TAX INFORMATION BULLETIN

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The Taxation (Core Provisions) Bill was introduced into Parliament on 7 December 1995. It was passed on 26 July 1996, and became the Taxation (Core Provisions) Act 1996 [No.67]. This Act amends the Income Tax Act 1994 and the Tax Administration Act 1994. It also makes consequential amendments to several other Acts.

See the inside front cover for a full list of this TIB's contents.

This TIB has no appendix.

(TIB Volume Eight, No.8 will appear at the end of November. The out-of-sequence numbering arises because we needed to allocate an issue number to coincide with a NZ Gazette notice, and at the time it was uncertain which TIB would be ready first.)

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This is an Inland Revenue service to people with an interest in New Zealand taxation.

Contents

Taxation (Core Provisions) Act 1996 1

New Part A - Purpose and Application 2

New Part B - Core Provisions 3

General consequential changes 8

Consequential amendments to Part C - Income Further Defined 11

Consequential amendments to Part D - Deductions Further Defined 15

Consequential amendments to Part E - Timing of Income and Deductions 17

Consequential amendments to Part F - Apportionment and recharacterised transactions 19

Consequential amendments to Part G - Avoidance and non-market transactions 20

Consequential amendments to Part H - Treatment of net income of certain entities 21

Consequential amendments to Part I - Treatment of net losses 23

Consequential amendments to Part J - Surcharges 26

Consequential amendments to Part K - Rebates 26

Consequential amendments to Part L - Credits 27

Consequential amendments to Part M - Tax payments 28

Consequential amendments to Part N - Withholding taxes and taxes on the income of others 29

Consequential amendments to Part O - Definitions and related matters 30

Consequential amendments to Part Y - Amendments, repeals, savings and transitional provisions 31

Consequential amendments to the Tax Administration Act 1994 31

Comparative tables of old and new provisions 32
- Changes to the Income Tax Act 1994 32
- Changes to the Income Tax Act 1976 or the Inland Revenue Department Act 1974 35
- Changes to definitions 37
- Changes to the Tax Administration Act 1994 37

Taxation (Core Provisions) Act 1996

Part B, Income Tax Act 1994 and consequential amendments to the Income Tax Act 1994 and Tax Administration Act 1994

Introduction

The Taxation (Core Provisions) Act 1996 represents the first phase of the rewrite of the Income Tax Act in plain language. It contains new core provisions which set out the key laws on which the rest of our income tax legislation is based.

The core provisions:

- provide an overview of the scheme and purposes of the Act
- provide all the essential rules for taxpayers to calculate and satisfy their income tax liability
- provide the basis for the application of other Parts.

The new core provisions adopt a "global/gross" approach to the calculation of an income tax liability.

The core provisions have been drafted in plain language. The new drafting style for the core provisions minimises complexity, repetition and the use of redundant words. The structure of the core provisions is represented in diagrams in the Act.

The legislation makes consequential amendments to all Parts of the Act to ensure that tax legislation conforms to the "global/gross" approach being implemented by the core provisions. This process has necessitated significant amendments to the Income Tax Act and other Inland Revenue Acts.

Although the core provisions and consequential amendments are not intended to change policy, in a few areas it has been necessary to clarify policy. These are highlighted in this TIB.

Background

In its final report, the Consultative Committee on the Taxation of Income from Capital (the Valabh Committee) noted the importance of a coherent scheme in tax legislation. The re-ordering and renumbering of the Income Tax Act 1976 and the subsequent enactment of the Income Tax Act 1994 was the first step in this process. The Working Party on the Reorganisation of the Income Tax Act 1976 recommended that the re-ordering be followed by a full rewrite of tax legislation in a number of phases over the next four to five years. The Government adopted this recommendation. The aim of the rewrite, as outlined in the December 1994 discussion document *Rewriting the Income Tax Act: Objectives, process, guidelines*, is to reduce the various costs (such as compliance, administrative and legal costs) incurred by taxpayers and society generally because of the way tax law is expressed.

The new core provisions are the first step in the rewrite of the Act. *Core Provisions: Rewriting the Income Tax Act, A discussion document*, released in May 1995, outlined the Government's objectives and proposals for the new core provisions. The Government received submissions and undertook further consultation before the introduction of the Taxation (Core Provisions) Bill, in December 1995.

Further submissions were received at the Select Committee stage. The new core provisions, which differ from the draft legislation in the discussion document and the commentary on the bill, are the result of an extensive consultation process.

Key features

The new core provisions are intended to give an overview of the scheme and purposes of the Act. The core provisions also provide all the essential rules for taxpayers to calculate and satisfy their income tax liability.

The core provisions provide the basis for the application of other Parts of the Income Tax Act. In particular, the role of each of the Parts in calculating and satisfying a taxpayer's income tax liability is set out in the core provisions. The core provisions govern the application of the rest of the Act by referring readers to the later Parts of the Act dealing with particular steps in the calculation e.g., Part I for losses (see section BC 6 (4)).

The global gross approach begins with the allocation of gross income and allowable deductions to income years under the relevant timing rules. The calculation of a taxpayer's income tax liability then begins with the determination of "annual gross income", being the total of all gross income for a particular year. The total amount of deductions for the year - "annual allowable deductions" - is then calculated. This is subtracted from annual gross income, resulting in a single net income or net loss figure.

This approach is in contrast to the approach of undertaking separate calculations of net income or loss in respect of a number of sources of income.

The new core provisions have been drafted in plain language. The plain language drafting style is intended to minimise complexity, repetition and the use of redundant words. Wherever possible, the legislation adopts words that are commonly used. The complexity of the subject matter means that the resulting legislation is not simple, but the complexity is reduced by the new drafting style.

The new Part B includes charts, descriptive headings for subsections and, at the end of each section, a list of defined terms used in the section. These are aids to interpretation only and are not part of the operative text of the legislation. The interpretive sections in the new Part A make it clear that if there is a conflict between the new aids to interpretation and the substantive sections of the Act, the substantive section will apply.

continued on page 2

from page 1

The new Part A contains a purpose provision, setting out the main purposes of the Act and a new interpretation provision which emphasises the importance of the core provisions, purpose provisions and the structure of the Act in interpreting legislation. Part A also includes a provision stating in general terms to whom the Act applies which is not intended to alter the residence or source rules in the Act.

Consequential amendments have been made to all other Parts of the Act and to other legislation to ensure that the body of tax legislation conforms to the global/gross approach being implemented by the new core provisions. Because these consequential amendments have been made to Parts that are yet to be rewritten, the drafting style of those Parts has been retained.

Most of the consequential changes are terminological. The most frequent change is the replacement of the term "assessable income" with "gross income", "net income" or "taxable income". The term "assessable income" was used inconsistently throughout the pre-core provisions Act to encompass different levels of income. Sometimes it referred to gross income, other times to net income and occasionally to both in the same section (see for example, the former section BB 7). It is intended that the amendments will remove these inconsistencies.

More substantial drafting changes have been made in the following areas:

- Provisions which referred to "profit", such as land transactions, personal property, forestry and minerals. These have generally been split into income, deductions and timing components. The deductions and timing components have been made explicit through a new provision applying to "revenue account property" (section DJ 13) and a new matching provision (section EF 2);
- Regimes containing net or schedular components, such as mineral mining and life insurance.

In general the amendments are not intended to change policy. However, in some instances, as in section HF 1 (2), relating to mutual associations, it has been necessary to clarify an ambiguity.

The amendments confirm the Court of Appeal's decision in *CIR* v *Inglis* (1992) 14 NZTC 9,180: that a loss on disposition of personal property is in effect deductible where, if a profit had been derived in the same circumstances, it would have been assessable.

The savings provision inserted for the 1994 reordered Act has been retained in Part Y for sections that have not been amended subsequently. There are also new savings provisions in section 2 of the Taxation (Core Provisions) Act in relation to the use of the terms "gross income" and "exempt income" generally and, in particular, the replacement of the words "profits or gains" with "amounts" in section CD 3 relating to business income.

Binding rulings issued before the application of the core provisions legislation may cease to apply if they were based on any provision amended or repealed by the legislation. A special process has been established for rulings affected by changes in the core provisions legislation only (as contained in section 3). The Commissioner will:

- reissue the ruling, if the Taxation (Core Provisions) Act has not substantially altered the way the tax law in the ruling applies;
- at the taxpayer's request only issue a new ruling if the ruling cannot be reissued along the same lines as the existing ruling due to the nature of the changes in the core provisions legislation (any substantial changes made to the tax law other than those noted in this TIB will be reported to the Government).

Affected rulings will be reissued (or issued), free of charge, on the basis of the taxpayer's original application.

Application date

The new core provisions and consequential amendments will apply to the 1997-98 and subsequent income years.

New Part A - Purpose and Application

Section AA 1 - purposes of Act

The new section AA 1 provides that the main purposes of the Income Tax Act 1994 are to:

- impose tax on income
- impose obligations in respect of tax
- set out rules to be used to calculate the tax and to satisfy the obligations imposed.

The new purpose provision distinguishes the Income Tax Act from other Revenue Acts.

A purpose provision for the Income Tax Act as a whole was envisaged in the December 1994 discussion document[1]. The discussion document went on to say that: "Purpose provisions will be used where they assist taxpayers and other users of legislation to appreciate the general intention of the particular Part, Subpart or sections to which they relate. Purpose provisions can also assist in the resolution of unforeseen ambiguities." This is consistent with the original recommendations of the Valabh Committee that led to a Subpart A being set aside, in each Part in the 1994 reordered Act, for the insertion of a purpose provision.

New section AA 2 gives readers a preliminary indication of the persons to whom the Income Tax Act 1994 and the Tax Administration Act 1994 apply. Persons who are "resident in New Zealand or who (have) income from New Zealand" must satisfy the obligations

1. Rewriting the Income Tax Act: Objectives, process, guidelines.

imposed by the Income Tax Act and the Tax Administration Act. The reference to "income" is to income in a non-technical sense rather than a defined term. This new provision is not intended to affect the application of the specific residence and source rules in the Act.

Section AA 3 - Interpretation

New section AA 3 introduces an interpretation provision to the Income Tax Act. It requires the user to have regard not only to the words of a particular provision, but also to the purpose provisions, the core provisions and the way in which the Act has been organised. It is intended that each of these features of the re-ordered and rewritten Act be used to improve the reader's ability to understand the meaning of a provision.

Section AA 3 (2) makes it clear that diagrams and lists of defined terms at the end of sections are aids to interpretation only. They are designed to help readers follow the structure of a Part and its connection to other Parts of the Act. They are also designed to help readers identify the steps that must be taken to determine an income tax liability under the Income Tax Act 1994. If there is a conflict between these new aids and the sections of the Act, section AA 3 (2)(a) makes it clear that the aids to interpretation do not apply.

If a defined term is inadvertently omitted from a list, and the term is defined for the purposes of the section (or the Act), the meaning conferred by the definition is still applicable, as the lists are an aid to interpretation only.

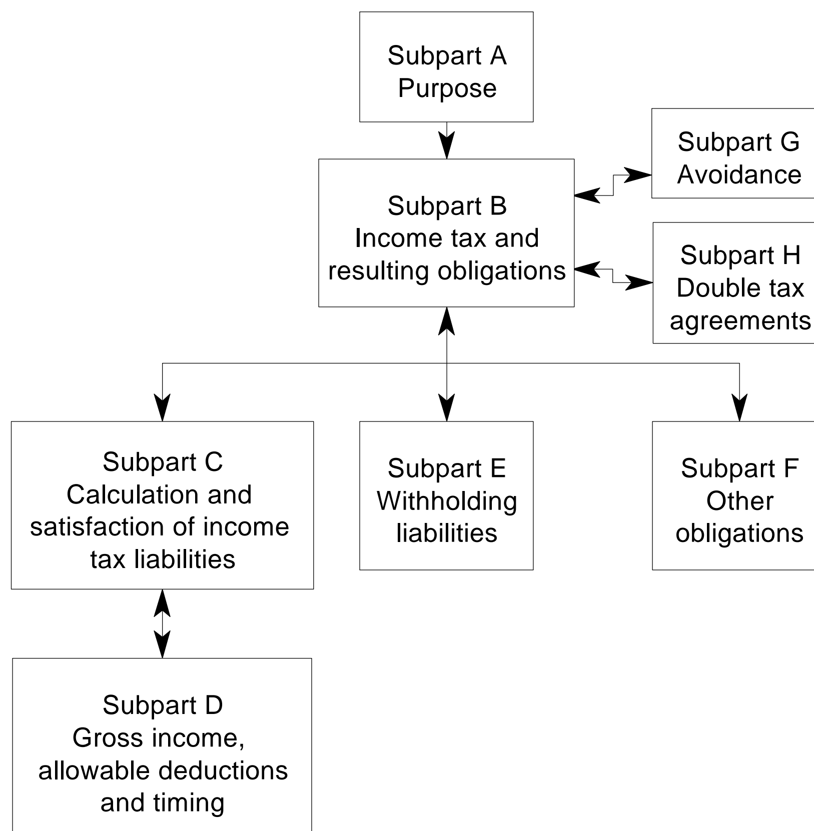
Section AA 4 - Definitions

New section AA 4 consolidates the provisions that were previously found in sections AA 2 and AA 3. Subsection (1) ensures that a reference to 'this Act' still includes a reference to the Tax Administration Act 1994, unless the context requires that it not be included. Subsection (2) refers the reader to Part O for definitions and for general provisions relating to the interpretation and construction of the Act.

Old section AA 2 (2) provided that references to the definition of a particular word were references to the definition of that word as it appeared in section OB 1. Old section AA 4 provided that a reference, for example, to "paragraph (f)" was a reference to the paragraph (f) of the section, subsection, definition, or clause in which that reference was made. These sections were products of the re-ordering process. As they are now taken to be implicit, they no longer require legislative force and have been omitted from the core provisions. However, section AA 1 (2) has been saved as section YB 4 (3). Section AA 1 (2) provided that the re-ordering and changes of style carried out in the Income Tax Act 1994 were not intended to affect the interpretation of the provisions of the Income Tax Act 1976 as they were included in the re-ordered Act. The new section YB 4 (4) provides that the changes in style and language carried out by the Core Provisions Act are to be applied to the interpretation of the provisions of the 1976 Act which continue to apply.

New Part B - Core Provisions

The structure of the core provisions is illustrated by the following diagram:



continued on page 4

from page 3

Part B contains the main rules for calculating and satisfying income tax liabilities. While most of the detail is contained in other Parts of the Act, the other Parts are subject to the core provisions.

Subpart BA - Purpose

The new section BA (1) sets out the purposes of Part B. The purposes of core provisions are:

- to impose income tax, provisional tax, withholding liabilities and other obligations in respect of taxes
- to set out procedures to be followed to calculate the tax and satisfy the obligations imposed under the Income Tax Act 1994 and the Tax Administration Act 1994
- to provide a basis for the application of the other Parts
- to set up the scheme of the Act and the main links between its Parts.

Part B is intended to be the only Part of the Act within which all the various taxes dealt with in the Act are imposed, so as to make it as straightforward as possible for users to locate charging provisions. Consequently, Part B contains the charging provisions in relation to FBT, PAYE, RWT, provisional tax and so on.

Subpart BB - Income Tax and Resulting Obligations

The new Subpart BB imposes income tax and provides the links with the later subparts.

Section BB 1 - Imposition of tax

New section BB 1 is the central charging provision, intended to retain the effect of the former central charging provision (section BB 1). Income tax is imposed on taxable income at the rate(s) of tax fixed by an Act and is payable to the Crown.

Section BB 2 - Principal Obligations

The new section BB 2 provides that:

- income tax liabilities must be calculated and satisfied under Subpart BC
- provisional taxpayers must pay provisional tax in respect of an income year in accordance with the provisional tax rules
- any withholding liabilities under Subpart BE must be satisfied
- any other taxes imposed under Subpart BF must also be satisfied.

Section BB 3 - Overriding effect of certain matters

The new section BB 3 provides that a person's income tax liability may be affected by the existence of a tax avoidance arrangement or a relevant double tax agreement. The rationale for including the section in the core provisions is to reflect the fact that the implications of the general anti-avoidance rule and of double tax agreements need to be considered as part of the process of determining a person's income tax liability.

Subpart BC - Calculation and satisfaction of income tax liabilities

New Subpart BC sets out the methods for determining and satisfying a person's income tax liability.

Section BC 1 - Calculation and satisfaction

The method of determining a person's income tax liability depends on whether a person is:

- a non-filing taxpayer (defined in section OB 1)
- a taxpayer other than a non-filing taxpayer; or
- a taxpayer with "schedular gross income".

New section BC 1 (1) directs these different types of taxpayers to the appropriate provisions in Subpart BC that govern the calculation of their types of income tax liability.

New section BC 1 (2) states that the income tax liability for an income year may be satisfied by crediting any tax paid or withheld, or by paying terminal tax under section BC 9, or by both.

Section BC 2 - Calculation of income tax liability of a non-filing taxpayer

"Non-filing taxpayer" is defined in section OB 1 to include:

- a taxpayer to whom section 33A of the Tax Administration Act 1994 applies (formerly known as "pay-period taxpayers");
  - (i) who does not elect to file a return; or
  - (ii) whose income tax liability for an income year would be larger if determined under sections BC 4 to BC 8, than if it were equal to the total of all tax deductions required to be made from the gross income derived in that income year.
- a non-resident entertainer who elects not to file; and
- a taxpayer who derives only non-resident withholding income subject to NRWT as a final tax.

