Appendix A

Income Tax (National Standard Costs for Livestock) Determination 1994

1. Title and application

(a) This determination may be cited as the Income Tax (National Standard Costs for Livestock) Determination 1994.

(b) This determination applies in respect of the valuation of specified livestock under the national standard cost scheme for the 1993-94 income year and subsequent years. Any taxpayer valuing any specified livestock in accordance with the provisions of section 86C of the Income Tax Act 1976 shall calculate the cost of such livestock on hand at the end of the income year in accordance with this determination.

(c) For the purposes of this determination where a taxpayer separately accounts for more than one livestock business under national standard cost then national standard cost in relation to the livestock used in each of those businesses shall be calculated separately.

Interpretation

2. In this determination, unless the context otherwise requires, -

Expressions used have the same meanings as in sections 2, 2A and sections 85 to 86L of the Income Tax Act 1976.

References to an income year shall include reference to any corresponding non-standard accounting year.

"Act" means the Income Tax Act 1976:

"**Bobby calves"** mean, in respect of a taxpayer, calves -

(a) Bred from a dam which is a female of the dairy cattle livestock type; and

(b) Acquired by the taxpayer for rearing; and

(c) Which have not been weaned from a diet of milk (and/or milk substitute) when acquired by the taxpayer; and

(d) Which were not purchased as progeny at foot along with the calf's dam.

"**Breeding sires"** means, in respect of a taxpayer, male livestock used or intended to be used by the taxpayer for breeding purposes:

"Cost flow identification" means inventory accounting treatments which account for costs relating to livestock intakes in calculating the closing value of livestock on hand in an income year:

"Immature inventory grouping" means all livestock of a type which are rising one year of age at closing balance date and the immature inventory grouping of any livestock type may be separated into sub-groups on the basis of those livestock used for or intended to be used by the taxpayer for breeding purposes, and those livestock not used for or not intended to be used for breeding purposes:

"**Inventory grouping"** means the classes of livestock included in an inventory group, for each type of livestock on hand at the closing balance date for an income year:

"Livestock" means specified livestock:

"**Livestock intake"** means, for purposes of inventory accounting, the maturing livestock or mature livestock first entering the taxpayer's inventory system in an income year:

"Mature inventory grouping" means, in respect of a taxpayer's livestock of any type and any income year:

(a) In the case of sheep, cattle, deer or goats, all classes of such livestock which are older than one year of age at the end of the income year, other than male non-breeding cattle; and

(b) In the case of cattle, rising three year or older male non-breeding cattle; and

(c) In the case of pigs, all classes of pigs or, at the taxpayer's option, only those classes of pigs which are older than one year of age at the end of the income year;

but shall exclude:

(d) Breeding sires, where the herd scheme is being used in conjunction with national standard cost for any of that livestock type; and

(e) Animals required to be valued under the high-priced livestock scheme,-

and the mature inventory grouping of any livestock type may be separated into sub-groups on the basis of those livestock used for or intended to be used by the taxpayer for breeding purposes, and those livestock not used for or not intended to be used by the taxpayer for breeding purposes:

"Mature livestock" means, in respect of an income year, livestock which is on hand at the start of the income year:

(a) In the case of male non-breeding cattle, rising three years of age or older; or

(b) In the case of sheep, cattle (other than male non-breeding cattle), goats and deer, rising two years of age or older; or

(c) In the case of pigs, rising one year of age or older:

"Maturing livestock" means, in respect of an income year, livestock which if owned at the end of the income year, would be:

(a) In the case of male non-breeding cattle, rising three years of age (or older in the case of non-breeding male cattle purchased in the income year):

(b) In the case of pigs, rising one year of age (or older in the case of pigs purchased in the income year):

(c) In the case of other livestock, rising two years of age (or older in the case of such livestock purchased in the income year):

"National average market value" means, in respect of any class of specified livestock and any income year, the value declared by the Governor-General by Order in Council in accordance with section 86G of the Act:

"National standard cost" means, in respect of livestock being -

(a) Rising one year sheep, dairy cattle, beef cattle, deer or goats born in the income year and owned by the taxpayer at birth:

(b) Opening rising one year livestock on hand at the beginning of the income year through to rising two years of age for sheep, beef cattle, dairy cattle, deer and goats:

(c) Opening rising two year male non-breeding beef cattle which are rising three years of age at closing balance date:

(d) Bobby calves acquired during the income year:

(e) Weaner pigs to 10 weeks of age (excluding sucklings):

(f) Growing pigs from 10 to 17 weeks of age, -

the respective production costs, based on national average costs of production, declared by the Governor-General by Order in Council under section 86C of the Act:

"Non-breeding" means, in respect of a taxpayer, livestock not used or intended to be used for breeding purposes by the taxpayer:

"On hand" means, in respect of a taxpayer, livestock of any type physically under the control of that taxpayer whether owned, bailed, or leased but excluding any deficiencies of livestock associated with bailed or leased livestock and any livestock not owned by the taxpayer but being under the control of the taxpayer for a fee.

"**Purchase cost**" means:

(a) In the case of livestock purchased in an income year, without progeny at foot, the purchase price of that livestock and other costs associated with the purchase of that livestock; and

(b) In the case of livestock purchased in an income year, with progeny at foot, for an undivided cost, the purchase price of that livestock and other costs associated with the purchase of that livestock as determined by a fair and reasonable apportionment of costs between the parents and progeny; and

(c) In the case of high-priced livestock previously required to be valued under the national standard cost scheme, the national average market value for the current income year relating to that class of livestock as if that livestock was purchased at that cost; and

(d) In the case of livestock commencing to be bailed in an income year, the market value of the livestock bailed to the bailee in that income year.

(e) Includes transfers between separate accounting entities operated by the same taxpayer at the cost included in the financial accounts for income tax purposes as outlined in paragraph 1(c) of this determination.

"Rising one year" means, in respect of any closing balance date for an income year, livestock aged between birth and one year of age at that date:

"Rising three year" means, in respect of any closing balance date for an income year, livestock aged between two years and three years of age at that date:

"Rising two year" means, in respect of any closing balance date for an income year, livestock aged between one year and two years of age at that date:

"Rising two year male non-breeding cattle inventory grouping" means, in respect of any closing balance date in any income year, all male non-breeding cattle which are rising two years of age at that date:

"Self assessed cost" means the cost of livestock calculated in accordance with section 86B of the Act.

Cattle breeds for NSC purposes

Dairy cattle breeds which are not bred as part of a dairy farming business (for example, if they are bred on a sheep or beef cattle farm) may be valued under the NSC for beef cattle breeds. In all other cases, the NSC applies directly to the breed concerned.

Value under National Standard Cost scheme for sheep, dairy cattle, beef cattle, deer, goats and pigs

3. Valuation of livestock less than one year of age of each livestock type (other than pigs)

Rising one year livestock of a taxpayer of each type of livestock (other than pigs) shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of rising one year livestock of the type on hand at the end of the income year;

b is the number of livestock of the type sold by the taxpayer during the income year which would have been, if still on hand, rising one year livestock of the taxpayer at the end of that income year;

c is the number of livestock of the type purchased by the taxpayer during that income year which are, or would have been if still on hand, rising one year livestock of the taxpayer at the end of the income year.

d is the national standard cost for that income year of rising one year livestock of the type;

e is the aggregate purchase cost of livestock of the type purchased during that income year by the taxpayer which are, or would have been if still on hand, rising one year livestock of the taxpayer at the end of the income year;

f is, in the case of either beef or dairy cattle, the number of bobby calves purchased by the taxpayer during the income year; and

g is the national standard cost for the income year of acquired bobby calves.

Where (a + b - c) in the above formula results in a negative figure the average value, at the end of an income year, for the purposes of the national standard cost scheme, shall be calculated in accordance with the following formula:

$$\frac{e + (f \times g)}{c}$$

where the items in the formula are those referred to in the first formula in this paragraph.

4. Valuation of livestock intake (excluding pigs and rising two year and three year or older male non-breeding cattle)

Livestock intake of a taxpayer of each type of livestock (excluding pigs and rising two year and rising three year or older male non-breeding cattle) shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of rising one year livestock which are not rising one year male non-breeding cattle of the taxpayer of the type on hand at the end of the immediately preceding income year;

b is the national standard cost for that income year of rising two year livestock of the type;

c is the aggregate purchase cost of livestock of the type purchased during the income year by the taxpayer (excluding rising two year or older male non-breeding cattle and breeding sires of this livestock type which are to be valued under the herd scheme) which are, or would have been if still on hand, rising two year or older livestock of the taxpayer at the end of that income year;

d is the aggregate value for income tax purposes of rising one year livestock which are not rising one year male non-breeding cattle of the taxpayer of the type on hand at the end of the immediately preceding income year; and

e is:

(i) in the case of dairy cattle or beef cattle, the number of livestock of the type purchased during the income year by the taxpayer (excluding rising two year and older male non breeding cattle and breeding sires of this livestock type which are to valued on the herd scheme) which are, or would have been if still on hand, rising two year or older livestock of the taxpayer at the end of that income year; and

(ii) in the case of sheep, deer and goats, is the number of livestock of the type purchased during the income year by the taxpayer which are, or would have been if still on hand, rising two year or older livestock of the taxpayer at the end of that income year excluding breeding sires of this livestock type which are to be valued under the herd scheme.

5. Valuation of rising two year male non-breeding cattle

Rising two year male non-breeding dairy cattle

In respect of the dairy cattle livestock type, the rising two year male non-breeding cattle of this type shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of rising one year male non-breeding dairy cattle of the taxpayer on hand at the end of the immediately preceding income year;

b is the national standard cost for the income year of rising two year male non-breeding dairy cattle;

c is the aggregate purchase cost of male non-breeding dairy cattle purchased during the income year by the taxpayer which are, or would have been if still on hand, rising two year male non-breeding dairy cattle of the taxpayer at the end of that income year;

d is the aggregate value, for income tax purposes at the end of the immediately preceding income year, of rising one year male non-breeding dairy cattle of the taxpayer on hand at the end of the immediately preceding income year; and

e is the number of male non-breeding dairy cattle purchased during the income year by the tax-payer which are, or would have been if still on hand, rising two year male non-breeding dairy cattle of the taxpayer at the end of that income year.

