# PETROLEUM MINING, LIFE INSURANCE AND OTHER AMENDMENTS, AND INCOME TAX AMENDMENTS

This Appendix explains the Income Tax Amendment Act (No.2) 1990 which was enacted on 1 August 1990.

## 1. SHORT TITLE - Section 1

This Act can be cited as the Income Tax Amendment Act (No.2) 1990, and shall be read as part of the Income Tax Act 1976. The provisions of this section shall come into force on the day on which this Act received the Royal Assent (1 August 1990).

## 2. INTERPRETATION - Section 2

Subsection (1) adjusts the definition of a "company" to preclude any arguments that a port company or a local authority trading enterprise is a local authority and therefore is not a company for the purposes of the Income Tax Act.

Section 2 also includes a definition of "life insurance" to which the new taxation regime for life insurers contained in the Bill will apply.

Subsections (3) and (5) tidy up the legislation in relation to the definition of "major shareholder". Subsection (3) inserts the definition of the term "major shareholder" in section (2) of the principal Act. Subsection (5) consequentially repeals the section 374E(1) definition and corrects all the other references to a major shareholder. These amendments are purely to simplify the legislation and have no substantive impact. Subsection (6) consequentially repeals the section 52 of the Income Tax Amendment Act (No.5) 1988 which inserted the definition of "major shareholder" into the Act originally.

Subsection (4) corrects a minor drafting error in the definition of pay period taxpayer in section 2 of the principal Act. It incorrectly referred to section 356(1) of the Act instead of section 356(2).

Subsection (7) provides the application date for subsection (1) of this section. The exclusion of local authorities from the definition of company applies for the income year commencing on 1 April 1989 and some subsequent income years. Some local authority trading enterprises were formed during the 1989/1990 income year. The exclusion of public authorities applies for the income year commencing on 1 April 1990, and subsequent income years.

## 3. DEFINITION OF TERM DIVIDEND - Section 3

Corrects a minor drafting error by inserting words which were incorrectly omitted.

## 4. COMMISSIONER TO MAKE ASSESSMENTS, DETERMINATIONS OF LOSS, AND OTHER DETERMINATIONS - Section 4

The Act makes provision to ensure that determinations of tax credits by the Commissioner take account of the new provisions which have credits relating to life insurers.

## 5. REBATE FOR SAVINGS IN SPECIAL FARM, FISHING VESSEL, AND HOME OWNERSHIP ACCOUNTS - Section 5

Changes are made to ensure that special savings account holders are not adversely affected by the introduction of resident withholding tax on interest. An adjustment is made in the calculation of the rebate allowed in respect of a special saving account to take account of the amount of resident withholding tax deducted.

## 6. REBATE IN RESPECT OF GIFTS OF MONEY AND SCHOOL FEES - Sec 6

Section 56A(2) of the principal Act is amended by adding the following charitable organisations to the list of organisations having donee status-

a) "Water for Survival"; and
b) "International Christian Aid (ICA)"; and
c) "Christian Children's Fund of New Zealand Ltd."

Taxpayers will therefore be able to claim the rebates in section 56A and section 140 in respect of donations made to Water for Survival, International Christian Aid, and the Christian Children's Fund of New Zealand from the 1990/91 income year.

## 7. INCOMES WHOLLY EXEMPT FROM TAX - Section 7

The tax exemption for annuities paid in respect of a life insurance policy is amended to ensure that it is consistent with the scope of the new life insurance taxation regime. Annuities which relate to policies offered or entered into in New Zealand are exempt from tax, together with policies offered and entered into outside New Zealand but issued by a New Zealand resident life insurer.

## 8. EXEMPTION OF DIVIDENDS FROM TAX - Section 8

As life insurance companies are to be taxed in a manner similar to other taxpayers, they are now eligible for the exemption from taxation provided at section 63 of the Income Tax Act for dividends received from other companies. As a result subsection (1) repeals paragraph (a) of section 63(3).This subsection applies from the income year commencing on 1 April 1990 and for every subsequent income year.