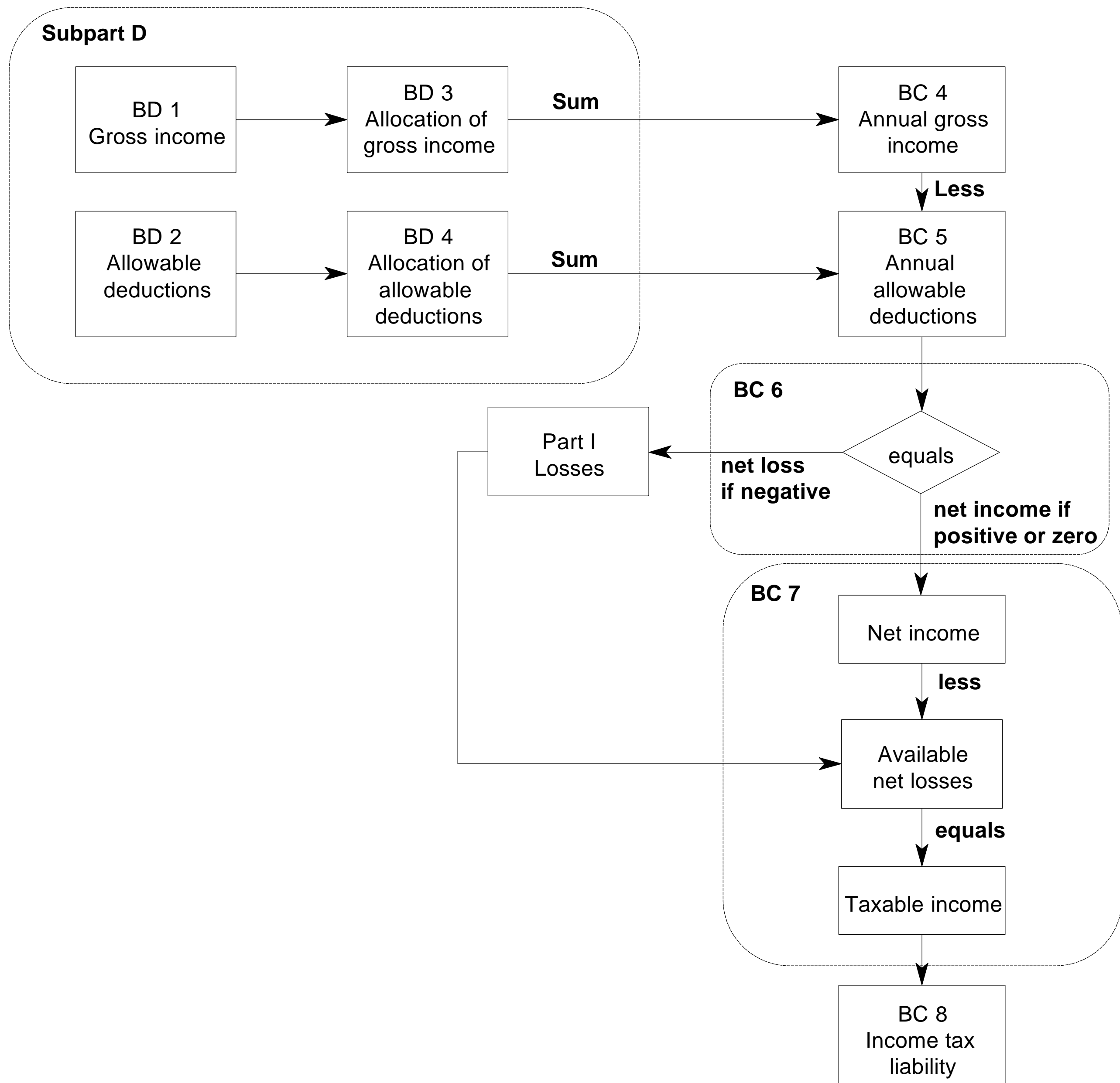
Under section BC 2, non-filing taxpayers have their income tax liability determined by the amount of tax deductions required to be made from their gross income for the relevant year.

Sections BC 4 to BC 8 - Income tax liability of all taxpayers other than non-filing taxpayers

New sections BC 4 to BC 8 set out the general calculation provisions for determination of an income tax liability. Taxpayers who are not "non-filing taxpayers" must follow this process. Taxpayers with schedular gross income must also apply this process in the manner described below.

The first step to calculating the taxpayer's income tax liability under the general calculation provisions is to calculate the taxpayer's taxable income. The process is illustrated diagrammatically on page 5.

Filing taxpayer - calculation of taxable income



The definitions of “annual gross income” and “annual allowable deductions” in new sections BC 4 and BC 5 set the foundation for the global/gross approach. “Annual gross income” and “annual allowable deductions” are, respectively, the total amounts of gross income and allowable deductions allocated, under Subpart BD, to the year for which taxable income is calculated.

Annual allowable deductions are deducted from annual gross income to arrive at the “net income” or “net loss” of a taxpayer. Under new section BC 6, if a taxpayer’s annual gross income is more than, or equal to, the taxpayer’s annual allowable deductions, the difference is the taxpayer’s net income for the year (subsections (1) and (2)). By contrast, if a taxpayer’s annual gross income is less than the annual allowable deductions, the difference is the taxpayer’s net loss.

A taxpayer with a net loss is deemed to have net income of zero (subsection (3)). This avoids the necessity to refer continuously to “net income or net loss” throughout the Act.

Section BC 6 (4) provides that a net loss may, in accordance with Part I, either be:

- carried forward by the taxpayer to future income years along with net losses of previous income years and offset against net income of the taxpayer in those future years; or
- made available to another taxpayer for offset against their net income (under the company grouping rules or the loss attributing qualifying company rules).

continued on page 6

from page 5
Under section BC 7 “available net losses” are deducted from net income to arrive at “taxable income”. An “available net loss” is defined in section OB 1 as an amount that a taxpayer is entitled at any relevant time to offset against net income under Part I. In addition to net losses referred to in the more general loss provisions in Part I, the term includes particular sources of loss such as CFC and FIF losses and specified activity losses.

Section BC 3 - Income tax liability of a taxpayer with schedular gross income

Section BC 3 introduces the concept of “schedular gross income”. This is defined in section OB 1 to mean income of the following types:

- non-resident withholding income subject to NRWT as a final tax
- policyholder income of a life insurer
- certain income of non-resident entertainers
- certain gross income of a non-resident general insurer that is not a company
- Category A income of a group investment fund
- gross income of a non-resident mining operator from a mining venture.

In the absence of this section the preceding types of income would not fit within the global/gross approach because a separate income tax liability calculation is required for reasons such as separate return filing requirements or different tax rates.

Section BC 3 requires taxpayers with schedular gross income to calculate, under the general calculation provisions, an income tax liability in respect of that income as if it were their only income. This amount determined under section BC 3 (2) is a “schedular income tax liability”.

If the taxpayer has more than one type of schedular gross income for an income year, this calculation must be performed for each type of schedular gross income and all the schedular income tax liabilities added together.

The schedular income tax liability or the total of the schedular income tax liabilities must then be added to the amount that would be the taxpayer’s income tax liability if the taxpayer did not have any schedular gross income and is other than a non-filing taxpayer.

Taxpayers who act in separate capacities, such as agents and trustees, are dealt with elsewhere in the Act as separate taxpayers in respect of those capacities. This means that it is not necessary to aggregate their income from those capacities.

Section BC 8 - remaining steps for calculation of income tax liability

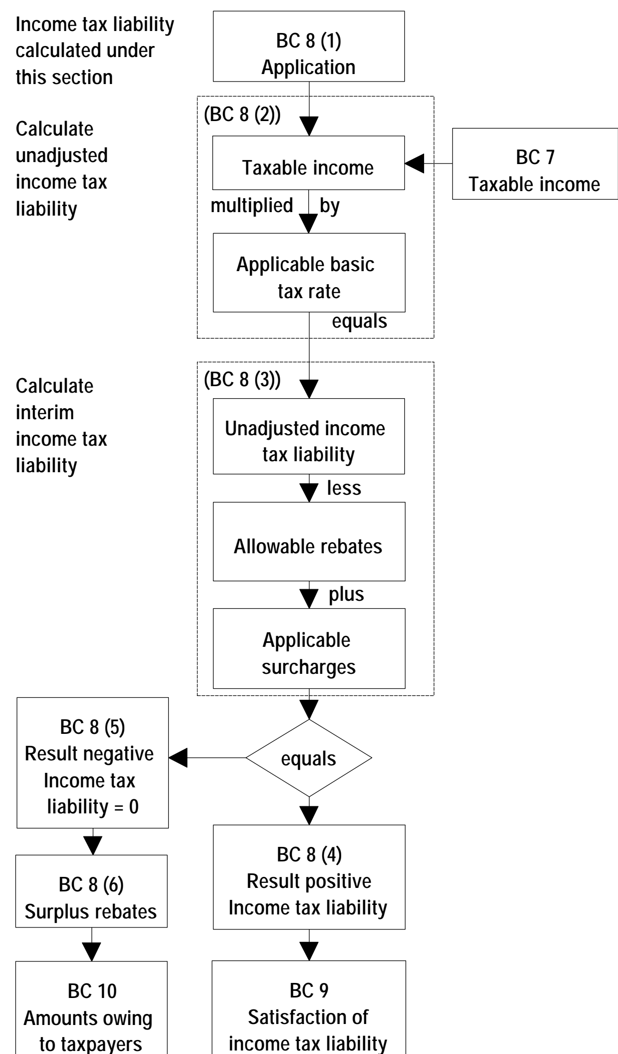
The remaining steps that must be followed in order to calculate a taxpayer’s income tax liability are set out in section BC 8. Broadly section BC 8 provides the process for calculating taxpayers income tax liability once their taxable income has been determined. It provides that the income tax liability is the result of the following calculations:

- Multiplying taxable income by the applicable basic tax rate (set out in Schedule 1 of the Act) to arrive at the “unadjusted income tax liability” (section BC 8 (2));
- Subtracting the taxpayer’s allowable rebates from the unadjusted income tax liability, and adding the New Zealand superannuation surcharge (the applicable surcharge) to arrive at the “interim income tax liability” (section BC 8 (3)).

If the result of these calculations is positive or zero, that amount is the income tax liability of the taxpayer. If the result is negative, the taxpayer’s income tax liability is zero (section BC 8 (5)). In the latter case, the Commissioner is then required, under section BC 8 (6) and section BC 10, to make a refund in respect of any refundable rebates (defined to include Family Support credits and rebates of non-resident investment companies) to the extent that they exceed the interim income tax liability. The excess is called a “surplus rebate”.

The steps for calculating the income tax liability that follow from the calculation of taxable income are illustrated in the following diagram:

Section BC 8 - Income Tax Liability



Section BC 9 - Satisfaction of income tax liability

Having determined the income tax liability of a taxpayer, section BC 9 outlines the manner in which it must be satisfied.

The liability is first satisfied by credits that are available to the taxpayer and then through the payment of terminal tax.

If the total of the taxpayer's credits for tax paid or withheld exceeds the taxpayer's income tax liability, section BC 9 (2) requires the excess credits first to be set off against other tax obligations of the taxpayer. Any remaining excess is to be dealt with in accordance with Part L (credits), Part M (tax payments) or is to be refunded by the Commissioner under section BC 10.

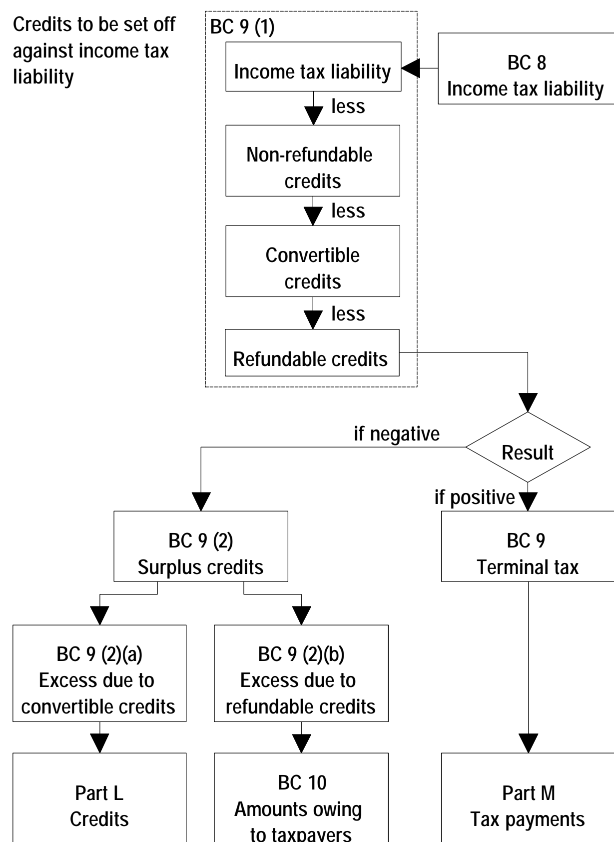
To determine the composition of any excess credits, new section BC 9 (3) provides that the taxpayer's credits are to be treated as having been set off in the following order:

- non-refundable credits (such as credits for foreign tax)
- credits allowed to the taxpayer under Part L in respect of supplementary dividends
- convertible credits (such as imputation credits)
- refundable credits (such as PAYE and provisional tax).

This ordering rule ensures that maximum credit is available for foreign taxes and other amounts which are capped at the level of domestic income tax liability.

The following diagram illustrates the process for satisfying income tax liabilities:

BC 9 - Satisfaction of income tax liability



Section BC 10 - Amounts owing to taxpayers

New section BC 10 gives the Commissioner the authority to refund surplus credits and rebates.

Subpart BD - Gross income, allowable deductions and timing

The new subpart BD contains the sections relating to gross income, allowable deductions and timing that must be applied to determine annual gross income and annual allowable deductions for the purposes of new Subpart BC.

Section BD 1 - Gross income

New section BD 1 defines gross income as all amounts included in gross income under various Parts of the Act. The main Part dealing with gross income is Part C, although currently items are included in gross income throughout the Act.

Section BD 1 contains the exclusions from gross income. They are exempt income, amounts excluded under various later Parts of the Act and, if the taxpayer is a non-resident, amounts that are foreign-sourced. The last exclusion gives effect to the rules that determine liability to tax by reference to residence and source (former section BB 3). This approach is intended to place those rules more clearly within a global/gross context as income tax liabilities are now triggered through derivation of gross income.

Section BD 2 - Allowable deductions

New section BD 2 defines allowable deductions by inclusion of the general deductibility provision and reference to the Parts allowing other deductions.

The replacement in the general deductibility provision of the words "gaining or producing" with the word "deriving", and other changes in wording in the provision, are purely drafting changes and are not intended to affect policy or interpretation.

Section BD 2 (2) contains the prohibitions on deductibility. An amount of expenditure or loss is not an allowable deduction to the extent that it is:

- of a private or domestic nature
- incurred in deriving exempt income
- incurred in deriving income from employment
- incurred in deriving non-resident withholding income subject to NRWT as a final tax
- of a capital nature unless specifically allowed; or
- disallowed as a deduction under any other provision of the Act.

These exclusions generally reflect the exclusions in the previous legislation. The exception is the exclusion in relation to non-resident withholding income subject to NRWT as a final tax, which reflects current practice and case law as in *Lambe* v *CIR* (1980) 4 NZTC 61,599.

continued on page 8

from page 7

Section BD 3 and BD 4 - Allocation of gross income and allowable deductions

New sections BD 3 and BD 4 outline the timing rules that allocate gross income and allowable deductions to income years. If a timing regime in Part E applies, the income or deduction must be allocated in accordance with that regime. Otherwise the test is when the income is derived or the expenditure incurred.

Both sections contain provisions to ensure that there is no double assessability or deductibility.

Subpart BE - Withholding Liabilities

New section BE 1 imposes the various withholding liabilities dealt with under the Act. These include:

- source deduction payments
- resident withholding tax
- non-resident withholding tax
- fringe benefit tax
- specified superannuation contribution withholding tax
- dividend withholding payments.

The section refers to those Parts of the Act that contain the detail of the relevant regime.

Subpart BF - Other obligations

New section BF 1 imposes a number of other taxes dealt with under the Act. These include:

- qualifying company election tax
- income tax on taxable distributions from non-qualifying trusts
- withdrawal tax
- further income tax
- further dividend withholding payments

Again, the section refers to the Parts of the Act that contain the detail of the relevant regimes.

Subpart BG - Avoidance

New section BG 1 contains the main aspects of the general anti-avoidance provision and is split into two essential components: the voiding of tax avoidance arrangements, and the ability of the Commissioner to counteract any advantage obtained under such arrangements.

The rest of the general anti-avoidance provisions are contained in section GB 1 and section OB 1.

The changes in wording to the various components of the provisions, including the reference in section BG 1 to the Commissioner being able to "counteract" an arrangement, are not intended to change existing policy. The reference to the Commissioner's ability to "counteract" was used in the illustrative core provisions drafted by the Working Party on the Reorganisation of the Income Tax Act 1976.

Subpart BH - Double Tax Agreements

Section BH 1 rewrites the previous section BB 11, as introduced in the 1994 Act, dealing with the overriding effect of double tax agreements and the provisions that may be contained in a double tax agreement.

Subsection (3) provides that any reference in a double tax agreement to profits from a particular activity shall be read as a reference to the amount that would be the taxpayer's net income if that activity were the taxpayer's only activity. This is to ensure that net concepts in double tax agreements are not inconsistent with the global/gross approach.

General consequential changes

New terms and phrases

The core provisions use new terms to describe the various components of the income tax calculation. The new terminology is now used consistently throughout the Act. The most common change is to the term "assessable income", which was previously used to reflect both gross and net concepts. In some instances it was not clear which concept of income was being referred to.

The term "assessable income" has been replaced with the more explicit terms "gross income", "net income" or "taxable income", as appropriate.

Gross income is referred to as being "derived by" a taxpayer. In contrast "net income" and "taxable income" are the result of a calculation . Accordingly, the Act refers to the net or taxable income "of" (rather than "derived by") the taxpayer.

Gross income

Section BD 1 defines gross income as an amount included in a taxpayer's gross income under one of the various Parts of the Act that classify amounts as gross income. Gross income is not related to a particular income year until it is allocated to an income year under section BD 3 in accordance with the relevant timing principle.

The following phrases have been used in provisions identifying amounts as "gross income":

- "xxx is gross income"
- "the gross income of any person includes"; and
- "xxx is included in the gross income of any person".

The use of these phrases interchangeably reflects that gross income can be one, or more than one, item. As noted above, total gross income for an income year is called annual gross income.

In line with the drafting changes to the general deductibility provision (section BD 2), references to the "production of assessable income" have been changed to the "derivation of gross income". Similarly, references to "gaining or producing assessable income" have been changed to "deriving gross income".

