INCOME TAX AMENDMENT ACT (NO 4) 1989

INCOME EXEMPT FROM INCOME TAX. (Section 4)

Section 4 introduces three new sources of exempt income.

The first amendment extends the exemption in section 61(12) for pensions, annuities, and allowances, paid by the German Government as compensation to victims of Nazi persecution, to cover pensions paid by the Austrian Government in the same circumstances. This exemption applies from the income year commencing on the 1st day of April 1989.

The second amendment exempts income in the form of Adverse Event Family Income Support Payments received by farmers, as part of the South Island drought relief package, between 1 October 1988 and 31 March 1989 inclusive. While such payments would, in the absence of this specific provision, have been subject to income tax, the Government has allowed this exemption for the six months period only in recognition that the taxation status of the payments had not been widely appreciated.

Payments made after the 31st of March will be subject to income tax.

The amendment also defines the terms "South Island drought relief package" and "Adverse Event Family Income Support scheme".

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

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

The third amendment exempts payments made to any person as compensation under the First Schedule to the Crown Forestry Act 1989.

INCOME AND EXPENDITURE WHERE FINANCIAL ARRANGEMENT REDEEMED OR DISPOSED OF (Section 5)

A new section 64F(7C) is inserted in the principal Act.

The section applies to forgiveness of debt following the discharge from bankruptcy under section 114 of the Insolvency Act 1967; and the remittance of tax or duty under any of the Inland Revenue Acts or section 114 of the Accident Compensation Act 1982.

The debt forgiven in these instances shall be deemed to have been paid for the purposes of this section and therefore does not give rise to assessable income under the accrual regime.

The section applies from 1 April 1985.

NEW START GRANTS (Sections 6, 9 and 52)

These sections expand the provisions in the principal Act to allow New Start grants to be paid out for "adverse events". The current provisions specify that they may only be paid out where a drought has occurred. Farmers, within the Kerikeri area, who experienced extreme rainfall as a result of Cyclone Delilah can now qualify for the tax relief associated with a New Start grant paid out by MAF. These amendments take effect from 1 April 1989 as some New Start Grants have already been paid.

<u>Section by Section Analysis of New Start Grants</u>

Section 6 - New Start Grants for Farmers

Section 64FB of the principal Act is amended by introducing a definition of the term "adverse event". An adverse event is defined to include -

(a) The drought conditions that occurred during the years 1988 and 1989 and which affected parts of Marlborough, Canterbury, and Otago and were designated as "a drought affected area" by the Minister of Agriculture.

(b) Land inside a 15 kilometre radius of Kerikeri.

(c) Land outside a 15 kilometre radius of Kerikeri which has been designated as having been subject to extreme rainfall conditions by a local arbitration committee set up by the Minister of Agriculture.

There are also a number of consequential drafting amendments to section 64FB(1) and (2). They remove certain references to New Start grants relating solely to “drought relief” and insert the term “adverse event”.

These amendments apply in relation to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year. An application date of 1 April 1988 was required to cover New Start grants paid in respect of both drought and extreme rainfall conditions prior to this amendment.

Section 9 - Amounts Remitted to be taken into Account in Computing Income

Sections 9 and 52 of the Amendment Act make amendments to sections 78(4)(b) and 414(2A) in relation to changing the term “drought relief” in section 64FB to “adverse event”.

Section 7 - Post facto adjustment.

Section 7 corrects a minor drafting error in section 64I(3)(a) of the principal Act which specifies a previously amended section. There is no change in the interpretation of section 64I(3)(a) as a result of the amendment.

LIVESTOCK TAXATION

(Sections 2,10,11,12,13 and 55)

The amendments to the livestock regime in the Income Tax Amendment Act (No.4) 1989 are the result of discussions held by Inland Revenue with interested parties associated with the farming industry. These amendments are aimed at simplifying the livestock regime’s application for the benefit of the taxpayer, the tax professional, and Inland Revenue.

The amendments made are as follows:

HERD LIVESTOCK

The herd livestock regime is expanded to include immature classes of female livestock and immature male livestock where that livestock is intended to be used in the future for the production of wool, velvet, or fibre. The taxpayer is given the option, via an election, not to include these classes of livestock in the herd scheme.

The herd scheme is further amended by introducing a provision allowing the taxpayer to elect to immediately place livestock in the herd scheme rather than after the 2 year waiting period as previously required under the legislation.

Finally a provision is introduced to allow farmers who cease farming prior to 1 January in any year, or estates of farmers where the farmer dies prior to 1 January in any year, to adopt the prior year’s herd livestock values. This may be done where, in the case of a deceased taxpayer, their tax return is furnished prior to the release of the current year’s values and in all other cases where an election is furnished prior to 1 January.

Write-Down Provisions

The 3 year write-down provisions in respect of specified livestock, which applied to -

(a) New farmers for their first 4 years of business; and
(b) Existing farmers significantly expanding their business; and
(c) Farmers swapping from the herd scheme to the trading stock scheme:

have been repealed.

High-Priced Livestock

The high priced livestock scheme is amended to allow farmers to depreciate livestock purchased within 6 months of balance date where that livestock has been used by the taxpayer for breeding purposes. “Used for Breeding Purposes” has been defined in the Act to mean male livestock used for insemination purposes and female livestock which have given birth. The high priced livestock system is also amended to provide that livestock with a value of less than $100 cannot be high priced livestock. The legislation is further amended to allow farmers to commence depreciation of livestock once it is older than 1 year of age.

SECTION BY SECT ION ANALYSIS OF LIVESTOCK AMENDMENTS

Section 2 - Interpretation - Definition of Herd Livestock

This section extends the definition of “herd livestock” to include male livestock that are intended to be used in the future primarily for the production of wool, velvet or fibre. A special application must be made to the Commissioner justifying the inclusion of the immature male livestock in the herd scheme. The Commissioner will be guided by the taxpayer’s statements on this matter and by other factors, such as the taxpayer’s actions in previous years.

The classes of livestock included in the herd scheme are extended by the addition of classes of immature female livestock to column 3 of the

Twelfth Schedule to the Act. This amendment means that a taxpayer can now include immature female livestock in the herd scheme.