Subsection (2) confirms that the inter-corporate dividend exemption does not apply to dividends derived by a local authority from a local authority trading enterprise. This subsection applies from the income year commencing on 1 April 1989 and for every subsequent income year.

## 9. INTERPRETATION - ACCRUALS - Section 9

This section amends the definition of a specified option, so that all property transactions under the accruals regime reflect only the implied interest of the transaction rather than the capital gain of the underlying asset.

In addition, annuities except those subject to the new life insurance taxation regime, are now subject to the provisions of the accruals regime.

## 10. NEW START GRANTS FOR FARMERS - Section 10

Section 64FB of the principal Act is amended by providing that the drought conditions that occurred during the years 1988 and 1989 which affected parts of the East Coast qualify as an adverse event for the purposes of the section.

The land affected must be designated by either the Minister of Agriculture as an adverse climatic area or by a local appeals committee as being subject to an adverse climatic event area.

This section applies from the income year commencing 1 April 1990.

## 11. LOSSES INCURRED MAY BE SET OFF AGAINST FUTURE PROFITS - Sect 11

The loss-carry forward provisions were amended to ensure that local authority trading enterprises (LATEs) were not disadvantaged. In certain circumstances companies are required to satisfy a 40% common shareholding test in order to offset losses against future income. For the purposes of this test it is necessary to “look through” any interposed company structures and allocate shares owned by companies to the eventual shareholders.

Difficulties arose because a portion of shares in a LATE are owned by a local authority. As local authorities do not have shareholders, it is impossible to “look-through” the local authority. Therefore a LATE could not satisfy the requirements of section 188 of the income Tax Act 1976. Section 11 of the amendment removes this requirement to “look through” interposed companies where those companies do not have the liability of their members limited by a memorandum of association.

## 12. EXCESSIVE REMUNERATION BY PROPRIETARY COMPANY TO SHAREHOLDER, DIRECTOR, OR RELATIVE - Section 12

This section corrected a minor drafting error with application from the date the drafting error first applied.

## 13. BUSINESS OF LIFE INSURANCE - Section 13 and 14

The Bill repeals the old section 204 which provided for the taxation of life insurance companies and substitutes new provisions in sections 204 to 205F which provide for a comprehensive taxation regime for all life insurers.

Briefly, the regime is based on the report of the Consultative Committee on Superannuation, Life Insurance and Related Areas (the Brash Committee). It provides for a comprehensive tax base for life insurers for their income received in their capacity as insurers which includes underwriting income together with all other income received, less any expenses incurred in deriving its income. In addition, the regime provides for the taxation of life insurers as a proxy for policyholders for distributions made to policyholders.

The provisions of the new life insurance taxation regime are discussed in greater detail in appendix C to this TIB.

## 14 SEPARATION OF LIFE INSURER'S SUPERANNUATION BUSINESS - Section 14

As part of the implementation of the new life insurance regime, the Consultative Committee recommended that life insurers should be permitted to separate their superannuation business from their life insurance business. This is achieved through a transfer of the superannuation business to a superannuation fund provided the approval of the Government Actuary has been obtained. The Bill inserts a new section 206 which provides for the taxation of assets held by a superannuation fund which were transferred pursuant to an approved arrangement.

This provision is discussed in more depth together with the new life insurance taxation provisions in Appendix C to this TIB.

## 15. NEW SECTION INSERTED - PETROLEUM MINING - Section 15 and 16

The new regime commences on 1 October 1990. Central to it is the concept of petroleum mining development expenditure.

**Petroleum Mining Development Expenditure**

Petroleum mining development expenditure means any expenditure which is incurred after the submission of an application for a prospecting licence for the purpose of:

- Obtaining or evaluating any prospecting information by way of geophysical prospecting, regional reconnaissance surveys, drilling of exploration wells, or in any other way related to prospecting and exploring for petroleum, and
- Planning, drilling, testing or abandoning exploratory wells, and
- Acquiring any asset, for the purpose of petroleum mining, which has an estimated useful life that is dependent on, and no longer than the unexpired portion of the relevant mining licence (licence specific asset).

Generally petroleum mining development expenditure is capitalised and spread over a 10 year period with deductions commencing in the later of:

- The first year of commercial production, or
- The income year in which the expenditure was incurred.

