basis person for a class of financial arrangements as not being a cash basis person for the class if that or any other person has structured and promoted the class to defer an income tax liability.

Defined in this Act: cash basis person, Commissioner, financial arrangement, income tax liability

Compare: 2004 No 35 s EW 59

EW 60 Trustee of deceased's estate

When trustee of estate is cash basis person

(1) A trustee of a deceased's estate is a cash basis person for financial arrangements in the estate in the circumstances

described in **subsection (2)** for the period described in **subsection (3)**.

Circumstances

(2) The circumstances are that, at the time of the deceased's death,—

(a) the deceased is a cash basis person; and

(b) the financial arrangements in the deceased's estate meet the requirements of **section EW 56(1)(a) and (b)**.

Period

(3) The period is the income year in which the deceased dies and in each of the 4 following income years. However, if at any time in those 5 income years the financial arrangements in the deceased's estate cease to meet the requirements of **section EW 56(1)(a) and (b)**, the trustee ceases to be a cash basis person for financial arrangements in the estate and cannot again be a cash basis person for them.

Modifications to be read in

(4) For the purposes of this section, **sections EW 54 to EW 56** are read with the modifications necessary to make them refer to the case of a deceased estate.

Defined in this Act: cash basis person, financial arrangement, income year, trustee

Compare: 2004 No 35 s EW 60

EW 61 Election to use spreading method

Election of spreading method

(1) A cash basis person may choose to use a spreading method, unless **subsection (2)** applies.

Election not allowed

(2) A cash basis person may not choose to use a spreading method for a financial arrangement in the income year in which **section EW 29** requires them to calculate a base price adjustment for the arrangement.

How election made

(3) The person makes the election by calculating a cash basis adjustment under **section EW 62(1)**.

Effect of election

(4) The person must use a spreading method for—

(a) all financial arrangements to which the person is a party at the time of making the election; and

(b) all financial arrangements the person enters into after the income year in which they make the election.

How election revoked

(5) The person revokes the election by giving notice to the Commissioner with a return of income and within the time that the return must be filed under section 37 of the Tax Administration Act 1994.

Effect of revocation

(6) The revocation applies to all financial arrangements the person enters into after the income year in which the notice is given.

Defined in this Act: cash basis person, Commissioner, financial arrangement, income year, notice, return of income, spreading method

Compare: 2004 No 35 s EW 61

EW 62 When and how calculation of cash basis adjustment required

Choosing spreading method

(1) A cash basis person who chooses to use a spreading method must calculate a cash basis adjustment for the income year in which they choose to use a spreading method as if they had ceased to be a cash basis person.

Person becoming cash basis person

(2) A person who becomes a cash basis person in an income year must calculate a cash basis adjustment for a financial arrangement to which they—

(a) are a party at the end of the income year; and

(b) were a party at the end of the previous income year.

Exclusions

(3) However,—

(a) a person who becomes a cash basis person in an income year and who chooses to continue using a spreading method in the income year must not calculate a cash basis adjustment; and

(b) a person who becomes a cash basis person in an income year must not calculate a cash basis adjustment for a financial arrangement that is already being accounted for on a cash basis.

Person ceasing to be cash basis person

(4) A person who ceases to be a cash basis person in an income year must calculate a cash basis adjustment for a financial arrangement to which they—

(a) are a party at the end of the income year; and

(b) were a party at the end of the previous income year.

Exclusion

(5) However, a person who ceases to be a cash basis person must not calculate a cash basis adjustment for a financial arrangement that is already subject to a spreading method.

Person not cash basis person if adjustment not made

(6) A person who would be a cash basis person for a financial arrangement if they calculated a cash basis adjustment for it, and who does not calculate the adjustment, is not a cash basis person for the arrangement.

Cash basis adjustment

(7) A person calculates a cash basis adjustment using the formula in **section EW 63**.

Adjustment is income or expenditure

(8) The only income or expenditure under the financial arrangement for the income year to which the formula is applied is the cash basis adjustment.

Positive or negative cash basis adjustment

(9) A cash basis adjustment is,—

(a) if positive, income, under **section CC 3(1)** (Financial arrangements), derived by the person in the income year for which the calculation is made:

(b) if negative, expenditure incurred by the person in the income year for which the calculation is made.

Defined in this Act: cash basis person, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 62

EW 63 Cash basis adjustment formula

Formula

(1) A person calculates a cash basis adjustment using the formula—

adjusted income – adjusted expenditure – previous income + previous expenditure.

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (6)**.

Adjusted income

(3) **Adjusted income** is,—

(a) for a person who becomes a cash basis person, the amount that would have been income derived by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made; and

(b) for a person who ceases to be a cash basis person, the amount that would have been income derived by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Adjusted expenditure

(4) **Adjusted expenditure** is,—

(a) for a person who becomes a cash basis person, the amount that would have been expenditure incurred by the person under the financial arrangement if they had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made; and

(b) for a person who ceases to be a cash basis person, the amount that would have been expenditure incurred by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Previous income

(5) **Previous income** is income derived by the person under the financial arrangement in **(***previous***)**earlier income years.

Previous expenditure

(6) **Previous expenditure** is expenditure incurred by the person under the financial arrangement in **(***previous***)**earlier income years.

Defined in this Act: amount, cash basis person, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 63

Subpart EX—Controlled foreign company and foreign investment fund rules

Contents

Controlled foreign company rules

When is a company a controlled foreign company?

Calculation of person's control interest

Calculation of person's income interest

Controlled foreign company rules

When is a company a controlled foreign company?

EX 1 Meaning of (*CFC*)controlled foreign company

Tests of control

(1) A foreign company is a controlled foreign company (**CFC**) if any of the following tests is met:

   (a) there is a group of 5 or fewer New Zealand residents whose total control interests in the company are more than 50% in any one of the control interest categories:

   (b) a single New Zealand resident holds a control interest of 40% or more unless at the same time—

      (i) another person also holds a 40% or more control interest in the same control interest category; and

      (ii) the other person is not a New Zealand resident; and

      (iii) the other person is not associated with the New Zealand resident:

   (c) there is a group of 5 or fewer New Zealand residents who can control the exercise of the shareholder decision-making rights for the company and, as a result, control the company's affairs.

Status applies for whole accounting period

(2) If any of the tests is met at any time in a foreign company's accounting period, the company is treated as a CFC for the whole of the accounting period.

Defined in this Act: accounting period, associated person, CFC, company, control, control interest, control interest category, foreign company, New Zealand resident, shareholder decision-making right

Compare: 2004 No 35 s EX 1

Calculation of person's control interest

EX 2 Four categories for calculating control interests

Separate categories

(1) Under **section EX 5(1)**, a direct **control interest** in a foreign company can arise in each of 4 separate categories of rights.

List of categories

(2) The 4 categories are—

- (a) shareholding in the foreign company:
- (b) shareholder decision-making rights for the foreign company:
- (c) rights to receive income from the foreign company:
- (d) rights to receive distributions of the company's net assets.

Detailed calculation rules

(3) In each category, more detailed calculation rules appear in **section EX 5**.

Four categories of control interests

(4) Accordingly, the rules in **section EX 3** for calculating control interests by totalling various direct and indirect control interests and associated parties' interests are applied on a category by category basis, by reference to those categories of direct control interest.

Defined in this Act: associated person, control interest, direct control interest, foreign company, income, shareholder decision-making right

Compare: 2004 No 35 s EX 2

EX 3 Control interest: total of direct, indirect, and associated person interests

Calculation of control interest

(1) A New Zealand resident's control interest in a foreign company at any time is the total of the following for the relevant control interest category:

(a) any direct control interest that the New Zealand resident holds in the company:

(b) any direct control interests in the company held by persons associated with the New Zealand resident:

(c) any indirect control interests that the New Zealand resident holds in the company:

(d) any indirect control interests in the company held by persons associated with the New Zealand resident.

Avoidance arrangements: first kind

(2) **Section GB 7** (Arrangements involving CFC control interests) may apply to treat a control interest as being held by a group of New Zealand residents in equal proportions.

Avoidance arrangements: other kinds

(3) Any of the following sections may apply to the calculation of a person's control interest:

(a) **section GB 9** (Temporary disposals of direct control or income interests):

(b) **section GB 10** (Temporary acquisitions of direct control or income interests):

(c) **section GB 11** (Temporary increases in totals for control interest categor**(***y***)**ies **(***totals***)**):

(d) **section GB 12** (Temporary reductions in totals for control interest categor**(***y***)**ies **(***totals***)**):

(e) **section GB 13** (When combination of changes reduces income):

(f) **section GB 14** (When combination of changes increases loss).

Defined in this Act: associated person, control interest, direct control interest, foreign company, New Zealand resident

Compare: 2004 No 35 s GC 9

EX 4 Limits to requirement to include associated person interests

Non-resident relatives

(1) For the purposes of **section EX 3**, a New Zealand resident is associated with a non-resident relative only if the New Zealand resident holds a direct control interest or indirect control interest in the foreign company.

No double counting

(2) Despite **section EX 3(1)(b) and (d)**, for the purposes of determining whether a foreign company is a CFC, a direct control interest or indirect control interest may be counted only once.

Defined in this Act: associated person, CFC, control interest, direct control interest, foreign company, New Zealand resident, non-resident, relative

Compare: 2004 No 35 s EX 4

EX 5 Direct control interests

Categories of direct control interests

(1) A person has a **direct control interest** in a foreign company at any time if they hold—

(a) any of the shares in the foreign company:

(b) any of the shareholder decision-making rights for the company:

(c) a right to receive, or to control the application of, any of the income of the company for the accounting period in which the time falls:

(d) a right to receive, or to control the application of, any of the value of the net assets of the company, if they are distributed.

Percentage of total is counted

(2) The direct control interest in each control interest category is the percentage of the total that the person holds.

Measurement of available subscribed capital

(3) When the direct control interest in the category in **subsection (1)(a)** is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of

the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company.

Varying decision-making rights

(4) When the direct control interest in the category in **subsection (1)(b)** is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in **section YA 1** (Definitions), the highest percentage is taken.

Income distribution rights: assumptions

(5) When the direct control interest in the category in **subsection (1)(c)** is calculated, it is assumed that—

(a) the income is distributed on the last day of the accounting period; and

(b) the person's entitlement is unchanged during the period; and

(c) a payment of interest on a debenture subject to **section FA 2** (Recharacterisation of certain debentures) or **FZ 1** (Treatment of interest payable under debentures issued before certain date) is a distribution of income.

Defined in this Act: accounting period, available subscribed capital, control interest category, direct control interest, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 5

EX 6 Direct control interests include options and similar rights

Entitlement to acquire or extinguish

(1) For the purposes of **section EX 5**, a person is treated as holding something if they are entitled to acquire it or extinguish it.

Entitlement arises in various ways

(2) A person is entitled to acquire or extinguish something if the entitlement is absolute or contingent and whether the entitlement—

(a) arises under a company's constitution; or

(b) arises under the terms of an option; or

(c) arises under the terms of a convertible note; or

(d) arises under the terms of any arrangement substantially similar to any of those described in **paragraphs (a) to (c)**; or
(e) arises in some other way.

Standard security arrangements

(3) Despite **subsections (1) and (2)**, a person is not treated as being entitled to acquire something if—
(a) the entitlement arises under a security arrangement; and
(b) the person acquired the security arrangement in a transaction entered into on an arm's length basis; and
(c) the security arrangement's terms conform to generally accepted commercial practice.

No double counting

(4) Despite **subsections (1) and (2)**, for the purpose of determining whether a foreign company is a CFC, each of the percentage holdings described in **section EX 5** may be counted only once.

Defined in this Act: arrangement, CFC, company, convertible note, direct control interest, foreign company, security arrangement

Compare: 2004 No 35 s EX 6

EX 7 Indirect control interests

How indirect control interests arise

(1) A person has an indirect **control interest** in a foreign company to the extent to which the rules in this section attribute to them some or all of the direct control interests held by a CFC in the foreign company.

Attribution of CFC's direct interests

(2) A CFC's direct control interest in another foreign company is attributed under **subsections (3) to (11)**.

Associates

(3) For the purposes of this section, the CFC is treated as also holding any direct control interests in the foreign company held by persons associated with the CFC.

Attribution to smallest controlling group

(4) **Subsections (6) to (11)** apply to attribute the CFC's direct control interests to the smallest controlling group, to ensure that the

attribution exercise does not dilute recognition of a factual chain of control.

Attribution on basis of respective income interests

(5) If the CFC's direct control interests are attributed to more than 1 person, the direct control interests are divided in proportion to each group member's respective income interest in the CFC.

One controlling group

(6) If there is only 1 group of New Zealand residents whose control interests have caused the CFC to be a CFC under **section EX 1**, the CFC's direct control interests are treated as being held by that group.

More than 1 group

(7) If there is more than 1 group whose control interests have caused the CFC to be a CFC under **section EX 1**, the CFC's direct control interests are attributed to the smallest group.

Equal smallest groups

(8) If there are 2 or more groups that are equally the smallest, and 1 group has the greatest total control interests in the CFC, the attribution is to that group.

Equal smallest groups with equal greatest control interests

(9) If there are 2 or more smallest groups with equal greatest total control interests in the CFC, the attribution is made in full to each group.

No double counting

(10) Despite **subsection (9)**, for the purpose of determining whether a foreign company is a CFC, a direct control interest may be counted only once.

Sequential application

(11) If a foreign company becomes a CFC under this section, this section is then applied to attribute its direct control interests.

Defined in this Act: associated person, CFC, control, control interest, direct control interest, foreign company, income interest, New Zealand resident

Compare: 2004 No 35 s EX 7

Calculation of person's income interest

EX 8 Income interests: total of direct and indirect interests

Calculation of income interest

(1) A person's income interest in a CFC at any time is the total of the following:
- (a) any direct income interest that the person holds in the CFC:
- (b) any indirect income interest that the person holds in the CFC.

Avoidance arrangements

(2) Any of the following sections may apply to the calculation of a person's income interest:
- (a) **section GB 9** (Temporary disposals of direct control or income interests):
- (b) **section GB 10** (Temporary acquisitions of direct control or income interests):
- (c) **section GB 11** (Temporary increases in totals for control interest categor(*y*)ies):
- (d) **section GB 12** (Temporary reductions in totals for control interest categor(*y*)ies):
- (e) **section GB 13** (When combination of changes reduces income):
- (f) **section GB 14** (When combination of changes increases loss).

Defined in this Act: CFC, control interest category, direct control interest, direct income interest, income, income interest, indirect income interest

Compare: 2004 No 35 s EX 8

EX 9 Direct income interests

Categories of direct income interest

(1) A person has a **direct income interest** in a CFC at any time if they hold—
- (a) any of the shares in the foreign company:
- (b) any of the shareholder decision-making rights for the company:
- (c) a right to receive, or to control the application of, any of the income of the company for the accounting period in which the time falls:

(d) a right to receive, or to control the application of, any of the value of the net assets of the company, if they are distributed.

Percentage of total is counted

(2) The person's direct income interest is the percentage of the total that the person holds.

Varying percentages

(3) However, if the percentage varies between the different categories, the person's direct income interest is the highest.

Measurement of available subscribed capital

(4) When the direct income interest in the category in **subsection (1)(a)** is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company.

Varying decision-making rights

(5) When the direct income interest in the category in **subsection (1)(b)** is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in **section YA 1** (Definitions), the highest percentage is taken.

Income distribution rights: assumptions

(6) When the direct income interest in the category in **subsection (1)(c)** is calculated, it is assumed that—

(a) the income is distributed on the last day of the accounting period; and

(b) the person's entitlement is unchanged during the period; and

(c) a payment of interest on a debenture subject to **section FA 2** (Recharacterisation of certain debentures) or **FZ 1** (Treatment of interest payable under debentures issued before certain date) is a distribution of income.

Defined in this Act: accounting period, available subscribed capital, CFC, debentures, direct income interest, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 9

EX 10 Indirect income interests

Looking through CFCs

(1) If a person has a direct income interest in a CFC, and the first CFC has a direct income interest in another CFC, the person has an **indirect income interest** in the other CFC.

Calculation of indirect income interest

(2) The indirect income interest is calculated by multiplying the person’s direct income interest in the first CFC by the first CFC’s direct income interest in the other CFC.

Chains of CFCs

(3) If there are 2 or more CFCs in a chain of direct income interests between the person and a CFC, the person has an indirect income interest in the CFC at the end of the chain that is calculated by multiplying all the direct income interests in the chain.

Defined in this Act: CFC, direct income interest, indirect income interest

Compare: 2004 No 35 s EX 10

EX 11 Options and similar rights in certain cases

Increase in income interest

(1) The rules in this section apply to increase a person’s income interest in a CFC (the **first CFC**) in some cases.

Entitlement to acquire

(2) This section applies when the person, or some other person, such as another CFC taken into account when calculating an indirect income interest of the person in the first CFC, has at any time an entitlement (the **option**) to acquire 1 of the things listed in **section EX 9(1)** in relation to the first CFC but does not hold it.

Actual holder outside CFC rules attribution

(3) For this section to apply, the actual holder of the thing subject to the option must not be—
- (a) another CFC:
- (b) a New Zealand resident, unless they are a New Zealand resident whose income interest in the first CFC for the accounting period in question is less than 10%.

Terms of option indicating economic ownership

(4) For this section to apply, the option must have 1 of the following features:

(a) in the absence of this section, the effect of the option would be to defeat the intent and application of **subpart CQ** (Attributed income from foreign equity) or **DN** (Attributed losses from foreign equity) or this subpart, taking into account the economic benefit that the person gets as a result of the CFC deriving income:

(b) the consideration payable for the exercise of the option is less than the market value of the thing acquired at the time of the acquisition:

(c) the holder of the option (or an associated person) has directly or indirectly funded or assisted the actual holder to acquire or hold the thing subject to the option.

Calculation as if option exercised

(5) If each requirement for this section to apply is met, the person's income interest is calculated as if the option holder had exercised the option.

Defined in this Act: accounting period, associated person, CFC, income, income interest, indirect income interest, New Zealand resident, pay

Compare: 2004 No 35 s EX 11

EX 12 Reduction of total income interests

Application of this section

(1) This section applies when the total income interests for a CFC for an accounting period would be more than 100%, because **section EX 9(3)** requires the highest percentage to be taken if varying percentage shareholder rights are held.

Proportional reduction

(2) Each person's income interest for the period is reduced to the amount calculated using the formula—

$$\text{income interest before reduction} \times \frac{100}{\text{total income interests before reduction.}}$$

Defined in this Act: accounting period, amount, CFC, income interest, shareholder

Compare: 2004 No 35 s EX 12

EX 13 Income interests of partners

When this section applies

(1) This section applies when a partnership holds rights that would be an income interest in a CFC if the partnership were an individual.

Partners' proportions

(2) When income interests in the CFC are calculated, each partner is treated as holding a share of anything held by the partnership, in proportion to the partner's interest in the partnership.

Defined in this Act: CFC, income interest

Compare: 2004 No 35 s EX 13

Ten percent threshold and variations in income interest level

EX 14 Attribution: 10% threshold

A person has attributed CFC income or attributed CFC loss from a CFC only if the person's income interest in the CFC is 10% or more for the relevant accounting period.

Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, income interest

Compare: 2004 No 35 s EX 14

EX 15 Associates and 10% threshold

Associates included

(1) Solely for the purpose of applying the 10% threshold in **section EX 14**, and the equivalent test in **sections EX 32(b)** and **EX 46(1)(a)**, a person's income interest in a CFC is increased by each income interest in the CFC for the accounting period of a person associated with the person.

Exception

(2) Despite **subsection (1)**, the income interest of an associate is not counted if the associate is a CFC.

Defined in this Act: accounting period, associated person, CFC, income interest

Compare: 2004 No 35 s EX 15

EX 16 Income interests for certain purposes

When this section applies

(1) This section applies for the purposes of determining the attributed CFC income or loss of a person for a period if the person holds an income interest in the CFC on a day in the period.

Zero income interest

(2) For the purposes of calculating the attributed CFC income or loss of a person for a period, the person has an income interest in a CFC of zero on a day in the period if, on the day, the person is—

(a) a non-resident:

(b) a transitional resident.

Attribution not prevented

(3) This section does not override—

(a) **section CD 21** (Attributed repatriations from controlled foreign companies), which treats a dividend resulting from attributed repatriation as being derived while the person deriving it is a New Zealand resident; or

(b) **section CQ 2(3)** (When attributed CFC income arises), which treats any attributed CFC income as being derived while the person deriving it is a New Zealand resident; or

(c) **section CQ 5(4)** (When FIF income arises), which treats any foreign investment fund (FIF) income as being derived while the person deriving it is a New Zealand resident.

Defined in this Act: accounting period, attributed CFC income, attributed repatriation, CFC, dividend, FIF income, income interest, New Zealand resident, non-resident, transitional resident

Compare: 2004 No 35 s EX 16

EX 17 Income interest if variations within period

When this section applies

(1) This section applies when a person's income interest in a CFC, calculated under **sections EX 8 to EX 16**, varies between days in a period.

Weighted average

(2) The person's income interest for the period is the total of the amounts for the period, each of which is calculated using the formula in **subsection (3)** for a day in the period.

Formula

(3) The formula is—

$$\frac{\text{income interest for day}}{\text{days in period.}}$$

Definition of items in formula

(4) In the formula,—

(a) **income interest for day** is—

(i) the income interest during the day, if the income interest does not vary during the day:

(ii) the income interest at the start of the day, if the income interest varies during the day:

(b) **days in period** is the number of days in the period.

Defined in this Act: CFC, income interest

Compare: 2004 No 35 s EX 17

Calculation of attributed CFC income or loss

EX 18 Formula for calculating attributed CFC income or loss

If a person has attributed CFC income under **section CQ 2** (When attributed CFC income arises) or an attributed CFC loss under **section DN 2** (When attributed CFC loss arises), the amount of a person's attributed CFC income or loss from a CFC for an accounting period is calculated using the formula—

$$\text{person's income interest for accounting period} \times \text{branch equivalent income or loss of CFC for accounting period.}$$

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, branch equivalent income, CFC, income interest, loss

Compare: 2004 No 35 s EX 18

EX 19 Taxable distribution from non-complying trust

Application of this section

(1) This section applies when—

(a) a CFC derives a taxable distribution from a non-complying trust in an accounting period; and
(b) a person has attributed CFC income or loss from the CFC for the period, or would have if the taxable distribution were included in the CFC's branch equivalent income.

Additional attributed CFC income

(2) The taxable distribution is excluded under **section EX 21(32)** when calculating the CFC's branch equivalent income or loss, and instead the person has additional attributed CFC income.

Calculation of additional attributed CFC income

(3) The amount of the additional attributed CFC income is calculated using the formula—

$$\text{person's income interest in CFC for accounting period} \times \text{taxable distribution.}$$

Non-complying trust tax rate

(4) The person is liable for income tax on the additional attributed CFC income at the rate in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) that applies to amounts under **section HC 19** (Taxable distributions from non-complying trusts).

Disclosure restrictions on grey list CFCs

(5) No additional attributed CFC income arises under this section to the extent to which **section EZ 32** (Disclosure restrictions on grey list CFCs before 2011–12) applies.

Defined in this Act: accounting period, amount, attributed CFC income, branch equivalent income, CFC, income interest, income tax, loss, non-complying trust, taxable distribution

Compare: 2004 No 35 s EX 19

EX 20 Reduction in attributed CFC loss

Application of this section: no economic loss

(1) This section applies when—
(a) a person has an amount of attributed CFC loss; and
(b) the person suffers no, or substantially no, corresponding economic loss, whether because of a call option, a put option, or any other reason.

Application of this section: attributed CFC loss excessive

(2) This section also applies if—
(a) a person has an amount of attributed CFC loss; and
(b) the amount is more than any corresponding economic loss of the person, whether because of the application of the rules for calculating the person's income interest or for any other reason.

Reduction to economic loss

(3) The attributed CFC loss is reduced to be equal to the economic loss, if any.

Defined in this Act: amount, attributed CFC loss, income interest

Compare: 2004 No 35 s EX 20

Calculation of branch equivalent income or loss

EX 21 Branch equivalent income or loss: calculation rules

Rules set out in this section

(1) For the purpose of calculating the attributed CFC income or loss of a person (the **taxpayer**), the branch equivalent income or loss of the CFC for an accounting period is calculated under the rules in this section.

CFC treated as New Zealand resident

(2) The rules in this Act are applied as if the CFC were always a New Zealand resident, and—
(a) the CFC's branch equivalent income for the accounting period is equal to the CFC's net income for the period; and
(b) the CFC's branch equivalent loss for the accounting period is equal to the CFC's net loss for the period.

Modifications to rules

(3) However, the rules in the Act are modified for the purposes of the calculation by the following subsections.

Conversion to New Zealand dollars

(4) The taxpayer must choose—
(a) for all the calculations to be done in New Zealand dollars; or

(b) for all the calculations to be done in the currency of the CFC's financial accounts; and if the CFC has no financial accounts, the currency used is that of the CFC's country of residence, the result being then converted into New Zealand dollars at the average of the close of trading spot exchange rates for the **(***fifteenth***)**15th day of each complete month that falls in the period.

Consent for change of currency

(5) Having chosen a currency, the taxpayer must use the same currency for calculating branch equivalent income or loss for the CFC for each later consecutive accounting period, unless the Commissioner allows the taxpayer to choose again.

Change for commercial purpose

(6) The Commissioner may consent to a change under **subsection (5)** only if satisfied that—

(a) the taxpayer's main purpose in changing is a commercial one, and for this purpose, the reducing of tax is not a commercial purpose; and

(b) the change does not have an effect of defeating the intent and application of **subpart CQ** (Attributed income from foreign equity) or **DN** (Attributed losses from foreign equity) or this subpart.

New Zealand currency for financial arrangements

(7) Despite **subsections (4) to (6)**, New Zealand currency calculations must be used to calculate that part of the branch equivalent income or loss attributable to financial arrangements if—

(a) the total value of financial arrangements to which the CFC is a party is more than $1,000,000 at any time during the relevant accounting period, applying **section EW 17(2)(b)** (Straight-line method) to measure the values; or

(b) the CFC's total net foreign exchange loss attributable to financial arrangements, calculated under **subsections (4) to (6)** for the accounting period, is more than $100,000.

Limit to subsection (7)

(8) **Subsection (7)** does not apply to a financial arrangement if—

(a) it is a variable principal debt instrument; and
(b) all the rights and obligations of all the parties to the financial arrangement are expressed in the currency chosen under **subsection (4)(b)**; and
(c) no other party to the financial arrangement is associated with the CFC; and
(d) no person enters into the financial arrangement under an arrangement that has a purpose of defeating the application of **subsection (7)**.

Opening cost base: tangible assets: first period

(9) If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose whether to measure the cost base at the start of an accounting period of premises, plant, machinery, equipment, and trading stock of the CFC at—
(a) historical cost minus any accumulated amounts of depreciation loss, or another value used by the CFC as the starting value for the period for income tax calculations in the country in which the CFC is resident, but only if the value is below market value; or
(b) the starting value that would be used under this Act if the CFC had always been a New Zealand resident.

Opening cost base: tangible assets: later periods

(10) If the taxpayer had attributed CFC income or loss from the CFC for the previous period, the cost base at the start of an accounting period of premises, plant, machinery, equipment, and trading stock of the CFC is the closing value at the end of the previous period used to calculate the income or loss.

Opening cost base: financial arrangements: first period

(11) If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose to calculate the consideration under the financial arrangements rules for a financial arrangement at the start of an accounting period, at—
(a) the market value of the financial arrangement; or
(b) the absolute value calculated using the formula—

consideration paid to the CFC + expenditure
– consideration paid by the CFC – income.

Definition of items in formula

(12) In the formula,—

(a) **consideration paid to the CFC** is the consideration paid to the CFC for all periods before the accounting period:

(b) **expenditure** is expenditure that would have been incurred under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand:

(c) **consideration paid by the CFC** is the consideration paid by the CFC for all periods before the accounting period:

(d) **income** is income that would have been derived under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand.

Provisions that do not apply

(13) The following provisions do not apply:

(a) the consolidation rules:

(b) **section CB 26** (Income equalisation schemes) and **subparts DQ** (Income equalisation schemes and environmental restoration accounts schemes) and **EH** (Income equalisation schemes):

(c) **sections CD 45 to CD 52** (which relate to the CFC attributed repatriation calculation rules) or **subpart CQ** (Attributed income from foreign equity) or **DN** (Attributed losses from foreign equity) or this subpart to the extent to which any of the sections or subparts would result in attributed CFC income, attributed CFC loss, or attributed repatriation for the CFC:

(d) **section CW 8** (Money lent to government of New Zealand):

(e) **section CW 39(1)** (Local and regional promotion bodies):

(f) **sections DO 1** (Enhancements to land, except trees) and **DO 2** (Erosion and shelter plantings):

(g) **sections EW 9** (Persons to whom financial arrangements rules apply) and **EW 11(b)** (What financial arrangements rules do not apply to):

(h) **subpart FE** (Interest apportionment on thin capitalisation):

(i) **section GB 5** (Arrangements involving trust beneficiaries):

(j) **subpart IC and sections IA 2 to IA 9, IP 3 to IP 7, IZ 4, and IZ 5** (which relate to the use of tax losses).

Business treated as if carried on in New Zealand

(14) The following provisions apply as if the CFC's business activities were carried on in New Zealand:

(a) **sections CT 1 to CT 3, CT 5 to CT 7, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5** (which relate to petroleum mining):

(b) **sections DO 4 to DO 7, DO 12, DP 1 to DP 3, DP 8, and DP 11** (which relate to farming, aquacultural, and forestry expenditure):

(c) **section EZ 17** (Amount of depreciation loss for plant or machinery additional to section EZ 16 amount):

(d) the definitions in **subpart YA** (General definitions) that specifically apply for the purposes of those sections.

Transfer pricing rules

(15) **Sections GC 6 to GC 14** (which relate to transfer pricing arrangements between associated persons) apply only to a transaction that has a purpose or effect of defeating any of the jurisdictional ring-fencing rules for CFC losses and tax credits in—

(a) **section DN 4** (Ring-fencing cap on deduction):

(b) **section IQ 2** (Ring-fencing cap on attributed CFC net losses):

(c) **section IQ 4** (Group companies using attributed CFC net losses):

(d) sections **LK 1 to LK 7** (which relate to foreign tax credits and CFCs).

Also, when **sections GC 6 to GC 14** are applied, the associated persons include persons associated under the parts of **subpart YB** (Associated persons and nominees) that apply for the purposes of the whole Act, excluding the 1973, 1988, and 1990 version provisions.

Dividends generally

(16) **Sections CW 9 to CW 11** (which relate to exempt income from equity) and **CZ 13** (Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996) do not

apply and dividends are income that is not exempt income, unless **subsection (17)** applies.

Dividends: exempt income

(17) Despite **subsection (16)**, dividends are exempt income of the CFC if—

(a) the dividends are derived by the CFC from another CFC and the taxpayer has a 10% or greater income interest under **sections EX 14 to EX 17** in the other CFC for an accounting period falling in the same relevant income year or the previous income year; or

(b) the dividends are from shares that are an attributing interest in a FIF of the CFC.

Benefits from money advanced

(18) When **section CC 7** (Consideration other than in money) is applied, the borrower is treated as if it carries on a business in New Zealand.

No tainting by association

(19) **Sections CB 9 to CB 13** (which relate to the disposal of land) and **CV 1** (Group companies) do not apply to treat an amount derived by the CFC as income merely because of the activities of a person associated with the CFC if the associate is a non-resident.

Crown acquisition of land

(20) The reference in **section EI 7(1)** (Disposal of land to Crown) to the Crown includes any relevant government outside New Zealand.

Amount of depreciation loss recovered

(21) When **sections EE 50 to EE 54** (which relate to disposals and similar events) are applied, the CFC is treated as having had a deduction for an amount of depreciation loss, and to have an adjusted tax value accordingly, if an amount of depreciation loss has been deducted when calculating the CFC's branch equivalent income or loss for any period and the attributed CFC income or loss of any person.

GST and value-added taxes

(22) When **sections CX 1** (GST), **DB 2** (GST), **EE 47** (Consideration for purposes of **section EE 46**), **EE 55** (Cost: GST), **(***EZ 9 (FIF interests held on 1 April 1993),***)** and **EZ 18** (Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994) are applied, references to output tax, input tax, or goods and services tax (GST) payable include a reference to the equivalent item arising under the value-added tax or other tax rules of a country or territory outside New Zealand if the rules have a similar intent and application to the New Zealand GST rules.

Government grants to businesses

(23) When **section DF 1** (Government grants to businesses) is applied, a reference to the New Zealand government includes a government outside New Zealand but, to the extent to which **section DF 1** still does not apply to a grant or subsidy to the CFC from a government, the grant or subsidy is income of the CFC.

Subvention payments

(24) If an amount is paid as consideration for the transfer of tax losses,—
- (a) it is income if derived by the CFC; and
- (b) it is a deduction if payable by the CFC but only if paid to a person resident in the same country as the CFC and if deductible under the taxation law of that country.

Life insurers

(25) **Subsection (26)** applies if—
- (a) the CFC itself carries on the business of providing life insurance; or
- (b) shares in the CFC are held, directly or indirectly, by a foreign company (the **parent company**, in **subsection (26)**) that carries on the business of providing life insurance and those shares have to be taken into account under **sections EX 8 to EX 13** to calculate the taxpayer's income interest in the CFC.

Policyholders

(26) If the test in **subsection (25)** is met, the life insurance rules do not apply and the branch equivalent income or loss of the CFC is the amount actuarially determined to be the part of the CFC's net income or loss to which shareholders, and not policyholders in either the CFC or the parent company, are entitled.

When subsection (26) does not apply

(27) Despite **subsection (25)**, **subsection (26)** does not apply if the Commissioner—

(a) considers that the amount calculated is not a reasonable reflection of the part attributable to shareholders; or

(b) has requested and not received sufficient information to enable the actuarial calculation to be reviewed.

Mineral mining activities

(28) **Sections BC 7, CU 1 to CU 29, CX 44 to CX 46, CZ 2, CZ 4, DU 1 to DU 12, DZ 12, IS 1 to IS 4** (which relate to mineral mining) apply, with any necessary modifications, if the CFC carries on activities outside New Zealand that are substantially the same as the mineral mining activities to which those sections apply.

Petroleum mining activities

(29) **Sections CT 1 to CT 3, CT 5, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5** (which relate to petroleum mining) apply, with any necessary modifications, if the CFC carries on petroleum mining activities outside New Zealand that are substantially the same as the petroleum mining activities to which those sections apply.

Finance leases and specified leases

(30) A lease entered into by the CFC before the start of the first accounting period in which the CFC is a CFC is neither a finance lease (subject to the financial arrangements rules and **sections FA 6 to FA 11**, which relate to finance leases), nor a specified lease, subject to **sections FZ 2 to FZ 4** (which relate to leases).

When subsection (30) does not apply

(31) **Subsection (30)** does not apply if another party to the lease is either a CFC or a New Zealand resident.

Taxable distributions from non-complying trust

(32) If the CFC gets a taxable distribution from a non-complying trust—

(a) **section HC 22** (Use of tax losses to reduce taxable distributions from non-complying trusts) does not apply; and

(b) the taxable distribution is not taken into account in calculating the CFC's branch equivalent income or loss; and

(c) **section EX 19** applies.

CFCs with interest in FIFs

(33) If the CFC has rights in a FIF,—

(a) the rights are not prevented from being an attributing interest of the CFC in a FIF merely because the notional New Zealand residence of the CFC under **subsection (2)** causes **section EX 32** to apply; and

(b) the CFC's FIF income or loss is not taken into account in calculating the branch equivalent income; and

(c) **section EX 46** applies.

Transitional treatment of cross-border reinsurance

(34) **Section CZ 12** (General insurance with risk period straddling 1 July 1993) applies as if the reference to New Zealand were a reference to the CFC's country of residence.

Disclosure restrictions on grey list CFCs

(35) A CFC has no amount of branch equivalent income or loss under this section for an accounting period to the extent to which **section EZ 32** (Disclosure restrictions on grey list CFCs before 2011–12) applies.

Defined in this Act: absolute value, accounting period, adjusted tax value, amount, arrangement, associated person, attributed CFC income, attributed CFC loss, attributed repatriation, attributing interest, branch equivalent income, branch equivalent loss, business, CFC, close of trading spot exchange rate, Commissioner, consideration, consolidation rules, deduction, depreciation loss, dividend, exempt income, FIF, FIF income, finance lease, financial arrangement, financial arrangements rules, foreign company, GST, GST payable, income, income interest, income tax, income year, input tax, lease, life insurance, life insurance rules, loss, mineral, net income, net loss, New Zealand, New Zealand resident, non-complying trust, non-resident, output tax, pay, petroleum, resident in New Zealand, share, shareholder, specified lease, tax, taxable distribution, trading stock, variable principal debt instrument

Compare: 2004 No 35 s EX 21

Grey list exemption

EX 22 Unqualified grey list CFCs

Criteria

(1) A CFC is an unqualified grey list CFC for an accounting period if—
  (a) at all times in the accounting period it is resident in a country listed in **schedule 24, part A** (International tax rules: grey list countries); and
  (b) in that country the CFC's liability for income tax has not been reduced by applying any of the concessions listed in **schedule 24, part B**.