The section applies in relation to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

Section 10 - Livestock Valuation Elections

This section amends section 85A(2) to provide taxpayers with an option to elect not to include the immature classes of herd livestock in the expanded herd scheme. It also further amends section 85A(3)(d) of the principal Act to allow immediate entry into the herd scheme.

The election must be exercised on a type by type approach with all immature classes of one livestock type included or excluded as the case may be.

This section provides that all herd livestock, meaning immature and mature livestock, is valued in the herd scheme unless an election is furnished by the taxpayer requesting that the immature livestock be valued under another scheme. If an election is received then the herd scheme values will only apply to the taxpayer's mature herd livestock. In other words immature herd livestock is automatically included in the herd scheme except where the taxpayer elects otherwise.

This section also requires that the election must be made in writing and furnished with the return of income for the income year that commenced on the 1st day of April 1989. This election option is only available to taxpayers who are already in the herd scheme. Taxpayers entering the herd scheme from 1 April 1990 are required to value all their immature herd livestock at herd livestock values. Any election to exclude immature livestock from the herd scheme can be revoked meaning the taxpayer may reverse the decision and place the immature classes of a livestock type in the herd scheme. The revocation once used is irreversible. In other words, once the immature classes of a herd livestock type are placed into the herd scheme they may not be removed.

Taxpayers may now immediately enter the herd scheme without the previous 2 year waiting period. The entry provisions into the other livestock schemes are not changed.

The section applies in relation to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

Section 11 - Standard Value of Livestock

The section amends section 86 of the principal Act to remove the 3-year write-down to trading stock values applying to specified livestock.

The write-down applied to -

(a) New farmers for their first 4 years of business; and
(b) Existing farmers significantly expanding their business; and
(c) Farmers swapping from the herd scheme to the trading stock scheme.

The 3-year write down provisions will continue to apply with respect to non-specified livestock.

The section applies to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

Section 12 - Valuation of Herd Livestock

Subsection (1) amends section 86A of the principal Act by replacing the word "type" with "class". This minor drafting amendment ensures that the herd scheme will apply where the taxpayer elects not to include immature livestock in the new expanded livestock in the herd scheme.

Subsection (2) introduces a new section 86A(3A) to deal with a problem which arises on the death of a farmer or on the cessation of farming of a taxpayer in the herd scheme. The taxation liability of the taxpayer cannot be correctly determined until the herd livestock values for the income year are established generally after the end of that income year.

The new section provides that where a taxpayer has:

(a) Elected that their livestock shall be valued in accordance with the provisions of the herd scheme; and
(b) During the income year the taxpayer dies or ceases farming and the herd livestock owned by the farmer is sold or otherwise disposed of prior to 1 January preceding the issuing of the herd values; and
(c) In the case of:
    (i) The deceased taxpayer, the return to date of death is furnished prior to the issuing of the herd values in respect of that year; and
    (ii) In the case of all other qualifying taxpayers, an election in writing prior to 1 January

the values to be taken into account for the purposes of section 86A(3) of the principal Act are the herd values established for the previous year.

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

Section 13 - Valuation of High-Priced Livestock

This section amends the definition of "high-priced" livestock to set a $100 minimum entry level. Livestock with a value of less than $100 is not high priced livestock so must be included in the other livestock valuation regimes.

This section also amends the depreciation provisions to allow depreciation to be claimed on livestock owned for less that 6 months where that livestock has been used for breeding purposes.

The term "used for breeding purposes" means in respect of male livestock, that livestock used for insemination, and, in respect of female livestock, that livestock which has given birth. It was accepted that breeding livestock depreciates with a single act so this definition is necessary to clarify exactly when that act is considered to have occurred.

Livestock purchased within 6 months of the end of the income year are now able to be depreciated where that livestock has been used for breeding purposes by the taxpayer.

All livestock 1 year of age and older are able to be depreciated.

Section 55 - Twelfth Schedule

The Twelfth schedule of the principal Act has had classes of immature female livestock added to the 3rd column. This column sets out those livestock classes eligible to be placed in the herd scheme. Also, some class names have been simplified to match current farming terminology. An extra class, rising 3 year and older steers, has been added to the Beef breeds and the Friesian breeds categories.

BRANCH EQUIVALENT INCOME CALCULATION (Section 14)

This section corrects several drafting errors contained in section 245(J). Section 245(J) is concerned with the calculation of Branch Equivalent income of a controlled foreign company.

A number of subsections of section 245(J) make reference to "that person" or "the person". The reference assumes "that person" or "the person" is a person with an income interest in the controlled foreign company, in respect of which the Branch Equivalent income or loss is being calculated, however the legislation fails to make that connection.

The amendments make it clear that the provisions of section 245(J), where they refer to "that person" or "the person" refer to a person who has an income interest in the controlled foreign company.

EXCESS RETENTION TAX (Sections 15 to 19)

Section 15

Subsection (1) amends the formula used to calculate excess retention tax. This appears in section 246 of the principal Act.

It is intended that there be no tax benefit in channelling dividend income through a privately controlled investment company. The previous formula used to calculate excess retention tax did not achieve this outcome in all cases - it worked correctly when all dividends received by the company either had the maximum or no imputation or dividend withholding payment credits attached, and when all dividend income was either retained or distributed. However, it under-calculated excess retention tax (ERT) in instances where a company received a mixture of credited and uncredited dividends and only distributed some of its income.

ERT is now payable on the "distributable portion of the dividend income derived by a company in an accounting year" which is the lesser of two figures:

1. Total dividend income derived by the company in that accounting year less the result of the formula

   $\frac{a + b}{c}$ which is the same as in the previous definition.

   The formula grosses up credits received, and dividend withholding payments made, to give an income equivalent.

   This calculation therefore effectively calculates the amount of uncredited dividend income which is derived by the company in a year: or

2. Dividends (excluding imputation and dividend withholding payment credits) derived during the year less dividends paid (also excluding those credits) during the prescribed period relating to that year.

The amendment applies to excess retention tax on income derived in income years which commence on or after 1 April 1989.

Subsection (2) of the amendment Act restricts the range of dividends subject to ERT to cash dividends and taxable bonus issues. This overcomes the difficulty experienced by privately controlled investment companies which receive deemed dividends but no cash and are required to distribute such dividends to avoid excess retention tax.