Specific provisions which allow an earlier write-off of this expenditure are discussed below.

**Other Expenditure**

All other expenditure is dealt with under normal tax rules. The effect is that:

- Administrative overheads which do not relate to a specific mining licence can be deducted as incurred.
- Expenditure on scientific research, other than capital expenditure, can be deducted as incurred. Note that expenditure on prospecting and exploration activities is considered not to qualify as scientific research.
- Interest or other expenditure incurred in respect of a financial arrangement will continue to be deductible in terms of the accruals rules in the Tax Act.
- Assets, other than licence specific assets, can be depreciated in the normal way.
- The cost of land is not deductible under any circumstances.

**Early Write-off of Petroleum Mining Development Expenditure**

Early write-off can occur where:

- A petroleum mining licence is relinquished. Any undeducted petroleum mining development expenditure can be deducted immediately. If, as a result of those deductions, the petroleum miner incurs a tax loss in the year of relinquishment, that loss can be carried back and offset against assessable income derived in previous income years.
- Where:
  - A dry exploratory well is sealed and abandoned, and
  - The petroleum miner completes a statutory declaration that it has no intention of:
  - Utilising the exploratory well in petroleum mining activities, or
  - Applying for a mining licence in respect of the area in which the well is located,

  the full costs of planning, drilling, testing and

abandoning the exploratory well can be written-off immediately.

A clawback can apply if a mining licence is later granted for the area where the dry well is located. This is explained below.

- Where a licence, or share in a licence, or a licence specific asset is sold, any undeducted petroleum mining expenditure applicable to the licence or asset is offset against assessable income arising from the sale. Full details of the treatment of licence and asset sales are explained below.

**Clawback of Exploratory Well Expenditure Written-Off**

As explained above, exploratory well expenditure can be written-off where the well is found to be dry, and the miner files a declaration to the effect that it has no intention of utilising the well or of applying for a mining licence in respect of the area in which the exploratory well is located. If a mining licence is subsequently granted in respect of that licence area a clawback of the deductions claimed, plus an interest factor may apply.

The clawback is an adjustment made to the assessable income of any petroleum miner which currently owns a share in the petroleum licence (the subsequent licence holder) and consists of the aggregate of 3 components:

(1) The amount of exploratory well expenditure, relating to any dry exploratory or appraisal well located within the licence area over which the mining licence has been granted, which has been deducted by the subsequent licence holder in the year in which the licence was granted and in earlier income years, where that expenditure contributed to defining the scope, character, or size of the petroleum deposit subsequently located, multiplied by the following formula:

$$\frac{b}{c}$$

Where

b is the subsequent mining licence holder's share in the licence at the time the mining licence is granted, and

c is the subsequent mining licence holder's share in the prospecting licence at the time the deductions were claimed.

(Note, however, that b/c cannot be greater than one)

(2) The amount of exploratory well expenditure, relating to any dry exploratory or appraisal well located within the licence area over which the mining licence has been granted, which has been deducted by any person associated with the subsequent licence holder in the year in which the licence was granted, to the extent that that licence share was transferred to the subsequent licence holder by the associated person, where that expenditure contributed to defining the scope, character, or size of the petroleum deposit subsequently located.

(3) Interest at a specified rate, on the amounts determined under components (1) and (2) above.

The aggregate of the amounts calculated are deemed to be assessable income in the income year during which the subsequent mining licence is granted.

The aggregate of components (1) and (2) is deemed to be petroleum mining development expenditure and is deductible over the 10 year period applying to such expenditure.

**Sales of Licences and Licence Specific Assets**

Consideration, defined as money and the market value of any assets received, but not excess expenditure - see under farm-out arrangements below, is assessable in all cases. Undeducted petroleum mining expenditure, applicable to the asset sold is allowed as a deduction in the year of sale.

Consideration paid is treated as petroleum mining development expenditure incurred by the purchaser.