Rising two year male non-breeding beef cattle

In respect of the beef cattle livestock type, the rising two year male non-breeding cattle of this type shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of rising one year male non-breeding beef cattle of the taxpayer on hand at the end of the immediately preceding income year;

b is the national standard cost for the income year of rising two year male non-breeding beef cattle;

c is the aggregate purchase cost of male non-breeding beef cattle purchased during the income year by the taxpayer which are, or would have been if still on hand, rising two year male non-breeding beef cattle of the taxpayer at the end of that income year;

d is the aggregate value, for income tax purposes at the end of the immediately preceding income year, of rising one year male non-breeding beef cattle of the taxpayer on hand at the end of the immediately preceding income year; and

e is the number of male non-breeding beef cattle purchased during the income year by the tax-payer which are, or would have been if still on hand, rising two year male non-breeding beef cattle of the taxpayer at the end of that income year.

6. Valuation of livestock intake which is rising three year or older male non-breeding cattle

Rising three year or older male non-breeding dairy cattle

In respect of the dairy cattle livestock type, the livestock intake of a taxpayer, being rising three year or older male non-breeding dairy cattle, shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of rising two year male non-breeding dairy cattle of the taxpayer on hand at the end of the immediately preceding income year;

b is the national standard cost for the income year of rising three year male non-breeding beef cattle;

c is the aggregate purchase cost of male non-breeding dairy cattle purchased during the income year by the taxpayer which are, or would have been if still on hand, rising three year or older male non-breeding dairy cattle of the taxpayer at the end of that income year;

d is the aggregate value, for income tax purposes at the end of the immediately preceding income year, of rising two year male non-breeding dairy cattle of the taxpayer on hand at the end of the immediately preceding income year; and

e is the number of male non-breeding dairy cattle purchased during the income year by the tax-payer which are, or would have been if still on hand, rising three year or older male non-breeding dairy cattle of the taxpayer at the end of that income year.

Rising three year or older male non-breeding beef cattle

In respect of the beef cattle livestock type, the livestock intake of a taxpayer, being rising three year or older male non-breeding beef cattle, shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of rising two year male non-breeding beef cattle of the taxpayer on hand at the end of the immediately preceding income year;

b is the national standard cost for the income year of rising three year male non-breeding beef cattle;

c is the aggregate purchase cost of male non-breeding beef cattle purchased during the income year by the taxpayer which are, or would have been if still on hand, rising three year or older male non-breeding beef cattle of the taxpayer at the end of that income year;

d is the aggregate value, for income tax purposes at the end of the immediately preceding income year, of rising two year male non-breeding beef cattle of the taxpayer on hand at the end of the immediately preceding income year; and

e is the number of male non-breeding beef cattle purchased during the income year by the tax-payer which are, or would have been if still on hand, rising three or older male non-breeding beef cattle of the taxpayer at the end of that income year.

7. Valuation of pigs

Pigs valued in the weaners to 10 weeks of age category of livestock (excluding suckling pigs).

Pigs, on hand at the end of an income year, which are weaners to 10 weeks of age (excluding suckling pigs) shall be valued at the national standard cost for the income year for this category of livestock.

Pigs valued in the growing pigs 10 weeks to 17 weeks of age category of livestock.

Pigs on hand at the end of an income year which are growing pigs 10 weeks to 17 weeks of age or pigs which are grown on to an older age (including the purchase of pigs intended for breeding purposes) shall have an average value, at the end of an income year, for the purposes of the national standard cost scheme, calculated in accordance with the following formula:

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

where -

a is the number of growing pigs which at any time during the income year were aged between 10 and 17 weeks of age and which were sold during the income year or are on hand at the end of that income year;

b is the number of weaned pigs purchased by the taxpayer during the income year for the purposes of rearing to about 17 weeks of age or older;

c is the number of pigs on hand at the beginning of the income year which were valued as growing pigs 10 to 17 weeks of age;

d is the national standard cost for the income year for pigs in the weaners to 10 weeks of age category of livestock;

e is the national standard cost for the income year for pigs in the growing pigs 10 to 17 weeks of age category of livestock;

f is the aggregate purchase cost of pigs purchased at the age of weaning or older during the income year excluding boars to be valued under the herd scheme by the taxpayer;

g is the total number of pigs purchased by the taxpayer at the age of weaning or older during the income year excluding boars to be valued under the herd scheme.

Provisions which apply to Paragraphs 3 to 7 of this Determination

8. Treatment of high-priced livestock transferred from high-priced livestock scheme to national standard cost scheme

Where any high-priced livestock was valued under the high-priced scheme in the preceding income year and is required under section 86I of the Act to be valued under the national standard cost scheme in the current income year, that livestock shall be treated under this determination as livestock pur-chased at the national average market value for the preceding income year.

9. Exclusion of certain livestock from livestock cost calculations

Exclusion of breeding sires where the herd scheme is being used in conjunction with national standard cost

Where the herd scheme has been adopted for a particular livestock type and the taxpayer is using that scheme to value any livestock of that type, the purchase cost of breeding sires of that livestock type and the number purchased during the income year must be excluded from the calculation of average cost of the taxpayer's livestock of the type under the national standard cost scheme. In any case where a taxpayer commences to use the herd scheme in conjunction with the national standard cost scheme, no adjustment to the calculation of average costs under the national standard cost scheme shall be made in respect of breeding sires purchased in earlier income years.

Exclusion of high-priced livestock

Any animals purchased during the income year which must be valued under the provisions of section

86I of the Act as high-priced livestock at the end of the income year must be excluded from the calculation of average cost under the national standard cost scheme with regard to both the number and cost of animals purchased.

10. Establishment of NSC where calculation of NSC using any of paragraphs 3 to 7 produces nil values

In the event of any of the formulas in paragraphs 3 to 7 of this determination producing an average value at the end of an income year of nil, the average value shall be deemed to be, in the case of:

- a rising one year class of livestock, the national standard cost of rising one year livestock of that type for that income year; and
- a rising two year and older intake of livestock other than rising three year male non-breeding cattle, the national standard cost for rising one year livestock of that type plus the national standard cost for rising two year livestock of that type for that income year; and
- rising three year male non-breeding cattle, the national standard cost for rising one year male non-breeding cattle plus an amount equal to twice the national standard cost for rising two year male non-breeding cattle for that income year.

Inventory system requirements under the National Standard Cost scheme

11. General

In respect of sheep, cattle, deer and goats, as this livestock ages until it becomes mature livestock, the costs of production of the livestock accumulate and are incorporated into average values over balance dates. Once the livestock has first become mature livestock of the taxpayer at the end of an income year, the value of the livestock to the taxpayer under the national standard cost scheme becomes fixed (not accumulating any further production costs) and remains in the taxpayer's inventory valuation for the mature inventory grouping until such time as the livestock is sold, transferred to another livestock valuation option or dies (each as determined having regard to any sub-inventory grouping adopted by the taxpayer and to the cost flow identification system applied by the taxpayer, as each is detailed further below).

In respect of pigs, the average cost identified with respect to the pigs entering inventory in any particular income year and remaining on hand at the end of the income year remains fixed (not accumulating any further production costs) and remains in the taxpayer's inventory valuation for the mature inventory grouping until such time as the pigs are sold, transferred to another livestock valuation option or die (as each is determined having regard to any sub-inventory grouping adopted by the taxpayer and to the cost flow identification system applied by the taxpayer, as each is detailed further below).

For the purposes of identifying the end of year valuation of mature livestock under the national standard cost scheme, a taxpayer must have a cost flow identification system involving specific identification, average costing or first-in first-out (FIFO) costing, as detailed further in paragraphs 13 to 15 of this determination.

The average cost inventory system or the first in first out inventory system represent the minimum standard of inventory accounting for all types of livestock. The taxpayer may choose to use more accurate inventory accounting systems.

Different systems may be adopted by the same taxpayer for different types of livestock.

Where a mature inventory grouping of a type of livestock is broken down by a taxpayer into sub-inventory groups (as detailed further below), each sub-inventory group of that type of livestock must be valued by the taxpayer under the national standard cost scheme using the same cost flow identification system.

Where a taxpayer is using the national standard cost scheme to value any livestock of a type within an inventory grouping, or as the case may be, sub-inventory group, the taxpayer shall value all livestock of that inventory grouping or sub-inventory group under the national standard cost scheme, except for:

- livestock of that type valued under the herd scheme at the end of the relevant income year; or
- Bailees who elect to account for deficiencies of bailed livestock at market value or replacement price.

12. Separate sub-inventory groups for non-breeding and breeding livestock

Notwithstanding any other provisions of this determination (including in particular the formulae in paragraphs 3 to 7), a taxpayer may elect to establish separate sub-inventory groups, with respect to each livestock type, for the livestock:

(a) Intended to be used by the taxpayer for breeding purposes; and

(b) Intended to be used by the taxpayer for purposes other than breeding.

Where separate sub-inventory groups are established by a taxpayer:

(c) All livestock of the relevant inventory group which are valued under the national standard cost scheme and are intended for breeding purposes or, as the case may be, purposes other than breeding purposes, must be included in the relevant sub-inventory group of the taxpayer until disposed of or death; and

(d) Separate calculations of average cost for each sub-inventory group may be made under the formulae in paragraph 3 to 7 of this determination and the taxpayer may separately apply the cost flow identification system adopted by the taxpayer for mature livestock of that type to each sub-inventory group.

Once livestock is included in a sub-inventory group it must continue to be accounted for under that sub-inventory group until treated as sold, disposed of, or valued under one of the other livestock valuation options. It may not be moved to another sub-inventory group.

Cost flow identification systems for the valuation of mature livestock

13. First-in first-out system (FIFO)

Where the taxpayer elects to use the FIFO system for cost flow identification, the cost and number of the livestock intake entering the taxpayer's inventory system in an income year must be recorded. In accordance with the normal rules applying under FIFO systems, dispositions and deaths of mature livestock of the type in question, and where the taxpayer so elects maturing livestock of that type, will be treated as reducing first the oldest intake of livestock of that type on hand.

A taxpayer may however, at the taxpayer's option and to such extent as the taxpayer chooses, with regard to any specific livestock, adopt a specific identification system for accounting for acquisitions, dispositions and deaths.

Refinements to the minimum standard of the FIFO inventory system as described above to more accurately account for purchases, sales and deaths affecting different intake years within the FIFO inventory system may be made.