The amendment will be implemented with effect from the income year which commenced on 1 April 1988.

Subsections (3) and (4) make a number of minor amendments to definitions in section 246.

Section 16 substitutes a new section 250 consequential upon the amendment to the ERT formula. The "distributable portion of the dividend income derived by a company in an accounting year" is deemed to be an insufficient distribution. The effect of this is that ERT is now payable on the "distributable portion...".

Section 17 inserts a sunset clause into section 253 of the principal Act. The refund mechanism contained in that section will apply only where excess retention tax was paid in relation to income derived in an accounting year corresponding with an income year which commenced before 1 April 1989.

Section 253 is not necessary in relation to ERT paid in respect of income derived in the income years commencing on or after 1 April 1988 since ERT paid gives rise to a credit in the company's ICA and can now be passed through to shareholders as imputation credits.

Section 18 removes from section 255 of the principal Act all references to "total income" and substitutes "total dividend income". The definition of "total income" has been repealed.

Section 19 repeals section 257 of the principal Act which allows the Commissioner to waive liability for ERT in certain specified situations. It was intended that a privately controlled investment company should not be relieved of an ERT liability unless an individual would have been relieved of an income tax liability on dividends in the same circumstances.

None of the circumstances under which the Commissioner was empowered to waive an excess retention tax liability under section 257 fall into this category.

Section 257 has been repealed with respect to excess retention tax paid in respect of income years commencing on or after 1 April 1989.

RETIREMENT TAX (Sections 20, 30, and 54)

Section 257C of the principal Act is amended to change the way retirement tax is calculated in relation to company income. Previously retirement tax was to be calculated on the total taxable income of a company.

This amendment now calculates retirement tax on a company's assessable income, less the amount of dividends paid, plus the amount of dividends received.

The purpose of this amendment is to avoid a double counting of retirement tax on company income which is distributed as dividends. That is, the amendment ensures that retirement tax is only attributed once to company income which is distributed as dividends to shareholders.

This calculation shall apply for the 1990 income year and every subsequent year.

The rate of retirement tax on fringe benefits is increased from 7.5 percent to 11.2 percent. This rate is consistent with the FBT rate.

The fringe benefit tax rate is based on the 33 percent income tax rate of individuals. However income tax rates are applied to gross amounts of income. Fringe benefits on the other hand represent net income in the recipient's hands. For this reason the income tax rate is grossed up by a factor of 1 /(1-p) (where p is the individual tax rate) to arrive at the fringe benefit tax rate (49 cents in the dollar).

In order to preserve consistency, in relation to retirement tax attributed to other forms of income, the retirement tax rate applying to fringe benefits should be grossed up by the same factor of 1/(1p). This results in a retirement tax rate, for fringe benefit purposes only, of 11.2 percent.

DEDUCTION OF RESIDENT WITHHOLDING TAX (Section 21)

This section deals with 5 different aspects of resident withholding tax:

- Taxable Bonus Issues
- Foreign Currency Accounts
- $5000 threshold
- Payments through exempt persons
- Relief in respect of certain redemption payments

Taxable Bonus Issues

Subsection (1) clarifies the amount of RWT to be deducted in relation to a taxable bonus issue. A full discussion of this legislation appears in the Appendix A to TIB No 3, issued in September 1989.

Foreign Currency Accounts held in New Zealand

Subsection (2) replaces subsection 327C(3) of the principal Act with a new subsection (3). The method for making RWT deductions from foreign denominated bank accounts held in NZ has been changed to allow the deduction to be made in the foreign currency. Where the deduction is made in the foreign currency the tax deduction certificate will show both the income and the deduction in foreign currency. For the purposes of calculating the NZ dollar value of the resident withholding income and the available withholding tax credit the taxpayer has the option of converting the foreign currency either at -

- the close of trading spot exchange rate on the day on which the RWT deduction was made; or

- At such rate as the Commissioner may specify for this purpose for the month in which the RWT deduction was made.

Where any RWT deductions have been made in a foreign currency they are payable to the Commissioner in NZ dollars. Such deductions are to be converted at the close of trading spot exchange rate on the first working day of the month succeeding the month in which the deduction was made.

$5000 Threshold

Subsection (3) replaces subsection 327C(5) of the main Act with a new subsection (5) which clarifies the operation of the $5000 threshold below which deductions of RWT are not required. A full discussion of this provision can be found in Appendix A to TIB 3.

This amendment provides that where any payment takes the total paid for that year over the $5000 threshold an RWT deduction will be required from the whole of that payment. (Previously it was only to the "extent that the payment exceeded $5000" which caused practical problems especially in cases where several payments were made simultaneously.)

The amendment also ensures that the section only applies to a person who has a liability to deduct RWT; i.e. does not apply to persons making payments to which the RWT regime does not apply such as private mortgage interest.

Payment through exempt persons

Section 327C(7) of the principal Act provides that payments do not constitute resident withholding income where they are *paid* to persons who hold a Certificate of Exemption (COE). This provision is in addition to the provision in section 327B where interest or dividends *derived by* a person who holds a valid COE are excluded from the definition of resident withholding income. Subparagraph (vi) of section 327C(7)(c) provided that where a payer knew that a payment was not derived by the person who holds a COE that payer could not rely on section 327C(7) to avoid a requirement to make an RWT deduction. It was essentially an anti-avoidance provision. There was a similar provision in section 327C(7)(d). However, these provisions created practical difficulties in for example certain trustee situations.

Under the amendment in this Amendment Act (subsection (4), only in the case where a person is making an interest or dividend payment to a bank, building society or trustee bank, and the payment is not interest or dividends derived by that bank, building society or trustee bank as trustee for a third person, the payer cannot rely on the COE held by the bank, building society or trustee bank and will be required to deduct RWT.

This provision will prevent persons from avoiding the requirement to make a deduction by paying through an exempt third party.

Relief in respect of certain redemption payments

Section 327C(8) of the principal Act provides relief where the payer is not aware that the payment constituted resident withholding income (RWI).

Where any payer who is a bank, building society or trustee bank (i.e. has a COE pursuant to paragraphs (a) to (c) of S 327M(1)) receives a payment, or makes a payment at the request of another person (i.e. as agent or trustee), for the purpose of determining whether that payment constitutes RWI such payment shall be deemed not to constitute RWI if the payer could not reasonably be expected to know that the payment did constitute RWI.