No attributed income or loss

(2) **Sections CQ 2(1)(g)** (When attributed CFC income arises) and **DN 2(g)** (When attributed CFC loss arises) provide that no attributed CFC income or attributed CFC loss arises from an unqualified grey list CFC.

CFCs with interest in FIFs: look-through approach

(3) This section does not prevent FIF income or loss arising under **section EX 46**, if an unqualified grey list CFC has an interest in a FIF.

Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, FIF, FIF income, grey list, income tax, loss

Compare: 2004 No 35 s EX 22

EX 23 Tax concession grey list CFCs

Criteria

(1) A CFC is a tax concession grey list CFC for an accounting period if—
  (a) at all times in the accounting period it is resident in a country listed in **schedule 24, part A** (International tax rules: grey list countries); and
  (b) in that country the CFC's liability for income tax has been reduced by applying any of the concessions listed in **schedule 24, part B**.

Attribution using country's tax rules

(2) In the case of a tax concession grey list CFC,—
 (a) **section EX 21** does not apply for the accounting period; and
 (b) when **section EX 18** is applied, the amount of branch equivalent income or loss for the period is equal to the net income or net loss calculated under the income tax law of the CFC's country of residence but—
  (i) excluding any allowance for carrying forward prior period losses; and
  (ii) adjusted to exclude the benefit of concessions listed in **schedule 24, part B**; and
  (iii) converted to New Zealand dollars under **section EX 21(4)(b)**.

Defined in this Act: accounting period, amount, branch equivalent income, CFC, grey list, income tax, loss, net income, net loss, New Zealand

Compare: 2004 No 35 s EX 23

Residence of companies

EX 24 Residence in grey list country

Necessary liability to income tax

(1) For the purposes of this subpart and **subparts CQ**, **DN**, and **LF** (which relate to attributed income and losses from foreign equity and to foreign tax credits), a CFC is resident in a country listed in **schedule 24, part A** (International tax rules: grey list countries) if—
 (a) the CFC is liable in the country to income tax on the CFC's income because the CFC—
  (i) is domiciled in the country:
  (ii) is resident in the country:
  (iii) is incorporated in the country:
  (iv) has its place of management in the country:
 (b) the CFC is organised under the laws of the country and the country—
  (i) imposes on persons holding income interests in the CFC the liability for income tax on the CFC's income; and
  (ii) under the laws of the country, is the source of 80% or more of the income of the CFC.

Relationship with sections YD 2 and YD 3

(2) This section overrides **sections YD 2 and YD 3** (which relate to the residence of companies).

Defined in this Act: CFC, grey list, income tax

Compare: 2004 No 35 s EX 24

EX 25 Companies moving to or from New Zealand

Companies becoming foreign

(1) If a company becomes a foreign company, an accounting period of the company starts on the day when the company becomes a foreign company and the former accounting period ends on the previous day.

Companies ceasing to be foreign

(2) If a foreign company ceases to be a foreign company, an accounting period of the company starts on the day when the company ceases to be a foreign company and the former accounting period ends on the previous day.

Pro-rating

(3) If **subsection (1) or (2)** applies to shorten an accounting period of a CFC, a person with attributed CFC income or loss from the CFC for the period may choose to calculate the branch equivalent income or loss of the CFC—

(a) using the results for the shortened period only; or

(b) by applying the pro-rating formula in **subsection (4)** to the results for the unshortened period.

Formula

(4) The formula for calculating branch equivalent income or loss under **subsection (3)(b)** is—

$$\begin{array}{c}\text{unshortened period}\\ \text{branch equivalent}\\ \text{income or loss}\end{array} \times \frac{\text{days in shortened period}}{\text{days in unshortened period.}}$$

Defined in this Act: accounting period, attributed CFC income, branch equivalent income, CFC, company, foreign company, loss, New Zealand

Compare: 2004 No 35 s EX 25

Change of CFC's balance date

EX 26 Change of CFC's balance date

Application of this section

(1) This section applies when a person—

(a) has an income interest in a CFC; and

(b) has calculated attributed CFC income or loss or attributed repatriation from the CFC on the basis of 1 accounting year (the **old accounting year**); and

(c) wants to change to use a different accounting year (the **new accounting year**) for the calculations.

Change requiring Commissioner's consent

(2) The person may make the change only if the Commissioner agrees.

Commissioner's reasons

(3) The Commissioner may consider any relevant factors when making the decision, including—

(a) whether the change is sought because ownership of the CFC has changed:

(b) whether the change is sought because of taxation or other legal requirements in a country where the CFC is resident or does business:

(c) whether the change is sought to achieve consistent balance dates in a group of companies:

(d) whether the change would postpone liability to income tax on attributed CFC income or on attributed repatriation or to a foreign dividend payment (FDP) on attributed repatriation.

No transitional deferral

(4) If the new accounting year ends in a later income year than the year the old accounting year ends in, and that fact would result in an amount of attributed CFC income or attributed repatriation being derived in the later income year, the amount is not deferred to the later income year and instead is treated as

derived in the previous income year. However, this subsection applies only once, in the year of the transition.

Defined in this Act: accounting year, amount, attributed CFC income, attributed repatriation, business, CFC, Commissioner, FDP, group of companies, income interest, income tax, income year, loss

Compare: 2004 No 35 s EX 26

Ownership measurement concession

EX 27 Use of quarterly measurement

Interests held at end of quarter

(1) In order to simplify the process of calculating a person's control interest or income interest in a foreign company, the person is treated as holding at all times during a quarter the same interest, including a zero interest, as the interest they hold at the end of the quarter.

Anti-avoidance

(2) The concession in **subsection (1)** is overridden by the anti-avoidance rules in **sections GB 9 to GB 16** (which relate to arrangements involving CFCs).

Ignoring concession

(3) A person may choose not to apply the concession in **subsection (1)** when calculating their attributed CFC income or loss from a foreign company.

Election

(4) An election under **subsection (3)**—
   (a) must be in the form required by the Commissioner; and
   (b) is irrevocable; and
   (c) applies in the income year in which it is made and later.

Defined in this Act: attributed CFC income, Commissioner, control interest, foreign company, income interest, income year, loss, quarter

Compare: 2004 No 35 s EX 27

Anti-avoidance rule: stapled stock

EX 28 Anti-avoidance rule: stapled stock

When this section applies

(1) This section applies when—

(a) a New Zealand resident holds rights (the **stapled rights**) that give rise to an income interest or control interest in a foreign company; and
(b) the rights may, or may ordinarily, be disposed of only together with rights in another company; and
(c) the other company is a New Zealand resident or a CFC.

Stapled rights held by company

(2) When each of **subparts CQ** (Attributed income from foreign equity) and **DN** (Attributed losses from foreign equity) and this subpart is applied, the stapled rights are held by the other company and not by the person.

Defined in this Act: CFC, company, control interest, foreign company, income interest, New Zealand resident

Compare: 2004 No 35 s EX 28

Foreign investment fund rules

What is a foreign investment fund?

EX 29 Meaning of FIF

A **foreign investment fund**, or **FIF**, is any of the following:
(a) a foreign company:
(b) a foreign superannuation scheme:
(c) an insurer under a life insurance policy, but not if the policy is offered or entered into in New Zealand (in which case the insurer must comply with the life insurance rules in relation to the policy):
(d) an entity described in **schedule 25, part A** (Foreign investment funds).

Defined in this Act: FIF, foreign company, foreign investment fund, foreign superannuation scheme, life insurance policy, life insurance rules, offered or entered into in New Zealand

Compare: 2004 No 35 s EX 29

Attributing interests in FIFs

EX 30 Attributing interests in FIFs

Three categories

(1) A person has an **attributing interest** in a FIF if—
(a) the person holds rights in 1 of the categories of rights described in **subsections (2) to (4)**; and

(b) none of the exemptions in **sections EX 32 to EX 37** applies to those rights.

Category 1: direct income interest in foreign company

(2) The first category is a direct income interest in a foreign company, as defined in **section EX 31**, or in an entity described in **schedule 25, part A** (Foreign investment funds).

Category 2: foreign superannuation scheme entitlement

(3) The second category is rights to benefit from a foreign superannuation scheme, as a beneficiary or a member.

Category 3: foreign life policy entitlement

(4) The third category is rights to benefit from a life insurance policy in relation to which a FIF is the insurer.

Contingent rights

(5) The second and third categories include rights that are contingent or discretionary.

Defined in this Act: attributing interest, direct income interest, FIF, foreign company, foreign superannuation scheme, life insurance policy

Compare: 2004 No 35 s EX 30

EX 31 Direct income interests in FIFs

Categories of direct income interest

(1) A person has a direct income interest in a foreign company at any time if they hold—

(a) any of the shares in the foreign company:

(b) any of the shareholder decision-making rights for the company:

(c) a right to receive, or to apply, any of the income of the company for the accounting period in which the time falls:

(d) a right to receive, or to apply, any of the value of the net assets of the company, if they are distributed.

Percentage of total

(2) The person's direct income interest is the percentage of the total that the person holds.

Varying percentages

(3) However, if the percentage varies between the different categories, the person's direct income interest is the highest.

Measurement of available subscribed capital

(4) When the direct income interest in the category in **subsection (1)(a)** is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company.

Varying decision-making rights

(5) When the direct income interest in the category in **subsection (1)(b)** is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in **section YA 1** (Definitions), the highest percentage is taken.

Income distribution rights: assumptions

(6) When the direct income interest in the category in **subsection (1)(c)** is calculated, it is assumed that—
- (a) the income is distributed on the last day of the accounting period; and
- (b) the person's entitlement is unchanged during the period; and
- (c) a payment of interest on a debenture subject to **section FA 2** (Recharacterisation of certain debentures) is a distribution of income.

Meaning of company

(7) In this section, and in defined terms referred to in this section, **company** includes an entity listed in **schedule 25, part A** (Foreign investment funds).

Defined in this Act: accounting period, available subscribed capital, company, debentures, direct income interest, FIF, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 31

EX 32 CFC rules exemption

A person's rights in a FIF at any time are not an attributing interest if—

(a) the FIF is a CFC at the time; and

(b) the person has an income interest of 10% or more in the CFC for the accounting period during which the time falls.

Defined in this Act: accounting period, attributing interest, CFC, FIF, income interest

Compare: 2004 No 35 s EX 32

Struck out (unanimous)

EX 33 Grey list exemption

Exemption

(1) A person's rights in a FIF in an income year are not an attributing interest if, at all times in the income year,—

(a) the FIF is not an entity described in **schedule 25, part B** (Foreign investment funds); and

(b) a country listed in **schedule 24, part A** (International tax rules: grey list countries), in relation to the FIF, meets at least 1 of the grounds for exemption set out in **subsections (2) and (3)**.

First ground for exemption

(2) The country—

(a) is the residence of the FIF under **section YD 3** (Country of residence of foreign companies); and

(b) imposes on the FIF liability for income tax on the FIF's income because the FIF—

(i) is domiciled in the country:

(ii) is resident in the country:

(iii) is incorporated in the country:

(iv) has its place of management in the country.

Second ground for exemption

(3) The country—

(a) is the country under whose laws the FIF is organised; and

(b) imposes on persons holding income interests in the FIF liability for income tax on the FIF's income; and

Struck out (unanimous)

(c) under the laws of the country, is the source of 80% or more of the income of the FIF.

Exemption: categories 2 and 3

(4) **Subsection (1)** does not apply if the rights of the person are those described in **section EX 30(3) or (4)**.

Defined in this Act: attributing interest, company, FIF, grey list, income tax, income year

Compare: 2004 No 35 s EX 33

New (unanimous)

EX 33 Exemptions: direct income interests in FIF in grey list country

Direct income interest of 10% or more

(1) A person's rights in a FIF in an income year are not an attributing interest if, at all times in the income year,—

(a) the rights are a direct income interest of 10% or more; and

(b) the person is not a portfolio investment entity, a superannuation scheme, a unit trust, a life insurer, or a group investment fund; and

(c) the FIF is not an entity described in **schedule 25, part B** (Foreign investment funds); and

(d) the FIF meets the requirements of **subsection (2)**.

Further requirements

(2) The FIF meets the requirements of this subsection if—

(a) the FIF is a grey list company and a country listed in the grey list imposes on the FIF liability for income tax on the FIF's income because the FIF—

(i) is domiciled in the country:

(ii) is resident in the country:

(iii) is incorporated in the country:

(iv) has its place of management in the country:

(b) a country is listed in the grey list that—

(i) is the country under whose laws the FIF is organised; and

New (unanimous)

(ii) imposes on persons holding income interests in the FIF liability for income tax on the FIF's income; and

(iii) under the laws of the country, is the source of 80% or more of the income of the FIF.

Shares acquired when FIF resident and unlisted company

(3) A person's rights in a FIF in an income year are not an attributing interest if—

(a) the rights are shares; and

(b) the FIF is a grey list company that is not an entity described in **schedule 25, part B**; and

(c) the person acquired the shares when—

(i) the company was resident in New Zealand; and

(ii) the shares were not listed on a recognised exchange; and

(d) the company became a grey list company immediately after having, for 12 months or more,—

(i) been resident in New Zealand; and

(ii) had in New Zealand more than 50% of its assets and employees; and

(e) the year begins less than 10 years after the company became a grey list company; and

(f) at all times in the year, the company has a fixed establishment in New Zealand; and

(g) the company through the fixed establishment—

(i) incurs expenditure other than interest of $1,000,000 in the year:

(ii) at all times in the year, engages 10 or more full-time employees or contractors.

Shares acquired when FIF unlisted, FIF owning resident company

(4) A person's rights in a FIF in an income year are not an attributing interest if—

(a) the rights are shares; and

(b) the FIF is a grey list company that is not an entity described in **schedule 25, part B**; and

New (unanimous)

(c) the person acquired the shares when the shares were not listed on a recognised exchange; and
(d) at all times in the year, the grey list company directly or indirectly owns a company (the **resident company**) that, for 12 months or more, has—
 (i) been resident in New Zealand; and
 (ii) had in New Zealand more than 50% of its assets and employees; and
(e) the year begins less than 10 years after the grey list company first owned the resident company; and
(f) the resident company through a fixed establishment in New Zealand—
 (i) incurs expenditure other than interest of $1,000,000 in the year:
 (ii) at all times in the year, engages 10 or more full-time employees or contractors.

Shares acquired under share purchase agreement

(5) A person's rights in a FIF in an income year are not an attributing interest if—
(a) the person is a natural person; and
(b) the rights are shares; and
(c) the FIF is a grey list company that is not an entity described in **schedule 25, part B**; and
(d) at the time the person acquires the shares, the FIF—
 (i) employs the person:
 (ii) owns, directly or indirectly, the person's employer; and
(e) the person acquires the shares under a share purchase agreement; and
(f) the share purchase agreement includes a restriction on the disposal of the shares that affects the value under **section CE 3** (Restrictions on disposal of shares under share purchase agreements) of the benefit to the person under the agreement; and
(g) at the beginning of the year, the period of the restriction has not expired or has expired for a period of less than 6 months.

New (unanimous)

Exception: categories 2 and 3

(6) **Subsections (1) to (5)** do not apply if the rights of the person are those described in **section EX 30(3) or (4)**.

Defined in this Act: attributing interest, company, direct income interest, employee, employer, FIF, fixed establishment, grey list, grey list company, group investment fund, income tax, income year, interest, life insurer, New Zealand resident, portfolio investment entity, recognised exchange, share, share purchase agreement, superannuation scheme, unit trust, year

Compare: 2004 No 35 s EX 33

EX 33B Exemptions limited by income years: shares in certain grey list companies

Exemption for certain shares: listing, holding, and taxation

(1) A person's rights in a FIF in an income year beginning before 1 April 2012 are not an attributing interest if the rights are shares in a grey list company that,—
- (a) on 17 May 2006,—
  - (i) is not an entity described in **schedule 25, part B** (Foreign investment funds); and
  - (ii) is listed on a recognised exchange in New Zealand; and
  - (iii) has more than 20,000 shareholders who have addresses in New Zealand on the company's share register; and
  - (iv) has shareholders referred to in **subparagraph (iii)** who between them hold shares in the company carrying voting interests of more than 50%; and
  - (v) is listed on a recognised exchange in a country listed in the grey list; and
  - (vi) is liable to income tax in a country listed in the grey list; and
  - (vii) has assets of which more than 50% in total value are shares in other companies carrying voting interests of more than 50%; and
- (b) in the period of 30 days beginning from the day on which the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 receives the Royal assent, notifies the Commissioner that on 17 May 2006 the

New (unanimous)

grey list company met the requirements of **paragraphs (a)(i) to (vii)**.

Exemption for certain shares: investment

(2) A person's rights in a FIF in an income year beginning before 1 April 2009 are not an attributing interest if the rights are shares in a grey list company that,—

(a) on 17 May 2006,—

(i) is not an entity described in **schedule 25, part B** (Foreign investment funds); and

(ii) is listed on a recognised exchange in New Zealand; and

(iii) has shareholders of which more than 40% have addresses in New Zealand on the company's share register in New Zealand; and

(iv) is listed on a recognised exchange in a country listed in the grey list; and

(v) is liable to income tax in a country listed in the grey list; and

(vi) has assets of which 50% or more in total value are shares in other companies each of which is resident in New Zealand; and

(vii) has assets of which 90% or more in total value are shares in other companies each of which is resident in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand; and

(b) in the period of 30 days beginning from the day on the which the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 receives the Royal assent, notifies the Commissioner that on 17 May 2006 the grey list company met the requirements of **paragraphs (a)(i) to (vii)**; and

(c) at all times in the year,—

(i) has assets of which 50% or more in total value are shares in other companies each of which is resident in New Zealand; and

New (unanimous)

(ii) has assets of which 90% or more in total value are shares in other companies each of which is resident in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand.

Exception: election in tax return

(3) An exemption under **subsection (1) or (2)** does not apply for a person for an income year (the **initial year**) and for later income years, if the person completes a return of income for the initial year on the basis that the exemption does not apply for the person and the initial income year.

Defined in this Act: attributing interest, company, FIF, fixed establishment, grey list, grey list company, income tax, income year, New Zealand resident, recognised exchange, resident in Australia, resident in New Zealand, share, shareholder, voting interest, year

Compare: 2004 No 35 s EX 33B

EX 33C Exemption: shares in listed Australian companies

A person's rights in a FIF in an income year are not an attributing interest if the rights are from shares and the FIF is a company that, at all times in the year, is—

(a) resident in Australia and not treated under a double tax agreement between Australia and another country as resident in a country other than Australia or New Zealand; and

(b) included in an index that is an approved index under the ASX Market Rules made under Chapter 7 of the Corporations Act 2001 (Aust); and

(c) not an entity described in **schedule 25, part B** (Foreign investment funds); and

(d) required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.

Defined in this Act: attributing interest, company, direct income interest, double tax agreement, FIF, income tax, income year, resident in Australia, resident in New Zealand, share, year

Compare: 2004 No 35 s EX 33C

New (unanimous)

EX 33D Exemptions: units in certain Australian unit trusts

Exemption

(1) A person's rights in a FIF in an income year are not an attributing interest if—

(a) the FIF is a unit trust; and

(b) the FIF is not an entity described in **schedule 25, part B** (Foreign investment funds); and

(c) at all times in the year, the unit trust is resident in Australia; and

(d) at all times in the year, an RWT proxy exists under section 15T of the Tax Administration Act 1994 for the unit trust and payments by the unit trust to the person; and

(e) for the assets of the unit trust that each have a market value greater than or equal to the cost of the asset for the unit trust, the market value of the assets (the **held assets**) held at the end of the year by the unit trust and the proceeds derived from disposals of assets during the year by the unit trust (the **asset disposals**) have a relationship meeting the requirements of **subsection (2)**.

Further requirements

(2) The total market value of the held assets must be more than the total cost of the held assets by an amount that is less than or equal to 3 times the amount calculated using the formula—

disposal proceeds – asset costs.

Definition of items in formula

(3) In the formula,—

(a) **disposal proceeds** is the total proceeds of the asset disposals:

(b) **asset costs** is the total cost of the assets involved in the asset disposals.

New (unanimous)

Currency

(4) In **subsections (2) and (3)**, all amounts are expressed in the currency used in the unit trust's financial accounts.

Defined in this Act: attributing interest, company, FIF, income year, resident in Australia, resident in New Zealand, RWT proxy, share, unit trust, year

Compare: 2004 No 35 s EX 33D

EX 33E Australian superannuation fund exemption

A person's rights in a FIF are not an attributing interest if—

(a) the person is a natural person; and

(b) the FIF is a foreign superannuation scheme that is—

(i) an Australian approved deposit fund:

(ii) an Australian exempt public sector superannuation scheme:

(iii) an Australian regulated superannuation fund:

(iv) an Australian retirement savings account.

Defined in this Act: attributing interest, Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund, Australian retirement savings account, FIF, foreign superannuation scheme

Compare: 2004 No 35 s EX 33E

EX 34 Foreign exchange control exemption

A person's rights in a FIF are not an attributing interest if and to the extent to which—

(a) the person is a natural person; and

(b) the person acquired the rights—

(i) before first becoming a New Zealand resident; or

(ii) before exchange controls applying to the person and the interest were imposed by a foreign country; or

(iii) before 8.00 pm New Zealand Standard Time on 2 July 1992; and

(c) the exchange controls prevent the person from deriving amounts from the rights, or from disposing of the rights, in New Zealand dollars, or consideration that is readily convertible into New Zealand dollars.

Defined in this Act: amount, attributing interest, FIF, New Zealand, New Zealand resident

Compare: 2004 No 35 s EX 34

EX 35 Income interest of non-resident or transitional resident

Categories 2 and 3

(1) **Subsection (2)** applies only to rights described in **section EX 30(3) or (4)**.

Exemption for non-resident or transitional resident

(2) A person's rights in a FIF at any time are not an attributing interest if—
- (a) the person is a natural person; and
- (b) the person acquires the rights when a non-resident or transitional resident; and
- (c) at the time, the person is a non-resident or transitional resident.

Defined in this Act: attributing interest, FIF, income year, New Zealand resident, non-resident, transitional resident

Compare: 2004 No 35 s EX 35

EX 36 New resident's accrued superannuation entitlement exemption

Struck out (unanimous)

Exemption

(1) The rights of a natural person to benefit, as a beneficiary or a member, from a foreign superannuation scheme at any time are not an attributing interest in a FIF to the extent to which the requirements of **subsections (2) to (9)** are met at the time.

New (unanimous)

Exemption

(1) The rights of a natural person to benefit, as a beneficiary or a member, from a foreign superannuation scheme at any time are not an attributing interest in a FIF—
- (a) to the extent to which the requirements of **subsections (2) to (4)** are met at the time; and
- (b) if the requirements of **subsections (5) to (9)** are met at the time.

Rights accruing before or after becoming resident

(2) The rights must have accrued during a period—
- (a) for which the person is not a New Zealand resident:
- (b) for which the person is a New Zealand resident and that—
  - (i) begins when the person becomes a New Zealand resident; and
  - (ii) ends before the first day of the fifth income year following the income year in which the person becomes a New Zealand resident.

Calculation of rights accruing

(3) The extent to which the rights have accrued during a period referred to in **subsection (2)** is calculated using the formula—

closing value – opening value.

Definition of items in formula

(4) In the formula,—
- (a) **closing value** is the market value of the rights on the day that ends the period:
- (b) **opening value** is the market value of the rights on the day that begins the period.

Employee scheme or self-employed

(5) Either—
- (a) the scheme must be one where the person's rights can be acquired only through the person's employment; or
- (b) the person must be wholly or mainly self-employed, either when the person first acquired the rights or at the relevant time for applying this section.

Contributions or benefits: link to income

(6) The amount contributed to the scheme by or for the person must be calculated—
- (a) by some fixed relationship to the person's income from employment or self-employment; or
- (b) to provide benefits that bear a fixed relationship to the person's income from employment or self-employment, except to the extent to which the benefits are adjusted by reference to an objective measure of inflation.

Contributions by person, employer, or other scheme

(7) Contributions to the scheme for the person's benefit must be made only by or for—
- (a) the person; or
- (b) the person's employer, or a person associated with the employer; or
- (c) the representatives of another superannuation scheme—
  - (i) as a transfer of the person's benefit rights in the other scheme; and
  - (ii) if those benefit rights would have qualified for the exemption in this section.

Restricted rights to assign or cash in

(8) The person's future benefits under the scheme must not be able to be assigned, or exchanged for a current receipt of cash, or other property, except—
- (a) if the person becomes physically incapacitated; or
- (b) if the person is transferring the benefit rights into another, similar, scheme; or
- (c) when or after the person retires at normal retiring age; or
- (d) if the person is assigning the benefit rights to a spouse under a relationship agreement; or
- (e) at the cost of a substantial decrease in the present value of the benefits.

Relationship property assignment

(9) When the person has obtained the rights by their being assigned under a relationship agreement, the exemption in this section applies if the assignor spouse would have been entitled to it.

Defined in this Act: amount, associated person, attributing interest, employer, FIF, foreign superannuation scheme, income, income from employment, market value, New Zealand resident, relationship agreement, superannuation scheme

Compare: 2004 No 35 s EX 36

EX 37 Non-resident's pension or annuity exemption

Exemption

(1) The rights of a natural person to benefit from a pension or annuity provided by a FIF are not an attributing interest if the requirements of **subsections (2) and (3)** are met.

Relevant period of non-residence

(2) The person must have provided the consideration for acquiring the rights—

(a) when the person was not resident in New Zealand; or

(b) when the person was resident in New Zealand but in the period ending 3 years after the end of the income year in which they last became a New Zealand resident; or

(c) when the person was resident in New Zealand but as a result of commuting or transferring their interest in a superannuation fund in anticipation of their ceasing to be a New Zealand resident.

Restricted rights to assign or cash in

(3) The person's future benefits must not be able to be assigned, or exchanged for a current receipt of cash, or other property, except—

(a) if the person is assigning the benefit rights to a spouse under a relationship agreement; or

(b) at the cost of a substantial decrease in the present value of the benefits.

Elective exclusion of pre-1996–97 rights

(4) **Subsection (1)** does not apply if—

(a) the rights were acquired before the 1996–97 income year; and

(b) the person chose to treat the rights as an interest in a foreign investment fund for the 1996–97 income year and later income years by complying with the requirements of section CG 15(4) of the Income Tax Act 1994.

Defined in this Act: attributing interest, FIF, foreign investment fund, income year, matrimonial agreement, New Zealand resident, non-resident, relationship agreement, resident in New Zealand, superannuation fund, year

Compare: 2004 No 35 s EX 37

Calculation of FIF income or loss

EX 38 (*Four*) Six calculation methods

Use of 1 method

(1) If the tests in **section CQ 5** (When FIF income arises) or **DN 6** (When FIF loss arises) are met, the amount of a person's FIF income or loss is calculated under—
(a) the accounting profits method; or
(b) the branch equivalent method; or
(c) the comparative value method; or
(d) the deemed rate of return method(.); or

New (unanimous)

(e) the fair dividend rate method; or
(f) the cost method.

Choosing method

(2) The person must choose which calculation method applies by completing their return of income accordingly, but the choice is limited by **sections EX 40, EX 40B, EX 41, and EX 50**.

Defined in this Act: accounting profits method, amount, branch equivalent method, calculation method, comparative value method, cost method, deemed rate of return method, fair dividend rate, FIF income, loss, return of income

Compare: 2004 No 35 s EX 38

EX 39 Exclusion of amounts of death benefit

No FIF income

(1) When this section applies, a person is treated as not deriving FIF income to the extent to which the income arises solely from receiving a death benefit under a life insurance policy.

Application of this section: contract before becoming resident

(2) This section applies if—
(a) the person or the deceased (the **contracting party**), when not a New Zealand resident, entered into a binding contract that gave rise to the benefit; and
(b) at the time the contract was entered into, the contracting party either had not previously been a New Zealand

resident or had not been a resident for at least the previous 10 years; and
(c) the benefit was not increased by a voluntary action taken after the contracting party became a resident.

Application of this section: pre-1992 contracts

(3) This section also applies if—
(a) before 2 July 1992 the person or the contracting party entered into a binding contract giving rise to the benefit; and
(b) the benefit was not increased by a voluntary action taken on or after 2 July 1992.

Defined in this Act: amount, FIF income, life insurance policy, New Zealand resident, year

Compare: 2004 No 35 s EX 39

EX 40 Limits on choice of calculation methods

Same method for same FIF

(1) If a person has 2 or more attributing interests in the same FIF for the same period, the person must use the same calculation method for calculating FIF income or loss from each interest in that period, except to the extent to which—
(a) the interests are of different classes; and
(b) this section prevents the same method being used.

Accounting profits method

(2) A person may use the accounting profits method for an accounting period to calculate FIF income or loss from an attributing interest in a FIF only if—
(a) the FIF is a company; and
(b) at all times during the accounting period when the FIF exists, interests in the FIF similar to the person's attributing interest were—
(i) quoted on the official list of a recognised exchange; or
(ii) offered widely by or for the FIF to the public in 1 or more countries; and
(c) the net after-tax accounting profits or losses of the FIF for the accounting period are calculated under generally accepted accounting practice, or an equivalent standard

for consistent and undistorted reporting of net profits, of the country in which the FIF is resident; and

(d) the net after-tax accounting profits or losses are detailed in financial statements—
  (i) sent or made available to shareholders in the FIF; and
  (ii) readily available to interested members of the public; and
  (iii) audited by a chartered accountant, or accountant of equivalent professional standard in the country in which the FIF is resident; and
  (iv) for which such an accountant has given a standard audit opinion, without qualifications, to the effect that the financial statements represent the income and financial position of the FIF to the degree of validity normally required in the country in which the FIF is resident; and

(e) the net after-tax accounting profits or losses are calculated, in any case in which the FIF has 1 or more subsidiaries, on a consolidated basis; and

(f) the net after-tax accounting profits or losses include any extraordinary items; and

(g) the person has no reason to believe that the net after-tax accounting profits or losses do not fairly represent the net after-tax profits or losses of the FIF for the accounting period; and

(h) the FIF is not an entity described in **schedule 25, part C** (Foreign investment funds); and

(i) the Commissioner has not concluded that the net after-tax accounting profits or losses do not fairly represent the net after-tax profits or losses of the FIF for the accounting period.

Branch equivalent method

(3) A person may use the branch equivalent method to calculate FIF income or loss from an attributing interest in a FIF for an accounting period only if—

(a) the FIF is a company; and

(b) the person can provide to the Commissioner, if requested, sufficient information to enable the Commissioner to check the calculations required by **section EX 43**.

Deemed rate of return method

(4) A person may use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF for an income year only if any of the following apply:

(a) it is not reasonably practicable for the person to use—

(i) the comparative value method, because the person cannot determine the market value of the attributing interest at the end of the income year; or

(ii) the accounting profits method for any accounting period that falls wholly or partly in the year; or

(b) the person is a natural person and at all times during the income year the total value of attributing interests in FIFs held by the person is $250,000 or less, the value of each interest being—

(i) its book value, calculated under **section EX 45(7)**, at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year:

(ii) its market value, in any other case; or

New (unanimous)

(bb) the person is required by **section EX 40B** to use the method; or

(c) **section EX 41** requires the person to use that method; or

(d) **section EX 50** requires the person to continue using that method.

New (unanimous)

Deemed rate of return method: further limit

(5) A person may not use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF if—

(a) the interest is a direct income interest in a foreign company of less than 10%; and

New (unanimous)

(b) the person is not required by **section EX 40B** to use the deemed rate of return method for the interest.

Comparative value method

(6) A person may use the comparative value method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company for an income year only if—
  (a) the person's direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with them, is 10% or more at any time in the income year:
  (b) the attributing interest is a right of a kind referred to in **subsection (8)(a)(i) to (v)**:
  (c) the person is a natural person:
  (d) the person is the trustee of a trust that—
    (i) is a complying trust; and
    (ii) is established mainly for the benefit of a natural person for whom the settlor has natural love or affection or mainly for the benefit of an organisation with income that is exempt income under **section CW 40 or CW 41** (which relate to charities); and
    (iii) has no settlor who is not a natural person; and
    (iv) is not a superannuation scheme.

Fair dividend rate method for shares in foreign companies

(7) A person may use the fair dividend rate method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company for an income year only if the requirements of **subsection (8)** are met and—
  (a) the person is a portfolio investment entity, or an entity that meets the requirements of a portfolio investment entity, or a life insurance company, and the FIF is a foreign investment vehicle:
  (b) the person's direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with them, is less than 10%—

New (unanimous)

(i) at any time in the income year, if the FIF is a grey list company; or
(ii) at all times in the income year, if the FIF is not a grey list company.

Fair dividend rate method: further requirements

(8) The further requirements for a share in a foreign company referred to in **subsection (7)** are—
(a) the attributing interest is none of the following:
(i) a fixed-rate share under **section LL 9** (Some definitions):
(ii) a non-participating redeemable share:
(iii) an interest in a non-resident having assets of which 80% by value consist of financial arrangements denominated in New Zealand dollars:
(iv) an interest meeting the requirements of **subsection (9)** that the Commissioner has not determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method is applicable:
(v) an interest of a kind that the Commissioner has determined under section 91AAO of that Act to be an interest for which the fair dividend rate method is not applicable; and
(b) the person uses the comparative value method for no other attributing interest that is a share in a foreign company and for which the person would be allowed, in the absence of this paragraph, to use the fair dividend rate method.

Fair dividend rate method: other interests for which method not applicable

(9) To meet the requirements referred to in **subsection (8)(a)(iv)**, an attributing interest of a person (the **investor**) in a FIF must be a share and must involve an obligation—
(a) of another person to provide to the investor an amount that is more than the issue price of the share; and
(b) that is direct to the investor or indirect through an arrangement; and

New (unanimous)

(c) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial.

Cost method for shares in foreign companies

(10) A person may use the cost method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company only if—

(a) the person's direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with them, is less than 10%—

(i) at any time in the income year, if the FIF is a grey list company; or

(ii) at all times in the income year, if the FIF is not a grey list company; and

(b) use of the fair dividend rate method is allowed but is not practical because the person cannot determine the market value of the attributing interest at the start of the income year except by an independent valuation.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, Commissioner, company, comparative value method, complying trust, cost method, deemed rate of return method, direct income interest, exempt income, fair dividend rate method, FIF, FIF income, financial arrangement, foreign company, foreign investment vehicle, generally accepted accounting practice, grey list company, income, income year, loss, market value, portfolio investment entity, recognised exchange, share, shareholder, superannuation scheme, tax, trustee

Compare: 2004 No 35 s EX 40

New (unanimous)

EX 40B Use of particular calculation methods required

A person who is not allowed to use the fair dividend rate method to calculate FIF income from an attributing interest in a FIF for an income year, but would be allowed to use the method in the absence of **section EX 40(8)**, must calculate FIF income from the interest for the income year using—

(a) the comparative value method; or

(b) the deemed rate of return method, if use of the comparative value method is not practical because the person

New (unanimous)

cannot determine the market value of the attributing interest at the start of the income year.

Defined in this Act: attributing interest, comparative value method, deemed rate of return method, fair dividend rate method, FIF, FIF income, income year

Compare: 2004 No 35 s EX 40B

EX 41 Default calculation method

When this section applies

(1) This section applies when—

(a) a person does not choose a calculation method to calculate FIF income or loss from an attributing interest for a period; and

(b) **sections EX 40, EX 40B, and EX 50** do not have the effect of requiring a particular calculation method to be used.

Struck out (unanimous)

Default choice

(2) The person is treated as having chosen to use, for the interest and the period,—

(a) if **section EX 40(2)** allows the use of the accounting profits method and it is practical to use that method, that method; and

(b) if use of that method is not allowed or not practical,—

(i) the comparative value method if it is practical to use it; and

(ii) the deemed rate of return method if it is not practical to use the comparative value method.

New (unanimous)

Default choice for direct income interests in FIF of less than 10%

(2) The person is treated as having chosen to use, for the period,—

New (unanimous)

(a) for a direct income interest in a foreign company of less than 10% for which **section EX 40(7)** allows the use of the fair dividend rate method,—
  (i) the fair dividend rate method if it is practical to use it; and
  (ii) the cost method if it is not practical to use the fair dividend rate method:

(b) for any other interest,—
  (i) the accounting profits method, if **section EX 40(2)** allows the use of that method and it is practical to use it; or
  (ii) the comparative value method if **section EX 40(2)** does not allow the use of the accounting profits method and it is practical to use the comparative value method; or
  (iii) the deemed rate of return method if **section EX 40(2)** does not allow the use of the accounting profits method and it is not practical to use the comparative value method.

Defined in this Act: accounting profits method, attributing interest, calculation method, comparative value method, cost method, deemed rate of return method, direct income interest, fair dividend rate method, FIF income, foreign company, loss

Compare: 2004 No 35 s EX 41

EX 42 Accounting profits method

Formula

(1) If a person is using the **accounting profits method** to calculate FIF income or loss from an attributing interest in a FIF, the total FIF income or loss from all their attributing interests in the FIF for the relevant accounting period is calculated using the formula—

$$(\text{accounting profits or losses} - \text{foreign tax}) \times \text{income interest}.$$

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (5)**.

Accounting profits or losses

(3) **Accounting profits or losses** is the net after-tax accounting profits or losses of the FIF for the accounting period.

Foreign tax

(4) **Foreign tax** is the total for the accounting period of income tax on the income of the FIF—

(a) for which the person is liable under the laws of a country or territory outside New Zealand; and

(b) paid by the person in the accounting period.