**Farm-out Arrangements**

A farm-out arrangement is defined as any arrangement under which a person (the farm-in party) agrees with a petroleum miner (farm-out party) to incur expenditure in return for a share in a petroleum licence, where the share of expenditure to be incurred by the farm-in party is greater than the share of the licence transferred. The excess expenditure is referred to as excess outgoings.

A farm-out arrangement is also considered to be a licence sale. Any consideration, but not excess expenditure, which forms part of a farm-out arrangement is assessable under the provisions relating to sales. Special rules apply to excess outgoings.

Excess outgoings are not assessable income to the farm-out party. However that party is required to reduce the amount of petroleum mining development expenditure available for future deductions by the lesser of:

- The amount of the excess expenditure,
- An amount calculated in accordance with the following formula:

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

Where:

a is the amount of undeducted petroleum mining development expenditure, and

b is the excess expenditure

c is the sum of the excess expenditure and consideration paid by the farm-in party.

That is the farmout party will lose the benefit of those deductions.

Excess expenditure is deemed to be petroleum mining expenditure incurred by the farm-in party.

**Removal and Restoration Expenditure**

This type of expenditure refers to the costs of restoring mining sites after mining operations are completed or abandoned. The previous treatment, whereby a petroleum miner who incurs a loss as a result of deducting removal and restoration expenditure, could apply to have that expenditure offset against assessable income derived in previous income years, is continued.

**Maui**

The new regime does not apply to the Maui project.

## 17. INTERPRETATION TRUSTS - Sec 17

This section corrects a minor drafting error in section 226(4). Subsection (4) specifies the persons who are the settlors of a trust where the trust has been settled by a controlled foreign company. The amendment removes an incorrect reference to categories of control interest as listed in section 245C(3) and substitutes a reference to section 245C(4).

## 18. TRUSTS SETTLED BY PERSONS BEFORE BECOMING RESIDENT - Section 18

This section amends subsections 2(b) and 3(b) of section 226A. Section 226A provides the procedure for making an election to pay tax on the trustee income of trusts settled by New Zealand immigrants. Subsections (2) and (3) contain the consequences of election or non-election with reference to periods before and after the date upon which an election is made or the election expiry date, respectively.

The wording of the two subsections has been amended to clarify that a reference to a period after the date of election or the election expiry date is inclusive of those dates. This amendment is necessary to ensure that subsections (2) and (3) of section 226A are consistent with subsection (4) of the section.
This amendment is effective from the 1st day of August 1990.

## 19. INCOME ASSESSABLE TO BENEFICIARIES - Section 19

This section amends subsection (2) of section 227. Section 227 sets out the circumstances in which a beneficiary of a trust is assessable to income tax. Section 227(2) provides that where a beneficiary is assessable to tax, the trustee of the trust is liable for that tax as an agent for the beneficiary.

The wording of the section has been modified to ensure that a trustee bearing tax as agent for a beneficiary is both assessable and liable for the tax. This amendment is necessary to align the wording of the section with the other provisions of the Act and is to apply from the income year commencing on 1 April 1990.

## 20. TRUSTEE INCOME -Section 20

The Act inserts a new section 228(2C) to provide that where one superannuation fund is a member of another superannuation fund, certain administration or marketing expenses incurred by member funds may be transferred to the other funds. This is to cover the situation where a member fund may earn no assessable income because all of its investments are held by the 'parent' superannuation scheme and therefore expenses incurred by the member scheme may otherwise be non-deductible.

## 21. CALCULATION OF CONTROL INTEREST

Section 245C(7) is amended to delete an incorrect reference to section 245B. The correct reference is section 245C(3).

## 22. PERSONS NOT REQUIRED TO CALCULATE ATTRIBUTED FOREIGN INCOME AND LOSS - Section 22

This section corrects two drafting errors in section 245F of the principal Act which relate to the situ-

ations where persons are not required to calculate attributed foreign income or loss under the controlled foreign company regime.

The first amendment makes a minor amendment by removing the words "be required to" from subsection (1) of the section.

The second amendment corrects the wording of the section to ensure that it applies to persons not resident in New Zealand in terms of section 241 of the principal Act.

The amendments are to apply from the 1st day of August 1990.