Generally the Act no longer states the taxpayer is liable to tax in respect of a particular item. This is because the designation of an amount as gross income, by implication, brings the amount into the calculation of an income tax liability.

Examples of where "assessable income" has been replaced with "gross income" follow:

Section ED 4. Accounting for goods and services tax -

(1) ...the **gross income** of any person shall not include -

(a) Any amount of output tax charged, levied, or calculated in respect of a supply of goods and services made by that person:

(b) Any amount of goods and services tax payable by the Commissioner to that person.

Section CH 3 Monetary Remuneration

All monetary remuneration derived by a person is **gross income**.

Net income

The amount by which annual gross income exceeds annual allowable deductions is net income.

An example of where the term "net income" replaces "assessable income" follows:

Section KC 2. Rebate in certain cases for children

In the assessment of every taxpayer (other than an absentee) who at any time during any income year -

(a) Is under the age of 15 years ....

there shall be allowed a rebate of income tax for that income year of the lesser of -

(d) An amount calculated in accordance with the following formula:

(x - y) x (15/100)

where

x is the **net income** of the taxpayer for that income year ...

Taxable income

"Taxable income" is calculated by deducting "available net losses" (see above) from "net income".

An example of where "assessable income" has been amended to "taxable income" follows:

Section IG 2 Net loss offset between group companies

...

(2)(g)(iii) The [subvention] payment would not (otherwise than under this subsection) be taken into account in calculating the **taxable income** of either the loss company or the profit company; and ...

Amount

A number of provisions in the Act refer to net concepts of profits or gains, such as section CD 1, relating to land transactions. These references are inconsistent with the gross approach of the new core provisions.

The term "any amount" has been adopted in substitution for "profits or gains" to refer to the total consideration derived by the taxpayer from a transaction. The word "amount" is intended to reflect that what is being referred to is a gross item. As noted above, there is a savings provision in relation to the use of the term "amount" in section CD 3 (the predecessor to which, section BB 4 (a), referred to profits or gains from a business).

The term "amount" is used more generally to replace generic references to income except where this would change the meaning of a section. "Amount" is defined to include an amount in money's worth.

Allowable deductions

The legislation authorising a deduction has been standardised. Consistent with section BD 2, the Act now refers to an amount being "allowed as a deduction" or a variation of that phrase. Terms such as "entitled" or "permitted" in deduction sections have been replaced with "allowed".

For example:

Section DD 3. Deduction for interest where funds borrowed to purchase shares in amalgamating company -

... interest payable, in the income year in which the amalgamation takes place or subsequently, on the money borrowed will be **allowed as a deduction** to the other company.

Section DB 1. Certain deductions not *allowed*

...

Under the new core provisions, the allowance of deductions is incorporated as one aspect of the calculation of a taxpayer's net income. Consequently, references to "in calculating the assessable income" are redundant and have been removed. For example, section DF 2 previously read:

Sect DF 2. Contributions to employees' benefit funds -

(1) **In calculating the assessable income of any employer** the Commissioner may allow a deduction of any amount set aside or paid by the employer as or to a fund (not being a superannuation scheme) to provide individual personal benefits to employees of that employer:

That section now reads:

(1) The Commissioner may **allow a deduction to an employer** of any amount set aside or paid by the employer as or to a fund (not being a superannuation scheme) to provide individual personal benefits to employees of that employer:

continued on page 10

from page 9

Annual gross income and annual allowable deductions

"Annual gross income" and "annual allowable deductions" are, respectively, the total amounts of gross income and allowable deductions for an income year. These terms are only occasionally used in the Act outside the core provisions.

Net loss/Available net losses

The term "loss" in the Act previously meant one of two things: expenditure or loss arising from a particular event (for example, theft) or a year's trading loss.

The term "net loss" is now consistently used when referring to the amount by which annual allowable deductions exceed annual gross income. All losses dealt with in Part I, including pre-1997-98 losses are termed "net losses".

References to "a loss incurred by a taxpayer" have been changed to "a net loss of a taxpayer". The phrase "offset against net income" has replaced "deduct/set off against assessable income".

Available net losses are, as noted above, the sum of losses available to a taxpayer for offset, including attributed foreign losses and specified activity losses.

Income tax liability

Under the new core provisions, taxpayers have an "income tax liability" in respect of their "taxable income". When used in this context, the term "income tax payable" has been changed to "income tax liability".

No change has been made where "income tax payable" directly refers to the payment of (or the obligation to pay) tax.

The terminology used for the recognition of the payment of an income tax liability is generally that an income tax liability has been satisfied. A liability is first satisfied by credits that are available to a taxpayer being "set off" or "credited against" that liability.

Basic rate of income tax for companies

As a result of the recent reduction of the tax rate on New Zealand branch income of non-resident companies, the phrase "rate of resident companies' income tax" has been replaced by "basic rate of income tax for companies".

Other consequential changes

Hypothetical calculations

As mentioned earlier, the core provisions require that all items of gross income are aggregated for an income year, regardless of their source or type. Net income is calculated by deducting annual allowable deductions from the aggregate amount of gross income for an income year (annual gross income). Therefore there can be only one net income figure.

However, various provisions in the Act refer to a particular type or source of net income. In order to preserve the existing policy while conforming with the global/gross approach, it has been necessary to adopt a formulation for a hypothetical calculation of net income. The hypothetical calculation assumes that the gross income from one source is the only gross income of a taxpayer.

Under section IH 1 a mining company which incurs a net loss from exploration in a mining licence area may offset the loss against net income for a succeeding income year only to the extent that the loss does not exceed the following amount:

gross income derived from mining in the licence area

- less -

expenditure incurred in deriving that income.

Mining income derived from another licence area and any non-mining income derived by that company is not, therefore, taken into account for the purposes of calculating the amount of net loss able to be offset.

Section IH 1 has consequently been redrafted as follows:

Section IH 1. Losses of mining companies and petroleum miners

(1)(b) .... offset against the net income of that company to the extent that it does not exceed **the amount that would be the net income of the company if its sole source of gross income for the year of claim was from that licence area...**

Certain provisions calculate the amount of an allowable deduction by reference to particular types or sources of income. This quarantining is also preserved by the same hypothetical calculation. For example:

Section DM 1. Treatment of petroleum mining exploration and development expenditure -

(6)(a) The petroleum miner shall be allowed deductions under subsection (5)(b) in respect of that asset only to the extent that the deductions do not exceed the **amount that would be the net income of the petroleum miner if the only gross income of the petroleum miner were from that disposition**.

This change has also been made in section DD 2 (Testamentary annuities charged on property) and HI 4(2) (Tax in respect of Maori authorities with 20 or fewer beneficiaries).

The same principles apply to determine the amount of income tax payable on income from a particular source. In these instances it has been necessary to provide a hypothetical calculation of a person's income tax liability. For example,

Section LC 4 Foreign tax credits - controlled foreign companies

(4) Any person ... is entitled to set off that credit against the person's income tax liability -

(a) For that income year, to the extent that it does not exceed the **amount that would be the person's income tax liability for that year if the person did not have any gross income for that year other than attributed foreign income ...**

Provisions that previously referred to assessable income as a net concept before taking into account deductions to which the section applies, now use a formulation such as "the amount that would but for this section be the net income".

For example:

Section DJ 4. Gifts of money by companies not closely held -

... the amount of the deduction allowed under this section -

(a) In respect of the aggregate of all gifts made in that income year by any company not being a close company) to any one donee, shall not exceed the greater of -

(i) 1% of the **amount that would but for this section be the net income** of the company; ...

Similarly:

- The deduction allowed to a Maori authority under section DI 2 (deduction for donations to Maori associations) is expressed as not exceeding 5% of the amount that would be the net income of the Maori authority in the absence of this section.
- The net schedular flavour of section DI 3 (2) (treatment of expenditure incurred by a superannuation fund if its funds are invested in another superannuation fund) has been removed by characterising the amount of the allowable deduction to the second superannuation fund by reference to notional taxable income of the second superannuation fund.

"Notwithstanding"

The core provisions provide all the essential rules for the calculation of an income tax liability and form the basis for the application of later Parts of the Act. For instance, for expenditure or a loss to be an allowable deduction it must satisfy the general deductibility rule in section BD 2 or the rule in that section defining allowable deductions by reference to whether they are allowed in a later Part. Accordingly, the Act no longer contains the phrase "notwithstanding anything in section BB 7" (the predecessor to section BD 2). See section DB 1 (Certain deductions not allowed).

As another example, section DI 3 (Expenditure incurred by superannuation funds) previously applied "notwithstanding section BB 8 (a)". Section BD 2 (2)(e) excludes a capital amount from the term "allowable deduction", unless it is allowed as a deduction under either Part D or E. Therefore it is not necessary to override the capital deduction prohibition in specific deduction provisions.

Provisions that replicate the core provisions

As noted above, the changes confirm the Court of Appeal's decision in *CIR* v *Inglis* (1992) 14 NZTC 9,180: if any profits or gains from a transaction would have been taxable under the Act, any losses are deductible. This is because the total consideration derived from the sale of property is included in gross income and the cost of that property is identified as an allowable deduction.

Consequently, in addition to the changes made to the land, personal property and other "revenue account property" provisions as discussed below, provisions dealing with losses by reference to what the treatment would be if a profit had arisen have been removed. For example:

- The proviso in paragraph (c) of section DD 1 (Certain deductions not allowed - rents, interest, and premises) previously stated that in the case of a disposal of premises, the deduction for a loss would not be denied if a corresponding profit would have been assessable.
- Sections IE 1 (5) and IG 2 (1)(c) previously provided that a tax loss is not available if no gross income has been derived, as in the case of non-residents.

Terminating provisions

The core provisions legislation will apply from the 1997-98 income year. The approach taken to amending terminating provisions is to amend only those that have application in the year the core provisions will apply. In the case of provisions that have historical application only, the old terminology is retained.

Consequential amendments to Part C - Income Further Defined

Subpart CB - Exempt income

The new term "exempt income" is used in Subpart CB for consistency with section BD 1 (2) of the core provisions, which excludes "exempt income" from the meaning of gross income.

Section CB 1 (Exempt income - interest) incorporates changes that are illustrative of the changes to all the provisions in Subpart CB. It employs the new term "exempt income", which has been adopted to replace references to items (or persons[2]) that were previously "exempt from tax".

2. See section CB 14.

Section CB 1 also introduces a new formulation at the beginning of each section that exempts an item from tax. It reads: "to the extent that in the absence of this section the following amounts would be gross income, they are exempt income". This ensures that there is no overlap between items of exempt income and capital gains. It is also intended that the exempt items are gross amounts.

Section CB 1 further illustrates a change which has occurred frequently throughout the consequential amendments: the reference to "income derived" has been replaced with a specific reference to the character of the income being referred to. For example, in section

continued on page 12

from page 11
CB 1 (b), "income derived" has been replaced with "interest on post-war credits derived". Similarly, references to "income derived by a person" throughout the consequential amendments have often been replaced by "any amount derived by a person". See, for example, section CB 2 (1)(c) (Non-residents' exempt income).

Section CB 4 (1)(k), which provided for a $1,000 exemption for non-profit organisations, has been repealed and replaced with a $1,000 deduction provision in Part D (limited to the amount of net income of the organisation - see section DJ 17 (Non-profit bodies)). For consistency with the global/gross approach, the reference to "exempt income" should be to a gross amount since exempt income is limited to amounts that would otherwise be gross income. Hence, it is not possible to have net amounts as exempt income. To draft the provision on a gross income basis would effectively deny non-profit organisations a deduction for the portion of expenditure that was incurred in relation to their exempt income. This is not the current policy. The redrafting of this provision is a change in mechanism only and involves no change to the actual tax position of non-profit organisations.

The proviso to section CB 8 (1)(b) (Certain income from Niue exempt) replaces "income or gains derived" with "any amount derived". Subsection (1)(b) provides that no dividends are exempt income under that paragraph to the extent that those dividends constitute distribution of any amount derived by the company from sources in New Zealand. The substitution of the word "amount" does not alter the capital/revenue boundary inherent in the section: the introductory words of section CB 8 limit the exemption available in subsection (1)(b) to items that would otherwise be gross income, in this case dividends paid by certain New Zealand companies deriving profits from Niue to non-residents. The intention of the proviso is to ensure that the exemption provided under the section does not extend to companies that derive some profits from New Zealand sources. The words "income or gains from New Zealand" are used in the generic sense (as in profits from New Zealand) rather than in a tax sense. Consequently, the changes have not altered the application of the section.

In section CB 12 (Exempt income - employee allowances and expenditure on account of an employee), the phrase "deductible in calculating the employee's assessable income for any income year" has been replaced by the phrase "an allowable deduction to the employee". This illustrates two generic changes which are consequential to the enactment of the core provisions:

- The removal of the term "assessable income".
- The use of new terminology for allowing a deduction or providing that an amount is deductible is "allowed as a deduction" for consistency with Subparts BC and BD of the core provisions.

Section CB 12 also removes the reference to section DE 1 (formerly Deduction for expenditure or loss incurred in production of income from employment), and replaces it with a reference to section BD 2 (2)(c) of the core provisions (Exclusion from allowable deductions for expenditure incurred in deriving income from employment).

Subpart CC - Compensation, Benefits and Grants

All provisions in Subpart CC have been placed on a gross basis so that compensation payments and benefits, payments to former service employees, and the labour portion of the forestry encouragement grant are gross income.

Section CC 1 (Certain compensation, benefits, and other payments are gross income) now begins: "The gross income of any person includes". This phrase and the phrase "is included in the gross income of any person" have frequently been added to provisions designating amounts or items as "gross income".

Subpart CD - Activities in the nature of trade

A number of significant changes have occurred in Subpart CD. Subpart CD now contains the core assessability provisions relating to business and personal property. Sections CD 3 (Business), CD 4 (Personal property) and CD 5 (Gross income according to ordinary concepts) replace the former sections BB 4 (a), BB 4 (c) and BB 4 (d) respectively. In line with the core provisions, all the sections in Subpart CD have been placed on a gross basis.

Section CD 1 (Land transactions) illustrates two generic changes which are consequential to the enactment of the core provisions:

- First, the words "unless (or save so far as) express provision is made in this Act to the contrary" have generally been omitted (see also section CG 1, for example). The accepted rules of statutory interpretation, the new interpretation provision in Part A (section AA 3 (1)) and the Acts Interpretation Act 1924 generally make this phrase redundant.
- Second, as mentioned above, generic references to "profits or gains" have for the most part been replaced with a singular reference to "any amount" placing the section on a gross basis.

Section CD 3 provides that an amount derived from a business is now "gross income". Cases such as *Californian Copper Syndicate* v *Harris* (1904) 5 TC 159 and more recently *CIR* v *City Motor Service Ltd* [1969] NZLR 1010 have established the common law principle whereby the assessability of business profits in an income tax statute is determined by focusing on whether the receipt in question is derived from the current operations of a business. Accordingly, the use of the term "amount" instead of "profits or gains" should not

disturb the application of this principle. A savings provision has, however, been inserted in section 2 of the Taxation (Core Provisions) Act for the avoidance of doubt on the matter. It states that the use of the word "amount" in section CD 3 is not by itself intended to change whether an amount derived by a person is taken into account or disregarded in calculating the person's income tax liability for an income year.

The changes to section CD 4 involve substituting the words "amount derived from the sale ... of personal property" for the existing terminology of "profit or gain derived from the sale ...of personal property". A provision has also been included in Part D that has the effect of authorising a deduction for the cost of that property under the general deductibility provisions.

Section CD 5 (Gross income according to ordinary concepts) replaces the former section BB 4 (d). Section BB 4 (d) included in assessable income "income derived from any other source". The Act did not contain an exhaustive definition of assessable income, instead determining assessable income on an inclusive basis by listing (for example, under the former section BB 4) the principal sources of income assessable under the Act. In order to maintain, in substance, an inclusive definition of income under the global/gross approach, section CD 5 has been included to provide that the gross income of any person includes "any amount that is included in gross income under ordinary concepts". This ensures that where any transaction gives rise to an amount that is of an income nature, that amount will be gross income even where that amount would not otherwise fall within the scope of any other specific gross income provision. The comment was made at page 17 of *Taxation (Core Provisions) Bill - Commentary on the Bill*, December 1995 that the intention of this change is to ensure that the courts "recognise and give effect to the full scope of the income concept".

A general provision applying to revenue account property has been inserted in Part D to ensure a deduction for cost under the general deductibility rule in section BD 2. Any specific deduction provisions have been relocated to Part D (for example, former subsections CD 1 (5), (8) and (9)).

Relevant to the sections in subpart CD is the insertion in Part E of a new matching provision which requires the allowable deduction for the cost of the property to be deferred until the later of, disposition of the property, or derivation of gross income from the disposition (see comment under section EF 2).

Subpart CE - Investment and land income

The provisions in Subpart CE have been placed on a gross basis and any related deductibility provisions contained in this Subpart have been relocated to Part D.

For example, new section CE 3 (1)(a) provides that the gross income of any person includes the amount received on the redemption of a commercial bill. Commercial bills are, therefore, revenue account property as that term is defined in section OB 1. The corresponding allowable deduction for the cost of the commercial bill was formerly contained in old paragraph CE 3 (1)(a). Now, where the commercial bill is not a financial arrangement to which the accrual rules apply, the cost of the commercial bill will be an allowable deduction under section BD 2 (1)(b)(i) or (ii). New section DJ 13 prevents any such expenditure incurred by a taxpayer as the cost of revenue account property being prohibited from deductibility by the capital exclusion of section BD 2 (2)(e). The cost of the commercial bill will also be subject to the allocation rules set out in section EF 2. Finally, section DJ 16 provides that for the purposes of determining the deduction allowed for the cost of a commercial bill, the taxpayer is treated as having acquired it at a cost equal to its value on the date of acquisition.

Section CE 4 (Amounts remitted to be gross income) has been inserted to replace the former section BB 5 (Amounts remitted to be taken into account in computing income). This new section deems any expenditure or loss incurred by the taxpayer and allowed as a deduction, that is subsequently cancelled or remitted, to be gross income in the year in which it was remitted or cancelled.