Practical problems arose with the existing provision in situations where payments are made which are known to include a redemption payment (e.g. bills of exchange) but, as the original issue price is not known, the payer has an obligation to deduct but does not know the amount from which to make a deduction.

This amendment (subsection (5) extends section 327C(8) so that where a payer knows that a payment includes a redemption payment but does not know the issue price and therefore cannot determine the amount of the redemption payment the payment is deemed not to constitute resident withholding income.

Application Date

Subsection (6) deems subsections (1), (4) and (5) to take effect from 1 October 1989.

AGENTS AND TRUSTEES - (Section 22)

Section 22 of the Amendment Act amends Section 327D which imposes a liability on agents and trustees to make deductions of RWT on receipt of payments from which no deduction of RWT has been made.

Where an agent, or trustee of a bare trust, either holds a COE, or receives a payment in the course of a taxable activity; and

- the payment constitutes RWI; and
- there has been no RWT deduction from that payment,

the agent or trustee (of a bare trust) must deduct RWT at the time of receipt regardless of the reason why there was no previous deduction.

This obligation does not apply, however, where any payment is received by a trustee of a trust which is not a bare trust. The obligation to deduct will arise if and when the trust income is distributed. (A “bare trust” is a trust where the trustee has no duty to perform other than, on request, to convey the property of the trust to the beneficiary or according to the beneficiary’s direction.)

There is also a minor drafting change which clarifies the relationship of 327D and 327C and removes the need to determine whether the payment was made in the course of a taxable activity.

PAYMENT OF DEDUCTIONS OF RESIDENT WITHHOLDING TAX TO COMMISSIONER (Section 23)

This section clarifies the payment provisions to clarify the distinction between payers who are required to make monthly payments of RWT deduction to the Commissioner and those who are required to make payments 6 monthly.

Payers who estimate that they will make RWT deductions of more than $500 in each month of a particular year will be monthly payers. Where payers will not make payments of more than $500 in each month of that year they will be six-monthly payers.

The requirement for 6 monthly payers to pay deductions to the Commissioner when accumulated deductions exceed $500 has not changed.

Example

Dedn’s mth Ended			Pay to CIR
31/10/89	$ 165	hold	
30/11/89	267	hold	
31/12/89	60	hold	
31/01/90	431	pay $923	by 14/2/90
28/02/90	125	hold	
31/03/90	63	pay $188	by 14/4/90

RESIDENT WITHHOLDING TAX RECONCILIATION STATEMENTS (Section 24)

This is a minor amendment changing the word “30 days” to “20 working days” in section 327I (3) of the principal Act, in line with other provisions of Part IXA of the principal Act.

CERTIFICATES OF EXEMPTION (Section 25)

Section 327M(1)(D) is amended by extending the Public Trustee’s eligibility to obtain a COE for its wholly owned subsidiaries.

Section 327M(1)(e) is amended by including the following categories of persons as eligible for COE’s:

- solicitors’ nominee companies to which rules made by the Council of the NZ Law Society apply; and
- brokers’ nominee companies to which the Securities Act (Contributory Mortgage) regulations 1988 apply.

Section 327M(1) is further extended by a new paragraph (ea) which adds a new category of persons eligible to apply for a COE - solicitors, in relation to the operation of their trust accounts where such trust accounts are maintained in accordance with section 89 of the Law Practitioners Act 1982.

Certain persons whose income is exempted from tax by various subsections of section 61 of the principal Act are able to obtain COE's under paragraph (h) of Section 327M(1). Three additional subsections have also been included - (2A), (41) and (50).

These refer respectively to:-

- S61(2A) exempts certain income of Local Authorities. These were previously included in S61(2) which has been recently amended to apply only to Public Authorities.

- S61(41) exempts the income on any sick, accident or death benefit fund.

- S61(50) exempts income expressly exempted from income tax by any other Act. This particular provision will allow persons to obtain COE's where they have previously had difficulty convincing payers by other means that their interest constituted "exempt" interest.

Paragraph (c) of S 327M(12) is repealed. Any application for a COE pursuant to section 327M(12) has to be in the form prescribed which includes a declaration, so there was no necessity have an additional declaration as required by paragraph (c).

A transitional provision is inserted to provide that where a person makes an application for a COE pursuant to the additional categories provided in this Amendment Act before the 31st day of January 1990, the Certificate will be deemed to have been held since 1 October 1989.

AMOUNT OF RESIDENT WITHHOLDING TAX DEDUCTION DEEMED TO HAVE BEEN RECEIVED (Section 26)

Section 327ZA provides that the amount of RWT deduction is deemed to have been derived by the recipient of interest or dividend income. The amendment restricts the application of the section to RWT deducted from interest or specified dividends as RWT deducted from any other dividend is deemed to be a dividend withholding payment credit attached to that dividend and is included as income from dividends under section 394ZC.

DISCLOSURE OF TRANSACTIONS IN FINANCIAL ARRANGEMENTS (Section 27)

Section 27 extends the disclosure provisions in 327ZB to include situations where a redemption payment is made and an RWT deduction is not made because the payer either does not know that the payment is RWI, or does not know the extent to which the payment is RWI. (Section 21(5) of this Amendment Act refers)

NO RIGHT OF ACTION WHERE OBLIGATION RELIEVED (Section 28)

Section 28 provides a protection to payers who made deductions of RWT from recipients who subsequently obtain a "back-dated" COE so that the recipient cannot claim that they should have received a payment of RWI gross, and take action to retrieve the deduction made from the payer.

This section also provides that any deductions made in those circumstances shall be a deduction of RWT not withstanding that the recipient receives a back-dated COE.

NATIONAL SUPERANNUITANT SURCHARGE - DETERMINATION OF SPECIFIED EXEMPTION

This section amends a drafting error in section 336BA(1) of the Act.

It ensures that a married superannuitant whose spouse does not qualify for National Superannuation can claim only one specified exemption.