Where the average closing cost calculated in accordance with paragraphs 4 and 6 (and 7 at the taxpayer's option) of this determination is to be used in association with the minimum standard FIFO inventory system that average closing cost shall be applied to all of the livestock intake of that livestock in that income year valued under the provisions of section 86C of the Act at the end of the income year.

14. Average cost system where the herd scheme was not used in the current income year or in the immediately preceding income year

This inventory system is the minimum standard of inventory accounting where the herd scheme was not used in the preceding income year or the current income year.

Where a taxpayer uses the average cost system of cost flow identification, the value of the taxpayer's mature and maturing inventory grouping of any type under the national standard cost scheme at the end of an income year shall be calculated by multiplying the number of mature and maturing livestock of that type on hand by the average cost calculated in accordance with the following formula in relation to that type of mature and maturing livestock and the income year:

$$\frac{((a - b) \text{ x } c) + ((e - (a - b)) \text{ x } d)}{e}$$

where -

a is the number of livestock of the taxpayer on hand at the end of the immediately preceding income year, being at that time mature livestock;

b is the lesser of a and -

(i) The number of livestock of the taxpayer on hand at the end of the immediately preceding year, being at that time mature livestock; or

(ii) At the election of the taxpayer except where the livestock are pigs, the number of livestock of the taxpayer, being livestock of the taxpayer on hand at the end of the immediately preceding income year which were at the time mature livestock or during the income year maturing livestock of the taxpayer,-

which are disposed of by the taxpayer or die (while owned by the taxpayer) during the income year;

c is the average cost or value of mature livestock of the taxpayer on hand at the end of the immediately preceding income year;

d is the average cost of livestock intake of the taxpayer as calculated under paragraph 4, 6 or 7 of this determination;

e is the number of mature livestock of the taxpayer on hand at the end of the income year.

The average closing cost calculated according to the formula shall be applied to all livestock of the mature inventory group which are to be valued under using the average cost system the provisions of section 86C of the Act at the end of the income year.

15. Average cost system where the herd scheme was used in the preceding income year or is to be used in the current income year

This inventory system is the minimum standard of inventory accounting where the herd scheme was used in the preceding income year or is to be used in the current income year.

Where a taxpayer uses the average cost system of cost flow identification, the value of the taxpayer's mature and maturing inventory grouping of any type under the national standard cost scheme at the end of the income year shall be calculated by multiplying the number of mature and maturing livestock of that type by the average cost calculated in accordance with the following formula in relation to that type of mature and maturing livestock and the income year:

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

where -

a is the number of livestock of the taxpayer on hand at the end of the immediately preceding income year, being at that time mature livestock valued under a valuation method other than the herd scheme;

b is the lesser of a and -

(i) The number of livestock, other than male breeding sires, of the taxpayer on hand at the end of the immediately preceding year, being at that time mature livestock; or

(ii) At the election of the taxpayer, except where the livestock are pigs, the number of livestock, other than male breeding sires, of the type of the taxpayer, being livestock of the taxpayer on hand at the end of the immediately preceding income year which were at the time mature livestock or during the income year maturing livestock of the taxpayer,-

which are disposed of by the taxpayer or die (while owned by the taxpayer) during the income year;

c is the average cost or value of mature livestock of the taxpayer on hand at the end of the immediately preceding income year valued under a valuation method other than the herd scheme;

d is the average cost of livestock intake of the taxpayer as calculated under paragraph 4, 6 or 7 of this determination;

e is the number of mature livestock of the taxpayer on hand at the end of the income year valued under the national standard cost scheme.

The average closing cost calculated according to the formula is applied to all of the livestock of the mature inventory group which are to be valued using the average cost system under the provisions of section 86C of the Act at the end of the income year.

Where the herd scheme is to be used in conjunction with national standard cost in relation to a type of livestock and no rising one year livestock of that type (or rising two year male non-breeding dairy or beef cattle in the case of dairy or beef cattle) were valued using a valuation method other than the herd scheme in the immediately preceding income year, then the rules contained in paragraph 28 of this determination must be applied before calculating the average closing cost in accordance with this paragraph.

16. Change in cost flow identification system when using the national standard cost scheme

Subject to the rules contained in this paragraph and in the following paragraphs of this determination, a taxpayer may change the cost flow identification system used when valuing the taxpayer's mature inventory grouping under the national standard cost scheme from FIFO to average cost or vice versa.

Where a taxpayer changes to the average cost system, for the purposes of determining the average cost in the year of change, the average cost of mature livestock of the type in question on hand at the end of the immediately preceding income year will be calculated as follows:

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

where:

a is the total closing cost of that inventory grouping valued under national standard cost in the preceding income year; and

b is the total closing number of livestock in that inventory grouping valued under national standard cost in the preceding income year.

If the FIFO inventory system is being adopted, the opening inventory cost in the year of the change will be the total closing cost of that inventory grouping in the immediately preceding income year.

17. Reduction in livestock numbers where stock valued under national standard cost scheme and the herd scheme

Where a taxpayer in any income year values any livestock under the herd scheme and also values other livestock of the same type under the national standard cost scheme, any reduction in the number of livestock of that type below the number on hand at the end of the immediately preceding income year must first be accounted for from the relevant class (in any case where the taxpayer adopts a class by class separation of livestock numbers) or inventory grouping valued at the end of the immediately preceding income year under the national standard cost scheme. Accordingly, any reduction in the number of livestock of that type shall only commence to reduce the number of livestock valued under the herd scheme:

(a) In any case where the taxpayer uses an inventory system which separates out livestock of that class, where no livestock of that class is on hand at the end of the income year to be valued under the national standard cost scheme; or

(b) In any case where the taxpayer uses an inventory system which does not separately identify livestock of that class, where no livestock of the relevant inventory grouping is on hand at the end of the income year to be valued under the national standard cost scheme.

18. Treatment of livestock bailed by a taxpayer which may be valued under the national standard cost scheme

Under section 86C(3) of the Act, taxpayers who bail livestock are only eligible to use the national standard cost scheme in relation to bailed livestock where the taxpayer expects to have the livestock originally bailed to be re-delivered. In such a case, the provisions of this determination shall apply as if the bailed livestock were livestock on hand.

Movement between National Standard Cost and other livestock valuation schemes

19. Changing from herd scheme, market value option or replacement price option to national standard cost scheme

In respect of each livestock type, in the income year in which the national standard cost scheme is first adopted by the taxpayer, the opening inventory structure and cost must be calculated, in accordance with the appropriate paragraph 20 or 21 of this determination, in order to allow calculation of the closing inventory number and cost in respect of that type of livestock in that income year under the provisions of paragraphs 13 to 15 of this determination.

20. Where the taxpayer adopts the average cost system of cost flow identification

If a taxpayer is to use the average cost system in respect of livestock valued under the national standard cost scheme, in respect of each relevant inventory grouping of livestock, the average cost at the beginning of the income year will be deemed to be equal to the amount calculated in accordance with the following formula:

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

where -

a is the aggregate value adopted for income tax purposes in the preceding income year by the taxpayer in respect of all classes of livestock of the taxpayer of the type which would have been included in the inventory grouping on hand at the end of the immediately preceding income year;

b is the number of livestock of the taxpayer of the type which would have been included in the inventory grouping on hand at the end of the immediately preceding income year.

21. Where the taxpayer adopts the FIFO system of cost flow identification

If a taxpayer is to use the FIFO system to account for livestock under the national standard cost scheme, the value of the opening inventory of mature livestock of the taxpayer in the relevant income year will be equal to the values for income tax purposes of each class of livestock of the taxpayer in an inventory grouping of the type in question on hand at the end of the immediately preceding income year. For the purposes of application of the FIFO system in the income year of the change and subsequent income years, the opening inventory of mature livestock (in all cases other than pigs) shall be subdivided and be deemed to be aged as follows (from newest to oldest):

(a) Rising two year female breeding stock;

(b) Older classes of female breeding stock (subdivided and ranked from newest to oldest to the extent possible having regard to the taxpayer's preceding tax accounting system);

(c) Non-breeding livestock (excluding male non-breeding dairy cattle and male non-breeding beef cattle);

(d) Male breeding stock.

In the case of pigs, the mature livestock included in opening inventory in the income year shall be subdivided and be deemed to be aged as follows (from newest to oldest):

(a) Weaner pigs less than 10 weeks of age;

(b) Growing pigs between 10 and 17 weeks of age;

(c) Pigs over 17 weeks of age;

(d) Breeding sows less than one year old;

(e) Breeding sows over one year of age;

(f) Breeding boars.

The FIFO system will be applied accordingly, in the income year in which the national standard cost scheme is first adopted and in subsequent income years in which it is used, so that dispositions and deaths are deemed to reduce first the oldest still existing class of mature livestock.

22. Change from national standard cost scheme to the herd scheme, market value option or replacement price option for any complete inventory grouping

Irrespective of which cost flow identification system was used in the income year preceding the year of the change, the opening value of the livestock of the inventory grouping in the year of change shall be treated as being equal to the value for tax purposes at the end of the immediately preceding income year. A value of the livestock at the end of the year of change will be calculated accordingly under the chosen valuation option on an class-by-class basis.

23. Change from national standard cost scheme to the herd scheme for some livestock only

If the number of livestock of an inventory grouping moved from valuation under the national standard cost scheme to valuation under the herd scheme in any income year still leaves some livestock of the particular inventory grouping to be valued under the national standard cost scheme at the end of the income year, then paragraphs 24 to 26 (as appropriate) of this determination shall apply.

24. Average cost system used in year preceding the year of change

If the average cost system of cost flow identification was used in the income year preceding the income year of change to the herd scheme, the number of livestock moved to the herd scheme shall be accounted for as if they were livestock disposed of or dying in the income year (see paragraphs 14 and 15 of this determination). No adjustment is required to opening inventory numbers and costs.

25. FIFO system used in year preceding the year of change

If the closing inventory system used in the income year preceding the income year of the change to the herd scheme was the FIFO system, then the number moved to the Herd scheme will be deemed to have been derived from the oldest inventory on hand at the opening balance date in the income year of the change to the Herd scheme in the same manner as sales and deaths are accounted for when using the FIFO type of inventory system unless the inventory account has been accurately prepared on an age class by age class basis with the appropriate costs per head recorded for each group of livestock in each age class, under which conditions, the adjustment to closing inventory numbers and costs can be made on a class by class basis.