Subpart CF - Dividends

Section CF 1 provides that the gross income of any person includes "all dividends". Other minor changes have been made to the dividend rules to ensure consistency with the core provisions. For example:

- Sections CF 2 (9) and (10) (Meaning of term "dividends") have been amended so that if dividends are subsequently repaid to the company the Commissioner may amend the assessment of the "income tax liability" of the shareholder accordingly.
- Section CF 2 (15)(a)(ii) replaces the phrase "rate of resident companies' tax" with the phrase "basic rate of income tax for companies" (see general consequential changes above).
- Sections CF 3 (1)(ia)(iii) and (j)(iii) (Exclusions from term "dividends") referred to dividends for which a person has been "assessable and liable for tax". This is replaced with "is included in gross income". Any amount that is gross income is, by implication, assessable for income tax.
- Section CF 3 (7) has been re-structured and re-drafted so that it no longer refers to "profits or gains". The changes are not intended to alter the application of the section.
- Section CF 6 (1) (Amount of dividend includes credits and certain foreign tax) deletes "for the purposes of determining the amount of income derived by a person" because the core provisions explicitly determine the amount of gross income of a person.

continued on page 14

from page 13

Subpart CG - Attributed foreign income

Section CG 1 provides that attributed foreign income and foreign investment fund income are gross income.

Section CG 11 (5)(b)(ii) (Branch equivalent income calculation), relating to the adjusted base price of financial arrangements, replaces "accrued expenditure" with "expenditure deemed to be incurred" and replaces "accrued income...less consideration received by the holder" with "gross income". This ensures consistency with the consequential amendments made to Subpart EH (Financial arrangements).

Subpart CH - Employment-related income

A new section CH 3 (Monetary remuneration) has been added. This replaces the former section BB 4 (b) and provides that all monetary remuneration derived by a person is gross income.

Subpart CI - Fringe benefits

Section CI 3 (2)(b) (Value of fringe benefit) replaces "amount of income" with "amount of gross income". Also, the "amount accruing from that loan" has been replaced in that section with the "gross income accruing from that loan". This clarifies the type of income that is being referred to and makes the terminology of the section consistent with core provisions.

Section CI 9 (Application of fringe benefit tax provisions) has been removed as section BE 1 (4) (Fringe benefits) makes the section redundant.

Income from minerals, timber, or flax

The former section CJ 1, dealing with a net concept of profit or gain in relation to the extraction or sale of timber and minerals, has been split into its income, expenditure and timing components. The income component has been retained in Part C. The effect of the phrase "reduced by the cost of those minerals or of that flax or timber" and the proviso to section CJ 1 has been relocated to Part D (see section DJ 13, which provides that the cost of "revenue account property" (as defined in section OB 1) is not a capital cost to which section BD 2 (2)(e) applies. See also Part E (including the new section EF 2) in relation to timing).

Group companies

The former section CK 1, relating to companies within a group and the recharacterisation of profit as assessable income, has been split into its income and deduction components. The related deductibility provision is section DI 4.

Life insurer income

The former section CM 1 (Assessable income of life insurers) provided for a net schedular taxation regime for life insurance companies. It is repealed, since the regime has been significantly restructured to enable the life insurance rules to fit within the global/gross framework.

New section CM 3 (Exclusions from life insurer's gross income) preserves the tax treatment of life insurance premiums and reinsurance claims received by life insurers as not being of a taxable nature. These were exclusions from the "item i" in the old CM 3 formula. The life insurance regime is, therefore, no longer a code that exists independently of the core provisions. This change does not involve any change to the existing policy.

The deduction provisions in the life insurance regime are now all located in Part D. For example, section CM 4 (Adjustment for superannuation policies in respect of property acquired before 1 April 1988) provided a deduction for life insurers, and has been relocated to Part D (see section DK 3C). Section CM 11 (Certain property not trading stock) has also been relocated to Part D as section DK 3E.

New sections CM 5, CM 6, CM 7 respectively deem "mortality profit", "premium loading", "discontinuance profit" to be gross income. In section CM 12 certain amounts relating to full reinsurance are deemed not to be gross income. This is consistent with the change to section CM 3.

Section CM 9, which prohibited double deductions, is repealed because the schedular nature of the regime has been removed and because section BD 4 (4) provides a prohibition on double deductions.

Section CM 10 (Sales or disposals of property) is substantially amended to treat as gross income all consideration derived from property subject to the section. The timing of the deduction for the cost of the property is dealt with in Subpart DK. Subsection (4) is relocated to Part E as section EG 19 as this subsection relates to the depreciation rules.

The calculation for policyholder income is performed under section CM 15 (Policyholder base income or loss) is termed "the policyholder base calculation". Policyholder income is deemed to be gross income (and is included by definition within schedular gross income). A policyholder net loss may only be deducted in accordance with sections II 1 and II 2 because of the separate basic rate of income tax for "schedular taxable income in respect of policyholder income" (see clause 1 of Part A of Schedule 1). Former sections CM 15 (3) and (4) have been relocated to section CM 18 (Transfer of life insurance business).

Consequential amendments to Part D - Deductions Further Defined

Loss on disposal of premises

Paragraph (c) of section DD 1 denies a deduction for a loss in relation to the demolition, destruction or disposal of premises. As noted above, the proviso stated that in the case of a disposal, the paragraph would not apply if a corresponding profit would have been assessable.

The effect of the proviso is achieved by the core provisions: deductions in respect of a disposal transaction producing a loss will be allowed if a profit from the transaction would have been liable to tax. The consideration in respect of the transaction is included in gross income and the cost of the transaction is separately included in allowable deductions. The proviso has, therefore, been removed as unnecessary.

If a profit from the transaction would not have been liable to tax, the consideration in respect of it would not be included in gross income, and no corresponding deductions would, therefore, be allowed. The reference to the term "disposal" is, therefore, also unnecessary as its effect is inherent in the core provisions. The decision in *Lyttelton* v *CIR*[3] confirms that "disposal" is distinct from demolition: a building cannot be "disposed of" by demolition because disposal carries with it connotations of sale, assignment or transfer.

Expenditure incurred by employees

Subsection (1) of section DE 1 is repealed as the exclusion for expenditure in relation to income from employment is now contained in section BD 2. Section DE 1 is now titled *Depreciation for asset used in employment*.

Group companies

Section DI 4 is a new deductibility provision required as a result of separating the income and deduction components of section CK 1, relating to companies within a group and the recharacterisation of profits as assessable income. Section CK 1 treated the profit of a wholly-owned group of companies as if the group of companies were one company. Section DI 4 provides that when any company in a wholly-owned group derives gross income under section CK 1, a deduction is allowed for the cost relating to that gross income. The allowable deduction is matched to the year of allocation of gross income, in line with the effect of the former "profit" terminology.

Expenditure of trustees

New section DI 5 (Taxpayer who derives beneficiary income) denies beneficiaries deductions in relation to expenditure incurred by a trustee in deriving beneficiary income. This is not intended to change current policy.

The need for the section arises from the definition of "beneficiary income" as gross income derived by the trustee to the extent that it is vested in or paid to beneficiaries. The new section is intended to remove any doubt on the point.

New section DI 6 (Expenditure incurred by trustee) ensures that the deduction is available to the trustee (see also the commentary under Subpart HH).

Bad debts, share losses, indemnities

Under paragraph (b) of section DJ 1 a share loss deduction is denied if the benefit of the loss has already been taken under the grouping rules - a loss in this sense does not fit within the global/gross approach. This has been dealt with by referring to a decline in the value of the shares and by differentiating between unrealised and realised losses. The latter are expressed as being where gross income in respect of the shares is less than the deduction (if any) allowed for the cost of the shares.

Irrecoverable book debts

Deductions under section DJ 2 (Deduction from estate income of irrecoverable book debts) were previously allowed first against trustee income and any balance against certain income of a beneficiary. The net schedular aspect of the section has been removed by placing the emphasis on the person obtaining the deduction, rather than on an offset against particular income.

Gifts of money

The amount of the deduction for charitable donations by companies under section DJ 4 (Gifts of money by companies not closely held) was formerly based in part on the assessable income of the company. The reference to assessable income has been changed to net income, which clarifies the previous treatment.

Patent expenses

Some minor drafting changes have been made to section DJ 6 in addition to consequential changes to the section.

As the section could apply both before and after the 1997-98 income year, paragraph (b) refers to "gross income or assessable income".

Cost of revenue account property

New section DJ 13 has been inserted as part of the separation of the following sections into their income, deductions and timing components:

continued on page 16

3. HC (ChCh) 17 May 1996, at 28.

from page 15

- section CD 1 (Land transactions)
- section CD 4 (Personal property)
- section CE 3 (Commercial bills)
- section CJ 1 (Income from minerals, timber or flax).

Section DJ 13 deals with the deductibility of expenditure on "revenue account property", which is defined in section OB 1 as "property... in respect of which any amount derived on disposition would be gross income". Rather than allowing a specific deduction, section DJ 13 ensures that deductibility is not excluded by reason of the prohibition on expenditure of a capital nature under section BD 2 (2)(e). Deductibility of the cost of revenue account property is, therefore, provided for by a combination of sections BD 2 (1)(b) (the general deductibility provision) and DJ 13.

There has been some concern about whether the treatment of the cost of minerals has been affected. Inland Revenue's policy as set out in Chapter 19 of our old series Technical Rulings is not intended to be affected by the Core Provisions Act.

Other deductions for revenue account property

New sections DJ 14 to DJ 16 and section DL 1 deal with other deductions in relation to revenue account property. They are intended to preserve existing deductions in respect of certain land transactions, dispositions of personal property, commercial bills and timber.

Section DJ 14 (Expenditure on acquiring land) provides a deduction, limited to the amount of profit, if amounts are brought into tax in respect of the sale of land because of profit being attributable to zoning changes. The corresponding gross income section is CD 1 (2)(e).

Subsection (3) of section DJ 14 deals with the amount that is allowed as a deduction in relation to development work of other than a minor nature. Section CD 1 (2)(g) corresponds. It preserves the deduction for market value of the land at the time of the commencement of the undertaking of the scheme by deeming there to have been a sale to an unrelated third party, and reacquisition, at market value.

Section DJ 15 (Expenditure incurred in acquiring personal property) preserves the deduction for market value in respect of undertakings or schemes to which the third limb of section CD 4 (profit making undertakings or schemes) applies.

Section DJ 16 (Expenditure incurred in acquiring commercial bills) determines the amount of the deduction allowed in respect of the acquisition of a commercial bill from another person. The deemed acquisition cost is the value on the date of disposition.

Consistently with the changes to section CB 4 (1)(k), noted above, section DJ 17 (Non-profit bodies) converts the $1,000 exemption for non-profit bodies previously provided for in section CB 4 (1)(k) to an allowable deduction of the lesser of $1,000 or a non-profit body's net income. The reference to net income clarifies existing policy.

Deductions for life insurers

New sections DK 3 to DK 3E, relating to life insurers, contain the deduction provisions which correspond to the income provisions in Subpart CM and are required as a result of removing the schedular nature of the life insurance regime.

Forestry expenditure

Section DL 1 (Cost of timber) contains the deductibility provisions relating to forestry expenditure. These include the deduction for planting and maintaining trees, the specific deductions for overheads, weed and pest control under subsection (3), the deduction for access tracks and the restrictions on deductibility for cost of timber if timber is sold to an associated person. They do not include the deduction for cost of timber itself, which is provided in the deduction for cost of revenue account property in section DJ 13.

Petroleum mining expenditure

The petroleum mining regime had some schedular aspects relating to deferred deductions on seal and abandonment and to sales to associated persons. Minor changes have been made to section DM 1 (Treatment of petroleum mining exploration and development expenditure) to conform with the global/gross approach.

Mineral mining expenditure

Subpart DN, which related to mineral mining expenditure, is repealed and replaced as significant drafting changes to the regime were necessary, primarily to bring it into line with the global/gross approach. The changes are intended to preserve existing policy. The main features of the new Subpart are:

- Because of the overriding effect of the core provisions, provisions that treat the mineral mining regime as a code, or as overriding the rest of the Act, such as the former sections DN 1 (1) and (3), have been repealed.
- The former section DN 1 (5)(a) provided that mining expenditure was deductible first against mining income and then to the extent of two-thirds against other income. The subsection is replaced with a new provision providing that if a mining company has allowable deductions that exceed its gross income from mining, it may include those deductions in its annual allowable deductions only to the extent that they do not exceed the lesser of:
  - two-thirds of the "mining outgoing excess" (defined in section OB 1 to mean expenditure relating to mining, less mining income); and

- the company's gross income other than from mining, less allowable deductions incurred in deriving that gross income.

- Under the global/gross approach, the former section DN 1 (5)(b), dealing with non-mining expenditure and the order of offset, was considered unnecessary given that there is no limit on the amount that can be deducted. This provision has, therefore, been removed.
- Paragraphs (a) and (b) of section DN 1 (17), which give the Commissioner certain powers to deal with the situation where an offset against either mining or non-mining income places the taxpayer at a disadvantage, are repealed as they relate to the time when there were differential rates of tax for mining and non-mining income.
- Section DN 2 deals with amounts from the sale of mining shares. The section has been redrafted to remove the reference to profits, in line with the global/gross approach.
- Changes in section DN 4 to the treatment of a mining outgoing excess for a resident mining operator follow those in section DN 1 for mining companies.

Attributed foreign losses and foreign investment fund losses

A new subpart DP has been inserted to allow a deduction in the year incurred for attributed foreign losses and foreign investment fund losses.

Under section DP 1 a person is allowed a deduction for an attributed foreign loss of the lesser of the loss or the total of the following, arising from the same jurisdiction as the loss:

- any attributed foreign income
- any foreign investment fund income calculated under the branch equivalent method.

Section DP 2 applies to a foreign investment fund loss calculated other than under the branch equivalent method. The loss is allowed as a deduction to the extent that it does not exceed the total of:

- any foreign investment fund income calculated other than under the branch equivalent method
- the excess of the loss over that income to the extent that the excess does not exceed the total of that income derived by the person in any previous income years.

Section DP 3 provides that section DP 1 applies with certain modifications to a foreign investment fund loss calculated under the branch equivalent method.

These new sections replicate the current treatment of attributed foreign losses and foreign investment fund losses in Part I (treatment of net losses). However, they clarify that the offset is in effect against a gross amount of income.

If the loss is not fully absorbed it can be carried forward and dealt with according to Part I as either an "attributed foreign *net* loss" or a "foreign investment fund *net* loss" (both defined in section OB 1).

Consequential amendments to Part E - Timing of Income and Deductions

Throughout the Act, references to "apportion" and "attribute" are changed to "allocate" where they are used in a timing sense (see section EB 2 (1), for example). The use of the word "allocate" follows the new general timing rule in section BD 3 of the core provisions. Also, references to "any income year" when referring to gross income have been omitted where timing is not a factor. Further, the words "in calculating the assessable income derived [by a company] in any income year" have been omitted, because under the core provisions an allowable deduction will be allocated to an income year and included in annual allowable deductions. It is the amount of annual allowable deductions which is subtracted from annual gross income (see section EG 1, for example).

Income credited in account or otherwise dealt with

Subpart EB sets out how gross income received in advance or in anticipation is to be allocated to an income year. Section EB 1 (Amounts credited in account or otherwise dealt with) now applies the derivation rules to generic "amounts" instead of "income". This change in terminology is not intended to change policy but is consistent with the use of a generic concept of "income" under the previous section EB 1.

Consequences of change in accounting practice

Section EC 1 (Adjustment for incorrect accounting practice in previous years) has been substantially redrafted. Previously, section EC 1 applied to assessable income from a business. This is inconsistent with the global/gross approach, in which all sources of income for a particular year are aggregated for tax purposes. In essence, the section as redrafted gives the Commissioner power to adjust the gross income or allowable deductions of a taxpayer from a business. Moreover, if an adjustment made by the Commissioner results in an increase in net income of $1,000 or more, the taxpayer has the ability under section EC 1 (4) to elect that the amount of the adjustment be allocated equally between

continued on page 18

from page 17
that year of adjustment and the three subsequent (or preceding) years. The amount so allocated is deemed to be gross income derived in those years.

Trading stock

Section EE 1 (Valuation of trading stock, including livestock) has been amended to separate out the income and deduction components of the trading stock regime. Section EE 1 (8) includes the value of a taxpayer's trading stock at the end of an income year in gross income. Section EE 1 (9) provides that the opening value of the taxpayer's trading stock is allowed as a deduction for that income year.

Accrual expenditure

Section EF 1 (Accrual expenditure) is amended by replacing subsections (1) and (2) with a new subsection (1) using the new core provision terminology. It provides that if a person has incurred accrual expenditure, that expenditure is allowed as a deduction and the unexpired portion of that expenditure is included in gross income of the person for that income year. The amount of that unexpired portion will then be allowed as a deduction in the next income year.

Matching provision

The assessability provisions (including sections CD 1, CD 3 and CD 4 have been amended to apply explicitly to gross items rather than to "profits or gains" from a business or from property transactions. An allowable deduction is separately authorised for the cost of the property under sections DJ 13 and BD 2. This has necessitated the insertion of an explicit matching requirement for dispositions of revenue account property. Section EF 2 (Matching regime for cost of revenue account property) requires deductions for the cost of certain revenue account property to be deferred until the later of:

- the year of disposition of the property; or
- the year gross income is derived from the disposition of the property.

If the gross income from the disposition is derived in more than one income year, the corresponding allowable deductions must be proportionately allocated to each of those years. Each year's allocation of allowable deductions is based on the "proportion of the allowable deduction which the gross income derived in that income year represents as a proportion of the total gross income in respect of the disposition" (section EF 2 (3)). If that total gross income cannot be identified with certainty, subsection EF 2 (4) requires the allocation to be on the basis of what the taxpayer "reasonably expects to derive from the disposition". This change enables taxpayers to calculate their income tax liability (and file a return accordingly) on the basis of a reasonable estimate. Section BD 4 ensures, however, that the total allowable deductions do not exceed the amount of expenditure incurred.