Income interest

(5) **Income interest** is the person's income interest in the FIF for the accounting period. The income interest is calculated under all the following CFC rules, applying as if the FIF were a CFC:

(a) **sections EX 8 to EX 11 and EX 13**:

(b) **sections EX 16 and EX 17**:

(c) **section EX 27**, unless the person chooses to apply **subsection (6)**.

Election to measure on 31 March only

(6) In order to simplify the process of calculating the person's income interest, the person may choose to be treated as holding, at all times during a tax year, the same interest, including a zero one, that they held at the end of the tax year. The person makes the election by completing their return of income accordingly for the relevant income year.

Election irrevocable

(7) An election under **subsection (6)** is—

(a) irrevocable and applies to the person and all their attributing interests in the FIF in later years; and

(b) overridden by the anti-avoidance rules in **sections GB 9 to GB 16** (which relate to CFCs).

Conversion to New Zealand dollars

(8) The person must choose, for the accounting period and each later accounting period and for all interests for which the person uses the accounting profits method,—

(a) for all the calculations to be done in the currency of the FIF's financial accounts, with the result then converted into New Zealand dollars at the average of the close of trading spot exchange rates for the (*fifteenth*)15th day of each complete month that falls in the accounting period; or

(b) for all the calculations of the net after-tax accounting profits or losses of the FIF to be done in New Zealand dollars.

Reduction in FIF loss to economic loss

(9) In the cases described in **subsections (10) and (11)**, the amount of any FIF loss calculated under **subsection (1)** is reduced to be equal to the person's corresponding economic loss, if any.

Application of subsection (9): no economic loss

(10) **Subsection (9)** applies if the person suffers no, or substantially no, economic loss corresponding to the FIF loss, whether because of a call option, a put option, or any other reason.

Application of subsection (9): FIF loss excessive

(11) **Subsection (9)** also applies if the amount of FIF loss is more than any corresponding economic loss suffered by the person, whether because of the application of the rules for calculating the person's income interest or any other reason.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, CFC, close of trading spot exchange rate, FIF, FIF income, FIF loss, income interest, income year, loss, New Zealand, non-resident, pay, quarter, return of income, tax, tax year

Compare: 2004 No 35 s EX 42

EX 43 Branch equivalent method

Formula

(1) If a person is using the **branch equivalent method** to calculate FIF income or loss from an attributing interest in a FIF, the total FIF income or loss from all their attributing interests in the FIF for the relevant accounting period is calculated using the formula—

$$\text{branch equivalent income or loss} \times \text{income interest}.$$

Definition of items in formula

(2) The items in the formula in **subsection (1)** are defined in **subsections (3) and (4)**.

Branch equivalent income or loss

(3) **Branch equivalent income or loss** is the branch equivalent income or loss of the FIF for the accounting period. This is calculated by applying **section EX 21** of the CFC rules—
- (a) as if the FIF were a CFC and the person were calculating their attributed CFC income or loss; and
- (b) applying **subsections (5) and (6)**.

Income interest

(4) **Income interest** is the person's income interest in the FIF for the accounting period. The income interest is calculated under all the following CFC rules, applying as if the FIF were a CFC:
- (a) **sections EX 8 to EX 11 and EX 13**:
- (b) **sections EX 16 and EX 17**:
- (c) **section EX 27**.

Taxable distributions

(5) If the FIF derives a taxable distribution from a non-complying trust in the accounting period,—
- (a) the taxable distribution is excluded when calculating the FIF's branch equivalent income or loss, due to the combined effect of **subsection (1)** and **section EX 21(32)**; and
- (b) the person has additional attributed CFC income calculated by multiplying the taxable distribution by the person's income interest in the FIF; and
- (c) the person is liable for income tax on the additional attributed CFC income at the rate in **schedule 1** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) that applies to amounts under **section HC 22** (Use of tax losses to reduce taxable distributions from non-complying trusts).

Calculation of additional FIF income or loss

(6) If the FIF itself has an income interest, calculated under **subsection (4)**, in a foreign company for the accounting period,

the person has additional FIF income or loss calculated using the formula—

$$\text{interest} \times \text{FIF's FIF income or loss.}$$

Definition of items in formula

(7) In the formula in **subsection (6)**,—

(a) **interest** is the person's income interest in the FIF for the period:

(b) **FIF's FIF income or loss** is the FIF's FIF income or loss calculated under the rules in **section EX 46(4) and (5)**, as if—

(i) the FIF were the CFC referred to; and

(ii) the FIF's interest in the foreign company were an attributing interest, despite any application of **section EX 32**.

Application of CFC rules tax credit rules

(8) The rules in **sections LK 1 to LK 7** (which relate to tax credits for attributed CFC income) apply to allow the person to claim foreign tax credits but on the basis of the assumptions made in **subsection (9)**. The rules in those sections allow foreign tax credits relating to attributed CFC income but apply a jurisdictional ring-fencing approach to the use of tax credits.

Assumptions in reading tax credit rules

(9) **Sections LK 1 to LK 7** are applied as if—

(a) the FIF were a CFC; and

(b) the FIF income of the person from the FIF were attributed CFC income; and

(c) the person's income interest, calculated under **subsection (4)** were their relevant income interest for the purposes of those sections; and

(d) any relevant person's FIF income calculated under the branch equivalent method from a FIF that is resident in the relevant country were attributed CFC income.

Reduction in FIF loss to economic loss

(10) In the cases described in **subsections (11) and (12)**, the amount of any FIF loss calculated under **subsections (1) and (6)** is reduced to be equal to the person's corresponding economic loss, if any.

Application of subsection (10): no economic loss

(11) **Subsection (10)** applies if the person suffers no, or substantially no, economic loss corresponding to the FIF loss, whether because of a call option, a put option, or any other reason.

Application of subsection (10): FIF loss excessive

(12) **Subsection (10)** also applies if the amount of FIF loss is more than any corresponding economic loss suffered by the person, whether because of the application of the rules for calculating the person's income interest or any other reason.

Defined in this Act: accounting period, amount, attributed CFC income, attributing interest, branch equivalent income, branch equivalent method, CFC, FIF, FIF income, FIF loss, foreign company, income interest, income tax, loss, non-complying trust, non-resident, quarter, tax, taxable distribution

Compare: 2004 No 35 s EX 43

EX 44 Comparative value method

Formula

(1) If a person is using the **comparative value method** to calculate FIF income or loss from an attributing interest in a FIF, the FIF income or loss from that interest for the relevant income year is calculated using the formula—

(closing value + gains) – (opening value + costs).

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (6)**.

Closing value

(3) **Closing value** is the market value of the person's interest in the FIF at the end of the income year. The value is zero if the person has disposed of the interest or is then applying another calculation method to it.

Gains

(4) **Gains** is the total of all amounts that the person derives during the income year from holding or disposing of the interest. The amounts include any foreign withholding tax or other tax that the person is allowed as a credit under **section LJ 2** (Tax credits for foreign income tax).

Opening value

(5) **Opening value** is the market value of the person's interest in the FIF at the end of the previous income year. The value is zero if the person did not hold the interest then or was then applying another calculation method to it.

Costs

(6) **Costs** is the total for the income year of—
- (a) all expenditure, if any, that the person incurs in acquiring or increasing the interest:
- (b) income tax on the income of the FIF—
  - (i) for which the person is liable under the laws of a country or territory outside New Zealand; and
  - (ii) paid by the person in the income year.

New (unanimous)

Applying method to direct income interests of less than 10%

(6B) **Subsection (6C)** applies to a person who calculates under **subsection (1)** an amount of FIF income or loss for an attributing interest in a FIF (the **minor attributing interest**) that—
- (a) is a direct income interest in a foreign company of less than 10% at a time in the relevant income year; and
- (b) is not a right of a kind referred to in **section EX 40(8)(a)(i) to (v)**.

Reduction of total FIF loss from direct income interests of less than 10%

(6C) If, in the absence of this subsection, the person would have under **subsection (1)** a total FIF loss for the income year from all the person's minor attributing interests in FIFs, the total FIF loss for the income year for the person from the minor attributing interests is zero.

Struck out (unanimous)

Conversion of foreign currency amounts

(7) If an amount is derived from, or incurred on, the interest in a foreign currency during the year, the person must choose—

(a) for each such foreign currency amount in the income year to be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or

(b) for all such foreign currency amounts in the income year to be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the fifteenth day of each month that falls in the year.

New (unanimous)

Conversion of foreign currency amounts

(7) If an amount in a foreign currency is the market value of, or is derived from or incurred on, an interest during an income year, the person must choose that for the income year and each later income year and for all interests for which the person uses the comparative value method,—

(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is derived or incurred; or

(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.

Defined in this Act: amount, attributing interest, calculation method, close of trading spot exchange rate, comparative value method, direct income interest, FIF, FIF income, FIF loss, foreign company, foreign withholding tax, income year, loss, market value, New Zealand, pay, tax

Compare: 2004 No 35 s EX 44

New (unanimous)

EX 44B Fair dividend rate method

Alternative formulas used

(1) If a person is using the **fair dividend rate method** to calculate FIF income or loss from an attributing interest in a FIF for an income year, the calculation depends on whether the person is a unit trust or other entity (the **unit valuer**) that—

(a) makes investments for the benefit of other persons (the **investors**); and

(b) assigns each investor an interest in a proportion of the net returns from the investments; and

(c) determines the value of the investor's interest for each of a number of period (the **unit valuation periods**) making up the income year.

FIF income for person not unit valuer

(2) For a person who is not a unit valuer, the FIF income from the attributing interests in a FIF for an income year for which the person uses the fair dividend rate method is the amount calculated for the income year using the method in **section EX 44C**.

FIF income for unit valuer

(3) For a person who is a unit valuer, the FIF income from the attributing interests in a FIF for an income year for which the person uses the fair dividend rate method is the total of the amounts calculated for each unit valuation period in the income year using the method in **section EX 44D**.

FIF loss

(4) If a person is using the fair dividend rate method to calculate FIF income or loss from an attributing interest in a FIF, the FIF loss from the attributing interest for an income year is zero.

Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, FIF loss, income year, investor, loss, unit trust, unit valuation period

Compare: 2004 No 35 s EX 44B

New (unanimous)

EX 44C Fair dividend rate method: usual method

FIF income

(1) If this section applies to a person who calculates FIF income from attributing interests in a FIF under the fair dividend rate method for an income year, the FIF income is the total of the amounts, each calculated for a FIF for the income year using the formula in **subsection (2)**.

Formula

(2) The formula is—

$$0.05 \times \text{opening} \times \text{quick sale adjustment}.$$

Definition of items in formula

(3) The items in the formula in **subsection (2)** are defined in **subsections (4) and (5)**.

Opening

(4) **Opening** is the total of the market values of the attributing interests in a FIF—
- (a) for which the person uses the fair dividend rate method; and
- (b) that the person holds at the start of the income year.

Quick sale adjustment

(5) **Quick sale adjustment** is—
- (a) zero, if the person in the income year—
  - (i) acquires or increases the attributing interest in no FIF for consideration:
  - (ii) disposes of or reduces the attributing interest in no FIF after an acquisition or increase of the interest for consideration; or
- (b) if **paragraph (a)** does not apply, the lesser of—
  - (i) the amount (the **peak holding adjustment**) determined under **subsection (6)**:
  - (ii) the amount (the **quick sale gains**) that is the greater of zero and the total for the income year of amounts calculated, for each attributing interest that is both acquired and disposed of in

New (unanimous)

the income year, by taking the total amount derived by the person from holding or disposing of the interest and subtracting the total expenditure that the person incurs in acquiring the interest.

Peak holding adjustment

(6) The peak holding adjustment is the total for the income year of the amounts calculated for each FIF using the formula in **subsection (7)**.

Formula

(7) The formula referred to in **subsection (7)** is—

$$0.05 \times \text{quick sales} \times \text{average cost.}$$

Definition of items in formula

(8) The items in the formula in **subsection (7)** are defined in **subsections (9) and (10)**.

Quick sales

(9) **Quick sales** is—

(a) zero, if the person in the income year does not acquire or increase the attributing interest in the FIF for consideration, or does not dispose of or reduce the attributing interest in the FIF after the acquisition or increase; or

(b) if **paragraph (a)** does not apply, and no share reorganisation occurs in the income year, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the person holds at a time in the income year:

(i) the difference between the interest size that is the greatest for the income year and the interest size at the start of the income year:

(ii) the difference between the interest size that is the greatest for the income year and the interest size at the end of the income year; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the income year the amount calculated under **section EX 44E** for the income year.

New (unanimous)

Average cost

(10) **Average cost** is—

(a) zero, if the person in the income year does not acquire or increase the attributing interest in the FIF for consideration, or does not dispose of or reduce the attributing interest in the FIF after the acquisition or increase; or

(b) if **paragraph (a)** does not apply, and no share reorganisation occurs in the income year, the total amount of expenditure that the person incurs during the income year in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the increase in the attributing interest in the FIF for each acquisition or increase; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the income year the amount calculated under **section EX 44E** for the income year.

Conversion of foreign currency amounts

(11) If an amount in a foreign currency is the market value of, or is incurred on, an interest during an income year, the person must choose that for the income year and each later income year and for all interests for which the person uses the fair dividend rate method—

(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is incurred; or

(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.

New (unanimous)

Identifying attributing interests disposed of in income year

(12) For the purposes of calculating the quick sale gains under **subsection (5)(b)(ii)**, attributing interests in a FIF are treated as being disposed of in the reverse order of their acquisition.

Defined in this Act: amount, attributing interest, close of trading spot exchange rate, fair dividend rate method, FIF, FIF income, income year, investor, market value, New Zealand, share reorganisation

Compare: 2004 No 35 s EX 44C

EX 44D Fair dividend rate method for entities that value investors' units

FIF income

(1) If this section applies to a person who calculates FIF income from attributing interests in a FIF under the fair dividend rate method for an income year, the FIF income is the total of the amounts calculated using the formula in **subsection (2)** for each of the periods making up the income year (the **unit valuation periods**) for which the entity determines the value of investors' interests.

Formula

(2) The formula is—

$$0.05 \text{ opening} \times \frac{\text{period}}{\text{year}} + \text{quick sale adjustment.}$$

Definition of items in formula

(3) The items in the formula in **subsection (2)** are defined in **subsections (4) to (7)**.

Opening

(4) **Opening** is the total of the market values of the attributing interests in a FIF—

(a) for which the entity uses the fair dividend rate method; and

(b) that the entity holds at the start of the unit valuation period.

New (unanimous)

Period

(5) **Period** is the number of days in the unit valuation period.

Year

(6) **Year** is the number of days in the income year.

Quick sale adjustment

(7) **Quick sale adjustment** is—
- (a) zero, if the unit valuation period is 1 day; or
- (b) zero, if the entity in the unit valuation period—
  - (i) acquires or increases the attributing interest in no FIF for consideration:
  - (ii) disposes of or reduces the attributing interest in no FIF after an acquisition or increase of the interest for consideration; or
- (c) if **paragraphs (a) and (b)** do not apply, the lesser of—
  - (i) the amount (the **peak holding adjustment**) determined under **subsection (8)**:
  - (ii) the amount (the **quick sale gains**) that is the greater of zero and the total for the income year of amounts calculated, for each attributing interest that is both acquired and disposed of in the income year, by taking the total amount derived by the entity from holding or disposing of the interest and subtracting the total expenditure that the entity incurs in acquiring the interest.

Peak holding adjustment

(8) The **peak holding adjustment** is the total for the unit valuation period of the amounts calculated for each FIF using the formula in **subsection (9)**.

Formula

(9) The formula referred to in **subsection (8)** is—

$$0.05 \times \text{quick sales} \times \text{average cost}.$$

New (unanimous)

Definition of items in formula

(10) The items in the formula in **subsection (9)** are defined in **subsections (11) and (12)**.

Quick sales

(11) **Quick sales** is—

(a) zero, if the entity in the unit valuation period does not acquire or increase the attributing interest in the FIF for consideration, or does not dispose of or reduce the attributing interest in the FIF after the acquisition or increase; or

(b) if **paragraph (a)** does not apply, and no share reorganisation occurs in the unit valuation period, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the entity holds at a time in the unit valuation period:

(i) the difference between the interest size that is the greatest for the unit valuation period and the interest size at the start of the unit valuation period:

(ii) the difference between the interest size that is the greatest for the unit valuation period and the interest size at the end of the unit valuation period; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the unit valuation period the amount calculated under **section EX 44E** for the unit valuation period.

Average cost

(12) **Average cost** is—

(a) zero, if the entity in the unit valuation period does not acquire or increase the attributing interest in the FIF for consideration, or does not dispose of or reduce the attributing interest in the FIF after the acquisition or increase; or

(b) if **paragraph (a)** does not apply, and no share reorganisation occurs in the unit valuation period, the total amount of expenditure that the entity incurs during the unit

New (unanimous)

valuation period in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the increase in the attributing interest in the FIF for each acquisition or increase; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the unit valuation period, the amount calculated under **section EX 44E** for the unit valuation period.

Conversion of foreign currency amounts

(13) If an amount in a foreign currency is the market value of, or is incurred on, an interest during an income year, the entity must choose that for the income year and each later income year and for all interests for which the person uses the fair dividend rate method—

(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is incurred; or

(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.

Identifying attributing interests disposed of in income year

(14) For the purposes of calculating the quick sale gains under **subsection (7)(b)(ii)**, attributing interests in a FIF are treated as being disposed of in the reverse order of their acquisition.

Defined in this Act: amount, attributing interest, close of trading spot exchange rate, fair dividend rate method, FIF, FIF income, income year, investor, market value, New Zealand, share reorganisation, unit valuation period

Compare: 2004 No 35 s EX 44D

EX 44E Fair dividend rate method and cost method: when periods affected by share reorganisations

Items and formulas

(1) This section provides for the calculation, for an income year or unit valuation period (the **affected period**) in which a share reorganisation occurs, of the following:

New (unanimous)

(a) the item **quick sales** for the purposes of the formulas in **sections EX 44C(7), EX 44D(9), and EX 45B(2)**:

(b) the item **average cost** for the purposes of the formulas in **sections EX 44C(7), EX 44D(9), and EX 45B(2)**:

(c) the item **change** for the purposes of the formula in **section EX 45B(7)(b)**.

Treatment of affected period in which share reorganisation occurs

(2) For the purposes of calculating the items for an affected period under this section,—

(a) the affected period is treated as consisting of periods (the **reorganisation periods**) that do not overlap:

(b) each reorganisation period in the affected period—

(i) begins with the start of the affected period or a share reorganisation in the affected period; and

(ii) ends before the next later event that is a share reorganisation or the end of the affected period:

(c) the amount of the attributing interest in the FIF held by the person at any time (the **comparison time**) in a reorganisation period, is treated as corresponding to an amount (the **equivalent interest size**) equal to the amount of the attributing interest in the FIF that the person would hold at the end of the affected period if, after the comparison time, the person did not increase or reduce the attributing interest in the FIF except under share reorganisations occurring in the affected period:

(d) the amount of an acquisition or increase (the **acquired interest**) by the person of the attributing interest in the FIF other than under a share reorganisation is treated as corresponding to an amount (the **equivalent acquired interest**) equal to the difference between—

(i) the equivalent interest size for the time of the acquisition or increase; and

(ii) the amount that would be the equivalent interest size for the time of the acquisition or increase if the person were not to have the acquired interest.

New (unanimous)

Quick sales

(3) Under this section, the item **quick sales,** for a person and an affected period, is the lesser of the following:

(a) the difference between the equivalent interest size that is the greatest for the affected period and the equivalent interest size for the start of the affected period:

(b) the difference between the equivalent interest size that is the greatest for the affected period and the equivalent interest size for the end of the affected period.

Average cost

(4) Under this section, the item **average cost,** for a person and an affected period, is the total amount of expenditure that the person incurs during the affected period in acquiring or increasing the attributing interest in a FIF divided by the total for the affected period of the equivalent acquired interest for each acquisition or increase.

Change

(5) Under this section, the item **change,** for a person and an affected period, is the difference between the equivalent interest size for the start of the affected period and the equivalent interest size for the start of the period before the affected period.

Conversion of foreign currency amounts

(6) If an amount in a foreign currency is incurred on an interest during an affected period, the person must use the method for converting the amount to New Zealand currency chosen under **section EX 44C, EC 44D, or EC 45B** by the person for the income year of the affected period.

Defined in this Act: amount, attributing interest, FIF, income year, share reorganisation, unit valuation period

Compare: 2004 No 35 s EX 44E

EX 45 Deemed rate of return method

Formula changes if interest changes

(1) If a person is using the **deemed rate of return method** to calculate FIF income or loss from an attributing interest in a FIF for an income year, the FIF income or loss is calculated—

(a) by the formula in **subsection (3)** (the **standard formula**) if the person has held the interest unchanged throughout the income year; and

(b) by totalling the amounts calculated by the formula in **subsection (5)** (the **part-year formula**) for each part of the income year during which the interest is unchanged, in any other case.

When interest changes

(2) A person's attributing interest in a FIF changes during an income year if the person—

(a) acquires or increases the interest; or

(b) disposes of or reduces the interest, but merely receiving an annuity payment from the interest is not a disposal or reduction.

Standard formula

(3) The standard formula is—

$$\text{opening book value} \times \text{deemed rate.}$$

Definition of items in standard formula

(4) In the standard formula,—

(a) **opening book value** is the book value of the interest at the end of the previous income year, calculated under **subsection (7)**:

(b) **deemed rate** is the rate set by the Governor-General by Order in Council for this section for the relevant income year.

Part-year formula

(5) The part-year formula is—

$$(\text{opening book value} + \text{costs}) \times (\text{deemed rate} \times \frac{\text{days})}{365.}$$

Definition of items in part-year formula

(6) In the part-year formula,—

(a) **opening book value** is the book value, if any, of the interest at the end of the period before the part of the income year, calculated under **subsection (7)**:
(b) **costs** is the total for the part of the income year of—
  (i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:
  (ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the part of the income year:
(c) **deemed rate** is the rate set by the Governor-General by Order in Council for this section for the relevant income year:
(d) **days** is the number of days in the part of the income year; and for this purpose, an acquisition or increase is treated as occurring at the start of a day, and a disposition or reduction is treated as occurring at the end of a day.

Closing book value formula

(7) The book value, at the end of an income year or, in a case in which **subsection (5)** applies, a part of an income year, of an attributing interest of a person in a FIF under the deemed rate of return method is, unless **subsection (9)** applies, calculated using the formula (the **closing book value formula**)—

(opening book value + costs
+ deemed income + top-up amounts) – gains.

Definition of items in closing book value formula

(8) In the closing book value formula,—
(a) **opening book value** is the book value, if any, of the interest at the end of the previous income year or the part of the income year, calculated under **subsection (7)**:
(b) **costs** is the total for the income year or part of the income year of—
  (i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:
  (ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the income year or part of the income year:

(c) **deemed income** is the FIF income from the interest for the year or the part of the income year calculated under **subsection (3) or (5)**:

(d) **top-up amounts** is amounts, gains from holding or disposing of the interest, that are top-up FIF income in the year under **section EX 48 or EX 49**:

(e) **gains** is the total of all amounts that the person derives during the year or the part of the income year from holding or disposing of the interest; the amounts including any foreign withholding tax or other tax that the person is allowed as a credit under **section LJ 2** (Tax credits for foreign income tax).

Closing book value zero if changing method

(9) The closing book value is always zero if the person is using a calculation method for the interest different from the deemed rate of return method at the end of the income year or, in a case to which **subsection (5)** applies, the part of the income year.

Top-up income if deemed rate inadequate

(10) If the closing book value of a person's attributing interest in a FIF at the end of an income year or a part of an income year is below zero, the person has additional FIF income equal to the deficit for the relevant income year.

When subsection (10) does not apply

(11) **Subsection (10)** does not apply if—

(a) the person is a natural person; and

(b) at all times during the income year the total value of the person's attributing interests in FIFs is $250,000 or less, the value of each interest being—

(i) its book value, calculated under **subsection (7),** at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year:

(ii) its market value, in any other case; and

(c) the deficit in closing book value arises only because the person disposed of some or all of the interest; and

(d) the gain that the person derived from disposing of the interest or part-interest is not income, or is income only to the extent to which it gives rise to FIF income.

Top-up income if gains more than deemed income

(12) A person calculating FIF income under the deemed rate of return method can also have additional FIF income under **section EX 48**.

FIF income reduced on disposal if deemed rate excessive

(13) If a person has disposed of the whole of an attributing interest in a FIF and the closing book value for the relevant income year or the part of the income year is more than zero, the excess is subtracted when the person's FIF income under the deemed rate of return method for the income year is calculated.

When subsection (13) does not apply

(14) **Subsection (13)** does not apply if—

(a) the person is a natural person; and

(b) at all times during the income year the total value of attributing interests in FIFs held by the person is $250,000 or less, the value of each interest being—

(i) its book value, calculated under **subsection (7),** at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year:

(ii) its market value, in any other case; and

(c) the gain that the person derived from disposing of the interest or part-interest is not income, or is income only to the extent to which it gives rise to FIF income.

Conversion of foreign currency amounts

(15) If an amount is derived from, or incurred on, the interest in a foreign currency during the income year, the person must choose, <u>for the income year and each later year and for all interests for which the person uses the deemed rate of return method,</u>—

(a) for each such foreign currency amount in the income year to be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or

(b) for all such foreign currency amounts in the year to be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the income year.

Defined in this Act: amount, attributing interest, calculation method, close of trading spot exchange rate, deemed rate of return method, FIF, FIF income, foreign withholding tax, income, income year, loss, market value, New Zealand, pay, tax

Compare: 2004 No 35 s EX 45

Additional FIF income or loss if CFC owns FIF

New (unanimous)

EX 45B Cost method

FIF income from interest

(1) If a person is using the cost method to calculate FIF income or loss from an attributing interest in a FIF—

(a) the FIF income from the interest for the relevant income year is the greater of zero and the amount calculated using the formula in **subsection (2)**:

(b) the FIF loss from the interest for the relevant income year is zero.

Formula

(2) The formula referred to in **subsection (1)** is—

$$0.05 \times (\text{opening value} + (\text{quick sales} \times \text{average cost})).$$

Definition of items in formula

(3) The items in the formula in **subsection (2)** are defined in **subsections (4) to (6)**.

Opening value

(4) **Opening value** is the total of the market values of the attributing interests in a FIF—

(a) zero, if the relevant income year is the year in which the person acquires the interest; or

(b) the amount of an independent valuation of the market value of the interest at the start of the relevant income year, if the person holds the interest at the start of the relevant income year, and—

(i) the interest was not an attributing interest for the income year before the relevant income year:

New (unanimous)

(ii) the person has used the cost method for the interest for a period of 4 or more income years ending before the relevant income year and has not applied this paragraph to the interest for any of those income years; or

(c) the amount calculated using the formula in **subsection (7)**, if the person's attributing interest (the **current opening interest**) at the start of the relevant income year is the same as the person's attributing interest (the **preceding opening interest**) at the start of the income year before the relevant income year; or

(d) the amount calculated using the formula in **subsection (8)**, if the person's current opening interest is more than the preceding opening interest; or

(e) the amount calculated using the formula in **subsection (9)**, if the person's current opening interest is less than the preceding opening interest.

Quick sales

(5) **Quick sales** is—

(a) zero, if the person in the relevant income year does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after an acquisition or increase; or

(b) if **paragraph (a)** does not apply and no share reorganisation occurs in the relevant income year, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the person holds at a time in the relevant income year:

(i) the difference between the interest size that is the greatest for the income year and the interest size at the start of the income year:

(ii) the difference between the interest size that is the greatest for the income year and the interest size at the end of the income year; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the income year, the amount calculated under **section EX 44C** for the income year.

New (unanimous)

Average cost

(6) **Average cost** is—

(a) zero, if the person in the relevant income year does not acquire or increase the attributing interest in the FIF for consideration, or does not dispose of or reduce the attributing interest in the FIF after the acquisition or increase; or

(b) if **paragraph (a)** does not apply, and no share reorganisation occurs in the relevant income year, the total amount of expenditure that the person incurs during the relevant income year in acquiring or increasing the attributing interest in the FIF divided by the total for the relevant income year of each increase in the attributing interest in the FIF for each acquisition or increase; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the unit valuation period, the amount calculated under **section EX 44C** for the relevant income year.

Formulas for opening value: first formula

(7) The formula referred to in **subsection (4)(c)** is—

$$\text{preceding} + \text{FIF income}.$$

Formulas for opening value: second formula

(8) The formula referred to in **subsection (4)(d)** is—

$$\text{preceding} + \text{FIF income} + (\text{change} \times \text{average cost}).$$

Formulas for opening value: third formula

(9) The formula referred to in **subsection (4)(e)** is—

$$\frac{\text{opening interest}}{\text{preceding interest}} \times (\text{preceding} + \text{FIF income}).$$

Definition of items in formulas

(10) The items in the formulas in **subsections (7) to (9)** are defined in **subsections (11) to (16)**.

Preceding

(11) **Preceding** is the opening value for the income year before the relevant income year.

New (unanimous)

FIF income

(12) **FIF income** is the FIF income under **subsection (1)** for the attributing interest for the income year before the relevant income year.

Change

(13) **Change** is,—

(a) if no share reorganisation occurs in the income year before the relevant income year, the difference between the person's attributing interest at the start of the relevant income year and the person's attributing interest at the start of the income year before the relevant income year:

(b) if a share reorganisation occurs in the income year before the relevant income year, the amount calculated under **section EX 44C** for the income year before the relevant income year.

Average cost

(14) **Average cost** is—

(a) zero, if the person in the income year before the relevant income year does not acquire or increase the attributing interest in the FIF for consideration, or does not dispose of or reduce the attributing interest in the FIF after the acquisition or increase; or

(b) if **paragraph (a)** does not apply, and no share reorganisation occurs in the income year before the relevant income year, the total amount of expenditure that the person incurs during the income year in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the increase in the attributing interest in the FIF for each acquisition or increase; or

(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the income year before the relevant income year the amount calculated under **section EX 44C** for the income year before the relevant income year.

New (unanimous)

Opening interest

(15) **Opening interest** is the amount of the attributing interest at the start of the relevant income year.

Preceding interest

(16) **Preceding interest** is the amount of the attributing interest at the start of the income year before the relevant income year.

Conversion of foreign currency amounts

(17) If an amount in a foreign currency is the market value of, or is incurred on, an interest during an income year, the person must choose that for the income year and each later income year and for all interests for which the person uses the cost method—

(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is incurred; or

(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.

Defined in this Act: amount, attributing interest, close of trading spot exchange rate, cost method, FIF, FIF income, FIF loss, income year, market value, New Zealand, share reorganisation, unit valuation period

Compare: 2004 No 35 s EX 45B

EX 46 Additional FIF income or loss if CFC owns FIF

Application of this section

(1) This section applies when—

(a) a person has an income interest of 10% or more in a CFC for an accounting period under **sections EX 8 to EX 17**; and

(b) because **section EX 21(33)** applies, FIF income and FIF loss is not taken into account in calculating the branch equivalent income or loss of the CFC for the period for the person.

Calculation of FIF income or loss

(2) The person instead has FIF income or loss, for the income year in which the period ends, calculated using the formula—

income interest × CFC's FIF income or loss.

Definition of items in formula

(3) In the formula,—

(a) **income interest** is the person's income interest in the CFC for the period under **sections EX 8 to EX 13**:

(b) **CFC's FIF income or loss** is the CFC's FIF income or loss for the period calculated under **subsections (4) and (5)**.

Application of FIF rules to choice of method

(4) The person must—

(a) choose, under **sections EX 38 to EX 41**, the calculation method for calculating the CFC's FIF income or loss; and

(b) otherwise apply the calculation rules in **sections EX 38 to EX 49** as if the person directly held the attributing interest; and

(c) apply the FIF loss ring-fencing rules in **section(***s***) DN (***8 (Ring-fencing cap on deduction: not branch equivalent method) and DN***) 9** (Ring-fencing cap on deduction: branch equivalent method) as if the person directly held the attributing interest.

Exclusion of policyholders' entitlements

(5) Despite **subsection (4)**, the CFC's FIF income or loss does not include any amount actuarially determined to be attributable to policyholders in the CFC or another company as a result of applying **section EX 21(25) and (26)** to the CFC.

Unqualified grey list CFCs

(6) This section applies whether or not the CFC is an unqualified grey list CFC under **section EX 22** for the period.

Disclosure restrictions on grey list CFCs

(7) No FIF income or loss arises under this section to the extent to which **section EZ 32** (Disclosure restrictions on grey list CFCs before 2011–12) applies.

Defined in this Act: accounting period, amount, attributing interest, branch equivalent income, calculation method, CFC, company, FIF, FIF income, FIF loss, FIF rules, grey list, income interest, income year, loss

Compare: 2004 No 35 s EX 46

Relationship with other provisions in Act

EX 47 Codes: comparative value method, (*and*)deemed rate of return method(*s*), fair dividend rate method, and cost method

When this section applies

(1) This section applies when a person has an attributing interest in a FIF and calculates their FIF income or loss from the interest for a period using—

(a) the comparative value method (*or*):

(b) the deemed rate of return method:

New (unanimous)

(c) the fair dividend rate method:

(d) the cost method.

No income other than FIF income

(2) The person is treated as not having any income from the interest for the period other than FIF income and, in particular, any dividends derived in the period from the interest and any income gained from disposing of the interest in the period are disregarded.

No deductions other than FIF loss

(3) The person is denied a deduction for any amount incurred in the period on acquiring some or all of the interest, except to the extent to which the amount is taken into account under the relevant calculation method in calculating FIF income or loss for the period.

Application of trading stock rules

(4) The interest is not trading stock in the period and accordingly **subpart EB** (Valuation of trading stock (including dealer's livestock)) does not apply.

Defined in this Act: amount, attributing interest, calculation method, comparative value method, cost method, deduction, deemed rate of return method, dividend, fair dividend rate method, FIF, FIF income, FIF loss, income, loss, trading stock

Compare: 2004 No 35 s EX 47

EX 48 Top-up FIF income: deemed rate of return method

When this section applies

(1) This section applies at any time when a person—
- (a) has an attributing interest in a FIF for a period; and
- (b) is calculating the FIF income or loss from the interest using the deemed rate of return method; and
- (c) derives in the period, from holding or disposing of the interest, an amount that would have been income if **section EX 47(2)** had not applied.

Formula

(2) The gain is FIF income to the extent to which the amount calculated using the following formula is positive:

total income gains – total FIF income.

Definition of items in formula

(3) In the formula,—
- (a) **total income gains** is the total of amounts, including the amount in question, derived by the person until that time from holding or disposing of the interest that would have been income if **section EX 47(2)** had not applied:
- (b) **total FIF income** is the total of FIF income, reduced by the total of any FIF losses, derived by the person from the interest until, and including, the relevant period.

Consequence of partial sales

(4) If the person disposes of part of the interest, this section applies to the part disposed of and the part retained as if they were separate interests. If this means that an apportionment is

necessary, it must be done on the basis of the respective market values at the time the part interest is disposed of.

Defined in this Act: amount, attributing interest, deemed rate of return method, FIF, FIF income, FIF loss, income, loss, market value

Compare: 2004 No 35 s EX 48

EX 49 Top-up FIF income: 1 April 1993 uplift interests

When this section applies

(1) This section applies at any time if a person—
- (a) has an attributing interest in a FIF for a period; and
- (b) held the interest on 2 July 1992; and
- (c) calculated their FIF income from the interest in the period starting on 1 April 1993 under the comparative value method or the deemed rate of return method; and
- (d) was treated as having reacquired the interest on 1 April 1993 for an uplifted cost under section CG 23(1)(d) of the Income Tax Act 1994 or EZ 7 of the Income Tax Act 2004; and
- (e) derives in the period, from holding or disposing of the interest, an amount that would have been income if **section EX 47(2)** had not applied.

Formula

(2) The gain is FIF income to the extent to which the amount calculated using the following formula is positive:

total income gains – total FIF income.

Definition of items in formula

(3) In the formula,—
- (a) **total income gains** is the total of amounts, including the amount in question, that the person derived until that time from holding or disposing of the interest that would have been income if **section EX 47(2)** had not applied:
- (b) **total FIF income** is the total of FIF income, reduced by the total of any FIF losses, that the person derived from the interest until, and including, the relevant period.

Consequence of partial sales

(4) If the person disposes of part of the interest, this section applies to the part disposed of and the part retained as if they

were separate interests. If this means that an apportionment is necessary, it must be done on the basis of the respective market values at the time the part interest is disposed of.

Defined in this Act: amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, FIF loss, income, market value

Compare: 2004 No 35 s EX 49

Changing calculation method

EX 50 Limits on changes of method

No change unless allowed

(1) Once a person uses a particular calculation method to calculate FIF income or loss for an attributing interest in a FIF for a particular period, they must use the same method for interests in the FIF for the next period unless they are allowed to change under **subsections (2) to (7)**.

Change on practical grounds

(2) The person may change if it is not practical to continue with the same method because—

(a) in the case of the accounting profits method, **section EX 40(2)** prevents its continued use or it is impossible to obtain enough information to continue to use it:

(b) in the case of the branch equivalent method, it is impossible to obtain enough information to continue to use it:

(c) in the case of the comparative value method, it is impossible to find out the end-of-year market value of the interest:

(d) in the case of the deemed rate of return method, if the person was entitled to use that method only by falling under the $250,000 threshold in **section EX 40(4)(b)**, the threshold is exceeded:

(e) in the case of the deemed rate of return method, if it was the default method under **section EX 41**, it ceases to be the default method:

New (unanimous)

(f) in the case of the fair dividend rate method, it is impossible to find out the start-of-year market value of the interest except by an independent valuation:

New (unanimous)

(g) in the case of the cost method, if it was the default method under **section EX 41**, it ceases to be the default method.