26. Change in cost flow identification system in the same income year as some livestock are moved from the national standard cost scheme to the herd scheme system of valuation

If a change in the cost flow identification system is made in the same income year as some livestock are moved to the herd scheme, this adjustment shall be effected only after the appropriate adjustment has been made for moving those livestock to the herd scheme on the basis of the cost flow identification system used in the immediately preceding income year.

27. Complete change from national standard cost scheme to self assessed cost or from self-assessed cost to national standard cost scheme

The value of livestock of each type on hand in each inventory grouping at the end of the immediately preceding income year under the preceding method will be deemed to be the opening value of livestock of that type in that inventory grouping in the year of change. Any change in the cost flow identification system accompanying the change will be subject to paragraphs 16 and 26 of this determination.

28. Value of Livestock where NSC used in conjunction with the herd scheme.

Where a taxpayer has adopted the herd scheme for any class of livestock in any income year and the livestock numbers for that class are more than the base number of herd scheme animals, in accordance with section 86D(5) of the Act, and wishes to value those livestock under the national standard cost scheme, the following provisions will apply:

For the purposes of calculating national standard cost for those livestock the opening value of rising 1 year livestock and rising 2 year male non-breeding dairy and beef cattle the definition of ‘d’ in the formulae in paragraphs 4, 5 and 6 of this determination will be:

> In the case of paragraph 4 and 5:-
>
> The opening number of rising 1 year livestock of that type multiplied by the national standard cost calculated for rising 1 year livestock of that type for, at the taxpayers’ option, the current or immediately preceding income year using the formula contained in paragraph 3 and 5.

In the case of paragraph 6:-

The opening number of rising 2 year male non-breeding dairy or beef cattle multiplied by the national standard cost calculated for rising 2 year male non-breeding dairy or beef cattle in, at the taxpayers' option, the current or immediately preceding income year using the formulae in paragraphs 3 and 5.

In the event of there being no rising 1 year livestock of that type or rising 2 year male non-breeding dairy or beef cattle on hand in either the current or immediately preceding income year on which to base the calculations in paragraphs 4, 5 or 6, the national standard cost will be the average purchase cost of the rising 2 year livestock of that type or the rising three year male non-breeding dairy or beef cattle.

This Determination is made and signed by me on the 29th day of March 1994.

Simon Sherry
Director (Rulings)

Appendix B

Current balance date policy

The Commissioner's current policy on balance dates remains in force. We've reproduced this below as it appeared in TIB Volume 3 No 9 (June 1992).

Introduction

This article sets out Inland Revenue's policy on balance dates for income tax purposes. Taxpayers may adopt a balance date other than 31 March (a "non-standard balance date") where:

- the nature of their business makes a 31 March balance date inappropriate; or
- a subsidiary wishes to align its balance date with its parent company; or
- an estate wishes to adopt the deceased's date of death; or
- a shareholder-employee wants the same balance date as the company.

This item sets out the criteria which we will follow when we receive a request for a non-standard balance date.

Current practice

Section 2 of the Income Tax Act 1976 defines "income year" to mean the "year" in which the income is derived. This means a year commencing on 1 April and ending on the following 31 March. Returns of income must therefore cover the year ended 31 March.

However, section 15 allows a taxpayer (with the consent of the Commissioner) to elect to furnish a return of income for the year ending on the date of the annual balance of the accounts. In these cases the income derived during the accounting year is deemed to be derived for tax purposes during the income year ending on the 31 March nearest to the taxpayer's balance date.

All balance dates from 1 April to 30 September inclusive in the same calendar year relate to the previous 31 March, and all balance dates from 1 October to 30 March inclusive relate to the following 31 March.

Examples:

Accounting year	Corresponding income year
31 October 1991	31 March 1992
28 February 1992	31 March 1992
30 June 1992	31 March 1992
30 September 1992	31 March 1992

Currently, a small number of recognised industry non-standard balance dates are approved.

We have completed a review of our policy, and there are more circumstances in which we will approve a non-standard balance date. These are set out below.

The circumstances

1. The nature of the business makes a 31 March balance date inappropriate.

   We will grant a non-standard balance date where it would help a business that is operating in an environment in which 31 March is not the most appropriate balance date.

   Some businesses have a "natural" end to their income year such as the end of a growing period, the end of a seasonally busy period, or the time in the annual business cycle in which the majority of income and their relevant costs can be brought to account. Examples of businesses which could have "natural" income years not ending on 31 March include manufacturers, retailers, wholesalers, professionals, the tourism industry, farmers, horticulturists, and service related industries.

   Without limiting the range of businesses that may have non-standard balance dates, these balance dates are commonly recognised:

Apiarists	- 30 Nov or 31 Dec
Education/childcare related services	- 31 December
Farmers, cattle	- 31 May
dairy	- 31 May
sheep	- 30 June
Fishing industries	- 30 September
Horse breeders	- 31 July
Meat processing and export	- 31 August to 1 October
Orchardists, pipfruit	- 31 March to 30 June
Kiwifruit	- 31 March to 30 June
Seed dressers	- 30 November
Tobacco growers	- 31 July

2. The date coincides with the balance date of a parent company, except where the change would result in a significant deferral of income.
3. For continuing estates, the date coincides with the date of death of the deceased taxpayer.
4. For shareholder employees, the date coincides with the balance date of the company in which they are major shareholders and from which they derive their main source of income.

   If they are major shareholders in more than one company, their balance date should be aligned to the balance date of the company which provides their main source of income. If no main source of income can be identified, the choice of which company's balance date to align with should be the taxpayer's.

Information we need

An application for a non-standard balance date must be in writing, and must fully state the reasons for the application.

We need the following information ***before*** we can consider a request for a non-standard balance date:

1. Full name of the entity seeking the balance date
2. Name of the tax agent
3. Full details of the reasons why a non-standard balance date should be approved
4. If the request is because a 31 March balance date is inappropriate for the taxpayer's particular business, we will also need:
    - If the business is already in operation:
        - details of cash flows
        - details of stock patterns
        - details of customer demand
        - details of seasonal patterns
        - other evidence showing that financial information prepared to the proposed balance date will be more appropriate to the entity than information prepared to 31 March.
    - If the business is a new business we will need predictions of the factors set out above.

    If there is an industry balance date commonly recognised (as listed above), this will be strong evidence that a request for a similar balance date would be approved.
5. Whether the entity is associated with any other entities, and if so, the nature of the relationship and the balance dates of the other entities.
6. Any other reasons for requesting the balance date other than those already stated.

Unacceptable reasons for a non-standard balance date

The anniversary date of the commencement of the business is not a valid reason for a non-standard balance date.

We will not accept an application for a non-standard balance date if it is for reasons of tax deferral or tax avoidance, or to take undue advantage of any tax incentive or concession.

Appendix C

Provisional tax - details of new legislation

This appendix gives a section-by-section analysis of the new provisional tax legislation. For a general overview, see the article on page 14 of the accompanying TIB.

Section 375: Interpretation

There are a number of new definitions in the provisional tax rules because use-of-money interest now applies to larger provisional taxpayers from the first instalment date. The new interest rules required new provisional taxpayer provisions, so new definitions were also required. The new provisional taxpayer provisions are required to prevent interest being charged or paid over a full income year when a provisional taxpayer had only been in business for part of an income year.

Definitions

"*First business day":* This means the first day in an income year on which a taxpayer derives income or incurs expenditure as a result of carrying on a taxable activity. Taxable activity is defined in this section to have the same definition as in the GST Act except that the financial services exclusion is omitted.

"First instalment date" means the 7th day of the month specified as the first instalment date in the eighth schedule to this Act.

"Instalment date" means the 7th day of any month in which a taxpayer's provisional tax instalment is due.

"New provisional taxpayer" means a provisional taxpayer who meets these three conditions:

- it is not a natural person
- it first started to derive assessable income from a taxable activity in that income year
- it has not derived any assessable income from a taxable activity in the last four years.

This last requirement ensures that new provisional taxpayer status can apply to shelf companies or dormant companies that are recommencing business. To qualify the company must produce such documents and information as the Commissioner may require.

"Provisional taxpayer" means any taxpayer whose RIT is $2,500 or more, *except* for a taxpayer who meet one of these conditions:

- it is a company with a fixed establishment in NZ, but it is not deemed to be a resident in New Zealand
- s/he is a pay period taxpayer
- it is a non-resident contractor that has been issued an exemption certificate under regulation 5.

"Residual income tax" is largely the same as the current definition and is the taxpayer's tax liability reduced by the amount of:

(a) Tax paid by a trustee on behalf or a beneficiary or by an agent on behalf of a principal;

(b) Any export market development, tourist promotion incentives and export market development activities - sections 156F or section 156G of the Act;

(c) Any foreign tax credit in respect of foreign income from a controlled foreign company -section 245K(3);

(d) Controlled foreign company foreign tax credits utilised pursuant to section 245L. The legislation actually states section 245(1). This drafting oversight will be corrected shortly;

(e) Foreign tax credits - section 293;

(f) Any non-resident withholding tax - section 318(2);

(g) Any resident withholding tax - section 327K;

(ga) Any tax credit in respect of a supplementary dividend paid under section 308A;

(h) Any national superannuitant surcharge deductions - section 336J and section 336K;

(i) Any PAYE deductions - section 362;

(j) Any imputation credits and dividend withholding payments credits - sections 394ZE and section 394ZP;

(k) Any debit balance in a BETA account in respect of a dividend received from a CFC - section 394ZZV(3);

(l) Any credit balance in a policy holder credit account required to be maintained by a resident life insurance company - section 394ZZZC or section 394ZZZH.

"*Taxable activity"* has the same definition as in the GST Act except that the financial services exclusion is omitted.

Section 376: Application of this Part

This section specifies that provisional tax will be payable according to this Part of the Act, and that the Part applies to the 1994-95 income year and to every subsequent income year.

Section 377: Amount of provisional tax payable

Section 377 determines the *total* amount of provisional tax that a provisional taxpayer must pay, even though the calculation of that total may be done under section 378 (for taxpayers who estimate) or section 379 (if the Commissioner determines the amount of provisional tax payable).