Without an explicit matching requirement, the legislation would, on the face of it, allow taxpayers to deduct the cost of revenue account property at the time of purchase rather than at the time of sale. This would produce a mis-match between the expenditure incurred and the income to which it relates. The insertion of section EF 2 is not considered to be a policy change, however, as various decisions of the courts have required such matching. In *Murray Darnill Ltd* v *TRA* (No 2) 1994 16 NZTC 11, 126 and *Garwen Holdings Ltd* v *CIR* (1995) 17 NZTC 12,396, the courts interpreted the Act as requiring taxpayers to match their expenditure with the consideration derived from property transactions by adopting a common law trading stock approach. Further, the accrual expenditure rule in section EF 1 was applied to a land transaction in *Thornton Estates Ltd* v *CIR* (1995) 17 NZTC 12,230.

Section EF 2 will not apply to property held on revenue account that is subject to the trading stock rules, the accrual expenditure rules, the accrual rules applying to financial arrangements, or the specified lease rules.

Depreciation

Depreciation deductions are now "deductions allowed on account of depreciation" (see sections EG 1, EG 3, EG 11 and EG 12).

Section EG 15 (4)(a) (Additional depreciation in respect of certain new assets acquired of improvements made between 16 December 1991 and 1 April 1994) is amended for consistency with amendments to Subpart CB relating to exempt income.

Financial arrangements

The changes made to this Subpart mostly involve re-terming "income" as "gross income" to make the Subpart consistent with core provision terminology.

Section EH 6 (Post facto adjustment) has been amended so that a taxpayer's "income tax liability" rather than the "assessable income derived or loss incurred" is recalculated (taking into account the substituted amounts of gross income or expenditure from the post facto adjustment). Under subsection (5) the Commissioner has the right to reassess the taxpayer's "income tax liability".

Section EH 9 (f) (Application of accruals rules) has been amended so that interest is payable in relation to the "income tax liability", not the "tax on income" of the taxpayer. Under the core provisions, taxpayers have an income tax liability in respect of their taxable income. Where the term "income tax payable" (or "tax on income") is used in this context it has been changed to "income tax liability" for consistency with the core provisions. However, where the term refers directly to an obligation to pay income taxes (including withholding taxes) no change has been made.

Income equalisation

The phrase "without taking into account the value of trading stock at the beginning or at the end of that accounting year, and before the allowance of any deductions under this Act" in section EI 17 (4) is redundant as gross income, by definition, does not include deductions allowed.

Spreading of farm income

Significant amendments have been made to section EJ 1 (Spreading of income derived from sale or other disposition of timber) to ensure that if a taxpayer spreads back the gross income derived from the sale or other disposition of timber over previous years, the same proportionate amount of the cost of the timber is spread back as well. This approach is similar to that employed in sections EF 2 (3) (Matching regime for cost of revenue account property), EN 2 (3A) (Sums received from sale of patent rights) and EN 4 (2) (Spreading of gross income derived and allowable deductions incurred on acquisition of land by Crown).

Livestock

The reference to "income derived" in section EL 1 (2)(b) (Valuation of livestock generally) is replaced with "gross income derived".

Bloodstock

Significant changes have been made to section EM 3 (Replacement breeding stock) to improve consistency with the core provisions. For example, the term "assessable gain" has been replaced by the term "net gain", and definitions of "gross proceeds", "net gain" and "value of breeding stock" have been added to section OB 1. In addition, references to the inclusion of a net amount in gross income have been changed. The changes are of a drafting nature only and are not intended to affect the application of the section.

Other gross income

The reference in section EN 4 (1) (Spreading of gross income derived and allowable deductions incurred on acquisition of land by Crown) to the "payment of all income tax that is or may become payable" is no longer appropriate and has been changed to "satisfaction of all income tax liabilities that have arisen or may arise". The terminology for recognition of tax paid has been changed generally so that an income tax liability is "satisfied" which is consistent with section BC 9 of core provisions.

Section EN 4 has been changed substantially along the same lines as section EJ 1 (Spreading of gross income derived and allowable deductions incurred from sale or other disposition of timber) as discussed above.

Foreign source income

Section EP 1 (Option to use foreign tax balance date) has been substantially amended for consistency with the global/gross approach. This has involved clarifying that the election under subsection (1) applies to both foreign source income and foreign expenditure (being expenditure incurred in deriving that foreign source income).

In addition, clarification of the limit applying to the election in section EP 1 (8) has been undertaken. The $100,000 threshold is calculated on the following basis: "if...the taxpayer's net income for the year, but for this subsection, would exceed $100,000 if the only gross income of the taxpayer were foreign source income". This wording retains the former inclusion of allowable deductions in respect of domestic expenditure relating to that gross income in the calculation of the $100,000 threshold.

Consequential amendments to Part F - Apportionment and recharacterised transactions

Apportionment

Section FB 1 (Apportionment of expenditure or loss) is repealed as it relates to the time when there were differential rates of tax for dividends and other forms of income. It consequently no longer has any practical effect.

Recharacterisation

Section FC 3 (Dividend from share dealing) reflects a net schedular concept of income and has been significantly redrafted to create consistency with the global/gross approach.

Assignments of income

No change has been made to section FC 11. This section refers to a generic concept of income which would be inappropriately restricted if described as gross or net income.

Consolidation

The references to "attributed foreign income" and "foreign investment fund income" in section FD 2 (Interpretation) have been removed as they are implicit in the term gross income. References to "attributed foreign loss" and "foreign investment fund loss" are

continued on page 20

from page 19

replaced with "attributed foreign net loss" and "foreign investment fund net loss". References to "loss" are replaced with references to "net loss" where appropriate.

The term "profit or gain" in section FD 10, dealing with transfers within a consolidated group, has been replaced with "gross income". The deduction inherent in the term "profit or gain" is allowed under the new general deductibility provision, section BD 2 (1)(b)(i) and (ii). It was, therefore, considered that a separate deductibility provision was unnecessary.

Amalgamation

In section FE 4 (Amalgamated company to assume unexpired accrual expenditure, and gross income of amalgamating company), the term "profit or gain" is replaced by the term "amount", the latter being a gross concept. Again, deductions inherent in the term "profit or gain" are provided by the new core general deductibility provision, section BD 2 (1)(b)(i) and (ii), so a separate deductibility rule is not necessary.

Thin capitalisation

Sections FG 3, 4 (2) and 8, containing the new thin capitalisation rules, have been consequentially amended to make them consistent with the core provisions.

Consequential amendments to Part G - Avoidance and non-market transactions

Avoidance - general

References to income in the detailed part of the general anti-avoidance provision, section GB 1 (Agreements purporting to alter incidence of tax to be void), have been changed to references to gross income, allowable deductions and net losses, as appropriate. This is not intended to change the ambit of the section.

Section GB 1 should be read with section BG 1 of the core provisions, which provides for the voiding of tax avoidance arrangements and the Commissioner's power to counteract such arrangements.

The previous section BB 9 has partially been replaced with a definition of "tax avoidance arrangement". Tax avoidance arrangement means:

"an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly-

(a) Has tax avoidance as its purpose or effect; or

(b) Has tax avoidance as one of its purposes or effects, whether or not any other purpose or effect is referable to ordinary business or family dealings, if the purpose or effect is not merely incidental:"

The minor changes to existing wording are drafting changes only and are not intended to affect the existing interpretation.

The definition of "tax avoidance" in section OB 1 has not been materially altered.

Avoidance - specific

Section GC 19 (c), which provides for the general anti-avoidance provision to apply to resident withholding tax, has been amended to make it consistent with the amended section GB 1.

Non-market transactions

Consequential changes to section GD 3 (1), dealing with excessive remuneration to relatives, have been kept to a minimum as the section is largely concerned with generic items of profit, income or loss.

GD 10 (2) now provides that section GD 10 (Leases for inadequate rent) applies with respect to any leased property only and to the extent that it is used by the lessee in the derivation of gross income or exempt income. The previous reference was to "income" which could encompass both types of income.

New section GD 13, containing the new transfer pricing rules, was inserted by the Income Tax Act 1994 Amendment Act (No 3) 1995. Consequential changes have been made to the section, so that it is consistent with the new core provisions terminology.

Consequential amendments to Part H - Treatment of net income of certain entities

Consolidated groups of companies

Section HB 1 (d) (Returns, assessments, and liability of consolidated group) is amended to refer to the taxable income of the companies in a consolidated group for an income year as if the companies were a single taxpayer. This change was necessary as the core provisions refer only to single taxpayers.

In section HB 2, also relating to consolidated groups, the term "relevant period" is deemed to be an income year for the purposes of the section, to enable the terms "gross income", "amount" and "taxable income", which relate to an income year, to be used.

Special partnerships

The special partnership regime is schedular in nature. This has been dealt with in the Subpart by creating three new terms - "partnership gross income", "partnership net income" and "partnership loss", defined in section HC 1 (12). The latter two definitions refer to net income or a net loss as if the partnership were a taxpayer resident in New Zealand.

Section HC 1 (2) provides that if a special partnership sustains a partnership loss, no deduction will be allowed to any partner for any outgoing of the partnership and the partnership gross income will be deemed not to have been derived by the partners. Instead, in line with the original intention to treat special partnership losses as company losses, the loss may be carried forward by the special partnership to be offset against partnership net income in accordance with section HC 1 (3) to (5).

If a partnership loss is so offset against partnership net income, section HC 1 (6) allows each of the special partners a deduction of an amount equal to each partner's share of the partnership loss. This deduction is intended to be offset against the proportion of the income included in each partner's gross income so that the quarantining is removed to the extent that the partners have income from the partnership against which to offset the loss.

Partnerships

Section HD 1 (Assessment of partners, co-trustees, and joint venturers) prescribes the process for calculating income tax liabilities of taxpayers deriving or incurring amounts jointly. Paragraph (b) relating to partnerships refers only to gross income and not allowable deductions of the partnership. This is intended to avoid any perceived implications that partnerships and similar bodies are tax entities in their own right. In line with the Court of Appeal's decision in the *Hadlee* case[4], only *taxpayers* can obtain deductions, and the allowable deductions are those of the individual partner, not of the firm. The practice of partnerships filing returns of net amounts is not intended to be changed, however. This is dealt with more specifically in the changes to section 42 of the Tax Administration Act 1994.

4. Hadlee & Sydney Bridge Nominees Ltd v CIR (1991) 13 NZTC 8116.

Unit trusts

Under section HE 2, group investment funds were required to file separate returns in respect of their category A income and category B income. This requirement is reflected in the amended section. The previous section also imposed the liability to tax in respect of each type of income. This schedular aspect is now dealt with in section BC 3, which requires group investment funds to calculate separate liabilities in respect of category A income and category B income and add those liabilities together to calculate a single income tax liability.

Mutual associations

The rules relating to mutual associations provided that rebates paid by mutual associations to members in respect of member transactions were deducted from the profit from member transactions, to the extent of that profit.

The amount of the deduction for an income year is now expressed in a formula as the lesser of:

- the rebates paid by the association in the year in respect of member transactions
- gross income from member transactions less deductions relating to that gross income and distributions in accordance with section ME 35 (1)(a) (cash distributions with imputation credits attached).

There was some ambiguity as to whether "profit" meant a taxation concept of profit or accounting profit. The clarification in favour of a taxation concept of profit was based on the underlying purpose of section HF 1 (Profits of mutual associations in respect of transactions with members) to allow the imputing to members of that part of an association's assessable income arising from member transactions that is distributed to members by way of rebate. It is consistent with that purpose to interpret profit as a tax concept.

Trusts

Subpart HH for the most part refers to gross income derived by a trustee that is categorised as trustee income or beneficiary income.

Pivotal to the trust regime are the definitions in section OB 1 of "trustee income" and "beneficiary income".

"Beneficiary income" is broadly defined as gross income derived by a trustee of a trust to the extent that it is vested in the beneficiary or is paid or applied within 6 months after the income year for the beneficiary's

continued on page 22

from page 21

benefit. The words "to the extent that" are intended to reflect that deductions may be taken by the trustee. The definition has also been amended to include amounts that vest to a beneficiary that would have been gross income of the trustee if any settlor of the trust had been resident in New Zealand.

This change was necessary as, since gross income excludes amounts derived by non-residents (under section BD 1 (2)(c)), the definition of beneficiary income may otherwise have become narrowed as a result of the global/gross approach. The change makes it clear, for example, that resident beneficiaries of a foreign trust (one for which no settlor is resident at any time in New Zealand) can still derive beneficiary income, even though the income is not gross income for New Zealand purposes.

"Trustee income" is defined as gross income derived by the trustee of a trust that does not vest in the beneficiary or is not paid or applied for the benefit of a beneficiary within 6 months after the end of the income year. The change from the previous definition (which referred merely to income that was not beneficiary income) was necessary because of the change to the definition of beneficiary income required as a result of the global/gross approach as described above.

As a consequence of treating all income derived by a trustee at the gross level, two new provisions (sections DI 5 and 6, discussed above) further clarify that deductions are to be taken by the trustee rather than the beneficiary, regardless of whether the corresponding income is trustee or beneficiary income.

The following example compares the pre- and post-core provisions treatment for a trustee who distributes net rental income to a beneficiary.

Example

Pre 1997-98 treatment

Revenue		
Non-taxable gain from the sale of shares	$3,000	
Rental income	$5,000	
Interest	$2,000	
Dividends	$2,000	
		$12,000
Expenses		
Accounting fees	$1,000	
Property costs	$2,000	
Legal fees (lease renewals)	$1,000	
		$ 4,000
Net profit		$ 8,000
Adjustments		
Non-taxable gain from the sale of shares		$3,000
		$5,000
Beneficiary income		$2,000
Trustee income		$3,000

Global/gross approach from 1997-98

Gross income derived by the trustee		
Rent	$5,000	
Dividends	$2,000	
Interest	$2,000	
	$9,000	
less beneficiary income	$2,000	
Annual gross income of trustee		$7,000
Allowable deductions		
Accounting fees	$1,000	
Property costs	$1,000	
Legal fees (lease renewals)	$1,000	
Annual allowable deductions of trustee		$4,000
Net income of trustee		$3,000

Calculation of beneficiary income (for both methods)

Rent		$5,000
less property costs	$2,000	
less legal fees	$1,000	
		$3,000
		$2,000

Under the settlor regime, section HH 4 brings certain non-resident trustees deriving foreign-sourced income into the New Zealand tax net. The section has been amended to treat this type of income as gross income. This was necessary because such income is excluded from gross income under the core provisions (section BD 1 (2)(c)).

New section HH 4 (3A) ensures the retention of the treatment of non-resident trustees of a trust with a New Zealand resident settlor relating to foreign tax credits, financial arrangements, foreign investment fund income, attributed foreign income and BETA accounts. New section HH 4 (3B) is intended to retain the treatment of foreign-sourced amounts of a trust with no New Zealand-resident settlor by providing that these amounts are not gross income.

Subsection (2) of section HH 5, relating to the cost base for trustees of trusts who in that capacity are new taxpayers, is repealed. That subsection excluded existing trusts which had no income or made losses from the cost base rules. As the test in subsection (1) is whether or not gross income was derived before the relevant date, it was no longer necessary to exclude such trusts.

As mentioned above, this Subpart generally refers to gross income derived by a trustee. However, there are two exceptions:

- The income tax liability of the trustee is expressed as being in respect of the *taxable* income of the trustee, as is required by section BC 8 of core provisions.
- Generic references to income have been retained in the ordering rules (section HH 6) as these references would be inappropriately restricted if described as gross or net income.

Amendments have also been made to the definition of "qualifying trust". The former focus of the definition was on income derived by the trustee of a trust where that income has been liable to New Zealand income tax. Consistently with the core provisions, the focus of the definition is now on whether or not gross income has been derived. The amended definition is also intended to ensure that a foreign trust cannot be a qualifying trust under the global/gross approach.

Maori authorities

Section HI 2 in effect provided, with certain exceptions, that the Maori Authority regime was a code. As it is inconsistent with the global/gross approach to have independent codes within the legislation, section HI 2 (Maori authorities and Maori) has been repealed. The specific exclusions from former section HI 2 were in relation to the application of section GC 14 (essentially an anti-avoidance provision applying to distributions to beneficiaries), and sections HH 3 and HH 4 (the trust rules regarding trustee and beneficiary income). These sections have been specifically amended to make it clear they do not apply to Maori authorities or any Maori to whom Subpart HI applies[5].

The legislation, in relation to Maori authorities with more than 20 beneficiaries (section HI 3), taxed undistributed income rather than taxable income. The difference between the two concepts is that undistributed income is the amount remaining after deducting distributed income from net income. Taxable income is defined in section BC 7 to mean net income less available net losses. The redrafted section HI 3 taxes Maori authorities on taxable income, but with an allowable deduction for distributed income, and makes it clear that the net income of a Maori authority is determined after, rather than before deduction of distributions.

5. See sections GC 14 (2), HH 3 (6), and HH 4 (8).

Agency

Under section HK 1 (Agent to make returns and be assessed as principal), agents are deemed to be separate taxpayers with respect to the income of each principal for which the agency applies. This means that a separate calculation of income tax liability must be made for each agency.

The retention of the term "income" reflects the fact that agencies will not generally be restricted to gross income.

Section HK 15 (Recovery of tax payable in respect of alimony or maintenance) is repealed because alimony payments have been exempt from income tax since 1939.

The reference to "income" in section HK 26 (Agents in New Zealand of principals resident abroad) has not been changed as the section is concerned with amounts which might not otherwise fall within the New Zealand tax net, and would not, therefore, be included within "gross income".

Consequential amendments to Part I - Treatment of net losses

The former Part I has been replaced with a new Part I because of the substantial number of changes required to the Part. The previous section numbers have been largely retained.

Like its predecessor, the new Part I deals with withdrawal tax as well as net losses. As withdrawal tax is a terminating regime, the withdrawal tax provisions have been relocated (with consequential changes for consistency with core provisions) to Subpart IZ. The charging section (section ID 2) has been amended so that withdrawal tax is imposed in core provisions (section BF 1 (c)). Part I has been renamed "Treatment of net losses".