Choosing to change

(3) The person may also change by notice to the Commissioner if—

(a) the notice complies with **subsection (4)**; and

(b) either—

(i) the person is a natural person and the $250,000 threshold in **subsection (5)** is not exceeded; or

(ii) the change is to, or from, the branch equivalent method and within **subsections (6) and (7)**.

Notice of election

(4) The notice of an election to change under **subsection (3)** must—

(a) give the reasons for the change; and

(b) comply with the Commissioner's notice requirements; and

(c) be given before the end of the first income year or accounting period for which the change is to take effect, unless the Commissioner agrees to a retrospective notice; and

(d) in the case of a natural person relying on the $250,000 threshold test in **subsection (3)(b)(i)**, be given before the end of the year or period that is before the one from the end of which the change takes effect.

Natural person: $250,000 threshold

(5) A natural person may make an election under **subsection (3)** if the total market value of their attributing interests in FIFs is $250,000 or less at the end of the income year or accounting period before the year or period from the end of which the change takes effect.

Changing to or from branch equivalent method

(6) A person may make an election under **subsection (3)** to change—

(a) to the branch equivalent method if—

(i) this is the first time they have chosen to change to the branch equivalent method for an attributing interest in the FIF; or

(ii) **subsection (7)** allows them to make another election:

(b) from the branch equivalent method if—

(i) they are changing back to a calculation method that they used for attributing interests in the fund before they used the branch equivalent method; and

(ii) this is the first time they have chosen to change from the branch equivalent method, unless **subsection (7)** allows them to make another election.

Repeated changes to or from branch equivalent method

(7) A person may change more than once to, or from, the branch equivalent method if—

(a) there has been a change in circumstances, such as a significant change in shareholding, that significantly changes their ability to obtain enough information to use the branch equivalent method; and

(b) altering their income tax liability is not the principal purpose or effect of the change.

New (unanimous)

Repeated changes between fair dividend rate method and comparative value method

(8) A person may change more than once from the fair dividend rate method to the comparative value method and from the comparative value method to the fair dividend rate method if the person is a natural person or the trustee of a trust that—

(a) is a complying trust; and

(b) is established mainly for the benefit of—

(i) a natural person for whom the settlor has natural love or affection:

(ii) an organisation or trust with income that is exempt income under **section CW 40 or CW 41** (which relate to charitable trusts); and

New (unanimous)

(c) has no settlor who is not a natural person; and
(d) is not a superannuation scheme.

Defined in this Act: accounting period, accounting profits method, attributing interest, branch equivalent method, calculation method, Commissioner, comparative value method, complying trust, cost method, deemed rate of return method, exempt income, fair dividend rate method, FIF, FIF income, income tax liability, income year, loss, market value, notice, settlor, superannuation scheme, trustee

Compare: 2004 No 35 s EX 50

EX 51 Consequences of changes in method

Changes between cost-based methods and look-through methods

(1) **Subsection (2)** applies if a person holding an attributing interest in a FIF changes the calculation method for calculating FIF income or loss from the interest—

Struck out (unanimous)

(a) from either of the cost-based calculation methods (the comparative value method and the deemed rate of return method) to either of the look-through calculation methods (the accounting profits method and the branch equivalent method); or
(b) from either of the look-through methods to either of the cost-based methods.

New (unanimous)

(a) from 1 of the 4 cost-based calculation methods (the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method) to either of the look-through calculation methods (the accounting profits method or the branch equivalent method); or
(b) from either of the look-through calculation methods to 1 of the 4 cost-based calculation methods.

Treatment as sale for market value

(2) The person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first accounting period to which the new method applies; and

(b) reacquired it immediately after the start of the period; and

(c) received for the disposal and paid for the reacquisition an amount equal to the interest's market value at the time.

Changes from comparative value method or fair dividend rate method to cost method or deemed rate of return method

(3) If a person holding an attributing interest in a FIF changes from either of the comparative value method and the fair dividend rate method to either of the cost method and the deemed rate of return method for calculating FIF income or loss from the interest, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

(b) reacquired it immediately after the start of the income year; and

(c) received for the disposal and paid for the reacquisition an amount equal to the interest's market value at the time of the disposal.

Changes from cost method or deemed rate of return method to comparative value method or fair dividend rate method

(4) If a person holding an attributing interest in a FIF changes from either of the cost method or the deemed rate of return method to either of the comparative value method or fair dividend rate method for calculating FIF income or loss from the interest, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

(b) reacquired it immediately after the start of the income year; and

(c) received for the disposal and paid for the reacquisition an amount equal to,— **(***the interest's closing book value, calculated under section EX 45(7), at the end of the previous income year.***)**

New (unanimous)

(i) for a person changing from the cost method, what would have been the interest's opening value under **section EX 45B** if the person had applied the cost method for the income year; or

(ii) for a person changing from the deemed rate of return method, the interest's closing book value under **section EX 45(7)** for the preceding income year.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, income year, loss, market value, pay

Compare: 2004 No 35 s EX 51

Cases of entry into and exit from FIF rules

EX 52 Migration of persons holding FIF interests

Leaving New Zealand

(1) **Subsection (2)** applies if a person—

(a) ceases to be resident in New Zealand; and

(b) holds an attributing interest in a FIF at the time; and

(c) for the period before the change of residence, calculates FIF income or loss from the interest using—**(***uses the comparative value method or the deemed rate of return method to calculate FIF income or loss from the interest.***)**

New (unanimous)

(i) the comparative value method:

(ii) the deemed rate of return method:

(iii) the fair dividend rate method:

(iv) the cost method.

Treatment as sale at market value

(2) The person is treated as—
(a) having sold the interest immediately before the change of residence for an amount equal to its market value at the time; and
(b) not holding the interest when not resident in New Zealand, unless they become resident again and **subsections (3) and (4)** apply.

Coming to New Zealand

(3) **Subsection (4)** applies if a person—
(a) is a non-resident or a transitional resident; and
(b) becomes a New Zealand resident who is not a transitional resident; and
(c) holds an attributing interest in a FIF at the time; and
(d) for the period after the change of residence or status, calculates FIF income or loss from the interest using— **(***uses the comparative value method or the deemed rate of return method to calculate FIF income or loss from the interest.***)**

New (unanimous)

(i) the comparative value method:
(ii) the deemed rate of return method:
(iii) the fair dividend rate method:
(iv) the cost method.

Treatment as purchase at market value

(4) The person is treated as—
(a) having bought the interest immediately after the change of residence or status for an amount equal to its market value at the time; and
(b) not holding it when **(***not resident in New Zealand***)** the person is a transitional resident or not a New Zealand resident, unless they had previously ceased being resident and **subsections (1) and (2)** applied.

Look-through calculation method: relevance of income interest rules

(5) **Subsection (6)** applies if a person—

(a) ceases to be—
   (i) a New Zealand resident who is not a transitional resident, and becomes a non-resident:
   (ii) a non-resident, and becomes a New Zealand resident who is not a transitional resident:
   (iii) a transitional resident, and becomes a New Zealand resident who is not a transitional resident; and

(b) holds an attributing interest in a FIF at the time; and

(c) for the accounting period in which the change occurs, uses the accounting profits method or **(***deemed rate of return***)** branch equivalent method to calculate FIF income or loss from the interest.

Income interest rules

(6) The income interest rule in **section EX 16** is relevant to the calculation of the amount of FIF income or loss for the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, FIF loss, income interest, loss, market value, New Zealand, New Zealand resident, non-resident, resident in New Zealand, transitional resident

Compare: 2004 No 35 s EX 52

EX 53 Changes in application of FIF exemptions

Exemptions ceasing to apply

(1) **Subsections (2) (*and (3)*) to (4)** apply if a person—

(a) holds rights in 1 of the categories of rights described in **section EX 30(2) to (4)**; and

(b) either—
   (i) the rights become an attributing interest in a FIF because 1 of the exemptions in **sections EX 32 to EX 37** ceases to apply; or
   (ii) the person starts having FIF income or loss from the rights because they incur a cost on an attributing interest in a FIF and exceed the $50,000 threshold in **sections CQ 5(1)(d) or (db)** (When FIF income arises) and **DN 6(1)(d) or (db)** (When FIF loss arises).

Market value for cost-based methods

(2) If the person uses the comparative value method, (*or*) deemed rate of return method, the fair dividend rate method, or the cost method to calculate FIF income or loss from the rights for the period following the change, the person is treated as having—

(a) disposed of the rights to an unrelated person immediately before the change; and

(b) reacquired them immediately after the change; and

(c) received for the sale and paid for the repurchase an amount equal to their market value at the time.

Calculation of reduction in FIF income or loss

(3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or the (*deemed rate of return*) branch equivalent method to calculate FIF income or loss from the rights for that period, the FIF income or loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period.}}$$

Definition of items in formula

(4) In the formula in **subsection (3)**,—

(a) **FIF income or loss** is the FIF income or loss of the person from the rights for the period before allowing for the reduction:

(b) **days before change** is the number of complete days in the period before the change occurs:

(c) **days in period** is the number of days in the period.

Exemptions applying

(5) **Subsections ((*2*)6) to ((*4*)8)** apply if a person—

(a) holds an attributing interest in a FIF; and

(b) either—

(i) the interest ceases to be an attributing interest in a FIF because 1 of the exemptions in **sections EX 32 to EX 37** starts to apply; or

(ii) the person ceases having FIF income or loss from the interest because they dispose of an attributing interest in a FIF and fall below the $50,000 threshold in **sections CQ 5(1)(d)** or **(db)** and **DN 6(1)(d)** or **(db)**.

Market value for cost-based methods

(6) If the person uses the comparative value method, (*or*) the deemed rate of return method, fair dividend rate method, or cost method to calculate FIF income or loss from the interest for the period before the change, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the change; and

(b) (*repurchased*) reacquired it immediately after the change; and

(c) received for the sale and paid for the repurchase an amount equal to its market value at the time.

Calculation of reduction in FIF income or loss

(7) If the change occurs during an accounting period of the FIF and the person uses the accounting profits methods or the (*deemed rate of return*) branch equivalent method to calculate FIF income or loss from the interest for that period, the FIF income or loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days after change}}{\text{days in period.}}$$

Definition of items in formula

(8) In the formula in **subsection (7)**,—

(a) **FIF income or loss** is the FIF income or loss of the person from the interest for the period before allowing for the reduction:

(b) **days after change** is the number of complete days in the period after the change occurs:

(c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, loss, market value, pay

Compare: 2004 No 35 s EX 53

EX 54 (*FIFs*) Entities (*migrating*) emigrating from New Zealand

When this section applies

(1) This section applies when a person holds rights that become an attributing interest in a FIF because an entity becomes a FIF.

Treatment as sale and repurchase

(2) The person is treated as having—
- (a) disposed of the interest immediately before the change to an unrelated person; and
- (b) repurchased it immediately after the change; and
- (c) received for the sale and paid for the repurchase an amount equal to the market value of the interest at the end of the business day on which the change occurred.

Calculation of reduction in FIF income or loss

(3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or branch equivalent method to calculate FIF income or loss from the rights for that period, **section EX 25** does not apply and the FIF income or loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period.}}$$

Definition of items in formula

(4) In the formula,—
- (a) **FIF income or loss** is the FIF income or loss of the person from the rights for the period before allowing for the reduction:
- (b) **days before change** is the number of complete days in the period before the change occurs:
- (c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, business, FIF, FIF income, loss, market value, New Zealand, pay

Compare: 2004 No 35 s EX 54

New (unanimous)

EX 54B FIF rules first applying to interest on or after 1 April 2007

When this section applies

(1) This section applies when—
- (a) a person has rights in a FIF—
  - (i) on the day (the **preceding day**) before an income year; and
  - (ii) on the day (the **application day**) that begins the income year; and
- (b) for the period ending on the preceding day,—
  - (i) the rights are not an attributing interest:
  - (ii) the rights are an attributing interest for which the person does not have FIF income or loss; and
- (c) for the period beginning on the application day, the rights are an attributing interest for which the person has FIF income or loss.

Treatment as disposal and acquisition

(2) The person is treated as having—
- (a) disposed of the interest immediately before the application day to an unrelated person; and
- (b) reacquired it immediately at the start of the application day; and
- (c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.

Payment of tax liability arising from transition

(3) A person who is liable to pay an amount of income tax (the **amount of tax**) because of the disposal and acquisition referred to in **subsection (2)**—
- (a) may satisfy the liability by paying the Commissioner at least—
  - (i) one third of the amount of tax in the income year following the income year in which the disposal is treated as occurring; and

New (unanimous)

(ii) one half of the balance of the amount of tax remaining owing after payment made under **subparagraph (i)**, in the second income year following the income year in which the disposal is treated as occurring; and

(iii) the balance of the amount of tax remaining owing after payments made under **subparagraphs (i) and (ii)**, in the third income year following the income year in which the disposal is treated as occurring:

(b) is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent to which the inaccuracy or shortfall arises because of the disposal.

Defined in this Act: amount, attributing interest, Commissioner, FIF, FIF income, FIF loss, income tax, income year, loss, market value, New Zealand, pay, tax

Compare: 2004 No 35 s EX 54B

Measurement of cost

EX 55 Measurement of cost

When this section applies

(1) This section applies when the cost of a person's attributing interest in a FIF is being measured for the purposes of—

(a) the natural person $50,000 **(***exemption***)** threshold in **sections CQ 5(1)(d)** or **(db)** (When FIF income arises) and **DN 6(1)(d)** or **(db)** (When FIF loss arises); and

(b) the comparative value method**(***; and***)**:

(c) the deemed rate of return method**(.)**:

New (unanimous)

(d) the fair dividend rate method:

(e) the cost method.

Struck out (unanimous)

FIFO cost flow identification

(2) If it is not possible to specifically identify the cost of the interest, because of multiple acquisitions or dispositions or both by the person, the first-in-first-out (FIFO) method of identifying cost flows is applied.

New (unanimous)

Cost flow using average cost

(2) The cost of an attributing interest in a FIF acquired by a person in an income year is treated as being the amount calculated using the formula—

$$\frac{\text{total cost}}{\text{number of interests.}}$$

Definition of items in formula

(2B) In the formula,—

(a) **total cost** is the total cost of all attributing interests in the FIF acquired by the person in the income year of the same class as the attributing interest:

(b) **number of interests** is the number of the attributing interests referred to in **paragraph (a)**.

Share splits or similar

(3) If the person acquires the interest as the result of a share split, non-taxable bonus issue, or similar event, and the acquisition is not income for the person, **subsections (4) and (5)** apply.

Allocation of original cost

(4) The cost of the interest is a fair allocation, based on market values at the time of the split, of the cost of the original property that is split.

Allocation replacing original cost

(5) For the income year in which the split occurs and later,—

(a) the cost allocated to the interest is no longer the cost of the original property that was split; and
(b) the person is treated as having incurred the allocated cost amount on acquiring the interest when the original property was acquired; and
(c) the person is treated as not incurring any other cost on the interest merely because the original property ceases to exist.

Non-monetary cost

(6) If any cost is incurred in kind and not in money, the amount of the cost is equal to the market value of the cost incurred in kind, measured as at the time incurred.

Exclusion of term life insurance element of premiums

(7) If the interest is rights to benefit under a life insurance policy, the cost of the interest excludes a premium incurred in **(***a previous***)**an earlier income year, or accounting period, to the extent to which the premium relates only to term life insurance for the previous period and does not increase the policy's surrender value.

Exclusion of holding costs

(8) The cost of the interest does not include any expenditure under the financial arrangements rules or interest on money borrowed to acquire it, or other holding costs, incurred after its acquisition.

Defined in this Act: accounting period, amount, attributing interest, amount, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, financial arrangements rules, income, income year, interest, life insurance, life insurance policy, market value, non-taxable bonus issue, premium, share

Compare: 2004 No 35 s EX 56

Change of FIF's balance date

EX 56 Change of FIF's balance date

When this section applies

(1) This section applies when a person—
(a) has an attributing interest in a FIF; and
(b) calculates their FIF income or loss from the FIF using the accounting profits method or the branch equivalent method; and

(c) has calculated FIF income or loss from the FIF on the basis of 1 accounting year (the **old accounting year**); and

(d) wants to change to use a different accounting year (the **new accounting year**) for the calculations.

Commissioner's consent

(2) The person may make the change only if the Commissioner agrees.

Commissioner's reasons

(3) The Commissioner may take into account any relevant factors when making the decision, including—

(a) whether the change is sought because ownership of the FIF has changed; and

(b) whether the change is sought because of taxation or other legal requirements in a country where the FIF is resident or does business; and

(c) whether the change would postpone liability to income tax on FIF income.

New accounting year

(4) If the change is approved, the person may use the new accounting year.

Limit on transitional deferral

(5) If, in order to make the transition, the transitional accounting period is more than 1 year and ends in a later income year than the old accounting year ends in, and that would result in an amount of FIF income being derived in the later income year, **subsection (6)** applies and **section CQ 5(1)(f)** (When FIF income arises) does not.

Income pro-rated over whole period

(6) For the transitional accounting period, the FIF income is divided by the number of days in the period and the resulting amount is FIF income of the person derived on each day in the period.

Defined in this Act: accounting period, accounting profits method, accounting year, amount, attributing interest, branch equivalent method, business, Commissioner, FIF, FIF income, income tax, income year, loss, year

Compare: 2004 No 35 s EX 57

Market value rules

EX 57 Market value of life policy and superannuation entitlements

When this section applies

(1) This section applies when, in order to calculate a person's FIF income or loss, it is necessary to calculate the market value of a person's rights to benefit under a life insurance policy or as a beneficiary under a superannuation scheme.

Value of life insurance policy

(2) The **market value** of rights to benefit under a life insurance policy is equal to their surrender value.

Limit to subsection (2)

(3) **Subsection (2)** applies only for the purpose of calculating the cost of a person's rights to benefit from a life insurance policy under—

(a) **section EX 52(4)**; and

(b) **section EX 53(2)(***; and***)**.

Struck out (unanimous)

(c) section EZ 9 (FIF interests held on 1 April 1993).

Value of superannuation scheme entitlement

(4) The **market value** at any time of a person's rights to benefit under a superannuation scheme is equal to the total of costs incurred up to that time by or for the person on acquiring the rights if—

(a) it is not reasonably practicable to calculate the actual market value; and

(b) they have not derived any material gain from the rights up to that time.

Defined in this Act: FIF income, life insurance policy, loss, market value, superannuation scheme

Compare: 2004 No 35 s EX 58

EX 58 Non-market transactions in FIF interests

Section GC 4 (Disposals and acquisitions of FIF attributing interests) applies to acquisitions and dispositions of attributing interests in FIFs when the comparative value method, **(***or***)** the deemed rate of return method, the fair dividend rate method, or the cost method is used.

Defined in this Act: attributing interest, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF

Compare: 2004 No 35 s EX 59

Commissioner's default assessment power

EX 59 Commissioner's default assessment power

When this section applies

(1) This section applies when—

(a) a person has failed to disclose their control interest or income interest in a CFC or attributing interest in a FIF, under section 61 of the Tax Administration Act 1994:

(b) a person has failed to disclose information regarding their control interest or income interest in a CFC or attributing interest in a FIF, requested under section 17 of that Act:

(c) a person cannot obtain enough information to calculate their attributed CFC income or loss, FIF income or loss, or attributed repatriation for a period.

Commissioner's power

(2) The Commissioner may make an assessment of the amount of attributed CFC income or loss, FIF income or loss, or attributed repatriation for the relevant period.

Examples of methods

(3) Without limiting the Commissioner's discretion, the assessment may be based on any of the following:

(a) the accounts of the CFC or FIF for the relevant period prepared for tax authorities, creditors, shareholders, or others:

(b) the application of a rate of presumed increase of 10% or more, compounding annually, to the CFC's or FIF's branch equivalent income calculated under **section EX 21** for a previous period:

(c) the application of a rate of presumed increase of 10% or more, compounding annually, to the CFC's or FIF's accounting profits as shown in its accounts for a previous period:

(d) an imputed rate of return on the market value of the interest at the start of the period:

(e) the actual gains or losses of the person in the period from holding or disposing of the interest:

(f) the change in the market value of the interest over the period.

Defined in this Act: amount, assessment, attributed CFC income, attributed repatriation, attributing interest, branch equivalent income, CFC, Commissioner, control interest, FIF, FIF income, income interest, loss, market value, shareholder

Compare: 2004 No 35 s EX 60

Subpart EY—Life insurance rules

Contents

Introductory provisions

Premium loading

Introductory provisions

EY 1 What this subpart does

Life insurance rules

(1) This subpart contains most of the life insurance rules.

Meaning of life insurance rules

(2) **Life insurance rules** means—
- (a) the sections in this subpart; and
- (b) **subpart CR** (Income from life insurance); and
- (c) **section CX 39** (Life insurers and fully reinsured persons); and
- (d) **subpart DR** (Life insurance business expenditure); and
- (e) **section DZ 2** (Life insurers acquiring property before 1 April 1988); and
- (f) **section EZ 1** (Life insurers acquiring property before 1 April 1988); and
- (g) **section GC 3** (Disposals by life insurers); and
- (h) **section IT 1** (Life insurers' policyholder net losses).

Defined in this Act: life insurance rules

Compare: 2004 No 35 s EY 1

EY 2 Matters to which this subpart relates

The matters to which this subpart relates are—
- (a) the meaning of **actuarial reserves**, **claim**, **life insurance**, **life insurance policy**, **life insurer**, **life reinsurance**, **life reinsurer**, and **life reinsurance policy,** *see* **sections EY 3 to EY 14**:
- (b) life insurers' premium loading, *see* **sections EY 15 to EY 24**:
- (c) life insurers' mortality profit, *see* **sections EY 25 to EY 34**:

(d) life insurers' discontinuance profit, *see* **sections EY 35 to EY 41**:
(e) life insurers' policyholder income, *see* **sections EY 42 to EY 45**:
(f) life insurers' income and deductions when disposing of property, *see* **sections EY 46 and EY 47**:
(g) non-resident life insurers, *see* **sections EY 48 and EY 49**.

Defined in this Act: actuarial reserves, claim, deduction, discontinuance profit, income, life insurance, life insurance policy, life insurer, life reinsurance, life reinsurance policy, life reinsurer, mortality profit, non-resident, premium loading, property

Compare: 2004 No 35 s EY 2

EY 3 Meaning of actuarial reserves

Meaning

(1) **Actuarial reserves** means a life insurer's reserves as calculated under **section EY 4**.

Link between actuarial reserves and life insurer

(2) Actuarial reserves, for a life insurer at any time, means the life insurer's actuarial reserves at that time.

Defined in this Act: actuarial reserves, life insurer

Compare: 2004 No 35 s EY 3

EY 4 Actuarial reserves: calculation

Calculation by actuary

(1) The life insurer's actuarial reserves must be calculated by an actuary.

All reserves or 1 or more amounts

(2) The actuary may calculate—
(a) the actuarial reserves for all the life insurance policies for which the life insurer is the insurer; or
(b) the amount in the life insurer's actuarial reserves for 1 or more life insurance policies for which the life insurer is the insurer.

Interest, mortality, and other assumptions and bases of calculation

(3) The actuary must do the calculation using interest, mortality, and other assumptions and bases of calculation that—

(a) are based on the same principles as those used in the actuarial advice on which the following are calculated:
  (i) the level of surplus funds available to the life insurer for allotment or payment to shareholders or policyholders; or
  (ii) the level of surplus funds available to the life insurer, if a superannuation scheme, for allotment to objects of the scheme other than the object of providing for members' benefits; and

(b) are likely to produce a reasonable estimation of the future experience of the life insurer in relation to life insurance policies of which the life insurer is the insurer, having regard to the past experience of the life insurer in relation to life insurance policies of which the life insurer was the insurer; and

(c) conform with commercially acceptable practice.

Reserves for policy never negative

(4) The amount in the actuarial reserves for a life insurance policy must never be negative.

Reserves for all policies never less than total of surrender values

(5) The actuarial reserves at any time must not be less than the total of the surrender values of all the life insurance policies they cover at that time.

Reserves for policies same at end of one, and start of next, income year

(6) The amount in the actuarial reserves for life insurance policies at the start of an income year is the same as the amount in the actuarial reserves for the life insurance policies at the end of the previous income year.

Effect of partial reinsurance

(7) The actuarial reserves of a life insurer who has partial reinsurance must be reduced by an amount that the actuary responsible for actuarial control of the life insurer considers appropriate having regard to the nature of the life reinsurance policies.

Defined in this Act: actuarial reserves, actuary, amount, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, pay, shareholder, superannuation scheme

Compare: 2004 No 35 s EY 4

EY 5 Actuarial reserves: actuary's declaration

Content

(1) The actuary responsible for actuarial control of a life insurer must provide, with the life insurer's return of income, a declaration that—

(a) states that the actuary is the actuary responsible for actuarial control of the life insurer; and

(b) states the specific interest, mortality, and other assumptions and bases of calculation applied in calculating the life insurer's premium loading, mortality profit, discontinuance profit, and policyholder income or policyholder net loss for the income year of the return; and

(c) states that the assumptions and bases of calculation comply with **section EY 4**.

Form

(2) The declaration must be in the form, if any, required by the Commissioner.

Defined in this Act: actuarial reserves, actuary, Commissioner, discontinuance profit, income year, life insurer, mortality profit, policyholder income, policyholder net loss, premium loading, return of income

Compare: 2004 No 35 s EY 5

EY 6 Actuarial reserves: powers of Commissioner

Seeking advice from Government Actuary or other actuary

(1) The Commissioner may seek the advice of the Government Actuary or any other actuary on the interest, mortality, and other assumptions and bases of calculation used by the actuary who did the calculation under **section EY 4(3)**.

Assessment on different basis

(2) Whether or not the Commissioner seeks or obtains any such advice, the Commissioner may make an assessment for a life insurer and an income year on the basis of interest, mortality, and other assumptions and bases of calculation different from those used by the actuary who did the calculation under **section EY 4(3)**.

Defined in this Act: actuarial reserves, actuary, assessment, Commissioner, income year, life insurer

Compare: 2004 No 35 s EY 6

EY 7 Meaning of claim

Meaning in life insurance rules

(1) In the life insurance rules, **claim**—
- (a) means the amount that a life insurer is liable to pay under a life insurance policy because the contingency against which the life insured is covered under the policy has occurred; **subsections (2) to (5)** expand on “the amount that a life insurer is liable to pay”:
- (b) includes a payment made by a life insurer on the transfer of some or all of its life insurance business:
- (c) in the expression “claim arising”, does not have the meaning given to the word “claim” in **paragraph (a) or (b)**.

Cash and non-cash benefits

(2) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay includes—
- (a) a payment on the death of a life insured:
- (b) a payment on maturity:
- (c) a payment of a cash bonus:
- (d) a payment on the surrender of a policy:
- (e) an annuity payment:
- (f) a benefit other than in cash.

Advance or amount in actuarial reserves

(3) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay does not include—
- (a) an advance against the security of the policy; or
- (b) a bonus or other discretionary amount added to the actuarial reserves.

Amount before certain subtractions

(4) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay means the amount before the subtraction of the following amounts payable to the life insurer:
(a) an advance against the security of the policy; and
(b) an unpaid premium for the policy; and
(c) interest on an amount referred to in **paragraph (a) or (b)**.

Amount zero

(5) For the purposes of **subsection (1)(a)**, the amount that a life insurer is liable to pay may be zero.

Defined in this Act: actuarial reserves, amount, business, claim, interest, life insurance, life insurance policy, life insurance rules, life insured, life insurer, pay, premium

Compare: 2004 No 35 s EY 7

EY 8 Meaning of life insurance

Meaning

(1) **Life insurance** means insurance under which—
(a) person A (the **life insurer**) is liable to provide person B (the **policyholder**) with a benefit described in **subsection (2)**; and
(b) the life insurer is entitled to receive consideration in return, either from the policyholder or from some other person.

Benefits

(2) The benefits are—
(a) a benefit whose payment is contingent on the death of 1 or more human beings, including an annuity whose term is contingent on human life; or
(b) a benefit whose payment is contingent on the survival of 1 or more human beings to a date, or an age, specified as part of the insurance, including an annuity whose term is contingent on human life; or
(c) a benefit that is an annuity whose term is not contingent on human life, if the life insurer enters into the arrangement to provide the annuity as part of their business of providing life insurance.

Exclusion: death benefits provided under accident or medical insurance

(3) **Life insurance** does not include accident or medical insurance under which—
- (a) 1 or more benefits are payable for the death of the person whose life is insured; and
- (b) all the benefits referred to in **paragraph (a)** are—

Struck out (unanimous)

- (i) payable incidentally to the provision of accident or medical benefits; or
- (ii) payable if the death is caused by a specified cause named in the policy; or

New (unanimous)

- (i) payable if the death is caused by a specified cause named in the policy; or
- (ii) payable incidentally to the provision of accident or medical benefits, if the death is caused by a specified cause named in the policy.

Exclusion: death benefits provided by superannuation funds

(4) **Life insurance** does not include an arrangement in which—
- (a) a superannuation fund is liable to pay, as a benefit to a beneficiary of the fund, a lump sum on—
  - (i) the death of 1 or more human beings specified in the trust deed; or
  - (ii) the survival of 1 or more human beings specified in the trust deed to a date, or an age, specified in the trust deed; and
- (b) the lump sum is made up of—
  - (i) superannuation contributions made by or for the beneficiary; and
  - (ii) allocated investment earnings attributable to contributions made by or for the beneficiary; and

(iii) any other allocation from the profits of the superannuation fund attributable to contributions made by or for the beneficiary.

Defined in this Act: arrangement, business, life insurance, life insurer, pay, superannuation contribution, superannuation fund

Compare: 2004 No 35 s EY 8

EY 9 Meaning of life insurance policy

Life insurance policy means a policy to the extent to which it states the terms under which life insurance is covered.

Defined in this Act: life insurance, life insurance policy

Compare: 2004 No 35 s EY 9

EY 10 Meaning of life insurer

Meaning

(1) **Life insurer** means a person carrying on a business of providing life insurance.

Exclusion

(2) A person carrying on a business of providing life insurance in an income year is treated as not carrying on a business of providing life insurance while the person has full reinsurance.

Inclusion

(3) An association of persons, a body of persons, or a trustee is treated as carrying on a business of providing life insurance to the extent to which—
- (a) the association, body, or trustee provides life insurance; and
- (b) the consideration for the provision is something other than natural love and affection.

Parties to policies treated as being unrelated

(4) Every life insurance policy entered into by the association, body, or trustee as insurer is treated as entered into with an unrelated party, even if the life insurer and the policyholder are, for example,—
- (a) an association and a member of the association; or
- (b) a trustee and a beneficiary of the trust.

Relationship with subpart HE

(5) **Subpart HE** (Mutual associations) does not apply to the business of providing life insurance of the association, body, or trustee.

Defined in this Act: business, full reinsurance, income year, life insurance, life insurance policy, life insurer, trustee

Compare: 2004 No 35 s EY 10

EY 11 Superannuation schemes providing life insurance

Benefits treated as life insurance

(1) The provision by a trustee of a superannuation scheme of a benefit to a member or beneficiary of the scheme is treated as the provision of life insurance if the trustee provides life insurance to any member or beneficiary, unless **subsection (2)** applies.

Exemption for certain schemes

(2) A trustee of a superannuation fund is treated as not carrying on the business of life insurance for an income year if the fund meets all the requirements of **subsections (3) to (9)** for the income year.

Fund must be registered

(3) At all times in the income year, the fund must be registered by the Government Actuary under the Superannuation Schemes Act 1989.

Trustee cannot be a life insurance company

(4) At all times in the income year, no trustee of the fund is a company carrying on the business of providing life insurance to which the Life Insurance Act 1908 applies.

Fund must be for employees or related parties

(5) At all times in the income year, the fund must be 1 of the following kinds:

(a) a fund established by an employer, or group of employers who are associated, to provide benefits only to persons who are employees of or related by employment to such an employer, or to another associated employer who agrees after the fund's establishment to make contributions to it:

(b) a fund constituted under the National Provident Fund Restructuring Act 1990, the National Provident Fund Act 1950 or the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of or related by employment to an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund:

(c) a fund different from the kind described in **paragraph (b)** and constituted under—

(i) the National Provident Fund Restructuring Act 1990 to provide benefits to persons, and relatives and dependants of persons, who, before 1 April 1991, were members of a superannuation fund that met the requirements of **paragraph (b)**:

(ii) the National Provident Fund Act 1950 and which, but for the fact that a small number of the total employers to which the fund relates do not agree to or are not required to make contributions to the fund, would be a superannuation fund that met the requirements of **paragraph (b)**:

(iii) the National Provident Fund Restructuring Amendment Act 1997 to provide benefits to persons, and relatives, dependants, and nominated beneficiaries of persons, who immediately before becoming members of the superannuation fund, were members of a superannuation fund that met the requirements of either **paragraph (b) or subparagraph (ii)**.

Only certain fund beneficiaries allowed

(6) At all times in the income year, each beneficiary of the fund must be—

(a) a natural person that is an employee of or related by employment to an employer of the kind referred to in **subsection (5)(a) or (b)**:

(b) a natural person that is a beneficiary of the fund, in the case of a fund referred to in **subsection (5)(c)** (which refers to funds related to the National Provident Fund):

(c) an employer of members of the fund, to the extent of the employer's contingent interest in a fund surplus.

Significant employer contributions required

(7) At all times in the income year, each employer is required by the trust deed or Act constituting the fund to make or is making, or having made on their behalf, contributions to provide to a significant extent the fund benefits, except to the extent to which **subsection (10)** applies.

No avoidance effect

(8) The fund must not have been established, and must not be being used at any time in the income year, in a way that has the effect of defeating the intent and application of the life insurance rules.

Government Actuary approval required

(9) The trustee of the fund must have made a written application to the Government Actuary for, and the Government Actuary must have granted, approval that the fund is for the income year one that complies with **subsections (3) to (8).**

Exemptions to requirements of subsection (7)

(10) **Subsection (7)** does not apply if—
(a) the Government Actuary is satisfied that, for the income year, **subsection (7)** would have been complied with but for the fund assets exceeding the accrued benefits from the fund:
(b) the fund is one referred to in **subsection (5)(c)** (which refers to funds related to the National Provident Fund).

Limited contributions disregarded for subsection (7)

(11) For the purposes of **subsection (7)**, contributions that are merely nominal or that only meet the costs of administration and investment management are disregarded.

Notice by Government Actuary

(12) The Government Actuary must notify the trustee of a superannuation fund as soon as practicable after determining that—
(a) the fund complies with **subsections (3) to (8)** for an income year:
(b) the fund ceases to comply with the subsections for an income year.

Objection under Superannuation Schemes Act

(13) A person dissatisfied with the Government Actuary's decision can object under section 23 of the Superannuation Schemes Act 1989 and has no right of objection under the Tax Administration Act 1994.

Meaning of related by employment

(14) In this section, a person is **related by employment** to an employer if the person is—

(a) a former employee, in the case of deferred benefits relating to prior employment:

(b) a relative or dependent of an employee, in the case of benefits arising from the employees or former employee's membership in the fund.

Defined in this Act: associated, company, employee, employer, income year, life insurance, life insurance rules, related by employment, relative, superannuation fund, superannuation scheme, trustee

Compare: 2004 No 35 s GD 8(1), (3)–(8)

EY 12 Meaning of life reinsurance

Meaning

(1) **Life reinsurance** means insurance provided to a life insurer by another person (**person C**), under which person C secures the life insurer, fully or partially, against the life insurer's liability under a life insurance policy. The words "fully" and "partially" describe the extent to which the life insurer is secured against the life insurer's liability under the life insurance policy; they do not describe the term for which the reinsurance is provided.

Full reinsurance

(2) The life insurer has **full reinsurance** if all the following apply:

(a) the life insurer offered or was offered or entered into a life insurance policy or policies,—

(i) in the case of a life insurer resident in New Zealand, as part of their business of providing life insurance; or

(ii) in the case of a life insurer not resident in New Zealand, as part of their New Zealand business; and

(b) the life insurer holds a life reinsurance policy or policies covering every life insurance policy described in **paragraph (a)**; and

(c) the life insurer is fully secured against liability under the life insurance policy or policies by the life reinsurance policy or policies; and

(d) the life insurer offered or was offered or entered into the life reinsurance policy or policies in New Zealand.

Partial reinsurance

(3) The life insurer has **partial reinsurance** if all the following apply:

(a) the life insurer—

(i) holds a life reinsurance policy or policies fully securing them against liability for 1 or some, but not all, of the life insurance policies described in **paragraph (b)**; or

(ii) holds a life reinsurance policy or policies for all the life insurance policies described in **paragraph (b)** but only partially securing them against liability; or

(iii) holds a life reinsurance policy or policies partially securing them against liability for 1 or some, but not all, of the life insurance policies described in **paragraph (b)**; and

(b) the life insurer offered or was offered or entered into the life insurance policy or policies covered by the life reinsurance policy or policies,—

(i) in the case of a life insurer resident in New Zealand, as part of their business of providing life insurance; or

(ii) in the case of a life insurer not resident in New Zealand, as part of their New Zealand business; and

(c) the life insurer offered or was offered or entered into the life reinsurance policy or policies in New Zealand.