Subsection (2) states that no person shall be required to pay provisional tax if that person's residual income tax does not exceed $300,000 for the income year and did not exceed $2,500 for the immediately preceding income year. The $300,000 exception to the general rule that "if your RIT is less than $2,500 last year you are not required to pay provisional tax this year" is to cover the situation when income-earning assets are moved between taxpayers.

Subsection (1) calculates the total amount of provisional tax used to be used in determining the size of any particular provisional tax instalment under section 381 (the section which calculates the amount of provisional tax due on each instalment date). The calculation of the amount of provisional tax payable must be made using one of the following four methods. (These methods apply in the order in which they are listed):

1. 105% of the taxpayer's residual income tax for the immediately preceding income year. The RIT figure for the immediately preceding income year is determined under subsection (3). It will be one of the following:
   - if the Commissioner has issued an assessment for the preceding year, it will be the amount calculated in this assessment
   - if the taxpayer has filed a tax return for the immediately preceding income year and the Commissioner has not issued an assessment, it will be the amount calculated in the taxpayer's return for the preceding year
   - if the taxpayer has to file a return before an instalment date but has not done so, it will be the amount calculated in the Commissioner's assessment for the preceding income year once that assessment is made.

     (Obviously, the taxpayer will not have the assessment in this situation. Such a taxpayer may wish to use another valuation option such as estimation. If the taxpayer continues to determine the payment amount under the 105% provision, there is a risk that any underpayment will result in additional tax.)
   - if the taxpayer did not have to file a return for the immediately preceding income year, the amount will be the residual income tax (if any) for that preceding income year. (This could happen if a taxpayer is a pay period taxpayer.)
2. 110% of the taxpayer's residual income tax for the year preceding the immediately preceding income year, if the taxpayer meets all of these conditions:
   - the taxpayer has to file a return for the immediately preceding income year, but an extension of time arrangement applies to the taxpayer and that return does not yet have to be furnished
   - the taxpayer has not filed the immediately preceding income year's return
   - the instalment in question is not the third instalment.

   The option to use 110% of the year before last only applies to the first and second instalment dates. This is to ensure that provisional tax payments are a reasonably accurate reflection of the taxpayer's current income tax position. Further, this option cannot be used if the taxpayer has estimated the current year's provisional tax liability or if the Commissioner has determined that liability.
3. The amount estimated by the taxpayer under section 378, unless the Commissioner has determined the amount of provisional tax payable
4. The amount determined by the Commissioner under section 379, provided the taxpayer was notified at least 30 days before the instalment date. (However, if the Commissioner determines the provisional tax payable because the taxpayer's estimate is not fair and reasonable, this determination is most likely to occur once the taxpayer has filed a tax return for the income year.)

Subsection (4) deals with late assessments and reassessments. In effect it states that the taxpayer's provisional tax position will remain unchanged where the taxpayer was not guilty of neglect or default. If there has been neglect or default then the taxpayer's provisional tax position can be recalculated. It is important to note that this could affect more than one income year, because the inaccurate RIT may have been used as a base for provisional tax payments in subsequent income years. The residual income tax amount will be unchanged for this Part of the Act if these three conditions are met:

- the Commissioner makes any assessment or reassessment after the due date of that tax
- the taxpayer's residual income tax is increased
- the taxpayer sets a new due date under section 398(5) for paying the increased income tax liability.

If a reassessment reduces a taxpayer's RIT and the taxpayer was previously charged additional tax or underestimation additional tax, the provisional tax position will need to be recalculated. Again this recalculation may have to cover more than one income year.

Subsection (5) specifies that those in the business of providing life insurance must provide certain information to the Commissioner.

Section 378: Estimated provisional tax

This section contains provisions relating to taxpayers who choose to estimate or who are required to estimate. The amount estimated under this section is used in the section 377 calculation to determine the total amount of provisional tax payable.

Subsection (1) provides that any provisional taxpayer may estimate residual income tax for an income year at any time on or before an instalment date. This means no estimate may be made after the third instalment date. The taxpayer may make revised estimates at any time up until the third instalment date. Estimates must be notified to the Commissioner.

Subsection (2) provides that any person who expects to have RIT exceeding $300,00 must make an estimate on or before the third instalment. Where the taxpayer does not do so, or incorrectly expects to have an RIT of $300,000 or less, that taxpayer is deemed to have estimated by subsection (3). This deemed estimate will be the amount of provisional tax paid on or before the third instalment date. If a taxpayer who has over $300,000 RIT pays the third instalment amount late and a deemed estimate applies, that taxpayer could become liable for underestimation additional tax as well as additional tax on the late payment.

Subsection (4) requires that any estimate must be fair and reasonable at the time the taxpayer files it with the Commissioner. If it is not, under section 379 the Commissioner can determine the amount of provisional tax payable.

Section 379: Commissioner may determine amount of provisional tax

Subsection (1) allows the Commissioner to increase the amount of provisional tax payable in certain instances. This will happen mainly in cases where a return is incorrect or not furnished. The Commissioner can also determine the amount of provisional tax payable if a taxpayer's estimate was not fair and reasonable at the time the taxpayer filed it.

Subsection (2) covers cases where the Commissioner can increase and decrease the provisional tax payable. This applies in cases where the taxpayer has a change of balance date or if certain international provisions relating to double taxation apply.

Under **subsection (3)**, if a taxpayer's RIT for an income year is less than $300,000 and subsection (1) applies, the Commissioner may increase the amount of provisional tax payable, but that amount may not exceed 105% of the taxpayer's RIT from the immediately preceding income year. There is no limit on the amount of provisional tax payable that the Commissioner can specify under subsection (2).

Under **subsection (4)** the Commissioner must notify the taxpayer of any determination of the amount of provisional tax payable. If the Commissioner increases the amount of provisional tax payable, any shortfall shall be due and payable on a day on or after 30 days after the date the Commissioner issued the notice. However, if the provisional tax payable is increased because the taxpayer's estimate was not fair and reasonable, the determination can apply retrospectively to any provisional tax instalment to which the taxpayer's estimate applied.

Subsection (5) specifies that the taxpayer can object under Part III to any determination that the Commissioner makes.

Section 380: Provisional tax payable in one, two or three instalments

Once the total amount of provisional tax payable is determined under section 377, section 380 determines whether that amount is payable in one, two or three instalments.

Subsection (1) provides the general rule that provisional tax is payable in three instalments. This rule applies to all provisional taxpayers who are not new provisional taxpayers, and to any new provisional taxpayer whose first business day is more than 30 days before the first instalment date.

If a provisional taxpayer is a new provisional taxpayer whose first business day occurs on or after 30 days before the first instalment date and more than 30 days before the second instalment date, **subsection (2)** provides that provisional tax will be payable in two instalments. The two instalments are specified in section 381(2) as the second and third instalment dates.

Subsection (3) provides if a new provisional taxpayer's first business day occurs on or after 30 days before the second instalment date, provisional tax is payable in one instalment (which is due on the third instalment date). The rationale for this section is that it is unreasonable to expect a new provisional taxpayer to pay an instalment within 30 days of commencing business, but that if business is commenced in an income year then at least one instalment date shall apply.

Subsection (3) also provides that a taxpayer, who is not a provisional taxpayer and who had residual income tax of less than $2,500 last year and who has over $300,000 RIT in the current income year, shall pay in one instalment on the third instalment date.

Section 381: Amount of provisional tax instalment

A taxpayer's provisional tax liability is worked out under section 377. Section 380 then determines the number of instalments in which that provisional tax is payable, and section 381 determines the exact amount payable on each instalment date. The general principle that applies in section 381 is that if a taxpayer's total provisional tax payable changes, any increase or decrease must be fully accounted for at the next occurring instalment.

Subsection (1) provides that when provisional tax is payable in three instalments, the instalments are due on the first, second and third instalment dates. These are the amounts of the instalments:

- First instalment: One-third of the provisional tax payable for the income year as determined under section 377 at the time of the first instalment date.
- Second instalment: Two-thirds of the provisional tax payable for the income year as determined under section 377 at the time of the second instalment date, less any amount previously due and payable. "Any

amount previously due and payable" covers the amount due on the first instalment date, but it also covers any amount the Commissioner has required the taxpayer to pay under section 379. Note that the reduction is based on "any amount previously payable" not the amount previously paid. This prevents the double up of any additional tax.

- Third instalment: The total amount of provisional tax payable for the income year as determined under section 377 at the time of the third instalment date, less any amount previously due and payable.

Example

A provisional taxpayer pays provisional tax for the 1994/95 income year. His RIT for the 1992/93 is $9,000 and the RIT for 1993/94 is $12,000. The taxpayer does not file his 1993/94 tax return until after the second instalment date, and he has an extension of time for filing that return. In this example, the taxpayer will underpay the second instalment to demonstrate the impact such a payment has on the third instalment.

First instalment: The taxpayer uses the year before last's option, so his total provisional tax payable (calculated under section 377) is $9,900. Under section 381(a) the amount due on the first instalment date is one third of $9,900, so the taxpayer is required to pay $3,300. He pays this amount.

Second instalment: The taxpayer uses the year before last's option, so he has total provisional tax payable of $9,900, as calculated under section 377. Section 381(b) provides that the amount due on the second instalment date is two thirds of $9,900 less any amount previously due an payable ($3,300 at the first instalment date), so the taxpayer must pay $3,300. The taxpayer pays $3,000. Because he has underpaid $300, additional tax of $30 (10% of $300) is applied. This additional tax would be reduced if the taxpayer's liability turns out to be less than the amount of provisional tax payable.

Third instalment: The taxpayer now uses the last year's RIT plus 5% option. This establishes a total provisional tax payable amount of $12,600 under section 377(1). Section 381(c) provides that the amount due on the third instalment date is the total provisional tax payable ($12,600), less any amount previously due and payable ($3,300 at each of the first and second instalment dates - total $6,600). The taxpayer must therefore pay $6,000. (Note that it is the amount payable - not the amount paid - which is used in calculating the size of an instalment. The amount used is the $3,300 due in the second instalment, not the $3,000 actually paid.) The taxpayer pays the $6,000 due ($12,600 - $6,600).

After the third instalment date the taxpayer pays the outstanding provisional tax from the second instalment date, and the accrued additional tax.