## 23. BRANCH EQUIVALENT INCOME CALCULATION - Section 23

The amendments to section 245J are of a minor nature to correct drafting oversights.

The first amendment will ensure that subsections (3) and (16) of that section relate to all countries *or territories* outside New Zealand. This is consistent with the other provisions contained in Part IVA of the Income Tax Act.

The second amendment is to remove the words "assumed to" in subsection (4) of section 245J. The words are inconsistent with the other provisions in section 245J of the Act.

The amendments take effect from the 1st day of August 1990.

## 24. FOREIGN TAX CREDITS - Section 24

This section amends section 245K(1) to ensure that it applies to all countries *or territories* outside New Zealand. This wording is consistent with other provisions of Part IVA of the Income Tax Act.

This amendment takes effect on the 1st day of August 1990

## 25. CHANGES OF RESIDENCE OF CONTROLLED FOREIGN COMPANIES - Section 25

This amendment clarifies the meaning of section 245O(2) and ensures that the section correctly applies when a foreign company ceases to be a foreign company.

This amendment takes effect on the 1st day of August 1990

## 26. FOREIGN INVESTMENT FUND INCOME AND LOSSES - Section 26

This section amends subsections (1), (11) and (14) of section 245R. Section 245R determines which foreign entities are foreign investment funds and also requires foreign investment fund income or losses to be calculated where a New Zealand resident has an interest in a foreign investment fund.

Subsection (1) removes the definition of an "excepted financial arrangement". This term is not referred to elsewhere in section 245R.

Subsection (2) amends the foreign investment fund regime as it applies to life insurance policies to ensure that it is consistent with the scope of the new taxation regime for life insurers. The foreign investment fund regime will not apply to policies offered or entered into in New Zealand as these policies are subject to New Zealand tax under the new life insurance taxation regime.

Subsection (3) amends the wording in section 245R(11) of the principal Act. The wording has been changed to ensure that the subsection applies to all persons not resident in New Zealand.

Subsection (4) corrects a drafting defect in the legislation. Where a person becomes resident in New Zealand during an income year section 245R(14) deems any interest they hold in a foreign investment fund to have been acquired, on the date on which they became resident, at the market value on that date. That deemed acquisition is included in item d of the calculation required by subsection (3) of the principal Act. However, section 245R does not prohibit the person from also deducting, at item c, the market value of the interest as at the end of the previous income year where that interest was held at that date. As a result a double deduction could have been allowed in respect of the same interest. This was clearly not intended. The amendment will ensure that where a person becomes resident in New Zealand during an income year no deduction shall be allowed in respect of the value of the interest as the end of the previous accounting year.

Subsections (2) and (4) of this section apply from the income year which commenced on 1 April 1990 while all the remaining subsection apply from the date of the Governor-General's assent; 1 August 1990.

## 27. CASES WHERE ASSESSABLE INCOME CALCULATIONS CANNOT BE UNDERTAKEN - Section 27

This section makes an amendment to section 245V of the Act to correct a minor drafting error.

Section 245V(b) makes references to "an interest of that taxpayer in a controlled foreign company or a control interest or an income interest of that taxpayer in a foreign investment fund".

The use of the terms "interest" and "control or an income interest" where they appear in paragraph (b) of that subsection are incorrect, i.e. a person has an "interest in a foreign investment fund and a "control or an income interest" in a controlled foreign company.

## 28. APPLICATION OF PART RELATING TO NON-RESIDENT WITHHOLDING TAX - Section 28

Section 28 of the Act extends the application of the NonResident Withholding Tax provisions to include life insurers as they are now taxable in a manner similar to all other taxpayers. Life insurance companies were previously not subject to NRWT as they were subject to a specific taxation regime as regards their investment income.

## 29. INTERPRETATION - RESIDENT WITHHOLDING TAX - Section 29

The definition of "exempt interest" for the purposes of the Resident Withholding Tax (RWT) has been extended to include interest payable on National Development Bonds or New Zealand Savings Certificates up to a maximum of $500 in any one year. Interest on these bonds and certificates is exempt from income tax under section 61(14) of the Income Tax Act 1976 (to a maximum of $500), and it was therefore an anomaly that deductions of RWT were being made from income which is exempt from tax.