Life reinsurer

(4) **Life reinsurer** means a person in the position of person C.

Defined in this Act: business, full reinsurance, life insurance, life insurance policy, life insurer, life reinsurance, life reinsurance policy, life reinsurer, New Zealand business, offered or was offered or entered into, partial reinsurance, resident in New Zealand

Compare: 2004 No 35 s EY 11

EY 13 Meaning of life reinsurance policy

Life reinsurance policy means a policy to the extent to which it states the terms under which life reinsurance is covered.

Defined in this Act: life reinsurance, life reinsurance policy

Compare: 2004 No 35 s EY 12

EY 14 Life insurance and life reinsurance: how sections relate

Life insurance definitions

(1) **Sections EY 8 to EY 11** define terms relating to life insurance.

Life reinsurance definitions

(2) **Sections EY 12 and EY 13** define terms relating to life reinsurance.

Life insurance term usually includes life reinsurance term

(3) A reference in this Act to any of the terms defined in **sections EY 8 to EY 11** includes the equivalent term in **sections EY 12 and EY 13**—for example, **life insurer** includes **life reinsurer**—unless the context requires otherwise.

Defined in this Act: life insurance, life insurer, life reinsurance, life reinsurer

Compare: 2004 No 35 s EY 13

Premium loading

EY 15 How premium loading is calculated

Life insurer providing life insurance at start of income year

(1) **Section EY 16** sets out the steps that a life insurer follows to calculate the life insurer's premium loading for an income year if the life insurer is in the business of providing life insurance at the start of the income year.

Life insurer not providing life insurance at start of income year

(2) **Section EY 17** sets out the steps that a life insurer follows to calculate the life insurer's premium loading for an income

year if the life insurer starts the business of providing life insurance in the income year.

Premium loading formula (life)

(3) **Section EY 18(1)** sets out the premium loading formula (life). This is the formula a life insurer uses, as the first step in calculating the life insurer's premium loading for an income year, to calculate an amount for a life insured under a life insurance policy, except to the extent to which an annuity is being paid under the policy at some time in the income year.

Premium loading formula (active annuities)

(4) **Section EY 18(2)** sets out the premium loading formula (active annuities). This is the formula a life insurer uses, as the first step in calculating the life insurer's premium loading for an income year, to calculate an amount for a life insured under a life insurance policy, to the extent to which an annuity is being paid under the policy at some time in the income year.

Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, pay, premium loading, premium loading formula

Compare: 2004 No 35 s EY 14

EY 16 Premium loading: when life insurers providing life insurance at start of income year

Calculation of premium loading

(1) If a life insurer is in the business of providing life insurance at the start of an income year, the life insurer calculates their **premium loading** for the income year by following the steps in **subsection (2)**.

Steps

(2) The steps are,—
  (a) first, use the relevant premium loading formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year:
  (b) second, for each such life insurance policy, add together the amounts for the lives insured under it:
  (c) third, add together the totals reached under **paragraph (b)**.

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, premium loading, premium loading formula

Compare: 2004 No 35 s EY 15

EY 17 Premium loading: when life insurers not providing life insurance at start of income year

Calculation of premium loading

(1) If a life insurer has started to carry on a business of providing life insurance in an income year, the life insurer calculates the life insurer's **premium loading** for the income year by following the steps in **subsection (2)**.

Steps

(2) The steps are,—

(a) first, use the relevant premium loading formula, adjusted as described in **section EY 19**, to calculate an amount for each life insured under each life insurance policy existing at some time in the income year:

(b) second, for each such life insurance policy, add together the amounts for the lives insured under it:

(c) third, add together the totals reached under **paragraph (b)**.

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, premium loading, premium loading formula

Compare: 2004 No 35 s EY 16

EY 18 Premium loading formulas

Premium loading formula (life)

(1) The **premium loading formula** (life) is—

$$0.2 \times \text{claim probability} \times (\text{opening sum assured} - \text{opening actuarial reserves}).$$

Premium loading formula (active annuities)

(2) The **premium loading formula** (active annuities) is—

$$0.01 \times \text{claim probability} \times \text{opening actuarial reserves}.$$

Definition of items in formulas

(3) The items in the formulas are defined in **subsections (4) to (6)**.

Claim probability

(4) **Claim probability** is the probability of a claim arising under the policy for the life insured's death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer's actuarial reserves at the start of the income year. It is

expressed as a decimal. Variations to **claim probability** are in **sections EY 19(2) and EY 20(2)**.

Opening sum assured

(5) **Opening sum assured** is the claim that would be payable under the policy for the life insured's death in the income year or, if no such claim would be payable, the claim that would be payable under the policy for the life insured's survival to the relevant date or age specified in the policy. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in **sections EY 19(3), EY 21(2), EY 22(3), and EY 23(2)**.

Opening actuarial reserves

(6) **Opening actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insured under the policy. It is determined at the start of the income year. A variation to **opening actuarial reserves** is in **section EY 19(4)**.

Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, pay, premium loading formula

Compare: 2004 No 35 s EY 17

EY 19 Premium loading formulas: when life insurers not providing life insurance at start of income year

When this section applies

(1) This section applies when a life insurer has started to carry on a business of providing life insurance in an income year.

Claim probability

(2) In using the relevant premium loading formula, the life insurer treats the reference in **claim probability** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured.

Opening sum assured

(3) In using the premium loading formula (life), the life insurer treats the reference in **opening sum assured** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured.

Opening actuarial reserves

(4) In using the relevant premium loading formula, the life insurer treats the reference in **opening actuarial reserves** to the start of the income year as a reference to the end of the income year.

Defined in this Act: business, income year, life insurance, life insurance policy, life insurer, premium loading formula

Compare: 2004 No 35 s EY 18

EY 20 Premium loading formulas: option when more than 1 life insured

When this section applies

(1) This section applies when a life insurance policy covers more than 1 life insured.

Claim probability

(2) In using the relevant premium loading formula, the life insurer may use as **claim probability** a common factor for all the lives insured under the policy.

Features of common factor

(3) The common factor must be a reasonable approximation of the average probability of a claim arising under the policy for each life insured's death in the income year. It must be weighted as necessary to take account of—

(a) differing claims for individual lives insured under the policy; and

(b) differing amounts in the life insurer's actuarial reserves for individual lives insured under the policy.

Defined in this Act: actuarial reserves, amount, claim, income year, life insurance policy, life insured, life insurer, premium loading formula

Compare: 2004 No 35 s EY 19

EY 21 Premium loading formula (life): when annuity payable on death

When this section applies

(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's death.

Opening sum assured

(2) In using the premium loading formula (life), the life insurer uses as **opening sum assured** the net present value of the annuity. The net present value is determined—

(a) at the start of the income year; and

(b) on the assumption that the life insured died at the start of the income year; and

(c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year.

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, premium loading formula

Compare: 2004 No 35 s EY 20

EY 22 Premium loading formulas: when annuity payable on survival to date or age specified in policy

When this section applies

(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's survival to the relevant date or age specified in the policy.

Claim probability

(2) In using the relevant premium loading formula, the life insurer must use **claim probability** as defined in **section EY 18(4)**, without regard to the fact that the payment of the annuity is not contingent on the life insured's death.

Opening sum assured

(3) In using the premium loading formula (life), the life insurer must use as **opening sum assured** the net present value of the annuity. The net present value is determined—

(a) at the relevant date or age specified in the policy; and

(b) on the assumption that the life insured survived to the date or age; and

(c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year.

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, premium loading formula

Compare: 2004 No 35 s EY 21

EY 23 Premium loading formula (life): when partial reinsurance exists

When this section applies

(1) This section applies when a life insurer has partial reinsurance.

Opening sum assured

(2) In using the premium loading formula (life), the life insurer must reduce **opening sum assured** by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy.

Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, partial reinsurance, premium loading formula

Compare: 2004 No 35 s EY 22

EY 24 Premium loading formulas: individual result may never be negative

If a life insurer gets a negative result from using a premium loading formula to calculate an amount for a life insured under a life insurance policy for an income year, the result is treated as zero.

Defined in this Act: income year, life insurance policy, life insured, life insurer, premium loading formula

Compare: 2004 No 35 s EY 23

Mortality profit

EY 25 How mortality profit is calculated

Life insurer providing life insurance at start of income year

(1) **Section EY 26** sets out the steps that a life insurer follows to calculate their mortality profit for an income year if they are in the business of providing life insurance at the start of the income year.

Life insurer not providing life insurance at start of income year

(2) **Section EY 27** sets out the steps that a life insurer follows to calculate their mortality profit for an income year if they start the business of providing life insurance in the income year.

Mortality profit formula

(3) **Section EY 28** sets out the mortality profit formula that a life insurer uses, as the first step in calculating the life insurer's mortality profit for an income year, to calculate an amount for a life insured under a life insurance policy.

Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, mortality profit, mortality profit formula

Compare: 2004 No 35 s EY 24

EY 26 Mortality profit: when life insurers providing life insurance at start of income year

Calculation of mortality profit

(1) If a life insurer is in the business of providing life insurance at the start of an income year, the life insurer calculates the life insurer's **mortality profit** for the income year by following the steps in **subsection (2)**.

Steps

(2) The steps are,—

(a) first, use the mortality profit formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year:

(b) second, for each such life insurance policy, add together the amounts for the lives insured under it:

(c) third, add together the totals reached under **paragraph (b)**:

(d) fourth, if the result is positive, take it as the mortality profit. If the result is negative, **sections EY 33 and EY 34** apply.

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, mortality profit, mortality profit formula

Compare: 2004 No 35 s EY 25

EY 27 Mortality profit: when life insurers not providing life insurance at start of income year

Calculation of mortality profit

(1) If a life insurer has started to carry on a business of providing life insurance in an income year, the life insurer calculates the life insurer's **mortality profit** for the income year by following the steps in **subsection (2)**.

Steps

(2) The steps are,—

(a) first, use the mortality profit formula, adjusted as described in **section EY 29**, to calculate an amount for each life insured under each life insurance policy existing at some time in the income year:

(b) second, for each such life insurance policy, add together the amounts for the lives insured under it:

(c) third, add together the totals reached under **paragraph (b)**:

(d) fourth, if the result is positive, take it as the mortality profit. If the result is negative, **sections EY 33 and EY 34** apply.

Defined in this Act: amount, business, income year, life insurance, life insurance policy, life insured, life insurer, mortality profit, mortality profit formula

Compare: 2004 No 35 s EY 26

EY 28 Mortality profit formula

Formula

(1) The **mortality profit formula** is—

$$\text{claim probability} \times (\text{opening sum assured} - \text{opening actuarial reserves}) - (\text{closing sum assured} - \text{opening actuarial reserves}).$$

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (8)**.

Claim probability

(3) **Claim probability** is the probability of a claim arising under the policy for the life insured's death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer's actuarial reserves at the start of the income year. It is expressed as a decimal. Variations to **claim probability** are in **sections EY 29(2) and EY 30(2)**.

Opening sum assured

(4) **Opening sum assured** is the claim that would be payable under the policy for the life insured's death in the income year. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in **sections EY 29(3), EY 31(2), and EY 32(2)**.

Opening actuarial reserves

(5) **Opening actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insured under the policy. It is determined at the start of the income year. A variation to **opening actuarial reserves** is in **section EY 29(4)**.

Closing sum assured if life insured dies in current income year

(6) If a life insured dies in the income year to which the formula is being applied, **closing sum assured** is the claim payable under the policy for the death. It may be zero. A variation to **closing sum assured** is in **section EY 32(3)**.

Closing sum assured if life insured dies in 1990–91 income year or year up to current income year

(7) If a life insured dies in the 1990–91 income year or a later income year before the income year to which the formula is being applied, and the claim has not already been included in **closing sum assured** for an income year, **closing sum assured** is the claim payable under the policy for the death. It may be zero. A variation to **closing sum assured** is in **section EY 32(3)**.

Closing sum assured if subsections (6) and (7) do not apply

(8) If **subsections (6) and (7)** do not apply, **closing sum assured** is the same as **opening actuarial reserves**.

Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, mortality profit formula, pay

Compare: 2004 No 35 s EY 27

EY 29 Mortality profit formula: when life insurers not providing life insurance at start of income year

When this section applies

(1) This section applies when a life insurer starts to carry on a business of providing life insurance in an income year.

Claim probability

(2) In using the mortality profit formula, the life insurer treats the reference in **claim probability** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured.

Opening sum assured

(3) In using the mortality profit formula, the life insurer treats the reference in **opening sum assured** to the start of the income year as a reference to the date on which the life insurance policy started to cover the life insured.

Opening actuarial reserves

(4) In using the mortality profit formula, the life insurer treats the reference in **opening actuarial reserves** to the start of the income year as a reference to the end of the income year.

Defined in this Act: business, income year, life insurance, life insurance policy, life insurer, mortality profit formula

Compare: 2004 No 35 s EY 28

EY 30 Mortality profit formula: option when more than 1 life insured

When this section applies

(1) This section applies when a life insurance policy covers more than 1 life insured.

Claim probability

(2) In using the mortality profit formula, the life insurer may use as **claim probability** a common factor for all the lives insured under the policy.

Features of common factor

(3) The common factor must be a reasonable approximation of the average probability of a claim arising under the policy for each life insured's death in the income year. It must be weighted as necessary to take account of—

(a) differing claims for individual lives insured under the policy; and

(b) differing amounts in the life insurer's actuarial reserves for individual lives insured under the policy.

Defined in this Act: actuarial reserves, amount, claim, income year, life insurance policy, life insured, life insurer, mortality profit formula

Compare: 2004 No 35 s EY 29

EY 31 Mortality profit formula: when annuity payable on death

When this section applies

(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's death.

Opening sum assured

(2) In using the mortality profit formula, the life insurer uses as **opening sum assured** the net present value of the annuity. The net present value is determined—

(a) at the start of the income year; and

(b) on the assumption that the life insured died at the start of the income year; and

(c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year.

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, mortality profit formula, pay

Compare: 2004 No 35 s EY 30

EY 32 Mortality profit formula: when partial reinsurance exists

When this section applies

(1) This section applies when a life insurer has partial reinsurance.

Opening sum assured

(2) In using the mortality profit formula, the life insurer must reduce **opening sum assured** by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy.

Closing sum assured

(3) In using the mortality profit formula, the life insurer must reduce **closing sum assured** by the claim receivable by the

life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy.

Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, mortality profit formula, partial reinsurance

Compare: 2004 No 35 s EY 31

EY 33 Mortality profit formula: individual result may be negative only in some cases

Rule: not negative

(1) If a life insurer gets a negative result from using the mortality profit formula to calculate an amount for a life insured under a life insurance policy for an income year, the result is treated as zero. However, a negative result is not treated as zero if 1 of the exclusions in **subsections (2) to (4)** applies.

Exclusion: death in income year

(2) The first exception is when the life insured died in the income year.

Exclusion: death in 1990–91 income year or later

(3) The second exception is when—

(a) the life insured died in the 1990–91 income year or a later income year before the income year for which the formula is being used; and

(b) the claim has not already been included in **closing sum assured** for an income year.

Exclusion: annuity being paid

(4) The third exception is when, and to the extent to which, the benefit under the policy is an annuity that is being paid at some time in the income year.

Defined in this Act: claim, income year, life insurance policy, life insured, life insurer, mortality profit formula, pay

Compare: 2004 No 35 s EY 32

EY 34 Mortality profit formula: negative result

When this section applies

(1) This section applies when a life insurer is allowed a deduction under **section DR 1** (Mortality profit formula: negative result).

Amount of deduction

(2) The amount of the deduction is the negative result.

Timing of deduction

(3) The life insurer is allowed the deduction in the income year.

Defined in this Act: amount, deduction, income year, life insurer, mortality profit formula

Compare: 2004 No 35 s EY 33

Discontinuance profit

EY 35 How discontinuance profit is calculated

Life insurer providing life insurance at any time

(1) **Section EY 36** sets out the steps that a life insurer follows to calculate the life insurer's discontinuance profit for an income year.

Discontinuance profit formula (existing policies)

(2) **Section EY 37** sets out the discontinuance profit formula (existing policies). This is the formula a life insurer uses, as the first step in calculating the life insurer's discontinuance profit for an income year, to calculate an amount for a life insurance policy that exists at the start of the income year and to which 1 of the following applies in the income year:

(a) it terminates, wholly or partly, for a reason other than the life insured's death or the life insured's survival to the relevant date or age specified in the policy; or

(b) a claim is paid under it for a reason other than the life insured's death or the life insured's survival to the relevant date or age specified in the policy.

Discontinuance profit formula (new policies)

(3) **Section EY 38** sets out the discontinuance profit formula (new policies). This is the formula a life insurer uses, as the first step in calculating the life insurer's discontinuance profit for an income year, to calculate an amount for a life insurance policy to which both the following apply:

(a) it does not exist at the start of the income year; and

(b) it terminates in the income year for a reason other than the life insured's death or the life insured's survival to the relevant date or age specified in the policy.

Defined in this Act: claim, discontinuance profit, discontinuance profit formula, income year, life insurance, life insurance policy, life insured, life insurer, pay

Compare: 2004 No 35 s EY 34

EY 36 Discontinuance profit for income year

Calculation of discontinuance profit

(1) A life insurer calculates the life insurer's **discontinuance profit** for an income year by following the steps in **subsection (2)**.

Steps

(2) The steps are,—

(a) first, use the relevant discontinuance profit formula to calculate an amount for each life insurance policy existing at some time in the income year:

(b) second, add all the amounts together.

Defined in this Act: amount, discontinuance profit, discontinuance profit formula, income year, life insurance policy, life insurer

Compare: 2004 No 35 s EY 35

EY 37 Discontinuance profit formula (existing policies)

Formula

(1) The **discontinuance profit formula** (existing policies) is—

pre-termination actuarial reserves –
post-termination actuarial reserves – termination payment.

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (5)**.

Pre-termination actuarial reserves

(3) **Pre-termination actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insurance policy, determined immediately before the event described in **section EY 35(2)(a) or (b)**. It is calculated using the same assumptions and bases of calculation as were used at the start of the income year to calculate the amount in the life insurer's actuarial reserves for the policy.

Post-termination actuarial reserves

(4) **Post-termination actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insurance policy, determined immediately after the event described in **section EY 35(2)(a) or (b)** and having regard to the fact that the event has occurred. It is calculated using the same assumptions and bases of calculation as were used at the start of the income year to calculate the amount in the life insurer's actuarial reserves for the policy.

Termination payment

(5) **Termination payment** is the claim payable by the life insurer on the occurrence of the event described in **section EY 35(2)(a) or (b)**. It may be zero. A variation to **termination payment** is in **section EY 39(2)**.

Defined in this Act: actuarial reserves, amount, claim, discontinuance profit formula, income year, life insurance policy, life insurer, pay

Compare: 2004 No 35 s EY 36

EY 38 Discontinuance profit formula (new policies)

Formula

(1) The **discontinuance profit formula** (new policies) is—

premium – termination payment.

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) and (4)**.

Premium

(3) **Premium** is all the premiums paid to the life insurer for the life insurance policy, including a premium due before, but paid after, it terminates. A variation to **premium** is in **section EY 40(2).**

Termination payment

(4) **Termination payment** is the claim payable by the life insurer when the life insurance policy terminates. It may be zero. A variation to **termination payment** is in **section EY 40(3)**.

Defined in this Act: claim, discontinuance profit formula, life insurance policy, life insurer, pay, premium

Compare: 2004 No 35 s EY 37

EY 39 Discontinuance profit formula (existing policies): when partial reinsurance exists

When this section applies

(1) This section applies when a life insurer has partial reinsurance.

Termination payment

(2) In using the discontinuance profit formula (existing policies), the life insurer must reduce **termination payment** by the claim receivable by the life insurer under the life reinsurance policy on the occurrence of the event described in **section EY 35(2)(a) or (b)**.

Defined in this Act: claim, discontinuance profit formula, life insurer, life reinsurance policy, partial reinsurance

Compare: 2004 No 35 s EY 38

EY 40 Discontinuance profit formula (new policies): when partial reinsurance exists

When this section applies

(1) This section applies when a life insurer has partial reinsurance.

Premium

(2) In using the discontinuance profit formula (new policies), the life insurer must reduce **premium** by an amount to which both the following apply:

(a) it is part of the premiums payable by the life insurer in the income year for a life reinsurance policy or policies (the **life reinsurance premiums**); and

(b) it is the part of the life reinsurance premiums that relates to the life insurance policy.

Termination payment

(3) In using the discontinuance profit formula (new policies), the life insurer must reduce **termination payment** by the claim receivable by the life insurer under the life reinsurance policy for the termination of the life insurance policy.

Defined in this Act: amount, claim, discontinuance profit formula, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, pay, premium

Compare: 2004 No 35 s EY 39

EY 41 Discontinuance profit formulas: individual result may never be negative

If a life insurer gets a negative result from using a discontinuance profit formula to calculate an amount for a life insurance policy for an income year, the result is treated as zero.

Defined in this Act: discontinuance profit formula, income year, life insurance policy, life insurer

Compare: 2004 No 35 s EY 40

Policyholder income

EY 42 How policyholder income is calculated

Section EY 43 sets out the policyholder income formula that a life insurer uses for each income year to calculate the life insurer's policyholder income for the income year.

Defined in this Act: income year, life insurer, policyholder income, policyholder income formula

Compare: 2004 No 35 s EY 41

EY 43 Policyholder income formula

Formula

(1) The **policyholder income formula** is—

$$\frac{\begin{array}{c}\text{claim due}\\ +\ (\text{closing actuarial reserves} - \text{opening actuarial reserves})\\ -\ (\text{premium} - \text{underwriting result})\end{array}}{(1 - \text{tax rate}).}$$

Definition of items in formula

(2) The items in the formula are defined in **subsections (3) to (8)**.

Claim due

(3) **Claim due** is the total of—

(a) each claim that became due and payable in the income year; and

(b) each claim that became due and payable in (*a previous*)an earlier income year to the extent to which—

(i) the claim relates to a contingency that was met in the 1990–91 income year or a later income year before the income year for which the formula is being used; and

(ii) the claim has not already been included in **claim** in an income year.

Closing actuarial reserves

(4) **Closing actuarial reserves** is the life insurer's actuarial reserves, determined at the end of the income year. A variation to **closing actuarial reserves** is in **section EY 45(2)**.

Opening actuarial reserves

(5) **Opening actuarial reserves** is the life insurer's actuarial reserves, determined at the start of the income year. A variation to **opening actuarial reserves** is in **section EY 45(3)**.

Premium

(6) **Premium** is all the premiums due and payable to the life insurer in the income year. **Premium** does not include a premium due and payable to the life insurer in **(***a previous***)**<u>an earlier</u> income year. A variation to **premium** is in **section EY 44**.

Underwriting result

(7) **Underwriting result** is the total of the following that the life insurer has in the income year:
(a) the premium loading; and
(b) the mortality profit; and
(c) the discontinuance profit.

Tax rate

(8) **Tax rate** is the basic rate of income tax set out in **schedule 1, part A, clause 7** (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits).

Positive result

(9) A positive result from using the policyholder income formula is policyholder income in the income year.

Negative result

(10) A negative result from using the policyholder income formula is policyholder net loss for the income year, and is dealt with under **section IT 1** (Life insurers' policyholder net losses).

Defined in this Act: actuarial reserves, claim, discontinuance profit, income year, life insurer, mortality profit, pay, policyholder income, policyholder income formula, policyholder net loss, premium, premium loading, tax

Compare: 2004 No 35 s EY 42

EY 44 Policyholder income formula: when partial reinsurance exists

When this section applies

(1) This section applies when a life insurer has partial reinsurance.

Premium

(2) In using the policyholder income formula, the life insurer must reduce **premium** by an amount calculated using the formula—

reinsurance premium – reinsurance claim.

Definition of items in formula

(3) The items in the formula are defined in **subsections (4) and (5)**.

Reinsurance premium

(4) **Reinsurance premium** is the total of the premiums due and payable by the life insurer in the income year under the life reinsurance policies under which the life insurer has partial reinsurance. **Reinsurance premium** does not include premiums due and payable by the life insurer in **(***previous***)**earlier income years.

Reinsurance claim

(5) **Reinsurance claim** is the total of the claims receivable by the life insurer in the income year under the life reinsurance policies under which the life insurer has partial reinsurance. **Reinsurance claim** does not include claims receivable by the life insurer in **(***previous***)**earlier income years.

Defined in this Act: amount, claim, income year, life insurer, life reinsurance policy, pay, partial reinsurance, policyholder income formula, premium

Compare: 2004 No 35 s EY 43

EY 45 Policyholder income formula: when life insurance business transferred

When this section applies

(1) This section applies when a life insurance business is transferred in a transfer to which all the following apply:

- (a) the transferor and the transferee, whether or not resident in New Zealand, are part of the same wholly-owned group of companies immediately before and immediately after the transfer; and
- (b) 1 of the following is met:
  - (i) if the transferor is resident in New Zealand, all the transferor's life insurance business is transferred to the transferee; or
  - (ii) if the transferor is not resident in New Zealand, all the life insurance policies offered or entered into in New Zealand that are held by the transferor are transferred to the transferee; and
- (c) the Commissioner receives confirmation from the Government Actuary that—
  - (i) the requirements of **paragraph (b)** are met; and
  - (ii) no policyholder will be unduly disadvantaged as a result of the transfer; and
- (d) the Commissioner is satisfied that the transfer is being undertaken for commercial reasons and that no undue tax advantage to either the transferor or the transferee will arise as a result of the transfer.

Closing actuarial reserves

(2) In using the policyholder income formula for the income year in which the transfer occurs, the transferor must use as **closing actuarial reserves** the transferor's actuarial reserves immediately before the transfer.

Opening actuarial reserves

(3) In using the policyholder income formula for the income year in which the transfer occurs, the transferee must use as **opening actuarial reserves** the total of—

- (a) the transferee's actuarial reserves, determined at the start of the income year; and

(b) the transferee's actuarial reserves for the business or policies transferred to the transferee, determined immediately after the transfer.

Defined in this Act: actuarial reserves, business, Commissioner, income year, life insurance, life insurance policy, offered or entered into in New Zealand, policyholder income formula, resident in New Zealand, wholly-owned group of companies

Compare: 2004 No 35 s EY 44

Disposal of property

EY 46 Income from disposal of property

When this section applies

(1) This section applies when a life insurer disposes of any property of their life insurance business.

Property generally

(2) An amount that a life insurer derives from disposing of any property of their life insurance business is income of the life insurer under **section CR 1(5)** (Income of life insurer). However, if the property is a financial arrangement, **subsections (3) to (5)** apply instead of this subsection.

Financial arrangement: application of financial arrangements rules

(3) If the life insurer disposes of a financial arrangement to which the financial arrangements rules apply, **subpart EW** (Financial arrangements rules) applies.

Financial arrangement: application of old financial arrangements rules

(4) If the life insurer disposes of a financial arrangement to which the old financial arrangements rules apply, **sections EZ 33 to EZ 52** (which relate to the old financial arrangements rules) apply.

Financial arrangement: before old financial arrangements rules

(5) If the life insurer receives an amount on or after 1 April 1982 as repayment or partial repayment of a financial arrangement to which the old financial arrangements rules would have

applied if **section EZ 45** (Application of old financial arrangements rules) had not existed, the amount is income of the life insurer.

Defined in this Act: amount, business, financial arrangement, financial arrangements rules, income, life insurance, life insurer, old financial arrangements rules, pay, property

Compare: 2004 No 35 s EY 45

EY 47 Deductions for disposal of property

When this section applies

(1) This section applies when a life insurer is allowed a deduction under **section DR 2** (Disposal of property).

Amount of deduction

(2) The amount of the deduction is—

(a) the property's acquisition value or cost; or

(b) the amount described in **section EZ 2(1)** (Deductions for disposal of property: 1982–83 and 1989–90 income years); or

(c) the amount described in **section EZ 2(2)**.

Timing of deduction

(3) The life insurer is allowed the deduction in the income year in which they dispose of the property.

Defined in this Act: amount, deduction, income year, life insurer, property

Compare: 2004 No 35 s EY 46

Non-resident life insurers

EY 48 Non-resident life insurers with life insurance policies in New Zealand

When this section applies

(1) This section applies when a life insurer not resident in New Zealand offers or is offered or enters into life insurance policies in New Zealand.

Income derived from New Zealand

(2) The life insurer's income from the business of providing life insurance, as determined under this section, is income derived from New Zealand.

Underwriting result and policyholder income

(3) The life insurer applies the items of the premium loading formula, the mortality profit formula, the discontinuance profit formula, and the policyholder income formula only to—

(a) the life insurance policies the life insurer, as insurer, offered or was offered or entered into in New Zealand; and

(b) the life reinsurance policies held by the life insurer that relate exclusively to the life insurance policies the life insurer, as insurer, offered or was offered or entered into in New Zealand.

Other income

(4) The life insurer's income from the business of providing life insurance, other than under a formula referred to in **subsection (3)**, is determined only in relation to the life insurer's New Zealand business.

Defined in this Act: business, discontinuance profit formula, income, income derived from New Zealand, life insurance, life insurance policy, life insurer, life reinsurance policy, mortality profit formula, New Zealand, New Zealand business, non-resident, offered or was offered or entered into, policyholder income formula, premium loading formula, resident in New Zealand

Compare: 2004 No 35 s EY 47

EY 49 Non-resident life insurer becoming resident

Non-resident life insurer may apply

(1) A life insurer not resident in New Zealand may apply to be treated for its New Zealand business as resident in New Zealand on and after the first day of a particular income year.

Application

(2) The life insurer applies by—

(a) completing a written application specifying the particular income year; and

(b) giving the application to the Commissioner not less than 20 working days before the start of the particular income year.

Commissioner may grant

(3) The Commissioner may grant the application.

Company resident in New Zealand

(4) If the application is granted, the life insurer's New Zealand business is treated, on and after the first day of the particular income year, as being carried on by a company resident in New Zealand in which the life insurer holds all the issued shares.

Life insurer agent for company

(5) The life insurer is treated as carrying on its New Zealand business as agent for the company and is liable, as agent for the company, to pay amounts payable to the Commissioner and to provide returns of income and other information required by the Commissioner.

Company and life insurer separate persons

(6) The life insurer and the company are treated as being separate persons in relation to the life insurer's New Zealand business.

Defined in this Act: agent, amount, Commissioner, company, income year, life insurer, New Zealand business, non-resident, pay, resident in New Zealand, return of income, share, working day

Compare: 2004 No 35 s EY 48

Subpart EZ—Terminating provisions

Contents

Leases of land

Depreciation

Definitions

Accident insurance

Life insurance

EZ 1 Life insurers acquiring property before 1 April 1988

When this section applies

(1) This section applies when **section DZ 2** (Life insurers acquiring property before 1 April 1988) applies.

Amount of deduction

(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{specific liability}}{\text{total liability}} \times \text{property sum.}$$

Definition of items in formula

(3) The items in the formula are defined in **subsections (4) to (9)**.

Specific liability

(4) **Specific liability** is the amount in the life insurer's total liability on the last day of the 1987–88 income year for the following matters covered by the life insurer's Life Insurance Fund:
(a) superannuation policies; and
(b) pre-1983 mortgage repayment insurance policies; and
(c) annuities that have been granted.

Total liability

(5) **Total liability** is the life insurer's liability for life insurance policies on the last day of the 1987–88 income year.

Property sum

(6) The **property sum** is calculated under whichever is relevant of **subsections (7) to (9)**.

Property acquired before last day of 1982–83 income year

(7) For property acquired on or before the last day of the 1982–83 income year, the property sum is calculated by subtracting the specified base cost for 1983 income year property from the market value of the property on 1 April 1988.

Property acquired after end of 1982–83 income year: not financial arrangement

(8) For property acquired after the end of the 1982–83 income year that is not a financial arrangement, the property sum is calculated by subtracting the cost price or acquisition value of the property from the market value of the property on 1 April 1988.

Property acquired after end of 1982–83 income year: financial arrangement

(9) For property acquired after the end of the 1982–83 income year that is a financial arrangement, the property sum is the base price adjustment for the arrangement, calculated as if the arrangement had matured on 1 April 1988 but using the formula in **section EW 31** (Base price adjustment formula).

Timing of deduction

(10) The life insurer is allowed the deduction in the income year in which they dispose of the property.

Defined in this Act: amount, deduction, financial arrangement, income year, Life Insurance Fund, life insurance policy, life insurer, property, specified base cost for 1983 income year property, superannuation policy

Compare: 2004 No 35 s EZ 1

EZ 2 Deductions for disposal of property: 1982–83 and 1989–90 income years

Section EY 47(2)(b)

(1) For the purposes of **section EY 47(2)(b)** (Deductions for disposal of property), for property to which both the following apply, the amount of the deduction is the market value of the property on the last day of the 1989–90 income year:

(a) the property is land or buildings acquired on or before the last day of the 1989–90 income year; and

(b) the profit from the property's disposal on or before the last day of the 1989–90 income year, had it been disposed of then at a profit, would have been a capital profit or gain and not a profit on disposal of an investment subject to income tax under section 204 of the Income Tax Act 1976 (as that section was immediately before its repeal and substitution by section 13(1) of the Income Tax Amendment Act (No 2) 1990).

Section EY 47(2)(c)

(2) For the purposes of **section EY 47(2)(c)**, for property to which both the following apply, the amount of the deduction is the specified base cost for 1983 income year property:

(a) the property was acquired on or before the last day of the 1982–83 income year; and

(b) subsection (1) does not apply to the property.

Defined in this Act: amount, deduction, income year, property, specified base cost for 1983 income year property

Compare: 2004 No 35 s EZ 2

Petroleum mining

EZ 3 Petroleum development expenditure from 1 October 1990 to 15 December 1991

Timing of deduction

(1) Expenditure that is allowed as a deduction under **section DZ 3** (Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991) must be deducted in equal amounts over the 10 years starting with the later of—

(a) the income year in which commercial production starts; and

(b) the income year in which the expenditure is incurred.

Petroleum mining operations outside New Zealand

(2) This section applies with any necessary modifications to a petroleum miner who undertakes petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by this Act.

Partnership interests

(3) For the purposes of this section, a partner is treated as having a share or interest in a petroleum (*mining*) permit or other property of a partnership to the extent of their income interest in the partnership.

Disposal of part of asset

(4) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: amount, commercial production, controlled foreign company, deduction, dispose, income year, New Zealand, petroleum, petroleum miner, petroleum mining operations, petroleum (*mining*) permit

Compare: 2004 No 35 s EZ 3

Livestock

EZ 4 Valuation of livestock bailed or leased as at 2 September 1992

When this section applies

(1) This section applies when—
(a) an owner of livestock valued a class of livestock for the 1991–92 income year under section 86 of the Income Tax Act 1976 (as that section was in force before its repeal by section 21 of the Income Tax Amendment Act (No 2) 1993); and
(b) either—
(i) the livestock was, as at 2 September 1992, at the use of a person under a bailment, lease, or other agreement that the owner entered into on or before that date, or was, on or before that date, livestock that was subject to a binding contract to bail or lease the livestock to a person, or otherwise allow them to use the livestock; or
(ii) the class of livestock was not one that the owner had on hand in the previous income year, but was a class that, as at 2 September 1992, was at the use of a person under a bailment, lease, or other agreement that the owner entered into on or before that date.

Rolling average value

(2) The owner may value the livestock at a value equal to 70% of the rolling average value of that class of livestock.

When subsection (2) applies

(3) **Subsection (2)** applies for the 1992–93 income year and any later income year in which the livestock continues to be bailed, leased, or otherwise used by the person under the bailment, lease, or other agreement.

Number of livestock valued

(4) The number of specified livestock of a class that may be valued under this section is the number that is the least of—
(a) the number of livestock of the class bailed, leased, or otherwise used (or, for a binding contract entered into

before 2 September 1992 but not yet applying, the number of livestock of that class provided for in the contract); and

(b) the number of livestock of the class bailed, leased, or otherwise used as at the end of the 1992–93 income year; and

(c) the lesser of the opening and closing number of stock of the class bailed, leased, or otherwise used in a later income year up to and including the income year in which the livestock is being valued.

Meaning of rolling average value

(5) In this section, **rolling average value**, for an income year and a class of specified livestock, means one-third of the sum of the national average market values set for that income year and each of the 2 previous income years for livestock of that class.

Defined in this Act: class, income year, lease, national average market value, rolling average value, specified livestock

Compare: 2004 No 35 s EZ 4

EZ 5 Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006

Bloodstock to which this section applies

(1) This section applies to bloodstock that—

(a) was not used for breeding in New Zealand before 16 December 1991; and

(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person, unless—

(i) the other person transferred the bloodstock to person A under a matrimonial agreement to which **section FB 18** (Bloodstock) applies; or

(ii) the other person and person A were companies in the same wholly-owned group at the time person A acquired the bloodstock from the other person; and

(c) **section EC 39(1) or (2)** (First income year in breeding business) applies to,—

(i) before 1 August 2006; or

(ii) for an income year ending on or after 1 August 2006, if a requirement of **paragraphs (a) to (c) of**

section EC 39(1) or (2) is first met before 1 August 2006.