Section 381(2) applies in the same manner as subsection (1) except that it applies only to new provisional taxpayers with two instalment dates. The instalment dates are the second instalment date and the third instalment date. On the second instalment date half of the taxpayer's provisional tax liability is due. The amount due on the third instalment date is all of the provisional tax due and payable for that income year, less any amount previously due and payable.

Section 381(3) covers those who are required to pay provisional tax in one instalment. This includes all of these taxpayers:

- new provisional taxpayers whose first business day is on or after the day 30 days before the 2nd instalment date
- provisional taxpayers whose RIT is equal to or greater than $300,000 for the current income year, and less than $2,500 for the immediately preceding year.

These taxpayers have their entire provisional tax liability due on the third instalment date.

Section 382: Voluntary payments

This section provides that a taxpayer may make voluntary payments of provisional tax at any time. These payments are income tax payments if the taxpayer is not a provisional taxpayer. If the taxpayer is a provisional taxpayer, these are payments in excess of the amount of provisional tax payable. Because of this, they do not affect the calculation of how much provisional tax is due at each instalment date. However, the amount paid will effectively be counted as provisional tax paid for the next instalment (if any) which occurs.

Example

A provisional taxpayer pays provisional tax for the 1994/95 income year. Her RIT for the 1993/94 income year is $12,000. She files her 1993/94 tax return before the first instalment date. She wishes to avoid underpaying, so she makes a voluntary payment between the first and second instalment dates.

First instalment: The taxpayer uses the last year's RIT plus 5% option. This establishes a total provisional tax payable amount of $12,600 under section 377(1) so she is required to pay $4,200. She pays this amount.

Voluntary payment: The taxpayer pays $800 voluntarily. Thus the total amount of provisional tax that she has paid up until this time is $5,000.

Second instalment: The taxpayer uses the last year's RIT plus 5% option, so she still has total provisional tax payable of $12,600. Under section 381(b) the amount due on the second instalment date is two thirds of $12,600 less any amount previously due and payable ($4,200 at the first instalment date), so the taxpayer is required to pay $4,200. The $800 voluntary payment is not an amount which was previously due and payable, so it is not taken into account in this calculation. However, as the taxpayer has made an $800 voluntary payment which is now standing in her account as a credit, the amount she needs to pay is only $3,400. However, she pays $4,200 to maintain the $800 overpayment.

Third instalment: The taxpayer again pays $4,200 on the basis of her last year's RIT plus 5%, maintaining the voluntary payment.

The voluntary payment carries forward until terminal tax date, when it reduces the taxpayer's terminal tax liability (if any).

Section 383: Refund of overpaid provisional tax

This section provides for the refund of overpaid provisional tax when the either the taxpayer or the Commissioner reduced the amount of provisional tax payable. To qualify for a refund the taxpayer must have paid more provisional tax than is actually due and payable after the reduction in total provisional tax payable takes place. A taxpayer must make a written request before any overpaid provisional tax will be refunded.

The Commissioner may use the refund to pay any of the taxpayer's income tax due which remains unpaid.

Example

A company pays provisional tax for the 1994/95 income year. The company's RIT for the 1993/94 income year is $12,000. It files its 1993/94 tax return before the first instalment date. After the second instalment date the company chooses to estimate its provisional tax liability for the entire income year at $9,000.

First instalment: The company uses the last year's RIT plus 5% option. This establishes a total provisional tax payable amount of $12,600 under section 377(1) so the company must pay $4,200. It pays this amount.

Second instalment: The company still uses the last year's RIT plus 5% option, so it still has total provisional tax payable of $12,600. It is required to pay $4,200 (two thirds of $12,600) less the $4,200 paid at the first instalment date. It pays this amount.

Estimation: Shortly after the second instalment date the company estimates its provisional tax liability at $9,000. Recalculating the first and second instalments on the basis of this new estimate means that the amount of provisional tax due on each of those instalments was $3,000. This means the company is entitled to receive a refund of $2,400. It sends in a written request, and receives the refund.

Third instalment: The third instalment is calculated as normal on the basis of the estimate, and the company is required to pay $3,000. It does so.

Section 383(2) deals with the case of taxpayers who consider themselves to be provisional taxpayers for the current income year, but who turn out not to be as the preceding income year's RIT was less than $2,500. This section allows the Commissioner to refund the provisional tax incorrectly paid.

Section 383(3) provides the rules for determining the amount of provisional tax payable for those instalments which occur after a refund of provisional tax overpaid. This section provides that the amount of provisional tax payable shall be calculated as if the amount payable on the previous instalment dates was an amount reduced by the amount of provisional tax refunded.

This section also provides that any provisional tax refunded is not counted as provisional tax paid. This is so any amounts refunded are not taken into account for underestimation additional tax purposes.

Section 384: Additional tax on underpaid provisional tax

This section imposes additional tax where an insufficient amount of provisional tax is paid on an instalment date. It effectively duplicates section 398(2) except that a number of provisions are inserted to prevent excess additional tax being applied.

Subsection (1) provides that additional tax will be applied when any provisional tax due remains unpaid on any instalment date. The amount of the additional tax applied is 10% of the amount which is due but unpaid.

The amount which remains unpaid is the difference between what the taxpayer was required to pay and what the taxpayer actually paid. If a taxpayer is not a new provisional taxpayer (or a new provisional taxpayer with three instalments) the amount that taxpayer is required to pay is the lesser of these amounts:

- the amount due on the instalment
- one-third of the taxpayer's residual income tax for that income year.

This restriction on the amount of provisional tax due prevents the overcharging of additional tax where the taxpayer's income tax liability is less than the amount the taxpayer is required to pay in provisional tax during the income year.

If the taxpayer is a new provisional taxpayer who must pay in two instalments, the amount that must be paid is the lesser of the amount due on the instalment date and half the taxpayer's residual income tax for that income year. Similarly, if only one instalment is due, the taxpayer must pay the lesser of the amount due on the third instalment date and the residual income tax for that income year.

The amount of provisional tax paid by an instalment date includes any amount overpaid at an earlier instalment date which remains overpaid. This includes any voluntary payment made under section 382.

This subsection also applies to any amount due on a date specified by the Commissioner, if the amount due on that date is not paid. However, the capping of the liability to ensure it does not exceed the taxpayer's income tax liability for the year does not apply in this case. The calculation is simply on the difference between what was due and what was paid.

Subsection (2) provides that the due date for any additional tax under this section is the instalment date. This means any additional tax first compounds six months after that instalment date.

Subsection (3) provides that additional tax under this section shall be treated as additional tax calculated under section 398, and shall have incremental tax calculated under that section.

Section 385: Additional tax where residual income tax underestimated as at final instalment date

Subsection (1) determines when additional tax on an underestimation of provisional tax is to be charged. Additional tax can be charged to these two groups of provisional taxpayers:

- those whose residual income tax in the immediately preceding income year exceeded $2,500 (because they therefore had to make payments)
- those whose RIT in the preceding income year did not exceed $2,500, but whose RIT in the current year exceeds $300,000, if they underestimate their provisional tax.

For underestimation additional tax to be charged, the taxpayer or the Commissioner must have estimated at less than 80% of the RIT for that income year, and the amount paid on or before the third instalment date must be less than 80% of the taxpayer's RIT for the income year. The latter requirement corrects the problem in the old legislation that allowed underestimation additional tax to be charged when a taxpayer's estimate was less than 80% of current year RIT, but the taxpayer had paid more than 80% of the tax due.

Subsection (1) sets out how the additional tax for underestimation is to be calculated. The amount of additional tax imposed varies depending on whether the taxpayer is a voluntary or compulsory estimator.

If the taxpayer is required to estimate, the additional tax is 10% of the difference between the taxpayer's RIT for the income year and the greater of these amounts:

- the amount of provisional tax the taxpayer was required to pay during the income year
- the amount of provisional tax paid during the income year.

If the taxpayer makes a voluntary estimate, the additional tax is 10% of the difference between the lessor of these amounts:

- the taxpayer's RIT for the income year
- 105% of the preceding year's RIT

and the greater of these amounts:

- the amount of provisional tax the taxpayer was required to pay during the income year
- the amount of provisional tax paid during the income year.

Basing the additional tax on the difference between what should have been paid and the greater of what was due and what was paid prevents the double imposition of additional tax when a taxpayer short pays a provisional tax payment and underestimates. Under the old legislation if a taxpayer short paid and underestimated, and that underestimate was not caught up by the third instalment date, the amount of the underpayment was incorporated in the calculation of additional tax for underestimation. This meant that the taxpayer was penalised twice.

Subsection (2) provides that the additional tax on underestimation will be due on the terminal tax date for the income year to which the additional tax applies.

Subsection (3) provides that additional tax shall be recoverable as income tax.

Subsection (4) provides that the Commissioner shall issue an assessment of additional tax on an underestimation. The taxpayer may object on the grounds that the assessment made is excessive or that the person is not chargeable with additional tax.

Subsection (5) provides that the taxpayer may object to an assessment.

Subsection (6) provides that additional tax under imposed this section shall be treated as if it was additional tax imposed under section 398.

Section 386: Remission of additional tax imposed on underestimation

Subsection (1) provides for remission of additional tax. Additional tax can be remitted if the Commissioner is satisfied that any provisional taxpayer has become liable for additional tax under section 385 of this Act because of one of these occurrences:

- an Act is enacted or a regulation or Order in Council is made, if this happens on or after the first day of the month before the month of a taxpayer's third instalment date
- The Commissioner makes public an amended ruling on or after the first day of the month before the month of a taxpayer's third instalment date
- the taxpayer adopts an interpretation of the legislation which is reasonable but incorrect
- the taxpayer derives dividends which are an attributed repatriation, and the taxpayer could not reasonably have foreseen the amount of these dividends at the time of making the estimate.

Subsection (2) allows underestimation additional tax to be remitted if certain unforeseen events occur. To qualify for this remission, these conditions must be met:

1. The taxpayer's estimate must have been fair and reasonable at the time it was filed.
2. The difference between the estimate and the taxpayer's residual income tax for the income year must be wholly or principally due to one or more of these transactions or events:
   - a transaction or event which the taxpayer could not reasonably be expected to have foreseen to had knowledge of on or before the first day of the month before the month the third instalment date occurs
   - a transaction or event which the taxpayer could foresee, but the amount of tax liability caused by that event could not reasonably have been known on or before the first day of the month before the month the third instalment date
3. If the transaction or events had not occurred, the taxpayer's residual income tax must have been reduced by 20 percent or more.