Subpart IB, containing administrative provisions, has been removed. The effect of sections IB 1 (Basic rates of tax) and IB 4 (Change of return date) is contained in the definition of "applicable tax rate" as used in the core provisions and the Tax Administration Act 1994.

The effect of sections IB 2 and IB 3 (Income derived by non-resident mining operators) is contained in the definition of "schedular gross income" and section BC 3 of the core provisions.

Subpart IC (Pay-period taxpayers) has also been removed. The effect of Subpart IC is contained in section 33A of the Tax Administration Act 1994 (Annual income tax returns not required from taxpayers) and in section BC 2 of the core provisions (Non-filing taxpayer). "Pay period taxpayers" are now referred to as "taxpayers to whom section 33A of the Tax Administration Act applies". Section OB 4 (Meaning of "pay period taxpayer") was consequentially repealed by the Income Tax Act 1994 Amendment Act 1995.

In Part I the term "net loss" has been adopted to encompass all instances where the result of the net income calculation is a negative figure. Further, this Part refers to "the net loss of [a taxpayer]" and "offset against net income".

As well as any net loss arising from the global/gross calculation if annual allowable deductions exceed annual gross income, net losses include losses from specified activities, mineral mining losses and policyholder losses of life insurers. They also include attributed foreign losses and foreign investment fund losses to the extent that they cannot be taken as a deduction

continued on page 24

from page 23
under the new Subpart DP in the year of incurrence. Subject to the specific rules under a particular regime, the key general provisions in the Part (section IE 1 (the loss carry-forward provision), section IF 1 (the continuity rules) and section IG 2 (the grouping provision)) apply to all such losses.

Subpart IE - Net losses

New section IE 1 (3) (Net losses may be offset against future net income) replaces the former subsection (4), which dealt with the ordering of losses. It clarifies that it is the sum of net losses (in the core provisions referred to as "available net losses") that cannot exceed net income.

Section IE 2 deals with losses from specified activities. The aspects of the regime dealing with the incurrence of the losses are repealed as they are of historical significance only. "Specified activity net income" and "specified activity net loss" have been defined in subsection (8) as hypothetical calculations of net income or net loss in relation to a specified activity.

Sections IE 3 and IE 4 (Attributed foreign net losses and Foreign investment fund net losses) have been significantly amended to ensure that, whilst retaining the existing policy, the treatment of attributed foreign losses and foreign investment fund losses is consistent with the global/gross approach. If the balance of an attributed foreign loss or a foreign investment fund loss has been carried forward from the year of incurrence under new sections DP 1, DP 2, and DP 3 (see above), the maximum amount that can be offset against net income is determined by reference to gross amounts of attributed foreign income or foreign investment fund income as the case may be.

Subsections IE 3 (5) and IE 4 (6) provide that if there is insufficient net income to offset the attributed foreign net loss or foreign investment fund net loss, any excess becomes a net loss and ceases to be an attributed foreign net loss or foreign investment fund net loss. This will ensure that any further offset of the excess will not be subject to ring-fencing. This maintains the effect of existing policy whereby attributed foreign and foreign investment fund losses are directly offset against the relevant foreign-sourced income.

The following example shows the previous treatment of an attributed foreign loss and the new treatment of the same loss under the new global/gross approach:

Previous treatment

Year 1

Attributed foreign income	$3,000
less attributed foreign loss	($6,000)
Attributed foreign loss to carry forward (ring-fenced)	($3,000)
Other income	$1,000
less deductions	($1,000)
Net income	nil

Year 2

Attributed foreign income	$2,000
Less attributed foreign loss c/forward	($3,000)
Attributed foreign loss to carry forward (ring-fenced)	($1,000)
Other income	$2,000
less deductions	($3,000)
Loss to carry forward (not ring-fenced)	($1,000)

Year 3

Attributed foreign income	$2,000
Less attributed foreign loss c/forward	($1,000)
Attributed foreign income	$1,000
Other income	$2,000
less deductions	($1,000)
Other assessable income	$1,000
Less loss carried forward	($1,000)
	nil

Global/gross treatment

Year 1

Attributed foreign income	$3,000
Other gross income	$1,000
Annual gross income	$4,000
Annual allowable deductions (incl. $3,000 attributed foreign loss)	($4,000)
Net income	nil

Year 2

Attributed foreign income	$2,000
Other gross income	$2,000
Annual gross income	$4,000
Annual allowable deductions	($3,000)
Net income	$1,000
Maximum attr. foreign net loss for offset	($2,000)
Loss to carry forward (not ring-fenced)	($1,000)
Attr. foreign net loss to carry forward (ring-fenced)	($1,000)

Year 3

Attributed foreign income	$2,000
Other gross income	$2,000
Annual gross income	$4,000
Annual allowable deductions	($1,000)
Net income	$3,000
Less max. attr. foreign net loss for offset	($1,000)
Less loss carried forward	($1,000)
Taxable income	$1,000

Subpart IF - Losses - companies

Some sections (for example, sections IF 1 (4) and IF 4 (d) (Net losses may be offset against future income)) refer to the portion of assessable income which is derived during a part of an income year. This terminology is changed generally to "the net income which is attributable to that part of the income year".

The changes to section IG 2 (Net loss offset between group companies) include the removal of subsection

(1)(a), which provided for losses to be ascertained in accordance with the provisions of the Act. The subsection was unnecessary as the core provisions provide for the application of Part I. Subsection (1)(c) has also been removed, as noted above, as the core provisions provide a corresponding treatment for profits and losses.

In subsections (2)(h)-(j), the treatment of group loss offsets or subvention payments as assessable income to the loss company and a deduction to the profit company has been changed to, respectively, a reduction in available net losses to the loss company and an offset against net income of the profit company. This is in line with the approach in the core provisions to offset net losses only after net income is determined. Other amendments made to section IG 2 are consistent with this approach.

Subsection (6) of section IG 2 deals with, among other things, losses from the sale or valuation of shares. The provision is amended, in the case of a disposal of shares, to refer to gross income from the disposal being less than the allowable deduction for the cost of the shares.

Sections IG 4 (Group of companies attributed foreign net losses) and IG 5 (Group of companies foreign investment fund net losses) specify the amount able to be offset by another company and modify the application of section IG 2, primarily to reflect the quarantining of such losses.

Subpart IH - Losses - miners and petroleum miners

Substantial drafting changes have been made in Subpart IH because of the complex and schedular nature of the mining loss rules. Again the intention is to retain existing policy.

Section IH 1 (Losses of mining companies and petroleum miners) deals with the offset of mining losses against particular sources of income. Amendments are made, as noted above, using terminology such as "the amount that would be the net income of the company if its sole source of income was from that licence area".

In section IH 3 (Loss carry back by petroleum miners) the reference to "expenditure or deferred deductions that cannot be deducted in full" has been changed to "allowable deductions...reduced by the amount that would otherwise be a net loss". This has been done both for reasons of consistency with the core provisions and to improve the drafting.

A mining company which is entitled to carry forward a net mining loss in accordance with sections IE 1 and IF 1 or section IH 1 must do so subject to section IH 4 (1) (Companies engaged in exploring for, searching for, or mining, certain minerals). Section IH 4 (1)(a) provides that the amount which may be carried forward from the year of loss may not exceed the amount of the "mining outgoing excess" in the year of loss (see the comments under Subpart DN) less 150% of the amount of that mining outgoing excess as was deducted in the year of loss under section DN 1 (3). Paragraph (1)(b) in effect, provides that the maximum amount of mining losses carried forward that can be offset against non-mining income is the lesser of:

- "net non-mining income"; and
- two thirds of the result of the following calculation:

  net mining losses carried forward
  less
  "net mining income".

The new formula reflects current policy within the global/gross context.

Paragraph (c) provides a formula for determining the amount available for further carry forward. This replicates the effect of subsection (1)(a), which was to ensure that the carried-forward loss was reduced by 150% of the losses used.

Section IH 5 (Resident mining operators) has been consequentially reworded to conform to the approach in the new section IH 4.

These amendments, as well as being consistent with the global/gross approach, better reflect the accepted approach to the application of these sections regarding the adjustment of net mining losses to carry forward as a result of the offset of any net mining losses in an income year.

Subpart II - Losses - life insurers

Section II 2 (1A) has been replaced by a new section II 3 (Carry forward of policyholder net loss) following the Income Tax Act 1994 Amendment Act (No 4) 1995.

Consequential amendments to Part J - Surcharges

Sections in this Part which refer to income from a particular source have been changed to "gross income derived" from that source.

Section JB 1 (New Zealand superannuitant surcharge provisions) is amended to ensure that the imposition of the New Zealand superannuitant surcharge liability is made in accordance with the core provisions.

The amendments to specified exemption provisions (Section JB 4) mean that in certain cases the New Zealand superannuation is not treated as gross income in some parameters of the calculations. This ensures that the specified exemption is correctly calculated in a manner which is consistent with the core provisions.

Section JB 3 (3) (Determination of "other income") gives the Commissioner power to treat payments received by a superannuitant as received in a different income year in certain circumstances. The allocations formerly applied on a gross basis, so the references to "income" in this subsection have been changed to "gross income".

Consequential amendments to Part K - Rebates

Where classes of income are referred to, the terminology is generally changed to "gross income".

Subpart KB - General

Section KB 1 is repealed, along with section BB 10, due to the insertion of the new definitions of "allowable rebates", "surplus rebates" and "refundable rebates" . These terms are inserted to clarify which rebates may be refunded.

The effect of former sections KB 1 and BB 10 meant that only KF 1 & 2 rebates could be refunded. This effect is now reflected in the way the core provisions link "allowable rebates", "surplus rebates" and "refundable rebates". In addition because the Family Support tax credit is effectively treated as a refundable rebate it has been included within the meaning of the term "refundable rebate".

Subpart KC - Individual rebates

The rebate provisions in Subpart KC were subject to section BB 10, which limited the amount of rebate to the amount of tax payable by the taxpayer. As section BB 10 is replaced by the core provision concepts of "allowable rebates", "refundable rebates" and "surplus rebates" (see section BC 8), the words "subject to section BB 10" are omitted in this Part.

Section KC 1 (Low income rebate) is an example of a change from "assessable income" to "net income" in this Part, on the basis that rebates are calculated on the basis of net income.

Section KC 1 is also amended by inserting a formula which provides that a taxpayer who is entitled to the low income rebate will calculate the amount of that rebate by excluding from gross income any interest, dividends, royalties, rents, beneficiary income or taxable distributions. Also excluded are the corresponding allowable deductions.

Under the core provisions, the transitional tax allowance is not a refundable rebate. Therefore it is unnecessary to retain the criteria of paragraph (b) within the definition of eligible person as the core provisions ensure that a person with no taxable income cannot obtain any benefit from the transitional tax allowance.

Subpart KD - Family Support

Section KD 1 (Determination of net income) has been amended to clarify that the Family Support tax credit is based on net income or net loss as calculated under the core provisions, but subject to the specified adjustments within section KD 1.

The purpose of section KD 1 (1)(f) is to ensure that if a person carries on more than one business, each business is treated separately so that there is no offsetting of losses made in one business against the income of another business.

The term "assessable income" in sections KD 1 (4), KD 2 and in the definition of "specified income" in section OB 1 has been replaced with "net income".

Section KD 4 (Allowance of credit of tax in end of year assessment) has been amended to reflect the fact that the Family Support tax credit is a "refundable rebate'" under the core provisions. Section BC 10 (1) of the core provisions states that any surplus refundable rebates must be refunded to the taxpayer, subject to section KD 4. Rebates (including Family Support credits) are set off against the income tax liability of the taxpayer under section BC 8 (2) of the core provisions. Accordingly, section KD 4 (1) is repealed as redundant. The requirement that the taxpayer provide prescribed information and make an application to the Commissioner to apply an allowable Family Support tax credit against income tax payable is inserted in section 41 of the Tax Administration Act 1994 (Annual returns by persons who receive a Family Support credit of tax). The issue of whether the Family Support tax credit should be renamed the "Family Support rebate" will be addressed during the rewrite of Part K.

Section KD 4 (4) gives the Commissioner the power to recover excess family support credits that are paid out to taxpayers and to treat them as income tax payable. The words "under this section" were removed as the set-off

of credits and refund is authorised by core provisions. Nevertheless, a reference to sections KD 2 and KD 3 was added to section KD 4 (4) for clarification.

The reference in section KD 5 (2) (Credit of tax by instalments) to "a complete statement of the assessable income (if any) that is expected to be derived" has been changed to a reference to the net income that is expected to be "attributable". Under the core provisions, gross income is "derived", and allowable deductions are incurred. The word "attributable" was chosen because net income is not, by definition, "derived".

Section KD 8 provides that the Family Support tax credit is not gross income. This section has not been repealed as it is necessary to ensure that Family Support credits that take on the characteristics of "income", namely that they are regular receipts and are treated by the recipient as income, are not treated as "gross income".

Consequential amendments have been made to section KF 1 (2) and (3) to ensure that the savings provision in section KZ 3 is consistent with the core provisions. Consequential amendments to the remaining subsections in section KF 1 and to section KF 2 are not necessary given their repeal.

Consequential amendments to Part L - Credits

Under the global/gross approach, credits are "set off" or "credited against" the income tax liability of a taxpayer, rather than in payment of income tax that is "payable" or that a taxpayer may be "liable for". Changes in Part L reflect this new approach.

There is no concept in the core provisions of an income tax liability arising in respect of a particular source of income. This creates a potential conflict with Part L, which refers to credits in respect of tax payable on income from a particular source or of a particular nature. For the purposes of determining credit limitations, taxpayers, in claiming a credit, may, therefore, be required to calculate the amount that would be their income tax liability for an income year, if their only gross income was the income for which the credit is claimed. This result is then fed back into the credit limitation rule.

Subpart LB - Imputation credits - shareholders and imputation system

The definition of quantity 'c' in section LB 1 (4) (Determination of amount of credit in certain cases) has been changed to the "gross income jointly derived by the partners of the partnership for the income year". This ensures consistency with both the core provisions and the consequential amendments made to section HD 1.

Section LB 2 (Credit of tax for imputation credit) has been substantially redrafted so that any imputation credits available to a taxpayer are credited against the income tax liability of that taxpayer, calculated in accordance with core provisions. Any excess imputation credits are converted into a net loss for the year which is then available for offset against net income in a succeeding income year.

Subpart LC - Foreign tax

Section LC 1 (Credits in respect of tax paid in a country or territory outside New Zealand) has been amended by providing generally that persons subject to the section are able to credit foreign tax credits against their New Zealand income tax liability. The words "subject to this section" in former LC 1 (1) have been removed as the limitation on the maximum foreign tax credits granted is now contained in section LC 2 (see below).

The new subsection LC 1 (4) provides for the calculation of the maximum foreign tax credit in respect of an interest in a foreign investment fund using the formula in section LC 14.

Section LC 2 (Maximum credits) is amended so that it is explicit that the maximum amount of foreign tax credit allowed shall be the amount calculated under section LC 14 (Ascertainment of New Zealand income tax liability on foreign source income). The cross-reference to section LC 14 retains the existing source by source basis for calculating foreign tax credits in a manner consistent with the core provisions.

Sections LC 4 (Foreign tax credits - controlled foreign companies) and LC 5 (Group of companies controlled foreign tax credits) have been substantially redrafted to make them consistent with the core provisions. The effect of the rewording is to carry out a "side calculation" of a taxpayer's income tax liability as if the only gross income derived by the taxpayer were attributed foreign income in respect of the controlled foreign companies in question, and to calculate the credit limitation by reference to that amount. These changes are necessary because, as mentioned above, there is no concept in the core provisions of an "income tax liability" in respect of a particular source of income.

In section LC 6 (Election in respect of foreign tax in dividend), a reference to "assessable income" has been retained since the double tax agreements which apply to section LC 6 make specific reference to "assessable income", and a continued use of the term is considered necessary.

The new section LC 14 provides a prescriptive approach to determining the maximum amount of tax credit that may be credited against the NZ income tax liability. It also incorporates a policy change which ensures that group tax losses do not reduce a taxpayer's entitlement to a foreign tax credit.

continued on page 28

from page 27
The general approach in section LC 14 to determining the maximum foreign tax credit examines the ratio of foreign sourced "net" income (foreign sourced gross income less applicable allowable deductions) to the net income of the taxpayer. However, where the taxpayer has losses, this general approach can give rise to distorted results and a secondary approach is necessary. The secondary approach fixes the maximum amount of credit by reference to the ratio of the tax credits for any single type or class of foreign sourced gross income calculated under the general approach to the sum of those tax credits for all types and classes..

Section LC 16 (Foreign tax credits of consolidated group members) has been amended by inserting a cross-reference to section LC 4, enabling redundant wording to be deleted. The addition of the "side calculation" used generally in this Subpart is also necessary in section LC 16 (2).

Sections LD 1 (Tax deductions to be credited against tax assessed) and LD 3 (Resident withholding tax deductions to be credited against income tax assessed) contain ordering rules by which tax deductions are credited against an employee's income tax liability. A new paragraph (d) has been inserted in subsection (2) of each section since, under section BB 2 of the core provisions, a person's income tax liability (dealt with by an amended paragraph (c)) is distinct from the person's liability to pay provisional tax (now dealt with under paragraph (d)). The changes are not intended to alter existing policy or practice.

Amendments are made to section LD 2 (Non-resident withholding tax - credit allowed) so that credits allowed for non-resident withholding tax are credited against the income tax liability of the taxpayer in a manner consistent with the core provisions. Similarly, section LD 7 (Provisional tax to be credited against income tax liability) is amended so that any provisional tax paid is credited against income tax liability. Section LD 6 (Allowance for provisional tax paid by agent) has been amended so that any provisional tax paid on behalf of a principal by an agent is credited to the principal's account.

Changes are made to section LD 9 (Refund to non-resident or exempt shareholders) to follow changes in the core provisions and in Subpart CB, relating to the treatment of exempt income.

Subpart LE - Non-resident investors

Sections LE 3 (10) and LE 3 (11) address the situation where an LE 3 holding company offsets losses and reduces its terminal tax below supplementary dividends received.