Stallion

(2) For the purposes of **sections EC 39 and EC 40** (which relate to bloodstock), the reduction applying to the value of a stallion is 25% of the cost price of the stallion unless person A chooses to value the stallion by the reducing value method.

Stallion valued by reducing value method

(3) When person A chooses to value the stallion by the reducing value method, the reduction applying to the value of the stallion is 37.5% of its cost price in the first income year and 37.5% of its opening value in each later income year. Person A must give notice to the Commissioner of their election in their return of income for the first income year.

Broodmare when first used before 1 April 2001

(4) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{15 - \text{age of broodmare.}}$$

Definition of item in formula

(5) In the formula in **subsection (4)**, **age of broodmare** is—
(a) 12 years of age; or
(b) the actual age in years, if the broodmare is 11 years of age or less at the end of the income year.

Broodmare when first used on or after 1 April 2001 but before 1 August 2006

(6) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which **section EC 39(2)** applies is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{11 - \text{age of broodmare.}}$$

Definition of item in formula

(7) In the formula in **subsection (6)**, **age of broodmare** is—
(a) 8 years of age; or

(b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Defined in this Act: bloodstock, broodmare, Commissioner, company, cost price, income year, matrimonial agreement, New Zealand, notice, return of income, stallion, wholly-owned group, year

Compare: 2004 No 35 s EZ 4B

EZ 6 Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006

Broodmare to which this section applies

(1) This section applies to a broodmare that **section EC 39(1) or (2)** (First income year in breeding business) applies to,—
- (a) before 1 August 2006; or
- (b) for an income year ending on or after 1 August 2006, if a requirement of **paragraphs (a) to (c) of section EC 39(1) or (2)** is first met before 1 August 2006.

Broodmare when first used before 1 April 2001

(2) For the purposes of **sections EC 39 and EC 40** (which relate to bloodstock), the reduction applying to the value of a broodmare to which **section EC 39(1)** applies and **sections EC 41** (Reduction: bloodstock not previously used for breeding in New Zealand) and **EZ 5** do not apply is calculated using the formula—

$$\frac{\text{cost price of broodmare}}{15 - \text{age of broodmare.}}$$

Definition of item in formula

(3) In the formula in **subsection (2)**, **age of broodmare** is—
- (a) 12 years of age; or
- (b) the actual age in years, if the broodmare is 11 years of age or less at the end of the income year.

Broodmare when first used on or after 1 April 2001 but before 1 August 2006

(4) For the purposes of **sections EC 39 and EC 40**, the reduction applying to the value of a broodmare to which **section EC 39(2)** applies and **sections EC 41 and EZ 5** do not apply is calculated using the formula—

$$\frac{\text{cost price of broodmare}}{11 - \text{age of broodmare.}}$$

Definition of item in formula

(5) In the formula in **subsection (4)**, **age of broodmare** is—
- (a) 8 years of age; or
- (b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Defined in this Act: broodmare, cost price, income year, year

Compare: 2004 No 35 s EZ 4C

Patent rights

EZ 7 Buying patent rights before 1 April 1993

When this section applies

(1) This section applies when **section DZ 8** (Buying patent rights before 1 April 1993) applies.

Amount of deduction

(2) The amount of the deduction is the expenditure that the person has incurred in buying the patent rights.

Amount when patent rights expired or disposed of

(3) If, before the expiry of the patent rights, the rights have come to an end or have been disposed of, the person is allowed a deduction of an amount that bears to the total sum of the expenditure on the purchase of the rights the same proportion as the unexpired term of the rights when they came to an end or were disposed of bears to their unexpired term at the date of their purchase. An amount that the person has otherwise been allowed as a deduction is not included.

Timing of deduction: subsection (2)

(4) The deduction referred to in **subsection (2)** is allocated to the income years in relation to which the term of the patent rights that is unexpired at the date of purchase applies.

Timing of deduction: subsection (3)

(5) The deduction referred to in **subsection (3)** is allocated to the income year in which the rights have come to an end or been disposed of.

Defined in this Act: amount, deduction, income year, patent rights

Compare: 2004 No 35 s EZ 5

Leases of land

EZ 8 Premium paid on land leased before 1 April 1993

When this section applies

(1) This section applies when **section DZ 9** (Premium paid on land leased before 1 April 1993) applies.

Amount of deduction

(2) The amount of the deduction is the premium paid on the grant or renewal of the lease. If person A does not use the land for the whole of a tax year, the amount of the deduction is reduced proportionately.

Amount when lease or renewal granted to another person

(3) If the lease or the renewal of the lease is granted to another person, the deduction must not be more than the amount of the premium paid by person A on the acquisition of the lease.

Timing of deduction

(4) The deduction is allocated evenly to the income years in relation to which the term of the lease applies.

Meaning of term of the lease

(5) In this section, **term of the lease**, for a lease of indefinite duration, means the minimum period it has to run.

Defined in this Act: amount, deduction, income year, lease, pay, premium, tax year, term of the lease

Compare: 2004 No 35 s EZ 6

Struck out (unanimous)

Foreign investment fund rules

EZ 9 FIF interests held on 1 April 1993

When this section applies

(1) This section applies when—

(a) a person held an attributing interest in a FIF at all times from 8.00 pm New Zealand Standard Time on 2 July 1992 until 1 April 1993; and

Struck out (unanimous)

(b) used the comparative value method or deemed rate of return method to calculate their FIF income or loss from the interest for the period starting on 1 April 1993.

Treated as having bought for market value

(2) The person is treated as having bought the interest on 1 April 1993 for an amount equal to its market value at the time, unless the person chooses not to apply this section by completing their return of income without applying it.

Defined in this Act: amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, loss, return of income

Compare: 2004 No 35 s EZ 7

Depreciation

EZ 10 Pool method for items accounted for by globo method for 1992–93 income year

If a person chooses the pool method for an item of property of a kind described in **section EE 67(3)(c)** (Meaning of poolable property), they must also choose to treat as a single pool all such items of property they still own that they accounted for at the end of their 1992–93 income year within the same globo account.

Defined in this Act: income year, pool, pool method

Compare: 2004 No 35 s EZ 8

EZ 11 Pool items accounted for by globo method for 1992–93 income year

Limit on amount of income

(1) If a person's pool consists solely of items of depreciable property accounted for at the end of the person's 1992–93 income year using, with the Commissioner's permission, the globo accounting method, the amount of income under **section EE 22(5)(a)** (Cases affecting pool) is no more than the amount calculated using the formula—

$$\text{depreciation allowed} - \text{income}.$$

Definition of items in formula

(2) In the formula,—

(a) **depreciation allowed** is the total of deductions for amounts of depreciation loss that the person has been allowed in all (*previous*)earlier income years for all items in the pool, including amounts allowed before the person's 1993–94 income year under the globo accounting method:

(b) **income** is all amounts of income under **section EE 22(5)(a)** in all previous income years.

Defined in this Act: amount, Commissioner, depreciable property, depreciation loss, income year, pool

Compare: 2004 No 35 s EZ 9

EZ 12 Amounts of depreciation recovery income and depreciation loss for part business use up to the 2004–05 income year

For the purposes of **sections EE 51(1)(b)(ii)** and **EE 52(5)(b)(ii)** (which relate to depreciation for partial income-producing use), the item is an item of property to which 1 or more of the following applies:

(a) the item is, at any time during the period the person owns it, subject to section FB 7 of the Income Tax Act 2004:

(b) the item is, at any time during the period the person owns it, subject to section EG 2(1)(d) or (e) of the Income Tax Act 1994:

(c) the item is, at any time during the period the person owns it, subject to section 108A(1)(d) or (e) of the Income Tax Act 1976:

(d) the item was, in the 1992–93 income year or (*a previous*)an earlier income year, an item that the person did not use wholly in deriving assessable income or carrying on a business for the purpose of deriving assessable income and for which, consequently, the person was allowed a smaller deduction for depreciation under section 108 of the Income Tax Act 1976 than they would have been allowed if they had used the item wholly for 1 of those purposes.

Defined in this Act: assessable income, business, income year

Compare: 2004 No 35 s EZ 10

EZ 13 Amount of depreciation loss for item acquired from associated person on or before 23 September 1997

When this section applies

(1) This section applies when, on or before 23 September 1997, a person (**person A**) acquires an item from an associated person entitled to a deduction for an amount of depreciation loss for it.

Exclusions

(2) This section does not apply—
- (a) if the item is acquired under a relationship agreement in circumstances to which **section FB 21** (Depreciable property) applies; or
- (b) if the item is listed in **schedule 14** (Depreciable intangible property) and the price that person A pays is income of the associated person; or
- (c) if the item is not listed in **schedule 14** and the Commissioner is of the opinion that the circumstances are such that a person should be allowed a deduction for an amount of depreciation loss for the item based on the actual price or other consideration given for it.

No greater amount of depreciation loss

(3) Whether or not the associated person has been allowed a deduction for an amount of depreciation loss, person A does not have a greater amount of depreciation loss for the item than that which the associated person would have had if the associated person had kept the item.

Amount of depreciation loss dealt with under section EE 50

(4) If the associated person has an amount of depreciation loss that has been dealt with under **section EE 50** (Effect of disposal or event), person A has an amount of depreciation loss for the item based on the total of—
- (a) all amounts dealt with under **section EE 50**; and
- (b) the depreciated value of the item immediately before person A acquired it.

When subsection (6) applies and does not apply

(5) **Subsection (6)** applies when, on or before 23 September 1997, the holder of management rights created under the Radiocommunications Act 1989 grants a licence right under that Act to an associated person. However, it does not apply when the Crown acting by and through the Secretary of Commerce is named as the manager under section 11(1) of the Radiocommunications Act 1989.

Licence right price

(6) The price of the licence right is treated as being zero for the purposes of **subpart EE** (Depreciation).

Defined in this Act: amount, associated person, Commissioner, depreciation loss, pay, relationship agreement

Compare: 2004 No 35 s EZ 11

EZ 14 Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year

What this section is about

(1) This section is about the annual rate that applies to an item of depreciable property that a person acquires before the end of their 1994–95 income year (not including fixed life intangible property or excluded depreciable property, for which rates are set in **sections EE 32** (Annual rate for fixed life intangible property) and **EZ 16** respectively).

Rate

(2) The rate is—

(a) the item's economic rate; or

(b) the pre-1993 depreciation rate described in **section EZ 15**, if the person chooses it under that section.

Defined in this Act: annual rate, depreciable property, economic rate, excluded depreciable property, fixed life intangible property, income year

Compare: 2004 No 35 s EZ 12

EZ 15 Pre-1993 depreciation rate

Scope of election

(1) A person may choose the pre-1993 depreciation rate for all items, or any item, that they acquire before the end of their 1994–95 income year.

How election made

(2) The election is made by applying the pre-1993 depreciation rate for the item to the item in the person's return of income for the income year for which the election is made.

Election unchangeable

(3) The election must not be changed for the income year for which it is made.

Moving from diminishing value to straight-line and vice versa

(4) A person who chooses the pre-1993 depreciation rate has the following choices:
(a) if the rate is a diminishing value rate, the person may instead use the straight-line rate by—
(i) rounding the diminishing value rate to the nearest rate specified in **schedule 10, column 1** (Straight-line equivalents of diminishing value rates of depreciation); and
(ii) taking the equivalent straight-line rate specified in column 2 of the schedule; or
(b) if the rate is a straight-line rate, the person may instead use the diminishing value rate by—
(i) rounding the straight-line rate to the nearest rate specified in **schedule 10, column 2**; and
(ii) taking the equivalent diminishing value rate specified in column 1 of the schedule.

Pre-1993 depreciation rate

(5) The pre-1993 depreciation rate is the rate calculated using the formula—

section 108 rate + section 108A rate + section 113A rate.

Definition of items in formula

(6) The items in the formula are defined in **subsections (7) to (9)**.

Section 108 rate

(7) **Section 108 rate** is the rate of depreciation that the Commissioner allowed persons with a standard balance date to use for the 1992–93 tax year to calculate a deduction for depreciation under section 108 of the Income Tax Act 1976, as in force for

the 1992–93 tax year, for property of the same kind as the item.

Section 108A rate

(8) **Section 108A rate** is the rate of additional deduction under section 108A of the Income Tax Act 1976, as in force for the 1992–93 tax year, for which the item was eligible for the 1992–93 tax year.

Section 113A rate

(9) **Section 113A rate** is the rate of supplementary deduction under section 113A of the Income Tax Act 1976 for which the item was eligible for the 1992–93 tax year.

Defined in this Act: Commissioner, diminishing value rate, income year, return of income, standard balance date, straight-line rate, tax year

Compare: 2004 No 35 s EZ 13

EZ 16 Annual rate for excluded depreciable property: 1992–93 tax year

What this section is about

(1) This section is about the annual rate that applies to an item of excluded depreciable property.

Rate

(2) The rate is the section 108 rate, without adding the section 108A rate or the other sections rate. The rates referred to in this subsection are described in **subsections (3) to (5)**.

Section 108 rate

(3) **Section 108 rate** means the rate of depreciation that the Commissioner allowed persons with a standard balance date to use for the 1992–93 tax year to calculate a deduction for depreciation under section 108 of the Income Tax Act 1976, as in force for the 1992–93 tax year, for property of the same kind as the item.

Section 108A rate

(4) **Section 108A rate** means the rate of additional deduction under section 108A of the Income Tax Act 1976, as in force for the 1992–93 tax year, for which the item was eligible for the 1992–93 tax year.

Other sections rate

(5) **Other sections rate** means a rate of additional or supplementary deduction under section 113A or any other provision of the Income Tax Act 1976 for which the item was eligible for the 1992–93 tax year.

Amount of depreciation loss under any other provision

(6) If a person has an additional amount of depreciation loss for an income year for an item of excluded depreciable property under **section EZ 17 or EZ 18** or any other provision of this Act,—

(a) the rate applicable to the item under **subsection (2)** may be adjusted to incorporate the additional amount of depreciation loss in a manner prescribed or allowed by the Commissioner; and

(b) when an adjusted rate is applied to the item, the person does not have a separate amount of depreciation loss for the item under **section EZ 17 or EZ 18** or the other provision.

Changing rate

(7) A person applying the rate in **subsection (2)** has the following choices:

(a) if the rate is a diminishing value rate, the person may instead use the straight-line rate by—

(i) rounding the diminishing value rate to the nearest rate specified in **schedule 10, column 1** (Straight-line equivalents of diminishing value rates of depreciation); and

(ii) taking the equivalent straight-line rate specified in column 2 of the schedule; or

(b) if the rate is a straight-line rate, the person may instead use the diminishing value rate by—

(i) rounding the straight-line rate to the nearest rate specified in **schedule 10, column 2**; and

(ii) taking the equivalent diminishing value rate specified in column 1 of the schedule.

Defined in this Act: annual rate, Commissioner, depreciation loss, diminishing value rate, excluded depreciable property, prescribed, standard balance date, straight-line rate, tax year

Compare: 2004 No 35 s EZ 14

EZ 17 Amount of depreciation loss for plant or machinery additional to section EZ 16 amount

When this section applies

(1) This section applies when a person carrying on a business in New Zealand incurs, wholly for the purpose of the business, capital expenditure in acquiring, installing, or extending plant or machinery that—

(a) is excluded depreciable property; and

(b) is—

(i) plant or machinery that is normally in operation for an average of at least 16 hours each working day and is not normally in operation for 24 hours each working day:

(ii) plant or machinery that is normally in operation for 24 hours each working day.

Exclusions

(2) This section does not apply to—

(a) aluminium smelting plant or machinery:

(b) cars:

(c) petroleum refining plant or machinery:

(d) ships, aircraft, or hovercraft:

(e) plant or machinery for which a deduction by way of a fixed rate was denied under section 108 of the Income Tax Act 1976 for the 1992–93 income year or **(***a previous***)**an earlier relevant income year:

(f) plant or machinery for which the Commissioner did not prescribe a differential rate for more than 1 shift operation when determining under section 108 of the Income Tax Act 1976 the rate of depreciation for the 1992–93 income year or **(***a previous***)**an earlier relevant income year.

Additional amount of depreciation loss

(3) The person has an amount of depreciation loss for the plant or machinery under this section in addition to any amounts of depreciation loss that they have for the plant or machinery under **section EZ 16**.

Relevant income years

(4) The person has the additional amount of depreciation loss in the first, second, third, fourth, and fifth income years in which the plant or machinery is used in deriving assessable income.

Rate

(5) The rate of the additional amount of depreciation loss is,—

(a) for plant or machinery described in **subsection (1)(b)(i)**, 3% of the diminishing value of the plant or machinery in each income year:

(b) for plant or machinery described in **subsection (1)(b)(ii)**, 6% of the diminishing value of the plant or machinery in each income year.

Defined in this Act: amount, assessable income, business, car, Commissioner, depreciation loss, excluded depreciable property, income year, New Zealand, petroleum, working day

Compare: 2004 No 35 s EZ 15

EZ 18 Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994

When this section applies

(1) This section applies when a person incurs expenditure of the kind described in **subsection (2)** in—

(a) the acquisition or installation of a qualifying asset; or

(b) the making of a qualifying improvement to an item the person owns.

Expenditure described

(2) The expenditure is expenditure of a capital nature, excluding any amount of input tax applying to the supply of the qualifying asset or qualifying improvement to the person.

Additional amount of depreciation loss

(3) The person has an amount of depreciation loss for the asset or item under this section in addition to any amount of depreciation loss they have for it under **subpart EE** (Depreciation) and **section EZ 17**. This subsection is overridden by **section EE 50(2)** (Effect of disposal or event).

Amount

(4) The additional amount of depreciation loss for an income year is 25% of the lesser of—

(a) the amount of depreciation loss that the person has under **subpart EE** and **section EZ 17** for the asset or item and for the income year; and

(b) the amount of depreciation loss that the person would have had under **subpart EE** and **section EZ 17** for the asset or item and the income year had its value been equal to its qualifying capital value.

Defined in this Act: acquire, amount, depreciation loss, income year, qualifying capital value, qualifying asset, qualifying improvement

Compare: 2004 No 35 s EZ 16

EZ 19 Section EZ 18 amount of depreciation loss when items transferred between companies in wholly-owned group before 1 April 1993

When this section applies

(1) This section applies when, before 1 April 1993, a company in a wholly-owned group of companies disposes of a qualifying asset, or an item to which the company has made a qualifying improvement, to another company in the same wholly-owned group.

Transferee has amount of depreciation loss

(2) The transferee company has an amount of depreciation loss under **section EZ 18** for the period after the disposal as if the transferee company were the same person as the transferor company.

Amount

(3) The amount of depreciation loss that the transferor company has under **section EZ 18** for the asset or item for the income year in which the disposal occurs must be subtracted when the amount of depreciation loss that the transferee company has under **section EZ 18** for the income year is calculated.

How definitions affected

(4) This section applies despite any limitations in the definitions of **new asset**, **New Zealand-new asset**, **qualifying asset**, **qualifying capital value**, and **qualifying improvement(**, *and*

qualifying asset) as to the identity of the person for whom an asset or item or improvement will be treated as a qualifying asset or qualifying improvement.

Defined in this Act: amount, company, depreciation loss, dispose, income year, new asset, New Zealand-new asset, qualifying capital value, qualifying improvement, qualifying asset, wholly-owned group of companies

Compare: 2004 No 35 s EZ 17

EZ 20 Section EZ 18 amount of depreciation loss when person previously exempt from tax acquires item

When this section applies

(1) This section applies when a person who has derived nothing but exempt income—

(a) starts in an income year to derive income that is not exempt income; and

(b) would have had an amount of depreciation loss under **section EZ 18** for an item and an income year if the person had been deriving income that was not exempt income at the time they acquired the item to which **section EZ 18** applies or made a qualifying improvement to the item to which **section EZ 18** applies.

How qualifying capital value determined

(2) The item's qualifying capital value is determined as if the person had had an amount of depreciation loss for the period during which they derived nothing but exempt income.

Defined in this Act: amount, depreciation loss, exempt income, income, income year, qualifying capital value, qualifying improvement

Compare: 2004 No 35 s EZ 18

EZ 21 Adjusted tax value for software acquired before 1 April 1993

What this section applies to

(1) This section applies to any of the following items for the acquisition of which a person was allowed a deduction before 1 April 1993:

(a) the copyright in software:

(b) the right to use the copyright in software:

(c) the right to use software.

Meaning of adjusted tax value

(2) The **adjusted tax value** of the item is its cost to the person minus all deductions that the person was allowed for it.

Defined in this Act: acquire, adjusted tax value

Compare: 2004 No 35 s EZ 19

EZ 22 Sections EE 47 and EE 49: permanent removal: allowance before 1 April 1995

Section EE 47((8)10)

(1) For the purposes of **section EE 47((8)10)** (Consideration for purposes of **section EE 46**), the consideration that a person derives from the event described in **subsection (2)** is the item's market value. Two qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any goods and services tax (GST) that would be charged on the supply; and

(b) this subsection does not apply to a transfer under a relationship agreement.

Section EE 4(0)9((10)9)

(2) For the purposes of **section EE 49((10)9)** (Events for purposes of **section EE 46**), the ninth event is the cessation of use in New Zealand, and the taking out of New Zealand for use outside New Zealand, of an item of property for which a first-year allowance has been granted under section 112(1) to (7) of the Income Tax Act 1976, except when the item—

(a) has been taken out of New Zealand temporarily; and

(b) will, after its return to New Zealand, be used in or for the purpose of a business in New Zealand.

Defined in this Act: business, GST, New Zealand, relationship agreement, taxable supply

Compare: 2004 No 35 s EZ 20

EZ 23 Base value and total deductions in section EE 57: before 1 April 1995

Base value in section EE 57 when section 108 of the Income Tax Act 1976 applies

(1) For the purposes of **section EE 57** (Formula), this subsection applies when a person could have been allowed a deduction for depreciation for an item under section 108 of the Income

Tax Act 1976 for the 1992–93 income year and they have owned the item continuously since the 1992–93 income year. **Base value** is the amount at which the item was recorded in the person's accounts for taxation purposes for the 1992–93 income year.

Section EE 58(3)(d)

(2) For the purposes of **section EE 58(3)(d)** (Base value in section EE 57 when none of sections EE 59, EE 60, and EZ 23(1) applies),—

(a) the expenditure is expenditure for which a person has been allowed a deduction for depreciation under any of sections 108 to 108N or section 113A of the Income Tax Act 1976; or

(b) the expenditure is expenditure for which a person has been allowed a deduction for depreciation under any other provision of the Income Tax Act 1976.

Section EE 59(1)(e)(ii)

(3) For the purposes of **section EE 59(1)(e)(ii)** (Base value in section EE 57 when no previous deduction), the item is one for which the person could not have been allowed a depreciation deduction under section 108 of the Income Tax Act 1976 for the 1992–93 income year.

Section EE 61(2)(c)

(4) For the purposes of **section EE 61(2)(c)** (Total deductions in section EE 57), the provision is section 117(5) of the Income Tax Act 1976.

Defined in this Act: amount, income year

Compare: 2004 No 35 s EZ 21

EZ 24 Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005

What this section is about

(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and

(b) the items are—

(i) plant or equipment acquired before 1 April 2005:
(ii) buildings acquired before 19 May 2005:
(iii) buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under this section or a corresponding provision.

Rate set by Commissioner

(2) The Commissioner sets the rate from time to time by—
(a) following the procedure set out in this section; and
(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—
(a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and
(b) rounds the figure up or down to the nearest rate specified in **schedule 12, column 1** (Old banded rates of depreciation); and
(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—
(i) the rate calculated for each kind; and
(ii) the reduction in compliance costs that is likely to be achieved.

Formula

(4) The formula is—

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

Definition of items in formula

(5) In the formula,—
(a) **residual value** is the greater of—
(i) estimated residual market value, which is defined in **section EE 68** (Other definitions):

(ii) 13.5% of cost:

(b) **cost** is the cost of items of the kind to which the formula is applied:

(c) **estimated useful life** is defined in **section EE 64** (Meaning of estimated useful life).

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EZ 21B

Definitions

EZ 25 Meaning of new asset

Meaning

(1) **New asset** means an item of property that a person owns to which **subsections (2) to (4)** apply and to which **subsection (5)** does not apply.

Acquisition date

(2) The item is—

(a) acquired by the person in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract that they entered into before 16 December 1991; or

(b) acquired by the person in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract that they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; or

(c) one to which all the following apply:

(i) it was acquired by the person before 16 December 1991 as trading stock; and

(ii) it was used by the person as a capital item for the first time in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and

(iii) it qualified for a deduction for depreciation under section 108 of the Income Tax Act 1976 in the period starting on 16 December 1991 and ending with the close of 31 March 1993.

Used before 1 April 1994

(3) The item is used by the person before 1 April 1994.

Not used by anyone previously

(4) The item is—
- (a) not acquired by any other person before the date on which the person acquired it; and
- (b) not used by any other person before the date on which the person acquired it; and
- (c) not held for use by any other person before the date on which the person acquired it; and
- (d) not an item or part of an item that qualified for a deduction for depreciation under the Income Tax Act 1976 for a period before the date on which the person acquired it.

Exclusion

(5) A constructed item that a person owns is not a new asset if—
- (a) its construction started before 16 December 1991 (but this paragraph does not apply to the extent to which the item is trading stock to which **subsection (2)(c)** applies); or
- (b) its construction started on or after 16 December 1991 under a binding contract that the person entered into before 16 December 1991; or
- (c) its construction was not completed before 1 April 1994; or
- (d) the item was not first used by the person before 1 April 1994.

Defined in this Act: acquire, new asset, trading stock

Compare: 2004 No 35 s EZ 22

EZ 26 Meaning of New Zealand-new asset

Meaning

(1) **New Zealand-new asset** means an item of property that a person owns to which **subsections (2) to (5)** apply.

Not new

(2) The item is not a new asset.

Date of acquisition

(3) The item is—

(a) acquired by the person in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract that they entered into before 16 December 1991; or

(b) acquired by the person in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract that they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; or

(c) one to which all the following apply:

(i) it was acquired by the person before 16 December 1991 as trading stock; and

(ii) it was used by the person as a capital item for the first time in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and

(iii) it qualified for a deduction for depreciation under section 108 of the Income Tax Act 1976 in the period starting on 16 December 1991 and ending with the close of 31 March 1993.

Used before 1 April 1994

(4) The item is used by the person before 1 April 1994.

Not used

(5) The item is—

(a) not used in New Zealand before the date on which the person acquired it; and

(b) not an item or part of an item that qualified for a deduction for depreciation under the Income Tax Act 1976 for a period before the date on which the person acquired it.

Defined in this Act: acquire, new asset, New Zealand, New Zealand-new asset, trading stock

Compare: 2004 No 35 s EZ 23

EZ 27 Meaning of qualifying capital value

Meaning

(1) **Qualifying capital value** means, for an income year,—

(a) for a qualifying asset that a person owns, the amount calculated for the income year using the formula in **subsection (2)**; or

(b) for an item that a person owns that is not a qualifying asset but to which they have made a qualifying improvement, the amount calculated for the income year using the formula in **subsection (7)**.

Formula

(2) The formula referred to in **subsection (1)(a)** is—

(acquisition cost + improvement cost) – item's depreciation.

Definition of items in formula

(3) The items in the formula in **subsection (2)** are defined in **subsections (4) to (6)**.

Acquisition cost

(4) **Acquisition cost** is the amount of capital expenditure the person incurs in acquiring the asset or item. In the case of a constructed item, the amount of capital expenditure is reduced by the amount of capital expenditure the person incurs on the construction on or after 1 April 1993, other than under a binding contract that the person entered into before 1 April 1993.

Improvement cost

(5) **Improvement cost** is the amount of capital expenditure, if any, the person incurs in making a qualifying improvement to the asset or item.

Item's depreciation

(6) **Item's depreciation** is the amount of depreciation loss for which the person has been allowed a deduction for the qualifying capital value of the asset or item in **(***previous***)**earlier income years, not including an amount of depreciation loss calculated using the straight-line method.

Formula

(7) The formula referred to in **subsection (1)(b)** is—

capital expenditure – improvement's depreciation.

Definition of items in formula

(8) The items in the formula in **subsection (7)** are defined in **subsections (9) and (10)**.

Capital expenditure

(9) **Capital expenditure** is the amount of capital expenditure the person incurs for the improvement.

Improvement's depreciation

(10) **Improvement's depreciation** is the amount of depreciation loss for which the person has been allowed a deduction for the qualifying capital value of the improvement in (*previous*)earlier income years, not including an amount of depreciation loss calculated using the straight-line method.

Defined in this Act: acquire, amount, depreciation loss, income year, qualifying capital value, qualifying improvement, qualifying asset, straight-line method

Compare: 2004 No 35 s EZ 24

EZ 28 Meaning of qualifying improvement

Meaning

(1) **Qualifying improvement**, for a person's income year, means an improvement of an item that the person owns, if all the following apply:

(a) the person incurred the expenditure on the improvement—

(i) in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract they entered into before 16 December 1991; or

(ii) in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and

(b) the person used the item in its improved form before 1 April 1994; and

(c) the person is allowed a deduction for depreciation under the Income Tax Act 1976 for the improvement for the income year.

Exclusions

(2) **Qualifying improvement** does not include—
(a) an improvement to a building; or
(b) an improvement requiring construction, if—
(i) the construction started before 16 December 1991; or
(ii) the construction started on or after 16 December 1991 under a binding contract that the person entered into before 16 December 1991; or
(iii) the construction was not completed before 1 April 1994; or
(iv) the improvement was not first used by the person before 1 April 1994.

Defined in this Act: income year, qualifying improvement

Compare: 2004 No 35 s EZ 25

EZ 29 Meaning of qualifying asset

Qualifying asset means—
(a) a new asset, other than a building, that a person owns in an income year and for which they are allowed a deduction for depreciation under the Income Tax Act 1976 for the income year; or
(b) a New Zealand-new asset, other than a building or a car, that a person owns in an income year and for which they are allowed a deduction for depreciation under the Income Tax Act 1976 for the income year.

Defined in this Act: car, income year, new asset, New Zealand-new asset, qualifying asset

Compare: 2004 No 35 s EZ 26

Accident insurance

EZ 30 Private insurers under Accident Insurance Act 1998

When this section applies

(1) This section applies when an insurer, as defined in paragraph (a) of the definition of **insurer** in section 13 of the Accident Insurance Act 1998, has a reserve in a tax year to cover the following, all of which relate to events covered by the Accident Insurance Act 1998 occurring before the end of the tax year:

(a) claims that have been made with the insurer but have not been settled before the end of the tax year; and
(b) claims that are expected to be made with the insurer in relation to events that the insurer knows about; and
(c) an estimate of claims that have not been reported to the insurer in relation to events that the insurer does not know about.

Adjustment to deduction

(2) When the closing value of the reserve for a tax year is more than the opening value, the deduction that the insurer is allowed is adjusted by an amount equal to the amount calculated using the formula—

closing value – opening value.

Adjustment to income

(3) When the opening value of the reserve for a tax year is more than the closing value, the income of the insurer is adjusted by an amount equal to the amount calculated using the formula—

opening value – closing value.

Amount

(4) The reserve at the end of the tax year is—
(a) an amount calculated by an actuary applying **subsection (5)** and adopted by the insurer for financial reporting purposes; or
(b) if no such amount has been calculated, an amount determined by the Commissioner, who may seek the advice of the Government Actuary or any other actuary in determining it.

Calculation or determination of reserve

(5) A person calculating or determining the amount of a reserve under **subsection (4)** must ensure that the amount has regard to—
(a) generally accepted accounting practice; and
(b) generally accepted actuarial practice; and
(c) the present value of expected future payments.

Link with subpart DA

(6) This section supplements the general permission. The general limitations still apply.

Defined in this Act: actuary, amount, Commissioner, deduction, general limitation, general permission, generally accepted accounting practice, pay, supplement, tax year

Compare: 2004 No 35 s EZ 27

EZ 31 Base premium for 1998–99 premium year under Accident Insurance Act 1998

Discount payment date

(1) An amount of base premium for the 1998–99 premium year that is paid on or before the discount payment date is treated as expenditure in the tax year in which the discount payment date falls if the discount payment date is before the date on the invoice that specifies when payment is due. This subsection overrides **section EF 3(1)** (ACC levies and premiums).

Monthly instalment plan

(2) Interest payable on a base premium for the 1998–99 premium year under a monthly instalment plan is treated as being payable on the date that the interest is applied under regulation 8 of the Accident Insurance (Payment of Base Premiums) Regulations 1999.

Some definitions

(3) In this section, **base premium for the 1998–99 premium year**, **discount payment date**, and **monthly instalment plan** have the meanings given to them in the Accident Insurance (Payment of Base Premiums) Regulations 1999.

Defined in this Act: amount, base premium for the 1998–99 premium year, discount payment date, interest, monthly instalment plan, pay, tax year

Compare: 2004 No 35 s EZ 28

(CFC)Controlled foreign company and (FIF)foreign investment fund rules

EZ 32 Disclosure restrictions on grey list CFCs before 2011–12

No attributed CFC income from taxable distribution

(1) No attributed controlled foreign company (CFC) income arises under **section EX 19** (Taxable distribution from non-complying trust) in relation to a person's income interest in a CFC if **subsection (4)** applies.

No branch equivalent income or loss

(2) No branch equivalent income or loss arises under **section EX 21** (Branch equivalent income or loss: calculation rules) in relation to a person's income interest in a CFC if **subsection (4)** applies.

No FIF income or loss

(3) No foreign investment fund (FIF) income or loss arises under **section EX 46** (Additional FIF income or loss if CFC owns FIF) in relation to a person's income interest in a CFC if **subsection (5)** applies.

Application of subsections (1) and (2)

(4) **Subsection (1) or (2)** applies in relation to a person's income interest for an accounting period in a CFC if—

- (a) the income interest arises from an interest of the person in a CFC that meets the requirements of **subsection (6)**; and
- (b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

Application of subsection (3)

(5) **Subsection (3)** applies in relation to a person's income interest for an accounting period in a CFC if—

- (a) the income interest meets the requirements of **subsection (6)**; and
- (b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

Relevant grey list CFC

(6) An interest in a CFC meets the requirements of this subsection for an accounting period if the CFC is, throughout the accounting period,—

(a) resident in a country on the grey list; and

(b) quoted on the official list of a recognised exchange in the country; and

(c) under the law of the country or the rules of the exchange,—

(i) prevented from disclosing to the person information necessary for calculating attributed CFC income or loss or FIF income or loss:

(ii) required, as a result of the disclosure, to make a further disclosure of information that would be harmful to the commercial interests of the CFC.

Person must satisfy Commissioner

(7) For this section to apply in relation to a person's income interest for an accounting period in a CFC, the person must hold information that would satisfy the Commissioner that, for the accounting period, an effect of the law or rules referred to in **subsection (6)** is that the person cannot calculate the attributed CFC income or loss or FIF income or loss in relation to the income interest.

Section terminates after 2010–11 income year

(8) This section does not apply to the tax on income derived by a person in an income year after the income year that corresponds to the 2010–11 tax year.

Defined in this Act: accounting period, attributed CFC income, attributed CFC income or loss, branch equivalent income or loss, Commissioner, CFC, FIF, FIF income or loss, grey list, income, income interest, income year, recognised exchange, tax, tax year

Compare: 2004 No 35 s EZ 29

Old financial arrangements rules

EZ 33 Application of old financial arrangements rules

The old financial arrangements rules apply to financial arrangements entered into on or after the implementation date and before 20 May 1999.

Compare: 2004 No 35 s EZ 30

EZ 34 Election to apply financial arrangements rules in subpart EW

Despite **section EZ 33**, a person may elect to apply the financial arrangements rules by calculating a transitional adjustment under **section EZ 51**.

Compare: 2004 No 35 s EZ 31

EZ 35 Accruals in relation to income and expenditure in respect of financial arrangements

(1) For the purpose of calculating the amount deemed to be income or expenditure of any person under **subsections (2) to (7)**, regard must be had to,—

(a) if the person is a holder in relation to the financial arrangement,—

(i) the amount of all consideration paid and to be paid to the person in relation to the financial arrangement; and

(ii) any amount remitted and to be remitted by the person in relation to the financial arrangement; and

(iii) the acquisition price of the financial arrangement in relation to the person; and

(b) if the person is an issuer in relation to the financial arrangement,—

(i) the amount of all consideration paid and to be paid by the person in relation to the financial arrangement; and

(ii) the acquisition price of the financial arrangement in relation to the person.

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

provided that the Commissioner must accept an alternative method to the yield to maturity method, that has regard to the principles of accrual accounting, and—

(a) conforms with commercially acceptable practice; and

(b) except to the extent that the Commissioner may otherwise allow under **subsection (8)**, is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and

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

(3) Notwithstanding **subsection (2)**, but subject to the other provisions of this section, where in any income year the total value of all financial arrangements of which a person is a holder or an issuer has on no day within that income year exceeded $1,500,000 or such greater amount as the Governor-General may by Order in Council declare for the purposes of this section,—

(a) the person may calculate income or expenditure for that income year in respect of those financial arrangements by using the straight-line method so as to result in the allocation to that income year and subsequent income years of amounts that are fair and reasonable in respect of those arrangements; and

(b) where the straight-line method is used under paragraph (a), that method must be used by the person in respect of all financial arrangements of which the person was the holder or issuer during that income year; and

(c) where the person has in accordance with this subsection calculated income or expenditure using the straight-line method in respect of a financial arrangement for any income year, the person must, unless otherwise authorised in writing by the Commissioner, continue to use that method in respect of that financial arrangement for any subsequent income year, until the maturity, remittance, sale, or other transfer of the arrangement, notwithstanding that the total value of all financial arrangements of which the person is holder or issuer may at any time in any such subsequent income year exceed $1,500,000 or such other amount as may be declared for the purposes of this section,—

and any amount calculated in respect of a financial arrangement in accordance with this subsection is income deemed to be derived by or expenditure deemed to be incurred by the person in respect of the financial arrangement for the relevant income year.