Subsection (3) provides that no transaction or event shall be taken into account for the purposes of subsection (2) if it meets either of these conditions:

- the transaction or event is the payment of directors' fees, salary, wages or other income for or on account of service as an employee to any taxpayer who is a shareholder in and an employee of a private company
- the transaction or event is one whose occurrence is controlled by the taxpayer or an associated person

The objective of this section is to limit the remission to those "true" unforeseen events and to exclude related party transactions.

Subsection (4) provides that additional tax under this section is not eligible for relief under section 413.

Subsection (5) provides that no additional tax shall be remitted under this section if the timing of any receipt of income or incurring of expenditure has been altered, and part or all of the purpose of the alteration was to have additional tax remitted. This anti-avoidance provision is to prevent changes in the timing of income receipt and expenditure to qualify for remission under subsection (2) of this section.

Subsection (6) provides that a request for remission of underestimation additional must be accompanied by other documents or other information sufficient to satisfy the Commissioner that remission is warranted.

Section 387: Payments to be set off within wholly owned group

Subsection (1) provides that for movement of provisional tax payments between wholly owned companies, this section applies for both provisional tax and use-of-money interest purposes.

Subsection (2) provides that any company which pays provisional tax in excess of its residual income tax for an income year may elect to allocate that excess to a company which is part of the same wholly owned group of companies, if the second company has paid less than its RIT for the income year. Under subsection (6), the first company's election must meet these conditions:

- it must be in writing;
- it must name the underpaid company or companies to which the excess is to be allocated;
- it must be filed within the time that the underpaid company has to make its payment (but the Commissioner may extend this time limit)
- it must specify the day on which the excess amount is deemed to be allocated to the underpaid company, and the amount of the excess that is to be allocated.

Subsection (3) provides that the excess provisional tax paid may only be allocated on or after the later of the date on which the excess is paid and the underpaid company's first instalment date.

Subsection (4) provides that the amount allocated from the overpaid company to the underpaid company shall be deemed to be transferred on the day specified in the taxpayer's notice.

Subsection (5) provides that the allocation from an overpaid company to an underpaid company shall be deemed to be provisional tax paid by the underpaid company, and not provisional tax paid by the overpaid company.

Section 388: Offset of further income tax

Subsections (1) and (2) provide that if a company was required is required to pay further income tax to ensure that an ICA account balances, that further payment will be set off against the taxpayer's provisional tax liability.

Section 389: Allowance for provisional tax paid by agent

This section provides that provisional tax paid by an agent on behalf of a principal shall be deemed to be provisional tax paid by the principal.

Section 390: Assessment and payment of terminal tax

Subsection (1) provides that the amount of income tax for which a provisional taxpayer is liable shall be calculated under Part IV of the Act.

Subsection (2) provides that the income tax which a provisional taxpayer is required to pay shall be due and payable on the taxpayer's terminal tax date. This date will be the 7th day of the month specified in the eighth schedule to the Act as being the month for the payment of terminal tax.

Subsection (3) provides that the Commissioner may set an earlier due date as the due date for the payment of terminal tax, as long as this date is not less than 30 days after the issue of the assessment.

Section 391: Provisional tax to be credited in payment of income tax

Any provisional tax paid by in accordance with this section is credited towards the taxpayer's income tax liability.

Section 392: Application of other parts to provisional tax

This specifies that the other Parts of the Act shall apply as if the amount the taxpayer is required to pay under this Part were income tax levied under section 38.

Section 398A: Interest to be charged when residual income tax exceeds provisional tax

Subsection (1) defines the following terms:

"Income tax payable" - This term is adjusted to account for Family Support over- and underpayments.

"Interest liability period" - this is the period over which interest on underpaid income tax is calculated. it starts on the day after the unpaid tax was due and ends on the taxpayer's terminal tax date for that income year.

"Provisional taxpayer" has the same definition as in section 375 of this Act.

"Specified rate of interest" means the rate prescribed under subsection 11(a) of this section. The rate on underpayments for the 1994/95 income year was recently set at 9% per annum. This rate may be deductible under the normal income tax provisions. Note that under the new provisional tax rules the rate on underpayments can now be different from the rate on overpayments (4.5% assessable for the 1994/95 income year).

"Trustee income" has the meaning assigned to that term by subsection 226 of this Act. This term is used in specifying that those with trustee income and who are provisional taxpayers are subject to interest.

This subsection then provides that other terms used have the definitions assigned to them by section 375 of the Act.

Subsection (2) provides that the following taxpayers shall be charged interest where provisional tax remains unpaid by due date:

- any provisional taxpayer who is not a natural person
- any provisional taxpayer who is a natural person whose residual income tax is greater than $30,000
- any provisional taxpayer who is a natural person who estimates his/her residual income tax
- any provisional taxpayer who is a natural person who at any time during the income year held a valid certificate of exemption from resident withholding tax under section 327M(12)
- Any natural person, in that person's capacity as trustee, to the extent that s/he is a provisional taxpayer in relation to the trustee income.

The period which interest on underpaid income tax is calculated over an "interest liability period". This is the period between the date the tax was due and the taxpayer's terminal tax date.

Subsection (3) provides that the interest calculation is undertaken daily and is calculated according to the following formula:

$$\frac{a \times b}{365}$$

Here's what the variables stand for:

a is the amount of tax that remains unpaid at the beginning of the day

b is the interest rate applying on that day.

Subsections (4), (5) and (6) allocate the provisional taxpayer's income tax liability over the relevant number of provisional tax instalment dates. If the amount paid by any instalment date is less than the amount allocated to that date, the difference between the two amounts is the amount of tax underpaid. These subsections override the Part XII provisions for determining how much is payable on each instalment date. The general principle these subsections apply is that income tax payable, for the purposes of this section, is either due evenly during the income year or at the third instalment date.

Subsection (4) provides that if a provisional taxpayer is not a new provisional taxpayer, and has more than $30,000 of residual income tax, that taxpayer's tax liability is due in three instalments for the purposes of this section. The instalments are due on the first, second and third instalment dates.

Subsection (5) provides that if a provisional taxpayer is not a natural person, and its residual income tax does not exceed $30,000, its income tax due in one instalment on the third instalment date for the purposes of this section. This subsection also provides that if a provisional taxpayer is a natural person and has RIT for the year of less than $30,000, if s/he estimated his/her provisional tax, the income tax is all due on the third instalment date for the purposes of this section. It also applies to any natural person who holds a valid certificate of exemption under section 327M(12)

Subsection (6) deals with new provisional taxpayers. The income tax of a new provisional taxpayer whose RIT exceeds $30,000 shall be due in one of these ways:

- in three equal instalments, if the taxpayer's first business day was more than 30 days before the first instalment date.
- in two equal instalments on the second and third instalment dates, if the taxpayer's first business day is 30 or fewer days before the first instalment date, but more than 30 days before the second instalment date.

- in one instalment on the third instalment date, if the taxpayer's first business day is 30 of fewer days before the second instalment date.

Subsection (7) covers the case where the taxpayer's income tax assessment is issued before the taxpayer's terminal tax date, and the taxpayer is being charged interest under this section. If the taxpayer pays the amount specified in the assessment together with the interest due within 30 days of the date the assessment was issued, any interest which accumulated between the issue of the assessment and the receipt of the payment is remitted.

Subsection (8) provides that interest can be remitted if the Commissioner is satisfied that the taxpayer has become liable for interest because of one of these events:

- an Act is enacted or a regulation or Order in Council is made on or after the first day of the month before the month of the taxpayer's third instalment date
- the Commissioner publicises an amended ruling on or after the first day of the month before the month of the taxpayer's third instalment date

Subsections (9) provides that any interest due and payable under this section is due on the taxpayer's terminal tax date for the income year to which the interest relates. If payment is not made then additional tax would be imposed under section 398.

Subsection (10) provides that interest is deemed to be incurred in the income year in which the assessment is made. This generally means that interest charged is deductible in the income year following the year to which the interest relates. This prevents circularity. If the interest was deductible in the income year to which it relates this would affect the taxpayer liability which affect their interest and so on.

Subsection (10) also provides that interest shall be recoverable as if it were income tax.

In the case of reassessment, if a taxpayer's tax liability (and thus the interest liability) increases, the increased interest is due on the taxpayer's terminal tax date for the income year to which the interest related. This means additional tax would apply unless the Commissioner set a new payment due date under section 398(5). The increased interest charge would be deductible in the income year in which the amended assessment was issued (as provided for in paragraph (a) of subsection 10).

If a taxpayer's income tax liability is reduced under a reassessment, the taxpayer's use-of-money interest charge will correspondingly be reduced. This reduces the size of the deduction the taxpayer is eligible for in the following income year.

Subsection (11) provides that the Governor-General may from time to time by Order in Council set the interest rate to apply for the purposes of this section.

This subsection also provides that the $30,000 threshold may also be raised by Order in Council. Any change in threshold must be made before the 1st day of October in the year before the start of the standard 1 April to 31 March income year.

Section 413A: Interest on tax overpaid

Subsection (1) defines the following terms:

"Person incorrectly assumed to be a provisional taxpayer" means a person who had residual income tax exceeding $2,500 in the immediately preceding income year and who in the current income year, and who meets all of these conditions:

- the person reasonably expected to be a provisional taxpayer
- the person made an estimate of residual income tax for that income year, in anticipation of being a provisional taxpayer
- the person paid $2,500 or more of provisional tax by the third instalment date
- the person was not a provisional taxpayer, because the residual income tax liability did not exceed $2,500 in the income year.

Even though these persons are not provisional taxpayers, they will be paid use-of-money interest as though they were. This definition is used in subsection (2) to ensure that these taxpayers are fairly treated. Estimation of tax liabilities at low income levels can be difficult and it is unfair for a person who thought and behaved as a provisional taxpayer not to be paid interest on an overpayment due to a reduction in income which may have been unforeseeable.

"Provisional taxpayer" has the same meaning as in section 375 of the Act

"Specified rate of interest" means the rate prescribed under subsection (10) of this section

"Trustee income" has the meaning assigned to that term by subsection 226 of this Act. This term is used to specify that those with trustee income and who are provisional taxpayers are eligible for interest.