EMPLOYER EXEMPTION FROM TWICE-MONTHLY PAYE TAX DEDUCTION PAYMENTS AND SUPERANNUATION CONTRIBUTION WITHHOLDING TAX (Sections 31 to 35 and 38)

At present PAYE tax deductions and Specified Superannuation Contribution Withholding Tax (SSCWT) are paid to the Department once a month. The date the payments are due is the 20th of the month after the month in which the contributions and the deductions were made (i.e.,. If the contributions or deductions were made in January, the payments to the Commissioner would be due by the 20th of February).

It was announced in the Budget that from 1 May 1990, all employers who make PAYE deduction payments and SSCWT would have to do so twice a month instead of monthly.

This was achieved by splitting the month into two periods. The first period being from the 1st to the 15th of the month with payment due on the 20th of the same month, and the second period being from the 16th to the end of the month with payment due on the 5th of the following month.

From 1 May 1990, twice monthly payment of PAYE deductions and SSCWT to the Inland Revenue Department shall be required only by those employers who in the previous tax year incurred PAYE deductions payable of $50,000 or more.

Employers who in the previous tax year have incurred PAYE deductions payable of less than $50,000 may continue to pay the deductions to Inland Revenue on a monthly basis. Payment however, shall be required by the 5th instead of the 20th of the following month.

A concession operates for new employers. Where an employer has not operated in the previous tax year, it is not possible to determine whether or not that employer should pay monthly or twice monthly. As a result, that employer may pay the deductions and any SSCWT on a monthly basis until such time as the deductions reach $50,000 or more in aggregate for that year. Once this happens, that employer shall from then on be required to make payment of the deductions and any SSCWT twice a month.

FAMILY SUPPORT CREDIT OF TAX (Section 36)

At present, if a two parent family is eligible for Family Support, the payment is split and made equally to both parents either through the employer or the Department of Social Welfare, depending on the working status of each parent.

At the end of the year, if a debit arises in the account of either parent, both parents are considered jointly and severally liable to pay the debit.

From 1 April 1990, Family Support in two parent families will be paid only to the parent in receipt of the Family Benefit. In almost all cases this is the parent who is the primary carer of the children. As a result, the parent (or secondary carer) who does not receive the family benefit will only receive Guaranteed Minimum Family Income (GMFI) if the family is also eligible for this tax credit.

Because many Primary Carers do not receive any independent form of income, if a debit were to arise in the account of the Primary Carer due to an overpayment of Family Support, both parents will still remain jointly and severally liable.

GUARANTEED MINIMUM FAMILY INCOME (Section 37)

The amount of the Guaranteed Minimum Family Income is increased by $10 per week with effect from 1 April 1990. From that date full-time earners with one child will have a guaranteed after tax income of $320 per week.

The increased amount will be included when new Certificates of Entitlement to Family Support are issued by Inland Revenue prior to 1 April 1989.

IMPUTATION, DIVIDEND WITHHOLDING PAYMENT AND BRANCH EQUIVALENT TAX ACCOUNT REGIMES (Sections 39 to 50)

Section 39 of the Amendment Act amends section 394D(1) of the principal Act to allow an imputation credit to arise in the imputation credit account (ICA) of a company for resident withholding tax deducted in respect of resident withholding income derived by that company. This would only apply to interest paid to a company because no resident withholding tax is deducted where dividends are derived by a company.

The credit arises on the date that the resident withholding tax is deducted (section 394D(2) amended by subsection (3)).

Section 394D(1)(i) is also amended to provide that where a company which has credits in its branch equivalent tax account (BETA) arising under the new subsection 394ZZP(1)(b) (refer to commentary on section 48 of the Amendment Act) uses those credits to offset a dividend withholding payment liability no credit to the ICA arises.

Section 40 amends section 394E to ensure that a debit does not arise in the ICA of a company where the company receives a refund of income tax or excess retention tax in respect of tax paid prior to the date that the company was in breach of the continuity of shareholder rules. When the company breaches the requirements, a debit arises in the ICA. The amendment ensures that a debit does not arise twice in respect of the same amount of tax.

An amendment is made to section 394E(1)(f) consequential upon the changes made to section 394ZZP to ensure that a BETA credit arising from the offset of branch equivalent income against New Zealand tax losses in accordance with section 394ZZP(1)(b) (refer to commentary on section 48) does not give rise to a cross debit in the company's ICA.

Section 41 amends section 394L(4A) which provides that where a company is paid a refund arising as a result of an export tax incentive which relates to the 1989 or a subsequent income year and which has given rise to a debit in the company's lCA, further income tax payable in relation to the end of year debit in the company's ICA is reduced by all such refunds which have previously been paid to the company.

The amount of the debit balance which is exempt from liability for further income tax is now reduced by all credits to the ICA received by the company in and since the imputation year that the debit arose in respect of such a refund.

The amendment ensures that imputation credits may only be attached to dividends as a result of tax being paid, as was originally intended.

Section 42 inserts into the definitions section for the dividend withholding payment regime (section 394ZK(1) a definition of 'close of trading spot exchange rate' consequent upon the insertion of a provision for converting foreign dividend withholding payment dividends in section 394ZM (see section 43 below).

Section 43 amends section 394ZM to provide for the conversion into New Zealand currency of foreign withholding payment dividends for the purpose of calculating the dividend withholding payment to be deducted. The dividend is to be converted either at:

- the close of trading spot exchange rate on the day the deduction is to be made or on the following day, or

- the rate the foreign withholding payment dividend was actually converted into New Zealand currency provided it was a market rate for transactions entered into at arm's length.

Section 44 amends section 394ZN(1) of the principal Act to ensure that a company is required to pay dividend withholding payment where it is "paid" a foreign dividend rather than where it "receives" a foreign dividend. This is consistent with section 394ZL which requires a company to deduct dividend withholding payment when it is paid a foreign dividend.

Section 45 inserts a new section 394ZS into the principal Act to counter arrangements entered into for the purpose of avoiding the application of the foreign dividend withholding payment regime.

The amendment is designed to counter arrangements entered into to alter or disguise the nature of payments of foreign dividends so they are not recognisable as payments of dividends when they are paid by a non-resident company to a company that is resident in New Zealand. The Commissioner may deem a payment that is the subject of the arrangement to be a foreign withholding payment dividend.

The provision applies only where a *purpose* of an arrangement is to defeat the application of the dividend withholding payment regime - where there is an arrangement to, in effect, make a payment to a New Zealand resident company in substitution for dividends.