(4) For the purposes of **subsection (3)**, a person must take into account financial arrangements to which **subpart EW** applies.

(5) For the purposes of **subsection (3)**,—

(a) the value of any financial arrangement to be taken into account in determining whether the total value of all financial arrangements of which a person is the holder or issuer on any day exceeds $1,500,000 or such other amount as may be declared for the purposes of this section is,—

(i) in the case of a fixed principal financial arrangement, the nominal or face value of the arrangement; and

(ii) in the case of a variable principal debt instrument, the amount owing by or to the person under the arrangement on the relevant day; and

(iii) in the case of a financial arrangement to which subpart EW applies, the value determined under that subpart; and

(b) in the first income year for which income or expenditure is calculated under **subsection (3)** in respect of a financial arrangement that—

(i) was acquired or issued by the person in a previous income year; and

(ii) continues to be held or issued by the person at the end of the first income year for which income or expenditure is calculated under **subsection (3)**,—

the amount of income or expenditure of the person in respect of that financial arrangement for that first income year is an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

a is the sum of all amounts that would have been income derived by the person in respect of the financial arrangement if the straight-line method referred to in **subsection (3)** had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year

b is the sum of all amounts that would have been expenditure incurred by the person in respect of the financial arrangement if the straight-line method referred to in **subsection (3)** had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year

c is the sum of all amounts of income deemed to have been derived by the person in respect of the financial arrangement before the commencement of that first income year

d is the sum of all amounts deemed to have been expenditure incurred by the person in respect of the financial arrangement before the commencement of that first income year;—

and any amount so calculated is, if a positive amount, deemed to be income derived by the person in that first income year and, if a negative amount, deemed to be expenditure incurred by the person in that first income year.

(6) Where it is not possible to calculate an amount to be deemed to be income or expenditure in respect of a financial arrangement using the yield to maturity method as provided for in **subsection (2)** or (in a case to which **subsection (3)** applies) the straight-line method as provided for in **subsection (3)**, the amount that is deemed to be income or expenditure of the person in any income year is an amount calculated by the person—

(a) using the method, if any, prescribed by the Commissioner for the financial arrangement in a determination made under section 90(1)(c) of the Tax Administration Act 1994:

provided that the Commissioner must accept an alternative method to the method prescribed in any such determination that has regard to the principles of accrual accounting, and—

(i) conforms with commercially acceptable practice; and

(ii) except to the extent that the Commissioner may otherwise allow under **subsection (8)**, is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and

(iii) results in the allocation to each income year of amounts that are not materially different from the amounts that would be calculated, but for this proviso; and

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

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

(7) Notwithstanding **subsections (2) and (6)**, the Commissioner must accept an alternative method for calculating the amount to be deemed to be income or expenditure of the person, in respect of a financial arrangement, to the methods provided for under **subsections (2) and (6)**, if the alternative method has regard to market valuation, and—

(a) conforms with commercially acceptable practice; and

(b) except to the extent that the Commissioner may otherwise allow under **subsection (8)**, is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and

(c) either—

(i) the business of the person comprises dealing in such financial arrangements; or

(ii) the financial arrangement is a forward or future contract for foreign exchange, or a futures contract; and

(d) the market, the method, and the source of the information used to determine the market values have been approved by the Commissioner under a determination issued under section 90(1)(e) of the Tax Administration Act 1994; and

(e) the person and any other person who is a holder (where the person is an issuer) or an issuer (where the person is a holder) of the financial arrangement are not associated persons;—

and such amount of income or expenditure so calculated is income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year:

provided that where income or expenditure in respect of a financial arrangement has been calculated by a person under this subsection, income or expenditure in respect of that financial arrangement must, except as otherwise allowed under **subsection (8)**, continue to be calculated on that basis by that person until the maturity, remittance, sale, or other transfer of the arrangement.

(8) Where a method of calculating income or expenditure in respect of a financial arrangement fails to meet the requirements of **paragraph (b)** of the proviso to **subsection (2) or subparagraph (ii)** of the proviso to **subsection (6)(a) or (7)(b)** by virtue of the fact that the method is not or will not be consistently applied by a person in respect of all such financial arrangements for financial reporting purposes, that method is nevertheless deemed to meet the relevant one of those provisions where the method—

(a) appropriately reflects the dominant purpose for which the person acquired or issued the financial arrangement (or each such arrangement); and

(b) has been and will be consistently applied by the person in respect of the particular financial arrangement (or each such financial arrangement) for the purposes of the old financial arrangements rules for every income year during its term (except to the extent that the Commissioner approves or may approve a change in method under the circumstances or conditions specified in a determination under section 90(1)(f) of the Tax Administration Act 1994); and

(c) is not adopted for purposes that include the purpose of tax avoidance; and

(d) has been approved by the Commissioner for adoption in the circumstances applicable to the taxpayer either by notice to the taxpayer or in a determination issued under section 90 of the Tax Administration Act 1994.

(9) **Subsections (2) to (7)** do not apply—

(a) to a cash basis holder; or

(b) in relation to a financial arrangement and a person, in any income year where **section EZ 38** applies to that person and to that financial arrangement; or

(c) in relation to a financial arrangement where—

(i) the financial arrangement is held by a trustee upon trust for the management of compensation paid for personal injury where that compensation is paid under the Workers Compensation Act 1956 or the Accident Compensation Act 1972 or the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Injury Prevention, Rehabilitation, and Compensation Act 2001 or an order of court; and

(ii) the trustee is, or if it were a natural person would be, a cash basis holder in respect of the financial arrangement.

(10) For the purposes of this section, the Commissioner may determine whether and to what extent any issuer or class of issuers is not required to comply with this section in relation to expenditure incurred or income derived in respect of any class of financial arrangements, having regard to—

(a) the nature and amount of the expenditure incurred or income derived by the issuer or class of issuers in respect of financial arrangements of that class; and

(b) the costs of the issuer or class of issuers in complying with this section in relation to the class of financial arrangements; and

(c) whether, in respect of that issuer or class of issuers and that class of financial arrangements, the application of the discretion given to the Commissioner under this subsection would result in a material difference in the amount of deductions or income allocated to any income year, in relation to the amount that would have been allocated had the discretion not been exercised.

(11) The Commissioner may at any time cancel any determination made in respect of any person or class of persons under **subsection (10)**.

Compare: 2004 No 35 s EZ 32

EZ 36 Excepted financial arrangement that is part of financial arrangement

The amount of the income deemed to be derived or the expenditure deemed to be incurred by a person in respect of a financial arrangement under the old financial arrangements rules does not include the amount of any income, gain or loss, or expenditure, that is solely attributable to an excepted financial arrangement that is part of the financial arrangement.

Compare: 2004 No 35 s EZ 33

EZ 37 Cash basis holder

(1) Subject to this section, a natural person is a cash basis holder in respect of financial arrangements held by that person in any income year, where—
  - (a) either—
    - (i) the income derived by that person in that income year in respect of those financial arrangements, calculated in accordance with **subpart EW** or **section EZ 35 or EZ 38**, as the case may be, does not exceed $70,000 (or such greater amount as the Governor-General may by Order in Council declare); or
    - (ii) the total value of financial arrangements held by the person in the income year does not exceed at any time in the income year $600,000 (or such greater amount as the Governor-General may by Order in Council declare), the value in respect of each financial arrangement being,—
      - (A) in the case of a fixed principal financial arrangement, the greater of the acquisition price of the arrangement or the nominal or face value of the arrangement; and
      - (B) in the case of a variable principal debt instrument, the amount of money owing to the person according to the arrangement; and

(C) in the case of a financial arrangement to which **subpart EW** applies, the value determined under that subpart; and

(b) the difference between the following amounts does not exceed $20,000 (or such greater amount as the Governor-General may by Order in Council declare):

(i) the amount of income that would be calculated by the person for the income year—

(A) using, at the option of the person, either the yield to maturity method or the straight-line method referred to in **section EZ 35(3)** (regardless of whether or not the person is entitled or has opted to use that method) or in accordance with **subpart EW,** as the case may be, or, where it is not possible to calculate an amount of income or expenditure in respect of the financial arrangements by using either of those methods, an alternative method approved by the Commissioner; and

(B) under either **section EW 3(*4*)1 or EZ 38**—

in respect of financial arrangements held by the person at the end of the income year; and

(ii) the amount of income that would be calculated by the person for the income year in respect of financial arrangements held by the person at the end of the income year if the person were a cash basis holder.

(2) For the purposes of **subsection (1)**, a person must take into account financial arrangements to which **subpart EW** applies.

(3) Notwithstanding anything in **subsection (1)**, the Commissioner may,—

(a) where the Commissioner is satisfied, having regard to the tenor of **section EZ 35(2)**, that treatment of a class of financial arrangements other than under **section EZ 35** results in a fair and reasonable allocation of income or expenditure among income years, deem natural persons to be cash basis holders in respect of such financial arrangements; and

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

(4) In any income year where a person who was a cash basis holder in the previous income year ceases to be a cash basis holder, the person must take into account, in calculating income or deductions for the income year, an accruals basis adjustment, in respect of every financial arrangement (other than arrangements that are already dealt with according to **section EZ 35** or in respect of which the Commissioner has exercised the discretion given under **subsection (3)(a)**) acquired in a previous income year and held by the person at the end of the income year equal to an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

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

b is the sum of all amounts that would have been deductions of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had not been a cash basis holder at any time during the period

c is the sum of all amounts of income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year

d is the sum of all amounts that have been deductions of the person in respect of the financial arrangement since it was acquired to the end of the previous income year;—

and the person must not take into account in the income year any other amount in respect of any such financial arrangement except those calculated under the accruals basis adjustment.

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

$$a - b - c + d$$

where—

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

b is the sum of all amounts which would have been deductions of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had been a cash basis holder in respect of the financial arrangement for the whole of the period

c is the sum of all amounts treated as income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year

d is the sum of all amounts that have been deductions of the person in respect of the financial arrangement since it was acquired to the end of the previous income year;—

and, where the cash basis adjustment has been taken into account, the person must not take into account any other amount in respect of any such financial arrangement in the income year except those calculated under the cash basis adjustment:

provided that the person is deemed not to be a cash basis holder in relation to any financial arrangement in respect of which the person does not take into account a cash basis adjustment.

(6) The amount of the accruals basis adjustment or the cash basis adjustment in respect of any financial arrangement and any income year is,—

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

(b) where it is a negative amount, deemed to be a deduction of the holder in the income year.

(7) For the purposes of **subsection (1)**, but subject to **subsections (8) and (9)**,—

(a) all income in respect of financial arrangements that is trustee income or beneficiary income under the trust rules is disregarded, as is the value of all such financial arrangements producing such income; and

(b) no person who holds such financial arrangements is a cash basis holder in relation to such financial arrangements.

(8) **Subsection (7)** does not apply to financial arrangements held on a bare trust, or to income in respect of such financial arrangements, and the financial arrangements held and the income derived by the trustees is treated as being held or, as the case may be, derived by a beneficiary of the trust to the extent of the beneficiary's share of the beneficial interest in the financial arrangement.

(9) Where a deceased person was at the time of his or her death a cash basis holder,—

(a) nothing in **subsection (7)** or in any requirement under this section that a cash basis holder be a natural person, in respect of the income year in which the death occurred and in each of the 4 immediately succeeding income years, applies to prevent the trustee of the estate of the deceased person from being a cash basis holder for the purposes of this Act in respect of financial arrangements issued or held by the estate, where the estate would otherwise qualify as a cash basis holder under this section; but

(b) if at any time during those income years the estate ceases to so otherwise qualify as a cash basis holder, it does not again qualify to become a cash basis holder by operation of **paragraph (a)**;—

and for the purposes of **subsections (4) and (5)**, any trustee of an estate who is a cash basis holder under this subsection is deemed to be the same person as the deceased cash basis holder.

(10) For the purposes of **subsection (1)**,—

(a) financial arrangements held; and

(b) income required to be returned in respect of those financial arrangements under section 42(1) of the Tax Administration Act 1994—

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

Compare: 2004 No 35 s EZ 34

EZ 38 Income and expenditure where financial arrangement redeemed or disposed of

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

$$a - (b + c)$$

where—

a is,—

(i) in the case of a holder, the sum of—

(A) the amount of all consideration that has been paid, and all further consideration that has or will become payable, to the person; and

(B) any amounts that have been remitted by the person and that are not included in **subsubparagraph (A)**:

(ii) in the case of an issuer, the sum of—

(A) the amount of all consideration that has been paid, and all further consideration that has or will become payable, by the person; and

(B) the amount paid by the person associated with the issuer if the issuer is the debtor of a debt to which **section EZ (*38*)41** applies—

in relation to the financial arrangement

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

c is,—

(i) in the case of a holder, all amounts that are income derived, less the aggregate of amounts of expenditure deemed to be incurred under **section EZ 35 or EZ 42** or deemed to be a deduction under **section EZ 37** by the person in respect of the financial arrangement in all previous income years since the acquisition of the financial arrangement; and

(ii) in the case of an issuer, all amounts of expenditure incurred in respect of the financial arrangement in all previous income years since the issue of the financial arrangement, less the aggregate of—

(A) all amounts that are income deemed to be derived under **section EZ 35 or EZ 37 or EZ 42** by the person in respect of the financial arrangement in all previous income years since the issue of the financial arrangement; and

(B) all amounts that are dividends derived by the person from the release of the obligation to repay the amount lent; and

(C) All amounts that are income of the person under **section CF 2** in respect of the financial arrangement.

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

$$a - (b + c)$$

where—

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

b is the acquisition price of the financial arrangement

c is the sum of all amounts that are income derived by the person, less the aggregate of amounts of expenditure deemed to be incurred under **sections EZ 35 and EZ 42** or deemed to be a deduction under **section EZ 37**.

(3) Subject to **subsection (5)**, the amount of the base price adjustment in relation to any financial arrangement and any income year is,—

(a) in relation to a holder,—

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

(ii) where it is a negative amount, deemed to be a deduction of the holder in the income year:

(b) in relation to an issuer,—

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

(ii) where it is a negative amount, deemed to be income derived by the issuer in the income year.

(4) Subject to **subsection (5)**, the amount of the cash base price adjustment in relation to any financial arrangement and any income year is,—

(a) where it is a positive amount, deemed to be income derived by the cash basis holder in the income year; and

(b) where it is a negative amount, deemed to be a deduction of the cash basis holder in the income year.

(5) Notwithstanding anything in **section EZ 50(3)**, where a financial arrangement is sold or otherwise transferred by a person for a consideration influenced by—

(a) a decline in the creditworthiness of the issuer between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or

(b) an increase in the possibility that the issuer may fail to meet any obligations under the financial arrangement between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or

(c) the occurrence of any event reducing or cancelling the obligations of an issuer under the financial arrangement,—

all amounts that would have been received but for the factors listed above are deemed, in calculating the base price adjustment or cash base price adjustment, to have become payable to the holder:

provided that this subsection does not apply where the business of the holder comprises holding or dealing in financial arrangements of that class, and the issuer of the financial arrangement and the holder are not associated persons.

(6) Where—

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

(i) under a financial arrangement by operation of section (*114*)304 of the Insolvency Act (*1967*)2006; or

(ii) under any of the Inland Revenue Acts (and whether the relief arises through remission, waiver, or cancellation); or

(iii) under a social assistance suspensory loan by virtue of that person satisfying the conditions referred to in **section EZ (*38*)41(8)(c)(ii)**; and

(b) that amount would, but for this subsection, be taken into account in determining the income derived by or expenditure incurred by that person under the old financial arrangements rules,—

that amount is, for the purpose of determining the income derived by or expenditure incurred by that person, and notwithstanding the old financial arrangements rules (other than this subsection), deemed to have been paid under that financial arrangement when the obligation to make payment has been so released.

(7) Notwithstanding anything in this Act, where and to the extent that a person (in this subsection called the **surety**) suffers expenditure or a loss under a security arrangement and the expenditure or loss, in whole or in part, is due to—

(a) the actions of; or

(b) the occurrence, or failure to occur, of an event that was potentially or actually subject to the influence of—

the surety or any person with whom the surety was, during the term of the security arrangement, an associated person, no deduction is allowed to the surety or any person in relation to the expenditure or loss.

(8) In this section,—

(a) the expression **holder**, in relation to a financial arrangement, includes a person who ceases to be a holder of the financial arrangement as provided in **subsection (1) or (2)**; and

(b) the expression **issuer**, in relation to a financial arrangement, includes a person who ceases to be an issuer of the financial arrangement as provided in **subsection (1)**; and

(c) the expression **social assistance suspensory loan** means a loan—

(i) made by a department or instrument of the Executive Government of New Zealand; and

(ii) under whose terms the issuer's liability may be remitted in whole or in part if the issuer satisfies conditions intended to promote a social policy objective of the Government of New Zealand; and

(iii) of a kind that is declared by the Governor-General by Order in Council to be a social assistance suspensory loan; and

(d) a financial arrangement is deemed to be remitted where—

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

(ii) the issuer has been released from making all remaining payments under that financial arrangement by the operation of the Insolvency Act (*1967*)2006 or the Companies Act 1955 or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement of composition with its creditors; or

(iii) all of the remaining payments under the financial arrangement have become irrecoverable or unenforceable by action through the lapse of time; or

(iv) the financial arrangement is a debt that is sold at a discount to a person associated with the debtor under the circumstances described in **section EZ 41**; and

(e) where a person ceases to be a New Zealand resident any financial arrangement in relation to which that person is an issuer or a holder is deemed, in relation to the person, to have been transferred for its market value at that date.

Compare: 2004 No 35 s EZ 35

EZ 39 Forgiveness of debt

(1) In determining the income or expenditure under the base price adjustment in **section EZ 38**, an amount owing under a debt, including an amount accrued and unpaid at the time of the forgiveness, is treated as paid when forgiven under the old financial arrangements rules if—

(a) the creditor is a natural person who forgives the debt, whether in a will or otherwise, because of the natural love and affection the creditor has for the debtor; or

(b) the creditor is a natural person who forgives the debt owing by a trust, whether in a will or otherwise, and the trust was established primarily to benefit—

(i) a natural person for whom the creditor has natural love and affection; or

(ii) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**; or

(iii) a natural person that meets **paragraph (b)(i)** and an organisation or a trust that meets **paragraph (b)(ii)**.

(2) Subsection (3) applies when a trustee makes a distribution, including a distribution of beneficiary income, to a beneficiary that is neither—

(a) a natural person for whom the creditor has natural love and affection; nor

(b) an organisation or a trust whose income is exempt under **section CW 40 or CW 41**.

(2A) **Subsection (3)** does not apply when a trustee of a trust (**trust A**) to which **subsection (1)(b)** applies makes a distribution to another trust (**trust B**) if—

(a) trust B is a trust described in **subparagraphs (i), (ii), or (iii) of subsection (1)(b)**; and

(b) **subsection (1)(b)** would apply to trust B if, at the time the distribution is made, the creditor of trust A were a creditor of trust B, and the creditor had forgiven a debt owing by trust B.

(3) A distribution to the beneficiary is income derived by the trustee—

(a) in the income year in which the distribution is made; and

(b) to the extent that the distribution is less than or equal to the total amount of debts forgiven by the creditor.

(3A) If **subsection (3)** applies, the income derived by the trustee is not income for the purposes of the **beneficiary income** definition.

(4) For the purposes of **subsection (3)**, the total amount of debts forgiven by the creditor is reduced by the amount of each distribution that is income derived by the trustee.

(5) **Subsection (3)** applies to a distribution made on or after 20 May 1999.

Compare: 2004 No 35 s EZ 36

EZ 40 Accrued income written off

(1) A deduction is allowed to a person for an amount written off by the person as a bad debt in respect of a financial arrangement where and to the extent that—

(a) the person derives income in respect of the financial arrangement under any of **sections EZ 35, EZ 37(4), EZ 38, and EZ 42**; and

(b) the amount written off is attributable to that income.

(2) A deduction is allowed to a person for an amount written off by the person as a bad debt in respect of a financial arrangement (not being an amount allowed as a deduction under **subsection (1)**) where—

(a) the person—

(i) carries on a business which comprises holding or dealing in such financial arrangements; and

(ii) is not associated with the person owing the amount written off; or

(b) the financial arrangement is a trade credit and the person carries on a business of dealing in the goods or services for which the trade credit is a debt.

(3) Where a person receives a security payment in relation to a loss and a deduction is denied to the person for the loss other than under this subsection, the person is allowed a deduction for the loss no greater than the amount of the security payment.

(4) A deduction for bad debts is allowed under this section only where the requirements of **section DB 32(1) and (5)** have been met.

(5) A deduction for a share loss (within the meaning of **section DB 25**) is allowed under **subsection (3)** only where the requirements of **section DB 25** have been met.

Compare: 2004 No 35 s EZ 37

EZ 41 Sale of debt to associate of debtor

(1) This section applies to a financial arrangement that is a debt which is sold at a discount to a person associated with the debtor on or after 20 May 1999.

(2) A creditor is treated as having sold a debt at a discount if the debt is sold to a person associated under the 1988 version provisions with the debtor for 80% or less of the market value of the debt.

(3) **Subsection (4)** applies to a debt that is sold if its market value was influenced by—

(a) the decline in the original debtor's creditworthiness between the date the debt was entered into and the date of sale; or

(b) an increase in the possibility that the original debtor would not pay an amount owing under the debt between the date the debt was entered into and the date of sale; or

(c) an event that occurred which reduced or cancelled the original debtor's obligations under the debt.

(4) For the purposes of **subsection (2)**, a debt's market value is determined as if its market value were not influenced by a factor listed in **subsection (3)(a) to (c)**.

(5) If a debt is sold at a discount to a person associated with the debtor, the associated person is treated as having provided the debtor with an interest free loan for the amount paid for the debt.

(6) If the debtor subsequently repays the person associated with the debtor more than the amount the associated person paid for the debt, the excess amount paid by the debtor is—
(a) a deduction to the debtor; and
(b) income of the person associated with the debtor.

Compare: 2004 No 35 s EZ 38

EZ 42 Post facto adjustment

(1) A financial arrangement is subject to the provisions of this section where—
(a) any of the amount or amounts payable under the financial arrangement are determined in the terms of the financial arrangement, as to whole or part, at the discretion of either the issuer or the holder, or both of them, or at the discretion of any other person where either the issuer or the holder and the other person are associated persons; and
(b) the change in the amount or amounts payable under the financial arrangement upon the exercise of a discretion as provided for in **paragraph (a)** does not reflect changes in economic, commodity, industrial, or financial indices or banking or general commercial rates; and
(c) the making of such financial arrangements is not generally accepted commercial practice; and
(d) the effect of the arrangement is to defeat the intent and application of the old financial arrangements rules.

(2) Where a financial arrangement is subject to the provisions of this section, both the holder and the issuer of the financial arrangement are required to calculate a post facto adjustment in respect of the following income years:
(a) the income year in which the person ceases to be a holder or an issuer, as the case may be, in respect of the financial arrangement; and
(b) where the person has not ceased to be a holder or an issuer of the financial arrangement at the end of the fifth income year following the income year of its issue or acquisition by the person, in that fifth income year; and
(c) until the person ceases to be an issuer or a holder in respect of the financial arrangement, in every fifth income year succeeding the income year in which the

post facto adjustment was last required to be made under this section.

(3) In order to calculate the post facto adjustment, a person must,—

(a) having regard to all amounts specified in **section EZ 35(1)** which have been paid or are payable, in respect of the financial arrangement, since acquisition or issue of the financial arrangement by the person to the end of the income year in which the post facto adjustment applies, calculate amounts of income or expenditure under the arrangement for each income year using the yield to maturity method as prescribed in a determination made by the Commissioner for the purposes of **section EZ 35(2)**: provided that where the post facto adjustment is made at a time determined by **subsection (2)(b) or (c)**, the person is, for the purpose of the post facto adjustment calculation, deemed to have transferred the financial arrangement for an amount equal to its market value on the last day of the income year; and

(b) recalculate the income tax liability for each income year using the amounts of income or expenditure calculated under **paragraph (a)** in substitution for the amounts of income or expenditure previously calculated in respect of the financial arrangement for each income year.

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

(5) Despite the time bar, the Commissioner must amend the person's assessment for the income years to which the post facto adjustment relates in accordance with the alterations to that income or expenditure as calculated by the post facto adjustment.

Compare: 2004 No 35 s EZ 39

EZ 43 Variable principal debt instruments

For the purposes of the old financial arrangements rules, where a person is a party to a variable principal debt instrument on the implementation date, the person is deemed to have acquired or, as the case may be, issued it on that day for a consideration equal to the amount of money that would be payable to the holder on that day if the amount or amounts payable under the financial arrangement were due and payable on that day.

Compare: 2004 No 35 s EZ 40

EZ 44 Relationship with rest of Act

(1) Notwithstanding any other provision in this Act, income or expenditure in an income year in respect of a financial arrangement under the old financial arrangements rules is calculated under those rules.

(1A) Expenditure incurred under the old financial arrangements rules is not included in—

(a) the cost of trading stock, for small taxpayers:
(b) the cost of revenue account property:
(c) the cost of livestock:
(d) the cost of bloodstock:
(e) the cost of acquiring a film or a film right:
(f) film production expenditure:
(g) the cost of timber:
(h) petroleum exploration expenditure or petroleum development expenditure.

(2) Where—

(a) property is transferred under a financial arrangement; and
(b) the property or the consideration given for the property is relevant under any provision of this Act other than the old financial arrangements rules for the purpose of determining any amount of income or deduction of a person,—

the property is treated for the purpose of that provision as having been transferred under the financial arrangement for an amount equal to the acquisition price of the property.

Compare: 2004 No 35 s EZ 41

EZ 45 Application of old financial arrangements rules

The old financial arrangements rules do not apply—

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

(b) in relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is under a binding contract in existence before the implementation date in relation to that financial arrangement:
provided that this paragraph does not apply in relation to a rollover, extension, or advance provided for before the implementation date in relation to the financial arrangement where the rollover, extension, or advance occurs on or after 1 April 1990; or

(c) in relation to a person and a financial arrangement, where the person acquired the financial arrangement in accordance with a relationship agreement and the transferor, in relation to the financial arrangement, was a person to whom **paragraph (a) or (b)** applied; or

(d) in relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is under and in terms of a rollover, extension, or advance provided for before the implementation date in relation to the financial arrangement and the rollover, extension, or advance occurs before 1 April 1990; or

(e) to the determination of—

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

(ii) non-resident passive income; or

(f) in relation to a financial arrangement to the extent that the income or expenditure incurred by a person in respect of the financial arrangement consists of interest payable to or by the Commissioner under Part 7 of the Tax Administration Act 1994, being interest payable in relation to the income tax liability of the taxpayer in respect of the 1994–95 income year or any subsequent income year.

Compare: 2004 No 35 s EZ 42

EZ 46 Election to treat short term trade credit as financial arrangement

(1) For the purposes of the old financial arrangements rules, a taxpayer may elect by notice given in accordance with **subsection (2)** to treat short term trade credits specified in **subsection (4)** as financial arrangements.

(2) Notice of an election under **subsection (1)** in relation to an income year must be given to the Commissioner within the time within which a vendor or a purchaser is required under section 37 of the Tax Administration Act 1994 to furnish a return of income for the income year to which the election is to apply.

(3) An election by the taxpayer under **subsection (1)** may be revoked by notice given to the Commissioner during any income year and the revocation applies only to short term trade credits created on or after the commencement of the subsequent income year.

(4) An election under **subsection (1)** may be made in respect of—

- (a) all short term trade credits of the taxpayer; or
- (b) 1 or more classes of short term trade credits of the taxpayer that the taxpayer defines by reference either—
  - (i) to the particular currency in which the short term trade credit is denominated; or
  - (ii) to the term of the short term trade credit; or
  - (iii) to both the term and the particular currency in which the short term trade credit is denominated.

Compare: 2004 No 35 s EZ 43

EZ 47 Election to continue to treat certain excepted financial arrangements as financial arrangements

(1) A person may elect to continue to treat all excepted financial arrangements under any of **paragraphs (p), (q), (r), (s), (t), (u), and (v)** of the definition of **excepted financial arrangement** as financial arrangements if the person is a holder or an issuer of an arrangement that was entered into on or after the person's last balance date and before 20 May 1999.

(2) A person elects to treat their excepted financial arrangements as financial arrangements by returning income derived and expenditure incurred from the elected arrangements under the old financial arrangements rules in their return of income.

(3) A financial arrangement that is an excepted financial arrangement under any of **paragraphs (p), (q), (r), (s), (t), (u), and (v)** of the definition of **excepted financial arrangement** is not an excepted financial arrangement for the holder or issuer who elects to treat it as a financial arrangement under **subsection (1)**.

Compare: 2004 No 35 s EZ 44

EZ 48 Definitions

For the purposes of the old financial arrangements rules, each of the following terms has the meaning given to it, despite any other meaning given to the term in **section YA 1** (*(Definitions)*) for any other purpose and unless the context otherwise requires:

acquisition price,—

(a) in relation to a financial arrangement and a holder of the financial arrangement, means an amount calculated in accordance with the following formula:

$$y - z$$

where—

y is the core acquisition price of the financial arrangement

z is the smaller of—

(i) the amount of consideration provided in relation to the financial arrangement by the holder that is not contingent on the implementation of the financial arrangement; and

(ii) an amount equal to 2% of the core acquisition price of the financial arrangement; and

(b) in relation to a financial arrangement and an issuer of the financial arrangement, means an amount calculated in accordance with the following formula:

$$y + z$$

where—

y is the core acquisition price of the financial arrangement

z is the smaller of—

(i) the amount of consideration provided in relation to the financial arrangement by the issuer that is not contingent on the implementation of the financial arrangement; and

(ii) an amount equal to 2% of the core acquisition price of the financial arrangement

agreement for the sale and purchase of property, in relation to a person, means a financial arrangement that is an agreement (whether conditional or unconditional) entered into by the person to purchase or otherwise acquire or sell or otherwise dispose of property; but does not include an option, a specified option, or a futures contract

amount of all consideration, in the definition of **core acquisition price**, in relation to a person and to an agreement for the sale and purchase of property or a specified option, where all or part of the consideration provided to the holder is property, means the aggregate of the amount calculated in respect of that property in the manner provided **in subparagraph (i) or (ii)** of item "w" in **paragraph (c)** of the definition of **core acquisition price** and any consideration provided to the holder in relation to the financial arrangement, other than the property provided to the holder

core acquisition price, in relation to a financial arrangement, means,—

(a) where **section EZ 50** applies, the amount determined under that section; and

(b) where the financial arrangement is a trade credit, an amount calculated in accordance with the following formula:

$$u + v$$

where—

u is—

(i) the cash price of the goods or services to which the trade credit relates (referred to in this item and item "v" as the **specified goods or services**), as determined by section 5 of the Credit Contracts and Consumer Finance Act 2003; or

(ii) if **subparagraph (i)** is not applicable, the lowest price at which the specified goods or services could be purchased under a short term trade credit; or

(iii) if **subparagraphs (i) and (ii)** are not applicable, the discounted value of the amounts payable for the specified goods or services, as determined under a determination made by the Commissioner under section 90(1)(h) of the Tax Administration Act 1994

v is,—

(i) in relation to a holder of the financial arrangement, the amount of all consideration provided by the holder in relation to the financial arrangement, other than the specified goods or services; or

(ii) in relation to an issuer of the financial arrangement, the amount of all consideration provided to the issuer in relation to the financial arrangement, other than the specified goods or services; and

(c) where the financial arrangement is an agreement for the sale and purchase of property (not being an agreement for the sale and purchase of property that has lapsed or otherwise does not proceed) or a specified option (not being a specified option that has lapsed or otherwise does not proceed), an amount calculated in accordance with the following formula:

$$w + x$$

where—

w is—

(i) the lowest price (determined in accordance with **section EZ 4(*6*)<u>9</u>**, if the consideration payable under the relevant financial arrangement is denominated in a foreign currency) that the parties would have agreed upon for the property that is the subject of the agreement for the sale and purchase of property or the specified option (referred to in this item and item "x" as the **specified property**) at the time at which the agreement for the sale and purchase of property was entered into or the specified option was granted on the basis of payment in full at the time at which the first right in the specified property is to be transferred; or

(ii) if **subparagraph (i)** is not applicable, the discounted value of the amounts payable for the specified property as determined under a determination made by the Commissioner under section 90(1)(h) of the Tax Administration Act 1994

x is,—

(i) in relation to the holder of the financial arrangement, the amount of all consideration provided by the holder in relation to the financial arrangement other than the specified property; or

(ii) in relation to an issuer of the financial arrangement, the amount of all consideration provided to the issuer in relation to the financial arrangement other than the specified property; and

(d) where the financial arrangement is a hire purchase agreement and the holder is the first holder in relation to the hire purchase agreement, either—

(i) an amount calculated in accordance with the following formula:

$$a + b + c$$

where—

a is,—

(A) the cash price of the hire purchase asset (as **cash price** is defined in section 5 of the Credit Contracts and Consumer Finance Act 2003); or

(B) if **subsubparagraph (A)** of this item is not applicable, the lowest price at which the hire purchase asset could be purchased under a short term trade credit at the time of commencement of the hire purchase agreement

b is the amount of all expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use to the extent to which any such expenditure or loss is not taken into account in determining the amount of item “a”

c is—

(A) in relation to the holder, the amount of all consideration provided by the holder in relation to the hire purchase agreement, other than the hire purchase asset and the expenditure or loss referred to in item “b”; or

(B) in relation to the issuer, the amount of all consideration provided to the issuer in relation to the hire purchase agreement, other than the hire purchase asset and the expenditure or loss referred to in item “b”; or

(ii) if **subparagraph (i)** is not applicable, or if either the holder or the issuer in relation to the hire purchase agreement applies to the Commissioner for a specific determination, an amount calculated in accordance with the following formula:

$$d + e$$

where—

d is—

(A) the discounted value of all hire purchase payments payable under the hire purchase agreement, as determined under a determination made by the Commissioner under section 90(1)(i) of the Tax Administration Act 1994; or

(B) where either the holder or the issuer in relation to the hire purchase agreement applies to the Commissioner for a specific determination, an amount determined by the Commissioner in relation to that application (and the amount so determined applies for both the holder and the issuer to the exclusion of any determination made in respect of that hire purchase agreement under **subsubparagraph (A)** of this item)

e is,—

(A) in relation to the holder, the amount of all consideration provided by the holder in relation to the hire purchase agreement, other than the hire purchase asset and any expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use; or

(B) in relation to the issuer, the amount of all consideration provided to the issuer in relation to the hire purchase agreement, other than the hire purchase asset and any expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use; and

(e) where none of **paragraphs (a) to (d)** applies to a financial arrangement,—

(i) in relation to a holder of the financial arrangement, the value of all consideration provided by the holder in relation to the financial arrangement; or

(ii) in relation to an issuer of the financial arrangement, the value of all consideration provided to the issuer in relation to the financial arrangement

excepted financial arrangement, other than an arrangement listed in **paragraphs (p), (q), (r), (s), (t), (u), and (v)** that a taxpayer has treated as a financial arrangement in a return of income already filed, means any of the following arrangements:

(a) an annuity for a term contingent upon human life or an annuity for a term not contingent on human life to which **section EY 8(2)(c)** applies:

(b) an insurance contract or membership of a superannuation scheme:

(c) a debenture to which **section FA 2** applies:

(d) a short term trade credit, unless the purchaser or vendor has elected in accordance with **section EZ 46** to treat the short term trade credit as a financial arrangement to which the old financial arrangements rules apply:

(e) a specified preference share to which **section FZ 1** of the Income Tax Act 2004 applies:

(f) in relation to a holder or an issuer, shares, other than withdrawable shares, or an option to buy shares, other than withdrawable shares, where those shares were or that option was acquired or issued by the person before 8.00 pm New Zealand Standard Time on 18 June 1987:

(g) in relation to a holder or an issuer, shares, other than withdrawable shares, or an option to acquire or to sell or otherwise dispose of shares, other than withdrawable shares, where those shares were or that option was acquired or issued by the person after 8.00 pm New Zealand Standard Time on 18 June 1987:

(h) a lease:

(i) a bet on any—

  (i) race, as defined in section 5 of the Racing Act 2003; or

  (ii) sporting event under a sports-betting system administered under Part 6 of the Racing Act 2003; or

  (iii) gambling, including a New Zealand lottery, as those terms are defined in section 4(1) of the Gambling Act 2003:

(j) in relation to an issuer or a holder, an option to acquire or to sell or otherwise dispose of property (other than an interest in a financial arrangement) where the option was issued or acquired by the person after 8.00 pm New