This subsection then provides that other terms used have the definitions assigned to them by section 375 of the Act.

Subsection (2) provides that the Commissioner will pay interest on overpaid provisional tax to these types of taxpayers:

- any provisional taxpayer or person incorrectly assumed to be a provisional taxpayer who is not a natural person
- any provisional taxpayer or person incorrectly assumed to be a provisional taxpayer who is a natural person whose residual income tax exceeds $30,000
- any provisional taxpayer or person incorrectly assumed to be a provisional taxpayer who filed an estimate of residual income tax for the year

- any natural person who is a provisional taxpayer in their capacity as a trustee.

Subsection (4) provides that taxpayers will be eligible for interest over a period called the interest entitlement period. The interest entitlement period ceases on the taxpayer's terminal tax date and starts on either the first, second or third instalment date.

The interest entitlement period starts on the third instalment date, if a person meets any of these conditions:

- the person is a provisional taxpayer whose residual income tax for the income year is less than $30,000
- a person incorrectly assumed to be a provisional taxpayer
- the person is a new provisional taxpayer who is required by section 380(3) to pay provisional tax in one instalment
- the person had less than $2,500 of RIT last year, but has more than $300,000 RIT this year.

The interest entitlement period starts on the second instalment date, if the person is a new provisional taxpayer whose residual income tax liability exceeds $30,000, and the person is required by section 380(2) to pay provisional tax in two instalments.

In all other cases, the interest entitlement period starts on the first instalment date.

After it has been established which instalments are eligible for overpayment interest, **subsection (5)** allocates a taxpayer's residual income tax liability to the relevant instalment dates, to allow the calculation of the amount by which the taxpayer has overpaid.

If the taxpayer's interest entitlement period starts on the third instalment date, the taxpayer's RIT is deemed to be due and payable on the third instalment date. Similarly, if the taxpayer's interest entitlement period starts on the second instalment date, the taxpayer's residual income tax is deemed to be due equally over the second and third instalment dates. Finally, where the taxpayer's interest entitlement period starts on the first instalment date, the taxpayer's residual income tax is deemed to be due equally over all three instalment dates. The amount the taxpayer actually paid by each instalment date will then be compared with the amount that should have been paid, to work out the taxpayer's interest entitlement.

Subsection (6) provides that certain amounts paid in excess are not included in the above calculations. These amounts are:

- overpaid tax retained by the Commissioner under sections 394M or section 394ZZX. These sections limit the refund of tax to the amount of credit balance in a company's imputation credit account and to the credit balance in the company's branch equivalent tax account.
- any tax retained which is only tax paid in excess as a result of the crediting to a provisional tax instalment date of any further income tax retained to make an imputation credit account balance.

Subsection (7) credits any interest which accumulates under this section towards any underpaid provisional tax instalment, if that underpaid instalment occurs after the day the interest accrued. This prevents a taxpayer having additional tax imposed on an underpayment of provisional tax, and at the same time having an amount of interest accrued under this section on an earlier overpayment.

Subsection (8) provides that the Commissioner may refund the interest as if it were income tax and that the interest is deemed to be interest for the purposes of Parts IV and IXA of this Act. This means the interest is assessable and subject to resident withholding tax.

Subsection (9) provides that if any amount of interest under this section has been incorrectly paid, the Commissioner may recover that overpayment as if it were income tax due.

Subsection (10) provides that the Governor-General may from time to time by Order in Council set the interest rate to apply for the purposes of this section.

Subsection (11) is a mechanical section which allows the Commissioner to pay the interest without further appropriation.

Appendix D

Prescribed format for Commissioner's part of case stated

This appendix sets out the prescribed format which will be used for the Commissioner's part of a case stated to a Taxation Review Authority or the High Court. There is no actual form as such for this part of the case, so we have published this sample format for the information of potential objectors and their agents.

A1

IN THE HIGH COURT OF NEW ZEALAND
[Insert name] REGISTRY

No.________________/___________

IN THE MATTER **of** *[Insert relevant Act]*

BETWEEN *[Full name]*, of *[Place of residence]*, *[Occupation]*

OBJECTOR

AND **THE COMMISSIONER OF INLAND REVENUE**

COMMISSIONER

CASE STATED

under *[Insert relevant section and Act]*

CROWN LAW OFFICE
P O Box 5012
WELLINGTON

[Insert name of Crown Counsel]
Telephone (04) 472-1719
Facsimile (04) 473-3482

[AND where applicable]
By his Agent:

[Insert name]
Crown Solicitor
[Insert Post Office box address]

[Name of solicitor]
[Insert telephone number]
[Insert facsimile number]

[Insert page number A1 in top right corner]*

PART A

[This part shall commence on a new page and each page of this part shall be numbered in sequence A2, A3 and so on in the top right hand corner of the page]

[General instructions. Where there are two or more paragraphs they shall be numbered 1.1, 1.2 and so on]

INDEX

[The index shall be set out on a separate page

PARTICULARS AND STATEMENT OF CASE

[EITHER (where objection relates to an assessment and/or a determination of an amount)]

PARTICULARS OF ASSESSMENT *[and/or DETERMINATION]*

1. **Type of tax:**
   [State type of tax and relevant Act]

2. **Nature of disputed adjustment:**
   [A brief statement of the factual basis of each item subject to objection]

3. **Amount of disputed adjustment:**
[State amount of adjustment]

4. **Grounds of assessment** *[and/or determination]:*
[Shortly state the grounds of assessment and/or determination, including the pertinent legislative provisions and references to the documentation which gives the grounds of assessment and/or determination]

[OR (where objection relates to a decision and/or other determination)]

PARTICULARS OF DECISION *[and/or DETERMINATION]*

1. **Type of tax:**
[State type of tax and relevant Act]

2. **Section under which decision** *[and/or determination]* **made:**
[Refer to section and Act under which the Commissioner has made decision and/or determination]

3. **Decision** *[and/or determination]* **made:**
[Shortly state the decision and/or determination made]

4. **Grounds for decision** *[and/or determination]:*
[Shortly state the grounds on which the Commissioner made the decision and/or determination, including the pertinent legislative provisions and references to the documentation which gives the grounds for the decision and/or determination.]

GROUNDS OF OBJECTION

5. **Section under which objection made:**
[Refer to section and Act authorising objection]

6. **Sections on which objection based:**
[Refer to sections relied on, and identify the documentation disclosing that information. If no section is specified by Objector insert "No section specified in Objection".]

7. **Essential facts on which objection based:**
[Shortly outline the essential facts stated by the Objector in the grounds of objection.]

8. **Attachments containing grounds of objection**
[Identify the attachment to the case stated containing the Objector's grounds of objection.]

QUESTION*[S]* **FOR DETERMINATION**

9. The question*[s]* to be determined *[is/are]*:
[State the issue or issues to be resolved by the Court, identifying the nature and amount of the disputed adjustment, if any, and the tax period to which the objection relates. Identify any difference between the question or questions posed and the issues which the Objector claims require determination as stated in the Objector's notice of grounds.]

STATING OF CASE

This case is stated by the Commissioner of Inland Revenue, by the Commissioner's solicitor *[Name of solicitor responsible for stating the case.]*

Dated this day of 19

[Signature of solicitor]
[Name of solicitor]

OBJECTOR'S ADDRESS FOR SERVICE

Documents associated with this case may be served on the Objector, by:

(a) delivery to *[state place for service of Objector]*; or

(b) by post to *[state address for postal service of Objector]*

[add any other modes of service accepted by the Objector such as facsimile transmission or document delivery service.].

The telephone number of the Objector *[or Objector's agent (state name of agent)]* is *[state any telephone numbers identified by the Objector.]*

COMMISSIONER'S ADDRESS FOR SERVICE

Documents associated with this case may be served on the Commissioner, by:

(a) delivery to *[place for service of Commissioner];* or

(b) by post to *[address for postal service of Commissioner]*

[add any other modes of service accepted by the Commissioner such as facsimile transmission, or document delivery service.]

The telephone number of the Commissioner's representative *[state name of agent representing the Commissioner]* is *[state telephone number.]*

PART C

[This part shall commence on a new page and each page of this part shall be numbered in sequence C1, C2 and so on.]

[General instructions. Where there are two or more paragraphs they shall be numbered 1.1, 1.2 and so on]

COMMISSIONER'S RESPONSE TO OBJECTOR'S NOTICE

Statement of further facts

1. The Commissioner refers to Part 2 of the Objector's notice of points of objection and states in respect of the facts:

   [The Commissioner shall reply to the Objector's statement of facts relied on, and identify the facts which the Commissioner accepts as true, and those which are not accepted (whether by reason of evidence to the contrary or lack of evidence, which basis need not be stated).]

   [The Commissioner shall also set out additional facts on which it is intended to rely.]

Commissioner's statement of law

2. The Commissioner refers to Part 3 of the Objector's notice of points of objection and states in respect of the propositions of law relied on by the Objector:

   [The Commissioner shall reply to the Objector's statement of propositions of law relied on; and either accept or reject the propositions relied on by the Objector; and state any further propositions of law on which the Commissioner intends to rely.]

Commissioner's statement of issues

3. The Commissioner refers to Part 4 of the Objector's notice of objection and states in respect of the issues which require determination:

   [The Commissioner shall reply to the Objector's statement of issues which require determination; and either accept the issue(s) as stated by the Objector; or identify the issues which the Commissioner considers arise and identify the differences between the Commissioner's position and the Objector's position.]

PART D

LIST OF DOCUMENTS

[This list shall commence on a new page and each page of this list shall be numbered in sequence DL1, DL2, and so on.]

The following documents were attached to the Objector's notice of Points of Objection:

[Insert a list of the documents attached to the Objector's notice. If no documents were attached insert "No documents attached".]

The Commissioner considers that the following documents (which were not attached to the Objector's notice of points of objection) are material in this proceeding:

[List the documents in date order, giving the page number, date, and a description of each document.]

[Documents, other than documents attached to the Objector's notice, on which the Commissioner intends to rely, shall be included, unless they are numerous, in which case they may be listed without being included. The top right hand corner of each page of each document is to be numbered in sequence E1, E2 and so on.]

TIB Appendices

Volume Five, No. 11 April 1994