This will take effect in respect of interest paid on or after 1 August 1990.

Where any RWT deduction has been made from interest paid between 1 April 1990 and 30 September 1990 a refund will be available on application from Hamilton District Office. Applicants for refunds should enter their IRD number on the RWT deduction certificate which they received when a bond or certificate matured and use that form rather than the customary IR15F used for refunds to exempt recipients.

The refund process has been centred in one District Office so that the total paid to any one recipient can be monitored and will not exceed the exemption.

Resident Withholding Tax deductions made prior to 1 April 1990 can be claimed as credits in the 1990 return of income.

## 30. DETERMINATION OF OTHER INCOME - Sections 30 and 31

Sections 336B(2) and 336BA(1)(a) of the principal Act, which deal with the determination of other income and specified exemption respectively, are amended in order to change the basis of apportionment of the other income and specified exemption where the guaranteed retirement income is received for only part of the income year.

Previously the apportionment was done on the basis of the number of pay days in which the guaranteed retirement income earner qualified for guaranteed retirement income in relation to the number of pay days in the income year.

This apportionment could result in guaranteed retirement income earners paying more surcharge then they received in guaranteed retirement income (net of tax) for the year.

The new method apportions the other income and specified exemption of a guaranteed retirement income earner on the basis of the number of days the guaranteed retirement income earner received GRI in relation to the number of days in the income year. This apportionment ensures that the guaranteed retirement income earner does not pay more surcharge then he / she receives in net guaranteed retirement income.

A number of other minor drafting amendments are also made with respect to section 336BA of the principal Act.

This section applies for the income year commencing on the 1st of April 1990 and every subsequent income year.

## 32. INTERPRETATION - FRINGE BENEFIT TAX - Sections 32, 33 and 34

**Superannuation Schemes**

These sections provide that where an employer makes a contribution to a superannuation scheme that contribution will be subject to FBT, except where the newly introduced specified superannuation contribution withholding tax applies to that contribution. In practise, this will mean, all non-monetary contributions, contributions to overseas superannuation schemes, and contributions to some New Zealand schemes will be subject to FBT.

The sections further provide that the value of the fringe benefit provided by the employer to the employee is the amount of that contribution.

These amendments confirm existing Government policy in this area and they are considered necessary as it has been contended that the existing legislation is inadequate in certain circumstances.

**Charitable and Religious Organisations**

The "Report to the Minister of Finance and the Minister of Social Welfare by the Working Party on Charities and Sporting Bodies" published in November 1989, contained the following recommendation:

> "The Working Party recommends that the present exemption of nonbusiness charitable activities from fringe benefit tax be removed. It also recommends that the definition (in the Income Tax Act 1976, Section 336N) of an emergency vehicle for fringe-benefit-tax purposes be examined, and that adequate exemption for fringe benefit tax is made where the vehicle is required because of factors peculiar to charitable work."

Subsection (3) of this section amends the "emergency call" exemption as a result of Select Committee considering that it should reflect factors peculiar to charities. The recommendation is accommodated by extending the emergency call exemption to cover emergency services relating to the health or safety of any person. The effect is that where a vehicle is used for such a service on any day, no fringe-benefit tax will accrue for any private use of the benefit on that day. Note that the restriction relating to calls made between the hours of 6.00am to 6.00pm on week days, which applies to other emergency calls, does not apply to calls relating to the health or safety of any person.

In the context of this exemption the term "health and safety" encompasses the spiritual well being of any person.

Subsection (6) of this section withdraws the exemption for non-business charities.

Both subsection (3) and subsection (6) of this section take effect from 1 October 1990.

**Life Insurance**

Subsection 7 inserts provisions to ensure that low interest loans made by a life insurer to a policyholder are subject to fringe benefits tax as from 1 October 1990.

## 33. INTERPRETATION - PAY PERIOD TAXPAYERS - Section 36

Minor amendments have been made to the definition of "pay period taxpayer" in sections 2 and 356 of the Tax Act, to correct drafting errors. The definition was recently rewritten to take account of the introduction of Resident Withholding Tax.