These provisions ensured that the effect of the offset of losses was countered by setting a minimum terminal tax liability before taking into account Foreign Investor Tax credits and provisional tax. In effect, the result of these two provisions was that to the extent a supplementary dividend derived by an LE 3 holding company remained undistributed (generally due to the effect of loss offsets), the LE 3 holding company was required to pay to the Commissioner the undistributed amount as income tax.

Under the global/gross approach, it is inappropriate to set a minimum terminal tax liability outside core provisions. Therefore sections LE 3 (10) and LE 3 (11) have been replaced by a new section LE 3 (10). This change, combined with the new section IF 7 (Offsetting supplementary dividend against net income) and the amendments to section LC 14, achieve the policy objective by restricting the amount of net loss which may be offset against net income in any income year. This approach would ensure that any undistributed supplementary dividend is repaid to the Commissioner as income tax. Consequential amendments have been made to other subsections of section LE 3 to render it consistent with core provision terminology.

Section LF 7 (Interest paid in conduit financing arrangements) has been amended so that interest paid in conduit financing arrangements is now an "allowable deduction" in the calculation of "net income".

Consequential amendments to Part M - Tax payments

Subpart MB - Provisional tax

Section MB 1 (Application of provisional tax rules) has been removed as the application of the provisional tax rules is covered by section BB 2 of the core provisions.

Provisional tax is a separate obligation from an income tax liability in the core provisions. Part M previously incorporated provisional tax with general references to income tax. Where appropriate, the two concepts have been separated as part of the consequential changes (see sections MD 4, ME 9, ME 13 and ME 19, for example). Changes have also been made to Subpart MB in recognition of the fact that provisional tax will be credited against the income tax liability of the taxpayer rather than against the income derived by the taxpayer.

In section MB 2 (5), life insurers are required to distinguish between provisional tax paid in respect of the life insurance base income and the policyholder base income. This is because provisional tax paid on the policyholder base is attributable only to benefits accruing to the policyholder, whereas a life insurer can attribute provisional tax paid on the life insurance base to either the life insurance base or the policyholder base.

For this reason, it remains necessary to distinguish provisional tax payments attributable to the policyholder base from other payments of provisional tax. This is achieved by requiring life insurers to identify the amount of provisional tax payable in respect of the policyholder base. The term "policyholder base" rather than the term "policyholder base income tax liability" is used because it is not possible to require taxpayers to state, at the time of payment, the extent to which provisional tax represents the policyholder base income tax liability as this liability is not known until after all provisional tax is required to be paid.

Changes are made to section MB 10 (Offset of further income tax) to make the section consistent with the rewritten section ME 9 (Further tax payable where end of year debit balance). The amendments to these sections reflect the core provisions approach to treating provisional tax obligations as distinct from income tax obligations.

Section MB 12 (Application of other provisions to provisional tax) illustrates a change consequential to the terminology used in section BB 1 of the core provisions. As income tax is now "imposed" many references to "tax levied" have been changed to "tax imposed".

Subpart MC - Terminal tax

Section MC 1 (1) (Assessment and payment of terminal tax) is repealed as part of a general removal of all references to "general assessment".

Changes made to the remainder of section MC 1 and MC 2 (Payment of tax) use the term "terminal tax" to specify when the tax is due and payable.

Subpart MD - Refunds

Section MD 4 is amended to provide consistency with the distinction drawn in the core provisions between income tax obligations and provisional tax obligations.

Section ME 1 (2), which outlines the types of companies that are not allowed to establish imputation credit accounts, is amended to make the terminology consistent with the core provisions.

Section ME 4 (Credits arising to imputation credit account) outlines a number of situations where a credit does not arise to an imputation credit account for income tax paid. This section and section ME 5 (Debits arising to imputation credit account) have been significantly reworded to make them consistent with core provisions. For example, a hypothetical calculation of an income tax liability in section ME 4 (1) (a)(iv) to exclude the income tax attributable to the period before a company becomes an imputation credit account company.

Sections ME 9 and ME 13 relate to further income tax payable when an imputation credit account is in debit for companies and consolidated groups. They have been amended to provide that any further income tax paid under those sections may be credited against any income tax liability that arises or any instalment of provisional tax that is payable in accordance with section MB 10.

The amendments to sections ME 9 and ME 13 reflect that any amount of further income tax paid may be credited against either income tax or provisional tax obligations. This change is to provide consistency with the distinction in the core provisions between provisional tax obligations and income tax obligations.

Sections MF 8, MF 10 and MF 13 have been significantly amended to make them consistent with the core provisions. For example, a taxpayer's income tax liability is calculated before any foreign tax credits and rebates are deducted. In addition, changes have been made to sections MF 4 and MF 5 to ensure that the legislation relating to the BETA account of a company is consistent with the new provisions on the BETA account of a consolidated group.

Consequential amendments to Part N - Withholding taxes and taxes on the income of others

Subpart NF - Resident withholding tax

In section NF 9 (Certificates of exemption), the $2 million resident withholding tax exemption certificate threshold is expressed as an annual gross income figure in paragraph (g) of subsection (1) and later subsections.

As section CB 4 (1) (k), which relates to the exemption for non-profit bodies, is being changed to a deductibility provision in the form of section DJ 17, necessary consequential changes are made to paragraph (j) of section NF 9 (1).

Subpart NG - Non-resident withholding tax

Under section NG 3 (Non-resident withholding tax to be final tax in certain cases), the former reference to non-resident withholding income subject to non-resident withholding tax as a final tax being excluded from assessable income is removed. Instead, consistently with section BC 3 of the core provisions (Taxpayer with schedular gross income), section NG 3 specifies the method for calculating the income tax liability of a person with income subject to final non-resident withholding tax as the sum of the:

continued on page 30

from page 29

- non-resident withholding tax in respect of that non-resident withholding income; and
- the amount that would be the person's income tax liability if the person had not derived that non-resident withholding income.

The removal of the reference to the income being excluded from assessable income has necessitated two changes:

- the insertion of a new subsection (2) providing that the taxpayer is not entitled to a credit against income tax liability for any imputation credit attached to the dividend; and
- a prohibition on deductions in section BD 2 (2) for expenditure incurred in deriving non-resident withholding income subject to final NRWT.

Neither of these provisions is intended to change the law.

The removal of the reference to non-resident withholding income, to which section NG 3 relates, not being included in assessable income has also highlighted an issue about the applicability of the general anti-avoidance provision as now contained in sections BG 1 and GB 1. There was an argument that section NG 3 was, before the enactment of core provisions, not subject to the Commissioner's general anti-avoidance powers because section GB 1 only gave the Commissioner power to adjust the "assessable income" of a taxpayer.

The change in wording in section NG 3 removes any ambiguity that may have existed in relation to the applicability of the general anti-avoidance provision to income, to which section NG 3 applies. Accordingly, the general anti-avoidance rule applies to non-resident withholding income. The removal of the words "shall not be included in the assessable income" does not in the Inland Revenue Department's view, represent a departure from its existing policy.

Section NG 4 (Non-resident withholding tax to be minimum tax in certain cases) has been amended so that it provides a method for calculating a global/gross income tax liability for persons with non-resident withholding income for which non-resident withholding tax is not a final tax. The formula is the greater of:

- the sum of:
  - all non-resident withholding tax for which the person is liable; and
  - the amount that would be the person's income tax liability if the person had not derived any non-resident withholding income
- the amount that would but for the application of the section be the income tax liability of the person.

Consequential amendments to Part O - Definitions and related matters

Subpart OB - General definitions

A considerable number of new definitions have been added to section OB 1, and a large number of previously existing definitions amended for consistency with the core provisions.

Some of the new definitions do no more than refer to the section in the core provisions that describe the substance of the relevant items. For example, "net income" means met income for an income year determined under section BC 6.

The more significant new or amended definitions have been discussed above under the relevant Parts.

Other definitions to note are:

Applicable basic tax rate

This is a new definition which is used in the core provisions relating to the calculation of a taxpayer's income tax liability. The definition has the effect of apportioning the relevant tax rate on a pro rata basis when a return of income covers a period greater or less than 12 months.

Eligible company/qualifying amalgamation

Reference to companies whose income is exempt under section CB 10 is added to paragraph (b). This ensures that companies whose sole income is from dividends which are subject to dividend withholding payment, and inter-corporate dividends, are not excluded from the consolidation/amalgamation regimes. This was the intention of those regimes.

"Qualifying company" - section OB 3

In paragraph (d)(i) a reference to "assessable income" is changed to "gross income". The change reflects the original policy intent of the legislation to treat the $10,000 limitation in respect of foreign non-dividend income as a gross amount. The definition of "foreign non-dividend income" has been amended accordingly.

Consequential amendments to Part Y - Amendments, repeals, savings and transitional provisions

As also mentioned above, the former section AA 1 (2) has been retained as section YB 4 (3), to clarify that the re-ordering of the 1976 Act, and minor wording changes effected by the Income Tax Act 1994 (as enacted on 23 December 1994) are not intended to affect the interpretation of the Act. This section will continue to apply to provisions that have not been amended by legislation subsequent to the enactment of the 1994 Act.

In the case of income years preceding the 1997-98 income year, the 1994 Act (or the 1976 Act as the case may be) will apply. Accordingly, it has not been necessary to "save" the old terminology for prior income years.

The new section YB 4 (4) provides that the changes in style and language carried out by the Taxation Core Provisions Act 1996 are to be applied to the interpretation of those provisions of the 1976 Act which continue to have application by virtue of section YB 4 (1). For example in considering the application of section 232B of the 1976 Act to a disposal of property in the 1998 income year, the term assessable income would be read as being the core provisions term "net income".

Consequential amendments to the Tax Administration Act 1994

The consequential amendments made to the Tax Administration Act 1994 in essence follow the concepts and terminology in the new core provisions. For example, as described in the section on general consequential changes, the new terminology of "gross income", "net income", "annual gross income", "annual allowable deductions" and "taxable income" have all been adopted in the Tax Administration Act as appropriate. The meaning of these terms are outlined in detail earlier in the TIB in the core provisions discussion.

Some sections required certain entities to file returns. Amendments have been made to ensure that the annual return relates to the taxable income of the entity for that income year (see section 57, for example, dealing with the filing requirements for Maori authorities).

Section 42

Significant amendments have been made to section 42 (Returns by partners, co-trustees and joint venturers) to make it consistent with core provisions and case law relating to the taxation of partnerships. A partnership is not a taxpayer and so is unable to derive gross income or claim deductions for expenditure incurred by the partnership business. The amendments clarify that each partner derives their share of gross income of the partnership and each partner separately claims their share of the allowable deductions relating to the partnership business. Accordingly, the partners are required to make a joint return of income including "the gross income jointly derived from the firm ... and a summary of the allowable deductions of each partner that relate to the gross income." (See also the comment under section HD 1.)

Section 92

Section 92 (Commissioner to make assessments, determinations of net loss, and other determinations) is amended to clarify that the Commissioner issues a single assessment in respect of a taxpayer's taxable income, income tax liability and the tax payable by the taxpayer. Further, subsection (3) refers to the Commissioner making a determination of "net loss" instead of "loss".

Section 129

Section 129 (Determination of objection not to affect other matters) has been redrafted to omit terminology that is inconsistent with the core provisions. The redrafted provision is not intended to change the application of the section. It now provides that the determination of the objection on one matter does not affect the right of the Commissioner to make or amend assessments on any other matter.

Binding rulings

A private or product ruling issued under section 91E or 91F of the Tax Administration Act 1994 before the passing of the Taxation (Core Provisions) Act may cease to apply on the application of the core provisions because of changes made by the latter Act. Such a ruling is to be called a "terminated ruling". In its consideration of the proposed legislation, the Finance and Expenditure Select Committee recommended that a special process be established for rulings affected by the changes in the Taxation (Core Provisions) Act.

As a result, the Commissioner will:

- reissue a terminated ruling, to the same effect as, and for the remainder of the period in, the terminated ruling, if the core provisions legislation does not substantially alter the way the tax law applies in the ruling (any substantial changes made to the tax law other than those noted in this TIB will be reported to the Government);
- issue a new ruling if the terminated ruling cannot be reissued and the taxpayer requests a new ruling.

Taxpayers will not be charged for these rulings and a ruling will be issued on the basis of the taxpayer's original application. (See section 3 of the Core Provisions Act).

Comparative tables of old and new provisions

The following pages contain comparative tables of the Taxation (Core Provisions) Act 1996, the Income Tax Act 1994, and the Income Tax Act 1976. The tables show which sections of the previous tax Acts correspond to the provisions of the new Act, and vice versa. The sections included are those that reorder, renumber, or repeal the 1994 legislation.

Changes to the Income Tax Act 1994

Provision in Core Provisions Act 1996	Corresponding provision in Income Tax Act 1994	Corresponding provision in Income Tax Act 1976 or IRD Act 1974
A 1	A 1	1
AA 1	new	
AA 2	BB 3 (a) BB 3 (b)	242(a) 242(b)
AA 3	new	
AA 4 (1)	AA 3	–
AA 4 (2)	AA 2 (1)	–
BA 1	new	–
BB 1	BB 1	38(1), (2)
BB 2 (1)	new	
BB 2 (2)	MB 1	376(1)
BB 2 (3)	new	
BB 2 (4)	new	
BB 3	new	
BC 1	new	
BC 2	new	
BC 3	new	
BC 4	new	
BC 5	new	
BC 6	new	
BC 7	new	
BC 8 (1)	new	
BC 8 (2)	new	
BC 8 (3)	BB 10	57(1)
BC 8 (4)	new	
BC 8 (5)	new	
BC 8 (6)	new	
BC 9	new	
BC 10	new	
BD 1(1)	new	
BD 1 (2)(a)	new	
BD 1 (2)(b)	new	
BD 1 (2)(c)	BB 3(c)	242(c)
BD 2 (1)(a)	new	
BD 2 (1)(b)(i)	BB 7(a)	104(a)
BD 2 (1)(b)(ii)	BB 7(b)	104(b)
BD 2 (1)(b)(iii)	new	
BD 2 (2)(a)	BB 8(b)	106(1)(j)
BD 2 (2)(b)	BB 8(c)	106(1)(k)
BD 2 (2)(c)	DE 1(1)	105(2)
BD 2 (2)(d)	new	
BD 2 (2)(e)	BB 8(a)	106(1)(a)
BD 2 (2)(f)	new	
BD 3	new	
BD 4 (1)	new	
BD 4 (2)	new	
BD 4 (3)	new	
BD 4 (4)	BB 8(d)	106(1)(o)
BE 1	new	
BF 1	new	
BG 1	BB 9	99(2)
BH 1 (1)	BB 11 (1)	294(1)
BH 1 (2)	BB 11 (2)	294(2)
BH 1 (3)	BB 11 (5)	292(2)
CB 1	CB 1	
CB 1 (1)(a)	CB 1 (1)(a)	61(14)
CB 1 (1)(c)	CB 1 (1)(d)	61(52)
s10(3) repeals CB 4 (1)(k)	CB 4 (1)(k)	61(34)
s24(8) repeals CD 1 (5)	CD1(5)	67(7)
s24(11) repeals CD 1 (8),(9)	CD 1 (8), (9)	67(9A), (10)
CD 2 replaces	CD 2	65(2)(h)
CD 3	BB 4(a)	65 (2)(a) excl proviso
CD 4	BB 4(c)	65 (2)(e) excl proviso
CD 5	BB 4 (d)	65(2)(l)
CE 4	BB 5	78(1)-(3)
CH 3	BB 4(b)	65(2)(b)
s48 repeals CI 9	CI 9 –	336R
s58 repeals CM 1	CM 1 –	204A
CM 3 replaces	CM 3	204 B
s60 repeals CM 4	CM 4 (1), (2)	204E(1), (2)
s65 repeals CM 9	CM 9 –	204J
CM 10 replaces	CM 10 (1)-(4)	204C(1)-(4)

Provision in Core Provisions Act 1996	Corresponding provision in Income Tax Act 1994	Corresponding provision in Income Tax Act 1976 or IRD Act 1974
s67 repeals CM 11	CM 11 –	204K
CM 18	new	
CN 1 (1A)	new	
CN 2 (2A),(2B)	new	
CN 3 (1A)	new	
CN 4 (2) replaces	CM 4 (2)	209(3)
DE 1 replaces	DE (1),(2)	105(2),(3)
DI 4	new	
DI 5	new	
DI 6	new	
DJ 12A	new	
DJ 13	CD 1 (5),(8)	67(7), (9A)
DJ 14	new	
DJ 15	CE 3 (2)	65(1)(b)(i) and (c)
DJ 16	CB 4 (1)(k)	61(34)
DK 3 replaces	DK 3	205F
DK 3A	new	
DK 3B (1) replaces	CM 10 (1)	204C(1)
DK 3B (2)	CM 10 (2)	204C(2)
DK 3B (3)	CM 10 (3)	204C(3)
DK 3C	CM 4	204E(1),(2)
DK 3D	CM 12	204N
DK 3E	CM 11	204K
DN 1	DN 1	
DN 1 (1)	DN 1 (2)	216(2)
DN 1 (2)	DN 1 (4)	216(5)
DN 1 (3)	DN 1 (5)	216(6)
DN 1 (4)	DN 1 (6)	216(7)
DN 1 (5)	DN 1 (7)	216(8)
DN 1 (6)	DN 1 (8)	216(9)
DN 1 (7)	DN 1 (9)	216(10)
DN 1 (8)	DN 1 (10)	216(11)
DN 1 (9)	DN 1 (11)	216(12)
DN 1 (10)	DN 1 (12)	216(13)
DN 1 (11)	DN 1 (13)	216(14)
DN 1 (12)	DN 1 (14)	216(15)
DN 1 (13)	DN 1 (15)	216(15A) (relettered)
DN 1 (14)	DN 1 (16)	216(15B)
DN 1 (15)	DN 1 (17)	216(17)
DN 1 (16)	DN 1 (18)	216(21)
DN 1 (17)	DN 1 (19)	216(22)(b)
DN 4	DN 4	
DN 4 (1)	DN 4 (3)	220(4)
DN 4 (2)	new	
DN 4 (3)	new	
DN 4 (4)	DN 4 (5)	new
DN 4 (5)	DN 4 (6)	220(7)
DN 4 (6)	DN 4 (7)	220(8)
DN 4 (7)	DN 4 (8)	220(9)
DN 5	DN 5	
DN 5 (1)	DN 5 (3)	new
DN 5 (2)	DN 5 (4)	221(5)
DP 1 (1) replaces	IE 3 (1)	245M(1)
DP 1 (2)	new	
DP 1 (3)	new	
DP 2 (1) replaces	IE 4 (2)	245RJ(2)
DP 2 (2) replaces	IE 4 (2)	245RJ(2)
DP 2 (3)	new	
DP 2 (4)	IE 4 (9)	245RJ(9)
DP 3 (1)	IE 4 (3)	245RJ(3)
DP 3 (2)	new	
EC 1 (4)	new	
EC 1 (5)	EC 1 (3)	76(3)
EF 2	new	
EG 19 (11)	new	
EJ 1 (2)	new	
EN 2 (3A)	new	
EN 4 (3)	new	
s204 repeals FB 1	FB 1 (1), (2)	(3), (4)
s205 repeals FB 2 (1B)	FB 2 (1B)	
GC 14 renumbers	GC 14	227(5)
GC 14 (2)	new	
HE 2 (1A)	new	
HH 3 (6)	new	
HH 4 replaces	HH 4	228
HH 4 (3A), (3B)	new	
HH 5 (2) replaces	HH 5 (2)	228A(2)
s283 repeals HI 2	HI 2 –	235
s293 repeals HK 15 (1)-(3)	HK 15 (1) - (3)	279(1) - (3)
s303 repeals IB 1	IB 1 (1), (2)	20(1), (2)
s303 repeals IB 2	IB 2 –	221(4)
s303 repeals IB 3	IB 3 –	222
s303 repeals IB 4	IB 4 –	16(6)
s303 repeals IC 1	IC 1 (1), (2)	357(1), (2)
s303 repeals IC 2	IC 2 –	358
s303 repeals IC 3	IC 3 (1) IC 3 (2)(a) IC 3 (2)(b)	359(1) 359(2)(a)(ii) 359(2)(b)