Zealand Standard Time on 18 June 1987 for private or domestic purposes only:
(k) a short term agreement for the sale and purchase of property:
(l) a short term option:
(m) a private or domestic agreement for the sale and purchase of property:
(n) a farm-out arrangement:
(o) a hire purchase agreement, as defined in **section YA 1**, but including an agreement that would be a hire purchase agreement but for the exclusion in **paragraph (g)** of the definition of that term, entered into before 1 April 1993, or any assignment of such an agreement:
(p) a loan that is interest free, repayable on demand, and denominated in New Zealand dollars, for the lender of the loan only:
(q) an employment contract:
(r) an interest in a group investment fund:
(s) an interest in a partnership or a joint venture:
(t) travellers' cheques:
(u) a warranty for goods or services:
(v) a hire purchase agreement for livestock or bloodstock entered into on or after 1 April 1993

financial arrangement means—
(a) any debt or debt instrument; and
(b) any arrangement (whether or not such arrangement includes an arrangement that is a debt or debt instrument, or an excepted financial arrangement) whereby a person obtains money in consideration for a promise by any person to provide money to any person at some future time or times, or upon the occurrence or non-occurrence of some future event or events (including the giving of, or failure to give, notice); and
(c) any arrangement which is of a substantially similar nature (including, without restricting the generality of the preceding provisions of this subparagraph, sell-back and buy-back arrangements, debt defeasances, and assignments of income);—

but does not include any excepted financial arrangement that is not part of a financial arrangement

fixed principal financial arrangement means any financial arrangement other than a variable principal debt instrument

forward contract, in the definitions of **holder** and **implementation date**, includes, but is not limited to, a forward contract for—
(a) foreign exchange:
(b) commodities:
(c) financial arrangements:
(d) excepted financial arrangements;—
but does not include an agreement for the sale and purchase of property or a specified option

holder—
(a) means,—
 (i) in relation to—
  (A) an agreement for the sale and purchase of property; or
  (B) a forward contract or a futures contract,—
 a person who is a vendor in relation to the financial arrangement:
 (ii) in relation to an option to purchase or otherwise acquire property, a person who is a grantor of the option:
 (iii) in relation to an option to sell or otherwise dispose of property, a person who is a grantee of the option:
 (iv) in relation to a hire purchase agreement, the lessor:
 (v) in relation to any other financial arrangement, a person who, if the amount or amounts payable under the financial arrangement were due and payable at that time, would be entitled to receive, or would receive a pecuniary benefit from, payment of the amount or amounts so payable or any part of them;—
 and **hold** has a corresponding meaning; and
(b) is further defined in **section EZ 38(8)** for the purposes of that section

implementation date means,—
(a) in the case of—
 (i) forward or future contracts, including, but not limited to, contracts for—

(A) foreign exchange:
(B) commodities:
(C) financial arrangements:
(D) excepted financial arrangements; and
(ii) futures contracts; and
(iii) trade credits; and
(iv) annuities; and
(v) agreements for the sale and purchase of property; and
(vi) convertible notes,—

8.00 pm New Zealand Standard Time on 23 October 1986; and

(b) in the case of debt defeasances and assignments of income, 20 December 1986; and
(c) in the case of variable principal debt instruments, 1 April 1987; and
(d) in the case of a financial arrangement under which—
(i) the monetary obligations of the parties are expressed in New Zealand currency; and
(ii) it is contemplated that the holder may, upon demand or call, require the return of sums advanced to the issuer; and
(iii) it is not contemplated that the holder may advance further sums to the issuer upon demand or call under the financial arrangement,—

1 April 1987; and

(e) in every other case, 8.30 pm New Zealand Standard Time on 31 July 1986

issuer,—
(a) in relation to a financial arrangement at any time, means a person who is a party to the financial arrangement and is not a holder in relation to the financial arrangement; and
(b) is further defined in **section EZ 38(8)** for the purposes of that section

maturity, in relation to a financial arrangement, means the date on which the last payment contingent upon the financial arrangement is made, and **matures** has a corresponding meaning:

provided that where a financial arrangement has not matured and where the amount which has not been paid is immaterial and the financial arrangement has been structured to avoid the application of **section EZ 38**, the financial arrangement is deemed to have matured

money, in **paragraph (b)** of the definition of **financial arrangement** and in the definition of **security payment**, includes money's worth, whether or not convertible into money, and the right to money, including the deferral or cancellation of any obligation to pay money whether in whole or in part

private or domestic agreement for the sale and purchase of property, in the definition of **excepted financial arrangement**, in relation to any person, means an agreement for the sale and purchase of property or a specified option where—

(a) the agreement was entered into by that person or the specified option was granted to or by that person for private or domestic purposes; and

(b) the subject-matter of the agreement or specified option is—

  (i) real property, the purchase price of which is less than $750,000; or

  (ii) any other property, the purchase price of which is less than $250,000; and

(c) settlement is required to take place within 365 days after the day on which the agreement was entered into or the specified option granted

property,—

(a) in the definition of **specified base cost for 1983 income year property** and in the life insurance rules, includes any real or personal property; and

(b) in **paragraph (a)** of the definition of **holder** and **paragraph (b)** of the definition of **lease** and in the definitions of **agreement for the sale and purchase of property**, **amount of all consideration**, **core acquisition price**, **excepted financial arrangement**, **private or domestic agreement for the sale and purchase of property**, **right in the specified property**, **short term agreement for the sale and purchase of property**, **short term option**, and **specified option**, means—

  (i) any capital asset that is not foreign exchange or a financial arrangement; and

  (ii) trading stock; and

  (iii) consumable aids; and

(iv) property to be purchased or otherwise acquired or sold or otherwise disposed of for private or domestic purposes only

right in the specified property, in the definition of **core acquisition price**, means—

(a) the right to possession of the property; or

(b) the right to any income or the right to control or influence the disposition of income derived from the property; or

(c) the right, directly or indirectly, to exercise, or to influence any other person in the exercise of, any decision-making in respect of the property; or

(d) any other right of a substantially similar nature:

provided that the mere right to enforce any agreement for the sale and purchase of property or any specified option does not of itself constitute a right in the specified property

secured arrangement, in the definitions of **security arrangement** and **security payment**, means an arrangement against which the failure to perform is secured by a financial arrangement

security arrangement, in the definition of **security payment**, means a financial arrangement that secures the holder against failure of any person to perform their obligations under a secured arrangement

security payment means money received by the holder of a security arrangement to the extent that the money is received in relation to a loss incurred due to the failure of performance of the secured arrangement and the value of the money is income of the holder

short term agreement for the sale and purchase of property means an agreement for the sale and purchase of property where—

(a) the property is real property and settlement is required to take place within 93 days of the day on which the agreement was entered into; or

(b) the property is not real property and settlement is required to take place within 63 days of the day on which the agreement was entered into

short-term option, in the definition of **excepted financial arrangement**, means a specified option where—

(a) the subject-matter of the option is real property and settlement is required to take place within 93 days of the day on which the option was granted; or

(b) the subject-matter of the option is not real property and settlement is required to take place within 63 days of the day on which the option was granted

short term trade credit, in the definitions of **core acquisition price**, **excepted financial arrangement**, and **trade credit**, means any debt for goods or services where payment is required by the vendor—

(a) within 63 days after the supply of the goods or services; or

(b) because the supply of the goods or services is continuous and the vendor renders periodic invoices for the goods or services, within 63 days after the date of an invoice rendered for those goods or services

social assistance suspensory loan is defined in **section EZ 38(8)(c)** for the purposes of that section

specified option means an option to purchase or otherwise acquire or sell or otherwise dispose of property, and the agreement for the sale and purchase of property, if any, entered into as a result of the exercise of the option is deemed to be part of the option

trade credit, in the definitions of **core acquisition price** and **implementation date**, means any debt for goods or services, but does not include a short term trade credit

trading stock, in **paragraph (b)** of the definition of **property**, means—

(a) any thing acquired for the purposes of manufacture, sale, or exchange:

(b) livestock:

(c) any other real or personal property where the business of the person by whom it is sold or disposed of comprises dealing in such property or the property was acquired by the person for the purpose of sale or other disposal:

(d) any land, any amount derived from the sale or other disposal of which would be income to which any of **sections CB 6 to CB 23** applies:

(e) anything in respect of which expenditure is incurred and which, if possession were taken, would fall within any of **paragraphs (a) to (d)**;—

but does not include any financial arrangement

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

(a) advance further sums to the issuer; or

(b) where the rights and obligations of the person under the financial arrangement are expressed in a currency other than New Zealand currency, require the return of sums advanced to the issuer—

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

Compare: 2004 No 35 s EZ 45

EZ 49 Determination of core acquisition price where consideration for property denominated in foreign currency

(1) For the purposes of **paragraph (c)** of the definition of **core acquisition price** in **section EZ 48**, if the consideration payable under the relevant financial arrangement for the specified property is denominated in a foreign currency, the lowest price referred to in that paragraph must be the lowest price the parties would have agreed upon in that foreign currency converted into New Zealand dollars using, at the option of the taxpayer,—

(a) the rate, on the day on which the financial arrangement was entered into (in this section referred to as the **contract date**), available to the taxpayer from a New Zealand registered bank for the exchange of New Zealand dollars for that foreign currency on the day on which the first right in the specified property is to be transferred (in this section referred to as the **rights date**); or

(b) if the period between the rights date and the day on which final payment is to be made under the financial arrangement (in this section referred to as the **settlement date**) is not greater than 5 years, the rate, on the contract date, available to the taxpayer from a New Zealand registered bank for the exchange of New

Zealand dollars for that foreign currency on the settlement date; or

(c) an exchange rate approved by the Commissioner for adoption under this subsection in the circumstances applicable to the taxpayer in a determination issued under section 90(1)(k) of the Tax Administration Act 1994.

(2) The rate adopted by a taxpayer in relation to a financial arrangement under **subsection (1)** must be consistently applied by that taxpayer in respect of that particular financial arrangement for the purposes of the old financial arrangements rules for every income year during its term.

(3) If the terms of the financial arrangement referred to in **subsection (1)** are such that the actual rights date is uncertain as at the contract date, then the rights date is for the purposes of **subsection (1)** the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that the first right in the specified property will be transferred.

(4) If the terms of the financial arrangement referred to in **subsection (1)** are such that the actual settlement date is uncertain as at the contract date, then the settlement date is for the purposes of **subsection (1)** the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that final payment will be made.

Compare: 2004 No 35 s EZ 46

EZ 50 Rules for non-market transactions

(1) Where the Commissioner, having regard to any connection between the parties to the issue or transfer of a financial arrangement and to any other relevant circumstances, is satisfied that the parties were dealing with each other in relation to the issue or transfer in a manner that has the effect of defeating the intent and application of the old financial arrangements rules, the Commissioner may, under **section EZ 35 or EZ 37 or EZ 38 or EZ 42**, deem the consideration for the issue or transfer to be equal to the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer.

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

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

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

(c) being a holder or an issuer of a financial arrangement, becomes a New Zealand resident, the person is deemed to acquire or to issue the financial arrangement at the time at which the person becomes a New Zealand resident;—

and that acquisition or that disposal is deemed to have been made for a consideration equal to the consideration that might reasonably be expected for the acquisition or disposal if the acquisition or disposal had been made at arm’s length.

(3) A financial arrangement is treated as having been sold and purchased or transferred and realised at its market value on the date of its sale or transfer if the sale or transfer, including a transfer by way of distribution to shareholders, is not for consideration in money or is for a consideration that is less than the market value of the financial arrangement.

(5) The market value of a financial arrangement is the market value for both seller and purchaser or transferor and transferee.

Compare: 2004 No 35 s EZ 47

EZ 51 Transitional adjustment when changing to financial arrangements rules

(1) A person may elect to apply the financial arrangements rules to a financial arrangement to which the old financial arrangements rules apply.

(2) A person who makes an election must apply the financial arrangements rules to all financial arrangements to which the person is a holder or an issuer.

(3) Despite **subsections (1) and (2)**, a person must apply **section EZ 38** if that section applies to a financial arrangement in the income year in which the election is made.

(4) Once an election is made, the financial arrangement is subject to the financial arrangements rules and is treated in the same

way as a financial arrangement that was entered into on or after 20 May 1999.

(5) A person who makes an election must calculate a transitional adjustment for the income year of election and return the resulting income or expenditure.

(6) The transitional adjustment is calculated using the formula—

income (financial arrangements rules)
– expenditure (financial arrangements rules)
– income (old financial arrangements rules)
+ expenditure (old financial arrangements rules)

where—

income (financial arrangements rules) is the total amount of income that would be derived by the person from the financial arrangement if the financial arrangements rules were applied to the financial arrangement for the period beginning on the date the person acquires the arrangement and ending on the last day of the income year in which this calculation is made

expenditure (financial arrangements rules) is the total amount of expenditure that would be incurred by the person under the financial arrangement if the financial arrangements rules were applied to the financial arrangement for the period beginning on the date the person acquires the arrangement and ending on the last day of the income year in which this calculation is made

income (old financial arrangements rules) is the total amount of income of the person from the financial arrangement in all income years before the income year in which this calculation is made

expenditure (old financial arrangements rules) is the total amount of expenditure incurred by the person under the financial arrangement in all income years before the income year in which this calculation is made.

(7) The result of the transitional adjustment is,—

(a) if a positive amount, income derived by the person in the income year; and

(b) if a negative amount, expenditure incurred by the person in the income year.

(8) In the income year in which the transitional adjustment is made to a financial arrangement, a person must take into account only the income derived or the expenditure incurred as a result of the adjustment for the financial arrangement.

(9) Despite **subsections (2) to (8)**, a person is treated as transferring a financial arrangement at market value at the end of the income year of election and must calculate a base price adjustment under **section EZ 38** if—

(a) the financial arrangement is an arrangement to which the old financial arrangements rules apply; and

(b) the financial arrangement were entered into on or after 20 May 1999 and would not have been subject to the financial arrangements rules; and

(c) the person elects to apply the financial arrangements rules to a financial arrangement to which the old financial arrangements rules apply.

Compare: 2004 No 35 s EZ 48

EZ 52 References to new rules include old rules

(1) **Subsection (2)** applies if—

(a) the old financial arrangement rules apply to a financial arrangement (**old financial arrangement**); and

(b) a taxation law in this Act (**rewritten law**) refers only to, or applies only to, a financial arrangement to which the financial arrangements rules apply; and

(c) the rewritten law is in neither **subpart EW** nor **sections EZ 33 to EZ 51**; and

(d) the rewritten law corresponds to and replaces, with or without amendments, a taxation law that applied to the old financial arrangement before 20 May 1999.

(2) The rewritten law applies to the old financial arrangement as if the rewritten law referred to, or applied to, a financial arrangement to which the old financial arrangements rules apply.

(3) **Subsection (2)** does not apply to—

(a) a definition, or parts of a definition, in **section YA 1** if that definition or part refers to **section EZ 48**; or

(b) **section GB 21**, because the former taxation law to which it corresponds has been re-enacted as **section EZ 50**.

(4) **Section FM 8(3)(b)(ii)** applies to a financial arrangement to which the old financial arrangements rules apply as if—

(a) the reference to **section EW 31** were to **section EZ 38**; and

(b) the words "financial arrangements rules" read "old financial arrangements rules".

Compare: 2004 No 35 s EZ 49

Part F
Recharacterisation of certain transactions

Subpart FA—Recharacterisation of certain commercial arrangements

Contents

Introductory provision

FA 1 What this subpart does

This subpart alters the tax treatment of certain commercial arrangements by—

(a) recharacterising either their nature or that of the amounts derived under the arrangements; and

(b) providing rules for the treatment of the parties to the arrangement.

Defined in this Act: amount, arrangement, tax

Debentures and shares

FA 2 Recharacterisation of certain debentures

Treatment of debenture and interest

(1) A profit-related debenture or a substituting debenture is treated for tax purposes as a share described in **paragraph (b)** of the definition of **share** in **section YA 1** (Definitions), and the interest payable under the debenture is treated as a dividend.

No deduction

(2) A company issuing either a profit-related debenture or a substituting debenture is denied a deduction under **section DB 11** (Interest or expenditure connected to profit-related or substituting debentures) for—

(a) interest payable under the debenture; or

(b) expenditure or loss incurred in connection with the debenture; or

(c) expenditure or loss incurred in borrowing the money secured by or owing under the debenture.

When interest fixed to certain rates or indices

(3) **Subsection (2)** does not apply to a profit-related debenture if the rate of interest payable under it is determined by a fixed relationship to—

(a) banking rates; or

(b) general commercial rates; or

(c) economic, commodity, industrial, or financial indices, but the application of this paragraph is subject to **section**

FZ 1(3) (Treatment of interest payable under debentures issued before a certain date).

Profit-related debenture

(4) In this section, a **profit-related debenture** means a debenture with a rate of interest that is set from time to time by reference to—

(a) the dividend payable by the company issuing the debenture; or

(b) the profits of the company issuing the debenture, however measured.

Substituting debenture

(5) In this section, a **substituting debenture**—

(a) means a debenture issued by a company to a shareholder or class of shareholder of the company when the amount of the debenture is determined by reference to 1 or more of the following aspects of the shares in the company held by the shareholder or class of shareholder at the time the debenture is issued or at an earlier time:

(i) the number of shares:

(ii) the available subscribed capital of the company calculated under the slice rule set out in **section CD 23** (Ordering rule and slice rule):

(iii) some other reference to the shares:

(b) does not include a debenture that is a convertible note.

Shares or available subscribed capital in another company

(6) A debenture is also a substituting debenture if it is issued to a shareholder or a class of shareholder and the amount of the debenture is determined by reference to 1 or more aspects of the shares as described in **subsection (5)** held by the shareholder in a company other than that issuing the debenture, whether or not the company is being, or has been, liquidated.

Amount of debenture

(7) For the purposes of **subsections (5) and (6)**, the amount of the debenture means the principal sum secured by or owing under the debenture.

Terminating provisions

(8) For the treatment of debentures issued before 8pm New Zealand standard time on 23 October 1986, *see* **section FZ 1**.

Relationship with agency rules

(9) **Section HD 14** (Companies issuing debentures) does not apply to a profit-related debenture described in this section, or to an amount paid or payable under it.

Defined in this Act: amount, available subscribed capital, company, convertible note, debenture holder, debentures, deduction, dividend, interest, issue, liquidation, loss, money, pay, profit-related debenture, share, shareholder, slice rule, substituting debenture, tax

Compare: 2004 No 35 ss FC 1, FC 2

FA 3 Recharacterisation of certain dividends: recovery of cost of shares held on revenue account

When this section applies

(1) This section applies to the amount of a dividend derived from shares that are revenue account property of a person when—

(a) the payment of the dividend realises or recovers the price the person paid for the shares; and

(b) the payment is made at the person's control or direction, or is part of a scheme that includes the acquisition of the shares and the payment of the dividend.

Treatment of amount derived

(2) The dividend is treated as an amount derived on a sale of the shares**(**, *but only***)** to the extent to which **(***the sum of the dividend and* **)**the actual amount realised by the person on the disposal of the shares is **(***no more***)**<u>less</u> than the cost to the person of acquiring the shares.

Dividend

(3) Despite **subsection (2)**, a dividend taken into account under this section remains a dividend derived by the person in the income year.

Defined in this Act: amount, consideration, control, dividend, income year, pay, revenue account property, share

Compare: 2004 No 35 s FC 3

FA 4 Recharacterisation of shareholder's base: company repurchasing share

When this section applies

(1) This section applies to a shareholder in a company in relation to an off-market cancellation of shares by the company under **section CD 22** (Returns of capital: off-market share cancellations) when—

(a) the shareholder holds the share as revenue account property; and

(b) after the cancellation, they continue to hold some shares of the same class.

When whole amount treated as dividend

(2) If the whole of the amount that the shareholder receives for the cancellation is treated as a dividend, the following paragraphs apply:

(a) the shareholder is not regarded as having disposed of the cancelled share, except for the purpose of determining whether they have derived a dividend; and

(b) the amount is added to the cost of the shareholder's remaining shares of the same class under **subsection (6)**.

Below market value of shares

(3) If **subsection (2)** does not apply, and the amount paid by the company is less than the market value of the shares at the time when notice is first given of the cancellation either by the shareholder or the company, the following paragraphs apply:

(a) an amount calculated using the formula in **subsection (4)** is added to the cost of the shareholder's remaining shares of the same class under **subsection (6)**; and

(b) the amount is excluded from the cost of the share being cancelled so that the shareholder is denied a deduction under **section DB 26** (Cancellation of shares held as revenue account property) for the amount unless the share is trading stock of the shareholder; and

(c) **sections GC 1 and GC 2** (which relate to the disposal of trading stock for inadequate consideration) does not apply.

Formula

(4) The formula referred to in **subsection (3)(a)** is—

$$\text{share cost} - \left(\text{cost pre-cancellation} \times \frac{\text{amount from cancellation}}{\text{market value}}\right).$$

Definition of items in formula

(5) In the formula,—

(a) **share cost** is the cost of the cancelled share to the shareholder:

(b) **cost pre-cancellation** is the total cost to the shareholder of all their shares of the same class immediately before the cancellation:

(c) **amount from cancellation** is the amount derived by the shareholder from the company for the cancellation:

(d) **market value** is the total market value of all the shareholder’s shares of the same class immediately before the cancellation.

When subsection (7) applies

(6) **Subsection (7)** applies at a time after the cancellation when the cost of the remaining shares is taken into account under **subpart EB** (Valuation of trading stock (including dealer’s(’) livestock)), or otherwise.

Adding amount to cost of shares

(7) The amount referred to in **subsection (2)(b) or (3)(a)** must be fairly divided among, and added to, the cost of the shareholder’s remaining shares of the same class.

Defined in this Act: amount, cancellation, company, consideration, deduction, dividend, market value, notice, off-market cancellation, revenue account property, share, shareholder, shares of the same class, trading stock

Compare: 2004 No 35 s FC 4

Leases

FA 5 Assets acquired and disposed of after deduction of payments under lease

When this section applies

(1) This section applies when a person (the **lessee**)—

(a) leases, rents, or hires an asset that is—

(i) plant, machinery, or other equipment; or

(ii) a motor vehicle; or

(iii) a temporary building; and

(b) is allowed a deduction for the rental payments; and
(c) acquires the asset and later disposes of it; and
(d) the consideration derived on the disposal is not income of the lessee under a provision of this Act other than this section.

Income

(2) If the consideration derived by the lessee for the asset is more than the cost of its acquisition, the excess is income of the lessee under **section CG 7** (Recoveries after deduction of payments under lease). **Subsection (3)** overrides this subsection.

Adjustment to income

(3) If the total amount of the deductions referred to in **subsection (1)(b)** is less than or equal to the excess, the amount of income under **subsection (2)** is the total amount of the deductions.

Apportionment

(4) If the asset is disposed of together with other assets, the total consideration must be apportioned to reflect the respective market values of the assets.

Disposal below market value

(5) If the asset is disposed of without consideration or for a consideration that is less than market value at the date of disposal, the asset is treated as having been disposed of at its market value.

Associated persons acquiring asset

(6) **Subsection (2)** also applies if a person associated with the lessee acquires the asset, whether from the lessee or not, and disposes of it for an amount that is more than the amount paid to acquire it. Association is determined at the time of acquisition by the associated person. The lesser of the excess and the total amount of the lessee's deductions is treated as income of the lessee.

Transfers on settlement of relationship property

(7) In this section,—
(a) **subsection (1)(c)** does not apply to an acquisition on a settlement of relationship property:

(b) **subsection (5)** does not apply to a disposal on a settlement of relationship property.

Defined in this Act: amount, associated person, consideration, deduction, income, market value, motor vehicle, pay, settlement of relationship property, tax year, temporary building

Compare: 2004 No 35 s FC 5(1), (3)

Finance leases

FA 6 Recharacterisation of amounts derived under finance leases

When a personal property lease asset is leased under a finance lease, the lease is treated as a sale of the lease asset by the lessor to the lessee on the date on which the term of the lease starts, and—

(a) the lessor is treated as giving a loan to the lessee for the lease asset; and

(b) the lessee is treated as using the loan to buy the lease asset; and

(c) **subpart EE** (Depreciation), the financial arrangements rules, and the other provisions of this Act apply to the arrangement as recharacterised.

Defined in this Act: amount, finance lease, financial arrangements rules, lessee, lessor, personal property lease asset

Compare: 2004 No 35 ss FC 8A(1), FC 8F, FC 8G

FA 7 Determining amount of loan

Value to lessor

(1) For a lessor under a finance lease, the amount of the loan is determined under **section EW 32** (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease).

Value to lessee

(2) For a lessee under a finance lease, the amount of the loan is determined under **sections EW 32 and EW 33** (which relate to the value of consideration under the financial arrangements rules).

Defined in this Act: amount, consideration, finance lease, financial arrangements rules, lease, lessee, lessor

Compare: 2004 No 35 ss FC 8A(2), (3), OB 1 “consideration”, “lessee’s acquisition cost”, “ lessor’s disposition value”

FA 8 Deductibility of expenditure under finance lease

Lessee treated as owner

(1) The lessee under a finance lease is treated as the owner of the personal property lease asset for the purposes of **subpart EE** (Depreciation).

Lessor <u>not</u> treated as **(***not***)** *owner*

(2) The lessor under a finance lease is not treated as the owner of the personal property lease asset for the purposes of **subpart EE**.

Defined in this Act: finance lease, lessee, lessor, personal property lease asset

Compare: 2004 No 35 s FC 8B(1)

FA 9 Treatment when lease ends: lessee acquiring asset

Acquisition treated as sale

(1) When a lessee under a finance lease acquires the personal property lease asset by the date on which the term of the lease ends, the acquisition is treated as the same sale that is treated as occurring under **section FA 6**.

When lessee or associated person acquires lease asset and later disposes of it

(2) If a lessee under a finance lease, or a person associated with them, acquires the lease asset and later disposes of it for an amount that is more than the consideration they paid for it, the excess is income of the lessee under **section CC 11** (Lessee acquiring lease asset on expiry of term of lease).

Allocation and association

(3) For the purposes of **subsection (2)**,—
- (a) the excess is income of the lessee in the income year in which the lessee or associated person disposes of the asset:
- (b) association is determined at the time of acquisition by the associated person.

Exception

(4) **Subsection (2)** does not apply if the consideration derived on the disposal is income of the lessee or an associated person under a provision of this Act other than this section.

Defined in this Act: amount, associated person, consideration, finance lease, income, income year, lease, lessee, personal property lease asset, term of the lease

Compare: 2004 No 35 ss FC 8B(2), FC 8E

FA 10 Treatment when lease ends: lessor acquiring asset

When this section applies

(1) This section applies when a finance lease ends by the date on which its term ends.

Acquisition by lessor at end of lease

(2) If the lessee does not acquire the personal property lease asset by the date on which the term of the lease ends, the lessor is treated as having acquired it on that date at its guaranteed residual value. If there is no guaranteed residual value, the consideration is treated as zero. In this section, the consideration is called the **notional (*value*)sale price**.

Further sale, assignment, or lease

(3) **Subsections (4) and (5)** apply when the lessor sells, assigns, or leases the lease asset to another person under another finance lease on or after date on which the term of the original lease ends.

When consideration more than notional (value)sale price

(4) If the consideration is more than the notional (*value*)sale price,—

(a) to the extent to which it is paid by the lessor to the lessee under the original finance lease, the notional (*value*)sale price is increased by the amount of the difference; and

(b) to the extent to which it is not paid by the lessor to the lessee under the original finance lease, the amount of the difference is income of the lessor under **section CC 12** (Lessor acquiring lease asset on expiry of term of lease) in the income year in which the original lease term ends.

When consideration less than notional **(***value***)***sale price*

(5) If the consideration is less than the notional **(***value***)**sale price, and the lessee is required to pay the amount of the deficit to the lessor, the notional **(***value***)**sale price is reduced by that amount.

Acquisition by lessor when lease ends early

(6) If the lease is terminated before the end of its term and the lessee does not acquire the lease asset, the lessor is treated as acquiring it for an amount calculated using the formula—

outstanding balance – release payment.

Definition of items in formula

(7) In the formula,—

(a) **outstanding balance** is the amount of the outstanding balance of the loan on the date on which the lease is terminated:

(b) **release payment** is the amount the lessee paid to be released from their obligations under the lease.

Relationship with section EE 47

(8) **Subsections (2) to (6)** override **section EE 47** (Consideration for purposes of section EE 46).

Defined in this Act: amount, consideration, finance lease, guaranteed residual value, income, income year, lease, lessee, lessor, notional **(***value***)**sale price, outstanding balance, pay, personal property lease asset, term of the lease

Compare: 2004 No 35 ss FC 8B(3), FC 8C, FC 8D

FA 11 Consecutive or successive finance leases

When this section applies

(1) This section applies for the purposes of **sections FA 6 to FA 10** if—

(a) the lease is a consecutive or a successive lease that, under the definition of **lease**, is treated as part of the original lease because the same personal property lease asset is leased to the same lessee; and

(b) the total lease runs for more than 75% of the lease asset's estimated useful life, although the lessor and lessee did not contemplate at the start of the term of the original lease that it would.

Adjustment required

(2) The lessor and lessee must each adjust their income and expenditure calculated for the lease, and include the adjustment in a return of income for the income year in which the adjustment is made.

Amount of adjustment

(3) The amount of the adjustment is calculated in relation to the period described in **subsection (5)** using the formula—

finance lease income – finance lease expenditure
– operating lease income + operating lease expenditure.

Definition of items in formula

(4) In the formula,—

(a) **finance lease income** is the income that would have been derived under the lease if the lease were a finance lease:

(b) **finance lease expenditure** is the expenditure that would have been incurred under the lease if the lease were a finance lease:

(c) **operating lease income** is the income derived under the lease as if the lease were an operating lease:

(d) **operating lease expenditure** is the sum of deductions allowed if the lease were an operating lease.

Adjustment period

(5) The period starts on the date on which the lease starts and ends on the last day of the income year in which the lease becomes a finance lease.

Adjustment positive

(6) If the adjustment is positive, the amount is income of the lessor or the lessee under **section CH 6** (Adjustments under consecutive or successive finance leases).

Adjustment negative

(7) If the adjustment is negative, the amount is expenditure incurred by the lessor or the lessee in the income year in which the adjustment is made.

Defined in this Act: amount, associated person, deduction, estimated useful life, finance lease, income, income year, lease, lessee, lessor, operating lease, personal property lease asset, return of income, term of the lease

Compare: 2004 No 35 ss FC 8H, FC 8I

Hire purchase agreements

FA 12 Recharacterisation of amounts derived under hire purchase agreements

When a person (the **seller**) provides personal property other than livestock or bloodstock to another person (the **buyer**) under a hire purchase agreement, the agreement is treated as a sale by the seller to the buyer on the date on which the term of the agreement starts, and—

(a) the seller is treated as giving a loan to the buyer for the property; and

(b) the buyer is treated as using the loan to buy the property; and

(c) **subpart EE** (Depreciation), the financial arrangements rules, and the other provisions of this Act apply to the arrangement as recharacterised.

Defined in this Act: amount, bloodstock, financial arrangements rules, hire purchase agreement, livestock, personal property

Compare: 2004 No 35 ss FC 9, FC 10

FA 13 Agreements recharacterised as sale with finance provided

Value to seller

(1) For a seller under a hire purchase agreement, the amount of the loan is determined under **section EW 32** (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease).

Value to buyer

(2) For a buyer under a hire purchase agreement, the amount to the buyer is determined under **sections EW 32 and EW 33** (which

relate to the value of consideration under the financial arrangements rules).

Defined in this Act: amount, consideration, financial arrangements rules, hire purchase agreement

Compare: 2004 No 35 ss FC 10(1)(a), OB 1 "consideration" , "lessee's acquisition cost", " lessor's disposition value"

FA 14 Deductibility of expenditure or loss under hire purchase agreement

Buyer treated as owner

(1) The buyer in **section FA 12** is treated as the owner of the property for the purposes of **subpart EE** (Depreciation).

Seller not treated as (*not*) *owner*

(2) The seller in **section FA 12** is not treated as the owner of the property for the purposes of **subpart EE**.

Discounted or bad debts

(3) **Subsection (4)** applies if the seller takes an amount calculated under **section FA 15** into account as the cost of trading stock or in the calculation of their net income for an income year.

No deduction for seller

(4) The seller is denied a deduction under **section DB 15 or DB 32** (which relate to debts sold at a discount and bad debts) for an amount owing under the hire purchase agreement.

Defined in this Act: amount, deduction, hire purchase agreement, income year, net income, property, trading stock

Compare: 2004 No 35 s FC 10(1)(c), (5)(c)

FA 15 Treatment when agreement ends: seller acquiring property

When this section applies

(1) This section applies, subject to **sections FA 16 and FA 17**, when—

(a) a hire purchase agreement described in **section FA 12** ends by the date on which its term ends or after that date; and

(b) the buyer does not acquire ownership of the property; and

(c) a person associated with the buyer does not acquire ownership of the property.

Sale of property

(2) The seller is treated as buying the property from the buyer for an amount equal to the outstanding balance calculated under **subsection (3)**, and the buyer is treated as selling the property to the seller for that amount. The date of the sale is the date the agreement ends.

Outstanding balance

(3) The outstanding balance is the amount calculated using the formula—

net balance due on termination
– buyer's termination payment
+ seller's termination payment.

Definition of items in formula

(4) In the formula,—

(a) **net balance due on termination** is the net balance due under the hire purchase agreement on the date the agreement ends less any costs and expenses referred to in section 31(2)(c) and (d) of the Credit (Repossession) Act 1997:

(b) **buyer's termination payment** is the sum of the following amounts, as applicable:

(i) an amount paid by the buyer, or an associated person, to the seller, or an associated person, under the agreement; and

(ii) an amount paid as a consequence of the ending of the agreement; and

(iii) an amount required to be taken into account by the buyer under the base price adjustment in **section EW 31** (Base price adjustment formula) or in item "a" of the formula in **section EZ 38(1)** (Income and expenditure where financial arrangement redeemed or disposed of):

(c) **seller's termination payment** is the sum of the following amounts, as applicable:

(i) an amount paid by the seller, or an associated person, to the buyer, or an associated person, under the agreement; and

(ii) an amount paid as a consequence of the ending of the agreement; and

(iii) an amount required to be taken into account by the buyer under the base price adjustment in **section EW 31** or by the seller in item "b" or "c" of the formula in **section EZ 38(1) or (2)**.

Base price adjustment

(5) For the purposes of **section EW 31**, the outstanding balance is taken into account as the consideration paid by the buyer to the seller under the hire purchase agreement.

Defined in this Act: amount, associated person, consideration, hire purchase agreement, outstanding balance, property

Compare: 2004 No 35 ss FC 10(2), (5)(a), OB 1 "lessee's outstanding balance", "lessor's outstanding balance" "net balance due"

FA 16 Treatment when agreement ends: when seller is cash basis person

When this section applies

(1) This section applies for the purposes of **section FA 15** when the seller is a cash basis person.

Reduction

(2) The amount treated as the seller's purchase price in **section FA 15(2)** is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula—

$$\text{accrual income} - \text{income}.$$

Definition of items in formula

(3) In the formula,—
- (a) **accrual income** is the amount of income that would have been derived under 1 of the spreading methods for payments under the hire purchase agreement if—
  - (i) the seller were not a cash basis person; and
  - (ii) **section EW 31** (Base price adjustment formula) did not apply to the seller and the agreement in the income year when the agreement ends:
- (b) **income** is the amount of the seller's income from payments received under the hire purchase agreement.

Defined in this Act: amount, cash basis person, hire purchase agreement, income, income year, interest, pay, spreading method

Compare: 2004 No 35 s FC 10(3)

FA 17 Treatment when agreement ends: when buyer is cash basis person

When this section applies

(1) This section applies for the purposes of **section FA 15** when the buyer is a cash basis person.

Reduction

(2) The amount treated as the buyer's sale price in **section FA 15(2)** is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula—

$$\text{prepaid expenditure} - \text{expenditure}.$$

Definition of items in formula

(3) In the formula,—
- (a) **prepaid expenditure** is the amount of prepaid expenditure that would have been incurred under 1 of the spreading methods for payments under the hire purchase agreement if—
  - (i) the buyer were not a cash basis person; and
  - (ii) **section EW 31** (Base price adjustment formula) did not apply to the buyer and the agreement in the income year when the agreement ends:
- (b) **expenditure** is the amount of expenditure incurred by the buyer and treated as interest under the hire purchase agreement.

Defined in this Act: amount, cash basis person, hire purchase agreement, income year, interest, pay, prepaid expenditure, spreading method

Compare: 2004 No 35 s FC 10(4)

FA 18 Treatment of amounts paid in income years after agreement ends

When this section applies

(1) This section applies when an amount that is liable to be paid under a hire purchase agreement is paid in an income year that is later than the income year in which the agreement ends.

Liability under agreement

(2) If the buyer is liable to pay the amount under the terms of the agreement to the seller, the amount is income of the seller

under **section CC 13(2)** (Amounts paid in income years after hire purchase agreement ends).

Payment after end of agreement

(3) If the seller pays the amount to the buyer under the agreement and, consequent on the ending of the agreement, the amount was not taken into account, the amount is treated as—

(a) expenditure incurred by the seller in the income year in which the amount is paid; and

(b) income of the buyer under **section CC 13(3)**, if they have been allowed a deduction in relation to the property under the agreement in the income year in which the amount is paid.

Associated persons

(4) In this section, the seller or the buyer includes a person associated with them.

Defined in this Act: amount, associated person, deduction, hire purchase agreement, income, income year, pay, property

Compare: 2004 No 35 s FC 10(5)(d)–(f)