The provision can only apply in limited circumstances, e.g., where it is determined that there is an arrangement to disguise a dividend payment to a company resident in New Zealand, being an amount that is paid in a non-taxable form. This is because the dividend withholding payment regime can only apply to a foreign withholding payment dividend which, as defined in sections 394ZK and 394ZL is a dividend paid by a non-resident company to a New Zealand resident company.

An anti-avoidance provision is necessary to counter such arrangements, as section 99 of the Act does not apply because the foreign dividend withholding payment is not income tax.

The provision would be invoked by way of an assessment under section 394ZN. There is therefore a right of objection under section 394ZN(9).

Section 46 amends section 394ZV to clarify that no credit arises in the dividend withholding payment account of a company where that company satisfies payment of dividend withholding payment by reducing its tax loss as it may elect to do under section 394ZN. The dividend withholding payment regime is based on the premise that credits may only be passed on to shareholders where DWP is paid. To allow credits to arise where no DWP is paid may lead to shareholders effectively obtaining cash refunds for the tax losses of the company.

Section 47 amends section 394ZW in a similar manner to the proposed amendment to section 394E in section 40. This will ensure that a debit does not arise twice in respect of a refund of dividend withholding payment where there has been a breach of the continuity of shareholder requirements.

Section 48 repeals section 3947ZZP(1) and allows, in addition to the credit which already arises where tax is paid under the international regime, a credit to the branch equivalent tax account (BETA) of a company where the company offsets any branch equivalent income (attributed foreign income) that arises under the international tax regime against its New Zealand tax losses.

This amendment is required to address the problem which arose where a company reduced its tax losses to offset both its income tax liability on branch equivalent income and its dividend withholding payment liability on foreign dividends. There was in effect a double reduction of losses in respect of the same income.

This section inserts subsection (4A) into section 394ZZP to provide an ordering rule to establish the order in which BETA credits are deemed to be exhausted. The rule provides that credits arising for the offset of branch equivalent income against NZ tax losses are deemed to have been exhausted first.

This section also provides an amendment similar to that provided in section 40 in relation to refunds of income tax on branch equivalent income where a company is in breach of the continuity of shareholding requirements.

Section 49 amends section 394ZZQ to prevent any credit that arises under the new subsection (1)(b) of section 394ZZP (inserted by section 48) from being transferred to the lCA of the company. This is to prevent a company from passing on imputation credits where no income tax has been paid.

Section 50 amends section 394ZZU in a similar manner to that provided in section 40, in relation to refunds of income tax on the branch equivalent income of a life insurance company where a life insurance company is in breach of the continuity of shareholder requirements.

INTEREST WHERE RESIDUAL INCOME TAX EXCEEDS PROVISIONAL TAX (Section 51)

Individual taxpayers who earn less than $100,000 and do not estimate their provisional tax liability will now be subject to interest where their residual income tax liability exceeds the amount of provisional tax paid. Certificates of exemption from Interest PAYE and Dividend PAYE are granted in circumstances where the tax deducted at source from interest or dividend income would exceed the taxpayer’s annual liability. Where an individual who derived less than $100,000 provisional income is issued a certificate of exemption for this reason they will now be charged interest on any underpayment of provisional tax.

This change takes effect for the provisional tax payable in the 1991 income year.

TRANSITIONAL ARRANGEMENTS FOR PROVISIONAL TAX IN THE 1990 INCOME YEAR (Section 56)

This is a transitional measure to allow provisional taxpayers who pay 1990 provisional tax on the basis of their 1989 residual income tax [RIT] to reduce the amount of their provisional tax payments for the 1990 year. The amount of the reduction is calculated on the basis of half the amount of interest and dividend income derived in the 1989 income year.

Deductions of Interest PAYE and Dividend PAYE commenced on 1 October 1989. Under the previous legislation, taxpayers who pay provisional tax on the basis of the amount of their previous year’s RIT would have been subject to both PAYE and provisional tax on Interest and Dividend income derived in the final six months of the 1990 income year.

The reduction in provisional tax is not available to taxpayers who have held a certificate of exemption from Interest PAYE or Dividend PAYE which was valid at any time during the 1990 income tax year. Nor is it available to taxpayers who have estimated their 1990 provisional tax prior to the instalment due date.

For the purposes of the calculation of provisional tax, the amount of residual income tax derived in the immediately preceding year is deemed to be reduced by the amount calculated by the formula shown below. The amount of reduction in 1990 provisional tax is 110 percent of the amount obtained through the following formula:

$$a + b - c$$

Where,

a is half of the taxpayer’s interest income in the 1989 income year multiplied by the rate of Interest PAYE (24 percent)

For the purposes of a the term interest excludes-

- Exempt interest (refer Section 327A of the Income Tax Act 1976)
- Interest which constitutes nonresident withholding income
- Interest derived outside New Zealand by a nonresident
- Interest paid between groups of companies
- Interest derived by a nonresident investment company from development investments

b is half the taxpayer’s dividend income in the 1989 income year multiplied by the rate of dividend PAYE (33 percent);

For the purposes of b the term dividends excludes -

- Non-cash dividends to the extent that FBT is payable
- Inter-corporate dividends exempt under section 63 of the Act
- Amounts deemed to be dividends under specified provisions
- Dividends which constitute non resident withholding income
- Dividends derived outside New Zealand by a non-resident
- Dividends expressly exempted from tax other than by the Income Tax Act

c is the aggregate of any dividend withholding payment credits and imputation credits attached to the dividends in item b.

This transitional provision applies only for the 1990 income year. The transitional arrangements for the 1991 income year are in separate provisions - see section 17 of the Income Tax Amendment Act (No.2) 1989.

The other transitional provisions for the 1990 income year which allow a zero uplift for taxpayers with income over $100,000, and provide adjustments for changes to rates of tax, will continue to be applied after the adjustment described above has been made.

DISCRETION TO GRANT RELIEF IN CASES OF SERIOUS HARDSHIP (Section 53)

Section 53 inserts a new section 414A. This section provides the Commissioner with the discretion to remit all of a taxpayer's tax payments or to remit part with the facility to spread any payment. The section is to be applied where a taxpayer is in financial difficulties and has entered into negotiations with his/her creditors. This section will allow the Commissioner to consider arrangements which will maximise the recovery of tax liabilities.