Pay period taxpayers are taxpayers who do not have to file a tax return. The tax collected during the income year from PAYE and RWT is accepted as the taxpayers final income tax liability if no return is furnished.

The two corrections that were made to the definition of pay period taxpayer are:

1) The reference to "section 356(1)" in the definition in section 2 was amended to read "section 356(2)"

2) The application of the definition (as given in section 356(2)) was limited to individual taxpayers.

The corrections take effect from 1 August 1990 so apply for the 1990/91 income year.

It was never intended that non-individuals should qualify as pay period taxpayers.

Subsection (2) is a transitional provision which relieves certain persons from the obligation to file a tax return for the year ended 31 March 1990.

This provision is necessary because although there is a new definition of "pay period taxpayer" which will exclude persons deriving small amounts of interest and dividend income from the requirement to file tax returns in future, that does not take effect until after 1 April 1990.

Following the introduction of resident withholding tax (RWT) regime, and the reduction in the interest and dividend exemption from 1 October 1989 there will be a class of persons (in particular children) adversely affected. Where such persons earn interest or dividends of less than $100 in the first half of the 1990 income year, and also earn such income in the 2nd half of the year which is subject to deductions of RWT there will be an obligation to file an income tax return pursuant to section 9 but there will be no liability for income tax.

Similarly, pay period taxpayers, who also earn small amounts of interest and dividends which were previously under $200 will also be affected.

The amendment removes the obligation to file returns from both these groups, but subsection (4) ensures that right to file a return remains, and subsection (2) retains the requirement to file a return where taxpayer receives a family support credit of tax.

The two groups of persons not now required to file returns are:-

a) A person whose only income is from interest and dividends who derives less than $100 between 1 April 1989 and 30 September 1989 and $200 or less from which a deduction of RWT has been made between 1 October 1989 and 31 March 1990.

b) A person who would be a pay period taxpayer (under the definition as it applied prior to the replacement of S356 by section 15(1) of the Income Tax Amendment Act (No 2) 1989) and who derives interest and dividends of less than $100 between 1 April 1989 and 30 September 1989 and $200 or less from which a deduction of RWT has been made between 1 October 1989 and 31 March 1990.

Subsection (3)(b) ensures that where an RWT deduction was not made because of a taxable bonus issue, a deduction will be deemed to have been made.

## 34. DETERMINATION OF ASSESSABLE INCOME - Section 37

Section 374B(1)(a) of the principal Act is amended to include in the definition of assessable income for Family Support purposes income derived from overseas pensions where a deduction is made from the person's entitlement to a monetary benefit (other than guaranteed retirement income) paid by the Department of Social Welfare.

This form of overseas pensions is exempt from income tax under section 61(36) of the Income Tax Act 1976.

A person receiving both an overseas pension and a New Zealand benefit can derive income in excess of the level of threshold at which Family Support commences to abate. Where such a person qualifies for Family Support, it would be inequitable if the Family Support did not abate in the same way as it would for a person receiving the same amount of income from a different source.

The second amendment corrects a cross reference with regard to the definition of major shareholder from section 336N(1) to section 2.

This section applies to income derived in the income year commencing on the 1st of April 1990 and subsequent income years.

## 35. IMPUTATION ASPECTS FOR LIFE INSURANCE REGIME - Sections 38 to 60

The new life insurance taxation regime allows for imputation credits in respect of taxes paid on life insurer income to be offset against taxes due on income relating to policyholders. In addition, New Zealand resident insurance companies are now required to maintain imputation credit accounts.

Sections 38 to 60 of the Bill provide for the implementation of these provisions. They include consequential amendments to the existing imputation regime to incorporate New Zealand life insurance companies together with a new Part XIID of the Income Tax Act which sets up a new memorandum account to be maintained by life insurers called a "Policyholder Credit Account". This account allows for the offset of imputation credits against tax due on Policyholder Income.

These provisions are discussed in more depth a separate Appendix to this Information Release.

## 36. TAX RATES - Section 61

The First Schedule to the Income Tax Act is amended to alter the rate of tax pertaining to life insurers and superannuation funds.