Provision in Core Provisions Act 1996	Corresponding provision in Income Tax Act 1994	Corresponding provision in Income Tax Act 1976 or IRD Act 1974
s303 repeals ID 1	ID 1 –	329
s303 repeals ID 2	ID 2 –	330
s303repeals ID 3	ID 3(1) - (4)	331(1) - (4)
s303 repeals ID 4	ID 4 (1) - (6)	332(1) - (6)
s303 repeals ID 5	ID 5 –	333
s303 repeals ID 6	ID 6 –	335
s303 repeals ID 7	ID 7 –	336 (relettered)
IE 1 (2)	IE 1 (3)	188(3)
IE 1 (3)	IE 1 (4),(5)	188(4),(5)
IE 1 (4)	IE 1 (6)	188(6)
IE 2 (5A)	new	
IE 2 (6) replaces	IE 2 (6),(7)	188A(7),(7A)
IE 2 (7)	IE 2 (8)	188A(8)
IE 2 (8)	IE 2 (9)	188A(1) - definitions 188A(2)(b) - definition
IE 3 (1)	new	
IE 3 (2) replaces	IE 3 (2)	245M(2)
IE 3 (3)	new	
IE 3 (4)	IE 3 (6)	245M(7)
IE 3 (5)	new	
IE 4 (1)	new	
IE 4 (2) replaces	IE 4 (2)	245RJ(2)
IE 4 (3)	new	
IE 4 (4)	IE 4 (3)	245RJ(3)
IE 4 (5)	IE 4 (10)	245RJ(10)
IE 4 (6)	new	
IF 3 replaces	IF 3	245M(4)
IF 7	new	
IG 4 replaces	IG 4 (1), (2)	245N(1), (2)

Provision in Core Provisions Act 1996	Corresponding provision in Income Tax Act 1994	Corresponding provision in Income Tax Act 1976 or IRD Act 1974
IG 5 (1) replaces	IG 5 (2)	245RK(2)
IG 5 (2) replaces	IG 5 (1)	245RK(1)
IG 5 (4)	new	
IG 10	new	
II 1 replaces	II 1	205D
II 2	II 2 (1)(1A)(2)	205C(1), (2)
II 3	II 2 (1A)	new
IZ 1	new	
IZ 2	new	
IZ 3	new	
IZ 4	new	
IZ 5	new	
IZ 6	new	
IZ 7	new	
s309 repeals KB 1	KB 1	57(2) (relettered)
KC 1 (4)	new	
s317 repeals KD 4 (1)	KD 4(1)	374F(1)
KZ 3 (2)	new	
KZ 3 (3)	new	
KZ 3 (4)	KZ 3 (2)	new
LC 1 (3A)	new	
LC 14 replaces	LC 14 (1), (2)	306(1), (2)
LE 2 replaces	LE 2	
s354 repeals MB 1	MB 1	376(1)
s360(1) repeals MC 1 (1)	MC 1 (1)	390(1)
MC 1 (2) replaces	(MC 1 (2)	390(2)
s386(4) repeals MF 5 (7)	MF 5 (7)	394ZZQ(8)
s389(3) repeals MF 10 (6)	MF 10 (6)	
NG 3 replaces	NG 3	317
YB 4 (3),(4)	new	

Changes to the Income Tax Act 1976 or the Inland Revenue Department Act 1974

Provision in Income Tax Act 1976 or IRD Act 1974	Corresponding provision in Income Tax Act 1994	Corresponding provision in Core Provisions Act 1996
1	A 1	A 1
16(6)	IB 4	repealed
20(1),(2)	IB 1 (1),(2)	repealed
38(1),(2)	BB 1	BB 1
50D (1), (2), (3)	KC 1 (1),(2),(3)	KC 1 (1),(2),(3)
57(1)	BB 10	BC 8(3)
57(2) (relettered)	KB 1	repealed
61(14)	CB 1 (1)(a)	CB 1 (1)(a)
61(46)	CB 1 (1)(b)	CB 1 (1)(b)
61(52)	CB 1 (1)(d)	CB 1 (1)(c)
61(34)	CB 4 (1)(k)	DJ 16
65(1)(b)(i) and (c)	CE 3 (2)	DJ 15
65(2)(a) excl proviso	BB 4 (a)	CD 3
65(2)(b)	BB 4 (b)	CH 3
65(2)(e) excl proviso	BB 4 (c)	CD 4
65(2)(h)	CD 2	CD 2
65(2)(l)	BB 4 (d)	CD 5
67(7)	CD 1 (5)	DJ 13
67(9A)	CD 1 (8)	DJ 13
67(10)	(9)	repealed
78(1)-(3)	BB 5	CE 4
99(2)	BB 9	BG 1
102(3),(4)	FB 1 (1),(2)	repealed
104(a)	BB 7 (a)	BD 2 (1)(b)(i)
104(b)	BB 7 (b)	BD 2 (1)(b)(ii)
105(2),(3)	DE 1 (1),(2)	BD 2 (2)(c), DE 1
106(1)(a)	BB 8 (a)	BD 2 (2)(e)
106(1)(j)	BB 8 (b)	BD 2 (2)(a)
106(1)(k)	BB 8 (c)	BD 2 (2)(b)
106(1)(o)	BB 8 (d)	BD 4 (4)
188(1)	IE 1 (1)	IE 1 (1)
188(3)	IE 1 (3)	IE 1 (2)
188(4),(5)	IE 1 (4),(5)	IE 1 (3)
188(6)	IE 1 (6)	IE 1 (4)
188(7)-(10)	IF 1 (1)-(4)	IF 1 (1)-(4)
188(12),(13)	IF 1 (5),(6)	IF 1 (5),(6)
188AA(1)	IF 2	IF 2
188A(3)	IE 2 (1)	IE 2 (1)
188A(4)	IE 2 (2)	IE 2 (2)
188A(5)	IE 2 (3)	IE 2 (3)
188A(6)	IE 2 (4)	IE 2 (4)
188A(6A)	IE 2 (5)	IE 2 (5)
188A(7),(7A)	IE 2 (6),(7)	IE 2 (6) (replaced)
188A(8)	IE 2 (8)	IE 2 (7)
188A(1) - definitions 188A(2)(b) - definitions	IE 2(9)	IE 2(8)
188C(1)(a)-(c)	IH 1 (1)(a)-(c)	IH 1 (1)(a)-(c)
188C(1)(d)(iv)	IH 1 (1)(d)	IH 1 (1)(d)
188C(2)(a)-(e)	IH 1 (2)(a)-(e)	IH 1 (2)(a)-(e)
188C(2)(f)(iii),(iv)	IH 1 (2)(f)(i),(ii)	IH 1 (2)(f)(i),(ii)
191(1)	IG 1 (1)	IG 1 (1)
191(2)	IG 1 (5)	IG 1 (5)
191(3)-(5)	IG 1 (2)-(4)	IG 1 (2)-(4)
191A(1)-(5)	IG 2 (1)-(5)	IG 2 (1)-(5)
191A(6) - definition	IG 2 (11)	IG 2 (11)
191A(7A)	IG 2 (6)	IG 2 (6)
191A(8)-(11)	IG 2 (7)-(10)	IG 2 (7)-(10)
191B(1),(2)	IG 3	IG 3
191O (1), (1A), (2) -(7)	IG 6 (1)-(8)	IG 6 (1)-(8)
191P(2)(b),(c)	IG 7 (1)(a),(b)	IG 7 (1)(a),(b)
191P(3)(a)	IG 7 (2)(a)	IG 7 (2)(a)
191P(3)(b)(ii)(iii)	IG 7 (2)(b)(i),(ii)	IG 7 (2)(b)(i),(ii)
191P(3)(d),(e)	IG 7 (2)(c),(d)	IG 7 (2)(c),(d)
191P(3)(f)-(h)	IG 7 (2)(e)-(g)	IG 7 (2)(e)-(g)
191P(4),(5)	IG 7 (3),(4)	IG 7 (3),(4)
191P(6)(a),(b)	IG 7 (5)(a),(b)	IG 7 (5)(a),(b)
191P(6)(c)(i)(B)	IG 7 (5)(c)(i)	IG 7 (5)(c)(i)
191P(6)(c)(ii)	IG 7 (5)(c)(ii)	IG 7 (5)(c)(ii)
191P(6)(d)	IG 7 (5)(d)	IG 7 (5)(d)
191WD(19)	IF 4	IF 4
191WD(20)	IF 5	IF 5
191WD(21)	IF 6	IF 6
191WD(22)	IG 8	IG 8
191WD(23)	IG 9	IG 9
191VC(1)-(3)	MF 10 (1)-(3)	MF 10 (1)-(3)
204A	CM 1	repealed
204B	CM3	CM 3 (replaced)
204C(1)-(4)	CM 10 (1)-(4)	CM 10 (replaced)
204E(1),(2)	CM 4 (1),(2)	DK 3C
204J	CM 9	repealed
204K	CM 11	DK 3E
205C(1),(2)	II 2 (2),(1),(1A),(2)	II 2
205D	II 1	II 1 (replaced)
205F	DK 3	DK 3 (replaced)
209(3)	CN 4 (2)	CN 4 (2) (replaced)

Provision in Income Tax Act 1976 or IRD Act 1974	Corresponding provision in Income Tax Act 1994	Corresponding provision in Core Provisions Act 1996
214B(7)	IH 2 (1)	IH 2 (1)
214B(25) (in part)	IH 2 (2)	IH 2 (2)
214G(2)	IH 3	IH 3
216(2)	DN 1 (2)	DN 1 (1)
216(5)	DN 1 (4)	DN 1 (2)
216(6)	DN 1 (5)	DN 1 (3)
216(7)	DN 1 (6)	DN 1 (4)
216(8)	DN 1 (7)	DN 1 (5)
216(9)	DN 1 (8)	DN 1 (6)
216(10)	DN 1 (9)	DN 1 (7)
216(11)	DN 1 (10)	DN 1 (8)
216(12)	DN 1 (11)	DN 1 (9)
216(13)	DN 1 (12)	DN 1 (10)
216(14)	DN 1 (13)	DN 1 (11)
216(15)	DN 1 (14)	DN 1 (12)
216(15A) (relettered)	DN 1 (15)	DN 1 (13)
216(15B)	DN 1 (16)	DN 1 (14)
216(16)	IH 4 (1)	IH 4 (1)
216(17)	DN 1 (17)	DN 1 (15)
216(19),(20)	IH 4 (2),(3)	IH 4 (2),(3)
216(21)	DN 1 (18)	DN 1 (16)
216(22)(b)	DN 1 (19)	DN 1 (17)
220(4)	DN 4 (3)	DN 4 (1)
220(6)	IH 5	IH 5
220(7)	DN 4 (6)	DN 4 (5)
220(8)	DN 4 (7)	DN 4 (6)
220(9)	DN 4 (8)	DN 4 (7)
221(4)	IB 2	repealed
221(5)	DN 5 (4)	DN 5 (2)
228	HH4	HH 4 (replaced)
228A(2)	HH 5 (2)	HH 5 (2) (replaced)
242(a),(b)	BB 3 (a),(b)	AA 2
242(c)	BB 3 (c)	BD 1 (2)(c)
245M(2)	IE 3 (2)	IE 3 (2) (replaced)
245M(4)	IF 3	IF 3

Provision in Income Tax Act 1976 or IRD Act 1974	Corresponding provision in Income Tax Act 1994	Corresponding provision in Core Provisions Act 1996
245M(7)	IE 3 (6)	IE 3 (4)
245N(1),(2)	IG 4 (1),(2)	IG 4 (replaced)
245RJ(2)	IE 4 (2)	IE 4 (2) (replaced)
245RJ(3)	IE 4 (3)	IE 4 (4)
245RJ(10)	IE 4 (10)	IE 4 (5)
245RK(1)	IG 5 (1)	IG 5 (2) (replaced)
245RK(2)	IG 5 (2)	IG 5 (1) (replaced)
245RK(3)	IG 5 (3)	IG 5 (3)
279(1)-(3)	HK 15 (1)-(3)	repealed
292(2)	BB 11 (5)	BH 1 (3)
293(2)	LC 1 (1)	LC 1 (1)
293(2B)	LC 1 (2)	LC 1 (2)
293(2C)	LC 1 (3)	LC 1 (3)
293(3)	LC 1 (4)	LC 1 (4)
294(1)	BB 11 (1)	BH 1 (1)
294(2)	BB 11 (2)	BH 1 (2)
306(1),(2)	LC 14 (1),(2)	LC 14 (replaced)
317	NG 3	NG 3 (replaced)
331(1)-(4)	ID 3 (1)-(4)	repealed
332(1)-(6)	ID 4 (1)-(6)	repealed
336 (relettered)	ID 7	repealed
336R	CI 9	repealed
357(1),(2)	IC 1 (1),(2)	repealed
359(1)	IC 3 (1)	repealed
359(2)(a)(ii)	IC 3 (2)(a)	repealed
359(2)(b)	IC 3 (2)(b)	repealed
374F(1)	KD 4 (1)	repealed
376(1)	MB 1	BB 2 (2)
390(1)	MC 1 (1)	repealed
390(2)	MC 1 (2)	MC 1 (2)
390(3)	MC 1 (3)	MC 1 (3)
394ZZQ(3) (3A), (4) -(7)	MF 5 (1)-(6)	MF 5 (1)-(6)
394ZZQ(8)	MF 5 (7)	repealed

Changes to definitions

Definition	Source	Location
allowable deduction	new	OB 1
allowable rebates	new	OB 1
annual allowable deductions	new	OB 1
annual gross income	new	OB 1
applicable basic tax rate	new	OB 1
applicable surcharges	new	OB 1
assessable income	replaced	OB 1
assesable income from forestry	repealed	
assessable income from mining	repealed	
attributed foreign net loss	new	OB 1
available net loss	new	OB 1
beneficiary income	replaced	OB 1
convertible credit	new	OB 1
determination of loss	repealed	
determination of loss carried forward	repealed	
determination of net loss	new	TAA 92(3)
determination of net loss carried forward	new	TAA 92(4)
foreign expenditure	new	EP 1 (11)
foreign investment fund net loss	new	OB 1
foreign sourced amount	new	OB 1
gross income	new	OB 1
gross income from forestry	new	OB 1
gross income from life insurance	new	OB 1
gross income form mining	new	OB 1
gross proceeds	new	EM 3 (3)
income tax liability	new	OB 1
mining outgoing excess	new	OB 1
mortality result	new	OB 1
net gain	new	EM 3 (3)
net income	new	OB 1
net loss	new	OB 1
net mining loss	new	OB 1
New Zealand resident	new	OB 1
non-filing taxpayer	new	OB 1
non-refundable credit	new	OB 1
non-resident	new	OB 1
non-resident general insurer	new	OB 1
notional income tax liability	new	LC 14 (4)
partnership gross income	new	HC 1 (12)
partnership net income	new	HC 1 (12)
policyholder base	new	OB 1
policyholder base calculation	new	OB 1
policyholder base income tax liability	new	OB 1
policyholder income	new	OB 1
policyholder net loss	new	OB 1 TAA 3
refundable credit	new	OB 1
refundable rebate	new	OB 1
return of income or return of the taxpayer's income	new	OB 1
schedular gross income	new	OB 1
schedular gross income subject to final withholding	new	OB 1
schedular income tax liability	new	OB 1
schedular taxable income	new	OB 1
specified activity net income	new	IE 2 (8)
specified activity net loss	new	IE 2 (8)
surplus rebates	new	OB 1
surplus refundable credits	new	OB 1
tax avoidance arrangement	new	OB 1
tax deduction	new	OB 1
taxable income	new	OB 1
terminal tax	new	OB 1
timing regime	new	OB 1
trustee income	replaced	OB 1
unadjusted income tax liability	new	OB 1
underwriting income	repealed	
underwriting loss	new	OB 1
underwriting result	new	OB 1
value of breeding stock	new	EM 3 (3)
windfall credit	new	MZ 1 (3)

Changes to the Tax Administration Act 1994

Provision in Tax Administration Act 1994	Corresponding provision in Income Tax Act 1976 or IRD Act 1974
41(1)	new
92A	new
120E(4)	new
120EA	new
120R(2)	new
141(12A)	new