The discretion will be applied in a manner that is consistent with commercial practice, such as, the concept that a dollar received today is worth more than a dollar received in the future. It will ensure the highest return possible of outstanding tax payments. A copy of the statement of financial position and the trading position are required along with the proposed arrangement by creditors. A declaration as to the fullness and accuracy of the information supplied is required, to ensure that the Commissioner has all available information on which to base his decision.

The discretion to remit tax is limited to those taxes that relate to the taxpayers' assessable income.

Where the taxpayer is acting as an agent for the Crown (e.g. PAYE, GST), the funds are trust money and as such cannot be considered under this section.

The Department has to consider the implications of the proposal/arrangement and, before giving consent, must be satisfied that:

- there is a reasonable certainty that all remaining debts can be paid;

- there is little or no likelihood of further arrears arising;

- the proposal provides a better payment plan for the Department's debt than could be obtained via some other recovery option;

- all other creditors agree to the proposal;

- no other creditor receives preferential payment in the general proposal put forward to creditors.

Where misleading and/or new information comes to light that relates to the date on which relief was granted the Commissioner may reverse his decision.

Provision has been made for an interim assessment outside the taxpayers' normal balance date.

The Commissioner's discretion under this section is limited to tax owing up to $50,000. Amounts in excess of $50,000, may be remitted, only with the approval of the Minister of Finance.

Application for remission can be made through a taxpayer's local District Office.

INLAND REVENUE DEPARTMENT AMENDMENT ACT 1989

This Act inserts two new paragraphs, paragraphs (ba) and (ca), into section 13(4) of the Inland Revenue Department Act 1974 and consequentially amends section 15 of that Act.

Section 13 of the IRD Act limits the extent to which information held by the Inland Revenue Department. may be communicated to other persons, whilst section 15 obliges persons to sign declarations of secrecy before being provided with any information.

A new paragraph (ba) has been inserted into section 13(4) to permit Treasury staff access to IRD information for the sole purpose of assisting them in the preparation of taxation revenue forecasts.

Paragraph (ca) was inserted into section 13(4) to enable the Commissioner to provide information to those persons he contracts for the performance of specific tasks. The amendment will allow officers of the Inland Revenue Department to provide contractors/consultants with sufficient information to enable them to perform their contracted duties.

The amendment to section 15 of the Inland Revenue Department Act was consequential to the inclusion of paragraphs (ba) and (ca) into section 13(4). As a result of this amendment, declarations of secrecy will need to be completed prior to any information being provided to an officer of Treasury, for revenue forecasting, or to any contractor engaged by the Commissioner. This will subject any such person who fails to comply with their obligation to maintain secrecy to the same penalties as would apply to an IRD employee, i.e. on summary conviction to imprisonment for a term of up to 6 months or to a fine of up to $15,000.

LAND TAX AMENDMENT ACT (NO.2) 1989 (SECTIONS 1 TO 35)

Introduction

The Land Tax Amendment Act (No.2) 1989 introduces earlier due dates for payment of land tax, as well as a “GST-style” self assessment approach. In addition, an exemption from land tax is provided for hospitals, area health boards, and vacant land intended for residential uses. Finally, the amendment Act confirms a 1 percent rate of tax on land held at 31 March 1990.

The amendments may be summarised as follows-

New Payment Dates

The Land Tax Amendment Act (No.2) 1989 provides for the new earlier land tax payment date of 7 May. The movement from the current 7 October payment date to 7 May date was announced by the Minister of Finance in the 1989 Budget. A transitional arrangement is also introduced which provides that for the 1990 year land tax is due and payable in 2 equal instalments on 7 May and 7 October.

Self-Assessment Approach

A number of consequential amendments were needed to the Land Tax Act 1976 to give effect to the new earlier payment date and self-assessment system. Taxpayers will be required to determine their tax liability and pay the tax so determined without awaiting receipt of a formal notice of assessment from the Department.

Exemptions from Land Tax

The exemption provided for land of a specific nature such as sea beds, reserves, and wildlife refuges is amended in order to include land of this nature owned by a local authority. The exemption is further amended by adding a pecuniary profit test to ensure that reserve land used for a business is subject to land tax.

The exemption provided for land used as the site of a residence is amended to exempt vacant land which is intended to be used and can be lawfully used (without any application, dispensation, waiver under the Town and Country Planning Act 1976) as the site of any residence. In other words, small vacant residential sections are now exempt from land tax.

New exemptions are introduced for land used as the site of any hospital (public or private) and for land used by an Area Health Board to provide health services.

Confirmation of Tax Rate

The amendment Act confirms the rate of land tax for the year of payment commencing on 1 April 1990 at 1%.

Detailed Provisions

Section 2 - Interpretation

The new self-assessment approach means the Commissioner will not issue an assessment in the majority of cases. The removal of the requirement for the Commissioner to issue an assessment makes it inappropriate to define a land tax year as a “year of assessment”. It is as a result of the amendment that the year is now referred to as a “year of payment”. There is no change in the actual meaning of the amended definition which is retained as the year for which land tax is payable.

The definition of the term “hospital” is introduced for the purposes of the hospital exemption inserted by section 63 of the amendment Act.

A “hospital” is defined as any hospital or similar institution, under the control of an Area Health Board, including any psychiatric hospital where that hospital is used principally for the treatment or diagnosis or rehabilitation or care of patients.

The definition also includes any licensed hospital within the meaning of Part V of the Hospitals Act 1957. Licensed hospitals are private hospitals which have met certain criteria specified in the Hospitals Act. The inclusion of this provision in the definition effectively means that private hospitals are now exempt from land tax.

Section 140 of the Income Tax Act 1976 has been repealed and replaced with a new section 140. This new section provides that where land tax is deductible it is deductible in the year that the land tax is paid. This may mean that with the 2 payment dates applying in the year of payment commencing 1 April 1990, half the tax relating to that year may be deductible in one income year and half in the next.

Sections 3 to 13,15 to 20, 24 to 26 and 28 to 34- Minor Amendments

These sections represent minor amendments providing for the new self-assessment approach.

Section 14 - Exemptions of Certain Classes of Land

This section amends two existing exemptions and introduces two new exemptions.