Life Insurers are taxable on the income they derive on behalf of policyholders at a rate of 33 cents. This is provided at a new clause 2A inserted by section 61(1).

As superannuation funds become qualifying trusts on 1 April 1990, subsections (2) to (5) provide that they will be taxable at a rate of 33 cents as from this date. It should be noted that this rate change is from a particular date, and not on an income year basis. There are provisions at subsection (6) to provide that if a superannuation fund's income year spans this date, then the income for the year is to be apportioned on a daily basis between the periods up to 31 March 1990, and the period after this date. Tax is levied on the income apportioned to either period at the appropriate tax rate.

## 37. SPENT PROVISIONS - Section 63

This section repeals the provisions listed below:

Section 42A: Rebate from Tax payable in respect of certain Off-Shore Petroleum Mining Operations

Section 43: Rebate from Tax payable by Visiting Experts

Section 47A: Rebate from Tax on Dividends derived from Assessable Income from Petroleum Mining

Section 48A: Rebate for Rates on Owner-Occupied Homes and Chatham Island Dues

Section 48B: First Home Mortgage Interest Rebate

Section 57(2) (ca), (da), and (db): Rebates to be Deducted from Income Tax

Section 74A: Tax Credit in Relation to Forestry Expenditure

Section 81: Spreading Income Derived from Sale of Timber from Farms

Section 86E: Deduction in Respect of Livestock Revaluation

Section 86FA: Deferral of Income From Livestock in 1987 Year

Section 88: Alternative Standard Values for Livestock Leased or Bailed

Section 93: Spreading of Excess Income Derived on Sale of Livestock where Unduly Low or Nil Standard Value Adopted

Section 114B: Depreciation Allowance for Alternative Fuel Systems in Certain Motorcars

Section 119: Regional Investment Allowance on Certain New Plant & Machinery

Section 120: Investment Allowance on New Manufacturing Plant used for Export

Section 121: Investment Allowance on New Plant Pursuant to Industrial Development Plan

Section 145: Gifts of Money by Medical Practitioners to NZ Medical Education Trust

Section 146: Gifts Of Money to Universities, Approved Institutes, and Individuals for Education or Research

Section 159: Amounts Paid on Shares in Mining Holding Companies to be Used for Mining Specified Minerals

Section 159A: Amounts Paid on Shares in Mining Holding Companies to be Used for Petroleum Exploration

Section 160: Amounts paid on Shares in Mining Companies

Section 160A: Amounts Paid on Shares in Petroleum Mining Companies

Section 161: Deduction in Respect of Amounts paid on Mining Shares to be taken in to account when calculating Profit / Loss on Sale

Section 188B: Transitional Provisions for Payment of Income Tax Arising from Application of Section 188A

Section 212C: Transitional Provisions in Respect of Bloodstock

Section 224C: Determination as to Whether Film Commenced on / before 4th August 1982

These various provisions are all redundant as their respective time limits have expired with the result that the sections may be repealed. As a consequence of the repeal of these 26 sections, a further 46 sections are to be repealed from some 17 Income Tax Amendment Acts. All 72 sections are detailed in the Schedule to the Bill.

## 38. TRANSITIONAL PROVISIONS FOR LIFE INSURERS - Sections 64 to 67

As New Zealand life insurance companies are required to maintain imputation credit accounts effective from the 1991 income year, and these accounts operate on a balance date of 31 March which may be different to the company's balance date there are transitional provisions in section 65 to cater for the initial part-year period. In addition there are other provisions in section 66 to cater for the change in status for New Zealand life insurance companies operating Branch Equivalent Tax Accounts who were previously BETA persons and are now BETA companies. Section 67 caters for other insurers who wish to maintain Policyholder Credit Accounts and have non-standard balance dates.

These provisions are discussed in more depth in Appendix C to this TIB.

# APPENDICES TO TIB VOLUME TWO, NO 3 OCTOBER 1990

**Appendix A: Petroleum Mining, Life Insurance, and other amendments**

**Appendix B: Amendments to GST, IRD, and Unclaimed Money Acts**

**Appendix C: New Taxation Regime for Life Insurers**