The first amendment amends section 27(1)(b) of the Land Tax Act. This section ensures that lands of a specific nature such as sea beds and historic reserves are exempt from land tax. The amendment provides that where these lands are owned by a local authority they are now exempt from land tax.

This amendment ensures that the exemption does not apply where the land is being used for the "pecuniary profit of any person". The amendment also ensures that where land is owned and used by the Crown, or a public, or local authority for a purpose specified in paragraphs (i) and (k) of section 27(1), such as a public museum, the private pecuniary profit test of any individual contained in those paragraphs is applied. In other words where a museum is sited on reserve land the less strenuous private pecuniary profit test of "any individual" is applied rather than "any person".

Second the residential exemption provided by section 27(1)(q) is amended to exempt the typical small vacant residential section purchased for the purpose of building a home on the site.

It provides that vacant land which is intended to be used and can be lawfully used as the site of any residence is exempt from land tax.

The three tests that must be satisfied for the exemption to apply are

(1) The land must be vacant. The land must be free of buildings or it cannot fulfil the requirement that it is to be used as the site of any residence as it is being used as the site of building designed for another purpose; and

(2) The land can be lawfully used as the site of a residence. The most common case fulfilling this requirement is where the operative district scheme has the land classified as residential in nature. The land may also lawfully be used as residential where the land is subject to a specified departure, or where a dispensation has been granted, under the Town and Country Planning Act; and

(3) The taxpayer must have the intention of using the land as the site of a residence in the future.

A new exemption is provided for land to the extent that it is used as the site for a hospital. The land associated with a hospital is defined widely to include servicing and landscaped areas directly associated with the operation of the hospital.

Also a further health related exemption is provided to reflect the wider operations now expected of area health boards. The exemption applies to health services which means -

(a) Services to promote health
(b) Services to protect health
(c) Services to prevent disease or ill-health
(d) Treatment Services
(e) Nursing Services
(f) Rehabilitative services
(g) Diagnostic Services
(h) Psychotherapy and counselling services
(i) Contraception services and advice
(j) Sterilisation Services
(k) Ambulance Services
(l) Mortuaries

As with the hospitals exemption it is considered that this exemption does not apply to administrative offices and other similar secondary services unless they are on the site and directly associated with the health service being provided.

Section 21- Payment Of Tax

The section provides that the amount of land tax payable by the taxpayer is the amount the taxpayer calculates as payable in their land tax return. The Commissioner will no longer issue an assessment informing the taxpayer of the actual amount of their tax liability. The tax shall be due and payable for any year of payment on the 7th day of May.

Section 22 - Transitional Arrangements for Land Valued 31 March 1990

The section remains in the Land Tax Amendment Act (No.2) 1989 and provides for land owned on 31 March 1990, land tax shall be due and payable in 2 equal instalments on the 7th day of May and 7th day of October 1990.

Section 23 - Additional Tax To Be Charged if Default Made In Payment of Tax

As part of the self-assessment approach the existing 10% 6 monthly incremental additional tax regime has been replaced. The new additional tax scheme imposes a one-off 10% additional tax charge if a payment is short, nil or late paid. Each subsequent month a further 2% additional tax on the balance outstanding is imposed until the tax is paid.

Section 27 - Power of Commissioner in Respect of Small Amounts

The Commissioner may now refrain collecting or refunding tax where the balance does not exceed $5.

Section 35 - Confirming rate of land tax for year commencing 1 April 1990

For the year commencing 1 April 1990 land tax shall be imposed, levied, and paid pursuant to Part II of the Schedule to the Act. Part B specifies a rate of land tax of 1 percent.

ESTATE AND GIFT DUTIES AMENDMENT ACT (NO. 2)1989

Section 98 of the principal Act provides the Commissioner of Inland Revenue with the discretionary power to destroy estate and gift duty records held after the expiration of 50 years from the date of death of the person or from the date of making a gift.

The amendment contained in the Estate and Gift Duties Amendment Act (No. 2) 1989 reduces the minimum period of retention from 50 years to 15 years, with effect from the date of assent, 19 December 1989.

STAMP AND CHEQUE DUTIES AMENDMENT ACT 1989

(Sections 1 to 4 Conveyance and Lease Duty)

The Minister of Revenue issued a press release on 24 May 1989 to clear up the confusion which had arisen with the assessment of conveyance and lease duty, particularly, whether the value of the property and rental should be GST inclusive.

The Minister confirmed that conveyance duty and lease duty was to be assessed on the GST inclusive value of the property and rental respectively. Further, the Minister advised that the Government would introduce amending legislation at the earliest opportunity to clarify this issue.

Sections 2 to 4 clarify the legislation that for the purposes of computing lease and conveyance duty, the value of the rental and property, are to be inclusive of any goods and services tax chargeable.

These sections will apply to any instrument of conveyance or lease executed on or after 19 December 1989.

(Section 5)

This section repeals the exemption from cheque duty on bills of exchange drawn or made on behalf of any school committee formed under the Education Act 1964. This section takes effect from the date of assent, being 19 December 1989.

This amendment is a consequential amendment resulting from the abolishment of the school committees with effect from 18 May 1989, and the replacement with the Boards of Trustees under the School Trustees Act 1989.

Bills of exchange drawn or made on behalf of any Board of Trustee will be exempt from cheque duty pursuant to Clause 2 of the Second Schedule to the School Trustees Act 1989.

APPENDICES TO TIB NO. 8. FEBRUARY 1990

1. APPENDIX A — INCOME TAX AMENDMENT ACT (NO. 4) 1989
   — INLAND REVENUE DEPARTMENT AMENDMENT ACT 1989
   — LAND TAX AMENDMENT ACT (NO. 2) 1989
   — ESTATE AND GIFT DUTIES AMENDMENT ACT (NO. 2) 1989
   — STAMP AND CHEQUE DUTIES AMENDMENT ACT 1989

2. APPENDIX B — GOODS AND SERVICES TAX AMENDMENT ACT (NO. 2) 1989

3. APPENDIX C — EXPLANATION TO APPLICATION OF SECTION 99 OF THE INCOME TAX ACT 1976

APPENDIX A TO TIB NO. 8, FEBRUARY 1990

EXPLANATION OF INCOME TAX AMENDMENT ACT (NO. 4)1989

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